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## ELM Policy Discussion Document – NFU Response

The NFU represents 55,000 members in England and Wales, involved in 46,000 farming businesses. In addition, we have 55,000 countryside members with an interest in farming and the countryside. The vast majority of these members will have a direct interest in the design and delivery of the future Environmental Land Management Scheme.

### Summary

In June Defra relaunched an [Environmental Land Management \(ELM\) Policy Discussion](#) document for comments. Following extensive engagement with members the NFU responds to the Defra questions around their proposed ELM scheme design. The scheme is due to be rolled out in 2024. If properly designed ELM has the potential to offer the farming industry the opportunity to achieve net zero and a global leader in climate friendly food and farming.

The NFU wants ELMs to be flexible and have farming at its heart. Farms are dynamic businesses and the new ELM scheme must embrace that. ELMs must be simple, and accessible to all farmers and farm types across the country, allowing farmers and growers to choose what they want to deliver, whether that is improvements to soil, air or water quality, as well as habitats and wildlife, at the same time as producing food.

Payments need to provide an incentive to farmers to take part and reward them for what they deliver for the environment. This must include support for maintaining environmental outcomes they deliver.

The NFU remains concerned about the tight timescales for delivery, particularly for the National Pilot that should be seeking applications next autumn, 18 months away.

The design of ELMs is only part of the picture. There needs to be a smooth transition to future farm support post-Brexit and Defra needs to outline what schemes will be available during the transition before ELMs is fully available.

The NFU will continue to work with Defra as more details emerge around the scheme.

### **Defra question 6: Do you have any comments on the design principles? Are they the right ones? Are there any missing?**

The design principles are broad and subject to interpretation. The NFU welcomes the intent behind them including greater flexibility for farmers and growers regarding how they deliver outcomes, the need for a simple scheme, considering the role of new technologies, continuous improvement, learning from the past, and considering re-use of existing systems.

The NFU would like to see design principles requiring the reinvestment of direct payments into the farming sector captured here, reflecting the Government's narrative in the Farming for the future policy and progress update (February 2020). Here it was said that "*the reductions in Direct Payments will be reinvested directly into the farming and land management sector*" and the "*our priorities for investment will respond to the challenges that farmers and farming face*".

The NFU welcomes principle A that says: *'focus on achieving environmental outcomes, helping to deliver our 25 Year Environment Plan and net zero target. In doing so, it will help farmers, foresters and other land managers optimise the potential of their land to deliver public goods, as part of a thriving food or other land business'*. ELMs needs to be complementary to and not instead of farming, focussing on multiple wins.

Recognition of the multiple roles of land is important. The ambitions of the 25 Year Environment Plan and net zero target can be delivered across farmland that remains in food and fibre production. These ambitions, including net zero, can be delivered throughout the ELMs design. ELMs should seek to secure a resilient, resource efficient and high welfare food production systems within an economically, environmentally, and socially sustainable farming sector. ELMs should not compromise a farmer or growers' ability to meet high animal welfare standards or ability to produce marketable products.

Principle B is about balancing national and local priorities. The NFU understands the need for local targeting or priorities in tiers 2 and 3, however, questions the potential solution suggested by Defra of devolving some responsibility in this area. The NFU says more in response to question 11.

Ensuring value for money for the taxpayer (principle C) may not in itself create a viable ELM scheme. For farmers and growers to participate they need to see value for money in ELMs to and the principle should be amended to reflect this. Also, ELMs needs to be designed to enable private and other funding sources to complement ELMs funding across all the tiers.

Principle D says *'ensure that ELM includes actions that most farmers, foresters and other land managers could deliver.'* The NFU believes that ELM should have an offer appropriate to all farming sectors and all land tenures. This principle could be interpreted to say Defra has actively decided that some farming sectors will not have an ELM offer available to them.

The NFU would like to see a commitment that there is a suitable offer open to all farmers and growers and that Defra will aspire to obtain uptake of ELMs by 100% of farmers and growers. As a voluntary scheme the NFU accepts that not all farmers and growers will want to enter it due to many different factors.

The NFU supports principle F - *'ensure minimal complexity and administrative burden for participants and administers, considering lessons learnt from similar past initiatives'*. To achieve this principle the NFU would like to see a commitment to ensuring that the budget is spent on delivery on farm, not on delivery bodies, advice and administration. The current Countryside Stewardship cost about 25% of the grant value to deliver. ELMs delivery needs to be much more cost effective, with delivery costs in the region of 5%.

The NFU welcomes the aspiration in principle F to learn from past initiatives. Defra's assessment and response are welcomed. The NFU supports the need for high levels of uptake in ELM; the need for clear objectives for farmers and growers; access to an effective advisory service; rewarding existing good practice; not overly prescriptive; proportionate compliance; and creating confidence in the delivery process.

Reflecting on what an applicant would want from the delivery process to give him confidence it is important that Defra commits to a fair and balanced contract between the applicant and delivery body. This must contain clear payment terms and there are clear routes of redress should the delivery body not meet their side of the contract.

There needs to be a proportionate level of risk for participants. If record keeping requirements are complex, and failure to keep them correctly is linked with disproportionate penalties that will be a barrier to uptake. It takes the agreement holders focus off effective delivery driving them to manage the option land by prescription date and record keeping.

The NFU agrees with principle H that lessons need to be continuously reflected on as ELMs develops and is implemented.

**Defra question 7: Do you think the ELM scheme as currently proposed will deliver each of the strategic scheme objectives above?**

- **Strategic Objectives**

The strategic objectives should be changed to address Government's commitments across the Agriculture Bill and 25 Year Environment Plan to encourage sustainable food production. The scheme should be focussed solely on farmers and growers given Defra's pledge to reinvest reductions in direct payments directly in farming. These should be long term commitments to farming. As is currently the case environmental activity beyond farming should be funded through other mechanisms.

In the policy document ELMs is outlined as a means of delivering the 25 Year Environment Plan. The 25 Year Environment Plan does recognise the need for economic growth and sustainable food production. The strategic objectives for ELMs must be changed to recognise these ambitions.

