

EFRA Select Committee Inquiry on ELMS: Progress update

ClientEarth Submission

Contents

Executive Summary	2
Introduction.....	3
Diffuse agricultural pollution from agriculture.....	3
Mitigating and adapting to climate change	4
The agri-environment baseline and the loss of cross-compliance	5
The Loss of Cross Compliance	5
The Potential Loss of other Agri-Environment Regulation.....	9

Executive Summary

- ClientEarth recognises that ELMS has the potential to deliver significant environmental benefits and should be brought forward as scheduled.
- However we are of the view that, as currently designed, ELMS does not appear capable of addressing the enormous scale of key environmental challenges, such as that posed by diffuse pollution of water by agriculture, or ensuring agriculture plays a full part in mitigating, and adapting to, climate change. Accordingly, the scheme should be improved over time to achieve maximum benefit.
- Moreover, given the limitations of ELMS as currently designed, we take this opportunity remind the Committee about the important role that agri-environmental regulations, including the measures brought together under cross-compliance, must continue to play in setting fundamental legal standards for farming and the environment. It is our view that ELMS should be delivered in combination with a comprehensive regulatory baseline in order to deliver widespread environmental benefits and maximise value for public money.
- We note, however, that the Government plans to withdraw cross compliance entirely as part of the agricultural transition and is further contemplating the review (and potential withdrawal) of other important agri-environmental regulation. We are concerned that the Government has not properly assessed the withdrawal of these existing regulatory standards from an environmental impact perspective and is instead over-relying on an exclusively voluntary approach under a still under-developed ELMS to deliver sustainable agricultural practices going forward.
- Mandatory requirements such as those under cross compliance have undoubtedly delivered substantial natural capital improvements across an enormous land area in England over many years. However, notwithstanding the advice of Natural England, it does not appear that the Government has conducted an environmental assessment in relation to the withdrawal of these baseline regulatory standards in the agricultural transition context, which is alarming.
- In our view, basic regulatory standards including those presently associated with cross compliance – which merely reflect longstanding principles of established codes of good agricultural practice – should instead be retained and be complied with as a *basic condition of participation in ELMS* (as is currently the case with the Basic Payment Scheme and other agri-environment incentive schemes). The costs associated with basic regulatory compliance should be borne by the agreement holder, with public funds paying for more ambitious and innovative measures above this baseline, with payment rates set at the right level to encourage maximum take up of the schemes.
- Our concern is that the Government is instead moving towards a situation in which its reliance on an under-developed and unproven ELMS programme and its simultaneous withdrawal or reduction of basic regulatory standards will neither secure environmental protection nor ensure the best value for public money. We encourage the Committee to advise DEFRA to review its current overall policy approach in this respect to ensure that agricultural regulation and incentive are sensibly integrated to instead maximise environmental benefit and value for public money.

Introduction

1. ClientEarth is an environmental law charity with offices in London, Brussels, Warsaw, Berlin, Madrid, Beijing, Luxembourg and Los Angeles. We use the law to fight climate change, tackle pollution, defend wildlife and protect people and the planet.
2. ClientEarth has extensive experience in domestic, international and EU environmental law. ClientEarth has recently been involved in a number of activities that seek to defend the rule of law, promote sound environmental governance and ensure the public's right to participate in government decision-making and to access the courts.
3. We welcome the opportunity to give written evidence to the Committee in relation to the progress made by Government on the Environmental Land Management Schemes (ELMS).

Diffuse agricultural pollution from agriculture

4. In the context of water pollution, ClientEarth is concerned that ELMS, and the Sustainable Farming Initiative (SFI) in particular, must be much more ambitious if it is to constitute an effective measure to address diffuse agricultural pollution, as required by The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017, more particularly, Regulation 20(2)(h) – “for diffuse sources liable to cause pollution, measures to prevent or control the input of pollutants”.
5. The context is that only 14% of rivers in England are considered to be at Good Ecological Status and that any improvement has ‘flatlined’ since at least 2009. Despite unsupportable claims made by the departing Chair of the Environment Agency that “water quality in our rivers is now better than at any time since the start of the Industrial Revolution”¹, the Agency has recently reported again that agriculture and rural land management is responsible for approximately 40 per cent of Water Framework Directive Reasons for Not Achieving Good Status (RNAGS) failures.
6. For total phosphorus (P), only 25% of water bodies are at good status. For total nitrogen, only 45% of water bodies are at good status. DEFRA has recently commented that “for swathes of England no additional P is needed, and in any given year fields contain N, P and K from previous years applications or generated by soil organic matter”.

