



DAERA

**NORTHERN IRELAND FUTURE AGRICULTURAL
POLICY FRAMEWORK:
STAKEHOLDER ENGAGEMENT**

**RESPONSE BY THE
AGRICULTURAL LAW ASSOCIATION**

10 OCTOBER 2018

**Agricultural Law Association
PO Box 10489
Oakham
LE15 0GL**

mike.holland@ala.org.uk

**Agricultural Law Association Northern Ireland
c/o Peter Brown
Martin King French & Ingram LLP Solicitors
52 Catherine Street
Limavady
County Londonderry
BT49 9DB**

pb@mkfi.co.uk

**Tel: 028 7776 2307
07929 048330**



1.0 The Agricultural Law Association

1.1 Background

The Agricultural Law Association ('the ALA') was formed in 1976 and is the UK's largest interprofessional organisation devoted to the law and business of the countryside.

We focus on the law in a non-partisan, apolitical way in order to promote its knowledge, understanding and development among those who advise rural businesses.

The ALA has over 1370 members across the legal, surveying, accountancy, farm business consultancy professions together with academia and members with specific expertise in international trade and investment; with all principal professional firms and, uniquely, all other principal member organisations within the agriculture sector represented within the membership.

We are a member of the following current sector cross organisation groups in the UK:

Tenancy Reform Industry Group
Agricultural Representatives Bodies Group (Taxation)
Scottish Land Commission – Tenant Farming Advisory Forum
Land Partnerships Service – National Advisory Group

We are also the largest member association of the European Council of Rural Law.

The Northern Ireland Regional Group has over recent years in response to the challenges presented to local agricultural advisers by Common Agricultural Policy Reform and Brexit grown from a handful of members to an active branch with regular events. The speakers have included Department officials, academics, representatives of the Agri Food Strategy Board (discussing both their Going for Growth Report and Sustainable Land Management Strategy), Ulster Farmer's Union and Young Farmers Clubs of Ulster and experts from Northern Ireland and further afield.



1.2 Consultation Work by Members

As part of our response to the Stakeholder Engagement invitation ('this/the Engagement'), we have conducted member consultation with our Northern Ireland member representatives.

This response is submitted on behalf of the ALA and its members and we look forward to working with DAERA and other sector organisations on shaping the future policy for our sector in Northern Ireland.



2.0 GENERAL COMMENTS

- 2.1.1 The Association welcomes the steps taken by DAERA ('the Department') to bring forward this dialogue with key stakeholders, notwithstanding that it is acknowledged that at this stage this Engagement does not seek to prejudice or constrain any future incoming Minister, the NI Executive and the NI Assembly on the future NI agri-food policy.
- 2.1.2 Agriculture is an integral part of the UK countryside and it matters beyond its economic contribution. We believe that the emphasis of all agricultural policies set in the UK and the devolved administrations should be on progress within the industry, acknowledging the best practice that already exists as opposed to making changes for the sake of change.
- 2.1.3 The food consumed by the UK population affects its health and well-being and the production of that food within the UK provides an essential basis for the food and drink sector industries and our exports.
- 2.1.4 Whilst there is a case for change in the way agricultural policy is delivered, as an overriding principle, support for UK food production must be at the core of any future agriculture policy together with support for rural communities and services.
- 2.1.5 In addition to that core policy, we support the four key desired outcomes and long-term vision for the Northern Ireland agricultural industry as set out in the Engagement paper on page 7.
- 2.1.6 We do recognise that the system of support through the Common Agricultural Policy ('CAP') has led to a reliance on that support in general and has, in many circumstances, led to a stasis in innovation and investment; but that must be viewed through the prism of the effects of world prices on the commodities that the UK farming sector produces and the underlying profitability of farming businesses exposed to the world market and the high input cost of production, whether that be, for example, on labour, machinery, fuel etc. As is often cited, UK



farmers are price takers and the ability of farmers to influence the farmgate price, particularly in the case of bulk commodities such as cereals, is, on the whole, currently limited and will probably remain so.

The agricultural sector in NI is no different.

- 2.1.7 However, what is currently lacking is a clear direction on the trade policy of the UK following its exit from the EU and that is required in order to shape an agricultural policy that is fit for purpose. Any policy decisions therefore taken during the period until that trade policy is known must retain some flexibility to be re-visited to allow for adaptations to the agricultural policy.