Within the 25 Year Environment Plan it says *"the 25 Year Environment Plan will help boost the productivity by enhancing our natural capital – the air, water, soil and ecosystems that support all forms of life – since this is an essential basis for economic growth and productivity over the long term."*

One of the first challenges outlined in that plan is *"how to optimise sustainable food production. We will seek to support truly sustainable productivity growth. For example, planting over-winter cover crops (grown between periods of regular crop production) can increase yield and also improve soil health. Other measures include reducing soil compaction through subsoiling or effective crop rotation. We also know that small copses, hedgerow trees and individual trees play an important role in breaking up monocultures of arable crops...."*

The draft Agriculture Bill places an obligation on government to *"have regard to the need to encourage the production of food by producers in England and its production by them in an environmentally sustainable way"* when framing financial assistance schemes.

In Defra's Farming for the future policy and progress update (February 2020) it is clearly said that *"the reductions in Direct Payments will be reinvested directly into the farming and land management sector"* and the *"our priorities for investment will respond to the challenges that farmers and farming face"*.

The Committee on Climate Change [letter](#) to Defra said *'Land managers should be rewarded for delivering environmental improvements in the face of climate change – and should also have appropriate incentives to reduce emissions and sequester carbon in the natural environment'*. They went on to ask that *'UK food security needs to be recognised in ELM and the wider government policy'*.

As written the objectives imply that only environmental improvement will be rewarded. After 30 years of agri-environment schemes there is a lot of land that is already delivering for the environment. It is important that maintenance of environmental delivery is supported. Not to do this would mean many upland areas managing priority habitat and SSSIs would go unsupported. That will be to the detriment of those features. It is also important that there is a long-term commitment to supporting environmental delivery, rather than the shorter term implied by Defra's objective 2.

The NFU recommends that the ELM strategic objectives are revised to reflect that farmers and growers are at the heart of ELMs, active farmers and growers should be rewarded for maintenance of good environmental practice and Defra provide a long-term commitment. Active farmers and growers covers all types of farming and includes growers both edible and ornamental plants.

The NFU suggests the following wording (underlined new words to Defra's proposal):

1. To maintain and secure a range of positive environmental benefits on farmland, prioritising between environmental outcomes where necessary.
- ~~2. To help tackle some of the environmental challenges associated with agriculture, focussing on how to address these in the shorter term~~

Replace with:

2. Through support to the active farmer and grower encourage environmental management on farmland alongside the safe production of food and fibre.

- **Scheme design**

The NFU has always encouraged a 'ladder' approach to environmental delivery, allowing different points of access according to the applicant's skills, environmental ambitions and environmental features present. The NFU welcomes the aspiration for a simple scheme that is open and accessible to all farmers and growers.

The NFU supports Defra's ambition for high uptake of ELMs and rewarding the good work farmers and growers are already undertaking. The NFU would like to see a commitment that there is a suitable offer open to all farmers and growers and that Defra will aspire to obtain uptake of ELMs by 100% of farmers and growers. As a voluntary scheme the NFU accepts that not all farmers and growers will want to enter it due to many different factors.

ELMs must reward the maintenance and adoption of good environmental practice. The recognition of the need for a proportionate enforcement system and a scheme that is not overly prescriptive is welcomed.

The policy discussion document outlines a policy framework, without the actual mechanics available. In reality, it's the coming together of all the elements of scheme design that determines whether the scheme will deliver. At a practical level farmers' and growers' need to know what actions they will be paid for, how it will be monitored and how the reward compares to the risk of participation. As there remain so many unknowns around the scheme detail it is too early to say this design will work.

**Defra question 8: What is the best way to encourage participation in ELM? What are the key barriers to participation, and how do we tackle them?**

There are many elements that individually or in combination make a successful scheme and secure the desired high levels of uptake. In assessing whether to enter a new scheme farmers and growers will want to know what is required by the scheme to understand whether it can be delivered and fits with the wider farming system, how it will be monitored, what are the reward and risks from participation. At this stage of ELM design these elements are not known to be able to comment on whether it will get a high level of participation.

The overriding message is 'keep it simple' for applicants, agreement holders and delivery bodies to deliver. Ensure the actions required on the ground clearly link to the environmental outcome desired, and the applicant can see the requirements make sense.

Deliverable on farm – In assessing the suitability of ELMs for their farm, the farmer and grower will consider what actions are required and whether they work for their soil type, location, and farming system. The actions required should not compromise their ability to produce a crop or livestock to the

standards required by consumers and the law. They will also make a judgement about whether the ELMs actions required will deliver the desired environmental outcome.

Delivery with a 'Can Do' Attitude – Going forward in ELMs there needs to be a delivery body approach that is about finding solutions to enable good delivery, rather than being blocked by, say, an IT programme. For example, current agri-environment schemes have had the scheme rules dictated by the way a computer has been programmed. Once the IT programme was written it has been very difficult to re-wire to enable appropriate delivery.

Voluntary – Participation in ELMs should be voluntary. That way you secure the applicants commitment to the environmental goals outlined.

Monitoring – Farmers and growers will want to know how they are going to be monitored to understand whether it is deliverable. The monitoring requirements need to be practical and make sense on farm. As Defra explore payments by results consideration must be given to the additional costs to the farm business of this approach and the need for the results monitoring to be pragmatic e.g. avoid harvest or lambing periods for monitoring. In Countryside Stewardship (CS) the high on-farm evidence requirements are a barrier. One error around evidence can lead to a significant penalty.

Risk and Reward – Any business transaction is assessed around its risks and rewards. There needs to be a fair reward that encourages participation (see our answer on payments, question 12). The risks could relate to the inability to deliver what is required or it could be the exposure to financial risk. CS is seen by many NFU members as being too risky. That is because of the complex nature of the scheme, the combined effect of needing to record everything on farm with a punitive penalty regime that penalises any missing record with no regard to actual environmental impact, payments being made one to two years after the business incurred the financial costs, low payment rates and lack of flexibility within the scheme. This is compounded by one sided contract where Defra is not bound to meet commitments around payments, yet farmers and growers get penalised for submitting evidence a day late.