¹ Emma Howard-Boyd, Letter to *The Times*, 3rd August 2019

7. There are particular examples that the Committee could usefully examine in the context of ELMS, and, in particular, SFI.
8. For example, as the RePhokus Project has reported to this Committee², the Wye catchment has a high risk of agricultural P loss due to high P input pressure, poorly- buffered and highly dispersible P-rich soils and moderate to high rainfall. Farming in that catchment generates an annual P surplus (i.e. unused P) of ca. 2000 tonnes (11 kg P/ha), which is accumulating in the catchment soils. That P surplus is nearly 60% greater than the national average and is driven by the large amounts of livestock manure produced in the catchment. The risk of P loss in land runoff due to accumulation of soil P is greater in the Wye catchment than in other UK soils. Analysis of long-term river P concentration data for the Wye catchment outlet at Redbrook suggests river P pollution may be gradually rising again.
9. In the context of ELMS and SFI, it appears that the lessons of the Wye have not been learnt. As the RePhokus Project stated in 2021 “water quality in the Wye catchment, and many other livestock-dominated catchments, will not greatly improve without reducing the agricultural P surplus and drawing-down P-rich soils to at least the agronomic optimum. This will take many years. A combination of reducing the number of livestock and processing of livestock manures to recover renewable fertilisers that can substitute for imported P products is needed to effectively reduce the P surplus”. It is not clear whether ELMS could deliver such innovative measures as would be required to deliver the requisite changes on the Wye.

Mitigating and adapting to climate change

10. DEFRA indicates that ELMS will play a key role in climate change mitigation and adaptation³. It confirms that through “the collective actions of farmers under our environmental land management scheme agreements [together with other farming subsidies] we will decarbonise agricultural emissions by up to a total of 6 MtCO₂e per annum in Carbon Budget 6 (2033-2037) in England.”⁴
11. It is not clear, however, just how the measures to be delivered under ELMS will enable this outcome in a reliable and measurable way. The new SFI agricultural and horticultural soils standard, for example, is intended to contribute to positive climate change outcomes through the improvement of soil health, including by way of adding organic matter to soil and through the use of cover crops⁵. However, there is a distinct lack of prescription involved in the delivery of the standard, with a great deal the implementation being left to discretion of the individual farmer (for example, is up to the farmer to decide how to test soil for organic matter and how to apply additional organic matter).

² Written Evidence to the EFRA Committee Water Quality in Rivers 2021 at <https://committees.parliament.uk/writtenevidence/40668/pdf/>

³ [Environmental land management schemes: outcomes - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/environmental-land-management-schemes-outcomes)

⁴ *Id.*

⁵ [The SFI arable and horticultural soils standard - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/the-sfi-arable-and-horticultural-soils-standard)

12. It is also not clear as to how the Government plans to capture and collate information on what has been collectively delivered in relation to this and other SFI standards so as to inform itself as to how the standards contribute to progress on its climate change objectives over time.
13. Finally, a review of the additional ELMS standards that are proposed from 2023 onwards⁶ reveals nothing as to how each of these will or will not contribute to climate change objectives and how they will knit together to deliver a tangible overall benefit. In sum, more detail is required in order to demonstrate that ELMS will indeed make a meaningful contribution the achievement of the Government's climate commitments.

