Department
for Environment
Food & Rural Affairs

Direct Payments to farmers: Lump Sum Exit Scheme and delinked payments in England

Summary of responses and government response

February 2022

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1. Executive summary

1.1 From 19 May to 11 August 2021, the UK government consulted on 2 proposed changes to Direct Payments to farmers in England. Specifically, we invited views on our proposed Lump Sum Exit Scheme and our proposed approach to delinked payments.

1.2 The consultation received 654 responses. The UK government welcomes the interest and would like to thank all who contributed.

1.3 The executive summary gives an overview of the responses to the consultation. Further detail, and the government's response, is included in the main body of this report.

1.4 A list of organisations, including stakeholder organisations and representative bodies, who responded to this consultation can be found in Annex A. We received responses from a variety of respondents including farmers, members of the public, environmental groups and farming organisations.

Lump Sum Exit Scheme

1.5 Our proposed Lump Sum Exit Scheme is aimed at helping those farmers who wish to retire or leave the industry to do so in a planned and managed way, while freeing up land for new entrants and expanding farmers. Most respondents felt the scheme would help farmers to leave the industry.

1.6 Around half of the respondents considered a small number of farmers would be likely to take up the scheme. Of those respondents who considered the scheme would be of limited interest, most noted that exiting is a complex process and farmers would need time to consider all the options available to them.

1.7 In terms of who would likely benefit from the scheme, most respondents thought that farmers exiting the industry would benefit, with many commenting that this would particularly be the case for farmers who had already started to think about retiring.

1.8 Around half of respondents thought the scheme would benefit existing farmers who wanted to expand, with a slighter smaller number thinking it would benefit new entrants.

1.9 A common comment was that expanding farmers, by having more capital, assets and experience, would have an advantage over new entrants in acquiring the land freed up by the exiting farmers.

Conditions and eligibility rules

1.10 A slight majority of respondents felt that the scheme rules should require owner-occupiers who choose to rent out their land, to do so for a minimum term of 5 years. Many respondents agreed that where a tenant passes on an Agricultural Holdings Act tenancy to a successor, this should be treated as them having met the requirement of having surrendered their tenancy.

1.11 A majority of respondents agreed that a successful applicant should be allowed to keep their residential or commercial property, non-agricultural land, and up to 5 per cent or 5 hectares (whichever is the smallest) of their agricultural land in England. This was largely because it was felt that this would allow applicants to stay in the farmhouse and to leave the industry while still feeling connected to farming.

1.12 A majority of respondents considered that there should be a requirement to have first claimed Direct Payments in 2015, with most feeling that this would ensure payments would only go to those who were established in farming. There were also some who felt that a more recent year would be more appropriate. Most agreed that there should be exemptions to this rule for farmers who have inherited a farm, or succeeded to an Agricultural Holdings Act tenancy, since 2015.

1.13 Responses tended to emphasise the need to ensure that applicants have enough time to be able to plan and have an organised exit. This was thought to be particularly important for tenants. A period of 2 years, after the publication of the scheme rules, to exit the industry was the most popular option selected by respondents.

1.14 A large majority agreed that farmers who use common land to claim BPS should give up their rights of common to claim the lump sum. This was seen by many as part of exiting farming and would free up the rights for other farmers.

1.15 There was no consensus on the question of whether recipients should be able to retain their agricultural land, such as if they enter it into a woodland creation or landscape restoration scheme. A slight majority was against this approach. Of these, the primary reason given was that they believed it would not help release land for other farmers, as per the stated aims of the Lump Sum Exit Scheme. Of those who supported the idea, many said that it would benefit the environment.

1.16 A variety of additional comments were made about the proposed conditions and eligibility criteria. Some of the wide-ranging comments have been captured in Chapter 3.

Calculation of the lump sum payment

1.17 A majority of respondents supported using the average of 2018 to 2020 BPS scheme years as the lump sum reference period. Most of these considered that using an average would be fair as it would balance out any business changes and other anomalies. A range of alternatives were proposed including using a single year for simplicity, a longer period for fairness and a year or years closer to the year of application to minimise the amount of business change that would have occurred.

1.18 Most respondents agreed there should be a payment cap on the lump sum, with differing views on the level of it. A cap of £100,000 was the most popular choice.

1.19 Some respondents commented that if a higher lump sum were offered, it would increase the uptake of the scheme.

Delinked payments

1.20 There was a broad range of preferences for the delinked payments reference period. As with the lump sums reference period, most respondents believed it should comprise a number of years, so that any year-to-year anomalies would be evened out.

1.21 Many thought that the reference period should be before the introduction of reductions to Direct Payments, taking place in 2021, as they considered this would result in higher delinked payments. Slightly fewer believed there should be minimal gap between the end of the reference period and the date of delinking.

1.22 A range of other comments were made about delinked payments. Many respondents wanted to know what conditions those recipients who continue to farm must meet. Some respondents raised environmental concerns, highlighting the need for an effective regulatory baseline to be in place by the time of delinking and the end of cross compliance. Many respondents wanted extra eligibility conditions for delinked payments, such as to exclude organisations that don’t farm the land.

Next steps

1.23 Chapter 4 sets out the government response to our consultation. We will shortly send information about the key scheme rules for the Lump Sum Exit Scheme and delinked payments to all Basic Payment Scheme (BPS) applicants. We will invite applicants who are considering leaving farming to request a forecast of the lump sum amount they could receive.

2. Introduction

2.1 As part of the transition to our new agriculture policy in England we announced on 30 November 2020 that we planned to:

- in 2022, offer farmers who wish to exit the industry the option of taking a lump sum payment in place of any further Direct Payments
- in 2024, 'delink' Direct Payments from the land for all farmers. This means that recipients will no longer have to farm the land to receive the payments

2.2 The purpose of the consultation was to seek views on our proposed Lump Sum Exit Scheme and our proposed approach to delinked payments. It sought views on a set of questions including on:

- the eligibility criteria and aspects of how we should calculate the value of the lump sum
- the reference period to be used to determine eligibility for, and calculate the value of, delinked payments

2.3 The consultation ran for 12 weeks, from 19 May 2021 to 11 August 2021. This document provides an overview of the views and comments received.

2.4 In our consultation document we said we would work with stakeholders to develop rules and guidance on how business changes will be treated for the purposes of calculating the lump sum and delinked payments. For example, this includes businesses splitting and merging after the start of the reference period. We have had discussions with stakeholders on these issues and guidance on these rules will be included in the scheme information provided to farmers. Views from these discussions are not included within this document.

Number of responses

2.5 654 responses to the consultation were received. This includes campaign responses, from a Women Against State Pension Inequality campaign, as well as a joint campaign from the Landworkers' Alliance and Sustain.

2.6 633 responses were received through our online survey on Citizen Space, while 21 responses came in as either emails or as letters.

Table 1: responses to the consultation by channel.

Response channel	Responses received
Citizen Space online survey system	633
Email or letter	21
Total	654

About the respondents

2.7 Respondents were able to provide demographic information about themselves through the online survey. The analysis in this chapter does not take account of responses provided by letter or email, or those online respondents who chose not to provide demographic information.

Types of respondents

2.8 The following chart shows the number of online survey respondents for each respondent type.

2.9 In the online survey, respondents were asked to self-identify the category of respondent which they felt best represented them. It is important to flag that respondents self-identified as belonging to each of these categories, and that no verification has been conducted.

Table 2: breakdown of how respondents self-identified on the online survey.

Respondent types	Number of respondents	Proportion of online survey respondents (633 in total)
Farmers and/or landowners	344	54 per cent
Land agents or advisors working with Basic Payment Scheme (BPS) claimants	77	12 per cent
Farming representative organisations	11	2 per cent
Other stakeholder representative organisations	20	3 per cent
Other (please specify)	181	29 per cent

2.10 Those who answered 'a farmer and/or landowner' were then asked which sub-category they felt best represented them. Respondents were able to select multiple answers for this question.

Table 3: breakdown of how farmers and landowners self-identified on the online survey

Respondent types	Number of respondents	Proportion of those who selected 'a farmer and/or landowner' (344 respondents)
BPS applicant	272	79 per cent
Tenant	147	43 per cent
Owner-occupier	214	62 per cent
Landlord	35	10 per cent
None of the above	15	4 per cent

3. Responses

3.1 This chapter is in line with the original structure of the consultation paper. It deals first with the Lump Sum Exit Scheme and then delinked payments.

3.2 In each case, it begins with a short summary of the key themes, followed by a more detailed summary of responses to each of the questions in the consultation paper.

3.3 Respondents had the opportunity to answer as many or as few questions as they chose to. Since not all responses via email and letter answered consultation questions directly, these contributions have been summarised under the most relevant questions.

3.4 The charts in this chapter show how the online survey respondents answered the questions. Responses made via email and letter are reflected in the descriptive analysis for each question.

3.5 For responses to the open-ended questions (and ‘other’ responses for the quantitative questions), we have identified the key themes across all the responses. We have reported these qualitatively, with direct quotes from respondents where appropriate, such as where they represent a common view.

3.6 Respondents had the option to declare if they wanted their responses to be confidential. Quotes have been anonymised where appropriate.

Lump Sum Exit Scheme

Summary

3.7 Paragraphs 5.1 to 5.40 of our consultation document discussed our plan to offer farmers who wish to exit the industry the option of applying for a lump sum payment in 2022. It was split into 3 parts on conditions and eligibility rules, calculation of the lump sum payment and further information.

