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NFU Cymru Consultation Summary: WG Consultation: Proposals to continue and simplify agricultural support for farmers and the rural economy.

This consultation is concerned with simplifying the current CAP regulations, until the Welsh Government's (WG) plans for the future of agriculture and the rural economy are delivered through a White Paper and introduction of an Agriculture (Wales) Bill in the next Senedd term.

On the 31 January 2020 the United Kingdom (UK) left the European Union (EU) and entered the Implementation Period, which is due to end on the 31 December 2020.

To continue to support Welsh farmers and the wider rural economy until new agricultural support schemes are available, designed around the Sustainable Land Management principles, the Welsh Government is proposing to continue with the existing Common Agricultural Policy ("CAP") regulatory framework, making some simplifications.

WG identify the proposals in this consultation set out a number of small but impactful changes to the scheme requirements. The proposed changes will only apply to the new domestic BPS and RDP, which will commence in scheme year 2021. The existing EU funded BPS (claim year 2019 and earlier), and RDP schemes will continue to operate under EU law.

The Wales Rural Development Programme 2014-2020 (the RDP) will continue until 31 December 2023 and continue to operate under EU Law; and any new domestically funded programme for rural development will operate under retained EU law, subject to any amendments made using powers in the UK Agriculture Bill.

The consultation will run from 31 July to 23 October 2020. The full consultation document can be accessed from the Welsh Government's website at: <https://gov.wales/sustainable-farming-and-our-land-simplifying-agricultural-support>

Basic Payment Scheme Proposals

WG highlight that the BPS has been a major part of farm business incomes since 2015 and is currently the main vehicle to deliver funding to farmers in Wales. They state that the BPS proposals allow the continuation of the regulatory framework whilst reducing complexity.

In their consultation, Sustainable Farming and our Land, WG state that they were clear on their intention to replace BPS, but also confirmed there would be sufficient time for farmers and land managers to transition to any new arrangements and proposed a multi-year transition period. In November 2019 the Minister for Environment, Energy and Rural Affairs announced the BPS would continue unchanged in 2021, subject to sufficient replacement funding being provided by UK Government.

1. BPS payment rates and annual allocation



The funds for agricultural support, including BPS 2021, will be provided as part of the UK Government comprehensive spending review, anticipated in Autumn 2020.

Currently, the EU legislation that governs CAP requires individual budgets to be established for each element that make up the annual BPS payment (BPS, Greening, Re-distributive and Young Farmer). Those individual budgets are taken into account alongside the total number of hectares declared each year to calculate payment rates.

There are circumstances which may prevent the total budget being spent each year, including where administrative penalties are applied to claims or entitlements are held in the National Reserve, prior to being reallocated. In previous years, this unspent funding allocated to BPS has not been able to be repurposed and was instead retained by the European Commission as part of the EU wide Multiannual Financial Framework funding arrangement.

WG propose to set the Welsh BPS ceiling annually, and provide flexibility for Welsh Ministers to allocate any remaining funding allocated to BPS.

*Q1. Do you agree with the proposal for Welsh Ministers to set the BPS ceiling, in regards to Wales?
Q2. Do you agree with the proposal to allow the Welsh Ministers flexibility to control any unspent funding allocated to BPS?*

2. Cross Border single application rule (UK wide)

For Cross Border holdings separate claims are submitted to each Paying Agency in England, Scotland, Northern Ireland or Wales. EU Law requires those separate claims to be treated as a single claim across the whole of the UK.

Checks are completed against each BPS claim and results shared between respective paying agencies. Once completed the lead Paying Agency completes processing and payment.

The minimum claim size rules for Wales require a minimum of 5 eligible hectares to be declared in support of an eligible claim. There are approximately 600 cross border farms with land on either side of the England/Wales border and a few farms with land in Scotland.

WG propose to only take Welsh land into account for calculating BPS claims in Wales. As a result, payments will be made as soon as checks in Wales are completed. Administrative penalties discovered on land located in other UK administrations will not be applied to Welsh claims. However, where less than 5 hectares of Welsh eligible land is available, the Welsh claim would be considered ineligible and rejected under the minimum claim size rules.

