

To: Direct Payments Consultation
Consultation Coordinator
via email only:
DirectPaymentsConsultation@defra.gov.uk

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Contact: Richard Wordsworth

Tel: 0247 685 8556

Fax:

Email: Richard.wordsworth@nfu.org.uk

Direct Payments to farmers: Lump sum exit scheme and delinked payments in England – NFU Response

The NFU represents 55,000 members across England and Wales. In addition, we have 20,000 NFU Countryside members with an interest in farming and rural life.

A Introduction

The NFU welcomes the opportunity to submit a response to Defra in regard to its consultation titled 'Direct Payments to farmers: Lump sum exit scheme and delinked payments in England'. This response is on the basis of being a farming representative organisation as defined in the consultation document. The NFU has since the launch of the consultation on the 19 May 2021 consulted extensively with its membership involving over 20 events and the attendance by over 2,500 members. Many more will have seen information on this consultation via our membership emails and hardcopy communications, such as our British Farmer & Grower magazine. The results of this activity and our knowledge of the issues covered in the consultation document are the basis of our responses to the questions set out below in parts C, D and E set out below.

In terms of next steps, the NFU will work with Defra and the RPA on the further refinement of these two direct payment delivery models, such as application processes, timing of payments, evidence requirements, communications and guidance.

The NFU wants to see a domestic agricultural policy that allows farm businesses to thrive, rewarding them for both the safe, traceable and affordable food they produce for the nation and their extensive work caring for the countryside. As our agricultural support is overhauled, farm businesses across the country will be making life-changing decisions about the future of their farm or tenancy. We want to see a fair transition which allows farmers who are considering leaving the industry to have sufficient time and information to make those significant decisions. The personal nature of these decisions and no two farm businesses being the same, makes each set of circumstances for a farmer considering a lump sum exit payment truly unique.

As a principle, we believe that the lump sum and delinking proposals should enable all farm businesses currently in receipt of BPS, to restructure and reinvigorate enterprise and management structures. In some cases, this will create opportunities for new entrants to farm, for others it will be permitting the next generation exclusive management responsibility, while the previous generation step back. Ideally any discussion around people exiting the industry must be coupled with how we attract new people into agriculture.

Equally those that are remaining within the industry should not be unduly put at a disadvantage when it comes to transitioning from the current model of administration of direct payments, BPS, to the proposed delinked payment system.

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It's crucial that the schemes announced within the Agricultural Transition Plan work in a coherent way with schemes such as the New Entrant Scheme and Future Farm Resilience Fund to ensure British farming thrives for generations to come.

While getting the framework of future agricultural policy schemes right is important, Defra's policy transition must not ignore the consequences of the government's new trade deals as these will be absolutely critical to the viability of many family farms. Trade and policy must act in tandem.

B NFU responses to Defra's general questions

Q1

What is your name?

Response: Richard Wordsworth

Q2

What is your email address?

Richard.wordsworth@nfu.org.uk

Q3

If you are responding on behalf of an organisation, what is its name?

Response: National Farmers' Union

Q4

Would you like your consultation response to be confidential? If you select 'yes', please give your reason.

Response: No

Q5

Are you responding as:

- **A farmer and/or landowner**
- **A land agent / advisor working with BPS claimants**
- **A farming representative organisation** Response: Yes
- **Other stakeholder representative organisation**
- **Other (please specify)**

Q6

If you answered 'a farmer and/or landowner' to the previous question, are you (tick all that apply):

- **A BPS applicant**
- **A tenant**
- **An owner-occupier**
- **A landlord**
- **None of the above**

Response: Not Applicable

Q7

If you farm, what size is the farm?

- **Less than 25 hectares**
- **25 to 50 hectares**
- **50 to 100 hectares**
- **100 to 200 hectares**
- **200 to 400 hectares**
- **More than 400 hectares**

Response: Not Applicable

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Q8**What is your age?**

- Up to 24
- 25 to 34
- 35 to 44
- 45 to 54 Response: Yes
- 55 to 64
- 65 to 74
- 75 or over
- Prefer not to say

C General comments

The NFU has set out responses to Questions 9 to 24 below in Sections D and E, but there are a number of key elements that we want to raise that impact across both schemes, these are: 1) direct payments in a wider context and 2) the taxation treatment of the proposed schemes to replace BPS. We also touch upon an issue that relates to new entrants.

Direct payments in a wider context

Whilst the NFU welcomes the opportunity to consult on the future delivery of direct payments through this consultation, we remain concerned that the current direct payments policy is being driven forward in isolation from wider pressures on the agricultural sector, such as what the impact from the trade deals now being developed.

The NFU continues to be concerned about the economic impact on English farmers of Defra's unwavering ambition to cut direct payments without taking any account of changes to market conditions (which is an option within the Agriculture Act) by virtue of the approach first defined in the Health and Harmony White Paper in 2018, which proposed BPS transition and the lump sum exit payment calculation with a pre-determined profile of annual cuts prior to 2028. Equally, the NFU is concerned that Defra's Health and Harmony consultation was conducted over three years ago alongside assurances that the UK would secure a deal with the European Union that would allow UK food free and frictionless access to the EU Single Market. This has not been the case in a number of areas, and is now having an impact on those businesses relying on that international trade.

Significantly, in stark contrast to the NFU's own post-Brexit agricultural policy proposal found here: <https://www.nfuonline.com/news/brexit-news/eu-referendum-news/nfu-unveils-detailed-plans-for-a-future-domestic-agricultural-policy/>, there currently appears to be no plans to retain any substantive scheme to assist farmers with income support or risk management to ensure stability in the face of future market and climactic volatility. Whilst the NFU supports the notion of public money for public goods, we believe it needs to be accompanied by stability payments to help farmers manage volatility in the sector and continue to provide high quality food, a residual direct payment mechanism could be used for such a purpose.

The NFU doubts the credibility of Defra's 2018 'Health and Harmony' evidence pack assumption that states increased productivity will make up for a loss of direct payments, conscious that the Farming Investment Fund is currently scheduled to be both short term and poorly funded element of the ATP. The pack stated that farm businesses would need to reduce costs by an average 10% to breakeven and increase output whilst controlling costs through diversification or higher price premiums. This figure masks huge variability whereby the 10% least profitable farms would require a 31% reduction in costs, and even those achieving average profitability would require a 3% reduction in costs to breakeven. It would seem that Defra's analysis did not factor in unpaid labour as a cost, a feature of family farm businesses. Therefore whilst 42% of farms made a loss without direct payments, 50% of farmers made less than £2 for every £100 spent, meaning that half are operating at a loss or close to

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breakeven point without factoring in unpaid labour. On average across all farms, for every £100 spent farms they received £106 in outputs making a profit of £6.

Furthermore, the loss of direct payments will not fall evenly across farm types. Grazing livestock farms, very small farms, wholly tenanted holdings, businesses with older farmers and those in less favoured areas all demonstrate a higher level of vulnerability to direct payments removal, as they are less able to 'produce' their way out of the income shortfall. For example, Less Favoured Area (LFA) Grazing Livestock have the biggest challenge in reducing costs to break even with many livestock farms having to reduce costs far beyond 16%, rising to as high as 56% for some farms.

For the tenanted farm businesses, Defra argues that a loss of direct payments will reduce rental charges, but the NFU sees this argument as weak and believes the evidence base is very unreliable, given studies have shown that EU capitalisation rates (amount each £1 of subsidy inflates rents) ranges between 6% - 90% (average of 25%). Defra has used much higher estimates in its justification for its position. We also know that much infrastructure on tenanted farms is in urgent need of replacement or upgrading. This is going to be vital if, in the absence of BPS, farm businesses are to have the capability to improve their productivity and remain viable as well as being compliant with current and future regulation, but will landlords invest, when there is a pressure on rental levels.

There is also extensive evidence provided by Defra to suggest that farmers have a lot of scope to increase their efficiency and boost output through improved management practices, optimise investment decisions, diversify or enter into new environment schemes which offer high value for money for public funds. On this point the NFU would broadly agree that the evidence supports considerable variations in farm performance within sectors which are not solely due to the farm structure – indeed it is often with succession of the next generation to a family farm that innovative practice is implemented (another reason why New Entrant Scheme should be available to all farm businesses not just new entrants).