3.8 The key themes from the responses are listed below:

- A slight majority of respondents agreed that, for the purposes of the Lump Sum Exit Scheme, an owner-occupier who chooses to rent out their land must do so on a Farm Business Tenancy (FBT) with a minimum term of 5 years.
- The majority of those who disagreed felt that the minimum term should be longer, with others thinking it should be shorter or there should be no minimum.
- A majority of respondents agreed that where a tenant passes on an Agricultural Holdings Act (AHA) tenancy to a successor, this should be treated as them having met the requirement to have surrendered their tenancy.
- A majority agreed that a successful applicant should be allowed to keep their residential or commercial property, non-agricultural land, and up to 5 per cent or 5 hectares, whichever is the smallest, of their agricultural land.
- There was a majority who agreed that there should be a requirement to have first claimed Direct Payments in 2015 or earlier. Respondents who did not support this proposal often wanted the requirement to be for a more recent year.
- There was also a majority who agreed there should be exemptions from this rule for farmers who have inherited a farm, or succeeded to an AHA tenancy, after 2015.
- Respondents frequently highlighted the importance of giving applicants enough time so they can plan their exit, particularly for the surrender of tenancies.
- Around half of respondents thought farmers should be given 2 years to exit. A range of other time periods were also proposed.

- A majority of respondents agreed that farmers who use common land to claim BPS should have to give up their rights of common to claim the lump sum. Some of those who disagreed sought clarity on how the proposals fit with the existing legislation on common land.

- Opinion was divided on whether recipients should be able to retain agricultural land if it is entered into a woodland creation or landscape restoration scheme. A slight majority was against this approach.

- Other comments regarding the Lump Sum Exit Scheme included concerns that the proposed rules on partnerships and limited companies will be too restrictive, the need to clarify the tax treatment of the lump sum and a desire to keep the rules and application process for the scheme simple.

- Some respondents commented about how the Lump Sum Exit Scheme needs to align with support for new entrants.

- A majority of respondents supported using the average of 2018 to 2020 BPS scheme years as the reference period. A range of other periods were also suggested.

- The majority of respondents agreed there should be a payment cap, with a cap of £100,000 the most popular choice.

- A majority of respondents felt the Lump Sum Exit Scheme would encourage farmers to take the payment and exit the industry. Many of these respondents thought a small number of farmers would take up the scheme.

- A majority believed that extra professional advice and guidance, in relation to issues such as, tax would be required for those considering the Lump Sum Exit Scheme.

- A majority thought that the Lump Sum Exit Scheme would benefit farmers exiting the industry. Many thought that it would also benefit farmers who want to expand their business and new entrants.

Conditions and eligibility rules

Consultation questions

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 5 years. Do you agree?

Respondents were asked to answer yes or no and to give their reasons for how they responded and if they selected ‘no’ to explain what rules they would prefer to see instead.

3.9 591 respondents answered this question on our online survey. Of these, 53 per cent agreed with the proposal, while 47 per cent disagreed.

3.10 Those who agreed with the proposal largely felt that a minimum tenancy term of 5 years struck a balance between providing enough security to tenants so they can establish themselves, while still allowing landlords to have some flexibility. Also, some respondents considered that some new entrants may not initially want to commit to longer than a 5 year tenancy.

a) The Central Association of Agricultural Valuers (CAAV) saw 5 years as consistent with *“*achieving a sufficient break in the occupation of the land to be consistent with the ‘exit’ objective of the proposed scheme”.

3.11 Both landlords and tenants tended to support the proposal for owner-occupiers to have to lease their land on a FBT for a minimum of 5 years to qualify for the Lump Sum Exit Scheme.

3.12 The majority of those who disagreed with a minimum 5 year tenancy felt that the minimum term should be longer. Some respondents proposed alternative minimum terms, often 10 or 15 years. They reasoned that a longer minimum term would provide tenants with greater security, giving them more motivation to invest in the farm and join agri-environment schemes.

a) The National Federation of Young Farmers' Clubs (NFYFC) stated that “a five year FBT does not afford enough time for establishing and growing a business”.

b) The Tenant Farmers Association (TFA) commented that they “believe that the suggested length of tenancy at five years is too short. Farm tenants need security of tenure for investment, environmental management and for resilience”.

3.13 A small group of respondents wanted a shorter minimum term, or no minimum term. The main reason given was that they felt a 5 year minimum term would have an adverse effect on scheme uptake. This is because both landlords and tenants might be put off by being locked into a tenancy for that long.

a) The Country Land and Business Association (CLA) prefer for there to be no restriction on the length of the new tenancy.

3.14 Some respondents proposed making the minimum term requirement more flexible, including, the:

a) Agricultural Law Association (ALA) who said that: ”53 [per cent] of their members who they surveyed supported a 5 year minimum if there was a break clause for the second or third year”. Some respondents considered it appropriate to only allow certain types of break clauses.

b) National Farmers' Union (NFU) who proposed allowing for “one or two consecutive agreements to one or more tenants but still covering the minimum 5 year period”.

3.15 A few respondents expressed the view that owner-occupiers should only be able to qualify for the scheme by selling their land. They believed it unfair that the applicant might be able to re-enter farming after the agricultural transition period has ended and then take part in the new schemes.

3.16 There were also a few respondents who felt that applicants should not be restricted to FBTs and suggested that other farming arrangements should be considered, such as share farming and contract farming.

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?

Respondents were asked to answer yes or no and to give their reasons for how they responded.

3.17 566 respondents answered this question on our online survey. Of these, 74 per cent agreed with the proposal, while 26 per cent disagreed.

3.18 Many of those who agreed with the proposal felt that it would help to facilitate successions and re-structuring of the industry.

a) This was reflected in the joint campaign from Sustain and the Landworkers' Alliance (LWA) which said that “should the tenant holder pass on their tenancy to a successor tenant, this would qualify them as having terminated their tenancy and allow them to pass it on to the next generation”.

3.19 Some of those who agreed with the proposal wanted further flexibility. For example, some thought that where a partnership applies for the lump sum, one of the partners should be allowed to succeed to the Agricultural Holdings Act tenancy and continue farming.

3.20 Of those who disagreed with the proposal, many felt that a successor to an Agricultural Holdings Act tenancy would be a family member, rather than someone completely new to farming. Therefore, this might not be introducing fresh ideas to the industry. There were also concerns raised that the applicant to the Lump Sum Exit Scheme might still be in control of the farm in all but name.

Question 11: should a successful applicant be allowed to keep their residential or commercial property, non-agricultural land, and up to 5 per cent or 5 hectares, whichever is the smallest, of their agricultural land in England?

Respondents were asked to answer yes or no and to give their reasons for how they responded.

3.21 581 respondents answered this question on our online survey. Of these, 70 per cent supported the proposal, while 30 per cent disagreed.

3.22 A large majority of both owner-occupiers and tenant farmers supported this proposal. Of the respondents who supported the proposal, most expressed the view that it would help those exiting the industry and therefore encourage uptake of the scheme.

3.23 A variety of reasons were given for this. For example, the applicant may struggle to find housing elsewhere and may feel attached to the farmhouse. Some felt that by being able to keep some agricultural land, the applicant will still feel part of the farming community.

3.24 Many respondents identified that they thought this proposal would be fair. Some of these respondents highlighted that this is because BPS is based mainly on agricultural land and the applicant could have commercial buildings which could have nothing to do with the farm business.

3.25 Some respondents stated that the proposal would also help applicants who are exiting to be able to enter a new industry. The Addington Fund thought that this proposal “has significant merit as it is opportunity for him or her to run a small business or rent out units to provide a retirement income".

3.26 Among respondents who disagreed with the proposal, there was a split between those who felt the applicant should be allowed to keep more of their land or property, and those who felt that applicants should be able to retain less. A greater number felt that applicants should be allowed to keep less of their land or property (including some who felt they should not be able to keep any) than felt applicants should be allowed to keep more.

3.27 Some of the respondents who disagreed with the proposal had concerns that it could lead to new entrants having to either build new buildings to support their farm business or live somewhere off the farm, meaning they may feel reluctant to enter the industry. The fear was that this would lead to larger farms on average, as only expanding farmers would be interested in taking on the land.

3.28 There were some wider concerns raised over planning permission. Some respondents felt that new entrants who are taking on land without buildings should be given planning permission if they want to build housing or commercial buildings.

3.29 There were a small number of respondents that argued that applicants should be allowed to keep a greater amount of land, often suggesting applicants should be able to retain up to 10 or 20 hectares. The reason behind this was that it would mean they would more easily stay part of the farming community and it would encourage more uptake of the scheme.

3.30 Also, some felt that the 5 per cent rule could leave smaller farmers with only a very small amount of land and that this part of the rule should be removed. For example, CAAV supported removing the 5 per cent aspect of the rule, providing the example of a 20-acre holding being left with less than a paddock, and they also considered that removing the 5 per cent rule would simplify the scheme.

3.31 Some commented that these rules could not be applied to tenants unless agreed with their landlords. The National Trust thought that the proposal could work for owner-occupiers but would have difficulties for tenanted farms.

Question 12: should it be a requirement to have first claimed Direct Payments in 2015 or earlier to qualify for the lump sum?

Respondents were asked to answer yes or no and to give their reasons for how they responded.

3.32 571 respondents answered this question on our online survey. Of these, 60 per cent agreed with the proposal, while 40 per cent disagreed.

3.33 The view expressed most frequently by those who supported this proposal was that it would mean only those who had been farming for long enough to establish themselves within the industry could qualify for the payment, so would prevent people from exploiting the system.

3.34 It was considered that this would help to avoid a situation where applicants have only entered the industry to receive the lump sum, while also ensuring it goes to those who have committed a significant amount of time to farming.

3.35 Respondents who did not support this proposal often wanted the requirement to be for a more recent year. Many thought that the 2015 rule would allow fewer people to qualify for the scheme, which would lessen the amount of structural change in the industry.

3.36 The NFU wanted the qualifying date to be brought forward to 2018. Their reasoning included that it would align with when the intention to offer lump sum payments was first announced and that it would not disadvantage those who had entered farming prior to the EU referendum with an expectation of continuing Direct Payments.

3.37 Some respondents thought that the proposed rule should be removed completely as they felt it to be an unnecessary complication.

3.38 Concerns regarding business changes were raised by some respondents. Business ownership structures are likely to have changed since 2015 and some respondents were concerned that this could disqualify applicants and create complexity. For example:

a) The TFA, while supporting the proposed 2015 requirement, stated that “this rule must recognise that certain individuals, partnerships or companies will have been formed from mergers with and acquisitions of other businesses to create new legal entities and new partnerships”.

