



Department
for Environment
Food & Rural Affairs

Contractual practice in the UK dairy sector consultation

Summary of responses

Date: February 2021

We are the Department for Environment, Food and Rural Affairs. We're responsible for improving and protecting the environment, growing the green economy and supporting our world-class food, farming and fishing industries.

We work closely with our 33 agencies and arm's length bodies on our ambition to make our air purer, our water cleaner, our land greener and our food more sustainable. Our mission is to restore and enhance the environment for the next generation, and to leave the environment in a better state than we found it.



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Introduction

Between June and September 2020 Defra, with input from the Devolved Administrations, conducted a public consultation exploring contractual relationships in the UK dairy sector. The consultation aimed to understand whether contract reform could provide greater certainty to both dairy producers and processors, by ensuring that clear terms and conditions are established in contracts. The consultation first invited views on whether legislation in this area was needed, before a more detailed series of questions on the typical components of dairy contracts.

This report summarises the responses received and sets out proposed next steps. 839 responses to the consultation were received (831 responses to the online survey, and 8 email responses¹). Not all respondents answered every question, and where charts or statistics are included in the summary below, the data represents only those who responded to that particular question. Officials also took part in nine engagement events across Great Britain, which were organised by various industry bodies and were attended by a mixture of dairy producers, processors and co-operatives.

We welcome the diverse range of views and level of interest received through the consultation and are grateful to all those who responded.

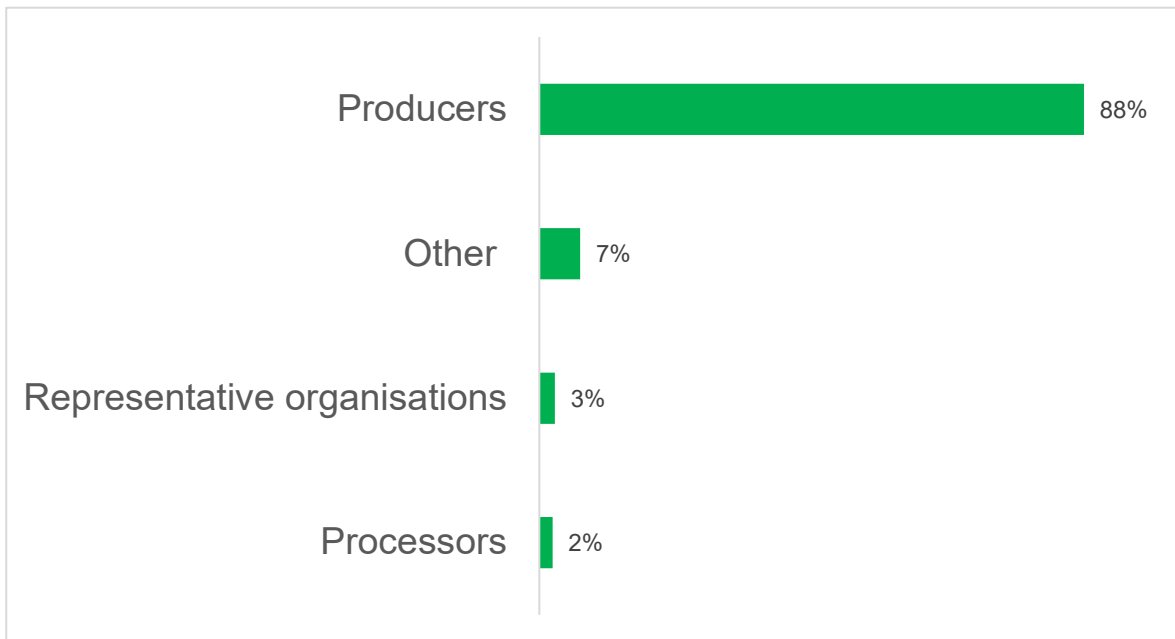
About the respondents

Where responses included the name of an organisation these are listed in Annex 3. The largest number of responses came from respondents who identified as 'a producer'. We received similar numbers of responses from those identifying as 'a processor' and 'a representative organisation'. Of those identifying as 'a representative organisation', 93% represented producer interests.