On these grounds, we welcome Defra's development and support for productivity measures, but these need to extend well beyond the early years of the agricultural transition period to be a permanent feature of public intervention in agriculture. This action is justified not just as it improves industry competitiveness, resilience, and profitability but also helps to speed up achievement of Net Zero, improvement in animal health and welfare goals and the environmental sustainability of English farms. However, taking up these financial support opportunities will be a challenge for many given the way such grants are usually administered, whereby the farmer has to bear the entire cost (and risk) of the investment in order to then qualify for the grant contribution being released to them. Given what has been set out above about the tight income margins for the sector and the plans to reduce direct payments substantially in the next few years, we may see the uptake of this support hindered by cashflow pressures and businesses simply seeking to survive the transition.

Official trade data shows the significant reduction in the value of agri-food products traded with the EU since the end of the "transition period" on 1st January 2021. In the first quarter of 2021, exports of agri-food to the EU fell by 47% compared to Q1 2020 a loss in export value of £1.4billion. The effect of this reduction is having a direct effect on farm businesses that were previously supplying the EU and is having a profound effect on the viability of many UK food and drink businesses sourcing UK farm products that serve UK farming. The effects are most pronounced in the red meats and dairy sectors, with exports of milk and cream to the EU down by more than 90% and cheese by 67%. A recent report by the BMPA suggests that operating costs for trade in red meats products to the EU have increased by £120million p.a.. This loss of export opportunities, coupled with the additional costs by businesses will inevitably place pressure on farmgate prices and negatively affect the financial margins of even the most efficient farming businesses in the UK.

At the same time as friction has increased with the EU, the government is embarking on an ambitious programme of Free Trade Agreements which will significantly increase competition on the domestic market. Since the start of 2021, the UK has confirmed roll over agreements with 36 trading partners. It

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has announced an agreement in principle with Australia, which will fully liberalise the UK agri-food sector in the coming years. It is expected to shortly confirm an agreement with New Zealand and will recommence negotiations with Canada, Mexico and Japan to further deepen trading relations and expand market access preferences, as well as seeking accession to the CPTPP. All of which are expected to come to fruition within the next 3 years. The government also continues trade talks with the USA and is presently consulting on the scope of a Free Trade Agreement with India. The effect of concluding all of these agreements – many of whom are with major agricultural producers and exporters - on UK farmers is as yet unknown. However, if we take the Australian agreement in principle as an indication of the likely direction of travel on market access, it is clear that the cumulative impact of such liberalisation will have an enormous impact on UK domestic producers. The government has argued that the effects of the Australian deal will be managed via a 15 year phase out period. However, we are deeply concerned that even in the early years of the agreement's entry into force, increased competition from Australia will have a significant effect on UK producers of key products such as beef. In year 1, the government has granted Australia 35,000t of access for its beef, however even small quantities of high value beef from Australia could have a damaging effect on farmgate price, for example, 7,000t of striploin would be the equivalent of 20% of UK production.

In light of the uncertain, but potentially hugely damaging effect unfettered liberalisation of UK markets could have on domestic producers, it is prudent that the government assesses the effect of removal of BPS on the viability of even the most competitive farm businesses in the UK, and most certainly those operating within the sectors likely to be affected the most by trade deals with the countries on the table.

Farmers have historically shown their high levels of resilience due to the flexibility of their business structure, relying on family labour, tolerating low returns on capital, diversifying to minimise commodity exposure and using cautious investment and access to a large asset base to overcome short term economic hardship. All these steps will be necessary given the uncertainty that leaving the EU brings for farm businesses during the 2020s. For two thirds of farms this combination may provide the strategy to weather a transition from direct payments to a reward system based on public money for public goods. However, even for this group the last year of Covid-19 restrictions has shown their vulnerability as commodity producers involved in highly competitive, low margin supply chains that characterise the UK food supply. Despite this demonstrable imbalance where direct payments provide vital safety net for 42% of farm businesses, Defra is continuing to persist with its reform agenda for agricultural policy reform that takes no account of these lessons. For the remaining one third of farm businesses, where tenancy, age or farm size provides little room for contingency planning, but which remain exposed to material risks that EU exit and coronavirus pose, the proposed transition presents very significant, perhaps existential challenge, with no guarantee that returns from a new environmental scheme will replace lost direct payments. Existing poor levels of liquidity and their limited ability to service interest payments would be significantly hampered by the withdrawal of direct payments.

In summary, given increased trade barriers with our largest export market, the EU, alongside increased competition from cheaper imports as a result of a liberalised trade policy, improved market returns currently seen which are not guaranteed going forward means farmers will not escape the impacts of the forthcoming economic hardship and as such the loss of direct payments will be hard to absorb for many, that is why the NFU continues to question the rationale of removing such payments going forward.

Taxation treatment

The NFU is disappointed and surprised that given the lump sum proposal was first mooted in September 2018, Defra is no further forward in knowing the taxation position for both the lump sum exit payment or the delinked payments as set out below in Paragraphs 5.29 and 5.54.

5.29 We are aware that the tax treatment of lump sums, as well as delinked payments, is an important issue for many farmers. We are discussing this with HMRC and guidance about the tax treatment will be provided in due course.

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5.54 Guidance about the tax treatment of delinked payments will be provided in due course.

The taxation of these payments has long been a common theme raised by our members during our discussions with them and is clearly a key concern when it comes to considering whether 1) to proceed with the lump sum exit payment or 2) how delinked payments will be treated.

The NFU urges that the outcome of discussions with HMRC will lead to the following tax treatments for the two new ways that direct payments will be delivered in the future:

- Lump sum exit payments – to be exempt from any tax liability.
- Delinked payment – to be treated as trading income from farming given that it has originated from agricultural activity in the past via a reference period.

The reason for these desired outcomes is to ensure the underlying policies being brought in by Defra are not derailed by tax barriers or tax consequences. A constructive tax context for these scheme payments will mean that they can be adopted by more farm businesses for the policy purposes intended: to accelerate restructuring and re-investment. A perverse fiscal context will result in the Lump sum exit payment lead to a marginalised scheme of little consequence. For example:

- For the lump sum exit payment the requirement to dispose of, or rent out, the applicant's farmland could have significant capital tax disadvantages. Any additional unfavourable tax treatment for taking the lump sum could compound the issues that would already be faced.
- For delinked payments, whilst aimed at reducing administrative burdens, it would be extremely unfortunate if this change resulted in either an adverse income tax treatment where these payments suffer a greater income tax liability, or a change to the trading status of the business which has adverse capital tax consequences.

New claimants

The NFU is concerned that Defra propose within the consultation document to not allow new claimants to be able to apply for BPS entitlements from the BPS national reserve from the 2022 BPS scheme year. Given that BPS is proposed to continue for two more scheme years from now and that this proposed change has not been mentioned before now to the industry, the NFU would want to at least see new claimants to be able to apply in the 2022 scheme year for new entitlements to support them. This would allow some residual delinked payment value from such entitlements going forward given there may be new farmers working on the expectation that the national reserve would be open in 2022. Please see our response to Question 23 below.

D NFU Responses to Defra questions on the Lump Sum Exit Scheme

Question 9

To qualify for the lump sum, an owner-occupier who chooses to rent out their land must do so on a Farm Business Tenancy with a minimum term of five years. Do you agree? Please give reasons for your answer and if you select 'no' please explain what rules you would prefer to see instead.

- Yes
- No

Response: The NFU agrees that a farmer wishing to exit the industry needs to demonstrate that they are serious about exiting. It is felt that the minimum length of term of 5 years is appropriate to deter an

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exiting farmer from re-entry at a later date. The NFU continues to want to see long term tenancy arrangements created within the industry to give certainty and 5 years does fit in with the average length of term currently being offered. We however also recognise that in some situations a minimum 5 year term may not be appropriate or may act as a disincentive to some tenants wishing to rent new land or to some owner occupiers who wish to exit (please see examples set out below). The proposed requirement to rent out land on an FBT for a minimum of 5 years via one agreement, may not maximise the opportunities for all parties. Therefore, the NFU proposes an amendment to the current condition whereby an exiting farmer gives a commitment to renting out the land for at least 5 years, but exceptionally this can be achieved through one or two consecutive agreements to one or more tenants but still covering the minimum 5 year period.