3.39 A small number of respondents wanted an earlier year than 2015 as they felt the payment should only be available to those who had been in the industry for a long period of time.

3.40 There were alternative approaches proposed. Some suggested that the requirement should be based on the age of the farmer rather than the length of time that the applicant had been farming. This is because it was generally viewed by those respondents that older farmers might be interested in applying to the Lump Sum Exit Scheme even if they had taken on the farm since 2015.

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?

Respondents were asked to answer yes or no and to give their reasons for how they responded.

3.41 428 respondents answered this question on our online survey. Of these, 65 per cent supported the proposal, while 35 per cent disagreed.

3.42 Many respondents who supported an exemption expressed the view that this would be fair, as the inheritance or succession, and its timing, could have happened beyond the applicant’s control.

3.43 Some respondents thought that someone could have inherited the farm business without actually wanting to be involved in agriculture.

3.44 Some other respondents saw this exemption as beneficial because it would encourage more successions and therefore create more opportunities for new entrants.

3.45 Concerns were raised by those who disagreed with this exemption. The most common reason given was that it was felt that the UK government should not be paying young or new farmers to exit.

3.46 There were also some concerns from respondents over whether applicants would be using this exemption to exploit the system to receive the lump sum payment.

3.47 Additional exemptions were proposed by some of the respondents, such as where the applicant had been in an accident or had poor health. The CLA believe there should be an appeals process in instances where the 2015 date would cause hardship.

3.48 Several respondents proposed a range of extra criteria. For example, some felt that the applicant must provide proof that they were involved with the farm business before they gained ownership of it.

3.49 Other suggestions included criteria based on the age of the applicant, whether the applicant had been in environmental schemes and the size of the farm.

Question 14: how long, from the publication of the scheme rules, should an applicant be given to transfer their land?

Respondents were asked to choose an answer from one of the following 1 year, 18 months, 2 years or other. They were also asked to give their reasons for how they responded.

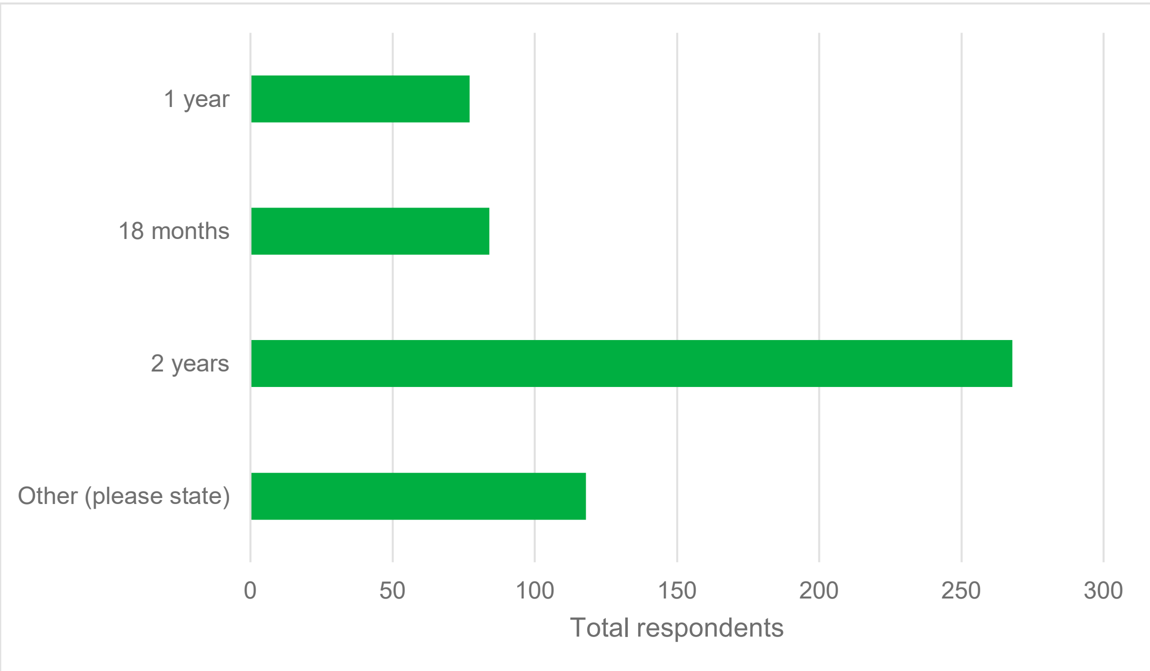

Figure 1: how long should an applicant be given to transfer their land (question 14).

3.50 547 respondents answered this question on our online survey. Of these, 14 per cent selected 1 year, 15 per cent selected 18 months, and 49 per cent selected 2 years. 22 per cent selected 'other'.

3.51 Respondents who chose ‘other’ put forward a wide range of suggestions for the time frame. These tended to support a longer period such as 3 to 4 years or no time limit at all. Some identified a shorter period of less than 1 year.

3.52 The predominant concern identified by respondents was whether farmers would have enough time to plan and organise their exit.

3.53 The NFU stated that “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”.

3.54 Issues surrounding tenancies were a common concern for those who wanted a longer amount of time allowed for exiting, such as 2 years or longer.

3.55 Some respondents commented on the need to allow time for the tenant to provide notice to their landlord and then, from that date, at least 12 months to leave the farm.

a) An example provided by the CLA is that if the scheme rules are published in October 2021 and the tenancy term date is 25 March, a notice could be served in October 2021, but it would not be effective until 25 March 2023.

3.56 Several respondents highlighted that where tenancy succession is opposed by the landlord, the process to resolve this can be lengthy. A few respondents called for additional time to be given in circumstances such as this.

3.57 Respondents who identified as landlords often raised the point that once their current tenant had handed in their notice, the landlord would then need to find a new tenant who would be appropriate for their holding.

3.58 Many respondents noted that enough time must be given for owner-occupiers to sell the land, as well as tenants to surrender tenancies. The Royal Institution of Chartered Surveyors (RICS) believes that 18 months represents a reasonable timeframe for applicants to transfer their land.

3.59 Agricultural cycles were another reason cited by respondents for a period of 18 months or more to exit. Respondents wanted to ensure that farmers would be able to complete agricultural activities, such as cropping or breeding cycles, before exiting. The Association of Chief Estates Surveyors and Property Managers (ACES) Rural thought that 2 years should be allowed for the cessation of all activities.

3.60 Several respondents were concerned that having too short a period would put a strain on the capacity of land agents and lawyers who will be aiding the transfers. Some also felt that if the time period were too short then it could lead to a sudden shock to land prices and rent levels.

3.61 Those respondents who wanted a shorter period, such as, 1 year or less, generally considered that this would encourage change within the industry sooner. It was felt by some that the longer the period, the longer people would delay leaving.

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?

Respondents were asked to answer yes or no and to give their reasons for how they responded, in addition if respondents selected ‘no’ they were invited to explain what rules they would prefer to see instead.

3.62 549 respondents answered this question on our online survey. Of these, 75 per cent agreed with the proposal, while 25 per cent disagreed.

3.63 Of those who supported the proposal, most considered that if the rights of common were not given up then the person in question would not have left farming. Some respondents suggested that common land should be treated in the same way as other land.

3.64 Some indicated that if a farmer is leaving the industry, they would have no need to keep hold of rights of common.

3.65 Many respondents also noted that rights of common are generally attached to the land, so should be transferred along with the land. Some respondents who supported the proposal highlighted the importance of Lump Sum Exit Scheme applicants giving up their rights of common so that the rights are made available for other farmers, for example:

   a) The LWA and Sustain felt that any right to farm on a common should be released and made available to new entrants. They believe that common land farming could be an attractive avenue to support new entrants into the farming sector.

3.66 The Foundation for Common Land supported the proposal, noting that in most cases rights of common are linked to the land to which they are attached and cannot be severed from the land unless leased for 2 years or less. They also said that:

   a) Given it is proposed that FBTs need to be for at least 5 years for the Lump Sum Exit Scheme, then the rights of common should be given up.

   b) That commons rights which are held in gross, rather than attached to the land, should also be given up, so they are available to be used by a new generation.

3.67 The Open Space Society was among a few respondents who commented that rights of common should not be extinguished, as they consider it is important that the rights are not lost permanently.

3.68 Many of the respondents who disagreed with the proposal argued that commons rights are different on each common, meaning a standard approach may not be appropriate, and that it would be disproportionate to require rights to be given up where they are attached to property or to the land retained by the Lump Sum Exit Scheme applicant.

3.69 A range of other concerns and comments were raised by respondents, for example:

a) The Federation of Cumbria Commoners was concerned that where tenants take the lump sum, the landlord may choose not to re-let the rights of common, which will make it difficult to maintain the hefting system on the common.

b) Other respondents thought the scheme could help reduce overgrazing on some commons.

c) The New Forest Defence Association, who disagreed with the proposal, thought that many commoners that are retiring would wish to continue commoning on a small-scale post retirement and, if they could not do this, would not take the lump sum. They also had concerns that, if farmers are incentivised to exit, the scheme could add further pressure on the lack of land available in the New Forest for back-up grazing.

d) The NFU felt that, rather than being required to give up their rights of common as proposed, applicants should either have to agree not to use them or choose to lease them to a third party.

3.70 Some respondents sought clarity on how the proposals fit with the existing legislation on common land. A few respondents commented that the impact on existing agri-environment schemes of commoners exiting should be considered.

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?

Respondents were asked to answer yes or no and to give their reasons for how they responded, and to provide details if yes was selected.

3.71 There were 571 responses to this question on our online survey. Of these, 47 per cent felt that applicants should be able to retain their agricultural land in some circumstances. 53 per cent did not feel applicants should be able to retain agricultural land (beyond the small amount allowed).

3.72 Of those who responded ‘yes’, the most commonly given reason was that it would benefit the environment if more land were entered into woodland creation and landscape restoration schemes. For example:

a) The NFYFC, while expressing some reservations about its impact on new entrants, supported the idea on balance as “there could be environmental benefits for entering land into a scheme for woodland creation or landscape restoration”.

