

Doing Better Initiative to Reduce Red Tape in Agriculture

Interim report

A response by Scottish Environment LINK

Scottish Environment LINK is the forum for Scotland's voluntary environment organisations, with over 30 member bodies representing a range of environmental interests with the common goal of contributing to a more environmentally sustainable society. LINK provides a forum for its member bodies facilitating and enabling informed debate, information-sharing, discussion and joint action. LINK assists communication between member bodies, government and its agencies and other sectors within civic society. Acting at local, national and international levels, LINK aims to ensure that the environment is fully recognised in the development of policy and legislation affecting Scotland.

We welcome the opportunity to comment on the interim report of the 'Doing Better Initiative to Reduce Red Tape in Agriculture' and have consulted widely within the LINK membership in order to do so. LINK members that specifically endorse this submission are: Scottish Wildlife Trust, RSPB Scotland, National Trust for Scotland, Archaeology Scotland, Woodland Trust Scotland, Froglife, Bumblebee Conservation Trust, Badenoch and Strathspey Conservation Group, Scottish Wild Land Group and Scottish Campaign for National Parks.

Summary

- The report fails to make a clear distinction between different types of 'regulation' affecting agriculture (CAP regulations vs environmental and other legislation) which, in our view, is likely to generate further confusion within the farming sector and which undermines the review.
- We agree that greater clarity about the role of SGRPID would be helpful (Recommendation **R4**).
- We support a number of recommendations regarding improved implementation of Nitrate Vulnerable Zones (**R14 and R15**) but are confused by subsequent calls for the EU Nitrates Directive to be repealed, **R16**. We offer further comments on recommendations **R17-R20**.
- We support recommendations **R34 and R35** on improving guidance to farmers.
- We support transparency in how risk is determined (re inspections) and communicated to farmers and therefore agree with recommendations **R38 and R39**.

- We do not share the report's conclusion that on the spot checks or unannounced visits are an undesirable regulatory tool (section 3.1.9)
- We support **R53** for more resources to be made available to ensure earlier development of the Futures platform for SRDP implementation and **R54** encouraging SGRPID to consult with agents and end users, and would welcome such consultation.
- We support the report's finding that membership of Farm Assurance schemes cannot be used as 'earned recognition' for SGRPID inspections. On the same basis, we cannot see how 'reverse earned recognition' **R56** would work.
- We support the need for improved advisory services in Scotland for farmers and land managers (section 3.1.18), and increased funding for this, building on existing provision.
- We object to, and will oppose, the implementation of recommendations **R61-65**, as drafted. However, were these recommendations to be re-drafted to consider a more logical, and possibly more comprehensive review of the governance of public policy on rural land use and the environment – with one of its multiple objectives being the simplification of engagement for rural land managers – we could be fully supportive and engage in its implementation. Other objectives for such a strategic overhaul would include the proper delivery of environmental policy goals, the proper enforcement of environmental legislation and a more open, transparent and accessible governance structure for all parties, including appeals that are full Aarhus-compliant.
- In light of the above, we would support the recommendation for a “feasibility study”(contained in **R62**). However, such a study should not be about the feasibility of a pre-determined solution. Rather, it should be a broad assessment of the objectives and purposes of regulation (along with the other functions of the bodies concerned), alongside a feasibility study of the practicalities.

General comments

The report opens with acknowledgement of the multifunctional nature of farming, its important role in ecosystems services and the need to demonstrate public benefit in order to secure continuing public support. Thereafter, this acknowledgement of a larger world within which agricultural subsidies and farming regulation need to operate falls away. For example, biodiversity receives only four mentions, while “red tape” has twelve, and there is no mention of rural communities, only the “farming community” (referenced six times).

This narrow focus, which fails to take into account the main public policy objectives of the Scottish Government, leads to a series of recommendations that only make sense within these reduced horizons, most notably the recommendations that national government bodies with land management responsibilities be merged. We offer further detailed comment on these recommendations later on.

The report itself is long at 141 pages of main text, but some 77 pages (54%) are devoted to recommendations, rather than introducing evidence, undertaking analysis or advancing conclusions. The recommendations often therefore lack support in the main text and we feel

greater effort is needed in the final report to substantiate the views that have been formed by the authors.