*Q3. Do you agree with the proposal to remove cross-border applications and only consider Welsh land for BPS claims in Wales, removing the need to wait for checks from other paying agencies?
Q4. Do you agree with the proposal for minimum claim size to remain unchanged and not to make any provision for farmers who currently rely on land in another part of the UK to achieve the minimum claim size area of 5 eligible hectares?*

3. Greening

As part of the BPS, farmers must undertake mandatory agricultural practices which are beneficial for the climate and environment, commonly referred to as Greening. Claimants cannot forego the Greening requirements and still claim the remaining BPS payment.

BPS claimants receive an additional payment linked to their main BPS payment for meeting the Greening rules. The payment is calculated using 30% of Wales' share of the Direct Payments (Pillar 1) budget. Currently, around 97% of Welsh claimants automatically meet the Greening requirements, and therefore receive this payment, via their permanent pasture declarations.



The Greening requirements are:

- **Crop diversification:**

On eligible arable land between 10 and 30 hectares in size, farmers are required to grow two different crops. The main crop may not exceed 75% of the land. If the eligible arable land is larger than 30 hectares in size, you need to grow at least 3 different crops, none of which may cover more than 75% of your arable land. The two largest crops together must not cover more than 95% of your arable land.

- **Maintaining existing permanent grassland:**

Land designated as environmentally sensitive permanent grassland (ESPG) in 2015 may not be ploughed or converted to arable use under the Greening rules. No more than 5% of land in Wales classified as permanent grassland may be ploughed or converted to other uses in any year.

- **Having Ecological Focus Area (EFA) on the agricultural area:**

Where the arable land of a holding covers more than 15 hectares, the farmer shall ensure, from 1 January 2015, an area corresponding to at least 5 % of the arable land of the holding the farmer declared is an EFA.

Experience of delivering the Greening requirement has led to the conclusion that it offers limited additional environmental benefit in Wales. There are low levels of arable cropping and minimal land use change affecting permanent grassland. Typically, the hedgerows and stonewalls declared to deliver EFA requirements are already protected as Landscape Features under the Good Agricultural and Environmental Condition ("GAEC") of Cross Compliance checks.

WG state that improving environmental practices and standards is a top priority, and this will be a fundamental part of the Agriculture (Wales) Bill in the next Senedd term. In the meantime, WG propose maintaining existing environmental standards and practices, retaining any environmental benefits of the Greening processes, but removing some of the existing complexities which are undertaken by around 3% of claimants who do not automatically qualify by virtue of their permanent grassland, into cross-compliance.

By delivering annual monitoring of land use changes and protecting Permanent Grassland and EFA requirements through cross-compliance, the WG aim is to simply minimise more complex requirements which do not result in additional environmental benefits.

WG do, however, propose to remove Crop Diversification element of Greening. This practice was included in the Greening standards to prevent monoculture farming regimes. In Wales where this kind of farming is less common than in other parts of the EU, it has become an unnecessary requirement for farmers.

The 30% budget currently provided for Greening will no longer be required as the Permanent Grassland and EFA requirements will be delivered under the Cross-Compliance system. Instead the budget will be included as part of funding allocated to BPS. Welsh farmers would not be financially disadvantaged as a result of this proposal as there are no planned reductions to the amount of direct payment received as a result of the Greening requirement restructure.

Q5. Do you agree with the proposal to retain the environmental benefits of Greening practices through Cross-Compliance?

Q6. Do you agree with the proposal to remove the Crop Diversification rule from the Greening requirements?

4. Young Farmer Scheme



Currently, the Young Farmer Scheme provides additional support for farmers who start to run their own farm business by the age of 40 by providing a small top up to BPS payments for a maximum of 5 years.

The payment is calculated using 25% of the Wales average 2020 BPS Entitlement value, multiplied by the number of BPS Entitlements the young farmer has activated for the scheme each year up to a maximum of 25 hectares. The payment uses 0.2% of Wales' share of the total budget.

The consultation states that Welsh Ministers are committed to supporting the future agricultural industry in Wales and recognise the need to encourage a younger demographic into the industry. The current scheme benefits a small number of Welsh farmers, as illustrated by the 0.2% share of the total budget.

Given the relatively small number of farmers eligible to claim support under the Young Farmers Scheme in Wales, WG say they need to consider whether the scheme goes far enough to deliver support to the agricultural industry as a whole.

