

To: consultation.coordinator@defra.gov.uk

Date: 02 June 2021

Contact: Jo Woodhams/Diane Mitchell

Email: Jo.Woodhams@nfu.org.uk
Diane.Mitchell@nfu.org.uk

The NFU represents 55,000 farm businesses in England and Wales. In addition we have 20,000 countryside members with an interest in farming and the country. We do not require our response to be kept confidential.

Environmental Governance:- Consultation on the draft Policy Statement on Environmental Principles

Summary

The Environmental Principles Policy Statement will be an important document, potentially shaping the direction of Government policy for years to come. With that in mind, the NFU believes that it is vital that the Policy Statement, and in particular the definitions of the environmental principles, will be critical for ensuring that the environment is adequately protected, that sustainable development is supported, and that innovation is encouraged. With that in mind, the NFU's key points, which will be expanded fully below, can be summarised as follows:

- The NFU endorses the **importance of sustainable development as a golden thread** that must run throughout the Policy Statement and should be the overarching goal under which the principles should be applied. The environmental, economic and social aspects of sustainable development are interdependent, but have equal standing. Achieving sustainable development in the interpretation and application of the individual principles must be at the front of the minds of Ministers.
- We welcome and support the requirement set out in the Environment Bill for **the principles to be proportionately applied**. It is vital that proportionality is at the core throughout the Policy Statement, allowing for sensible weighing up of policy options, whether in relation to social, economic, and environmental considerations, the assessments of costs and benefits, or the likelihood of an environmental impact of a policy.
- Financial cost and benefits analysis is essential to identify the right policies. We are pleased to see a number of references in the Policy Statement to the need to consider the financial costs and benefits of a policy. In order to identify a viable and proportionate outcome, **it is important that economic and social costs are taken into account**, alongside environmental benefits, when policy decisions are being made.
- We **support the use of the definition of the precautionary principle used in the Rio Declaration**. This approach is consistent with the UK's commitment to respecting international commitments whilst allowing the UK to develop its own approach. Looking to the Rio Declaration allows the UK to develop an appropriate approach to the principles in light of the way in which they are to be applied through the Environment Bill at a policy-making level.
- **The environmental principles should not be used to stifle innovation**. Innovation and technology underpin agriculture's ambition to meet Net Zero targets and for the wider economy to drive down emissions and thrive. It is vital that the development of new technologies is encouraged and supported. Taking an overly cautious approach to newer technology in the application of the principles risks stifling development, potentially forcing companies to move production elsewhere.

- We welcome the **recognition in the Policy Statement that the overseas impact** of a policy should be considered. The impact of imported goods and products may undermine agriculture's competitiveness and if those goods are produced to lower environmental standards, it could serve to drive our environmental footprint overseas. Many environmental impacts are transboundary in nature including on climate, air quality, water quality and waste shipments. Policies in these areas must consider international competitiveness otherwise there will be detrimental effects to the UK economy, imported environmental burdens and overall environmental impacts.
- Early and consistent application of the principles across all government departments to guide policy making, should deliver for the environment, economic growth and for social development, thus **supporting sustainable development**. To enable this to take place and for the principles to be embedded, we suggest that more detailed guidance and strong governance are needed.
- Whilst the Policy Statement sets the right balance and avoids over prescriptive instructions in applying the principles, to ensure consistency and avoid possible confusion, we propose a process is put in place to **periodically undertake an assessment of their application to demonstrate a consistent, transparent approach has been taken in line with the Policy Statement**. This would provide all stakeholders with reassurance and confidence in both their application and any subsequent policy making decisions.

Introduction

The Environment Bill, and the Environmental Principles Policy Statement are key documents which will shape the future direction of British environmental law for generations to come. The NFU believes it is vital that to get these documents right, both to ensure that the environment is adequately protected, and to ensure that British agriculture is able to thrive. Too often 'economic and social development' and 'environmental protection' are presented as opposing forces; however, in order to ensure environmental protection is most effective, these two aims need to work together and there needs to be a recognition that sustainable development incorporates environmental objectives, rather than being something to balance against environmental interests. In particular, the NFU believes that it is vital that environmental land management and food production need to work together, with every farmer having the opportunity to participate in environmental land management schemes if they wish to do so. Consequently, the NFU welcomes the opportunity to comment on the draft Policy Statement, and would welcome further opportunities to work with Defra as the policies evolve.

Brexit is a once in a life-time opportunity for the UK to take ownership of its laws and policies and to make key decisions about the future direction of our country. The NFU recognises the importance of ensuring that key environmental principles are embedded into UK law, but also believes it is important for the UK to take ownership of these principles and not simply adopt the approach taken by the EU. In formulating this response, the NFU has, of course, had regard to the commitments the UK has made in the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain And Northern Ireland, of the other part (the TCA). In particular, the NFU notes the commitment in the TCA to respecting internationally recognised agreements such as the Rio Declaration, and the principles contained therein. We support the use of the definition of the precautionary principle used in the Rio Declaration. This approach is consistent with the UK's commitment to respecting international commitments whilst allowing the UK to develop its own approach. Looking to the Rio Declaration allows the UK to develop an appropriate approach to the principles in light of the way in which they are to be applied through the Environment Bill at a policy-making level.