A fundamental flaw with the report is its failure to make a clear distinction between different types of 'regulation' affecting agriculture which, in our view, is likely to generate further confusion within the farming sector and which undermines the review. The first type of 'regulation' is that which gives rise to requirements, inspections and audit in relation to payments received through the Common Agricultural Policy – EU CAP Regulations, such as that on direct payments. The application of these regulations has implications for both competent authorities such as RPID (the paying agency) and farmers/land managers. In order to receive such payments: beneficiaries must apply for them (resulting in a level of administration); comply with certain rules and meet certain conditions relevant to the payments being made; the Scottish Government and its agencies are required to inspect for compliance with these rules/conditions; and, non-compliance can result in reductions or outright withdrawals of payments. A large proportion of the interim report is concerned with this type of regulation; the report is however very muddled in presenting those issues which affect the competent authorities and those which directly affect farmers. It is perhaps also worth highlighting that the rules and conditions which apply to farmers from this type of regulation only do so when farmers wish to claim public subsidy. In other words, farmers enter schemes and payment regimes entirely voluntarily and, in doing so, must accept the administrative and other requirements that come with them.

The second type of 'regulation' is that which has a legal basis in EU/UK/Scottish law and which farmers/land managers must comply with or ultimately face prosecution in a court of law. Non-compliance with this type of regulation can lead to fines or, in severe cases, imprisonment. Examples of this kind of regulation include the EU Welfare of Laying Hens Directive (enacted in domestic law by The Welfare of Farmed Animals (Scotland) Regulations 2010 and the EU Nitrates Directive (enacted in domestic law by The Action Programme for NVZs (Scotland) Regulations (2008) and subsequent amendments). These regulatory requirements exist irrespective of any payments made to farmers through the CAP. The interim report makes recommendations on a number of regulations of this type.

Further confusion arises in the report around discussions of cross compliance. Cross compliance has its legal basis in EU CAP regulations but is often confused with the second type of regulation described above. This arises because cross compliance is a sanction mechanism; its purpose is to create a link between the receipt of CAP payments and various (largely pre-existing) legal requirements, in order to improve compliance rates with those requirements. Non-compliance can result in the sanction of a reduction or outright withdrawal of CAP payments.

In seeking to help farmers, and the agriculture sector more widely, understand the purposes and application of regulation, it would be helpful if the final report made much clearer distinction between these types of regulation and dealt with them in separate sections of the report. The recommendations in particular are muddled and mix ones which relate to CAP regulations (with implications for both the competent authorities and farmers) with those relating to specific

legislation e.g. on NVZs or feed hygiene. This is not helpful and much greater effort is needed to present a logical and clear structure that helps both the reader and those at whom the recommendations are directed.

Acknowledging that the role of the ‘Department’ has permanently changed

We agree that greater clarity about the role of SGRPID would be helpful (Recommendation **R4**) particularly the need for clarity between its inspection and compliance functions and its role in providing advice and guidance to farmers. See further comments below on structural reform issues.

Mindset and Gold-plating

Sections 3.1.3 and 3.1.3a are a good example of where the authors muddle issues that arise from implementation of CAP regulations (administration, inspections, disallowance etc) and implementation of EU Directives (transposition of EU law into national law and requirements). We believe that much of the perceived ‘regulatory burden’ within the farming sector appears to arise from the former and note that the review was presented with little evidence of ‘gold plating’ in relation to the latter. In other words, it is implementation of the CAP subsidy regime which appears most problematic in terms of ‘red tape’ for farmers and administrators rather than legislation designed to protect the public good e.g. that relating to food safety, animal health and welfare or the environment.

Nitrate Vulnerable Zones

Scotland’s wetlands, rivers, lochs and coastal areas are vital for supporting wildlife, providing drinking water, producing food, sustaining world-renowned industries, recreational activities and tourism. Nutrient pollution is detrimental to the functioning of aquatic ecosystems, thus threatening not only the biodiversity that is inherent to these systems but all of the aforementioned public goods and services. LINK members wish to see a reduction in nitrate pollution from agriculture because of the long-term impact that this nutrient poses to wildlife and the natural environment¹.