WG state that one option would be to close Young Farmer scheme to new applications from BPS 2021 onwards. Young farmers already eligible for the scheme will continue to receive any remaining top up payments.

Closing the scheme to new applications after BPS 2020 reduces administrative burdens and ensures that this does not become a "legacy scheme" which would continue into future Sustainable Farming programmes. The closure of the scheme would also lead to a small increase to all BPS entitlements.

Young Farmers would continue to be a priority category eligible to apply for BPS Entitlements from the National Reserve.

Q7. Do you believe we should close this scheme to new applicants from 2021?

Q8. Other than the option to close the Young Farmers Scheme to new applications from 2021, are there further options which could be considered?

5. Late supporting documentation rules for BPS

Under the current rules, all supporting documentation must accompany a valid claim, and be submitted by 15 May, or face late penalties of 1% per working day, and, potentially, rejection, if submitted after the final date of Single Application Form (SAF) submission.

WG propose to increase flexibility for claimants by extending the deadline for submitting BPS supporting documents until midnight on 31 December of the relevant claim year. The extension provides as long as possible to confirm if each year's claim is eligible. If the proposal to pay an advance is implemented (Proposal 9), the absence of supporting documentation would prevent an advance payment being made, as this would be one of the basic eligibility checks.

WG propose no change to the rule requiring the application form to be submitted by 15 May, as it also covers ongoing RDP schemes operating under EU Law. WG also propose no change to the late penalties (1% per working day) and eventual rejection if submitted after the final date of submission. No changes are proposed to the late claim amendment rules with amendments permitted to the application form without penalty until 30 May, followed by 1% per working day until the final date of submission.

Q9. Do you agree with the proposal to extend the BPS supporting document submission date to 31 December?

Q10. Do you agree with the proposal to keep the application deadline and late claim penalties unchanged?



6. National Reserve

The National Reserve is currently available for 'New Entrants' and 'Young Farmers' wishing to apply for new BPS Entitlements. The National Reserve is replenished annually from a number of sources, including Entitlements which have not been activated ("claw back") for payment during two consecutive years.

WG propose to retain the 2-year usage rule in order to "claw back" un-activated BPS Entitlements. In addition, WG propose to allow farmers who have purchased new land or committed to a long term lease of 5 years or above, since 2015, to apply.

Q11. Do you agree with expanding the National Reserve categories to include additional land acquired?

Q12. Are there any other categories or proposals which you believe should be taken into consideration for the National Reserve?

7. Inspection Rates

The on-the-spot-checks control rate for Direct Aid schemes is generally 5% of the claim population, although this can vary depending on the individual schemes that make up the BPS payment.

For BPS, the European Commission control rate is set at 5% of claimants, however, due to the high standard of mapping and administrative controls in place, the use of online geo-spatial application and low rate of historic errors, the Welsh Government are permitted in the EU legislation to reduce this to 3% of claimants.

This provision cannot currently be applied to reduce control rates for Greening and Young Farmer, which are set at 5%, even though there are adequate control systems in place and low error rates. This results in the overall control rate exceeding the 3% required for BPS.

WG propose to require an overall 3% selected sample of the full combined scheme population to be inspected, as opposed to up to 5% of individual and separate schemes. WG would continue to monitor error rates to assess if additional inspections are needed to ensure satisfactory levels of compliance.

WG also propose to fully utilise cases selected as part of the European Commission RDP inspection controls to contribute towards the overall BPS control rates. These proposals will reduce the number of inspections for individual claimants but retain appropriate inspection control rates to meet the combined requirements of EU law and domestic legislation.

Q13. Do you agree with this proposed reduction in BPS inspection rates?

8. Over-declaration of land

Currently, claimants must declare all land at their disposal on 15 May when applying for BPS. Specific crop codes must be used to distinguish land eligible for payment.

Inaccurate over-declaration of eligible areas leads to reductions and financial penalties. Where the difference between the eligible area declared and area determined for a crop group is more than either 3% or 2 hectares, of the determined area, the area eligible for payment will be reduced by 1.5 times the difference found.