The NFU also notes the UK's commitment to non-regression, but believes that it is important to ensure that "non-regression" is not transformed into "non-divergence" by an overly cautious approach to policy making, as it is vital that the UK makes good use of the opportunities presented by Brexit to control the future development of UK environmental policy and remedy some of the problems experienced as a result of the EU's approach.

Farmers recognise and support the need to protect the natural environment. Indeed, without adequate supplies of clean water, well maintained soils, and clean air many farming businesses simply would not be able to operate in the future. However, farmers are also operating commercial businesses and need to be able to use their land and invest in new infrastructure in order to provide the high quality produce British consumers value. At present, the farming sector is impacted by environmental policies in a number of ways, including:

- **Cost burdens as a result of compliance with environmental standards.** Farmers are usually price takers and have limited ability to pass costs down the supply chain. Whilst it is right that farmers should do their bit to contribute to the protection of the environment, careful consideration is needed to ensure that adequate support is available to enable the sector to deliver on these ambitions, whilst ensuring the continued ability to deliver high quality produce. Policies which are unaffordable are unlikely to be effective at driving change, therefore the NFU believes that it is important that economic and social costs are taken into account when policy decisions are being made. There is also a risk that farmers may be unable to comply if the cost burdens are too high, preventing farmers from modernising their businesses or even forcing them to leave farming altogether, which has the potential to impact on domestic food security in the longer term.
- **Regulatory barriers.** As will be discussed further below, there are situations where environmental policies currently prevent farmers from investing in new, modern, infrastructure which would deliver environmental benefits. This means that farmers are sometimes forced to continue to operate with their current infrastructure, preventing environmental improvements and threatening the long-term viability of the business; if continuing with the existing infrastructure is not viable, they may be forced to cease farming or change the nature of their business. The NFU wants to see a more risk-based and proportionate approach to environmental policy and regulation, which supports those who are seeking to make improvements which deliver environmental benefits whilst also maintaining viable farming businesses and delivering national food security. In particular, the NFU wants to see a recognition that "betterment" (i.e. replacing existing farm infrastructure with more modern infrastructure), within the limits of what is currently achievable, needs to be supported and encouraged to ensure that environmental improvements can be delivered and businesses can remain viable.
- **Pressure on land use.** Land is required for development in order to meet housing targets and also for off-setting measures to compensate for the environmental impacts of other sectors. The introduction of biodiversity off-setting has the potential to further increase the requirement for additional land. The NFU believes it is important that future environmental policies recognise the importance of national food security and the need to maintain a sufficient area of agricultural land for future generations. However, there are situations where farmers may wish to provide environmental off-sets or other ecosystem services, and policies in this area must enable the market to develop in a manner which ensures farmers are rewarded for the services they provide. The NFU also believes that it is important to recognise the role of measures which work alongside agricultural production, for example by maximising the environmental benefits of buffer strips, boundary features and field margins, rather than simply focusing on measures which result in areas being taken out of production.

The NFU believes it is important to ensure that the principles are applied in a way which is appropriate for policy making, and ensures that all relevant factors, including economic and social factors, can be taken into account when policies are made and developed. Failure to take account of social and economic

factors when formulating policy risks resulting in policies which are impossible to implement, to the detriment of both society and the environment.

With these factors in mind, the NFU's answers to the specific questions posed in the consultation are set out below.

Question 5. Do you think the overview section provides an adequate foundation for policy makers to apply the environmental principles in policy-making?

The overview section provides a very brief introduction to the environmental principles and the way in which the Policy Statement is to be used, which is then supplemented in the later sections.

The overview section of the draft Policy Statement references the need to have “due regard” to the document, but does not provide any guidance on what “due regard” means. In the NFU's view, it would be useful to clarify that this means that the Policy Statement should be considered alongside other relevant documents and policies, and that Ministers need to decide how to balance the various concerns and objectives when making decisions. The Policy Statement should clearly recognise the importance of Ministerial evaluation and show that Ministers have robustly considered and applied the principles, whilst recognising that there are situations where compromise is necessary. It must be clear that Ministers continue to be able to decide that there are circumstances where a degree of environmental impact has to be accepted due to the importance of pursuing the primary objectives of the policy.

The environmental principles described in the draft Policy Statement are closely related to those which were set out in the EU Treaties; however, the way in which they are to be used is quite different to the context in which the EU principles are most often considered by the Courts. Much of the current case law which has developed the principles has concerned the interpretation and application of the principles in the context of individual decisions. However, the principles in the Environment Bill, and defined further in the Policy Statement, are intended to be applied by Ministers when making policies. Because the Policy Statement is designed to be used at an early stage of policy making when the risks may be uncertain, it is important that the way in which the principles are defined and used facilitates the decision-making process, and allows flexibility for Ministers to consider a wide range of factors, including economic and social factors, alongside environmental impacts. It is also important that the consideration of economic and social costs is fully integrated into the application of the principles to ensure that the policy which is ultimately produced can be implemented in an effective manner. Failure to do so risks resulting in policies with significant unintended consequences, that do not work in practice, stifle economic and social growth, or do not deliver the intended environmental benefits. If the Minister wants to ensure that the policy developed is applied in a precautionary way, or to limit the factors that are taken into account when making decisions under the policy, that can be written into the policy itself, but it is vital that all relevant factors, including economic and social factors, are taken into account during the policy formulation.