Addressing nitrate pollution is essential if we are to meet statutory obligations for the freshwater and marine environment eg Water Framework Directive and Marine Strategy Framework Directive. More efficient use of nutrients in agriculture can also make an important contribution to greenhouse gas emission reduction targets since fertiliser manufacturing produces large amounts of greenhouse gases and fertiliser use contributes to nitrous oxide emissions.

It is notable that Scottish Water and its regulators are concerned about the presence of nitrates in drinking water catchments, such as the area around the Dumfries basin aquifer². The process of removing nitrates from drinking water increases the cost of treatment which is ultimately passed on to the public via water charges. LINK supports a sustainable catchment management approach where land managers are supported for delivering services (e.g. drinking water quality, biodiversity, flood risk management, climate change mitigation and adaptation) over and above what is already required of them through regulation and cross compliance.

¹ MacDonald, M.A., Densham, J.M., Davis, R. and Armstrong-Brown, S. (2006) [Force-Feeding the Countryside: the impacts of nutrients on birds and other biodiversity](#). RSPB review

²<http://www.scottishwater.co.uk/protectdwsources>

R14 recommends the use of fresh initiatives to encourage nutrient budgeting within the industry. We agree that more needs to be done to promote nutrient budgeting and to educate and make clear the potential benefits for the farm business, resource protection and reducing greenhouse gas emissions. Such initiatives should seek to integrate with other relevant aspects of farm planning such as soils management.

The interim report (page 96) states: “*Water quality is not just agricultures’ problem and one wonders the extent other factors, such as sewage treatment plants and domestic septic tanks, have on nitrogen and phosphorous losses to our rivers*”. While we agree that agriculture is not the only source of water pollution, this statement hardly encourages the agricultural sector to take ownership of its responsibility to protect water resources. We remind the authors that the River Basin Management Plan³ for Scotland states that the principal source of nitrate inputs is agriculture and that 74% of groundwater bodies in poor chemical status are under pressure from diffuse pollution from agricultural activities.

LINK strongly welcomes the recommendation (**R15**) for a high profile initiative to engage farmers and land managers in the need for NVZs. We are therefore perplexed and concerned by recommendation **R16** which contradicts this by indicating support of a repeal of the Nitrates Directive.

We support the principle of simplifying calculations and looking at modifying the requirements to help farmers understand the relevance of the requirements (recommendation **R17**) but *only* if this does not weaken requirements and increase the likelihood of nitrates entering the natural environment.

R18 recommends a protocol is developed to identify low intensity businesses which would be subject to reduced NVZ recording requirements. We stress it would be crucial that any such protocol is capable of identifying the threshold below which farms do not pose a risk of nitrate pollution. It must be ensured that all businesses posing a significant risk of nitrate pollution are encompassed by the standard reporting requirements.

In the preamble for recommendations **R19** and **R20**, the report states, “*In the future we believe much more attention must be paid to the goal of sustainable economic growth with patience displayed in reviewing the success of the current restrictions. The recognised fact that the quality of groundwater changes very slowly obscures the ‘pain-versus-gain’ relationship and therefore leads to a defeatist attitude amongst producers. We believe that work should be commissioned to identify other ways of identifying positive signs that Nitrate pollution should be reducing (e.g. identify the impact of much reduced stocking rates, particularly on intensive units, in significant catchments)*”.

We acknowledge there can be a slow environmental response to nitrate pollution mitigation measures due to a time lag in ecological recovery. However, this makes it more necessary to communicate effectively to the industry about the lag effect and the importance of adhering to NVZ restrictions and all other relevant regulations such as the diffuse pollution General Binding Rules. After all, the future of agriculture in Scotland depends on adequate action being taken now to protect and restore the natural resources upon which it relies.

³ http://www.sepa.org.uk/water/river_basin_planning/scotland.aspx

Recommendation **R19** is for a review of areas designated as NVZ where all relevant evidence, such as stocking rates in a catchment, are used to assess current NVZ status with the objective of ensuring all restrictions are appropriate. We would stress that any such review must take account of all available evidence on nitrogen sources, pollution pathways and ecological effects and that it is subject to full peer-review by experts.

