



**WELSH GOVERNMENT CONSULTATION
SUSTAINABLE FARMING AND OUR LAND**

**RESPONSE BY THE
AGRICULTURAL LAW ASSOCIATION
30 OCTOBER 2019**

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

mike.holland@ala.org.uk



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 inter-professional 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 1470 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 Association's Regional Group in Wales which comprises practitioners from the legal, surveying and accountancy professions as well as academics and farm business consultants, has an active role in responding to matters of policy which affect their clients in practice.



2 Sustainability

Sustainable development has been attributed with a number of different definitions over the years.

Its definition varies according to the person who is providing the definition and the context in which it is explained.

Indeed, providing an example of the concept in practical terms is often the best way of explaining it to others. Sustainable development is notoriously difficult to define and has been used and misused in many contexts.^[1]

Furthermore, sustainability is a multi-dimensional concept containing many diverse elements and goals. Accordingly, composite definitions of the concept are to be preferred.

Generally, sustainable development is regarded as consisting of three elements; an economic element, a social element and an environmental element. All three must be considered and balanced effectively in order to achieve sustainable development.

Sustainable development requires balancing the food production requirement of the growing world population, whilst also preserving the environment.

3 The Key Proposals

We have referred to our response to the Welsh Government's *'Brexit and our Land'* consultation under a number of paragraphs below. To assist the reader, we attach a further copy of that response which generally underlines the principles we consider Government should adopt in developing this new policy and in the context of this consultation.

Furthermore, we re-submit our response to *'Brexit and our Land'* where comments made in that case equally apply to proposals in this consultation.

^[1] Dahl, A. L. (1997) *The Big Picture: Comprehensive Approaches in* Moldan, B., Billharz, S. and Matravets, R. (eds.) (1997) *Sustainability Indicators: A Report on the Project on Indicators of Sustainable Development* (John Wiley and Sons Limited: Chichester)



Sustainable Land Management

- 3.1.1 We welcome the development of a new agriculture policy in Wales that seeks to 'fill the gap' between the price primary producers receive for their product and what they provide as wider benefits to society and the environment.
- 3.1.2 As stated in our response to '*Brexit and our Land*', in ensuring the impact of Brexit does not undermine the true value of our land and its managers provide to Wales, policy must ensure that the core activity of agriculture, as an integral part of the UK countryside, and its economic contribution are fully recognised.
- 3.1.3 Whilst there is a case for change in the way agricultural policy is delivered, as an overriding principle, support for UK food producers must be at the core of any future agriculture policy.

The Sustainable Farming Scheme

- 3.1.4 With the above in mind, we welcome Welsh Government's objective of the proposed new Sustainable Farming Scheme to ensure that food production is not separated from environmental work on a farm. We also welcome the acknowledgement of forestry and woodland management as part of the scheme.

Farm Sustainability Review & Farm Sustainability Plan

- 3.1.5 We note the proposals that entry to the Scheme will be through a Farm Sustainability Review leading to a Farm Sustainability Plan. Whilst this approach is welcomed in providing farm businesses with a platform for reviewing their farming approach (which in itself will ensure that farm businesses 'test' the current sustainability and viability of their farming enterprises) this will require a substantial level of work for each applicant and require appropriate guidance and advice; both from the Welsh Government in administering the scheme and external advisers. We are concerned as to whether this proposal, where the objectives may well be justified and appropriate, have fully evaluated the cost and time to the applicant – assuming they have the right level of support from Government which in itself will require sufficient funding to support applicants and develop a sufficiently resourced advisory service.



- 3.1.6 Further consultation will be required on the Government's proposal for a '*swift Review and a simple Plan*'. The consultation is silent on what this threshold might be – how does Government propose to define a simple farm business and a complex one? Concern has also been expressed to our members by clients in respect of the level of business detail that is being requested or reviewed which in their eyes is seen to be personal and private to them as business owners.
- 3.1.7 As submitted in our response to '*Brexit and our Land*', the structure of the proposed new scheme must recognise that farming businesses will develop over time and new policy must consider the variety of business models that are available to farmers and ensure that policies do not hinder the development of alternative business structures during the course of the proposed multi-year contract.
- 3.1.8 We would also remind Government of our concern that any voluntary undertakings entered into through the proposed new scheme do not lead to statutory designations of land.