Question 6. Do you think step one allows policy-makers to correctly assess the potential environmental effects of their policy?

This section gives a logical overview of how policy-makers should go about assessing the potential environmental impacts of a policy. The fact that the draft Policy Statement confirms that this is not intended to be a “deep dive” or to replicate the impact assessment process is very useful, as attempting to carry out either of these exercises at a very early stage in decision making is likely to be impractical or disproportionately expensive. However, it is important to acknowledge that environmental impacts may change or emerge as policy is developed, therefore it is questionable whether this should be carried out as a one-off exercise at the start of the policy making exercise; it may be more appropriate for this step to be reviewed at key points throughout the policy making

exercise to consider whether risks have been adequately addressed, and to reduce the chances of unforeseen impacts as a result of mitigation measures built into a policy. Failing to adequately consider the environmental effects could result in more frequent policy changes to avoid unforeseen impacts, which could have been dealt with in the first instance. Ensuring that the Policy Statement adequately balances the need for a robust assessment of the impacts against the need to avoid the process becoming too onerous or impractical at an early stage will be vital if the Policy Statement is to facilitate good environmental decision making.

Page 9 of the draft Policy Statement discusses the need to consider the environmental impacts of a policy both at a domestic level and overseas. Policies which impact on the ability of the UK to produce food, such as those which impact on the use of agricultural land or on the manner in which food is produced in the UK, will have a direct impact on the food market. The market impact may include food prices, viability of businesses in the supply chain and consumer choice, as well as production standards and sourcing from other countries. If domestic policies drive the need to import more foods, the NFU believes that the environmental costs associated with those imports, including factors such as the CO₂ associated with the transport of those goods and environmental damage (e.g. deforestation) which may occur as a result of an increased demand for goods from overseas, must be taken into account. We would welcome greater consideration of the circumstances in which overseas environmental damage could be relevant to ensure that Ministers are alive to the need to consider such damage when working in areas other than foreign policy. It must also be recognised that farmers play a vital role in maintaining the British Countryside; without a viable farming sector in these areas there could be adverse environmental impacts.

The NFU welcomes the section on proportionality and the confirmation that Ministers only need to consider the harm which is likely to occur and which is likely to be significant. As this Policy Statement is to be applied at an early stage of the policy making process, it is vital that the process is practical for Policy Makers to implement, and it is right that the focus should be on risks which are likely and significant. It should be made clear to Ministers that the aim of the Policy Statement is to ensure that the risk of environmental harm is managed and maintained at an acceptable level, rather than the aim being to avoid any environmental harm regardless of the implications.

Question 7. Do you think step one ensures that policy-making will address the most important environmental impacts?

Step one should ensure that environmental impacts of a policy are duly identified and considered at an early stage of development. The fact that the emphasis is on identifying those risks which are likely to occur and which are likely to be significant, should help ensure that the considerations are focused and practical. This is critical for decision-makers at an early stage in the policy making process. However, as mentioned above, it is questionable whether this should be a one-off exercise, or whether it is likely to need to be reviewed periodically as the policy develops.

Whether the impacts are addressed adequately will be dependent on getting the definitions and application of the principles right, and whether they can be applied in a user-friendly manner which facilitates the development of good policies.

Question 8. Will step two assist policy-makers in selecting the appropriate environmental principles?

As currently drafted, step 2 appears to be a short description of what each principle means; it provides no guidance on how to select the most relevant principles or the circumstances in which each principle should be used. However, the information in the “When to use” paragraphs for each

principle in “Step 3” is likely to be useful when policy-makers are selecting the appropriate environmental principles, and should potentially be included in “Step 2”.

It is useful that “Step 2” confirms that the principles are intended to work alongside other objectives which are used in individual policy making, but no practical guidance is given to assist Ministers when they have to apply this in practice, or how to deal with situations where there is existing case law based on the EU interpretations of the principles which could be relevant to the policy. An improved description of what it means to have “due regard” to the Policy Statement may assist with this, but it may also be helpful to expressly acknowledge that the principles are not intended to be overriding objectives, but should be considered within the context of the policy aims being pursued and any existing legal framework which limits the available options. It is also important to ensure that Ministers understand that the principles should be applied in a proportionate and cost-effective manner, and that the economic and social implications should be taken into account when making policy decisions.

In the NFU’s view there is a danger in separating the selection and application of the environmental principles, and consideration should be given to merging these into a single step, as in the real-world there is likely to be a need to periodically reconsider which principles to apply as the policy evolves and more information is gained. For example, it may be that at the outset, the policy-maker sets out with the aim of preventing environmental damage and therefore considers that the rectification and polluter pays principles are irrelevant. However, if the application of the principle turns out to be impossible or disproportionately expensive, the policy-maker then needs to reconsider the selection of the principles and potentially apply the rectification at source and/or the polluter pays principle. So, the reality is that selection and application of the principles will often go hand-in-hand, and the initial selection may need to be reviewed after some consideration of its application.