Flexibility and Choice – It is important that farmers and growers do have the ability to choose what is appropriate for their farm. They should not be constrained by artificial barriers created by different tiers within ELMs or groups of options. Farmers and growers should be allowed to select the most suitable actions for their farm, regardless of tier. They should not be required to be in Tier 1 to access Tier 2 activities.

There should be flexibility in the way actions are described, finding a more balanced approach between a list of do's and do not's and measuring to the last centimetre and providing enough guidance to secure delivery. For example, the current CS prescriptions set a date by which a field margin should be planted. If that date is not met it creates a requirement for a derogation creating work for all parties. If that prescription said plant in the autumn that would remove some of the current inflexibility and reduce bureaucracy for both the farmer and grower and the delivery body.

There needs to be more flexible arrangements than in current CS agreements. This will allow for unforeseen circumstance such as drought. It would also help farmers and growers to respond to soil and field conditions at harvest when they need to adjust the crop rotation to protect the soil and achieve better outcomes. Flexibility also allows farmers and growers to make the decisions to plant the right seed mixes for the soil type delivering improved environmental outcomes e.g. wildflower mixes.

Flexibility can come in the way actions or options are recorded. Currently, the farmer and grower must declare where the option is located within a field. If they happen to record the wrong field, they will not get paid, even though they have delivered the environmental outcome elsewhere on the farm.

Common Land - Common land makes up just 3 per cent of the land area in England and provides 38 per cent of the open access land, 20 per cent of all SSSIs, 11 per cent of Scheduled Ancient

Monuments and vast swathes of the scenery within our National Parks and AONBs, including about 200,000 ha of peat bog. Therefore, it is important to allow common land to enter ELMs.

Agreements on common land are complex. There are multiple parties involved with different interests from landlord, shooting rights through to rights holders who can graze the common. A common could have 100 or more rights holders. Then Government bodies have an interest due to the protected status of the land and historic environment. As much of the land has open access the public are potentially more interested in how the land is managed.

To balance all those with an interest in common land and create an ELMs agreement is complicated, taking a long time, and will need to be catered for in ELMs design. The NFU's initial guidance is that common land should have its own ELM agreement separate from a farm's main holding, as is the case currently under CS. Common land should be able to enter into a Tier 1 agreement as well as the other parts of ELMs.

Land Tenure – Land tenure has been a block to participation in previous schemes. The length of the agri-environment has excluded land managed under shorter tenancies. The average length of a Farm Business Tenancy is less than 3 years.

Defra statistics indicate that 66% of the farmed area in England is made up of farms which have some degree of tenanted land within their portfolio. Mainly tenanted farms and wholly tenanted farms makes up approximately 35% of the farmed area.

Under a tenancy the land manager may not be able to engage in all aspects of agri-environment schemes. For example, where farm infrastructure is inadequate and is the responsibility of the landlord, not the tenant, and the landlord refuses to repair or update it or refuses the tenant consent to build adequate infrastructure. The length of the tenancy may prevent engagement in longer term collaborative arrangements with neighbours. Some requirements in ELMs could have the potential to lead to a breach of the tenancy where, in most cases, the tenant has to adhere to the statutory definitions of good husbandry and good estate management.

There have been arrangements in CS to enable agreements to be transferred from the outgoing to the incoming tenant. This process has proved far too complicated and time consuming. There does need to be a process to allow agreement transfer within ELMs. It needs to be far simpler than the current provisions.

Allow for Business Change – Under existing agri-environment schemes it has been very difficult to make changes to business structures or land arrangements. It also takes too long. Consequently, farmers and growers have not engaged or had a break between agreements to facilitate change. That is not always possible. Farm business structure change due to deaths, marriages and divorces. ELMs must provide for such change during an agreement.

Farm businesses can be quite complex with several different arrangements for land tenure. This can lead to annual changes to the total area of the farm, or annual changes in which fields are being farmed by a business. Again, ELM design must accommodate frequent changes to land tenure within a business.

Whole Farm Plans – The NFU is not in support of a mandatory requirement for whole farm plans. As outlined above, the area of a farm is not static from year on year. There can be regular changes to the fields being managed by a farm business. Previous agri-environment schemes have not been flexible enough to accommodate this fluid arrangement. Land can be added or removed from a holding especially in the tenanted sector, often on a yearly basis.

Across a single farm business having multiple landlords will mean it is not always possible to obtain appropriate agreements to secure whole farm activity. Within CS this has become a barrier to

participation. CS requires all SSSI associated with a holding to be in an agri-environment agreement. If the landlord does not agree to the SSSI being within a scheme the tenant cannot enter CS on any of their land. This barrier needs removing.

Should plans be required to support ELM agreements they should be relevant to the agreement and not aspire to cover all farming activity. Should Defra's ambition be to share these plans publicly then all business and environmentally sensitive information will need to be removed, along with information that could be used by activists to the detriment of the business.

Agreement Length – As indicated earlier agreement length can be a barrier to participation, particularly where there are regular changes to land tenure e.g. annual. The NFU suggests there needs to be a flexible approach to agreement length. Depending on the activity or option supported under ELMs the agreement length could vary. There will be options (e.g. catch and cover crops, overwintered stubbles) where the agreement length can be one year. This would provide some of the flexibility required to encourage participation and overcome some barriers outlined above.

Defra do consider the option of conservation covenants for Tier 3. Agreement length needs to match the length of the conservation covenant. It would not be acceptable to have an in-perpetuity covenant that is only funded for 10 years. This could leave the land manager unable to access ELMs after the initial 10 years to receive on-going maintenance for delivering that public good because of the covenant in place.

Honesty – The long-term consequences of entering an agreement should be set out upfront. Not to do so undermines the trust of the agreement holder and impacts on confidence to engage in ELMs. Where the intention of the scheme to create a habitat that, at the end of the agreement, cannot be brought back in to farming then that should be made clear at the outset e.g. creating semi-natural grassland that is protected by EIA regulations after the agreement. Equally, if actions under ELMs create long term liabilities for the business these should be transparent upfront e.g. building leaky dams for natural flood management creates a significant long-term liability for their management.

