



House of Commons
Environment, Food and Rural
Affairs Committee

**The outcome of the
independent Farming
Regulation Task Force:
Government Response
to the Committee's
Tenth Report of
Session 2010–12**

**Ninth Special Report of Session
2010–12**

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Environment, Food and Rural Affairs Committee

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Ninth Special Report

The Environment, Food and Rural Affairs Committee reported to the House on *The outcome of the independent Farming Regulation Task Force* in its Tenth Report of Session 2010–12, published on 23 September 2011. The Government response to the Report was received on 22 November 2011.

Government response

Introduction

The Government welcomes the Environment, Food and Rural Affairs Select Committee's report "The Outcome of the Independent Farming Regulation Task Force". It was helpful to have the Committee's call for evidence and consideration shortly after publication of the Task Force report in May 2011, as it provided an early opportunity for further consideration and assessment of the Task Force's strategic principles and recommendations.

The Government published an Interim Response to the Task Force on 3 November 2011 which provided a progress report and set out action to date. Where appropriate our response to the Committee draws on that document. We welcome the broad thrust of the Committee's recommendations and conclusions; responses to each are set out below. We will continue to bear these recommendations in mind as we prepare a final response to the full Task Force report for publication early in 2012, when we will set out detailed action and implementation plans for all recommendations.

Recommendations and Responses

Trust and the use of voluntary initiatives

Non-regulatory approaches

1. We agree that a non-regulatory approach should be the starting point for addressing a policy issue. We recommend that Defra enshrines this principle in their policy making process. Policy-making officials in Defra should be explicitly assessed on how they have given consideration to non-regulatory approaches. (Paragraph 15)

The Department's vision is to create the environment in which Defra's policies contribute to green economic growth in ways that are least burdensome on those affected, intervening only when necessary and preferably through non-regulatory approaches. Policy-makers are already expected to follow the Policy Cycle, a Departmental framework for developing policy. The cycle explicitly sets out the need for business cases to justify new activity, Impact Assessments to assess the costs and benefits of the options and Post-Implementation Review to assess how well policies are working and to determine whether they need to be changed. These steps in the cycle already require explicit consideration of non-regulatory solutions throughout the policymaking process.

We are strengthening these existing processes through a number of internal reforms. We will provide stronger challenge of new proposals, at the same time as providing greater support for policy makers. To provide stronger challenge we:

- have recently created a Regulatory Management Tool to improve the collection, management and analysis of regulatory and deregulatory plans from start to finish. This will enable better tracking of progress and earlier internal challenge of new proposals.
- are reviewing the Policy Cycle to strengthen the emphasis on using other methods of achieving desired outcomes, including better regulation levers of change and industry partnership approaches.
- have created a sign-off process for Senior Responsible Officers through which they have to confirm that alternative approaches have been considered. This will strengthen the accountability of SRO's decisions where regulation is a chosen option, and will in turn encourage a culture change where more consideration is given to non-regulatory alternatives early on in the policy making process.

To provide greater support:

- we have established a Regulatory Reform Evidence Plan to make better evidence more accessible to teams, for example on the costs and benefits of the existing stock of regulations, evidence, case studies, and guidance on alternatives to regulation (such as voluntary agreements and self-regulation) and how they can be effective, and designing and implementing less burdensome forms of regulation where regulation remains necessary.
- we have a team of Better Regulation Relationship Managers who encourage and challenge better regulation champions from each policy area to seek alternatives and ensure that staff have access to the advice and help they need to pursue alternative options. They will encourage information sharing and exchange of experience across the Department and with our stakeholders to stimulate a culture of innovation.
- the Centre for Expertise in Influencing Behaviours provides bespoke support to teams in understanding softer means of influencing behaviours. This includes understanding industry sectors in more depth, for example the different motivations for farming in a very diverse agriculture sector, and how different approaches to achieving desired outcomes can be tailored for different sectors.

Responsibility Sharing

2. While we see the benefits of responsibility-sharing, giving the industry more responsibility means allowing farmers the scope to fail to meet the expectations placed on them. Defra's response to our report should set out the policy areas where it considers increased responsibility-sharing is appropriate, given that this approach entails greater risk. (Paragraph 16)

The Government agrees that responsibility sharing is a higher risk approach to achieving outcomes. The Farming Regulation Task Force emphasised that the farming industry must take greater responsibility for achieving desired outcomes, and that in order to benefit from reduced burdens in regulation it needs to earn trust. The Department is pioneering stronger partnership approaches that emphasise responsibility sharing. For example, the Minister of State announced the creation of a new Animal Health and Welfare Board for England on 26 April 2011.