The NFU believes this amendment to current proposal will help make this aspect of the scheme more attractive and balance out the needs of the various parties for the following points:

- an exiting farmer who has had no previous experience in renting out land, either as a landlord or tenant, may be reluctant to enter into an agreement as long term as 5 years especially where they may not have such a business relationship with someone they may not know. Trust and finance will need to be built into the consideration of taking this option. It may lead to a reluctance to rent land to new entrants who may be seen as a higher risk category of tenant.
- Equally, in the situation of a new entrant, they may not want to rent for a five-year term straight away.
- There needs to be flexibility in this commitment to take into account the current uncertainty around policy implementation and developing position outside of the EU.
- Would be compatible with the normal range of tenancy clauses in place to safeguard both parties, such as a tenant defaulting on the agreement, or the ill health death or bankruptcy of a tenant or indeed the exiting farmer passes away during the time and others decide to sell the land.
- Equally a landowner who is exiting the industry may initially rent out his farm land for 2-3 years and then decide to sell some or all of it, so should be given the flexibility to do this during the 5 year period.
- This would allow owner occupier recipients to, within a 5 year timeframe, be able to change tenants in order to safeguard their position should the initial arrangement not be deemed suitable for a longer period.
- Finally, it should be noted that the Commons (Severance of Rights) (England) Order 2006 (SI 2006/2145) includes a requirement that leases of rights alone are less than 2 years in length. So, unless a statutory commons council (of which there are very few) has made different provisions for their common, that will be the case here. Therefore, if a farmer exiting the industry has common land rights and the ability to lease these rights out, then they would not be able to fulfil a minimum 5 year lease as currently proposed. Our suggestion is for a lease of under 5 years, but with an undertaking that the land would be leased out for the duration of at least 5 years would be address the issue.

As a final point there should be no condition on who the land is rented to, for example, renting to a family member should be equally as eligible as a non-family member.

Question 10

Where a tenant passes on an Agricultural Holdings Act tenancy to a successor, this should be treated as them having met the requirement to have surrendered their tenancy. Do you agree? Please give reasons for your answer.

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- Yes
- No

Response: Yes, the NFU sees this as a suitable action to demonstrate exiting the industry by a farmer by surrendering of an Agricultural Holdings Act tenancy and agree that this should be treated as such for the purposes of receiving a lump sum exit payment.

The NFU would like to point out that the ability to execute this action is not a straightforward or quick process. Succession planning for a tenancy can take a number of years to ensure a successful application, especially in the case of a succession on retirement. Whilst we understand the rationale for picking 2022 as the year to offer the lump sum exit payment as it creates the highest lump sum exit payment, the short time frame could limit those who are able to apply. It is also important to note that succession on retirement can only be applied for once and has a higher burden of evidence on the applicant taking on the tenancy than succession upon death, thus this process could take time. Also, critical to this opportunity is that applicants for the lump sum exit payment will need to be certain that their successor will meet all the succession rules if the retiring tenant wants the successor to be able to carry on farming the holding.

It is not simply the planning of an AHA succession which can elongate the process. Other factors such as negotiations / discussions with a landlord can take a significant amount of time, and in the event the succession is disputed, a formal application to the First Tier Tribunal will need to be made and then the application heard.

In order to maximise the benefit of this proposed feature of the scheme it has to be allowed to happen where both parties are also part of an existing business structure. For example, where both partners are in a partnership, or both are directors of a company and one of the individuals wants to take the lump sum and the other would like to continue with the business and succeed to the tenancy. The key point being illustrated here is that tenancies are generally held in one or two names whereas the farming partnership or company could be made up of many more individuals and one or more of those individuals wishes to take on the tenancy were it to be surrendered. For example, it is common for farming partnerships to include the younger generation which in this case may be the younger partner who is trying to succeed to the tenancy. The restriction on the partnership or company having to forgo the ability to claim future direct payments goes against the underlying policy aim here which is to create structural change. If unchanged this provision will only benefit those that are a sole trader and have a suitable successor who is employed on a farm.

A positive change where we see no restriction applying to any partners in the farming partnership or company on holdings would allow greater opportunities to encourage generational change, which is cited by Defra in the consultation as a key policy driver. Please also see the points that we make in our response to Question 17 below.

Finally, if an AHA tenancy can be transferred or assigned to another family member, this too should be accepted. In addition, where the AHA is preplaced by an FBT on succession this too should also qualify. Likewise, a transfer of a long term FBT to the next generation should also be considered eligible as an exit.

Question 11

Should a successful applicant be allowed to keep their residential or commercial property, non-agricultural land, and up to 5% or 5 hectares, whichever is the smallest, of their agricultural land in England? Please give reasons for your answer.

- Yes
- No

Response: Yes. The NFU believes that the flexibility set out in Question 11 to retain any residential, commercial property, non-agricultural land and up to 5% or 5 hectares, whichever is the smallest of

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agricultural land should be allowed, given a high proportion of farming businesses now have some form of on farm diversification. Whilst there will be clear challenges for a tenant, securing this opportunity for all should be allowed.

These flexibilities would help farmers exit active farming, reducing barriers around accommodation and where farming businesses have other existing non-farming activities or there are opportunities to develop such activities – letting out buildings for example would provide them alternative sources of income in the future, bearing in mind here that there is no age limit to the lump sum exit scheme.

There is a need for the exiting farmer to be able to have certainty around if they can expand their non-agricultural activities beyond their 2022 position to allow such eligible activity to develop or take up new opportunities that present themselves. This is critical for those seeking an income from their assets in the longer term given the current proposed lump sum cap of £100,000 is unlikely to deliver an income to live off in the future for those taking this option, when many may have a lump sum far less than this current limit.

This proposal compliments the ability of those exiting the industry as a farmer to continue involvement in the sector in the form of a rural based contractor or employee of another farming or rural based business. This proposed feature should be an option for an exiting farmer as it is important that such a farmer has the flexibility to allow access to some or all of their farm buildings by a party renting their agricultural land, this is particularly relevant to livestock farms as well as new entrants to farming who need this resource.

From a tenancy perspective, under most tenancy agreements, a clause will state that a tenant must reside in the farmhouse. Once the tenancy has been surrendered the tenant will not be able to remain in the farmhouse unless agreed through negotiation with the landlord. Secondly, it would be normal for the tenant succeeding to the tenancy to have to reside in the farmhouse. If a landlord is willing to let an exiting tenant to remain in the farmhouse this could alleviate any problems a tenant may have trying to find a replacement house within the local community due to lack of availability or finance. This would be welcomed in areas where suitable alternative rural housing is scarce, especially at a time where the access to housing is not improving in the wake of changes in the housing market since the Covid 19 epidemic appeared in 2020.

It is important to note that access to the farmhouse would not be a guaranteed outcome at the end of a tenancy as it will be dependent on what the landlord's plans are, which could include renting the property out again in its existing state, or separate the land from the house and rent both out separately or simply rent out the land and occupy the farmstead. There may be tax implications for a landlord where a farmhouse and / or buildings are separated off from the remainder of the agricultural land and this is likely to dictate what they do.

It is important that Defra clarifies what is seen as being acceptable retained diversified activity given some such activities are often complimentary to farming activity, such as adding value to agricultural produce or equine enterprises for example. Equally the position where agricultural activity that could be carried out without farmland and operating in the farmstead needs to be clarified. There is some clarity needed as to what is covered, for example is it associated to the business claiming BPS, not other businesses the retiring farmer may operate? A starting point to determine what is non-agricultural activity could be the current rules around on what is eligible for BPS in terms of non-agricultural use on eligible land.

Finally, there needs to be further clarity given in respect to the following paragraph within the consultation in respect to both this question as well as Question 16.

5.12 We also intend that if a lump sum recipient enters into certain new land management agreements (or adds land to existing agreements), such as Countryside Stewardship and the Sustainable Farming Incentive, during the remainder of the planned agricultural transition, they will have to repay the lump

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sum. We propose that the same condition will apply to directors of limited companies and all partners of a partnership.

The farmer taking the lump exit payment sum can retain 'non-agricultural land' and up to 5 hectares of agricultural land, however it should be noted that ELMs eligibility is likely not to be constrained to agricultural land going forward. Therefore, the NFU would prefer to see land that is included in an ELMs agreement should not be retained by an exiting farmer (now a landowner). We would want a tenant where the exiting farmer has rented out his agricultural land to be the ELMs SFI level agreement holder at the very least.

Question 12

Should it be a requirement to have first claimed Direct Payments in 2015 or earlier to qualify for the lump sum? Please give reasons for your answer.