R20 recommends that the starting point for the next NVZ action plan is an analysis of the costs and benefits of the scheme in order to ensure a future action plan is in keeping with sustainable economic growth. We disagree with this recommendation and the emphasis it gives to economic growth. The primary objectives of the action plan should be to protect groundwater and surface waters from nitrate pollution and to enable polluted waters to recover. Such action is, of course, ultimately beneficial to the economy since agriculture depends entirely on natural resources including a clean and healthy water supply. Any bias towards economic growth is absolutely short-sighted and does not consider the repercussions for the viability of future generations of farmers.

Guidance

There are some positive recommendations on guidance. **R34** recognises that land managers need to make an effort to understand the purpose of regulations before voicing complaints about them. We support this and acknowledge that much more could be done in this regard to help farmers understand why regulation is in place. Recommendation **R35** is about developing more user-friendly guidance that would be issued alongside comprehensive, detailed guidance and this seems a sensible suggestion. There is considerable scope to improve guidance – both on-line and through other formats – that we believe would help to improve compliance with environmental and other legislation.

Risk or random inspection and selection process

We agree it is sensible to target inspections where intelligence suggests there is greater risk of non-compliance with regulations and where risk of failure presents the greatest risk to public interest. We support transparency in how risk is determined and communicated to farmers and therefore agree with recommendations **R38 and R39**. Risk based inspections must also be accompanied by some random inspections however in order to ensure a rigorous and effective inspection regime.

On the spot checks

We do not share the report's conclusion that on the spot checks or unannounced visits are an undesirable regulatory tool (section 3.1.9). An effective regulatory regime should, in our view, be made up of a mix of unannounced visits alongside those for which a notice period is given. Whether visits are unannounced or scheduled could be related to risk assessments.

SGRPID Futures Programme

We support the report's analysis of the need for improvement in IT systems in relation to both Pillar I and Pillar II schemes and payments. In particular, we support **R53** for more resources to be made available to ensure earlier development of the Futures platform for SRDP

implementation and **R54** encouraging SGRPID to consult with agents and end users. A number of LINK members act as agents for, and are end users of, SRDP schemes and would welcome further consultation on this issue.

Earned Recognition

We support the report's finding that membership of Farm Assurance schemes cannot be used as 'earned recognition' for SGRPID inspections. Farm Assurance schemes (standards and inspections) serve an entirely different purpose to the regulatory requirements and inspections that SGRPID must undertake (although we accept there is some overlap) and are unlikely to be deemed compliant for audit purposes. Given the differences between the two, we cannot see how 'reverse earned recognition' **R56** would work; Assurance Schemes would need to be able to demonstrate that SGRPID inspections cover all aspects of Scheme requirements which is unlikely to be the case.

Farm Advisory Service

We support the need for improved advisory services in Scotland for farmers and land managers (section 3.1.18), and increased funding for this, building on existing provision. Advice can fulfil a number of functions including:

- Improving awareness and knowledge of, and ability to comply with, regulation
- Helping farmers and land managers access CAP schemes and payments and identify those that are most relevant to their business
- Ensuring the quality of applications for schemes and payments is high, particularly in relation to SRDP schemes

LINK members see advice as a key element in maximising value for money from the SRDP agri-environment-climate scheme and Forestry Grants Scheme. We welcome the proposed structure for the advisory service outlined in the recent SRDP consultation – especially the inclusion of 1:1 advice.

Oversight body and Structural Reform

In this section of our response, we focus on recommendations R61-R65 which relate to the governance arrangements for rural and environmental regulation. These are reproduced below.