3.0 UK GOVERNMENT LEGISLATION AND DEVOLVED POWERS

Since the publication of the Engagement paper on 31 July, the Agriculture Bill ('the Bill') has been published by the UK Government as found at:

<https://publications.parliament.uk/pa/bills/cbill/2017-2019/0266/18266.pdf>

The Bill as currently drafted and in relation to Northern Ireland, provides powers to the Department under Schedule 4 to/for:

- ✦ Modify legislation governing the basic payment system;
- ✦ General provisions connected with payments to farmers and other beneficiaries;
- ✦ Modify legislation governing the support for rural development;
- ✦ The requirement to provide information from persons in or closely connected with an agri-food supply chain;



- ✦ Exceptional market conditions;
- ✦ Modify retained direct EU legislation relating to public market intervention and private storage aid;
- ✦ Marketing standards and carcass classification;

Furthermore, with reference to the Explanatory Notes that accompany the Agriculture Bill is states (page 38 of the Explanatory Notes (which can be found at <https://publications.parliament.uk/pa/bills/cbill/2017-2019/0266/en/18266en.pdf>):

[The further provisions relating to Northern Ireland are provided] 'to enable DAERA to continue to make payments to farmers and land managers after the UK leaves the EU and to ensure future Executive Ministers have the flexibility to develop policy once an Assembly is returned.'

4.0 RESPONSE TO STAKEHOLDER ENGAGEMENT FRAMEWORK SECTIONS

4.1 TRANSITIONAL AGRICULTURAL SUPPORT REGIME 2019-2021

- 4.1.1 In the context of the wider UK agricultural sector, the retention of entitlements, or more generally the direct payments system, is supported whilst new agricultural policies are developed and put in place; not least to provide certainty for the sector on the basis for continued support during the UK's immediate exit from the EU and without the immediate change to a new system.
- 4.1.2 We would therefore support the retention of entitlements as the basis of the basic payment scheme for the 2020 and 2021 scheme years, particularly given the absence of an Executive and the implications that has for progressing the detail of a new agricultural policy.



- 4.1.3 The Engagement paper acknowledges the small impact that the greening requirements have in NI. We would support the removal of the crop diversification rules which impose an unnecessary burden on farmers and the Department without any significant productivity or environmental return.

We would also support the ability to remove Ecological Focus Areas and the current ploughing ban on environmentally sensitive grassland if only to provide a level of flexibility in any future policy which is not possible with those measures in place and whilst allowing for their reinstatement in the event that suitable alternatives cannot be found.

- 4.1.4 We support the continuation of payments to those Young Farmers Payment claimants who, up to and including 2019, have been accepted into the scheme and who may have invested in reliance upon the payments to which they have become entitled being available for the anticipated duration of the scheme .
- 4.1.5 Further applications to the YFP and Regional Reserve post 2019 should not be permitted to allow the current scheme, which although popular has many widely acknowledged deficiencies, to be replaced. This should be a bespoke Northern Ireland scheme which is more flexible, tailored to the specific circumstances prevailing in Northern Ireland and therefore fit for purpose. However the introduction of any new scheme should be immediate and seamless to ensure that the current momentum of generational renewal within the farming industry is not dissipated by any delay.
- 4.1.6 Whilst we generally support the retention of the direct payment criteria outlined under section 2.7 of the Engagement paper, the issue of proportionality of penalties, retrospective recoveries and the inspection regime must be addressed.
- 4.1.7 The Bill as drafted provides the power for changes to be made to the basic payment scheme that the Department considers will simplify or improve the scheme (Schd.4, para.2 (1) (a));



- 4.1.9 During the transition period consideration should be given to dealing with the issues raised by the current scheme in relation to land eligibility, time limits and cross compliance and indeed the other areas which have generated refusals and penalties which many perceive to be disproportionate.

Encouragement/Facilitation of Generational Renewal

- 4.1.10 Over the past few years there has been much discussion between the professional bodies that advise farmers and land managers in NI of the need for change.
- 4.1.11 For example, the current dependency on the use of Conacre agreements (for short term seasonal occupations of land) has resulted in limited access to longer-term occupation of land which in turn leads to an inability for new entrants to enter the sector and those existing farmers who might wish to expand, to do so. This in turn prevents investment and lacks certainty.
- 4.1.12 Access to land is a key feature of improved productivity in the sector and mechanisms in a new agricultural policy that would encourage progression in this area would be welcomed by the sector and those professionals advising owners and occupiers.
- 4.1.13 The current Land Mobility Scheme is welcome but would presumably benefit from incentives to increase participation. Consideration could also be given to working with professional bodies to provide training for their members and information and advice for participants on the various potential outcomes of such a scheme to ensure that there is no repetition of the shortcomings of some of the applications to the YFP scheme which resulted in otherwise compliant applications being rejected.
- 4.1.14 It should be noted that the issue of conacre is only one aspect of land mobility and has little or no direct impact on the related issue; generational renewal. Whilst progress on the issue of conacre and a move to longer term leasing would be welcome, consideration also needs to be given to other schemes which address the other aspects of land mobility and generational renewal in a more



comprehensive fashion such as has been achieved by the Republic of Ireland with its agri-taxation review including succession planning and the other aspects of these issues that longer term tenancies alone will not solve.