- Yes
- No

Response: No. Whilst the NFU believes that the lump sum exit payment should not be available to access in the future by those that have only been claiming direct payments in the form of BPS for a short period of time prior to the lump sum exit payment scheme being available. It is important to consider the policy driver here and the need to balance this perceived issue with desired outcomes. For the NFU it is important to point out that some claimants will have entered farming in the years prior to the EU referendum and would have been in the same position as those that were claiming in 2015 and have an expectation to receive future direct payments for as long as they existed. For this reason and others set out below the NFU would want to see the first year of claim needed for qualification of the lump sum exit payment to be brought forward to 2018, which would still be 5 years prior to the commencement of the scheme. The reason for this change is that after this time information would have been in the public domain that there was going to be a lump sum payment offered in the future. As such this timeframe would seem a more natural point to use than 2015.

The NFU believes the current reference year of 2015, which some eight years prior to the lump sum exit payment scheme coming into being is too long and would reduce the pool of farmers that could be eligible for this scheme.

In determining the final cut-off date for this proposed features of the scheme, Defra also needs to appreciate that throughout the period from 2015 onwards that some new claimants of BPS will have been created as a result of RPA determining them as not being a continuing business from a pre-existing SPS / BPS claiming business as a result of the IACS 26 / 27 validation process. This situation is not of the farmers making and imposed on them by the rules in place, which still exist to this day and as such this group of claimants should not be prevented from accessing this scheme. The NFU would argue that a new business claiming since 2018 that has its origins in claiming direct payments back to pre-BPS years should also be considered eligible, as opposed to those that have no history of farming or direct payment claims in that time period. This distinction needs to be made in our view to give flexibility to long established farming businesses. This would also level up the scheme offer and not just allow post 2015 business changes where those changes have been due to an inheritance or succeeded an Agricultural Holdings Act tenancy, which is the focus of Question 13 below.

In summary, the consultation document at Paragraph 5.19 states that it would not be appropriate to offer the lump sum to those who have only recently entered farming, we agree with the principle, but as illustrated in our response above there are several situations where this would not work. Therefore, the NFU would like to see a revised approach taken and allow more claimants to be eligible for this option and the underlying policy here to help farmers exit the industry if they so wish.

Question 13

If you answered 'yes' to the previous question, should there be an exemption from this requirement for farmers who have inherited a farm, or succeeded to an Agricultural Holdings Act tenancy, after 2015? Please give reasons for your answer.

- Yes
- No

Response: Whilst our answer to Question 12 is a 'No' (from a position of tweaking the principle we agree with) the NFU believes that there should be an exemption from the eventual version of the scheme rules as set out in Question 12 for farmers who have inherited a farm, or succeeded to an Agricultural Holdings Act tenancy where there has been a formal or informal succession or assignment of an AHA tenancy for the period where a restriction under Question 12 still remains. This is because we recognise that there may be cases where a farmer has inherited, but where their circumstances have subsequently changed. There should also be an exemption where a FBT has been passed on to the next generation.

In order to be consistent here with our response to Question 10, this proposed feature of the scheme has to allow for situations where the original parties in a succession scenario had been part of the same existing business structure. The point being here again is that tenancies are not necessarily held by the same people that form the partnership or company farming the land.

Question 14

How long, from the publication of the scheme rules, should an applicant be given to transfer their land? Please give reasons for your answer.

- 1 year
- 18 months
- 2 years
- Other

Response: Other. The NFU welcomes Defra's acknowledgement that the requirement to give up land occupation, be that selling it, gifting it, renting it out or giving up a tenancy or common land takes time. We note that Defra includes within the consultation document at Paragraph 5.21 the following:

We will not require the farmer to have completed the transfer of their land or tenancy, or to have confirmed their take-up of the exit scheme, at the time they apply for the lump sum.

This is also welcomed, but what the industry will want to see is certainty in the rules that allows the maximum time possible to allow these transfers of farmland to take place as they can take a long time to complete, and we propose that at least 2 years should be given. Virtually all those wishing to exit the industry will be in the position of not having completed the disposal in land within the current timelines of the application period being proposed as the first half of 2022 and the key rules only been known of by late October this year. This timeframe does not give a long period of time for farmers to have to decide they want to exit the industry and there will be a lot for farmers to think about and prepare for if they decide to take this option in the interim. They will not make any such a decision on exiting the industry without having the key elements of the scheme confirmed.

Whilst the process that needs to be followed to give up or sell land is well established in principle, farmers will not fully appreciate what is involved and what the journey along this route may look like if they have not been through it in the past. It will turn out to not be an easy one for some, with unexpected and unforeseen issues that may arise, such as previous arrangements, undocumented provisions or poor records that hinder progress, even the death of one of the parties involved. Equally, there may not be good relationships between the parties where there is the ability to leave a tenancy and take the lump sum payment (bearing in mind that some tenancies may prevent such an action by the tenant). This will have an impact on the reaction time to this scheme opportunity and dialogue thereafter.

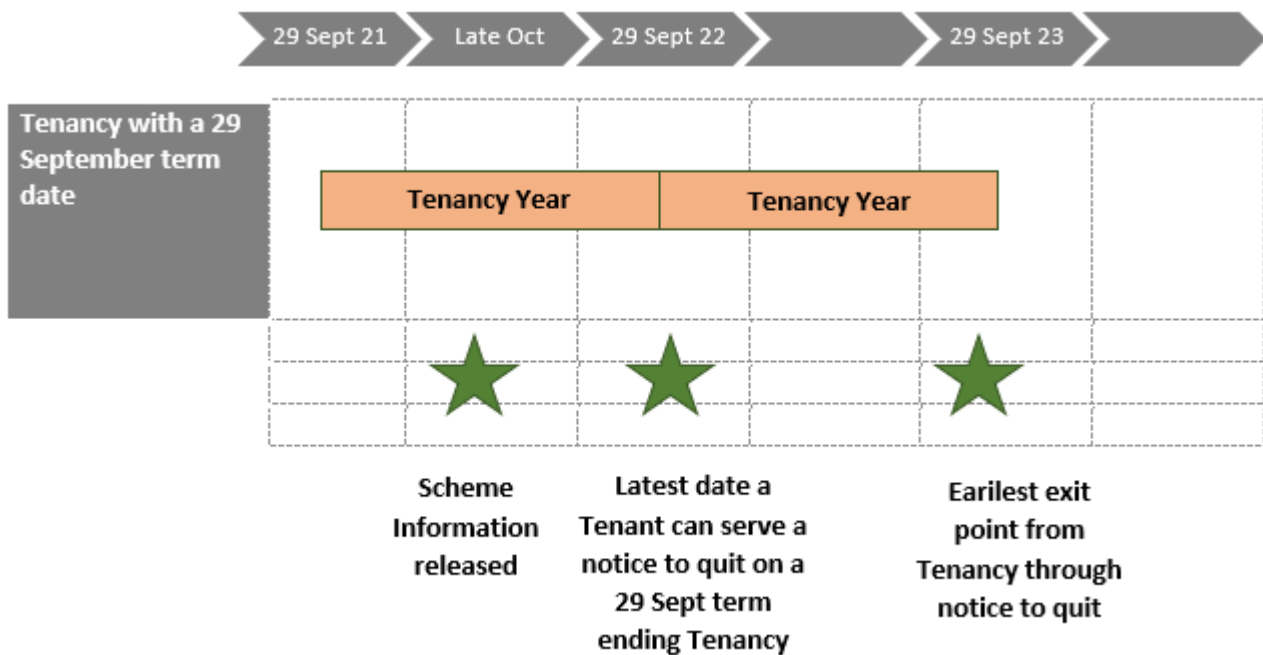
The ability of a tenant to surrender a tenancy is wholly dependent on a landlord's acceptance which inevitably will require specific and often lengthy negotiation. In the case of a surrender, will a landlord accept it on terms which are still favourable to a tenant many factors will come into play here. If a surrender cannot be negotiated, the only other option is for a tenant to serve a Notice to Quit on his landlord which will usually require at least 12 months often coinciding with the term date of the tenancy. If we do not find out the scheme rules until October 2021 at the earliest and the term date of the tenancy is 29 September, the latest a tenant could serve the notice is 29 September 2022 to terminate the tenancy on 28 September 2023.