Smooth Transition from Existing Schemes – To support engagement in ELMs there needs to be a smooth transition from existing agri-environment agreements into ELMs. Given ELMs is four years away from being available to all farmers and growers the NFU expects to see substantive improvements to the CS offer in preparation for ELMs. The current focus on improving and simplifying administration for RPA needs to shift to improving the overall offer for applicants and agreement holders. These include:

- A commitment to pay agreement holder 100% of the money due in December for the works undertaken in that year.
- A reduction in record keeping and evidence requirements for agreement holders, moving to a more proportionate and practical approach, for example, through re-drafting option prescriptions.
- A more proportionate approach to penalties and breaches of agreements to reduce risks associated with participation.
- Payment calculations need to be reviewed to align with ELMs to offer an incentive for participation.
- Until a better offer is available in CS or through ELMs, Higher Level Stewardship roll overs must remain available. These can be improved, for example by offering multi-year extensions with the removal of penalties backdating to the start of the original agreement. Higher Level Stewardship and CS rollovers should be able to include new capital items.
- Move to monthly start dates to enable continuous support for agreement holders providing the public goods desired.
- Ensure the RPA is resourced to continuously improve delivery performance, for example, to enable agreement offers to be made before the agreement starts.

- Break the requirement for SSSI land to be included in the application if a landlord/ tenant arrangement or common land arrangement is preventing the SSSI for entering a CS agreement.
- Widen the capital grant only schemes to improve engagement, lift the £10,000 threshold and extend the delivery period from two years for capital grant schemes., e.g. make water capital grants available more widely and introduce other CS capital only offers.

A smooth transition from historic to new ELMs agreements goes beyond the administrative issues highlighted above. Many farmers and growers have been in agri-environment schemes for 30 years. They have delivered for the environment following the guidance set out by specialists through Government schemes. These farmers can only offer on-going maintenance of these areas. On the ground, farmers and growers can see more wildlife consequently. It is disheartening to then find the new scheme does not recognise previous work through fair reward for maintenance or there is no support to continue the activity leading for perverse outcomes. An example of the latter is the support for field corners in Entry Level Stewardship. Farmers and growers report seeing these areas supporting birds. Support is not available in CS leading to these areas being removed.

**Defra question 9: For each tier we have given a broad indication of what types of activities could be paid for. Are we focussing on the right types of activity in each tier?**

The document provides some assurance that Defra genuinely want a scheme that works with a wider range of farming systems, although the NFU has concerns about upland farmers. The NFU welcomes the broad range of activities outlined in the paper and believes that ELMs should reward environmental goods produced from any farming system (e.g. organic, conventional, etc), with scope for earned recognition. The NFU would like to see the ambition that ELMs contains an appropriate offer for all farming systems in tiers 1 and 2 of ELMs.

It is important for the applicant to have the freedom to choose ELM activities to include in their agreement. The applicant should be able to choose the appropriate actions from any of the tiers to create an agreement. This would provide flexibility to choose the best actions or options for their land and farming systems. For example, cover crops are not appropriate for all soil types or a wet harvest may unavoidably lead to soil damage. The freedom to choose applies across the whole of ELMs including to the Tier 1 proposals for standards and menus of actions.

The NFU's net zero aspiration signals its ambition for emissions reduction and removals across three pillars. Successful delivery of our goal therefore relies on much more than land use change though carbon storage e.g. encouraging hedgerow and tree planting and management, is an important but not the only element. Improvements in productivity will drive reductions in methane, nitrous oxide and CO<sub>2</sub> whether through measures adopting precision technology which are applicable across sectors to specific measures like sexed semen for dairy.

The NFU supports Defra's desire to make the initial farmer and grower engagement with ELMs simple through providing standards or menus of options suitable to farming system or land type. This approach is useful as a promotion and marketing tool. It should not constrain the applicant, as that becomes a barrier to participation. In CS the wildlife packages have received positive reviews by some because they have cut through a complicated scheme making it easier to understand and access. Uptake has been predominately by the arable sector. The packages have not had positive reviews in other sectors and that is reflected in the uptake. Another example in CS where restricting choice has reduced engagement is the requirement to cut no more than 50% of your hedges in any one year. For areas with hedges made up of fast-growing species this is not tenable and preventing people from applying for CS.

The activities outlined give a flavour of the scheme. Across all three tiers the NFU would expect support for capital items e.g. stone walling, grants for replacing footpath styles in Tier 1, supporting precision



application of manures, fertilizers and pesticides. These should be accessible at any time during the agreement, depending on the nature of the capital item.

The activities outlined in Tier 1 do not appear to work for upland farmers. Upland areas contain a mixture of land types from international protected sites through to dairy farms. Common land is also a feature of these areas. There needs to be a discussion about what would work in an upland context and consideration given to the cultural heritage such as hefted flocks.

In the Tier 1 examples the only mention of grazing livestock related to limiting grazing to avoid run off. Livestock have a far greater contribution to make. Grass leys could be encouraged to contain more clover and herbs to provide an additional resource for pollinators. Livestock have a role in managing diverse swards that support multiple species. Better grassland management leading to feed efficiency reducing carbon losses.

Our expectation is that boundary management and creation and small-scale tree planting should be in Tier 1. These landscape features support a wide variety of species as well as having benefits for soil and water.

The NFU expects ELMs to reward the maintenance of existing features (e.g. small groups of trees, hedges, and stone walls), through to maintenance of priority habitats and SSSIs.

Tier 1 can reward farmers and growers for the maintenance of rights of way which provide free access to the countryside for the public, providing health and wellbeing benefits. Tier 2 public access schemes could then focus on creation of permissive rights of way and educational access. These do not need to be targeted through local priorities. There may be scope for collaborative opportunities in Tier 2 to create a new permissive access route involving several different farmers and growers. These could support local tourism opportunities.

Several the actions listed in Tier 1 support pollinators through land being taken out of production. There are opportunities to recognise that flowering crops provide significant benefits in supporting pollinators, delivering a vital public good. There may be an innovative approach where these pollination services are rewarded and offer better value for money whilst promoting the viability of otherwise uneconomical but important crops for enhancing the environmental performance of the rotation. There could be support provided to encourage pollinators between and around crops e.g. within orchards utilizing land between rows of trees.