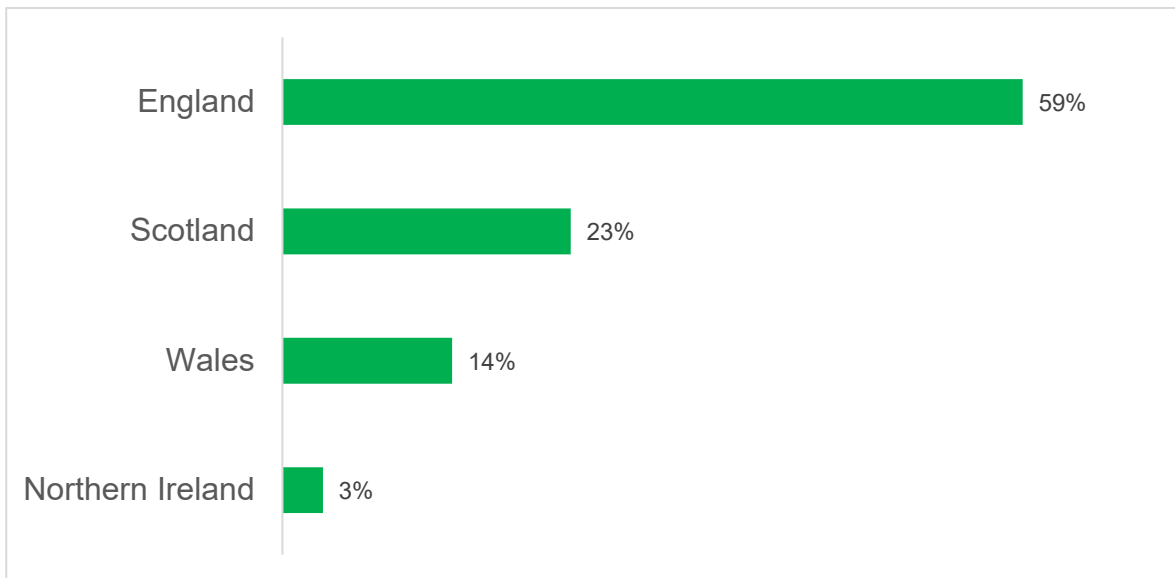
Response rates in each devolved nation provided good geographical representation for all parts of the UK.

¹ 819 responses were submitted via the online survey, plus 12 email responses that provided answers to the survey questions in the same format as the online survey were then transferred across to the online survey. The quantitative analysis tables in this government response include the 831 responses from the online survey. The qualitative narrative analysis includes all responses where comments were submitted through the online survey and email submissions.

Proportion of respondents in each category (online survey responses)



Business location of respondents (online survey responses)