3.73 Some respondents also felt it would give extra flexibility to farmers and make the Lump Sum Exit Scheme more attractive if recipients could retain some element of stewardship of the land, they previously farmed. For example:

a) The National Trust, who were in favour of allowing farmers to retain agricultural land under the schemes in question, said: “This could be a useful provision with merit where farm occupiers wish to stop farming the land and move to full conservation or environmental land management while staying in occupation of the land.”

b) Some other respondents also commented that the existing farmers would be best placed to oversee the implementation of woodland creation and landscape restoration agreements, given their previous tenure and knowledge of the land.

3.74 Some of those who answered ‘yes’ to this question commented on the types of schemes which should be covered by this rule. For example:

a) The CLA was in favour of allowing farmers to retain land entered into woodland creation and landscape restoration schemes and said there ought to be no barrier to recipients of the lump sum engaging in future support schemes that are not linked to farming activities, such as, the hedgerow and woodland management standards within the Sustainable Farming Incentive, or the woodland creation options under Countryside Stewardship.

b) The Confederation of Forest Industries (Confor) commented that the “...creation of new woodland through private funding should not exclude the owner from accessing BPS or the lump sum payment.”

3.75 Of those who answered ‘no’ to this question, many said that less land would become available for other farmers if recipients of the lump sum were able to retain agricultural land. For example, one respondent said: “...it will detract from younger farmers getting into the industry.”

3.76 Sustain also opposed the idea as “efforts should be made in every instance to transition any land made available under these schemes to new entrants to farming, who themselves can then benefit from integrating environmental outcomes and schemes such as woodland creation into their new farming businesses”. Broadly similar views were expressed by the CPRE.

3.77 Others who answered ‘no’ to the question, including the NFU, said that allowing farmers to retain agricultural land if it is entered into such schemes would mean that the recipient had not really ‘exited’ the industry and so would undermine the purpose of the Lump Sum Exit Scheme.

3.78 A few respondents were concerned with ‘double-funding’, by allowing recipients to receive a lump sum and further money through the woodland creation or landscape restoration schemes. CAAV, who considered that the approach appears to be consistent with wider policy objectives, also noted that it may bring administrative complexities.

Question 17: do you have any other comments on the proposed conditions and eligibility rules for the Lump Sum Exit Scheme?

3.79 360 respondents provided additional comments on the proposed conditions and eligibility rules.

3.80 Quite a few respondents said they wanted the eligibility criteria and application to be as simple as possible.

3.81 Another request from several respondents was for clarity in how the lump sum would be treated for tax purposes, which was seen as very important for uptake of the scheme.

3.82 In addition, quite a few respondents had concerns about the proposed way in which partners and directors of companies would be treated, as these were seen as too restrictive, for example:

a) The TFA considered that “Very often, farming companies and farming partnerships will have brought into their governance, younger members of farm families as part of long-term succession planning. It would be extraordinarily harsh for such individuals to be prevented from farming in the future”.

3.83 Some respondents also sought clarification on what would happen to those already in receipt of Countryside Stewardship, Environmental Stewardship and woodland grant scheme payments.

3.84 A few respondents also wanted to know how the Lump Sum Exit Scheme would impact cross-border holdings.

3.85 There were some respondents who felt the lump sum payments should not just be for those who want to leave farming but instead should also be available for those who want to invest in their farm business.

3.86 The TFA considered this could improve productivity, while RSPB thought it could help continuing businesses to invest in environmental outcomes.

3.87 Quite a few respondents, thought it would make sense if the Lump Sum Exit Scheme were aligned to support for new entrants. For example, the knowledge of existing farmers should be used to develop new entrants, especially in the uplands and in terms of the sustainable management of common land.

3.88 We received some responses from the Women Against State Pension Inequality campaign group who disagreed that we should have a Lump Sum Exit Scheme and reiterated their broader views regarding the age at which women receive their state pension. The Department noted the points about the state pension, but respectfully considers the issue of state pensions to be outside the scope of this specific rural affairs consultation, which relates to changes to the way in which farmers receive Direct Payments as we phase them out. The points about the state pension were passed to the Department for Work and Pensions.

3.89 Several respondents noted that it was important that the rules took account of business changes, such as mergers and splits of businesses, so that applicants would not become ineligible for the lump sum as a result of such changes.

3.90 Quite a few respondents thought it unnecessary to have rules to prevent applicants artificially changing their business to claim payment, such as splitting their business to maximise their lump sum payment. This is because they considered such rules could inhibit legitimate business changes.

3.91 Supporters of the LWA and Sustain joint campaign disagreed with the mechanism being suggested to ‘gift’ land. They consider this could lead to land staying within the ownership of the family of the current owner, rather than being opened up as an opportunity for a new entrant and therefore would not fulfil the objectives of the Lump Sum Exit Scheme.

3.92 Other comments raised by quite a few respondents included the need for the scheme rules to be made available in good time and for there to be clarity over the timing of payments, as well as clarity on the implications for those in existing agri-environment agreements.

3.93 Other comments included concerns from a few respondents about the proposed cancellation of leased-in entitlements.

Calculation of the lump sum payment

Consultation questions

Question 18: what reference period should the lump sum payment be based on?

Respondents were asked to choose an answer from one of the following, the average of the 2018 to 2020 BPS scheme years, the 2020 BPS scheme year, or other. They were also asked to give their reasons for how they responded.

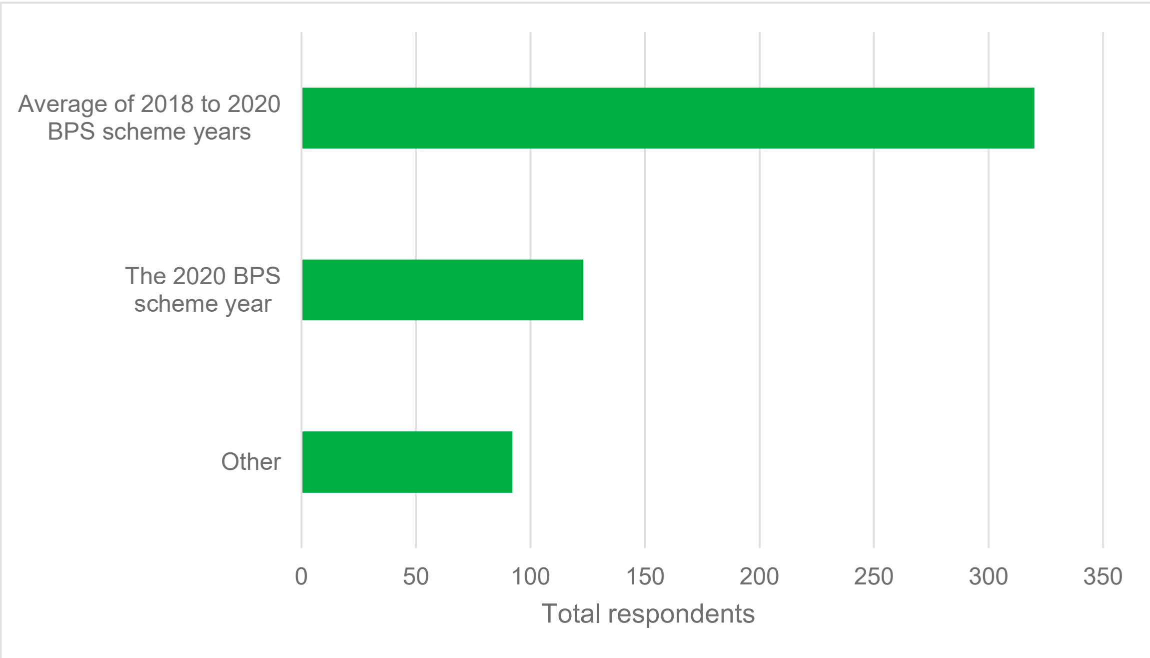

Figure 2: what reference period should the lump sum payment be based on (question 18).

3.94 535 respondents answered this question on our online survey. Of these, 60 per cent selected an average of BPS 2018 to 2020 scheme years and 23 per cent selected using the 2020 BPS scheme year. 17 per cent selected 'other' reference periods.

3.95 The most common reason given by respondents who chose an average of 2018 to 2020 was that they considered it to be fair. They felt that it would average out the impacts of business changes and other anomalies. Respondents supporting 2018 to 2020 included the ALA, CAAV, CPRE and the NFYFC.

3.96 Some respondents that chose the 2020 BPS scheme year identified that they did so as it was simpler than using an average, because it is close to the year of the lump sum application and 2020 was the last year before progressive reductions were applied.

3.97 Respondents also suggested a range of other reference periods. Some suggested other single years, including 2015, 2016 and more recent years. For example:

a) The CLA suggested the reference period should be based on one year as close to the introduction of the scheme as possible, either 2020 or 2021, to minimise the impact on businesses that have recently restructured.

b) The British Institute of Agricultural Consultants considered that a reference period of 2021 would minimise hardship cases.

3.98 A few respondents considered that a longer reference period would be more equitable. Longer periods which were suggested included the average of 2015 to 2022 and average of 2010 to 2020.

3.99 Other suggestions included using the reference period which provided the applicant with the greatest value.

3.100 Some respondents who supported an average over a number of years, such as the NFU, commented that the reference period should include a year as close to the year of application as possible so that it was more representative of the exiting business.

3.101 Additionally, the NFU would like to see an option for farmers to remove one year if it is particularly disadvantageous, such as where an applicant made a mistake or was not able to claim on land temporarily.

3.102 The TFA offered an alternative approach. Under their proposal, individuals should be given the option of choosing one of the last three years as the reference period subject to them still having ownership of a sufficient number of BPS entitlements in 2022.

Question 19: what cap should be applied to the recipient's lump sum payment?

Respondents were asked to choose an answer from one of the following, no cap, £100,000, or other. They were also asked to give their reasons for how they responded.