Equally should the tenant be able to retain the farmhouse (which is not seen as a very likely circumstance) and / or some other commercial or small area of agricultural land by agreement with the landlord, this could take much longer to negotiate. In addition, many tenants are not just a tenant of one holding with one landlord. Their farming business may be based on multiple tenancy agreements with multiple landlords, on different terms and conditions with each different individual tenancy, often having different start and termination dates. The same tenant may also be an owner-occupier of part of the holding. Negotiating a series of tenancy surrenders – (covering issues such as dilapidations / tenants improvements etc), plus selling or renting out the owner-occupied element of a holding can take considerable time.

In terms of preparing a tenancy succession is also an exercise that takes time. Not only does the successor have to ensure that all the eligibility criteria are met and that there is supporting evidence in place, where the succession is disputed by a landlord an application must be made to a Tribunal who then will decide, this process could easily take at least two years to conclude and therefore the maximum amount of time possible should therefore be given.

In addition to the elements that Defra has identified, and which are centred around land occupation, for a farmer to exit farming there will be many other complex issues for a trading business to manage as they exit the industry and timing of which will be dependent on other factors such as the farming enterprise cycles, non-tenancy related land access agreements and so whilst the selling of land or the surrendering of a tenancy may occur on particular dates there may well be farming activity still going on that will be completed by a later date. Equally, there will be tax considerations that may also have a bearing on the timing of disposals so a degree of flexibility would be desirable to accommodate such timings.

Given these challenges, the NFU would urge Defra to release the key rules of the lump sum exit scheme before the proposed end of October 2021 timeline. It is vital that the industry knows as soon as possible from what date they can commence activity to give up land. This is especially important where tenancies have term dates for Michaelmas of 29 September and generally where the notice period to quit is a minimum of 12 months. As illustrated in the diagram below, the current proposed timing of the release of information would lead to a 12 month delay in even being able to serve a notice to quit land as no one will serve a notice to quit without seeing the scheme rules and being confident that their application has been successful.



Finally, there will need to guidance and reassurance given by Defra when information is released in October or earlier about how an intending exiting farmer can protect their direct payment position in 2022. Where a farmer does apply for the lump sum exit payment they will also be likely to want to apply for BPS 2022 as a backup to safeguard the income (in case they are not found to be eligible for the scheme) and that such an approach should be allowed by Defra and the RPA.

Question 15

To claim the lump sum, should farmers who use common land to claim BPS have to give up their rights of common as proposed? Please give reasons for your answer and if you select 'no' please explain what rules you would prefer to see instead.

- Yes
- No

Response: No. The NFU believes that to claim the lump sum, farmers who use common land to claim BPS should not have to give up their rights of common as proposed. As Defra will appreciate the complex nature of commons adds further to the challenges faced (and already set out in the NFU responses to other questions in this response) to the ability to promptly give up land and take a lump sum exit payment.

It is suggested by Defra that a farmer (commoner) wishing to take up the lump sum exit payment would have to give up their rights of common in addition to meeting the other rules of the scheme. This is further clarified to mean by selling their rights of common and/or lease them out for a minimum of five years and/or transfer them by gift. Where the rights are attached to the land, the rights and land would need to be transferred together. Where a farmer has leased-in rights of common, they would need to surrender this lease.

Requiring a farmer with common rights to dispose of them is seen a problematic. It is important to point out that access to common land is based on different legislation to that of non-common land and some of these suggested options may not be as easy as they first seem to execute. Common rights are also often linked to land occupation, if this is the case, then the landowner / tenant of the associated non-common land would have to give it up or lease the land that is linked to the common land rights. If the rights relate to a specific property and the exiting farmer remains in the farmhouse / retained the farmstead, this could mean that they are not eligible for the lump sum exit payment scheme. Making a

farmer give up common rights would not necessarily create more land opportunities for another party if they were linked to a property that remains in occupation of the claimant unless they are leased out. Equally, the NFU would not want to see an exiting farmer who has rented out his farm to lose any rights to the common by virtue of taking the lump sum if in the future if they decide to give up the entire property that the rights are associated with and disadvantage a future occupier who would want to utilise them.

It is also important to note that the Commons Act 2006 limits the situations in which common rights can be severed from the land, so it is not as simple as a farmer being able to sell those rights to someone else. If provision is made for the rights to be severed in this situation we are not sure what the market for those rights would be like (would it be easy to sell them, or would that potentially prevent someone from participating in the scheme because there isn't a buyer?) or what the impact on the value of their property would be if the common rights were severed.

There is then the situation of a farmer participating in agri-environment agreement on a common and they "give up" their common rights? They don't necessarily have to be an active grazier to participate in such schemes but if its mid-agreement there could be complications associated with that situation arising.

As an alternative to avoid the issues set out above, the NFU suggests there should be some suitable conditions attached to this scheme which farmers with common land rights sign up to say that they will not use the rights, but may lease their rights to a third party. That means the rights can remain attached to the land and farmers are not prevented from participating in the scheme if they are not able to find a buyer/lease out the rights within a specific deadline.

Question 16

Are there any circumstances in which lump sum recipients should be allowed to retain their agricultural land (above the small amount that may be allowed – see question 11), such as if they enter the land into a scheme for woodland creation or landscape restoration? Please give reasons for your answer and if you select 'yes', please provide details.

- Yes
- No

Response: No. The NFU would not want to see any further flexibility given to exiting farmers, such as allowing them to retain land to go into new schemes as this would undermine the thrust of this scheme to give up control of land to demonstrate exiting farming and also giving opportunities to others to farm the land. Keeping to the current proposed opportunities as set out in Question 11 should suffice. We do not see this suggested further flexibility as furthering the underlying policy being delivered by this scheme. The NFU also sees any such land that is included in future schemes like ELMS to be in the control of the active farmer – a tenant, not a landlord.

Question 17

Do you have any other comments on the proposed conditions and eligibility rules for the lump sum exit scheme?

Response: The key point to appreciate is what is this scheme and policy are aiming to achieve; it is to provide a stimulus to and support to those wishing to exit the industry. Whilst the NFU recognises the need to protect and audit public funds that are used supporting this scheme and policy designs, there has to be a balance between the tools used to do this and the outcomes from this policy. Below are further comments and points that the NFU wants to make in respect to the current proposals and other points that should be incorporated into the scheme:

- **The requirement of businesses with multiple partners or directors to all have to exit the industry** - The current restrictions as set out in paragraph 5.11 of partnerships and companies with multiple partners / directors / shareholders to allow certain parties within those businesses

to leave the business and retire and not allowing the remaining parties to continue running the business seems counterproductive to the underlying policy being implemented in this scheme. This will not allow the remaining parties to continue running a farming business, such as a younger generation. A 'one out all out' approach as it currently stands will not work for many farming businesses given a significant proportion businesses will be in a partnership structure, often made up of related family members. Some of those parties wanting to carry on may only have a minor share or indeed have a share in other businesses compared to those that want to exit the industry, this would be a significant barrier to eligibility. Also, it is important to note that in recent times there has been an increase in multigenerational farm businesses, where partnerships and companies have brought the next generation into their businesses, which have been encouraged in some part by the Young Farmer Payment top up payment. We need a joined up approach between past and future scheme policies. We fear that unless Defra reflects on how farms are structured the current proposal will become a significant barrier to take up for some seriously considering this scheme and would only be attractive to a few sole trader businesses. This barrier needs to be removed for the next generation or those wanting to drive forward the business via taking control of the existing business where others are wanting to exit the industry.

- In some cases, tenancies may be comprised of two or more joint tenants. Where one tenant wishes to exit and take a lump sum payment, but the other tenant wishes to continue the tenancy, the joint tenants could negotiate with the landlord for removal of one of the tenants from the tenancy. Although there may be complications around partnerships or limited companies as noted above, a joint tenant who wishes to exit should be eligible for a payment in these circumstances despite the tenancy itself continuing to exist.
- In respect to Paragraph 5.10 which states it is a condition of the lump sum that all the English BPS entitlements held by the BPS applicant would be cancelled. What if a partnership has land in Wales or Scotland and wants to continue, perhaps the next generation wants to continue? That seems to be allowed from the narrative, but not an English only business.
- In summary, the NFU would want to see the following condition changed to allow parts of a farming business to exit the industry, be that partners, directors or shareholders and others allowed to continue to farm: *5.9 Our proposed lump sum exit scheme is aimed at those farmers who claim BPS and wish to exit the industry.*
- **Splitting Future Direct Payments** - Equally there should be the possibility for example in splitting the future direct payments to allow perhaps a proportion of it to be allocated to part of a farming business that wants to retire and the remainder retained by those elements that wish to continue farming via a reduction in the BPS / delinked payment received to not only be able to continue to farm, but also support their business. In such a situation the policy is delivered, and the remaining elements of the business can continue and take up and face the challenges ahead. This solution will still drive the change that is being promoted by this policy and will have in our view minimal impact on the funding of the future way direct payment is delivered.
- **Only access to land** – The NFU would not welcome any further constraints being put on exiting farmers such as disposal of machinery / equipment or livestock as these may be for the land retained or indeed any future activity such as continuing working in the industry. Equally, these assets could be leased out to an incoming farmer, including a new entrant and as a way of overcoming a new entrant's lack of access to capital.
- **Generational Change / New Entrant opportunities** – The current rules do not allow more innovative ways to create opportunities for young or new farmers, such as the ability for an exiting farmer to offer a share farming opportunity with another party as an alternative to the more traditional rental or purchase opportunities to access land and buildings by new or young farmers.