Tier 1 lists nutrient, pest, and soil management as examples of what could be supported. The industry led Voluntary Initiative and Tried & Tested have tools available supporting these areas. Through ELMs Defra should seek to utilise existing knowledge to avoid re-inventing the wheel.

The NFU welcomes the reference to water storage and efficient water use in Tier 1 and would like to see it extended to Tier 2. In Tier 1 the NFU sees that water re-use, rainwater harvesting, and reservoirs could feature to encourage sustainable water use. In Tier 2 there are opportunities around collaborative water storage, distribution, and use, potentially targeted towards water stressed catchments and / or where freshwater management is identified as a local priority. There is scope for water quality to be addressed through Tier 1 supporting the types of actions provided through Catchment Sensitive Farming.

The proposals seem to be silent on pest and risk management. Pests such as deer and rabbits can undermine environmental improvement activity. To be effective deer management does need to be carried out at a landscape scale, not on an isolated holding. Equally, if you do not plan for wildfire management in upland areas it can, as has been demonstrated recently, lead to significant damage to moorland habitats and peat. Covid19 has highlighted another blight on the countryside, fly tipping. This is a risk to wildlife, contains potential pollutants and a blight to the natural beauty of an area. It is a major issue close to urban areas and consideration should be given around how this can be addressed.

Tier 3 would be extremely difficult for farmers and growers to engage in. Tenants will not have the length or tenure to engage with this Tier and, in most cases, would be in breach of their tenancy agreement if they did. In most cases it appears to remove land permanently from agriculture. Where this is the case, the NFU believes that Tier 3 should be a separate scheme with a different funding stream, not drawing down budget from previous CAP budgets.

There are other activities that are listed in the consultation which are currently funded by different budgets to CAP. These activities should not be lumped into a farm-based ELMs scheme diluting the overall budget. For example:

- The removal of in river weirs to improve navigation and comply with WFD should remain outside of ELMs.
- Species re-introductions and translocations have a risk of failure and expensive to deliver. Funding would be better focussed on support existing biodiversity and environment to thrive.
- Forestry should have its own, separate budget.
- Funding for urban green space and parks should remain outside of ELMs
- Public bodies should be ineligible for ELMs, as is currently the case in Countryside Stewardship (e.g. Natural England, Environment Agency, Forestry Commission, Ministry of Defence).

**Defra question 10: Delivering environmental outcomes across multiple land holdings will in some cases be critical. For example, for establishing wildlife corridors or improving water quality in a catchment. What support do land managers need to work together within ELM, especially in tiers 2 and 3?**

There are many ways of achieving joined up delivery at scale to support wider environmental improvement. Entry Level Stewardship achieved landscape scale uptake by designing an attractive, accessible and simple scheme that as a result secured high uptake. Catchment Sensitive Farming secures a coherent set of actions within an area to improve water quality. Common land agreements are a collaboration across multiple parties to work towards common goals.

If collaboration is to be supported by ELMs, it needs to be farmer and grower led collaboration. The approach needs to be flexible to enable tenants to engage, even where they have a short term remaining. Some farmers will not be able to collaborate due to, say, their neighbours being unwilling or tenancies. Equally, larger farms may have sufficient scale not to need to collaborate. Those that cannot collaborate, for whatever reason, should not be disadvantaged in ELMs and collaboration should be optional.

There is scope for innovative collaborations, for example, supporting collaboration between arable and livestock farmers on nutrient management. These do not need to be contiguous holdings. There is scope to support farmers and growers to collaborate around efficient water use and storage to establish innovative schemes e.g. water trading and water sharing schemes. Collaboration could support farmers and growers to create permissive footpaths creating a sensible joined up offer to the public. The delivery of natural flood management interventions needs to be planned across a catchment area. Effective deer management needs to be delivered through collaboration.

A collaborative initiative in an area should not prevent access to the wide range of activities supported through ELMs. It is quite feasible for a farm to engage in a collaboration to improve water quality and separately want to support a specific feature or species e.g. historic environment management.

These collaborations have in common the need for a small amount of support to facilitate activity. This support needs to be someone the farmers and growers trust and respect, with the farmers and growers making that appointment. Any scheme needs to be simple for it to work and farmers and growers need to receive the financial support enabling collaboration.

Whilst collaboration is about achieving greater impact farmers are concerned about the risks. Individual farmers do not want to be held accountable and risk penalties when another business does not deliver. Participation in agri-environment schemes does cost the business.

**Defra question 11: While contributing to national environmental targets (such as climate change mitigation) is important, ELM should also help to deliver local environmental priorities, such as in relation to flooding or public access. How should local priorities be determined?**

For ELMs to deliver the activity required on the ground must be appropriate and deliverable. The current targeting approach in Countryside Stewardship has used national data which, in some cases was quite old, and had no mechanism for updating it. In some cases, this prevented inclusion of fields in appropriate options, just because the target information was out of date.

The NFU accepts that there will be an element of targeting for environmental outcomes in the higher tiers of the scheme e.g. SSSIs and priority habitat management. However, 'lines on maps' have created an arbitrary approach that should be avoided e.g. all the farm's fields are in the Catchment Sensitive Farming (CSF) target area, but as the farmyard is not the CSF infrastructure improvements cannot be delivered.

There needs to be a careful consideration on what Defra want to achieve through local priorities and spatial planning. After all local priorities can be set nationally and the real issues may be around other aspects of scheme design. Also, local priorities set at a regional or country level may not achieve the finesse desired.

Championing the Farmed Environment (CFE) has experience of setting county level farm environment priorities that ELMs can learn from. There are some core principles that should be met by any new targeting system:

- For Tier 2 there should be targets covering the whole country, so farmers and growers regardless of location can access Tier 2 should they choose.
- There will be locally relevant priorities that are set at a national level e.g. management of SSSIs, priority habitat, historic environment, and upland areas.
- The priorities need to be relevant to what can be delivered by ELMs and suitable for the land.