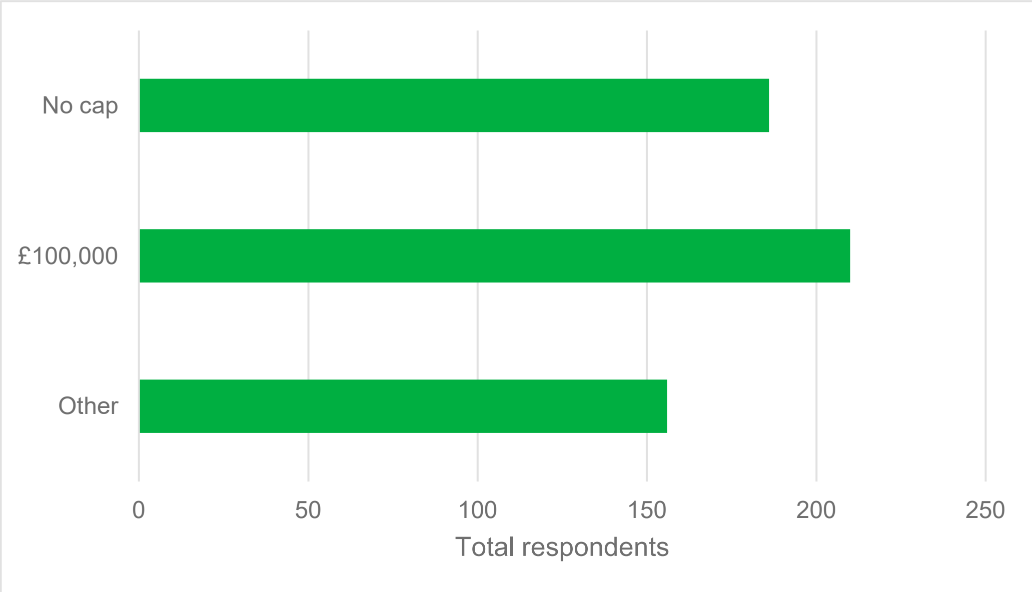

Figure 3: What cap should be applied to a recipient's lump sum payment (question 19).

3.103 552 respondents answered this question on our online survey. Of these, 38 per cent thought a payment cap should be set at £100,000, while 28 per cent felt there should be a cap but that it should not be £100,000. 34 per cent did not believe that there should be cap.

3.104 Of those who agreed with a £100,000 cap, some felt lump sum amounts higher than that would lead to public criticism. Other reasons given included that otherwise it is likely many large estates could receive a very large amount of public money.

3.105 Some respondents commented that a £100,000 cap would be fair as most farmers would be unaffected by it.

3.106 The CLA, while agreeing with a £100,000 cap, consider there should be a mechanism available to increase it to £200,000 in exceptional circumstances. The RSPB also supported a £100,000 cap, with the potential for it to be raised in some circumstances, such as if the applicant ensures continuation of positive environmental land management.

3.107 Respondents made a wide range of suggestions for other amounts that the cap could be, from £1,000 to £1 million, with no suggested amount having a majority. Some respondents commented that a cap of £100,000 would mean some tenant farmers would not apply as this amount would be insufficient to buy a house. This was reflected in comments from the Farming Community Network.

3.108 The Addington Fund suggested that the cap should be increased to £150,000 to encourage retirement.

3.109 Some other comments from respondents included that the cap should be means tested, the cap should be based on an area payment for an average sized farm and that a higher cap could lead to a greater uptake of the scheme.

3.110 Another comment was that a cap could be applied to the reference amount, rather than the final lump sum amount, to avoid any concerns about businesses splitting to avoid the cap.

3.111 Farmers with both large and small farms provided a range of responses, including wanting no cap, supporting a £100,000 and supporting a cap of different amounts.

3.112 Respondents who were against a cap provided a variety of reasons for this. Many of these respondents, including the NFU, argued that a payment cap could mean that some larger farms would not apply for the lump sum and that it could act as a barrier to exit.

3.113 The NFU also consider a cap would be unfair, and arbitrary, as it would result in farmers being treated differently depending on which side of the limit they fall.

3.114 Another concern identified by some of the respondents who opposed a cap was that it could mean the financial package would not be attractive enough to get farmers to commit to exiting.

3.115 Some respondents considered that, rather than a cap, there should be tax breaks and incentives for individuals to let or sell the land to incoming farmers.

Further information

Consultation questions

Question 20: 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?

Respondents were asked to choose an answer from one of the following, yes, many farmers, yes, a small number of farmers, no, very limited interest, or we should not encourage exits. They were also asked to give their reasons for how they responded and provide any supporting evidence they may have.

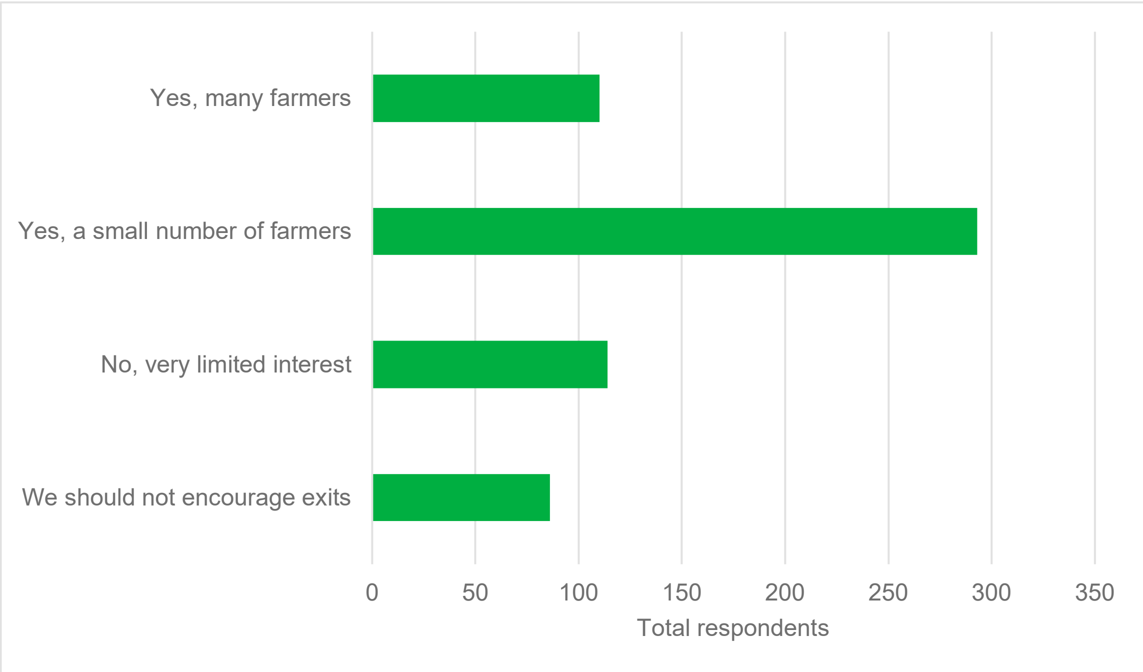

Figure 4: would farmers be encouraged to take a payment and exit the industry (question 20).

3.116 603 respondents answered this question on our online survey. Of these, 18 per cent thought that many farmers would be encouraged to apply for the scheme, while 49 per cent thought a small number would be. 19 per cent believed there would be very limited interest and 14 per cent thought, we should not encourage exits.

3.117 Most respondents who thought that many farmers would be interested considered that the farming population is ageing and that this scheme would appeal to them.

3.118 Some of these respondents also noted that not all farmers have a succession plan in place.

3.119 Some respondents thought the scheme would help some farmers to retire and pass the farm onto their children who would like to run the business.

3.120 Several agents who responded identified that they have received a large number of enquiries from clients expressing an interest in applying to the proposed scheme.

3.121 Other respondents felt that, although the scheme would not provide a vast sum of money, it would provide an opportunity for some tenant farmers to leave farming with a chance of renting a home.

3.122 Some respondents felt that the reductions to BPS payments, and lack of detail about future support schemes, will persuade many of those with small farms, who may be unprofitable, into considering taking up the scheme.

3.123 Quite a few respondents felt this scheme would only attract a small number of farmers because farming is a way of life and a farmer's socio-cultural ties are not like those of a salaried person.

3.124 Some respondents identified that farmers are tied to the land, with many farms having been in families for generations.

3.125 Some respondents highlighted that the amount offered needs to be enough to overcome emotional attachment.

3.126 Some respondents also flagged that the proposed multiplier being used to calculate the lump sum will mean that the money available would be insufficient to provide for retirement plans, leading to a limited uptake.

3.127 The Addington Fund and the NFYFC also suggested that, if the multiplier were higher, it would probably encourage more smaller farmers to apply for the scheme.

3.128 Many respondents who felt there would be a limited interest commented that exiting farming is complex, as it involves family life.

3.129 Some respondents identified that exiting can be structured to meet the rules of a scheme but may still not alter the actual control of a family business in the real world.

3.130 Some of the other comments received expressed the opinion that farmers should continue farming as they wish, with no government interference.

3.131 A few also commented that no other part of the population receives this exceptional treatment.

3.132 Some respondents felt the principle of a scheme might appeal to farmers, but it is difficult to say without further detail, including how the lump sum would be treated for tax purposes.

3.133 The CAAV, CLA, Royal Association of British Dairy Farmers (RABDF) and NFU all agree that given some of the finalised details of the Lump Sum Exit Scheme including scheme eligibility, tax treatment and timescales are not yet available, it is difficult to gauge the true appeal of the scheme.

3.134 The NFU also felt it is hard to quantify how many farmers are thinking of using this scheme as farmers will need to carefully consider a wide range of issues, which will take time.

3.135 In addition, Sustain and the LWA want to see how this scheme links with the wider agricultural transition plan and environmental land management policies, including the New Entrant Support Scheme, and how it will deliver those objectives.

3.136 The CPRE and the TFA think that the scheme alone will not generate many exits from the sector but that as part of a package, which might include sale of equipment, stock, land etc., it could be a viable option for some to retire.

Question 21: is extra professional advice and guidance needed to help a farmer decide whether to participate in the scheme?

Respondents were asked to answer yes or no and to give their reasons for how they responded.