Sustainable Farming Payment

- 3.1.9 We agree with the proposed objective that a Sustainable Farming Payment should provide a meaningful income stream and a multi-year contract would allow farming businesses to plan effectively for a fixed period. However, does Government envisage that at the termination of this multi-year period that there would be an automatic right to renew for the agreement holder, assuming the contracted outcomes have been achieved or is this purely in the 'gift' of Government to grant a new agreement? The consultation is silent on the 'multi-year' period proposed. Is it envisaged there would be the same agreement term for all agreements or varied depending on the applicant's proposals, say 5 years, 10 years, 15 years etc?
- 3.1.10 We agree that Government should bear the risk of outcomes not being achieved where the agreement holder has met all of the conditions and obligations under the agreement.
- 3.1.11 We strongly agree with the approach to reward both 'maintenance' and 'creation'. Often new policy can be too heavily focussed towards 'creation' when many existing landscapes and features require support for proper and appropriate maintenance. In itself, maintenance and the correct approach to management, will provide positive outcomes beyond that which are currently provided. Careful



thought needs to be given as to how to monitor and review the actions and outcomes in relation to such management.

- 3.1.12 We agree that the proposed SLM outcomes are sufficiently broad to recognise different farm types. Whilst we agree with the proposed approach to determining the most appropriate actions on each farm (rather than universal prescriptions), this will require a significant level of support from Government and other advisory services where that level of expertise and support is not available within the farming business. In effect, what is proposed is a farm by farm assessment and approach – whilst this has the potential to deliver the most targeted of agreements possible, it may also miss opportunities for their to be wider, collective approaches over an increased area of land – some outcomes/objectives may require collaborative, joined up approaches across different farming businesses in a specific geographical area. Policy and the new scheme must recognise that possibility – particularly where a number of farming businesses wish to take that joint approach.

Business Support

- 3.1.13 We welcome the Government's intention to consult further on business advice, capital investment and skills development. Others responding to this consultation will be better placed to identify the most appropriate type of support in the case of capital investment, but we welcome this approach by Government.

Fair Access to the Scheme

- 3.1.14 We note that Government is not at this stage proposing specific eligibility criteria, capped payments and the status of tenant farmers. We draw Government's attention to our response to '*Brexit and our Land*' (paragraphs 2.2.2, 2.4.2, 2.4.5, 2.4.6 and 2.6.5).
- 3.1.15 At the time of writing, we await a further meeting of the Tenancy Reform Industry Group (scheduled for 11 November) and which follows the recent tenancy reform consultation by the Welsh Government (and that of DEFRA in the case of England). No doubt the responses to that consultation will assist with further discussions on the status of tenant farmers within the new scheme.



Collaboration

- 3.1.16 With reference to our comments in paragraph 3.1.12 above, we welcome the Government's acknowledgement of the role collaboration can play in delivering appropriate outcomes.
- 3.1.17 With reference to the consultation's comments on producer co-operations, we refer to our previous submission to '*Brexit and our Land (para 2.5.4)* that one strand of this aspect is to ensure the special status of producer organisations including derogations from competition rules, are maintained. We also wish to emphasise that collaboration can take place at many different levels and the success of Mentro/Venture in Wales, the EIP and Cooperation grants show that there is an appetite for collaboration within the sector is strong and that with some help and support from Government that appetite can be nurtured and developed.
- 3.1.18 Where collaborative approaches offer an appropriate approach to achieving outcomes, it must be recognised that if one party chooses not to continue with an agreement, that this must not prejudice other parties to the collaboration. Therefore, whilst in some cases, it may be a consideration to have a single agreement with multiple parties joined into the agreement, this is most likely to result in dispute should one or more parties wish to exit. Therefore, collaborative approaches should avoid single, multi-party agreements (unless there are compelling reasons to adopt that approach) with each agreement holder subject to the obligations of their own agreement.

Advisory Service

- 3.1.19 We support the Government's approach to recognise advice as investment in the capacity of farmers.
- 3.1.20 We support the general proposals for the structure of the advisory service and specifically that the service would be independent from any body that is responsible for enforcing regulations.
- 3.1.21 The Farm Liaison Service in Wales has been a vital part of the support offered by Welsh Government for many years. Our members are extremely grateful for the guidance and support that the members of that team provide. We envisage that an extension of that team and service would add extra value. In relation to an enhanced advisory service, we believe that farmers should be able to access what



they need and not be required to utilise what may be considered required by them. For example, some farmers will not require business advice as they will already be astute business managers but may be in need of advice on new technologies or enhanced environmental. Such advice needs to be provided by the best advisers available and should not be restricted by the calibre of the advisers. We believe that advice should be of an international standard in order to ensure that farmers are achieving world standards in a global market.