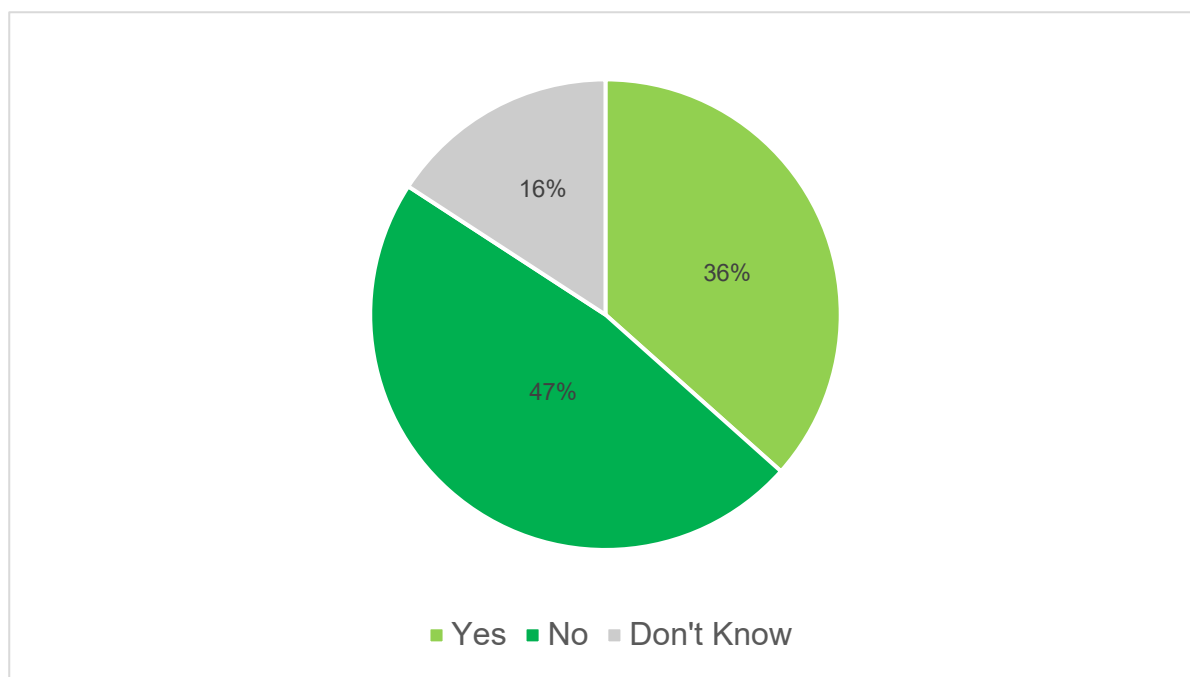


Chapter one: consultation questions and responses

Contractual reform

Consultation question and response

1. Have you, your business, or your members, experienced issues with dairy sector contracts, for example where contract terms have not followed the example set by the voluntary code? Please give examples to explain your answer.

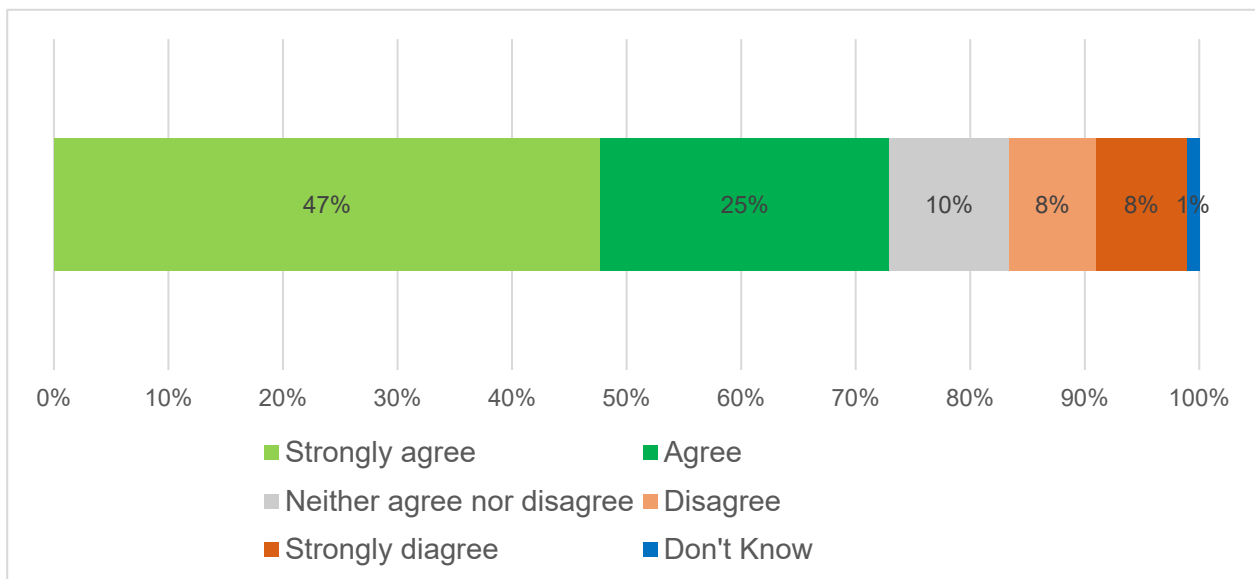


Responses to this question demonstrate a mixed picture regarding experience of contractual issues. The highest proportion of respondents indicated they have not experienced contractual issues. Notably, 60% of those responding this way currently belong to a co-operative business.

Roughly the same proportion of producers and processors state that they have experienced contract issues: 31% of producers and 33% of processors respectively. Producers referred to a range of issues including contract changes implemented with little notice, difficulties with payments and retrospective alterations to contract terms. Responses routinely highlighted the challenge of building a profitable business without greater long-term security. A number of processors shared the view that, as not all processors currently follow the Voluntary Code of Practice, an imbalance across the sector has arisen.

Consultation question and response

2. **Legislation, rather than voluntary measures, is needed to ensure that standards are consistent across the supply chain. To what extent do you agree with this statement? Please give reasons for your answer.**



The responses to this question indicate a significant demand for legislation; 72% of respondents either 'agree' or 'strongly agree' that contract reform legislation is needed.

Many producers note that they typically occupy vulnerable positions in the dairy supply chain, with a bargaining power that is "*virtually non-existent*" and the negative effects arising from this can only be tackled through legislative reform. Some also mention the difficulty of ensuring buyers uphold the current Voluntary Code of Practice in the absence of enforceable legislation.