The Board is the key mechanism for sharing responsibility for animal health and welfare with industry with a non executive Chair and a majority of other non executive members working in collaboration with Defra SROs. The Board, which met for the first time on 8 November, is the principal source of Departmental advice to Defra Ministers on all strategic health and welfare matters relating to all kept animals in England. The Board's role is to set the broad strategic policy framework as the basis for day-to-day advice to Ministers and for day-to-day operational actions. The non executive members of the Board act in a personal capacity to make decisions jointly with the Defra members.

The Board is looking at how to rebalance responsibilities between Government and industry while maintaining high standards of animal health and welfare. As a first step the Board will develop an Animal Health and Welfare Strategy for England which will set out the fundamental principles that it will follow in developing future policy and implementation plans. The Board's non-executive members will engage directly with industry and stake holder groups to ensure that all new policies are developed with the benefit of access to grassroots knowledge and experience.

The Board's specific responsibilities include:

- setting the strategic policy and budget priorities within the available budget envelope;
- development of key policies and how they should be funded (including where appropriate charging regimes for funding these policies);
- assessment of the risk of threats from animal disease and how to manage these;
- determining what the surveillance and research priorities should be;
- the implementation of policy, commissioning its delivery and ensuring value for money by the relevant Defra agencies and other delivery organisations;
- the effectiveness and proportionality of the regulatory framework;
- approving the operational plans of the Animal Health and Veterinary Laboratories Agency in relation to animal health and welfare in England and monitoring the delivery of those plans;
- approving the operational plans of other delivery bodies in respect of animal health and welfare in England (e.g. CEFAS and FSA);

- the contingency plans for dealing with new disease outbreaks and for reviewing these plans on an annual basis (or as circumstances require). These should provide for speedy and effective day-to-day management of the outbreak by officials.

Voluntary Approaches

3. Evidence on the effectiveness and suitability of voluntary approaches as opposed to regulation is not clear-cut. However, we conclude that voluntary initiatives offer significant potential, which merits further development. Following the end of the Campaign for the Farmed Environment in 2012, Defra's Centre of Expertise on Influencing Behaviours should conduct a review on the success of Defra's voluntary approaches and set out how future voluntary initiatives should be designed to maximise their success. (Paragraph 20)

Defra recognises the potential of voluntary initiatives to deliver outcomes and agrees that further evidence is needed to identify the key features of successful models. As the Committee's report indicates, a number of such initiatives are already in place and the June 2011 Natural Environment White Paper contains a commitment to:

“... use the review in 2012 of the Campaign for the Farmed Environment and the Greenhouse Gas Action Plan, as well as the evidence from elsewhere such as on pesticides or voluntary action under the Water Framework Directive, to assess more generally the effectiveness of this kind of voluntary industry-wide approach.”

This project has been started and is, involving policy teams and evidence specialists within the Department, including the Centre of Expertise on Influencing Behaviours. It will work closely with the farming industry and environmental and other civil society organisations to gather evidence and experience.

In addition to the planned review of progress against targets in June 2012, Defra and the other partners have initiated a process to evaluate environmental and wider outcomes achieved by the Campaign for the Farmed Environment, including evidence of shifts in attitude and action at farm level.

Adopting an outcome-based approach

4. We recommend that Defra's default option should be to regulate based on outcomes rather than compliance with processes, unless there is a strong reason for doing otherwise. The supporting case should be set out in the impact assessment accompanying the new regulatory proposal. Suitable justifications for process-based regulation might include the need to adopt a precautionary approach or difficulty in reliably or cost-effectively quantifying the outcome. (Paragraph 24)

Defra agrees with this recommendation. Sometimes regulation is necessary and where it is, our training materials, guidance and advice to policy makers will ensure that we are able to communicate, deliver and evaluate policy based on the outcomes we need to achieve. We are working in partnership with our delivery partner organisations and they are often best placed to inform us of how policies can be more effectively delivered on the ground. We have established a Regulators Group to allow our delivery partners to challenge our

approach and ensure that we make informed decisions about cost-effective implementation. Where regulations are considered necessary we will enforce these in a proportionate and risk based manner.