Oversight Body

R61 We recommend that a Regulatory Oversight Body for agriculture and land management be established as a priority to help co-ordinate and inform the regulation of Scottish agriculture. It will be essential that it is accountable to and can draw on guidance from independents appointed by Ministers. (Page 131)

Structural Reform within Scottish Government: Hard landing option

R62 We recommend that Scottish Government commissions a feasibility study into creating a new body that covers most of their Rural and Environment regulatory and policy interests. Our vision is that all Scottish Government Rural and Environment Directorates together with the Agencies (SNH, FCS, Crofting Commission but not SEPA) are amalgamated into a single body. The precise legal structure of this body would be determined by the feasibility study but it must be a customer facing organisation with the objective of helping the sustainable economic growth of the rural sector. We further envisage that this new body would take over the implementation of all specific farm and land manager regulation from SEPA, local authorities and the New Food Body and where practical from AHVLA on a contract basis (Memoranda of understanding). (Page 136)

R63 We recommend that an important outcome of re-structuring to form a single body is to have common data (i.e. a single database that covers all the interests of its constituents). Once established this will provide the platform for transparency and fully interactive systems that will make the lives of beneficiaries, regulators and policy makers easier. (Page 136)

Structural Reform within Scottish Government: Soft Landing Option

R64 We recommend that, if for whatever reason, the move to a single body for Rural and Environment is not achievable in the short term, it should be set as an objective with any restructuring supporting its eventual achievement. (Page 137)

R65 We recommend that the minimum restructuring that takes place is that the implementation of regulations affecting farmers and land managers is contained in one body that has the primary objective of increasing Scotland's sustainable economic growth. This body will be responsible for ensuring farmers and land managers understand what is expected of them (Guidance and Advice) and that they adhere to the rules (Inspection). A feature of this unit must be a single database that serves the needs of all parties, including beneficiaries. (Page 137)

In responding to these suggestions, LINK's views are driven by the principles of Governance, set out in *Governance Matters* (<http://www.scotlink.org/files/publication/LINKReports/LINKGovernanceMatters.pdf>). From this, it can be seen that (in some ways) we agree with thinking behind the recommendations in that we have suggested:

“The complex structure of the executive branch mixes different governmental functions within departments and agencies in a manner which is mostly arbitrary, and in instances perverse. These problems affect, in particular, the so-called ‘arms-length’ agencies in particular - and especially where they are supposed to operate independent of ministerial controls.”

That said, the analysis in *Governance Matters* does not lead to the same conclusions as the recommendations as in the interim Pack report. There are some aspects of the recommendations which we would agree – but other aspects which, on first sight, appear to contradict each other, to duplicate existing functions or to seek “special case exemptions” for farmers/land managers (seemingly on the basis that farmers/land managers either need not be regulated or are somehow “different” from other businesses). Overall, while some aspects of the governance ‘problem’ seem to have been correctly identified, the proposed ‘solution’ (a “mega-merger” – for one ‘customer’ base, without consideration of other ‘customers’) appears ill-conceived.

Scottish Environment LINK would not object to a comprehensive review of rural and environmental governance, including the implementation of regulation. Indeed, parts of *Governance Matters* called for such a review. To this extent, we welcome the recommendation for a “feasibility study” – however, such a study should not be about the feasibility of a pre-determined solution. Rather, it should be a broad assessment of the objectives and purposes of regulation (along with the other functions of the bodies concerned), alongside a feasibility study of the practicalities.

In *Governance Matters*, we wrote (p23-26):-

“The delivery of substantive environmental outcomes is, for us, the central issue rather than the architecture of government – but re-organisation of Government must be done very carefully if it is required - and in a way that does not damage our environment.

“In **Protecting the Environment in a Time of Cuts** we noted in a discussion of the size of government and the division of responsibility between the public, private and voluntary sectors that, unlike many areas of social policy, the environment, its protection and enhancement, are not heavily reliant on the provision of “public services”, but rather on the development and use of legislative, regulatory and other governmental tools. Our views were refined in our recent submission to the **Christie Commission** on the future of public services.

“The Public Services Reform Act gives the Scottish Government considerable powers to reform, merge or restructure the Non-Departmental Public Bodies (NDPBs) in the interest of efficiency and government simplification.

“We hope that the efficiency savings already involved in the merger of the Scottish Fisheries Protection Agency, Fisheries Research Services and other divisions of the civil service will be a consideration as we move forward, and that every effort will be made to continue the radical improvements offered by the new legislation.