However, where the difference between the area declared and area determined for a crop group is more than either 3% or 2 hectares, but no more than 10% of the determined area, a 'Yellow Card' will be applied to the penalty for that scheme. This means the penalty applied will be calculated (as described above) and will be reduced by 50%. This currently applies separately for each of the

schemes - BPS, Greening, Redistributive and Young Farmer. A 'Yellow Card' can be applied only once per scheme.

If the farm business over-declares any eligible area the following year, a penalty for that over-declaration will be applied and, in addition, the remaining 50% of the penalty from the previous year will also be applied/payment recovered.

WG propose to simplify the over declaration arrangements by removing the restriction that 'Yellow Card' can only apply once per scheme and remove the requirement to repay the Yellow Card (the remaining 50%) if there is an over declaration in the following year. This means when the difference between the area declared and area determined for a crop group is more than either 3% or 2 hectares the area eligible for payment will only ever be reduced by 1.5 times the difference found.

Q14. Do you agree with the proposal to remove the "Yellow Card" restriction?

9. BPS Payment window for un-validated claims

Eligible BPS claims submitted every year by 15 May are normally paid between 1 December and 30 June of the following year, once all administrative validation checks are complete. For a small number of farmers e.g. when claims are selected for inspection, checks can take significant time to complete.

In recent years, a BPS Support Scheme has been made available, in 2018 linked to the severe weather and in 2019 to provide financial support as part of a wider package of EU Exit 'No Deal' preparations. This domestically funded advance allowed a percentage of the anticipated claim value to be paid before all checks were complete.

WG propose to change the payment model and remove the need for claims to be fully validated before making an advance of payment of 70% of the anticipated claim value.

The advance would be made automatically to all BPS claimants in October every year, subject to basic eligibility checks, with the balance payment made from February the following year once full validation checks are completed.

Any overpayment of advance payment would be offset in the balance payment, or recovered under the established debt process if required.

Q15. Do you agree with the proposal to introduce an advance and balance payment model and the removal the requirement for claims to be fully validated before an early advance payment?

10. Active Farmer Requirement

To activate BPS Entitlements and receive payment, a claimant must meet the BPS definition of a 'Farmer' by undertaking 'Agricultural Activity' and also qualify as an "Active Farmer", which also affects farmers participating in the Glastir Organic scheme.

A 'Farmer' is a person/group of people, or a business that carries out an 'Agricultural Activity', which means doing at least one of the following activities:

- the production, rearing or growing of agricultural products including harvesting, milking, breeding animals and keeping animals for farming purposes
- maintaining an agricultural area in a state which makes it suitable for grazing or cultivation without preparatory action going beyond usual agricultural methods and machineries. In Wales, this means the control of non-native invasive weeds and scrub;



- carrying out a minimum activity on agricultural areas naturally kept in a state suitable for grazing or cultivation. In Wales, agricultural areas naturally kept in a state suitable for grazing or cultivation are defined as areas of saltmarsh and sand dunes. The minimum activity required is that the area is grazed to a minimum average annual stocking density of 0.01 to 0.05 livestock

The Active Farmer 'negative list' was introduced into the EU CAP in 2015 but became optional following further CAP reforms in 2018. In Wales the 'negative list' includes those claimants who operate railways, waterworks, real estate services or sports and recreational grounds.

Claimants on the 'negative list' must provide evidence to requalify as Active Farmers. The few claimants who trigger this test requalify as Active Farmers by virtue of satisfying one of the readmission criteria, usually by having 21 hectares of eligible agricultural land declared.

WG propose to remove the Active Farmer 'negative list' check, but retain the checks to ensure BPS beneficiaries are undertaking minimum levels of 'Agricultural Activity'.

Q16. Do you agree with the proposal to remove the Active Farmer negative list requirement and retain the minimum levels of 'Agricultural Activity'?

11. Hemp

Land used to grow hemp for fibre or other purposes can be declared and may be used in support of a BPS claim. If growing hemp, certified seed types of an eligible variety must be used. The original seed labels, confirming the variety, must be supplied with your SAF submitted to the Welsh Government.

Declaring this crop also requires evidence of Home Office approval to cultivate hemp to be submitted by 30 June and testing of the tetrahydrocannabinol ("THC") content required to be undertaken.