If the division between “Step 2” and “Step 3” is maintained, the “criteria for taking action” section currently in “Step 3” may be more appropriate in “Step 2”, as it is relevant to how Ministers select the principles. There should also be more information about when each principle should be used and how the principles can interact with each other. Consideration should also be given to including a suggestion that the selection and application of the principles is reviewed as the policy develops to ensure that the most appropriate principles have been used.

Question 9. Do you think step three provides a robust and sufficient framework for the application of each individual environmental principle?

The NFU welcomes the fact that a number of the principles make reference to taking account of the economic and social costs of any potential policy, and believes that this is particularly important in the context of principles being applied when Ministers are making policy decisions. The NFU recognises that, in the context of policy making, the consideration of economic costs when addressing environmental concerns is not a new thing; for example it is accepted that vehicles running on fossil fuels are more damaging for the environment than alternative technologies, but policies on diesel and petrol vehicles also factor in the economic and social importance of transport and the costs associated with moving over to alternative fuels, and allow for a gradual transition over a reasonable time frame. If economic and social costs were not taken into account and the decision was made solely on environmental grounds, the outcome may be very different and would potentially be disastrous for the UK economy.

The NFU also believes that taking economic and social costs into account when forming policy is essential to ensure that policies work and can be implemented effectively. A policy which offers significant environmental benefits but is too expensive to implement is unlikely to be implemented effectively and, as a result, is unlikely to deliver environmental benefits. In contrast, a policy which is

proportionate and affordable is more likely to be implemented effectively and therefore may deliver greater environmental benefits, even if, on paper, the policy accepts a degree of environmental impact in delivery. The NFU, therefore, believes that it is important that the Policy Statement is expanded to recognise these inevitable but important considerations of balance. In particular and as highlighted by the [BEIS Better Regulation Framework](#), disproportionate burdens on small businesses should be assessed. Many agricultural businesses are small businesses, or even micro-businesses.

These over-arching observations inform our more detailed response on the individual principles below.

a. Integration

This section does make it clear that the integration principle is always relevant, but it provides limited practical guidance to assist Ministers with the application of the principle. It would be helpful if the document set out more about what integration means and looks like, and how it can work alongside other objectives, which are not necessarily environmental, to support sustainable development.

Early and consistent application of the principles across all government departments to guide policy making, should deliver for the environment, economic growth and for social development, thus supporting sustainable development. To enable this to take place and for the principles to be embedded, we suggest that more detailed guidance and strong governance are needed.

It may be helpful to explain that integration could look different depending on the scenario being considered, and how Ministers can demonstrate that environmental protection is integrated into the policy. In some instances, Ministers may decide that the public, social and economic interest in pursuing a policy objective is so important that either a degree of environmental impact has to be accepted, or that the public as a whole should pay for the costs of avoiding or mitigating that harm. In those cases, we believe that, in the interests of transparency and accountability, Ministers need to expressly and publicly record that conclusion in the policy document.

The NFU is pleased that the Policy Statement recognises that Ministers should not adopt ineffective or inappropriate policies just to show integration. The focus should be on adopting good policies which work well and minimise the environmental impacts where possible. This may sometimes mean that Ministers must make decisions that balance the economic and social costs against the environmental benefits to ensure that the policy is practical. Failing to do so could result in policies which have unintended consequences, or even fully or partially fail to deliver the intended outcomes.

An integration opportunity: Public Procurement

Applying the environmental principles when designing public procurement policies and procedures is an opportunity to reduce environmental impacts in the public sector. This should include, for example, the consideration of the carbon footprint of imported goods and the environmental impacts associated with the production of those goods (e.g. deforestation), compared to the potentially much lower impacts of sourcing locally produced goods. UK agriculture is striving to become a world leading sector in addressing its environmental impacts, and the proper integration of the environmental impacts into all aspects of policy making must recognise and support the steps that the industry is taking.

b. Prevention

The NFU is pleased that the opening sentence of the prevention principle talks about reduction and mitigation of environmental harm as well as prevention, as in the real world it is often difficult to completely prevent *any* environmental impact. However, this does not appear to be followed through in the remainder of this section; it would be helpful to include further references to reduction and

mitigation to ensure that it is clear to policy makers that reduction and mitigation of environmental impacts are forms of prevention for these purposes. This is particularly important as it will ensure that policy makers understand how the principles can work together, with impacts being reduced as far as possible under the prevention principle, and any remaining impacts being addressed through rectification at source or the polluter pays principle, as well as ensuring the principles are applied proportionately.

The fact that the Policy Statement states that there should be reasonable certainty that an action will cause environmental harm, and that there should be an understanding of the risks, is important, as it is essential that Ministers focus their attention on areas where there is a real likelihood of measurable harm occurring and where it is understood what the cause of the harm will be. However, it is also important that Ministers understand the limitations of available technology and consider what is technically achievable when making policy decisions.