It is not clear how the local priorities will be determined. The NFU suggests that any local governance arrangement involve farmers and growers who will be delivering ELMs on the ground. As farmers and growers will be affected by the priorities there must be a requirement to consult farmers and growers effectively on the local plans. Local priorities or opportunities should be based on robust local evidence and data. Any local priorities to be used for ELMs targeting must sit within a national framework that recognises the need for productive farming. The priorities should be signed off by the responsible Government body.

There are many existing local plans and tools that can be used to inform a local ELMs plan. Defra mention National Character Areas and the potential link with proposed Local Nature Recovery Strategies (LNRS). At this stage it is not clear how they align. Local ELMs plans need to resist the temptation to cut and paste over existing environmental plans as they may not be deliverable, have conflicting priorities or not based on robust evidence and data.

LNRS are designed to support the delivery of biodiversity net gain through the planning system. There is a real danger that the creation of ELM priorities and opportunities linked to the LNRS will prevent businesses from attaining planning permission to improve business performance, comply with legislation or replace infrastructure to prevent environmental hazards such as slurry stores. This conflicting messaging with the planning system needs to be addressed.

Local priorities or flexibility has another dimension. Farmers and growers recognise the need for options to be locally relevant, for example, prescription dates for carrying out activities. Where these are set at national level, they do not match the local climatic conditions. There should be the ability to have options that are locally relevant, for example the Norfolk Broads an area that currently cannot enter Countryside Stewardship. There is an opportunity for local community groups to support delivery through providing intelligence on local priorities and helping record environmental achievement.

**Defra question 12: What is the best method for calculating payments rates for each tier, taking into account the need to balance delivering value for money, providing a fair payment to land managers, and maximising environmental benefit?**

The NFU's wants ELM payments to provide a 'fair reward' that incentivises high levels of participation, particularly in Tier 1. Many farmers and growers will look at ELMs as a separate enterprise within their accounts and it will need to provide a suitable economic return fully accounting for the resources invested, the risk profile and the return on investment to secure uptake.

The NFU has been critical of the income forgone calculation within Countryside Stewardship which has led to low payments for grassland and upland options.

Due to the lack of other methodology being available the NFU supports Defra's intention to review the payment calculation and include a wider range of costs such as management time and fixed costs. The NFU needs to be given confidence that the new payment rates will reward environmental maintenance for delivering public goods, overcoming the issues seen in Countryside Stewardship. In Stewardship there are low payment rates, such as £8/100metres for delaying hedge cutting, which fails to cover the costs of the work. The NFU welcomes Defra's references to ELMs providing an '*additional income stream*'. To achieve that Defra must go beyond the current approach to payment calculations.

The payments by results trials have demonstrated that better payment rates can be calculated using income foregone. The winter bird food option in Countryside Stewardship has a payment rate of £640/ha. In the payments by results trial the top payment rate is £842/ha. Currently both are underpinned by Basic Payments Scheme (BPS) which, for many farm businesses covers fixed costs and therefore the removal of BPS will impact on economic returns required from ELMs payment rates to cover associated costs and offer an attractive margin.

Across ELMs Defra needs to create a payment regime that offers an incentive for participation and reflects the risks of entering into an ELMs agreement. The risks could arise be from the inspection and penalty regime, bureaucracy and onerous record keeping, potential permanent change to land use, temporal risk accounting for the uncertainty of future environmental and economic impacts and risks due to new liabilities (e.g. natural flood management).

As BPS is removed for farmers and growers then ELMs payments will need to cover more costs. If the income forgone calculation is used, then the NFU wants to see the calculation reworked and additional costs covered. The new income forgone calculation needs to address:

- The management costs and time for creation and ongoing implementation of ELMs activity. This should cover the time required to keep records and manage the complexity of the scheme.
- The overhead costs of delivery e.g. if need to graze sheep for three months on an environmental area then there needs to be some provision for retaining sheep the other 9 months of the year. Currently these costs could be partially covered by BPS.
- Payment calculations need to offer an incentive beyond gross margins foregone to account for the delivery of a different ecosystem service than food production which is underpinned by completely different economic drivers.
- Payment is forthcoming for maintaining existing habitat e.g. SSSIs and moorland where income to forego is negligible. SSSI management is determined through national regulations, therefore

the payment principles need to be reviewed to secure maintenance payments on these and other valuable habitats.

- Payments cover the length of the commitment, for example, if a conservation covenant is put in place through ELMs then the ELMs contract needs to support the duration of that commitment.
- Payments should cover the maintenance of capital items and risk created from that item, unlike the current Countryside Stewardship model. For example, leaky woody dams need maintaining after installation. They also create liability for the land manager for potential impacts of flooding caused by a dam failure.
- The opportunity cost of creating new habitat that cannot be reverted to its original purpose at the end of the agreement.
- There needs to be recognition of the higher costs caused by working on smaller areas (e.g. field margins) and the impacts on neighbouring crops or future crops (e.g. weed burden).
- Advisory support and other delivery costs (depending on scheme design)

As Defra do want to move towards new payment calculations, the NFU would welcome further discussions as these develop. The NFU is interested as to whether more innovative approaches can be used such as carbon pricing to reward the public goods delivered.

The NFU has long standing concerns about reverse auctions where the process drives to an undervaluation of the costs involved, leading to an unsustainable delivery model. Also, this model is still cost focused and less likely to reward the provision of public goods, Defra's original intention. Whilst there is potential for the development of reverse auctions, it is envisaged that they will not offer a scalable national solution for price discovery and are more suitable for highly targeted interventions such as around a particular water catchment for the delivery of a specific environmental outcome.

Defra has also suggested that payment rates could be varied for several reasons. The NFU believes:

- There should be **consistent payment rates across the country**.
- Payment rates should be **consistent across successive application rounds**. To change payment rates could encourage applicants to hold off applying in case a more attractive payment is offered in a subsequent application round.
- Payment rates should be **consistent throughout the agreement**, to provide business certainty and allow farmers and growers to conduct operational and financial planning in order to ensure delivery of the desired outcomes. As stated above, there may need to be trigger points which prompt a review of agreement rates such as a severe market impact which alters the economics of delivery.