The agri-environment baseline and the loss of cross-compliance

14. ClientEarth would like to take this opportunity also to address the closely associated issue of the baseline of agri-environmental regulations and how ELMS meshes with the baseline.
15. ClientEarth believes that support for ELMS, in its current form, should be entirely conditional upon there being an effective agri-environment regulatory baseline, sitting alongside ELMS, compliance with which is monitored, inspected against and robustly enforced. That baseline must apply to all farmland and compliance should be a clear and explicit condition of participation in ELMS.
16. Specifically, ELMS should not be a mechanism whereby the taxpayer is asked to pay for basic regulatory compliance. Of course, payment terms and conditions will need to incentivise compliance and ELMS could be a powerful force to ensure basic compliance, in addition to the current 'traditional' model of monitoring, inspection and enforcement of the baseline, but, at the moment, it does not appear that DEFRA is formally linking ELMS to the agri-environmental baseline, even while the end of cross compliance approaches.
17. In our view the 'polluter' should pay for mandatory basic agricultural good practice, while public money should be directed, via ELMS, to deliver more ambitious and innovative measures that lead to environmental improvement over and above this baseline.

The Loss of Cross Compliance

18. ClientEarth is concerned that, as the Government moves towards the delinking of direct payments by 2024, it intends to also remove the underpinning requirements of cross compliance⁷, which is a presently a mandatory condition for the receiving of such payments⁸.

⁶ [How we designed the Sustainable Farming Incentive Standards - Future Farming \(blog.gov.uk\)](#)

⁷ See, e.g., *The Path to Sustainable Farming* (Defra 2020) a p. 10

⁸ [Guide to cross compliance in England 2022 - Introduction - Guidance - GOV.UK \(www.gov.uk\)](#)

19. The cross compliance requirements are set out in the Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014, which prescribe Standards for Good Agricultural and Environmental Condition (“GAECs”) in Schedule 2⁹. Those GAECs reflect recognised good agricultural practice for farmers and land managers, and – *in part* – require compliance with underpinning and independent regulatory requirements¹⁰. Through the GAECs, the public is assured that important standards of basic good agricultural practice requiring, *inter alia*, the protection of watercourses and hedgerows, the protection and maintenance of soil and soil quality and the control of agricultural pollution, including in relation both pesticides and fertilisers, are adhered to on the vast area of land associated with direct payments.¹¹
20. A recent (27th May 2022) response to an environmental information request¹² shows that Natural England confirms that it has not been consulted by Defra in relation to the removal of cross-compliance in relation to the environmental assessment procedures of either Part 6 of the Habitats and Species Regulations 2017 or The Environmental Assessment of Plans and Programmes Regulations 2004. Nor has Natural England received any formal notices in relation to section 28I of the Wildlife Countryside Act 1981 in relation to Sites of Special Scientific Interest.
21. As Natural England explained in its EIR response (in which it refers to its unpublished response to Defra’s 2018 *Health and Harmony*¹³ consultation) :
- “[We] aim to demonstrate the critical importance of avoiding the creation of a gap through the premature loss of coverage from the environmental protections currently provided by cross compliance (for example in respect of hedgerows) before replacement measures can be put in place. In order to avoid such an environmentally damaging interregnum, it will be important to retain the current cross-compliance rules until a new framework of environmental standards and the means for its delivery has been put in place [...]*
- We welcome the opportunity to support Defra in assessing the environmental impacts of the options for transitioning away from direct payments. Assuming an effective new regulatory and enforcement regime can be implemented immediately after the point of EU exit (ensuring the revised regulatory baseline is fully inclusive of all existing GAEC – ‘Good Agricultural and Environmental Conditions’ requirements), the main risks associated with the loss of the environmental conditionalities currently attached to direct payments should largely evaporate.”*

⁹ In practice, the standards consist of eleven GAECs and an additional thirteen “SMRs” (Statutory Management Requirements). We refer to all of these standards as “GAECs” for the purposes of this submission.

¹⁰ For example, the requirements of GAEC 1 include compliance with regulations 16(4) and 17 of the Nitrate Pollution Prevention Regulations 2015.

¹¹ See [Guide to cross compliance in England 2022 - Guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/guide-to-cross-compliance-in-england-2022).