A minimum of 20% of the total area growing hemp must be inspected to ensure the THC content of the crop does not exceed the prescribed level. For each variety sown, three distinct parts of each field claimed must therefore be maintained, each part comprising of at least 4,000 plants, until at least 10 days after flowering, in case sampling is necessary.

WG propose land used for the cultivation & production of hemp be removed from the list of eligible crop codes as no successful claim has been made in Wales since 2015. It will no longer be eligible for BPS.

Q17. Do you agree with the proposal to remove land used for the cultivation & production of hemp from the list of eligible crop codes and no longer be eligible for BPS?

Domestic Rural Development Proposals

WG propose to deliver a custom framework for rural support in Wales. The proposed framework and domestic programme will operate until the Agriculture (Wales) Bill is available and be distinct from and in addition to the existing and ongoing activities delivered through the Welsh Government Rural Development Programme 2014-20 which will continue to deliver rural support under the terms of the Withdrawal Agreement, and the European Union (Withdrawal Agreement) Act 2020 up to 2023.

1. Principles, mission, objectives and priorities

Under the current rules, support for rural development must contribute to fostering the competitiveness of agriculture; ensure the sustainable management of natural resources, and climate action; and achieving a balanced territorial development of rural economies and communities including the creation and maintenance of employment.



At the end of the EU Implementation Period, WG identify there will be an opportunity for new domestically funded support for rural development in Wales to contribute towards objectives and priorities specific to Wales. They identify the Environment (Wales) Act 2016 and the Well-being of Future Generations (Wales) Act 2015 provide a framework. **WG propose that the current EU mission, objectives and priorities are replaced to the following:**

“Rural Development” means “measures which are conducive to”:

- (a) the conservation or enhancement of the natural beauty or amenity of the countryside (including its flora and fauna and geological and physiographical features) or of any features of archaeological interest there; or**
- (b) the promotion of the enjoyment of the countryside by the public; or**
- (c) starting, or improving the productivity of, an agricultural, horticultural or forestry activity or a rural business; or**
- (d) starting, promoting or improving rural services.**

Q18. Do you agree with replacing the EU mission, objectives and priorities for rural development support with Welsh specific definition for rural development?

2. Measures Background

EU legislation provides a selection of Measures available to support rural development:

1	Knowledge transfer and information actions
2	Advisory services, farm management and farm relief services
3*	Quality schemes for agricultural products and foodstuffs
4	Investments in physical assets
5*	Restoring agricultural production potential damaged by natural disasters, adverse climatic events and catastrophic events and introduction of appropriate prevention actions
6	Farm and business development
7	Basic services and village renewal in rural areas
8 & 15	Forestry
9*	Setting up of producer groups and organisations
10	Agri-environment-climate
11	Organic farming
12*	Natura 2000 and the Water Framework Directive Payments
13*	Payments to Areas Facing Natural and other Constraints
14*	Animal welfare
16	Cooperation
17*	Risk management
19	Support for LEADER local development (Community-Led Local Development)

* not currently implemented in Wales

Welsh Government propose retaining the full range of measures (though not all measures may be used) with the following amendments:

- **Measure 1, Knowledge Transfer – extend to make specific reference to animal health and welfare.**
- **Measure 4, Investment in Physical Assets – extend the objectives to include cultural heritage objectives.**
- **Measure 7, Basic Services and Village Renewal – extend to allow for revenue as well as capital funding projects; include options for cultural heritage assets to be supported.**
- **Measures 8 and 15, Forestry – extend to reference the cultural as well as the environmental value of forests.**



- **Measure 14, Animal Health – extend to refer to animal health and welfare.**

Q19: Do you agree with the proposed amendments of the Measures?

Q20: Are there any further amendments or options you would like to suggest for any Measure?

3. Governance and Administrative arrangements

Under EU regulations, there are detailed requirements relating to the content of RDP and their amendment. The European Commission approves and monitors each programme. In Wales, Welsh Ministers make decisions regarding the selection of individual projects and payment of claims. There are also detailed EU requirements relating to resources and their distribution, fund contribution (the EU contribution to the programme), eligibility of expenditure, verifying and controlling measures, and making advance payments. Currently, the Managing Authority is responsible for “managing and implementing the programme in an efficient, effective and correct way.” This role is delivered by WG.