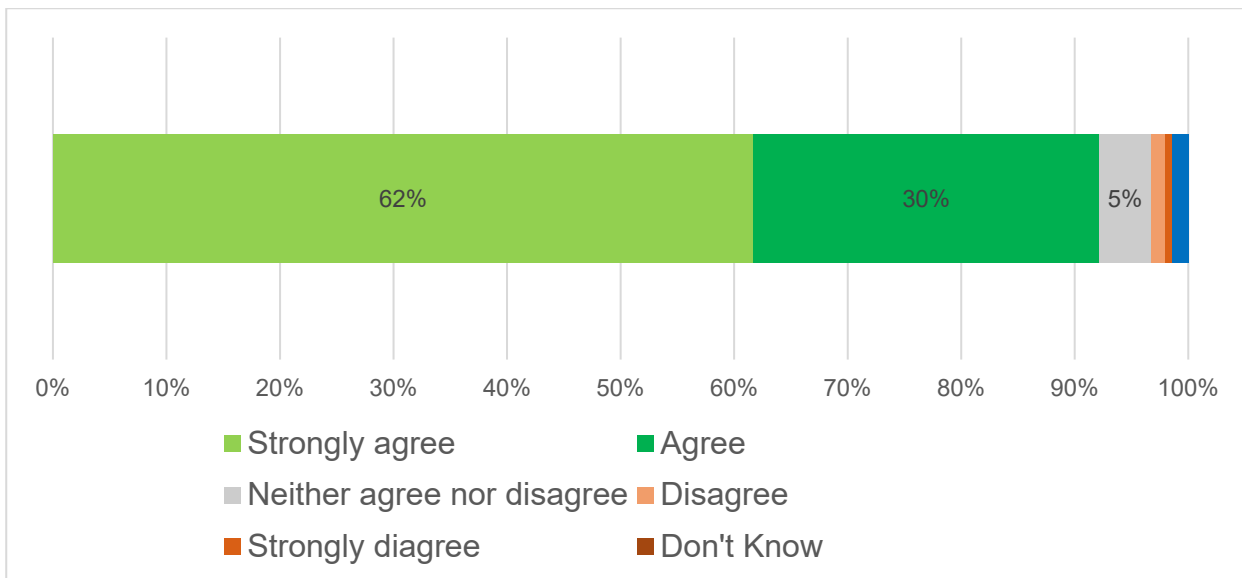
When considering responses from processors, there is a more even split between those who agree with the need for a legislative solution versus those who disagree (33% vs. 39% respectively). Among the processors who agree legislation is required, it was noted on more than one occasion that companies who are already compliant with the Voluntary Code of Practice risk being undercut by non-compliant competitors.

Many of the responses which either agreed or were undecided indicated the need for sufficient flexibility in legislation; in order to avoid restricting individual businesses to provisions that may prove unsuitable for their circumstances.

Legal requirement to contract in writing

Consultation question and response

3. **Should trading relationships between producers and purchasers always be covered by a written contract? Please give reasons for your answer.**