Prevention in Action: The Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) Regulations 2010 (SSAFO)

The SSAFO regime was implemented to reduce the risk of pollution as a result of the storage of silage, slurry and agricultural fuel oil on farms. The ability to store these substances on farm is vital, but inappropriate storage arrangements have the potential to have adverse environmental impacts. SSAFO introduced a set of minimum standards which ensured that such stores are constructed in an appropriate manner to reduce the risks to the environment. This includes measures such as the construction of a bund around a fuel storage tank so that any leak which may occur is contained and can be dealt with before environmental damage occurs. Preventing pollution occurring in this way is often more cost effective than attempting to remedy the consequences of a leak, but also ensures that farmers can continue to store these substances on farm. This is, therefore, a proportionate approach to dealing with the environmental risks associated with this activity. In the event that incidents do occur, this regime is backed up by a pollution sanctions regime, which then brings in rectification at source and/or the polluter pays principle when necessary.

c. Rectification

As currently drafted, there seems to be a lot of similarity between the prevention principle and the rectification at source principle, especially in relation to containing the environmental damage where it is not possible to prevent it at the source. Whilst the two principles are closely related, it is important to distinguish between them so that policy makers understand how they differ and how to apply them.

Rather than considering the prevention, rectification at source, and polluter pays principles as alternatives with Ministers deciding which one to apply, it may be more helpful to consider them as a set of complementary principles to be used together to address environmental impacts, as highlighted in the above example regarding SSAFO, and the example below in relation to Environmental Permitting. This would ensure that it is properly understood that rectification can come in after prevention, starting from the presumption that environmental harm has already been reduced and contained so far as practicable.

Rectification at source can include a very wide range of options, including design options, location options, off-setting options, or the creation of alternative habitat areas depending on the circumstances being considered. It is important that the right approach is selected for each policy, with the costs and benefits of the various options being considered to ensure that the response is proportionate.

Example: Prevention vs Rectification

Under the Environmental Permitting Regime, keepers of poultry are required to address the potential environmental impacts of their activities, which demonstrates the way in which the principles can work together. For example, ammonia scrubbers are used to reduce the amount of ammonia emitted from poultry sheds (prevention), with ventilation systems being designed so that any remaining emissions disperse sufficiently to reduce the environmental impacts at a local level (rectification). In addition, other measures, such as tree planting, may be used to further reduce/off-set the environmental impacts of the unit, representing a further example of the rectification principle in practice.

The permitting regime is based on the use of “best available techniques” which ensures that the regime takes into account what is technically feasible, whilst also recognising the importance of protecting the environment. The regime also takes account of local conditions, such as background levels and habitat types, to ensure that the requirements imposed are proportionate to the likely impacts of the specific unit, rather than there being a one size fits all approach.

The NFU would welcome greater emphasis on ensuring that rectification is proportionate to the harm being caused and takes account of the social and economic costs of the proposed actions. Consideration should be given to the full surrounding circumstances to ascertain whether particular rectification options are appropriate, proportionate, and cost-effective. This is most obvious in situations where rectification takes the form of habitat creation to compensate for areas which may be harmed. For example, if the area of compensatory habitat required to compensate for the impacts of a policy is many times greater than the area impacted, it is questionable whether this approach is cost-effective and proportionate; it may also be questionable whether the right areas of land have been selected to ensure that the impacts are effectively rectified. It should also be recognised that the focus of rectification should be on remedying the potential environmental impacts, with consideration of all appropriate approaches to this being possible; in particular, there is a need to avoid falling into the trap of thinking that rectification always requires a direct replacement of something which may be harmed. There may be other options which could offer the same or greater environmental benefits, and reviewing this approach may enable more proportionate options to be identified.

d. Polluter pays

The polluter pays principle is well defined in the Policy Statement, and the use of a practical real-world example of this principle being used effectively to drive a change in behaviour adds real value to the document. The example also serves to illustrate the importance of imposing charges at the right point in the supply chain to drive behavioural change.

The draft Policy Statement includes useful text around identifying the polluter and considering the different ways in which the polluter pays principle can be used. It is also reassuring to see an express acknowledgement that there are circumstances where it may not be appropriate to seek to recover the full costs from a particular individual or sector. When considering the approach to the polluter pays principle, the NFU believes that policy makers should be required to reflect on the five principles of good regulation set out by the Better Regulation Task Force; namely: proportionality; accountability; consistency; transparency; and targeting.

The agricultural sector faces its own unique difficulties due to the imbalance of power in the supply chain and the strong consumer interest in affordable homegrown food. It is difficult for farmers to pass on costs through the supply chain and the margins in many areas are limited and variable. The

position of tenant farmers is particularly challenging, as long-term investments in infrastructure may be out of their control or unviable if they do not have long-term security of tenure. In addition, clauses within the tenancy agreements may, in some instances, prevent land being managed environmentally, rather than for productive agriculture, limiting the ability of tenants to off-set impacts on their own holding. This means that policy delivery with short timeframes can disproportionately affect a significant proportion of active food producers in the market. Given the importance of maintaining national food security, and also in recognition of the public goods that the farming sector delivers through the maintenance of the British Countryside (particularly in upland areas where profit margins can be lower), it is important to ensure that the costs passed on to the industry are appropriate and affordable.