AGRICULTURAL POLICY FRAMEWORK BEYOND 2021

4.2 INCREASED PRODUCTIVITY

- 4.2.1 Whilst other organisations in the NI agricultural sector are closer to the current and developing technology 'on farm' and therefore are better placed to provide detailed comment, there is a need to encourage investment in innovation and technology to assist in increasing productivity.
- 4.2.2 The process of data sharing and ownership will underpin the ability to benchmark success and allow development of wide scale new approaches and it is important that data platforms used in the farming sector can be easily shared.
- 4.2.3 Consideration should be given to a tax credit for investment in on-farm R&D.
- 4.2.4 We were encouraged to see proposals in the UK Government's Health & Harmony consultation in England to bring groups of farms together in research syndicates to deliver practical solutions and that could also be linked to the tax credit principle stated above. We believe this is an initiative that has UK wide application and we would support such an approach in NI.
- 4.2.5 A policy of facilitation and financial support for near-market R&D approaches to encourage R&D investment throughout the supply chain is required. In addition, there should be an extension of the R&D tax relief for partnerships and sole traders.
- 4.2.6 Our members see the encouragement of CPD as a positive move for the farming sector, but the terminology of Continuing Professional Development may not be well suited to ensure take up in the farming sector; we propose that it should be geared more to a reference to 'Skills Development' or similar.



- 4.2.7 However, we would not support a policy that restricts access to financial support where that support is conditional on requirements to complete formal or informal CPD or similar.
- 4.2.8 In relation to investment and restructuring and in particular the use of fiscal incentives to promote land mobility and longer-term leases, we would reiterate our comments at 4.1.14 that longer term leases are only one aspect of land mobility and generational renewal. Subject to a caveat that taxation is not a devolved matter, fiscal incentives for longer term leases on its own will be of limited benefit in facilitating generational renewal and what is required is a more comprehensive approach along the lines of the Republic of Ireland agri taxation review, perhaps with an incentive on fiscal aid rather than tax incentives. The ALA nationally and regionally and its individual members at both levels would take this opportunity to offer their experience and expertise in the creation of any comprehensive approach and the documentation which would need to be developed to implement it.

4.3 IMPROVED RESILIENCE

- 4.3.1 With reference to our comments on short term occupation of land arrangements in 4.1.11 above, our members are concerned that the lending sector criteria in relation to the tenure of land occupation limits available access to funds.
- 4.3.2 One suggestion on a UK wide scale is that the lending sector should promote more multi-generational mortgage models for longer term loans, for example 40/50/60 year terms, to reflect the long term nature of farming and to provide a lower annual repayment liability spread over a longer period.
- 4.3.3 This would also assist in addressing issues of expensive infrastructure and innovation investment acting as a barrier.
- 4.3.4 In addition to the traditional routes of lending there may be an opportunity to develop alternative sources of finance that focus primarily on the agricultural sector. Development of bespoke products, increased supplier competition and producer choice will help facilitate decisions to further invest in the industry.



- 4.3.5 It is important that liquidity in capital markets dedicated for allocation to the sector remains stable to ensure sustainable levels of borrowing are accessible to those wishing to invest.

Basic Farm Resilience Support

- 4.3.6 We acknowledge that the retention at least temporarily if not permanently of a Basic Farm Resilience Support payment is necessary for an orderly transition from CAP to any post Brexit scheme

Risk Management and Resilience

- 4.3.7 Fundamental individual business resilience begins with optimising best operational and financial practice before adding in insurance or volatility measures. Opportunity exists to engage with producers to facilitate training in business planning and management skills, delivered through public and private sector collaboration.
- 4.3.8 Uptake of insurance products in the UK agricultural sector is low in comparison to many other developed economies where such instruments are routinely employed as part of a comprehensive risk management strategy and with Government support. A relatively immature UK market for these products requires a number of factors to be addressed before a significant increase in uptake could be expected. A key driver is the availability to the insurance industry of significant data sets with sufficient granularity to enable the development of index-based or standalone policy products. Additionally, raising awareness and use of insurance as a risk management tool amongst producers, balancing policy cost vs policy terms (coverage), minimising complexity, and facilitating a competitive insurance market would aid greater adoption of these products.
- 4.3.9 A broad range of price volatility management products are available and widely used internationally by producers and other supply chain actors in trading fungible agricultural and soft commodity products. Use of such instruments in the UK at a producer level is anecdotally limited. Physical forwards contracts, commodity futures and options derivatives, exchange traded commodities and



similar forex products offer significant potential for price volatility management. A programme developing awareness of these products, promotion of their use and linking producers with appropriate advisors and providers will be required to achieve a significant increase in uptake.