The consultation outlines that Tier 1 payments could be reduced if actions 'become the norm for all farmers'. Members are very concerned about the bar being raised over time. The NFU has concerns about how that decision is made and when payment changes would be adjusted. Farmers and growers with an ELMs contract will need certainty for the life of the contract.

As with other Government contracts payment rates should be linked to interest rates, particularly for longer term agreements.

There would need to be a mechanism that allowed payment rates to be reviewed for new agreements in the future. Currently, under CAP rules this happens every seven years.

With Brexit there are several unknowns, e.g. trade arrangements that impact on commodity prices, that could affect the viability of the agreement. Therefore, there does need to be a mechanism put in place that addresses this issue while giving applicants certainty around which they can plan.

**Defra question 13: To what extent might there be opportunities to blend public with private finance for each of the 3 tiers?**

ELM needs to allow farmers and growers to attract private funding in addition to ELMs payments. Water companies currently offer a range of farm grants that are well received due to their clarity of purpose and simplicity. Farmers and growers would not welcome these funding streams being 'blended' due to the complexity a Government scheme brings with it. It would be perverse for ELMs design to prevent access to simple grants funded through other routes.

Farmers and growers do want to see an approach where they can attract private funding on the same land as an ELMs agreement. Defra needs to find a way to enable this approach going forward. If the private sector is able to offer a better reward, then there should be scope to exit the ELM agreement early, whilst maintaining the environmental delivery.

If Defra were to consider blended finance with the private sector, then there will need for absolute transparency on costs and the funding reaching the land manager. The ELM contracts with land managers would need to match the length of the private commitment, particularly if habitat is being created. Defra would need to clarify how double funding was avoided. Before agreements were entered in to with the land managers it would need to be clear what happens at the end of the agreement and whether commitments on the land manager are released.

There are existing environmental funding streams or responsibilities of arms-length government bodies e.g. Environment Agency funding for flooding or maintenance of rivers. The NFU believes that these arms-length funding streams and responsibilities should continue in the future and the ELMs does not assume responsibility for delivering these schemes or their priorities. The relationship between the arms-length body schemes and ELMs needs to be clarified. Where appropriate these funding streams should be aligned. It might be the case that ELMs could be combined with another funding stream to make a more appropriate offer to land managers.

**Defra question 14: As we talk to land managers, and look back on what has worked from previous schemes, it is clear that access to an adviser is highly important to successful environmental schemes. Is advice always needed? When is advice most likely to be needed by a scheme participant?**

Future schemes will be delivered by farmers and growers and they need to fully understand the agreement contracts without the need for advice, such as when a land management plan is set up. A farmer or grower should be able to complete and deliver their agreement without the need to take advice, and that should remain going forward. Following our guiding principles the NFU wants to see with ELMs going forward a re-balance in scheme design that allows farmers and growers to deliver the public goods desired without the bureaucratic elements seen to date with current schemes. Equally what the NFU does not want to see is that bureaucracy is replaced with an overly onerous requirements for agreement holders to need to use advisers or need it as a pre-requisite in order to be successful in applying for the scheme. Given there will be less overall support in real terms going forward farmers will not have the funds to employ advisers. This should not be seen as a charter for advisers or seen as an adviser tax on ELMs. If needed advice and support should be available.

The NFU has long held the view that the adviser should come from the central delivery body to ensure the advice is up to date, compliant with scheme rules and consistent across the country or particular landscapes, for example uplands, coastal areas with an aim of avoiding a postcode lottery. Championing the Farmed Environment (CFE) has demonstrated that providing advice that recognises farming systems has been effective at achieving implementation. There is a need to keep advisory costs down as they could easily become a significant part of the budget.

The NFU believes that:

- **It should not be a requirement to receive advice to enter or maintain presence within the scheme.** Farmers and growers entering into an ELMs agreement need to fully understand these contracts.
- Every farmer and grower has different advice needs; from advice to understand the scheme through to the adviser implementing the scheme on the ground.
- **Advisers need to work from the same guidance as is available to farmers and growers.** This will help both agreement holder and adviser to develop their knowledge and ensure a level of consistency.
- **Advice must primarily come from the delivery body so there is consistency** with the advice given and they are fully responsible for the advice they give.
- **Advice need to be impartial** and the boundaries of what advice can be given should be clearly set out.
- Advisers need to have an **interest in getting delivery right and be insured.** That is, the agreement holder does not carry all the risk of delivery.
- Advisers need to **know the local area and be trusted by the farmer and grower.**
- Suitable advisers should be **available across all parts of the country**, so the farmer and grower does have the ability to choose the best adviser for their business.
- Advisers **must be qualified / accredited** and have continuous professional development and/or inspection of advisers to ensure quality advice, using existing frameworks in place, but at the same time acknowledging that the cost of this process should not in its entirety be passed back in terms of charges to agreement holders.
- Defra need to **ensure that the cost of advice is not a significant barrier** to participation in ELM.
- There should be a **role for user stakeholders to feed into the approach to advice** that is eventually operated.
- There needs to be a **mechanism to report and address poor performance** by advisers including anonymous user feedback.
- Advice **should come in many forms**, embracing new ways of working not just face to face or one to many events such as free at the point of use online webinar / YouTube video tutorials.
- Advisers have to be advisers and **not part of the authorisation or approval process**, that should still be the function of the delivery body, especially if results-based payments are a possibility.
- Acknowledgement that **advice is not an exact science**: an approach for one farmer or grower may not be the same for another one due to wider business aspirations and goals.
- There should be some form of national user forum set up to oversee the role of advisers within ELMs.

The scheme should be simple enough, particularly for Tier 1 for the applicant to be able to complete and deliver his agreement without the need to take advice. This would require good written advice and guidance to be available and easily accessible for farmers and growers understand and that is reviewed on a regular basis as new understanding and approaches are developed. ELMs will be delivered by the farmer and grower and they need to fully understand the agreement and contract without the need of advice. Too many of the current arrangements see the farmer and grower transfer that understanding to an adviser. There is a need to make the scheme as straightforward to help redress this situation.

There would need to be support available from the delivery body to support applicants as needed. There is a need for different types of advice and support throughout ELMs. It will need to span pre-application advice on meeting scheme rules; support to complete forms correctly; best options and management for the location and land type; through to advice and guidance on to support on-going delivery of the scheme. This may include 1-2-1 support.