Whilst it is right that the farming sector, like other comparable activities, needs to be accountable for the environmental impacts of its actions, it is also important to recognise that there are circumstances where farmers need to be supported to ensure that they are able to invest in more sustainable technologies to protect against unintended consequences in the agriculture and food system. The business of farming is often over-simplified, but it is itself a complex ecosystem of various types of business that have structural limitations for investment and change. Farming is also often naturally dictated by long-term cycles of production largely driven by the seasons, and it cannot be overstated that short-term confidence can have long-term impacts on the viability of the farming sector. It follows that wider social, value chain, and food policy impacts are inextricably linked and why careful consideration of these complexities is needed. With that in mind, the NFU is pleased to see the reference to the Farm Inspection Review conducted by Dame Glenys Stacey in the footnotes to the document, although we are concerned that the Review's application of the 'polluter pays' principle suggests that sanctions that prevent access to the market could be used. The NFU is keen to understand how these sanctions would work and the level of impact they would have across the different sectors.

The application of the polluter pays principle demonstrates the importance of ensuring that a wide range of policy options are available and considered. For example, ensuring that environmental land management schemes are open to all farmers who wish to participate in them, and that appropriate capital grant schemes, to support farmers as they invest in new technologies and infrastructure, are available to the sector. Whilst farmers need to ensure that they farm appropriately and minimise their environmental impact, it is also right that society as a whole should be collectively responsible for the impacts of producing the food we all need.

Case Study: The Slurry Investment Scheme

The cost of construction of new slurry storage facilities can be huge, meaning that businesses have to plan for such investments over a number of years. In sectors affected by low commodity prices, the ability to invest in such infrastructure can be very limited. However, modernising slurry storage facilities can offer significant environmental benefits, and there is also a strong public interest in ensuring that the UK is able to produce high quality, sustainable, affordable food and maintaining the UK's levels of food security.

Initiatives such as the proposed Slurry Investment Scheme mean that farmers are able to invest in new facilities sooner than would otherwise be the case, whilst maintaining the UK's ability to produce high quality, affordable, produce.

The NFU also believes that it is important that environmental policy is developed in a holistic manner which ensures that environmental impacts are considered fully at the policy level so that the costs of a policy are fairly distributed. This does not always happen currently. For example, in a situation

where there are a number of abstraction licences from the same water body near a protected site, each licence would be considered as it falls due for renewal, but its environmental impacts would be assessed in combination with all other abstraction licences. If the combined effects of all of the licences would potentially have an impact on a protected site, the licence application will be refused. This can mean that those whose licences fall due for renewal first have their licences refused, whereas those whose licences are due for renewal last may benefit from the reduced volume of abstraction from the water body as a result of the earlier refusals. This can be particularly problematic where there are different sectors involved, and the NFU has seen situations where large water industry abstraction licences are not due for renewal until after the farming licences, meaning that the cost falls solely on the agricultural sector.

It is also important that policies recognise the benefits of different approaches to tackling issues. For example, in some instances, offering advice and guidance to educate and support individuals and businesses can be more cost effective and deliver greater results than additional regulation. It is, therefore, important that the polluter pays principle does not drive policy makers down the regulation, enforcement, and sanctions route in order to address issues. Instead, it should encourage consideration of the multiple tools and approaches that can be used, including considering the use of education, guidance, and support schemes, which may sometimes be more effective and economically viable measures to drive change.

e. The precautionary principle

In the EU context, the application of the precautionary principle has resulted in numerous challenges for the agricultural sector, and case law driven by the Habitats Directive and the precautionary approach in particular has resulted in uncertainty, delaying decision making and stifling development. Despite the fact that Article 2(3) of the Habitats Directive states “*Measures taken pursuant to this Directive shall take account of economic, social and cultural requirements and regional and local characteristics*”, our experience is that economic factors are often disregarded as irrelevant when considering decisions and policies impacting on protected sites. For example, in a planning inspectorate decision in relation to a decision to refuse to renew an abstraction licence¹, the Inspector concluded that the economic impacts on the business concerned (and potentially other similar businesses abstracting water from the same catchment) could not be taken into account, despite the fact that refusing to grant the licence would potentially threaten the future viability of the business concerned.

Similarly, we have seen numerous issues arise as a result of case law developments in this area. For example, NVZ grassland derogations would normally be in place at the start of the calendar year, but concerns about the application of the Dutch N decision in this area meant that in April a number of farmers did not know whether their application for a derogation for this calendar year had been successful, leaving very limited opportunity to plan or make alternative arrangements for nutrient applications and/or slurry and manure storage because of the late notice of the outcome of their application. This demonstrates the importance of ensuring that policies are clear and that all of the potential implications are taken into account.

Whilst the draft Policy Statement is not intended to be used when making individual decisions such as this, the reality is that the interpretation of the principles is likely to be embedded into the policies and will influence the individual decisions made based on those policies. It is vital that the interpretation of the principles results in effective, proportionate and appropriate policies, which balance all of the relevant factors and objectives.