3.137 586 respondents answered this question on our online survey. Of these, 75 per cent felt that extra professional advice and guidance would be needed, while 25 per cent did not.

3.138 Among those who answered ‘yes’, the majority mentioned tax implications among the areas for which advice would be required. This included the implications for various tax relief measures, such as the Agricultural Relief for Inheritance Tax.

3.139 It was felt by many that this advice was critical if farmers were to make informed decisions on whether to take the lump sum.

3.140 One respondent said that “presumably there will be tax implications which will need advice on an individual basis, although it would be nice if the scheme gave detailed guidance on this aspect to avoid escalating professional fees eating into the lump sum payment.”

3.141 Extra advice on facilitating succession within families was also commonly cited by respondents, including mediation between family members. The emotional and mental impacts on those farmers selling their business, giving up their livelihood and preparing for a life outside of farming was commonly acknowledged as an area that would benefit from professional advice.

3.142 As one respondent said: “…a high rate of farmers have not or won't discuss succession plans with next generation and in many cases led to requiring mediation support. Do not underestimate the emotional and mental health issues at such a change for some.”

3.143 Tenancy issues were also cited by some respondents as an issue requiring professional advice, including negotiating a surrender of a tenancy (if a tenant) and how to let the land (if a landowner).

3.144 One respondent, who identified as a BPS advisor, agreed that extra professional advice would be required, given that there were: “many complex scenarios to resolve, whether that is surrendering a tenancy, selling the land or creating an FBT all of which will involve extra financial costs. None of the processes are straightforward and, in each scenario, advise [sic] would need to be sought and often a solicitor would need to be instructed.”

3.145 Many land agents also felt that more detail of the scheme, including tax, would be required before they were able to provide reliable and meaningful advice to farmers. For instance:

a) The Agricultural Law Association, whose members include lawyers, accountants and farm business consultants, said that “applicants would… be well advised to seek professional help in understanding the full implications of a decision to apply for the lump sum scheme. It will be important for them to weigh up the cost benefit of applying for the lump sum in each individual circumstance. Early guidance from HM Treasury on the tax treatment of the lump sum is essential to assist potential applicants to consider the lump sum option...”

3.146 The CPRE also agreed that extra professional advice would be required, saying that “advice should be available which integrates guidance on the range of packages under the Future Farming and Countryside Programme...This could be joined up with the Future Farming Resilience Programme to enable potential retirees to be supported in making informed and enhanced business decisions in the context of the agricultural transition.”

3.147 Of those who said that extra professional advice was not required, many suggested that the scheme rules should be made sufficiently simple so that professional advice was not needed.

3.148 Many felt that farmers were able to make decisions on their own behalf without seeking outside advice.

3.149 A significant number of these respondents raised concerns that agents would seek to benefit from the Lump Sum Exit Scheme rather than provide reliable advice.

Question 22: which groups do you think are likely to benefit from the Lump Sum Exit Scheme?

Respondents were asked to answer yes or no and to give their reasons for how they responded, and to provide details if yes was selected. Respondents were able to select more than one option from the following responses, farmers exiting the industry, new entrants entering the industry, existing farmers expanding business onto vacated land, or other. They were also asked to give their reasons for how they responded.

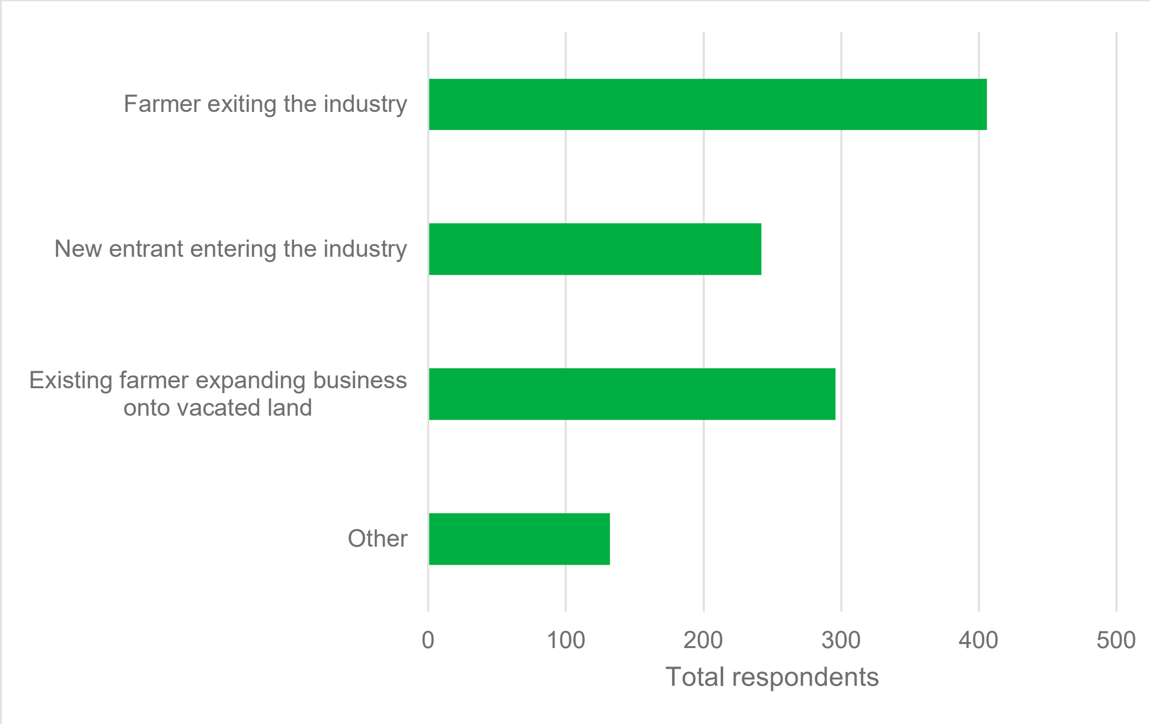

Figure 5: who is likely to benefit from the Lump Sum Exit Scheme (question 22).

3.150 Respondents were able to select multiple answers for this question. When considering groups that would benefit from the Lump Sum Exit Scheme, 70 per cent selected that a farmer exiting the industry would benefit.

3.151 42 per cent thought that new entrants entering the industry would benefit, 51 per cent thought that expanding farmers would benefit and 23 per cent thought other groups would benefit.

3.152 Of those respondents who said the scheme would benefit farmers leaving the industry, many said that the scheme would benefit farmers who were already thinking of retiring but lacked any plan or the means to do so. For instance:

a) The RABDF said “this exit scheme, although not new money, will be of interest to small scale owner-occupiers and some tenants already in discussions with their landlords about tenancy surrender, coupled with compensation from their landlord.”

3.153 Respondents who said that new entrants would benefit mainly cited the fact that increased amounts of land would become available for sale or lease.

3.154 The Chartered Institute of Ecology and Environmental Management noted that the scheme could be of some benefit to new entrants because “the [vacated] land would essentially be 'naked acres' in terms of support payments and could reduce its capital and rental values”.

3.155 However, many respondents also pointed out various barriers facing new entrants, including the high price of land to buy or rent, high start-up costs and the inability to access various government subsidies. Many respondents also noted that new entrants would not greatly benefit unless a parallel new entrant scheme was on offer at the time that land becomes available.

3.156 Many respondents who believed that existing farmers would benefit pointed out that they would be more likely than new entrants to have the capital, experience and resources with which to take on bank loans to purchase new land, or to take on tenancies, as well as having the local connections to identify land coming onto the market.

3.157 As one respondent put it, “existing businesses are in a better place to take on new land than new entrants, as the costs to start up a farming business are astronomical. To buy enough stock to start farming, together with all the equipment required in both stock handling systems and machinery, will cost much more than a lot of new entrants can afford and/or borrow.”

3.158 Of those who selected ‘other’, the beneficiaries of the scheme mentioned most often were non-farmers of various types, principally land agents, wealthy investors and large landowners. Most of those who thought these types would benefit suggested that only those with sufficient assets would be able to buy land on a market on which land prices and rents were highly inflated. A small number said that environmental bodies such as, wildlife trusts, woodland trusts or the RSPB, would likely benefit.

Delinked payments

Summary

3.159 This part of our consultation (paragraphs 5.41 to 5.60 of our consultation document) discussed how we are planning to replace BPS with delinked payments in 2024.

3.160 The key themes from the responses are listed below:

- The majority of respondents felt that the reference period for calculating delinked payments should be an average of several years, for the sake of fairness and to avoid anomalies.
- Many respondents preferred a reference period prior to the introduction of reductions to Direct Payments in 2021, mainly on the assumption that using a later period would result in higher reductions being applied. Others wanted the reference period to include a more recent year because, for example, this would better represent the business near the time of delinking.
- Some respondents commented that a strong regulatory baseline must be in place when delinked payments are introduced. Many wanted eligibility for the delinked payments to be further restricted, such as to exclude large companies or those not farming.

Consultation questions

Question 23: what reference period should the delinked payment be based on?

Respondents were asked to choose an answer from one of the following, 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, or other. They were also asked to give their reasons for how they responded.