- **Timings** – It is vital that there is clear guidance set out around when a farmer wishing to exit the industry will be eligible for the lump sum exit payment and we would ask that those that have already commenced this challenging transition are allowed to be eligible for the payment.
- **Business change** – The consultation document recognises that there will be a variety of changes to farm businesses that will happen after the start of the reference period and the NFU looks forward to working with Defra and RPA on solutions to these challenges that remain if suggestions set out in our response here are not taken up for the purposes of calculating the lump sum payment.
- **Artificiality** - We note that there is a suggestion at Paragraph 5.39 for a provision to be put in place to prevent the lump sum being paid in cases where farmers have made artificial changes to their business to claim payment. There is a suggestion this may cover the splitting of a business to maximise a lump sum payment, based on the assumption there will be a cap as mentioned in the consultation document. The NFU has proposed many changes to the current lump sum exit payment rules within its response that allows flexibility and a more transparent process and thus concerns over artificiality should fall away, for example if there was no cap on the lump sum, then this would allow all to benefit equally, and reduce the bureaucracy on all parties. The NFU believes that the focus of the rules should be on the outcome, not administrative blockers such as any artificiality criteria being set. It must be remembered that there is only one pot of money, it will go as lump sum or delinked payment. Equally if there was to be no change to the ability of existing partners and directors to carry on farming within the current business structures, then they should be allowed to make business structure changes going forward to achieve this outcome and for this to not be considered artificial.
- **Certainty** – The NFU welcomes the intention set out at Paragraph 5.24 ‘We expect to be able to fund all the eligible applications that we receive.’ This statement does need to be confirmed going forward to minimise as much as possible the uncertainty within the farmer journey around this scheme. Getting the sequencing and roll out of information between this scheme and the BPS 2022 claim cycle right is critical to manage the transition to this scheme for those taking it up. It is also critical that the application and decision making timeline for the lump sum exit payment is set out clearly for those applying to avoid any more undue uncertainty than is created by this activity.
- It has also to be appreciated that where a tenancy is being surrendered an exiting tenant is likely to have to give a year’s notice on their tenancy and the trigger point will generally be fixed by the term date of the agreement in place. What we need to avoid is an exiting farmer being in a position whereby they can give notice but do not have the confirmation that they will actually qualify for the lump sum since a Notice to Quit cannot be unilaterally withdrawn. We have to avoid at all costs a tenant losing their tenancy (i.e., a tenant serves a Notice to Quit on his landlord), but the lump sum application is not successful.
- Timing of the payment is also vital for those exiting farming where those monies will be needed to fund future housing or non-farming activities. Therefore, we ask that a clear timeline is set out of when a payment will arrive for those taking up this scheme as the sum may be needed by the exiting farmer to purchase a property or manage cashflow.
- **Payment in 2022** – As we have highlighted earlier in this response there is a need for flexibility and as much time as possible for farmers wishing to exit the industry. We have also highlighted the need for a positive interaction with the BPS claim in 2022. There is a need for a farmer to receive a direct payment in 2022, be that the full lump sum exit payment or their 2022 BPS payment and the residual lump sum payment in 2023 (2022 to 2027 value less the 2022 BPS

payment) if it cannot be released in full in 2022 due to scheme conditions not being met in order to help the cashflow of the claimant business.

- **Existing Agri-environment Agreements / undertakings** – We have already covered in Questions 11 and 16 our views on a lump sum exit payment recipient’s ability to retain control of land covered by an environmental scheme going forward. There does also need to be further clarification of the following paragraph in the consultation document:
- *Paragraph 5.11 We also intend that if a lump sum recipient enters into certain new land management agreements (or adds land to existing agreements), such as Countryside Stewardship and the Sustainable Farming Incentive, during the remainder of the planned agricultural transition, they will have to repay the lump sum. We propose that the same condition will apply to directors of limited companies and all partners of a partnership.*
- The NFU would want to see maximum flexibility given to those that prior to the disclosure of the full scheme rules as this paragraph suggests that could still have an ongoing CS agreement even if you have taken the lump sum exit payment. We assume if you sell the land then you will need to transfer the agreement into the name of the new occupier. However, there are situations where a landlord claims the environmental scheme and tenant claims the BPS, is this what is inferred by the (or adds land to existing agreements) element above. More information is needed about what does having control of land still mean.
- Furthermore, whilst there are rules in place within existing schemes on what happens if land occupation changes and the liabilities associated with the non-continuation by the incoming party of a pre-existing agreement we would ask that Defra allows as much flexibility as possible to allow a smooth transfer of such agreements out from exiting farmers. No one would transfer an agreement until they have Defra’s legal commitment to paying the lump sum exit payment or indeed deal with a recently rolled over CS or ES agreement. The NFU believes the active land manager should be in control of agreements held by exiting farmers as they would not be an active agreement management holder in our view in the position of the landowner. We would like to see where agreements are terminated that no penalty is applied for the exiting farmer where there is not a willing party to take on the existing commitment going forward.
- Finally, there needs to be a more coordinated RPA process to help ensure that where agreements are changing from one party to another that this happens in good time, given there will be a time limit to dispose of land and transfer schemes. These comments apply to both management payments as well as any capital works activity.
- **Participation in other Schemes** – The NFU would want to see maximum flexibility given to those that prior to the disclosure of the full scheme rules had entered into schemes such as the Countryside Productivity Small Grant Scheme as we would not want to see exiting farmers having to repay grant sums received from these previous schemes, be that where they leave farming and dispose of the grant funded items or where the investment is still retained by the exiting farmer and not disposed of, and perhaps used in the future for example by a tenant where the exiting farmer has rented out his land.
- The NFU also sees an exiting farmer that is continuing to be active within the industry, by virtue of becoming a contractor or self-employed worker still being eligible for a grant under future schemes such as the Farming Investment Fund in order to help them in their new role in the industry, especially given that contractors and foresters will be eligible under this new scheme.
- **Evidence to show a farmer has exited the industry** – We do not want this requirement to be too onerous on applicants, and would suggest a declaration from a farmer’s solicitor to state that the farmer has complied with the rules should be sufficient. This would avoid various documents needing to be provided to the RPA, that in turn would need to be handled and

correctly interpreted by the RPA, which would lead to delays and additional uncertainty for the applying farmer as to their eligible status.