Industry and supply chain

3.1.22 We support the Government's approach to providing support to the wider industry and supply chain as a separate function to that focussed on delivering support to farmers through the Sustainable Farming Scheme. We need to build capacity within the processing sector in Wales in particular to ensure that we can take agricultural products through to marketable products which can go towards developing Brand Wales. Recent events in terms of processors collapsing or reducing their processing of red meat is also of concern.

3.1.23 We refer you to our comments under paragraph 3.1.17 above in respect of Producer Organisations.

Regulatory framework

3.1.24 We agree with Government that the regulatory framework is complex and significant area of developing work.

3.1.25 In our response to *'Brexit and our Land (paragraph 2.7)*, we set out our general view on the approach that is required, and we submit those comments again to this consultation.

3.1.26 In respect of the proposals set out in this section, we respond as follows:

Clear Minimum Standards

Farmers need to be absolutely clear as to what is required of them and we welcome a scheme which provides that clarity and transparency. An education programme will be required for farmers across Wales to make sure that the standards are understood from a practical point of view. In addition, Welsh Government should



consider how external factors may impact on a farmer's ability to adhere to minimum standards.

Smarter Monitoring

We believe that we should establish this new scheme utilising the best technology available at this time and should consider the utilisation of smart Apps, and GPS to enable farmers to carry out the majority of the monitoring as part of their scheme delivery and thus avoiding the need for duplication of work and cost of monitoring by Government. We appreciate that a number of farmers may require training to enable them to carry out such monitoring, but we believe that the majority of farmers have smart phones. It is important that such monitoring is not dependent on 3G or 4G connection and that the information will upload to the cloud when a farmer is back in an area with network connection.

Proportionate and effective enforcement

Penalties need to be proportionate and the first port of call should not be financial penalties. Our members are aware that there are a number of farming businesses that have received financial penalties and breached scheme rules under the current scheme because there have been extremely difficult family, health and financial issues on the farm. It is therefore hoped that Welsh Government will devise a support mechanism which can be invoked in such circumstances to assist people to overcome those difficulties rather than instigating financial penalties which make the issues worse. It is also not proportionate to penalise on a % basis and we encourage the Welsh Government to develop a fixed penalty mechanism in cases where breaches have occurred.

A number of breaches are often 'technical' in nature. These often relate to the date of submission of claims or forms and there should be consideration of how draconian the current system is in that regard.

Transition and funding

3.1.27 In our response to *'Brexit and our Land (paragraph 2.8)*, we set out our general view on the approach that is required during the transition phase, including our view that the transition period should mirror that in England and should be no less than seven years to end in 2027.



Notwithstanding the absence of the wording of the proposed new Agriculture Bills (both in the context of the UK Government and the Welsh Government) we submit those comments again to this consultation.

3.1.28 We believe that the best method to transition to a new scheme is to have a clear date when the new scheme is to be implemented with details of what that new scheme will entail including its Rules and Guidance known as far in advance of that date as possible. The existing scheme should continue until that new scheme is implemented but all farmers should move to the new scheme in one go. This is necessary to ensure clarity and certainty for farmers but also in terms of those who advise and assist with applications so that everyone is on a level playing field and we do not have a situation whereby we have multiple schemes running alongside each other at the same time. This would cause unnecessary complication and confusion.

4.0 CONCLUSION

- 4.1 We have welcomed the opportunity to consider the Welsh Government's policy proposals through this Consultation.
- 4.2 However, we urge the Government to remain flexible in its approach to developing a new agriculture policy whilst future trade and external relationships remain uncertain until the UK has agreed the terms of its exit from the EU and furthermore, its future trading relationship with the EU.
- 4.3 It is especially important that Government undertake a widespread means of communicating developing policy, particularly to those who do not seek external advice on a regular basis.

Contact Information:

Address: Agricultural Law Association
PO Box 10489
Oakham
LE15 0GL

Email: mike.holland@ala.org.uk

Tel: 07885 643341