We are in discussion with industry representatives about how to engage business in the development of targeted sectoral guidance. Our Policy Cycle and EU Negotiations guidance encourage early engagement with business stakeholders to ensure that our policies are effective and encourage compliance and we are strengthening our processes to ensure that business are asked the right questions when we consult with them.

Very small businesses are a key sector for Defra and are a major component of the British economy, vital to future growth. Some 98% of farm holdings and 99% of catching enterprises (fishing industry) are micro-businesses of fewer than 10 staff. Defra is seeking to improve its understanding of the needs of these business and the impacts of its regulatory activities on them. We aim to ensure that regulation is proportionate to the scale and risk of businesses and reflects their operational circumstances, in particular the limited time available to absorb regulatory guidance. Working more directly with business in the development of policies will require a mind-set change from both the Department and business, and we recognise that, smaller businesses in particular will have limited resources to support us.

Much of our regulation emanates from the EU and we have developed an action plan to be more effective both upstream (before and during negotiations) and downstream (transposition and implementation), and to improve skills and capacity. Our new guidance for negotiators also sets out these principles and gives them the tools to challenge regulations and directives which appear to be process driven rather than outcome-focused. We are actively engaging in seeking to influence the Commission's 'Smart Regulation' Programme in particular their pilot studies on 'fitness checks' of EU legislation such as water and waste. In our interim response to the Farming Regulation Task Force Report we highlighted examples of early engagement with the industry to influence EU proposals, and we see significant opportunities to develop this approach in influencing the shape of the EU Animal Health Law.

Earned Recognition

5. We support the principle of using earned recognition to better target, and perhaps reduce, Government inspections and conclude that this could lead to a more efficient use of resources. Defra should aim to establish a system of earned recognition to target cross-compliance inspections. Defra should negotiate in Brussels to ensure that the reformed Common Agricultural Policy offers scope to do this without breaching EU audit and control requirements. Defra, in conjunction with the farming industry, will need to commission further research to model the link between assurance scheme membership and risk of non-compliance with regulation. Defra should also periodically review the appropriateness of the models it uses to assess farming businesses' risk profile. (Paragraph 32)

6. Defra must ensure that the implementation of a system of earned recognition results in a genuine reduction of costs for farmers as well as Government. Where farm assurance schemes are expected to shoulder additional responsibilities, the cost of this

should be shared between members of the assurance scheme and Government. If a system of earned recognition is implemented more widely, Defra must ensure that the cost of assurance scheme membership does not result in smaller farms being disproportionately targeted for inspections. (Paragraph 35)

The Interim Response to the Task Force (3 November 2011) (paragraphs 3.6–3.9) confirmed the Government's intention to fully explore the opportunities of earned recognition and to reward farmers who can demonstrate high standards and compliance with regulations. To ensure that changes are effective and fair, there are significant questions to be answered. Some questions may require discussion with the European Commission, if they affect the way that EU regulations are monitored and audited. Others may require further research to provide the necessary assurances that accredited audit of non-official standards provide the level of details and robustness of controls that allow them to be taken into account in official risk-assessments. We are working with the standard owners (Assured food Standards, LEAF), the farming sector and Defra's delivery agents to consider those questions, which were set out in the Interim Response:

- which accredited assurance schemes provide appropriate coverage and can be considered for potential earned recognition?
- should earned recognition be based on common outcomes or detailed analysis and comparison of standards?
- can membership of an assurance scheme give confidence of good practice/competence in other areas of a business that are not covered by that scheme?
- are there EU legal or audit standards that must be satisfied?
- are there costs implications for changes to IT systems? Are there other issues would affect timetables for change (e.g. changes to CAP rules, statutory processes, development of new systems)?

We will make quite clear that earned recognition does not mean a transfer of responsibility for enforcement or official audit to farm assurance schemes. Those are tasks that are clearly, and must remain, the responsibility of government. We want to take account of the efforts made by farmers, by recognising the information that is already available (such as assurance scheme membership) but which is not presently taken into account in the official risk-assessments that determine whether a premises should receive an official inspection. Collaborative working with all interested parties will be essential to taking this forward; and this is already taking place, building on the lessons learned from the work in recent years that has allowed introduction of earned recognition for farm animal welfare inspections. We will provide a progress report on these discussions in the final report to the Task Force in 2012.