The recent merger of the Deer Commission for Scotland and Scottish Natural Heritage is another example of this reductive process in operation. LINK members have considered these issues and are of the view that, while there is scope for further efficiency and best value gains via the SEARS approach, any hasty and major re-arrangement of the environmental Agencies would have detrimental impacts on the work that they do, and quite possibly incur greater cost.

“LINK and its members will play a full part in any consultation on proposed restructuring of agencies. We have already held a brief preliminary discussion of the matter with the Scottish Government and we call for consultation to take place at the earliest stages possible, in order that any restructuring achieves the confidence of civic society.

“LINK also offers the suggestion that the time has come for the complex structure of the executive in Scotland to be sorted out by defining and separating the functions of government. These functions might include the following list and each function should be assessed against any requirement that it be performed independently of political control – by either politicians or the central civil service.

Delivery	Purely executive functions	These functions, in the straightforward delivery of the legislative requirements placed on government by Parliament, are delivered by a bewildering variety of departments and agencies. The Scottish Executive, the civil service, deliver a wide range of regulatory, licensing, and other functions, such as the designation of protected environmental areas, in direct exercise of the powers given to Ministers. They also do so through indirect “client”, statutory agencies such as health boards, police boards or NDPBs, where a defined and limited independence of decision is granted to appointed boards of individuals.
Delivery	Regulatory and licensing functions	These functions are often carried out within Government but are also frequently handed to “arms-length” agencies as part of a mix with other work. The Crown Estate Commission, for example, both owns and directly manages property and issues licenses. The statutory regimes to be regulated do not, however, necessarily require independence from central government.
Delivery	Fiscal functions	These functions are largely carried out directly by the civil service under direct ministerial control – but can be devolved to others, such as local authorities in the case of the proposed Environmental Levy on Plastic Bags Bill in the second Parliamentary session.
Delivery	Policy formation functions	The formation of policy is performed largely by the central civil service but often after considerable consultation with supposedly “arms length”

		agencies, operating quasi-independently as the deliverers of current policy.
Scrutiny	Auditing functions	Formal auditing of the performance of the executive branch has, by and large been allocated as a function to independent bodies (clearly separated from executive functions). As in the case of the Sustainable Development Commission (SDC), however, this independence is no guarantee of the survival of this function.
Scrutiny	Ombudsmen & Commissioner functions	These functions are, properly, the responsibility of Parliament but are included here for purposes of completeness.
Advisory	Advisory & Expert functions	Bodies established by legislation or the Government for the purposes of giving expert advice on an independent basis remain, nevertheless, a part of the executive branch, carrying out this function often in conflict with other functions such as those of a purely executive nature.
Legal	Crown functions	These functions, such as the Crown Office, the Procurator Fiscal Service and the Scottish Courts Administration are performed by the executive branch as part of the judicial process. They extend into the functioning of the Crown Estate, however, and other residual duties, prerogatives and rights of the Crown.
Legal	Quasi-judicial functions	These functions, such as Ministerial decisions in planning cases or prisoner release, are carried out by politicians on the advice of civil servants, relate to private individuals (including legal individuals) but are, by convention, specific to an individual minister and are considered to be taken outside the normal party political policy structures, even though there consequences might be deeply political.

“It is the view of LINK that any restructuring of the executive branch must ensure that the resultant architecture of environmental governance avoids confusion as to function and conflicts between different functions. For example quasi-judicial functions should not be mixed with commercial duties, or independent scientific advisory functions should not be shared within a single body with duties entirely dependent on governmental direction.

“LINK is strongly of the view that we need a better, clearer understanding of the framework of functions and the rationale behind their combination in the roles of different agencies. Without such an agreed understanding, we and the rest of the public are left bewildered by the apparently arbitrary way in which government is structured. Why can Historic Scotland market itself and be “branded” as independent – when it is

just a part of the civil service, but SNH, a non-departmental public body can't? How can SNH be considered an independent, expert, advisory body, when it is tightly controlled by ministerial direction and grant-in-aid? Is policy formation furthered when most of the "public" responses to a Government consultation are provided by 100% executive agencies? Why should Ministers determine quasi-judicial appeals to decisions by NDPBs, when the decisions are taken by NDPBs subject to directions and funding from the same Minister?