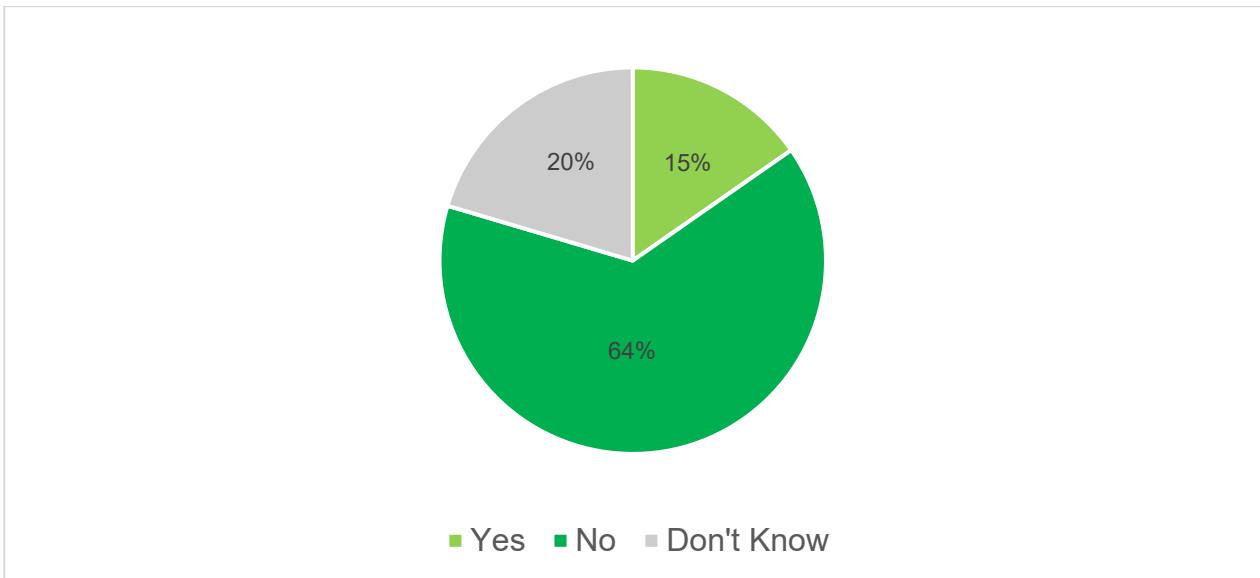
While written contracts are commonplace in the UK dairy industry, it is not currently a legal requirement. The purpose of this question was to establish whether written contracts should be an enforceable standard. Responses reveal that support for written contracts is high across both producers and processors; 93% of producers either strongly agree or agree contracts should be written, as do 88% of processors. Responses from Northern Ireland revealed a slightly different picture, with a smaller percentage (69%) either agreeing or strongly agreeing and 23% answering they didn't know or neither agreed nor disagreed.

Responses from both producers and processors suggest that written contracts would improve transparency between parties, as well as provide a legal guarantee of contract terms should any issues arise.

Variation within the UK

Consultation question and response

- Regulations are often applied uniformly across all UK nations. Is there any reason why a different approach should be taken? Please give reasons for your answer.



A significant majority of respondents from Great Britain support the introduction of UK-wide legislation. Numerous responses highlighted that, as milk typically moves freely within the UK, different rules in different areas risk causing an uneven playing field. Other responses indicate that UK-wide legislation provides clarity and ease for producers and processors alike.

Results were consistent across England, Scotland and Wales, with a slightly different picture emerging regarding Northern Ireland:

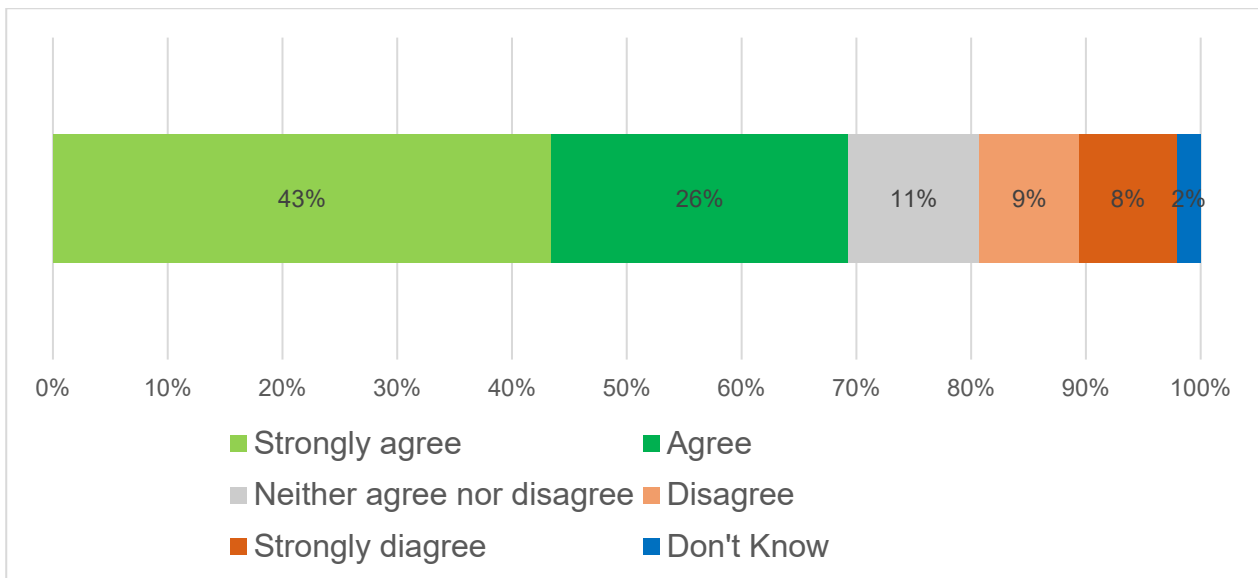
- 67% of those in Wales support UK-wide legislation;
- 64% of those in England;
- 64% of those in Scotland;
- 44% of those in Northern Ireland.

