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Update: Dairy Contracts Regulation

Background

The fairness of dairy contracts has been long debated. In Autumn 2020, Defra, Welsh Government and the other Devolved Administration held a joint consultation on dairy contract reform and since then, have been working to develop a new code of conduct for dairy contracts. This will set out in legislation mandatory minimum terms which all dairy contracts across the UK must comply, with the aim of improving fairness and transparency in the supply chain.

NFU Cymru has been supportive of this area of work, we want to see dairy contracts which are freely negotiated and flexible, tailored to the needs of both buyers and farmers. NFU Cymru does not want to 'fix anything which isn't broken' and there are many successful relationships that exist across Wales between farmers and milk buyers. However, there are others which place a disproportionate amount of risk on the farmer and we saw during the Covid 19 pandemic, how contract terms and pricing mechanisms could be changed at the buyer's discretion often at short notice without reasonable discussion, negotiation, or agreement.

Our vision is for a profitable, productive and progressive dairy sector in Wales, one which sees farmers and processors work together to make the most of the opportunities and share responsibility for the risk.

What's happened now?

NFU Cymru along with the other UK Farming Unions recently fed in views on the draft policy which will form the basis for the legislation necessary to implement the code. Positive progress is being made and there is now broad consensus across industry on the direction of travel.

Our feedback is based on five key points which we believe will lead to a more transparent, fair and well-functioning dairy supply chain:

1. Pricing mechanism – we want to see greater sharing of risk between the farmer and processor, believing that discretionary pricing (i.e. where a processor can unilaterally vary the price at their will) should be ended. Instead, prices should be transparent and should be calculated using a clear and verifiable mechanism which is market focused.
2. Relationships and farmer representation – any changes to the contract should be agreed by both parties and we think there is a huge role to play for Producer Organisations, Co-ops and farmer groups. Strong working relationships between the farmer and milk buyer are key to the success of the industry.
3. Exclusivity and volume – almost all dairy contracts are “exclusive” meaning that milk can only be sold to one buyer and in the past, we have seen processors restrict volumes which has limited expansion or diversification. We believe farmers should be able to chose between exclusive and non-exclusive contracts, this would enable milk to be supplied to multiple businesses which may enable farmers to take advantage of new or different markets.

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4. Elimination of unilateral changes and one-sided contract terms – many contracts allow the processor to make changes without agreement or even consultation with the farmer and / or feature terms which are very one-sided, generally placing the risk onto the farmer. We believe that these sorts of terms should be removed and that any changes should be jointly agreed between farmers and their milk buyers.
5. Consequences of a breach – a mandatory code only works if there are measures in place to ensure it is being followed, as a result there must be clear (financial) consequences for any breaches.

We also highlight the potential role Dairy Producer Organisations (DPOs) can play in the future when the code is in operation. A DPO can offer specialist professional and legal support for farmers, it can play a vital role in supply chain efficiency, marketing and play a useful role in helping milk buyers develop closer working relationships with farmers. However, setting up and running a DPO can take significant time, skill and investment and as such, it is likely professional assistance would be needed. NFU Cymru welcomes Welsh Government's suggestion that support to set up producer organisations would be available through the Collaborative layer of the Sustainable Farming Scheme (SFS). However, there may be a gap between the dairy contracts code being implemented and the start of the SFS. It is therefore vital that support be made available through the transitional mechanisms which Welsh Government has in place to ensure there are no barriers to Welsh dairy farmers setting up a DPO during the two years the contracts code is being implemented.

Next steps

Following this round of consultation Defra and the Devolved Administrations will now draft the necessary legislation. We expect this to be laid in Parliament early 2023 and it will then need to be debated in both the House of Commons and the House of Lords. We expect this process to take a few months and understand the aim is to have the code in place late spring in 2023. There will then be a two-year transition period during which, all dairy contracts across the UK will need to be brought in line with the code.

The introduction of this code is a once in a generation opportunity to change the way the dairy supply chain operates and NFU Cymru will continue to work to secure a fair future for the Welsh dairy sector.

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