¹² EIR response from Natural England to WWF UK of 27th May 2022, which has been shared with ClientEarth

¹³ *Health and Harmony: the future for food, farming and the environment in a Green Brexit (Defra 2018)*

22. Considering that upwards of 85,000¹⁴ farms in England are in receipt of direct payments (and, as such, cross compliance must be legally adhered to across a vast area of land, likely constituting millions of hectares¹⁵) it is clear that the loss of cross compliance would appear – without a successor regulatory framework in place that is designed to at least maintain the same level of public environmental benefit – to have significant negative environmental impact across the whole of England.
23. Even though some GAECs are, at least in part, currently independently underpinned by separate legislation (but also emphasising that these important regulations themselves are being reviewed by the Government¹⁶) significant gaps that are *not* presently also covered by such regulations will occur, including in relation to:
- GAEC 4 on **soil protection**, which requires farmers to take reasonable steps to ensure that land is covered by crops, stubbles, residues or other vegetation to protect the soil and also take all reasonable steps to prevent excessive soil erosion on the land¹⁷;
 - Important components of GAEC 1¹⁸, on the **protection of watercourses**, which requires farmers to take all reasonable steps to maintain green cover on – and not cultivate or apply pesticides to – land in close proximity to watercourses¹⁹;
 - Important components GAEC 7a²⁰, on the **protection of hedgerows**, which requires farmers to take all reasonable steps to maintain a green cover on, and not cultivate, or apply fertilisers or pesticides to land in close proximity to hedgerows²¹.

¹⁴ [Moving away from Direct Payments: Agriculture Bill - analysis of the impacts of removing Direct Payments \(publishing.service.gov.uk\)](#)

¹⁵ There are over 9 million hectares of farmland in England, with an average farm size of 87 hectares (see [Agricultural facts: England regional profiles \(publishing.service.gov.uk\)](#)). Farmers with eligible land of over 5 hectares are eligible for BPS (see [Basic Payment Scheme 2022 - Rules for 2022 - Land - Guidance - GOV.UK \(www.gov.uk\)](#)).

¹⁶ See paragraph 33, *infra*.

¹⁷ *Id.* at paragraph 3; see also [GAEC 4: Providing minimum soil cover - Guide to cross compliance in England 2022 - Guidance - GOV.UK \(www.gov.uk\)](#)

¹⁸ Components of GAEC 1 concerning the use of artificial fertilisers and organic manure near watercourses are underpinned by The Nitrate Pollution Prevention Regulations 2015 and The Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018.

¹⁹ SI 2014 No. 3263 at paragraph 4; see also [GAEC 1: Establishment of buffer strips along watercourses - Guide to cross compliance in England 2022 - Guidance - GOV.UK \(www.gov.uk\)](#)

²⁰ Components of GAEC 7a concerning the removal of hedgerows are underpinned by The Hedgerow Regulations 1997.

²¹ SI 2014 No. 3263 at paragraph 5; see also GAEC 7a: Boundaries - Guide to cross compliance in England 2022 - Guidance - GOV.UK (www.gov.uk)

24. In addition to the creation of these new environmental protection gaps, the removal of the cross compliance system would also appear to remove the Rural Payment Agency (the “RPA”) as an enforcement body on all GAECs presently brought together under cross compliance²². The RPA presently has wide enforcement powers in relation to the cross compliance, including the power to inspect land holdings that attract direct payments and are subject to cross compliance and the imposition of penalties for non-compliance. Indeed, in her 2018 review of agricultural regulation, Dame Glenys Stacey observed that “in farming ... the far most common approach [to the enforcement of rules] has been the automatic financial penalties imposed [by the RPA] through cross compliance.”²³
25. If the RPA is removed as an enforcement body for GAECs, upon the withdrawal of the cross compliance system, the enforcement of those surviving GAECs that are underpinned by independent legislation will fall wholly to other regulators. The other regulators would then have to make up for the loss of the RPA’s erstwhile enforcement activities in order to ensure that the overall level of effective enforcement activity – and the deterrence against poor farming practices that it engenders – is, at the very least, maintained.
26. The performance of at least some of those other regulators, however, appears to be grossly ineffective. In a recent response received from the Environment Agency, for example, in to an Environmental Information Request²⁴, the Agency confirmed that, for 2020 and 2021, despite identifying 1,021 total breaches of the agricultural pollution control regulations, only a single (1) civil sanction or penalty was applied by the Agency. That means that in relation to each criminal offence identified by the Agency under these regulations, it will impose a sanction 0.1% of the time. This is not surprising given ongoing press²⁵ about how the Environment Agency is significantly underperforming.
27. By comparison, the RPA issued 83 non-compliance penalties in relation to cross-compliance breaches of the Nitrate Pollution Prevention Regulations in 2020 *alone*^{26,27}.