- **Significant Claim Change between reference period and applying for either lump sum exit payment** – We note what is covered in the consultation document about the adjustment of the lump sum payment if someone sells entitlements before taking the lump sum at Paragraph 5.33, but the NFU only wants this to be applied for changes that occur after May 2021 when this condition was first publicly disclosed in the consultation document. We equally need to understand what ‘a significant overall decrease in the entitlements they hold’ means, bearing in mind that held entitlements is different to activated entitlements. If it is held entitlements there is no double payment being created. There needs to be flexibility for those situations where a tenant has not willingly wanted to reduce their claim during a period between the reference period and the operation of the scheme.
- **Relationship with other elements of the Agricultural Transition Plan (ATP)** – The NFU continues to be concerned over the integration of this scheme with other ATP activity, such as supporting farmers through a Future Farm Resilience Fund (FFRF) programme, given that this scheme will run beyond what appears to be the window to take up the lump sum payment – 2022. The NFU is concerned about the current timing of the FFRF, and the lump sum exit scheme which could lead to a situation where the outcome of FFRF discussions for a farmer is that their best option going forward is to exit the industry, but by the time such a position is arrived at the option to take up a lump sum exit payment may have already passed and thus this support is no longer there to help them. As far back as the 2018 the NFU has called for a holistic approach to any schemes looking at farmers exiting the industry. There is an opportunity still to develop such an approach. Equally, more work can be done to integrate the development of the New Entrants scheme into the offering. We await to see what Defra finally define as new entrants and who is eligible. The NFU would want to see those in the industry that are wishing to develop their own businesses, but are currently part of an existing business to have support under the New Entrants scheme.
- **Current Proposed Rules** - We support the following current proposed conditions and eligibility:
 - No age limit to be imposed.
 - Ability to continue to live in the farmhouse and retain non-agricultural property, which could allow the continuation of diversified business activities
 - Allowing those taking on land from exiting farmers to be able to access new ATP schemes on that land.
 - Ability for the exiting farmer to remain active in the industry in terms of becoming a contractor or become self-employed, equally their knowledge and skills would aid those taking on their land or new entrants.
- **Working with Defra and the RPA** - The NFU looks forward to working with Defra and the RPA on the development of the finer details of this scheme in the coming months and in the run up to the release of more information later this year and the delivery of the application process thereafter. Key is that this scheme contains a proportionate set of rules in the run up to and following the payment of the lump sum exit payment that does not hinder the outcome of this policy. Of particular importance is the careful management of this scheme alongside the operation of BPS 2022 in order to avoid farmers not receiving a direct payment in either BPS or lump sum in 2022.

- We also welcome Defra recognising there are issues around mergers, splits and business structure changes during the period of BPS and will work with stakeholders on these elements. The NFU does, however hope that a number of the areas of friction can be avoided by engineering them out for this scheme from the start.

Question Q18

What reference period should the lump sum payment be based on? Please give reasons for your answer.

- **The average of the 2018 to 2020 BPS scheme years**
- **The 2020 BPS scheme year**
- **Other. (Please state your preferred reference period).**

Response: Other - The NFU understands that there is a balance to be struck. The NFU believes a different option however, using an average of years that are as close to the application window including scheme year 2021 would be preferential to be more representative of where the exiting business was when they exited the industry in 2022 and also minimise business change in the years between the start of or the end of the reference period / year and access to this scheme. We would like to see an option to remove one year if it is particularly disadvantageous e.g., made a mistake that year to avoid compounding an issue in one year for later on or where they were not able to claim on land temporarily. Defra states using a single year would be simpler for the RPA to administer but the NFU sees this as disadvantaging those farmers who had a smaller BPS payment than usual in that year. Using an average of a number of years should avoid any such potential disadvantage if used in conjunction with an exceptions process.

Finally, we welcome the basis of the payment calculation where no scheme penalties will be taken into account when working out the lump sum amount. Please note that our response to Question 23 differs due to the different issues that arise, such as the differing timings to the introduction of both new schemes.

Question Q19

What cap should be applied to the recipient's lump sum payment? Please give reasons for your answer.

- **No cap**
- **£100,000**
- **Other. (Please state your preferred cap level).**

Response: The NFU believes there should not be a cap on these payments for the following reasons:

- Fairness, we do not want one farmer being treated differently to another farmer just because their resultant lump sum falls the wrong side of this artificial cap, both in terms of this scheme and when you compare it to the treatment of those receiving the delinked payment.
- It is clear this is seen a barrier for some to seriously consider exiting the industry and so goes against the underlying policy here, especially where some may not have a huge net worth from other assets they control by virtue of charges on those assets or savings or investments.

Whilst it has been suggested by Defra that c87% of farmers currently would not be affected by this cap, that could still mean that over 10,000 farmers would be impacted by it. Allowing larger farms to take full lump sum may allow the opportunities for those former holdings to be split between a range of other farmers, local, established or new entrants. The NFU is not convinced that a cap should be imposed. It's an arbitrary limit and means that those who have an entitlement to the BPS would be unable to realise that value. The cap also means that meaningful payments to buy an annuity or new house are closed.

Question Q20

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Based on the information you've read on the lump sum exit scheme, do you think this would encourage farmers to take a payment and exit the industry? Please give reasons for your answer and any supporting evidence you have.

- Yes, many farmers
- Yes, a small number of farmers
- No, very limited interest
- We should not encourage exits

Response: It is hard to quantify where many farmers thinking will be on this scheme. They will need to carefully consider a wide range of issues, and that will take time.

A lump sum payment may encourage some farmers to exit the industry however the net amount received will be paramount to some applicants, especially those with a low net worth. If a tenant farmer surrenders his tenancy it is unlikely that they will be able to remain living in the farmhouse so in deciding whether to take the lump sum will actually be part of a wider consideration. A tenant will have to ensure that they have the means to rent or buy a house off the holding. Tenant farmers in general tend to have fewer assets and less general wealth compared to owner occupiers so a lump sum amount may not make enough of a contribution to fund a retirement. The lump sum payment would have to be part of a package for a tenant to really consider retiring completely.

For some tenants there will be express terms in their tenancy agreements that would prevent claiming a lump sum, or not able to sell or lease or indeed do anything to result in the loss, reduction or removal from the holding of any of the entitlements or render them otherwise unavailable to a future occupier of the holding.

Based on the current set of proposed rules the NFU cannot see many farmers opting for this direct payments delivery model in 2022. The current uncertainty around the tax treatment of the scheme payment and the treatment of multigenerational farming partnership or companies has been raised by many of our members as significant blockers to take up of this scheme.

Question Q21

Is extra professional advice and guidance needed to help a farmer decide whether to participate in the scheme? Please give reasons for your answer.

- Yes
- No

Response: Yes. Given the significance of what is being asked of farmers who decide to exit the industry via this method then the NFU cannot see how a farmer would not need to 1) use professional help and 2) have additional help compared to if they continued to farm with no changes. Farmers will need a lot more information to be able to make an informed business decision. A farmer would need to consider and equally unpick land tenure / business structure / farming activity / tax affairs and all these elements need to be taken in the round with future priorities in life, family and even down to where people live and what income they will live off going forward. Accounting, legal and land tenure expertise would be needed. The farmer may need financial / retirement / pension advice.

In the case of a tenant farmer, they would need professional advice about the value of any end of tenancy compensation, tenants improvements or dilapidations claim which would affect the net sum they will receive on exiting the industry. Advice would also be required for surrendering the tenancy and if applying for a tenancy succession.

There would be a demand on the professional advice sector, that could lead to inflationary pressures for farmers especially when professional services will be in greater demand going forward due to the number of new schemes coming on stream.

The NFU has always encouraged its members who are looking at exiting the industry to seek professional advice in order to fully understand all the aspects that such a decision would entail, such as clauses are contained within the tenancy agreement in order to understand whether you would be able to apply for this scheme. It is difficult to start such preparatory work without more information that is currently provided by Defra.

Of course, the need for more professional support would eat into the lump sum exit payment they receive and that would in many situations reduce the attractiveness of the scheme.

In terms of guidance, the NFU would expect there to be more information provided on Gov.uk in both HTML and PDF formats to explain fully all the elements of this scheme and how its relationship with other schemes, both current and future will operate and to also cover the points raised in this response to the consultation.

Question Q22

Which groups do you think are likely to benefit from the lump sum exit scheme? Please tick all that apply and give reasons for your answer.

- **Farmer exiting the industry**
- **New entrant entering the industry**
- **Existing farmer expanding business onto vacated land**
- **Other (please specify)**

Response: The NFU believes that all of the first three groups identified would to a greater or lesser extent benefit, though given the challenges that will remain even after this policy is implemented, it is likely that existing farmers may benefit more than new entrants. New entrant farmers should in theory benefit from the scheme in that more land should be available either to buy or rent. However, new entrants are unlikely to have enough capital to buy land. Renting may be a problem as a landowner may not be willing to risk letting land for a minimum of 5 years (as the proposed rules are currently written) to someone new to the industry with little or no track record. What is unknown at this stage is human behaviour.

Existing or potential tenant farmers may have some benefit as one of the consequences of people taking the lump sum may be that more land becomes available on the tenanted market.

In terms of the final option to the question, undoubtedly the professional adviser sector will see an increase in work and fees generated by both those that actually go through with taking up the lump sum exit payment as well as those that do not proceed, but have carefully considered this option. There may also be non-traditional individuals or organisations that will see this as an opportunity to enter or increase their presence in the sector and where their aims will not be compatible with blending farming with the environment and thus restricting the next generation or existing farmers the opportunity to land as we enter the post CAP world.