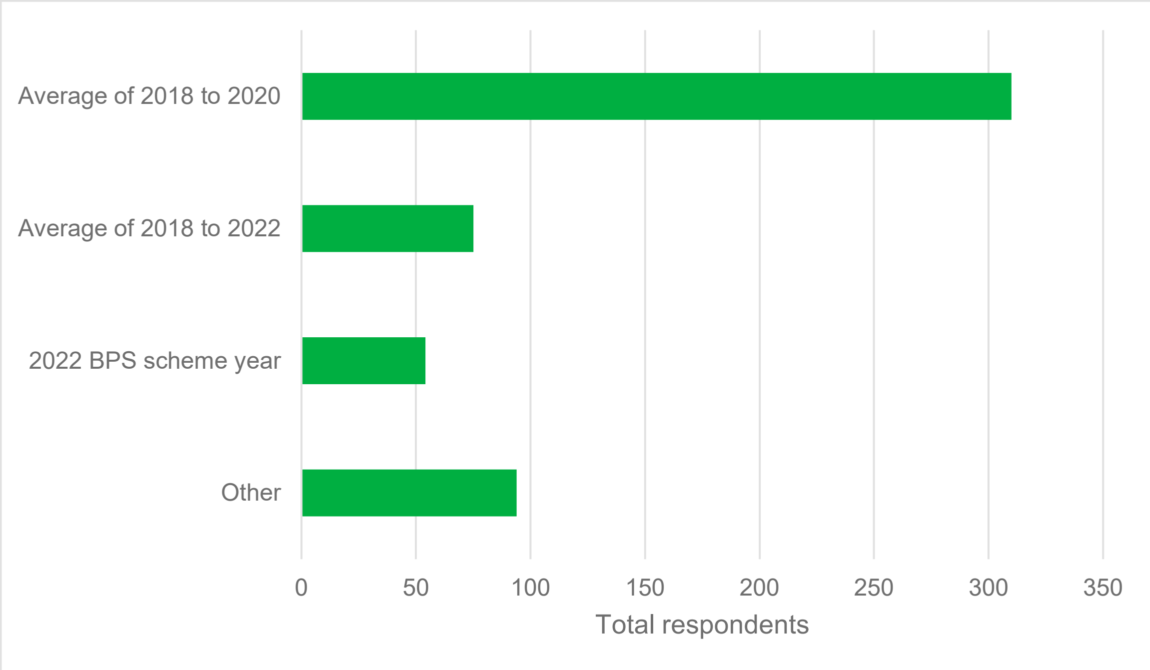

Figure 6: What reference period should be used for delinked payments (question 23).

3.161 533 respondents answered this question on our online survey. Of these, 58 per cent selected the average of the 2018 to 2020 BPS scheme years, 14 per cent selected an average of the 2018 to 2022 BPS scheme years, and 10 per cent selected the 2022 BPS scheme year. 18 per cent chose ‘other’.

3.162 A majority of those who selected the average of 2018 to 2020 scheme years said they preferred this reference period as it preceded the reductions to BPS payments (beginning in 2021). Some commented that using an average would be fair. Some said that it would avoid manipulation by farmers in future years to maximise their delinked payments. For example, one respondent considered that “If you use future dates people will always adapt to those rules to maximise their benefit. Using historical information discounts this problem”.

3.163 Many respondents who chose a reference period of 2018 to 2022 commented that an average over this period would remove any year-to-year anomalies, and so would be a fairer choice. Some respondents who chose this reference period thought that by including later years it would enable more recent changes to the farm business to be taken into account. For example, the Friends of the Lake District said this reference period would be “a balance between ironing out unusual years, but also minimising the time between the reference period and start of the scheme when business changes may have occurred.”

3.164 Most of those who preferred a reference period of 2022, and gave a reason for their choice, said that a reference period of 2022 would be the most up-to-date, and therefore the fairest.

3.165 Many also thought it would be the simplest approach. One respondent said that “selecting a single year for delinking sets the remaining payment at a level which reflects the size and scale of ongoing businesses rather than potentially giving a greater benefit to those who have sold or downsized over previous years or disadvantaging those who have increased in size.”

3.166 A wide range of reference periods were given by those who selected ‘Other’. Some preferred a longer reference period of 5 or 6 years, beginning in either 2015 or 2016. One of these respondents said that this would ensure that delinked payments went to farmers who had been in the industry for a long time.

3.167 Of those who chose a single year, most chose 2021, closely followed by 2020. A range of reasons were given, including simplicity, fairness and that it would represent an up-to-date picture of the farm business.

3.168 Some respondents preferred a later reference period. For example, CAAV thought that it “should be as near to the de-linking date as is consistent with good data so that the intervening business change issues are kept to a minimum. Thus, we favour using the data of the 2022 scheme year. If an average is to be used it should be that over 2020 to 2022.”

3.169 The NFU preferred a reference period of no more than 3 years, including the years 2021 and 2022. They also proposed that a farmer should be able to remove a year or years from a reference period where they did not claim in a year or would be particularly disadvantaged by including those years. The NFU stated that this approach would “lead to a more representative basis of ongoing businesses when the scheme starts to operate…”.

Question 24: do you have any other comments on the proposed eligibility rules for delinked payments?

3.170 119 respondents provided additional comments regarding the proposed eligibility rules for delinked payments.

3.171 Many respondents felt that eligibility for delinked payments should be restricted further than proposed. For example, some felt that recipients must have been farming for at least 5 years, while others felt that only individuals or sole traders should receive payments. As one respondent put it "they should not be given to people or organisations that do not farm the land! Large companies or rich individuals and families purchase huge swaths of land to reduce their tax liability, however under the delinking, they will also receive this money."

3.172 Sustain and the LWA also felt that eligibility should be conditional on continued farming, saying that "the government should ensure that any land must stay in agricultural use to ensure minimal impact on British food production and the industry as a whole."

3.173 Many respondents sought clarity about the conditions those recipients who continue to farm must adhere to, while some respondents raised environmental concerns in relation to this. For example:

a) The National Trust, said that delinking "should be accompanied with an effective baseline of environmental regulation; this needs to avoid any weakening of the current minimum cross compliance baseline and capture standard good practice."

b) Another respondent said that "to offer public money to land managers with no obligation whatsoever to deliver public goods is out of keeping with the social economic constraints of the wider national circumstance…the legislative baseline should be raised to at least reflect current cross compliance requirements…."

3.174 RICS commented that while delinking was a "positive step" there was a "danger the removal of linked subsidies will lead to an exodus from marginal land and that which the public probably value most highly, such as Welsh and North West uplands."

3.175 Some respondents commented on the benefits of delinking, such as facilitating structural change, putting new entrants on an equal footing with established farmers in terms of access to land, and simplification through the removal of the current BPS processes and enforcement regime. A few respondents said that delinking should be introduced as soon as possible, for example:

a) The TFA felt that delinked payments should be introduced in 2022, alongside the Lump Sum Exit Scheme, saying "delaying delinking until 2024 could cause unintended consequences through people speculating."

3.176 A range of other comments were raised by respondents, including the need for the scheme rules to accommodate business changes made since the start of the reference period and the need for support to be available for new entrants.

3.177 The NFU commented that there needed to be a clear timeline of when a farmer can cease farming, reduce their farming activity and remain eligible for the delinked payment. The CLA called for clarity on how leased entitlements would be dealt with.

4. Government response to the consultation

Lump Sum Exit Scheme

4.1 It remains our intention to introduce a Lump Sum Exit Scheme in 2022, to help those farmers who wish to exit the industry do so in a managed way. This will free up land for new entrants and farmers wishing to expand. This section sets out the government response to our consultation on the proposed scheme.

4.2 We will continue to work with farmers and stakeholders as we develop the delivery arrangements for the scheme, to ensure the application process is as simple as possible.

Conditions and eligibility rules

4.3 The farm business that takes the lump sum will have to surrender their BPS entitlements and will not be able to claim any further Direct Payments after receiving the lump sum.

4.4 Taking account of views from consultation respondents, we plan to adopt a more flexible approach to partnerships and limited companies than we had originally proposed. We recognise that where a partnership or limited company applies for the lump sum, only some of the partners or shareholders may wish to exit farming.

4.5 We plan to allow this where partners with at least a 50 per cent interest in a partnership, or shareholders with 50 per cent or more shares in a company, leave the partnership or limited company, respectively.

a) For example, one partner could exit where they have at least a 50 per cent interest in a partnership, or more than one partner could exit where they have a combined interest of at least 50 per cent in a partnership.

4.6 The restrictions on entering certain other land management schemes (see paragraph 4.20) will not apply to the partners or shareholders who continue to farm. This approach will allow, for example, parents with a combined 50 per cent interest in the partnership to exit and leave their son or daughter to continue to farm. This should facilitate generational change.

4.7 As is the case for other lump sum applicants, all the BPS entitlements for the partnership or limited company would be cancelled. We do not plan to set any restrictions about non-shareholding directors of limited companies.

4.8 To be eligible for the lump sum payment, applicants have to transfer their agricultural land in England (with some exceptions, see paragraphs 4.12 and 4.19). This could be by selling the land, renting it out or gifting it, or surrendering a tenancy.

4.9 The agricultural land farmers must transfer is the land they held on 17 May 2021. This date was the BPS 2021 application deadline, so the Rural Payments Agency (RPA) already hold the land data. If a farmer has already transferred out some of their land since 17 May 2021, as long as this was done in a way which meets our scheme rules on how land can be transferred and the farmer still holds entitlements, they could still be eligible for a lump sum.

4.10 An owner-occupier who chooses to rent out their land must do so on a Farm Business Tenancy with a minimum term of 5 years. This minimum 5-year term balances the desire to offer security to tenants while also providing landlords with flexibility. It also takes on board comments from those who were concerned that some tenants may not want to commit to a longer tenancy length. We think it is appropriate to allow break clauses for certain circumstances, such as death, bankruptcy or insolvency of the tenant.

4.11 Some Agricultural Holdings Act tenancies have statutory succession rights. Where a farmer has such a tenancy, and it transfers to a successor, this will be treated as the tenant having surrendered their tenancy for the purposes of them qualifying for the lump sum. We think this will help encourage generational change.

4.12 An applicant will be allowed to keep their residential or commercial property, non-agricultural land, and up to 5 hectares of their agricultural land in England. This applies to owner-occupiers and to tenants who are able to negotiate this with their landlord. We believe that this will make the scheme more attractive, recognising that some farmers will have a strong emotional attachment to their farmhouse. This in turn should lead to more land being freed up for other farmers. We have removed the 5 per cent part of our original proposal to simplify this rule.

4.13 To qualify for the lump sum, an applicant must have first claimed BPS in 2018 or earlier. This will ensure that the Lump Sum Exit Scheme will not be open to those who have only recently joined the industry.

4.14 Using 2018, which is when we first announced our intention to offer lump sum payments, would avoid any risk of a lump sum being paid to someone who only started claiming BPS to qualify for the lump sum. Using 2018, rather than an earlier year, is simpler for farmers and RPA as it reduces the number of business changes, such as mergers and splits, which need to be dealt with.