The NFU believes that ensuring that the precautionary principle is applied in a manner which is proportionate, and which supports sustainable development (as is required by the provisions in the

¹ Appeal Refs: APP/WAT/15/316 & 317

Environment Bill) is essential. The fact that the draft Policy Statement recognises the need for the principles to support innovation and confirms that new technologies should not be subject to more stringent controls simply because they are novel is welcomed. In the agricultural sector, the development of new technology and new techniques is essential and often carries multiple benefits, including environmental benefits and animal welfare benefits, compared to current/older technologies. If the British agricultural sector is to meet its Net Zero targets and improve its environmental performance across the board, it is vital that the development of new technologies is encouraged and supported. Taking an overly cautious approach to newer technology, simply because there is less data available to make assessments, risks stifling development in the UK, forcing companies to develop new technologies elsewhere. This would disadvantage British farmers and may mean that the technologies ultimately developed do not work as well with British agricultural methods, as farming methods can differ greatly in different climatic conditions.

One area in which the Policy Statement could go further is in recognising the need to facilitate “betterment” (i.e. the replacement of existing farm infrastructure with more modern, and often more environmentally friendly, alternatives) as the foundation of sustainable development. Often new/more modern approaches offer improvements compared to current/older technology, and policies should be designed to support improvements which reduce the level of environmental harm/risk compared to the current situation. However, in some situations current environmental policies actually act as a barrier to those who want to upgrade their farm infrastructure, as the result of an unachievable desire for zero risk. Consequently, we would like to see a general presumption in favour of pursuing policies which support/encourage betterment, even if a degree of risk remains, in order to ensure that environmental developments which are technically feasible are delivered promptly.

In the NFU’s view, the precautionary principle needs to be applied in a more proportionate manner, taking a risk-based approach. This has been a particular issue for farmers in terms of the availability of crop protection products, such as fungicides, herbicides, and insecticides. The current EU regime for approving products for use has seen many vital products lost to farmers, even when they are used properly with minimal risk to the environment or the public. Moreover, the principle has, in our view, led to huge costs in bringing alternative products or technologies to market, further compounding the problem. This loss of the means to protect crops poses an enormous threat to farmers’ ability to ensure sustainable yields, prices, and the health of a wide array of crops. The NFU believes that it is essential that the precautionary principle does not override all other factors which may be involved in decision making, and takes proper account of the magnitude of any potential risks identified. The reality is that most human activities carry a degree of risk, and the focus should be on assessing and managing risk to ensure that it is kept at an appropriate level. This means that the assessment needs to take account of a wide range of factors, including social and economic factors, and should balance the risks of adopting a particular course of action against the risks of doing nothing or taking alternative approaches.

There also needs to be a holistic, joined-up, approach to policy making across central and local government, and also between arms-length bodies, so that where a decision is made at an individual level the outcome is consistent, and where multiple bodies are involved they are all working under the same policies and applying the same principles.

Example: Slurry stores:- Barriers to modernisation

Ensuring that farmers have sufficient slurry storage and that modern infrastructure is installed offers significant environmental benefits, which the slurry investment scheme aims to support. However, farmers applying for planning permission for new slurry stores often face significant issues, especially if they are near protected sites, due to emissions from the store. The reality is that installing the new infrastructure and decommissioning old, outdated, infrastructure will usually offer real and significant environmental benefits. Unless planning policies recognise and support betterment, some farmers will simply be unable to obtain the permissions required to install additional, more modern facilities. This means that they will be forced to continue to operate with their existing infrastructure until such time as it is no longer fit for purpose, and ultimately will be forced to consider other business options, which may have other environmental, economic or social impacts associated with them.

This overly precautionary approach, which fails to recognise and support betterment, risks prolonging potential environmental impacts, compromises sustainable development opportunities, and may ultimately compromise domestic food security in some sectors.

In order to achieve the maximum benefits from the slurry investment scheme, these barriers need to be removed to ensure that investments and environmental improvements can be made within current technological limits, whilst maintaining a viable farming sector and encouraging and facilitating continued improvements as technology advances.

Regard should also be had to the position on the ground when formulating and applying policy. Where activities have been carried on for many years, or even generations, the impacts which those activities are actually having on the ground can be assessed, and should be taken into account to validate what scientific modelling etc is predicting. The reality is that ecosystems adapt and evolve and do not always behave in a predictable manner which matches modelling expectations. It would be helpful if the Policy Statement recognised that the real world situation can be taken into account, alongside other evidence, when assessing the level of risk, as failing to do so could result in an overly cautious approach being taken to policy development.

Question 10. Do you think the process for applying the policy statement (the three steps) provides a robust and sufficient framework for the application of the environmental principles as a whole?

As mentioned earlier in this response, as currently drafted, “Step 2” appears to contain little which assists Ministers with the selection of environmental principles. This may be because it is artificial to consider the selection and application of the principles in isolation; in reality the principles are likely to be complementary to each other, with Ministers selecting the appropriate balance of prevention, rectification, and polluter pays for the specific policy decisions being taken. A move to a two-step process involving:

- Step 1: Identify the likely environmental impacts, including understanding the causes and likelihood of the impacts; and
- Step 2: Selection and application of the environmental principles,

may lead to a more practical document overall.