²² A review of the current set of terms and conditions associated with the SFI scheme does not instil confidence that the RPA will play a role in the monitoring and inspection of baseline requirement on farms, as it does currently. See [Sustainable Farming Incentive Standards Agreement: Terms and Conditions - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/105448/Sustainable_Farming_Incentive_Standards_Agreement_Terms_and_Conditions_-_GOV.UK_(www.gov.uk).pdf). Whilst the scheme rules state that farmers “still need to meet any regulatory requirements that apply to [themselves] or [their] land”, the rules do not state what these rules are or indicate that the RPA itself will play any active role in their enforcement via its administration of the SFI agreement.

²³ Farm Inspection and Regulation Review (2018) at p. v.

²⁴ EIR response from the Environment Agency to WWF UK of 22nd March 2022, which has been shared with ClientEarth

²⁵ See, e.g., [Breaches of English farm pollution laws rise as rules remain largely unenforced | Farming | The Guardian](https://www.theguardian.com/environment/2022/mar/22/breaches-of-english-farm-pollution-laws-rise-as-rules-remain-largely-unenforced)

²⁶ EIR response by the Rural Payments Agency to ClientEarth of 13th May 2022

²⁷ Whilst the RPA has apparently issued significantly more penalties in 2020 in relation to the Nitrate Pollution Prevention Regulations than the Environment Agency, ClientEarth reserves its view on whether the RPA number of penalties was in any way adequate in order to serve the environmental protection purposes of either the 2015 Regulations or the requirements of Cross-Compliance.

28. Accordingly, it must be considered – in view of both the environmental protection *and* enforcement gaps that will result from the imminent withdrawal of cross-compliance – that said withdrawal requires comprehensive environmental assessment in accordance with law. At stake are not only the significant environmental protection benefits that cross compliance has likely enabled over an enormous area of England over many years, but also the value of the natural capital that has been built on the back the substantial public investment in direct payments. As such, a failure to undertake proper environmental assessments in accordance with law would be not only environmentally, but also fiscally, irresponsible.
29. In this regard, we reference the Committee’s own concerns that that the withdrawal of direct payments – to which the requirements of cross-compliance are linked -- may have not been comprehensively assessed, including in respect of the environment.²⁸
30. Indeed, given Natural England’s very recent confirmation on the subject, it appears as though both the Committee’s and Natural England’s²⁹ concerns about environmental assessment have not been addressed by the Government. A serious question exists as to whether such a failure is compatible with UK environmental law.
31. In summary, ClientEarth is concerned that the Government appears to be rapidly moving towards a scenario in which an underdeveloped and unproven ELMS programme is being promoted by it as a whole solution to protect and improve the value of England’s natural capital in the agricultural context, whilst at the same time it seeks to remove the fundamental protections of cross compliance (including the important monitoring and enforcement role of the RPA) and is further pursuing a wider agenda of regulatory review that could result in the loss of additional statutory environmental protections.
32. It is ClientEarth’s considered view that, far from delivering the green ambitions of the 25 Year Environment Plan, this course may instead be a recipe for a substantial reduction in environmental quality and opportunity across England’s farmland and rivers.

The Potential Loss of other Agri-Environment Regulation

33. Minister Pow, in her recent letter³⁰ to Herefordshire Council, has stated that a review is underway of baseline agricultural pollution control regulations, namely The Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018 (aka the Farming Rules for Water), The Nitrate Pollution Prevention Regulations 2015 and The Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) Regulations 2010 (as amended).

²⁸ Environmental Land Management and the agricultural transition, Second Report of Session 2021-22 (House of Commons 21 October 2021) at p. 12

²⁹ See paragraph 21, *supra*.