- 4.3.10 Public and private sector collaboration would be a logical delivery mechanism. Increase in demand for price volatility management products may also result in greater supplier competition, producer choice and development of new bespoke instruments.
- 4.3.11 We support in principle the suggestion of a domestic mechanism modelled on EU Common Market Organisation Regulation to assist in business planning.
- 4.3.12 With reference to the Bill, Part 3 of Schedule 4 sets out the powers that would be available to the Department as part of a wider response to exceptional market conditions, however it must be carefully noted that the Explanatory Notes to the Bill wording under clause 17 with reference to the provisions for England and therefore may be read across to NI, do not extend the Secretary of State's powers to intervene in the market in circumstances 'such as extreme weather events or animal disease unless they result in an actual or threatened market disturbance'.

Crisis Response Framework

- 4.3.13 As a general principle and in light of previous crises that have affected the agricultural industry (for example, foot and mouth disease), we support the introduction of a Crisis Response Framework; particularly if the explanatory note to the provisions under clause 17 of the Bill (see 4.3.12 above) are to apply equally to NI.



4.3.14 In this respect, the question must be addressed as to when any particular crisis is regarded as a local issue i.e. specific to NI only or where it has UK wide implications and therefore there must be joint work on developing this type of framework with the UK Government and devolved administrations.

4.4 ENVIRONMENTAL SUSTAINABILITY

Environmental Principles

4.4.1 We agree with the suggested environment principles as set out in the Engagement and we support proposals that allow for the development of a policy that has environmental protection and enhancement as an objective but to be effective, these principles must be framed in a policy of long-term sustainable land management. As part of this it is imperative that food production and environmental measures are complimentary and integrated.

Outcome based environmental measures

4.4.2 We would support an outcome-based model for environmental measures rather than schemes that are prescriptive and do not allow for seasonal variability and impacts of weather and other factors outside of the farmer or land manager's control.

4.4.3 This would therefore suggest that a landscaped based approach with wide uptake from farmers and land managers in a specific geographical location would create the basis for achieving long term sustainable aims for the protection and enhancement of the environment. We would see it as imperative that the development and implementation of such approaches must be jointly undertaken with the farming community. The imposition of an inflexible scheme with prescriptive measures in our view would not result in the uptake required to achieve the Department's suggested objectives.



4.4.4 However, in order to incentivise farmers and land managers to engage, the financial return must look beyond a costs incurred/income foregone model.

4.5 SUPPLY CHAIN FUNCTIONALITY

4.5.1 The farming sector is a crucial part of the supply chain however, we are disappointed that the remit of the GCA was not widened following the recent Government consultation that closed in January 2017 and we have urged the UK Government to re-consider the GCA remit to include primary producers.

4.5.2 As part of our approach to food products and, equally, with reference to food produced in the UK or imported for UK consumption, it is imperative that the system of food labelling provides the consumer with the necessary information to make a fully informed choice as to the food products they purchase. It is essential to the success of the UK farming sector that a high-quality food product produced by UK producers is properly and transparently distinguished from imported products.

4.5.3 We support the encouragement of Producer Organisations as part of the agri-food supply chain.

CONCLUSION

We have welcomed the opportunity to consider the Department's suggestions on the future agricultural policy for Northern Ireland and we would welcome continued dialogue with the Department in this respect; particularly whilst we await detailed policy proposals and consultation once a Minister is in place to deliver the same.



Contact Information:

Agricultural Law Association main contact:

Name: Mike Holland
Address: Agricultural Law Association
PO Box 10489
Oakham
LE15 0GL
Email: mike.holland@ala.org.uk
Tel: 07885 643341

Agricultural Law Association Northern Ireland representative:

Name: Peter Brown
Address: Martin King French & Ingram
52 Catherine Street
Limavady
County Londonderry
BT49 9DB
Email: pb@mkfi.co.uk
Tel: 028 7776 2307