The draft Policy Statement does not consider how to deal with situations where the Minister is making policy in an area where there is existing case law on the principles. For example, if the Minister was making a policy on protected sites, do they work with the definitions in the Policy Statement, or, as there is already EU case law on the principles in that context, are they bound by the EU interpretation

of the principles? It may be that this issue needs to be dealt with through the insertion of a clause in the Bill confirming that new policies should be based on the principles as defined in the Policy Statement, and expressly disapplying the EU interpretation of the principles going forward to ensure that future policies are not vulnerable to challenge in the Courts.

In the overview section, the Draft Policy Statement mentions the need to ensure that the application of the principles supports sustainable development, creating the golden thread that should run through the document. However, there is no reference to sustainable development or the need to support development at any other point in the draft Policy Statement. In the NFU's view, environmental protection and sustainable development need to go hand-in-hand, and there should be much greater emphasis on the need to support and encourage sustainable development *throughout* the document. The express recognition that economic and social costs can be taken into account when Ministers are formulating policy does go some way to supporting sustainable development, but the NFU considers that more needs to be done to ensure that policies support businesses which are trying to make investments which offer environmental benefits, and ensure that they do not face barriers which prevent them from making improvements. It should also be clearer that sustainable development and environmental protection are not alternatives, but are two principles that work together to deliver multiple benefits.

As highlighted in our response to Question 5, the overview section of the Policy Statement does not provide any guidance as to what is meant by "have due regard" when referring to Ministers' approach to the principles. Whilst it is desirable to leave Ministers some discretion regarding how they approach the principles and the records they keep, it is also important that Ministers applying a new document understand what they need to do to demonstrate compliance with the legal duty imposed on them by the Environment Bill. It may, therefore, be useful to include some indication of what Ministers should do in order to show that they have considered the Policy Statement when formulating policy; for example, is a statement indicating that the principles have been applied sufficient, or should Ministers be keeping a more detailed record of the risks that were identified and how they have been addressed through the application of the principles, or why a decision has been made to proceed notwithstanding those risks?

Question 11. Do you have any other comments on the draft policy statement which are not covered by the previous questions?

Whilst the Policy Statement sets the right balance and avoids over prescriptive instructions in applying the principles, to ensure consistency and avoid possible confusion we propose a process is put in place to periodically undertake an assessment of their application to demonstrate a consistent, transparent approach has been taken in line with the Policy Statement. This would provide all stakeholders with reassurance and confidence in both their application and any subsequent policy making decisions.

As a statutory guidance document, it is important that the Policy Statement provides a clear overview of how the principles should be interpreted, and what Ministers need to do to ensure that they have complied with their legal duties. The Environment Bill includes a requirement to consult on the draft Policy Statement, and on any subsequent changes to the Policy Statement. It is, therefore, important that the Policy Statement is capable of being read as a standalone document and provides Ministers with sufficient information to enable them to apply the environmental principles in a practical and proportionate manner. It would be undesirable for the Policy Statement to require further supplementary guidance which may not be subject to the same degree of public scrutiny and may potentially be more susceptible to frequent change. Consequently, whilst the NFU can appreciate the difficulties associated with formulating such a wide-reaching overarching policy document, it is important that the Policy Statement includes a sufficient level of detail on all areas for Ministers to understand how to use and apply the principles.

Whilst the NFU fully supports the focus on preventing climate change, as demonstrated by our Net Zero ambitions for the future of farming, environmental policy also needs to recognise that a degree of climate change has already occurred. Some areas of environmental policy are focused entirely on maintaining current habitat types or restoring habitats to a state they have not been in for many years, or even decades. This may be appropriate in some instances, but it is also important that environmental policies recognise that change is sometimes necessary in order to enable ecosystems to adapt to changed conditions, or that restoration is no longer possible or desirable. The restoration of blanket bog is one such example; restoring areas to recreate functional blanket bog where this has not existed for decades is complex and can have wide ranging impacts on the use of surrounding areas of land due to the water level changes necessary to facilitate this, as well as impacting on the use (both agricultural and recreational) of the areas in question. In addition, the habitats and ecosystems which have established themselves in these areas in more recent years will also be impacted by the change. Further, it is not entirely clear that it will be possible to restore the blanket bog habitat in these areas, so it may be that all of these adverse impacts are incurred in circumstances where the primary objective is never achieved. In our view, a full assessment of the likely impacts, including the impacts on existing habitat types, current land use (taking account of both commercial and recreational uses), and in the wider economy should be required before committing to a policy such as this.

Coastal erosion also presents challenges and can result in a drive to create additional areas of habitat lost through the entirely natural process of coastal erosion, again impacting on other land uses and habitat types. As an island nation, the UK is likely to be more susceptible to coastal erosion than many areas of Europe, and it is questionable whether a blanket approach of maintaining coastal habitats is viable in the longer term. There are also resource implications of trying to create and maintain habitat which is located in areas which are not naturally capable of supporting or sustaining the appropriate type of habitat. The NFU would like to see a greater focus on future-proofing our natural environment to ensure that environmental policies protect what is important, but also allow the changes necessary to adapt to changing climatic conditions and land loss.