4.15 There will be an exemption from the requirement to have first claimed BPS in 2018 or earlier for farmers who have inherited a farm, or succeeded to an Agricultural Holdings Act tenancy, after 2018. This will facilitate the exit of those who may have never intended to farm long-term.

4.16 Applicants will be given until 31 May 2024 to complete their transfer of land. We believe this will provide most farmers with enough time to consider such a significant decision and to complete their land transfer. Applicants will have the ability to request an extension in limited circumstances.

4.17 As the scheme is intended for those farmers leaving farming, it is appropriate that lump sum applicants should have to transfer any grazing rights they hold for a common, except where these rights are attached to the property or to the land they are allowed to keep under the scheme rules.

4.18 The grazing rights which must be transferred can either be sold, leased out for a minimum of 5 years or transferred 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. These rules do not override existing legislation relating to rights of common.

4.19 We will provide an option for applicants to enter some or all of the agricultural land they held on 17 May 2021 into certain woodland creation schemes, instead of having to transfer it out. We believe that this could help contribute to the UK Government's ambitious tree-planting targets. We will confirm which woodland creation schemes this option applies to in further scheme information we are providing to farmers.

4.20 Lump sum recipients will be required to repay the lump sum if they wish to enter into certain new land management agreements (or add land to existing agreements), such as Countryside Stewardship and the Sustainable Farming Incentive, during the rest of the planned agricultural transition. We will confirm which land management agreements this applies to in further scheme information which we will provide to farmers in due course.

Calculation of the lump sum payment

4.21 The lump sum will be paid once the applicant has provided evidence that they have met the eligibility rules, including having transferred their agricultural land (and, where applicable, rights of common) or planted the land with trees under a woodland creation scheme. We recognise that this could take farmers some time and, at the time of applying for the Lump Sum Exit Scheme, some farmers may be uncertain as to whether they will be able to complete their exit from farming. Farmers will therefore be able to apply for BPS in parallel with the Lump Sum Exit Scheme.

4.22 The lump sum will be calculated based on the BPS payments made to the farmer in relation to their English entitlements (before any penalties or progressive reductions were applied) in a reference period. We will set the reference period as the average of the BPS 2019 to 2021 scheme years. We consider that using an average is fair as it will help to even out any anomalies which could have arisen from using a single year. The years chosen take account of requests from some respondents to have a reference period which is close to the introduction of the scheme, to minimise the amount of business change that would have occurred.

4.23 We will be applying a cap of £42,500 to the lump sum reference amount, before multiplying it by 2.35 to give the value of the lump sum. This means that no farmer will receive more than £100,000. This ensures value for money. The sum lump will therefore be calculated as follows:

a) Lump sum reference amount in pounds sterling, subject to a cap of £42,500, multiplied by 2.35 equals the lump sum payment.

b) For example, if the farmer's reference amount is £40,000 then their lump sum payment would be £40,000 multiplied by 2.35 equals £94,000.

4.24 The lump sum will be reduced proportionately if the farmer has decreased the entitlements they hold since the reference period. If a lump sum applicant chooses to apply for BPS 2022 (or BPS 2023) in parallel with the Lump Sum Exit Scheme, the value of the BPS payments made will be deducted from the lump sum due.

Further information

4.25 We plan to open the scheme for applications in April 2022. Further details about the application period will be included in further scheme information which RPA will be sending to farmers. We will also provide guidance on how business changes, such as, mergers and splits will be treated for the purposes of calculating the lump sum payment.

4.26 We are aware that tax treatment of receipts under the Lump Sum Exit Scheme is an important issue for many farmers. The government intends to introduce legislation to provide clarity that the Lump Sum Exit Scheme payments will be treated as capital in nature and will be subject to capital gains tax, or corporation tax in the case of incorporated entities. The existing capital gains reliefs will be available where the qualifying criteria are met.

4.27 The capital treatment will also apply to interim Direct Payments, which will be deducted from the lump sum payment amount once the scheme rules have been met. Income treatment will apply to Direct Payments if the qualifying conditions for the Lump Sum Exit Scheme are not met. Further guidance on timing and abortive transactions will be provided by HM Revenue & Customs (HMRC).

4.28 HMRC will consider whether any steps may be necessary to prevent capital treatment being applied where transactions are undertaken which do not support the policy objective and there is a possibility of tax avoidance and will provide further detail in due course.

Support for new entrants

4.29 Many respondents referred to the importance of providing additional support for new entrants alongside the Lump Sum Exit Scheme. We agree that attracting bright new talent into food and farming is vital for a sustainable and productive agriculture sector.

4.30 As set out in our Agricultural Transition Plan 2021 to 2024 this government will provide funding to create lasting opportunities for new entrants to access land, infrastructure and support to establish successful and innovative businesses.

4.31 Over the last year we have been codesigning the new entrant scheme with a steering group as well as a wider user and stakeholder group including new and recent entrants, landowners and county farms and those already providing support to new entrants. As part of this, we are considering how to design the new entrant scheme to increase the potential for new and recent entrants to compete for land becoming available through the Lump Sum Exit Scheme.

4.32 We learnt that new entrants need more support to develop entrepreneurial skills and better opportunities to access the land and finance they need. As a result, in January 2022 the government announced the development of incubator pilots for new entrants to learn more about what works in terms of meeting these needs. We are currently developing our approach to pilots working with our co-design steering group and other stakeholders. We aim to announce more detail in early spring this year.

Delinked payments

4.33 It remains our intention to replace BPS payments with delinked payments in 2024, with the last payments being made for the 2027 scheme year.

4.34 Delinked payments will be calculated based on the BPS payments made to the farmer in relation to their English entitlements (before any penalties or progressive reductions were applied) in a reference period. We will set the reference period as the average of the BPS 2020 to 2022 scheme years. We consider that using an average over a number of years is fairer than using a single year, as any anomalies will be evened out. We have chosen years close to the introduction of delinking to minimise the amount of business change that would have occurred.

4.35 Progressive reductions will be applied to the payments as they are phased out. The delinked payment will therefore be calculated each year as follows:

a) Delinked reference amount in pounds sterling multiplied by the progressive reductions for that year equals the delinked payment

Further information

4.36 Where a business is in receipt of a delinked payment, these will continue to be taxed in line with ongoing BPS payments and be income in nature.

Farm regulation

4.37 Many consultation respondents referred to the impact that delinking will have on the farm regulatory approach as cross compliance ends and also sought clarity on the future regulatory regime. Farming and land management activities are covered by wide ranging legal standards, and these will continue to provide the majority of the environmental, animal health and welfare protections which are captured by cross compliance. We will be making sure farmers and land managers continue to understand the legal standards which apply to their activities in the run up to delinking.

4.38 As set out in our consultation on the Lump Sum Exit Scheme and delinked payments, the end of cross compliance provides the opportunity to improve the way we regulate. The Agricultural Transition Plan provided an outline of our plan to achieve this.

4.39 We are working closely with farmers, wider industry and relevant regulatory authorities to develop new approaches that will manage the transition away from cross compliance to a reformed regulatory regime for the future. We will be providing an update of this work shortly.

Annex A: list of responding organisations

This is a list of organisations who responded to the consultation. This list does not include those that asked for their response to be kept confidential.

This list of responding organisations is not exhaustive. Rather, it is based on those that declared their organisation. This may include responses from individuals who are members of specific organisations and therefore does not necessarily reflect that organisation's views.

- Addington Fund
- Agricultural Law Association
- AKC
- Arla Foods UK
- Association of Chief Estates Surveyors and Property Managers (ACES Rural)
- Birmingham Women Against State Pension Injustice
- British Institute of Agricultural Consultants (BIAC)
- Central Association of Agricultural Valuers (CAAV)
- Carter Jonas
- Chartered Institute of Ecology and Environmental Management (CIEEM)
- Country Land & Business Association (CLA)
- Confederation of Forest Industries (Confor)
- Cornwall County Council
- Cottage Farm Organics
- CPRE
- CSA Network UK
- DF Consultancy
- Duncombe Park
- Eastman Farm Consulting Ltd
- Ellis Partners
- Escrick Park
- Euston Estate
- Farm Cornwall
- Farm Office Services
- Farming Community Network
- Farms not Factories
- Federation of Cumbria Commoners
- Fisher German LLP
- Forest Farming Group
- Foundation for Common Land
- Friends of the Lake District
- Game & Wildlife Conservation Trust
- Glaspers
- Grown Green
- Holstein UK
- Increment Ltd
- Keystone Services
- Landworkers' Alliance
- Moore Barlow LLP
- Morval Estate
- National Sheep Association
- National Trust
- Natural England
- Nature Friendly Farming Network (NFFN)
- New Forest Commoners Defence Association
- National Farmers' Union (NFU)
- National Federation of Young Farmers Clubs (NFYFC)
- North West Auction
- Open Space Society
- Pension Reform Alliance
- Peter Quayle & Co
- Powlett & Associates Ltd
- Practical Farm Ideas
- Royal Association of British Dairy Farmers (RABDF)
- Real Farming Trust
- Richardson and Smith
- Royal Institution of Chartered Surveyors
- Rostons
- Royal Society for the Protection of Birds (RSPB)
- Rural Business Services Ltd
- Rural Partners Ltd
- Saviour Associates Ltd

- Shropshire Council
- Simmons and Sons Surveyors LLP
- South East Water
- Starbotton Estate
- Sustain
- Swain Estate Management Ltd
- Symonds and Sampson
- Tenant Farmers Association (TFA)
- The Prince's Countryside Fund
- The Whitelands Project CIC
- The Wildlife Trusts
- Tissington Estate
- Verwill Berdikari Ltd
- Vickers and Barrass
- Women Against State Pension Injustice (WASPI)
- WebbPaton
- Westmorland accountants
- Wignalls Chartered Surveyors
- Windmill Agri
- Wright Hassall LLP
- Yelden Growers Ltd
- Yorkshire Water Services