³⁰ Letter from Rebecca Pow MP, Parliamentary Under Secretary of State to Councillor David Hitchiner Leader of Herefordshire Council, 13th April 2021

34. It is not clear to ClientEarth how interested environmental NGOs can become involved in that review process, if indeed there is any intention to have a public consultation on the outcome of that review and any proposals that might flow from it. ClientEarth would welcome the Committee seeking clarification from the Minister on that point.
35. Clearly, the outcome of that review, coupled with the end of cross compliance, could have profound implications for ELMS - for what ELMS is required to achieve.
36. For example, the Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018 merely 'codified' into law what has been 'good practice' for decades, in various codes such as the statutory MAFF (1986) Code of Good Agricultural Practice³¹, which was expanded into the MAFF (1991) Code of Good Agricultural Practice - Water Code, itself later revised into the MAFF (1998) CoGAP Water Code (revised), which ultimately became DEFRA (2009) Protecting our water, soil and air: a code of good agricultural practice for farmers, growers and land managers, all statutory codes.
37. The 2018 Regulations were necessary to avoid infringement proceedings against the UK for a failure to implement basic measures to deal with agricultural diffuse pollution³². If those Regulations are to be modified or revoked as an outcome of the review, then the 'gap' left might end up being filled by ELMS – or may not end up being filled at all.
38. ELMS alone, however, would not be capable of filling this gap, not least because it is voluntary with a Government target only for 70% farmland coverage of some (and perhaps not necessarily relevant) elements of SFI.
39. In any event we do not believe that ELMS should be used as a substitute for the current regulatory baseline, which merely reflects good agricultural codes of practice in any event (see Paragraph 16, *supra*). Such an approach, in which public subsidy replaces regulation, would also be at odds with the "polluter pays" principle, which Parliament intended Government to have regard to when formulating new environmental policy, in accordance with the provisions of the Environment Act 2021³³.
40. Similarly, under the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991, there is a legal requirement for at least four months slurry storage capacity. The Water Code (1991) advised that "to avoid pollution, more than 4 months storage may be needed". Despite this the Agency's Axe Report – based on 2016 to 2019 farm audits – concluded that "despite over a decade of advisory visits in the period up to 2016, the catchment continued to decline and there were no significant improvement in farming practices. 95% of farms did not comply with storage regulations and 49% of farms were polluting the river Axe". No doubt that lack of compliance is repeated across other catchments in England.

³¹ Approved by the Minister for the purposes of section 31(2)(c) of the Control of Pollution Act 1974

³² Water Quality and Agriculture: Basic Measures. Impact Assessment 16th June 2016, at section 1b - https://www.legislation.gov.uk/ukia/2018/27/pdfs/ukia_20180027_en.pdf

³³ See sections 17 to 19 of the Environment Act 2021

41. Again, should the SSAFO Regulations be ‘diluted’ or even revoked as a result of the review, it is not clear if ELMS would be looked to by Government to fill that gap, but for the reasons stated above we are of the view that this would be wrong.

In response to specific questions raised by the Committee:

Is the Government on track to get 70% of farmers, covering at least 70% of farmland, to take up Sustainable Farming Incentive agreements? How have recent changes in global food prices impacted on the attractiveness of the financial incentive in the schemes?

and

How effectively is the Government communicating and engaging with farmers and other landowner groups about the progress of ELMS?

42. Client Earth considers that it is likely that far less than 70% of farmland will be covered by SFI. Nor does Client Earth consider that a Government target of only 70% is sufficient to address the multiple environmental issues caused by agriculture, including nature loss and the lack of any discernible recovery, access to the countryside, air pollution and poor water quality in England.
43. The Committee is referred to the interview with Minette Batters of the NFU, as reported in the ENDS Report on 21st July 2022. Ms. Batters says
- “I think there is a real danger that actually a vast proportion of farmers will say, “You know what, I’m going to earn from the market, I don’t want to go into any of those schemes, and I’m just going to farm harder and faster”. That’s the big danger to the environment.”*
44. ClientEarth fears that what Ms Batters predicts is exactly what will happen. Anecdotal evidence already suggest that the large-scale, more industrialised farmers are thinking on exactly those lines. The bureaucracy that they are likely to be faced with, and the potential for inspections – or, more accurately, the perceived advantages (they see) of eliminating inspections completely by not involving themselves in ELMS - means it is just not worth the payments currently on offer under SFI.
45. Anecdotal evidence received by ClientEarth from conversations with farm agents suggest the following about farmers current perceptions of ELMS:
- The current extent and detail about ELMS made available to farmers from DEFRA is moderate to poor and that the gov.uk platform is a “shambles” in this respect;
 - There is a strong feeling that that payment rates should match the true value of public goods created through ELMS rather than be limited to costs foregone, *i.e.*, the currently proposed payment rates are not attractive enough to incentivise widespread participation in ELMS;
 - In the context of the current global economic crisis, many farmers feel that this is not the right time to take land out of agricultural production and that UK food security should be the top priority. Again, this suggests that take up of ELMS may be less than predicted by the Government;