E NFU Responses to Defra questions on the Delinked Payments

Question 23

What reference period should the delinked payment be based on? Please give reasons for your answer.

- **The average of the 2018 to 2020 BPS scheme years**
- **The average of the 2018 to 2022 BPS scheme years**
- **The 2022 BPS scheme year**
- **Other. (Please state your preferred reference period).**

Response: 'Other' is the NFU answer. The NFU firstly welcomes confirmation that the reference amount is going to be based on the BPS claim values – both entitlements activated, and young farmer

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scheme top up payment and that previous penalties (as opposed to reductions) are not going to be compounded going forward into this calculation (though we would like to know if this covers all penalty categories that could be applied).

The NFU understands that there is a balance to be struck with any reference period. We believe however that a different option should be used than those currently proposed and that incorporates the following elements:

- a maximum reference period of 3 years
- that is as close to the application window of delinked payments including scheme year 2021 and 2022
- where a farmer can opt to remove a year or years from a reference period where they did not claim in a year or would be particularly disadvantaged if those years were included e.g., where a claim has been reduced by an event outside of their control (an infrastructure project) or where they made a mistake that year, with an aim of avoiding compounding a problem or situation in one year to later years (and not envisaged by the original scheme rules)

The NFU believes this approach would be preferential and lead to a more representative basis of ongoing businesses when the scheme starts to operate for the following reasons:

- Minimises the level of business change in the years between the start of or the end of the reference period and the start of the scheme, the current proposal is for a 3 year scheme gap which in our view is too long.
- Minimises the adverse impact during this period of transition of a lower than expected reference amount and therefore payment, such as where an error was, and the activation was less than expected or no claim was received by the RPA when one was intended.
- It would reduce the number of challenges that the RPA will receive and thus speed up the clarification of the reference amount for managing future payments when this work takes place.
- Cater for those entering the industry for the first time in recent years (or that have been recognised as a new business which originated from an earlier BPS business) and as well as those where the reference amount is not truly representative of their business.
- Cater for those where actions by others have meant their claim is less than it would be at some point in the future, where temporary compulsory access has occurred for infrastructure projects for example.
- The quality of base data used to base payments on is more accurate, including common land.
- Recognises those new entrants that applied in 2021 just ahead of the consultation document and information being released.
- We do not see any significant impact of using a forthcoming reference year (2022) on tenants as periods of notification would have to be at least a year in length. Using such a reference year would still give the RPA time before the commencement of the scheme in 2024 to clarify the reference amounts with farmers.
- Using 2022 will be compatible with the lump sum exit payment scheme as there would be no double counting of claims, the 2022 BPS value would either go to 1) the lump sum calculation or 2) the delinked reference amount.
- Still allows those wishing to make changes to their businesses to do so in 2023 (though of course not ceasing farming in that year) as the basis of value would have been set before that year with full liberalisation happening in 2024.
- If BPS 2020 was taken as the earliest reference year it would be at the start of a period when entitlements values were essentially fixed and no influence from exchange rate disruption. Such a period would not be impacted by any Financial Discipline Reductions and all payments would have only been made in sterling and thus easier to check payments and those payments would be more representative.
- It would reduce the number of historical business changes that have taken place from influencing the reference amount, a later reference period would remove business changes that

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occurred up to 6 years prior to the start of the scheme, such as those related to inheritance, and IACS 26 / 27 changes.

- Reduces the number of businesses that the RPA need to look at details for as some have left the industry and will not return.
- Later years would capture the changes that have been made to the reference data now being used from 2021 onwards in the New Forest.

Question 24

Do you have any other comments on the proposed eligibility rules for delinked payments?

Response: The NFU has set out below its views on the current proposed eligibility rules. It is important to note that this proposed future delivery model for direct payments has the biggest impact on the current BPS claim population given that delinking is the default delivery model for direct payments after 2023 as proposed in the consultation document.

The NFU recognises the simplification benefits of removing the current annual BPS application process and enforcement regime. Setting out that the change to delinked payments is happening in 2024 will give the industry at this point a level of certainty on the future way of receiving direct payments.

- **Conditions associated with receiving the payment** - Whilst the consultation document covers broad principles about who is eligible, the connection to previous BPS claims and how to generate a delinked payment reference amount, it is silent on what rules farmers and those that will receive these payments from 2024 onwards will be required to follow, perhaps on an annual basis to continue to receive the payment? The Health and Harmony Policy Statement of 14 September 2018 stated: *'... but all farmers must continue to comply with good land management and husbandry standards. We are committed to maintaining a strong regulatory baseline, with enforcement mechanisms that are proportionate and effective.'* It is disappointing that nearly 3 years after this statement was made that we have no further information on what conditions may be applied to farming businesses that receives the delinked payment. There should have been more information on this covered in the consultation document. The NFU has provided to Defra in 2020 its principles of what good regulation and enforcement should look like, in both a policy payment and our response to an informal consultation ahead of the Financial Assistance Statutory Instrument becoming law. It is not clear what regulation and enforcement will be applied to those receiving these payments, especially when there will be a wide range of reactions to this new scheme – increase farming activity, reduce farming activity or leave farming.
- **Administration of the scheme** - It is also not clear what the administration process is likely to be in place in order to receive the payments from 2024, for example those that cease or downscale their farming activity, in some cases only occupying non-agricultural land. Equally what happens in the situation where the claimant dies, we would assume the delinked payment would continue to be paid to the estate of a sole trader or those taking on the running of the farming business.
- **Timelines** – There is a need for clear timelines of when a farmer can cease farming, reduce their farming activity, this is critical if farmers at that point wish to sell land, give up a tenancy etc. It is also critical to know exactly to what point a current BPS claimant would need to still be farming prior to the commencement of the delinked payment regime. It may sound that this obvious question has been covered in the document, but it is it at some point in 2024 or the end of the calendar year 2023?
- **Tenants** – We support the principle that this payment should be received by the tenant given the current rules that they are the ones eligible to claim under BPS.

- **New entrants** – We can understand the direction of travel for direct payments, but the current proposals fail to consider adequately in our view those that enter the industry after the start of the reference period or after the current proposed reference has closed. We believe that new entrants should have access to some form of delinked payments whilst it is being issued to those that claimed BPS based on the reference period to minimise a disparity within the industry during the period to 2027. We strongly believe that there should be support for new entrants for the following reasons:
 - New entrant often face more significant financial challenge than existing business
 - We do not know the details of the proposed new entrant scheme and how they will actually help all new entrants, especially those that will enter the industry in the next year or so.
 - The other alternative new schemes have yet to be fully developed, such as ELMs and farm productivity measures and currently are not going to replace BPS or direct payments.
- **Business change** – Defra identify that there will be a variety of changes to farm businesses which will happen after the start of the reference period and the NFU looks forward to developing solutions to help those that may be exposed to this change in delivery model for direct payments. However, many of the issues that will arise can be resolved by the development of the approach as we have set out for Question 23, where our guiding points are to minimise the time between reference period and commencement of the delinked payment and the ability for farmers to use the best years within a range of years. This would also help to minimise potential artificial changes being created and create as much flexibility as possible to the industry, which was a principle laid down in September 2018 in Defra’s response to the Health and Harmony consultation. In respect to such suggested artificial activity Defra needs to appreciate that there are business changes ongoing all the time and that maximising direct payments is not the main driver by farmers for the change. We can make this set of rules as demanding as we want, but what is there to gain when the lifetime of these payments and the impact of the transition are limited given the progressive reductions that are also being applied?
- We also do not want to see a repeat of the issues that arose when previous change to the basis of payment was introduced in 2004 when we transitioned from coupled IACS related scheme payments to decoupled SPS payments given there is a link here to a proposed reference period and the challenges this will have if there is a gap between such a period and the introduction of delinked payments. Let’s engineer out issues at source.
- **Access to other schemes** – We support the ability of recipients of the delinked payments to not be disqualified from applying for payment under the new ATP schemes, including our environmental land management schemes, though of course they would need to comply with the specific eligibility criteria of such schemes.
- **Working with Defra and the RPA** - The NFU looks forward to working with Defra and the RPA on the development of the finer details of this scheme in the coming year and in the run up to the release of more information and the transition from BPS to delinked payments in readiness for 2024.

END