WG proposes to remove the following requirements from the role of the Managing Authority on the basis that these functions are already incorporated in Welsh Government procedures:

- **ensuring that there is an appropriate secure electronic system to record, maintain, manage and report statistical information on the programme and its implementation;**
- **ensuring that beneficiaries and others are informed of their obligations resulting from the aid granted;**
- **providing the Programme Monitoring Committee (PMC) with the information and documents needed to monitor implementation and delivery of the programme;**
- **ensuring that the Paying Agency receives all necessary information;**
- **ensuring publicity for the programme.**

WG also proposes:

- **To replace detailed requirements relating to the content and amendment of a future domestically funded RDP with Welsh Government procedure and Senedd scrutiny.**
- **To strengthen the role of the Welsh Ministers in overseeing the new domestic RDP, by aligning with Welsh Government procedures and Senedd scrutiny.**
- **To remove regulatory provisions relating to finance for any new domestic RDP and replace with Welsh Government and Senedd accounting procedures.**

Q21. Do you agree with removing detailed requirements for the content and amendment of a future rural development programme?

Q22. Do you agree with strengthening the Managing Authority’s role?

4. European networking

The EU legislation requires participation in the European Network for Rural Development (ENRD) which acts as a hub of information on how rural development policy, programmes, projects and other initiatives are working in practice. The European Innovation Partnership for agricultural productivity and sustainability (EIP-Agri) also supports the goals of rural development by encouraging innovation in agriculture and rural communities. **WG identify it will be desirable to share information, knowledge and ideas regarding rural development within and between Wales, the UK and Europe but propose this does not need to be set out in legislation.**

Q23. Do you agree with removal of the requirements relating to networking?

5. Monitoring & evaluation and reporting

Currently there are detailed regulatory requirements relating to the monitoring and evaluation including the objectives and indicators used for this purpose. There is currently a Programme Monitoring Committee (PMC) in place which, along with the Managing Authority, is responsible for monitoring the quality of the implementation and delivery of the programme. Monitoring and



evaluation is critical to ensuring public funds are used in the most effective manner and that progress is made towards strategic goals.

At the end of the EU Implementation Period there is an opportunity to better integrate monitoring and evaluation of the new domestic RDP across Environment, Energy and Rural Affairs (EERA) in Welsh Government. They further identify measuring support for rural development against Welsh-specific objectives and indicators could also make scrutiny and accountability more straightforward in future.

WG propose:

- **to retain regulatory requirements to monitor and evaluate public expenditure on rural development, but to enhance and integrate processes and indicators.**
- **to develop a set of objective indicators better aligned to Environment (Wales) Act 2016 and Well-being of Future Generations (Wales) Act 2015 and thereafter International reporting**
- **to retain the requirement to report annually on the implementation of any domestic rural development programme.**

Q24. Do you agree with integration and enhancement of monitoring and evaluation of support for rural development, using Welsh-specific objectives and indicators?

Q25. Do you agree the Welsh Government should report annually on the implementation of its rural development programme?

NFU Cymru Comment

A number of the proposals within this consultation address long running issues that NFU Cymru has raised historically as part of the European Commission simplification agenda and to various “red tape” reviews instigated by Welsh Government. More recently these matters have been covered within our responses to the Welsh Government Brexit and Our Land and Sustainable Farming and Our Land consultations.

We welcome proposals to reduce the heavy bureaucratic burden that has been placed on those farmers who have been caught up by crop diversification and ecological focus area rules. However, with cropping plans and preparation now underway for the 2021 harvest we have concerns that it will be many months before clarification and confirmation is given that these rules will not apply in 2021. This will mean that our growers will have to continue to plan for all eventualities.

We are pleased that WG propose to progress simplification of the current CAP architecture during the transition period. We welcome the commitment to maintain the BPS for 2021 and restate our position that transition should not occur until there is clear evidence through impact assessment, modelling and piloting – that replacement scheme(s) can deliver at least the same level of stability for farming businesses, the food supply chain and rural communities. WG must address concerns with RDP implementation and a full independent review of the RDP must be undertaken before moving forward with the development of new scheme given that the current proposals closely mirror the RDP approach.

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