Interactions with European Union institutions and other EU Partners

Gold-plating

7. Defra's Regulatory Assessment should include an assessment of whether regulations with EU origins are over-implemented and identification of ones where de-gilding can be achieved swiftly, ideally without recourse to amending statutory instruments. (Paragraph 40)

We agree with the principle that gold plating should be removed. In Defra it is very rare that we have not taken full advantage of derogations and where this has been the case it has been after full consideration of the evidence and where there has been an exceptionally strong case to do so. The Government's One-In, One-Out process is being used as part of our internal discipline for instigating reviews of existing policies and gold-plating of EU regulation is included within this process. In the case of rules on the maximum stocking density set for rearing meat chickens, we will carry out an assessment of the impact of the policy on the competitiveness of the industry.

Engagement with EU institutions

8. We support the Task Force's recommendations that Defra's engagement with EU institutions should be greater, earlier, and in partnership with industry. Defra will need to ensure that adequate staff resources are made available to EU policy teams in order to translate this recommendation into action. In addition, we highlight the importance of seeking allies among the other Member States. (Paragraph 43)

We agree that timely and credible engagement is a key aspect of the process of negotiating EU legislation and Defra will work with others across government, such as Better Regulation Executive and FCO, to pool resources to maximise the UK impact. Our EU Negotiations Guidance emphasises the need to engage early with the Commission, identify allies and influence effectively in European Institutions, including the European Parliament. Where Government and industry can identify and agree a common position, there is scope to work together as part of a targeted EU engagement strategy. These needs to be underpinned with a robust evidence base. The impact of proposals needs carefully evaluated in economic and other terms, and engagement is more likely to be effective if well developed alternatives can be proposed. As mentioned in response to recommendation 4, we also encourage officials to engage with industry and stakeholders at an early stage when preparing for, and during, negotiations. Equally we encourage industry partners to engage and help develop a robust evidence base that helps influence outcomes.

Parliamentary scrutiny

9. We recommend that the Leader of the House work with the Procedure Committee to take forward the proposal that Delegated Legislation Committees consider a substantive and amendable motion. (Paragraph 44)

This recommendation is not addressed to Defra.

The Task Force's Approach

Evidence base

10. We are confident that the Task Force's approach enabled them to gather substantial evidence, which they have endeavoured to reflect in their report. However, Defra will need to assemble a firmer evidence base, including detailed risk assessment and cost benefit analysis surrounding recommendations where the risk of a negative impact is high. (Paragraph 48)

We recognise that many of Task Force's recommendations identified a desired outcome and will require development of an evidence base to consider whether they are feasible and to provide a foundation for developing implementation proposals. Other recommendations need more detailed analysis, for example, we have already commissioned the epidemiological monitoring needed to compare the levels of protection provided by the current controls on livestock movements (the six-day standstill) and the simplified regime recommended by the Task Force. We will set out in the final response to the Task Force, how these will be taken forward, identifying where further work is needed and where formal Impact Assessments are required.

European regulations

11. Defra will not deliver the full potential of the Task Force's report if it is not willing to pursue the renegotiation of existing European regulations. Defra should build on the opportunities presented by the Commission's own simplification initiatives to engage forcefully with the European Commission and other Member States in this area. We recommend that Defra report, by May 2012, on its engagement with the Commission's Action Programme for Reducing Administrative Burdens in the European Union. (Paragraph 52)

The Commission's Action Programme for Reducing Administrative Burdens in the European Union, agreed by Heads of Government in 2007, commits Member States to achieving a net reduction of 25% by 2012. The UK's five year programme to achieve a 25% reduction was completed in May 2010. The final report¹ shows that Defra met the 25% target, and also explains how engagement with the EU contributed to the exercise. The Coalition Government has set out new ambitious plans to strengthen the management and reduction of regulation further. These include new Guiding Principles for EU legislation² underlying the Government's approach to EU measures, aimed at maximising the UK's influence in Brussels and ending the gold plating of EU legislation in the UK. These principles include a requirement for Ministers to report to the Foreign Secretary, twice a year, on early influencing priorities and engagement strategies. Defra plays a full part in this process.