- On a positive note, however, those farmers with a “progressive” interest in environmental sustainability have shown an interest in applying for ELMS, in particular the measures proposed under SFI, which they view as compatible with the use of land for food production.
- Finally, many farmers understand and appreciate the role of a regulatory baseline in supporting good agricultural standards, provided that regulation is delivered in a fair and well-administered manner.

46. These views suggest that for ELMS uptake to be successful, better information provision and more attractive payment rates, based on the actual value of public goods to be delivered, may be necessary to achieve high levels of uptake.

Should the Government change the focus on the ELMS scheme and/or the timescales for implementation given the current pressures on farmers and facing UK food security?

47. It is clear that ELMS cannot be relied upon by Government as the whole solution to addressing the huge scale of environmental challenges that we currently face. A strong regulatory baseline must also be in place to ensure that basic environmental standards are maintained. As these standards reflect good agricultural practice in any event, anecdotal evidence suggests that farmers would be accepting of this approach provided that regulation and enforcement is carried out in a fair and well-administered manner. Participation in ELMS should be conditioned in adherence to these standards such that subsidy and regulation are mutually reinforcing in order to maximise environmental benefit and value for public money.

48. However, notwithstanding the fact that ELMS requires additional improvement over time, Client Earth strongly suggests the focus on ELMS and the current timescales for implementation should not be significantly amended due to current external global or domestic pressures. Dealing with the environmental and other issues that the Government says ELMS is designed to address, cannot be ‘shelved’ while short-term external pressures exist – indeed some uptake of ELMS is already in progress and more will occur if the schemes are improved over time.

49. To countenance yet further significant delay would be a mistake. For example, in the context of water pollution caused by agriculture, England is already many years behind the initial target, as agreed by the UK in 2003, of good status by 2015.

50. There will always be external pressures on farming. Such pressures are periodic and will, no doubt, recur³⁴. The Government cannot delay environmental measures each time that

³⁴ See , for example, House of Commons Library (2019) Briefing Paper, Number 3339, 25 June 2019 - Agriculture: historical statistics

occurs. Indeed, payments under ELMS are, by their design, a tool to ease such pressures on farmers by paying them to produce ‘public goods’. Subject always to there being an effective agri-environmental regulatory baseline, that should be encouraged and introduced as soon as is possible.

51. Lastly, the Government should seriously re-consider its approach to the removal of cross-compliance and be extremely cautious in relation to its review of other agri-environment legislation so as not to over-rely on ELMS as a whole solution for agriculture and the environment. Environmental assessment should be carried out where relevant (as previously advised by Natural England in relation to the loss of cross compliance) to ensure that the right combination of incentives under ELMS *and* baseline regulations are properly coordinated to deliver on the environmental improvements envisioned in the 25 year plan and to ensure the best use of public money.

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ClientEarth is an environmental law charity, a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 10 Queen Street Place, London EC4R 1BE, a registered international non-profit organisation in Belgium, ClientEarth AISBL, enterprise number 0714.925.038, a registered company in Germany, ClientEarth gGmbH, HRB 202487 B, a registered non-profit organisation in Luxembourg, ClientEarth ASBL, registered number F11366, a registered foundation in Poland, Fundacja ClientEarth Poland, KRS 0000364218, NIP 701025 4208, a registered 501(c)(3) organisation in the US, ClientEarth US, EIN 81-0722756, a registered subsidiary in China, ClientEarth Beijing Representative Office, Registration No. G1110000MA0095H836. ClientEarth is registered on the EU Transparency register number: 96645517357-19. Our goal is to use the power of the law to develop legal strategies and tools to address environmental issues.