"At the same time as the functions are performed within this confusing framework, with its mixing of functions, we can observe also that there is no clear coverage of each within large areas of government. Regulation and licensing can be carried out directly or by agencies, without any logical, consistent distinction as to why. As a result of the piecemeal establishment of the organs of the executive branch, not every part of government is subject to an independent inspectorate or an expert advisory body. (The same certainly applies to ombudsmen and advocacy functions under the Parliamentary Commissioners.) Auditing functions have been largely restricted to the financial field - and auditing of measurable economic, social and environmental data has been dispersed across Audit Scotland, the abolished SDC, ill-resourced Parliamentary Committees and NGOs of the voluntary sector.

"Recommendations:

- *We should strive for a better common understanding of the functions of government and their allowable combinations and required separations within government and its agencies.*
- *Where an agency is established to exercise independent judgement, the agency should be provided with clear terms of reference and accountability, and its independence be respected.*
- *We should comprehensively analyse the way that each function of government (in isolation) is carried out across the executive branch as a whole."*

This, logical, cross-purpose approach to any major revision of Governance should be adopted in this case. Without this, there is a risk that a well-intentioned re-organisation will simply result in (yet another) *ad hoc* change without addressing the fundamental concerns of all customers, including the regulated businesses.

For instance, aspects of the Pack (2013) recommendations that lack the rigour of this analysis include:-

- The suggestion of an "oversight body" – what form of body is this? If this is to be another NDPB, how does the creation of a new one fit with the wish for there to be fewer bodies? What powers would it have? The recommendation of "co-ordinating and informing" sounds, to us, like the job of the Scottish Government's central civil service policy team – who are, themselves, already able to appoint and learn from independent advisors (such as, indeed, the authors of this report).
- While it is understandable, given the remit, that this report has focused on "farmers and land managers" (and they do indeed make up a large proportion of rural Scotland), it

should be recognised that there are (1) many non-farming land managers (it is unclear from the report, how far “land managers” should be taken to include forestry, fisheries, sporting (deer and game), etc) and (2) the “rural and environment” remit of regulars extends far beyond farming and land management (e.g. many of responsibilities of SNH and the SG’s environment and forestry directorate are span an artificial urban/rural divide).

- The “splitting off” of SEPA’s role between “implementation” - to be incorporated into a “new” body” – while it retains its “policy, advisory and regulatory” roles lacks logic and risks duplication (something that the report seeks to avoid).
- The suggestion of a “mega-merger” undermines the need for transparency and distinctiveness between the policy setting roles of Government, and the independence of regulatory bodies (e.g. one of SEPA’s) and specialist advisory bodies (e.g. one of SNH’s roles). Of course, we do not argue for the *status quo* in relation to the division of roles between Government and its agencies. As indicated, we believe there are already too many instances of confusion and duplication – but the solution is not a “mega-merger”; rather, the solution lies in a strategic assessment of the purposes of different functions, and where they are best located – and then designing a structure to deliver purpose (not another *ad hoc* adjustment).
- The “mega-merger” also does not answer the question of appeals – many appeals against decisions by NDPBs are addressed “in-house” by Government’s DPEA. If there was one single body, to whom would appeals be addressed (note – decisions made by branches of Government e.g. SGRIP or MS cannot be heard by DPEA, hence the need for independent appeals panels). Of course, we do not argue for the *status quo* in relation to appeals – our arguments to review the appeals system as a whole as part of the consideration of an environmental court suggests we favour a overhaul – but a strategic and encompassing overhaul, not another *ad hoc* one.

On the basis of the foregoing, Scottish Environment LINK objects to, and will oppose the implementation of recommendations R61-65, as drafted. However, were these recommendations to be re-drafted to consider a more logical, and possibly more comprehensive review of the governance of public policy on rural land use and the environment – with one of its multiple objectives being the simplification of engagement for rural land managers – we could be fully supportive and engage in their implementation.

Other objectives for such a strategic overhaul would include the proper delivery of environmental policy goals, the proper enforcement of environmental legislation and a more open, transparent and accessible governance structure for all parties, including appeals that are full Aarhus-compliant.