¹ <http://www.bis.gov.uk/assets/biscore/better-regulation/docs/s/10-1083-simplification-plans-2005-2010-final-report>

² <http://www.bis.gov.uk/policies/bre/policy/european-legislation/guiding-principles-eu-legislation>

Defra's response to the Task Force's report

Regulatory Scrutiny Panel

12. While it is important to get the membership of the Scrutiny Panel right, this will be of little significance if the Scrutiny Panel has no powers to hold Government to account. We recommend that Defra's initial response sets out the composition of the Strategic Regulatory Scrutiny Panel and its terms of engagement with Defra to clarify how it will hold Ministers to account for their implementation of this report. In our view, it would be appropriate for Ministers to have to justify why they have not followed the recommendations of the Scrutiny Panel. (Paragraph 56)

Defra's Better Regulation Programme is now supported by a Strategic Regulatory Scrutiny Panel which has been set up to make greater use of independent expertise and to scrutinise the impact of our regulatory policies. The Panel's role is to advise and challenge Defra on its strategic approach to regulatory reform and it will fulfil this role across all policy areas as well as implementation by our delivery partners. Its independent members are Christine Tacon, Peter Young and Andy Robertson.

In the Interim Response to the Task Force we announced that a Task Force Implementation Group—independently chaired (by Richard Macdonald) and bringing together key farming organisations and environmental organisations—would be set up to hold us to account for implementing the Task Force proposals, to push for progress and also to explore opportunities for closer relationships and innovative approaches to deliver the required outcomes. Progress on establishing the Group, its terms of reference, membership and forward plans will be provided in the final response to the Task Force report.

Content of the Report

13. Defra's response to the Task Force's report should provide a clear schedule and timetable for implementation of the Task Force's recommendations to enable the Strategic Regulatory Scrutiny Panel, external bodies, and this Committee to hold Defra to account. For each recommendation referring to a specific regulation, the report should set out who the owner of the regulation is, a target timescale for making any changes, a brief statement setting out Defra's initial response to the recommendation, and a description of any additional evidence that will be needed before a final decision can be made. (Paragraph 57)

14. We recommend that Defra set out the actions it will undertake to achieve culture change, who will champion these, and how the results of those actions will be assessed. We further recommend that the Department report annually to Parliament on its progress in reducing administrative burdens and demonstrate how it has followed the Task Force's guidelines for better regulation. We expect to periodically review Defra's achievements in eliminating unnecessary regulatory burdens. (Paragraph 59)

We will publish a final report to the Task Force early in 2012. In the Interim Response we undertook that this should set a clear agenda and action plan for implementation. We have yet to make decisions on the format of the final response; however we anticipate that it will provide implementation plans and timetables to address individual or related groups of

recommendations. The Committee's recommendations on format and content are helpful and we will bear them in mind in preparing the final response. We agree that it is essential that there should be clear trail from the Task Force report, through the Government Response to implementation, which is transparent and open to scrutiny.

We will continue to report on the delivery of our better regulation objectives, for example the publication of our Statements of New Regulation which set out how we are meeting our One-In, One-Out targets. The RPC also produces bi-annual reports of the fitness for purpose of our Impact Assessments.

As mentioned in response to recommendation 12 above, our interim response set out our intention to establish an implementation group that will oversee progress in implementing the Farming Regulation task Force recommendations. We see this as an ideal mechanism for holding both Defra and farming industry accountable for progress. The Strategic Regulatory Scrutiny Panel will also provide a strategic view on progress across the Department. We therefore do not accept need for a further process report that is unique to Defra.

Hands-on experience

15. Defra should consider whether a programme of hands-on experience with farming businesses targeted at the relevant staff would lead to improved policy-making and how this could be delivered, including the cost implications for Defra and participating businesses. (Paragraph 61)

We agree the principle of improved hands-on experience, to be considered in wider Change programme on Department's skills and ways of working and we are discussing with business organisations the possibility of setting up a business exchange programme along the lines of the scheme we currently run with the voluntary sector. Staff working with the farming sector are strongly encouraged to undertake farm visits, facilitated by industry organisations. We have also encouraged staff to work with industry bodies such as NFU and would like to encourage more opportunities for short term staff exchanges.