CFE can continue to promote good farm practice to support environmental delivery and encourage farmers and growers to undertake more challenging activities within ELMs within Tier 1. CFE has demonstrated that inspiring and upskilling participants is part of successful delivery e.g. provision of training modules linked to BASIS. ELMs needs to recognise the skills of the farmers and growers and support development of those skills. This could be through the same, or similar, tools being put in place for advisers. It should acknowledge the role of farm walks providing peer to peer learning through to more formal qualifications e.g. FACTS and BASIS. Support is also provided by other industry led initiatives such as Tried & Tested and the Voluntary Initiative.

In Tiers 2 and 3 the case for more support and aftercare can be made. However, as the farmer and grower is signing a binding contract it is vitally important that the farmer and grower fully understands the agreement they are entering in to. It takes several years for an adviser to build trust with the land manager. Part of that trust comes from recognising that the land is being used for the core business of farming. For the appropriate advice to be well received the adviser needs to recognise these challenges.

Where ELMs leads to permanent land use change, in Tier 3, then there needs to be a combination of advice on environmental delivery, with legal and financial advice. No one adviser will be able to provide this depth of knowledge. As with infrastructure projects, which this is comparable to, it is suggested ELMs could cover all these costs.

**Defra question 15: We do not want the monitoring of ELM agreements to feel burdensome to land managers, but we will need some information that shows what's being done in fulfilling the ELM agreement. This would build on any remote sensing, satellite imagery and site visits we deploy. How might self-assessment work? What methods or tools, for example photographs, might be used to enable an agreement holder to be able to demonstrate that they're doing what they signed up to do?**

In ELMs there is an opportunity to reduce the inspection burden on farms. The NFU would welcome a more proportionate penalty regime e.g. better approach to balancing environmental impact against a measuring transgression (e.g. 10cm short at one end of a margin should not result in no payment) or not backdating penalties to start of the agreement.

The NFU believes the following principles should apply to inspections:

- Inspections to be **risk and evidence based** to target those farms and activities that represent a higher risk
- Assessments to be used in determining the frequency of compliance visits, and Government inspections need to be **transparent** and incentivised
- Membership of **farm assurance and certification schemes** to be used to reduce the burden of inspection. Farmers that are members of farm assurance and certification schemes represent a lower risk than those that are not, and that should be reflected in the frequency with which they are inspected
- Farmers should be provided with **advice and guidance** on how to correct minor problems or allowed time to remedy actions following an inspection
- Any penalties imposed need to be **proportionate** to the damage or breach

Unfortunately, remote sensing and satellite imagery has gained a poor reputation due to the experiences through the RPA's use of satellites to record hedges and constantly changing field areas. ELMs must learn from these experiences if these technologies are to be used in the future.

Considering innovative ways of carrying out assessments will be part of finding a better approach. New technology offers new opportunities e.g. mobile phone apps. If these can use data already being captured on farm that would simplify the process. Also, it must be possible for farmers and growers to export data for their own use and must be compatible with applications in everyday day use i.e. MS Excel / Word. A solution must be found that is simple to use and not resource intensive on farm or



bureaucratic. It will require a range of solutions to ensure ELMs is accessible to all, including those without access to broadband.

Defra outline an ambition to move towards results or outcome-based approach that will require more monitoring by the agreement holder. The self-monitoring requirements need to be practical, simple and make sense on farm, otherwise it will be a barrier. The assessment needs to be something the farmer and grower and undertake without the need for an adviser. There are practical issues around identifying what can be monitored that the farmer and grower can influence through his management. The assessment should not be required during key points in the farming calendar e.g. lambing or harvest. They should not be onerous in terms of time commitment. It is simple to specific, say, monitor your hedges. However, if you have 5 miles of hedges and they need to be assessed every 100 meters that leads to 80 assessments.

Careful thought will be required to ensure that a fair sanctions regime is established if there is to be a greater focus on outcomes rather than actions. For example, what if a farmer and grower can show that they took all steps they reasonably could to achieve an outcome but for some reason the actions were unsuccessful? Force majeure only deals with exceptional or unforeseen events, so could help where (for example) there was a fire or exceptional flooding, but what if the reasons for the failure are unknown?

Monitoring goes hand in hand with the penalty regime. Penalties should only be imposed where the farmer and grower has negligently or intentionally breached the scheme requirements, and consideration of this should be properly integrated into the approach of dealing with breaches. The principle of proportionality needs to be properly integrated into the design of the penalty matrix, particularly with regard to administrative errors.

Backdating of penalties has particularly severe consequences, especially over long-term agreements – Tier 3 would be a significant concern here as agreements are likely to be longer-term to achieve the changes required. Complete recovery back to the start of the agreement may be justified in extreme cases (e.g. fraudulent claims), but in the majority of cases backdating should be limited, and ideally confined to situations where there is evidence that the breach occurred in previous years.

**Defra question 16: Do you agree with the proposed approach to the National Pilot? What are the key elements of ELM that you think we should test during the Pilot?**

The NFU welcomes the principle of running a National Pilot. The NFU would like to see more details about the content. The lack of detail currently available does not give confidence that the Pilot will have agreements in place in late 2021. The NFU is happy to discuss the detail of the pilot to ensure it is effective leading to a successful introduction of ELMs in 2024.

Before 2024 the NFU expects the pilot to be delivered using the same underpinning computer programmes, payment systems, monitoring processes and all the back-office support functions that will be use for the full delivery of ELMs. It is clear that the first phases of the National Pilot will not do this as decisions are still to be taken about the delivery body and supporting IT from 2024. Based on the experiences of the IT development leading up to the introduction of Countryside Stewardship this is very concerning, and timescales are getting extremely tight for full delivery in 2024.

**Defra question 17: Do you have any other comments on the proposals set out in this document?**

The NFU welcomes the opportunity to engage in the development of ELMs to create a simple farm-based scheme that delivers for the environment. The NFU remains concerned about the tight timescales for delivery, particularly for the National Pilot that should be seeking applications next autumn, 18 months away.