Several respondents from all areas of the UK specifically referenced different circumstances in Northern Ireland, noting the milk market there is export-focused, co-operative led and heavily dependent on cross-border trade with the Republic of Ireland. Responses suggested this unique situation, in addition to potential impacts arising from the Northern Ireland Protocol, may need to be reflected in legislation.

Pricing mechanisms

Consultation question and response

5. Any future legislation should introduce a legal obligation to include a price/price calculation mechanism in a contract. To what extent do you agree with this statement? Please give reasons for your answer.



Most respondents favour the inclusion of a price mechanism within a contract. Many respondents suggest this would improve the overall transparency of the contract and facilitate long-term planning, with some referencing the disparity of information often found between producers and processors:

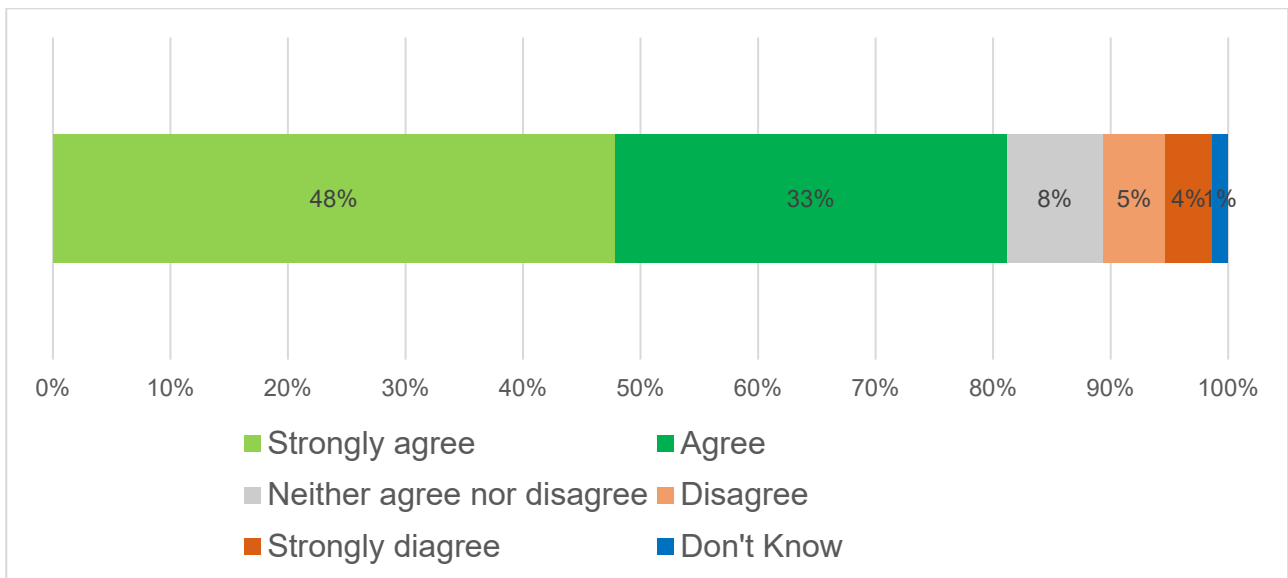
“It seems there are so many people in the supply chain that know exactly what farmers costs and income are, but the farmer gets told very little about what processors costs are.”

Some respondents raised concerns regarding market flexibility and note that it is undesirable to impose rigid pricing mechanisms that are unable to react to changing market conditions. There is a broad consensus that, whilst a contract should contain some form of pricing mechanism, both parties must be able to adopt a mechanism that best serves their business relationship. Retaining flexibility is a particular concern for co-operatives and a significant majority of those who raised this concern currently belong to a co-operative business.

A number of responses, including those from some of the producers’ representative organisations, believe that the practice of ‘discretionary pricing’ (the ability for processors to unilaterally alter the price paid per litre) should be prohibited. They suggest that this practice can exacerbate unfairness in the dairy supply chain, and the absence of testable criteria to underpin price calculation often leads to farmers absorbing an unjustifiable share of the production risk.

Consultation question and response

- 6. To achieve transparency, the methodology behind any price mechanism must be detailed within a contract. To what extent do you agree with this statement? Please give reasons for your answer.**



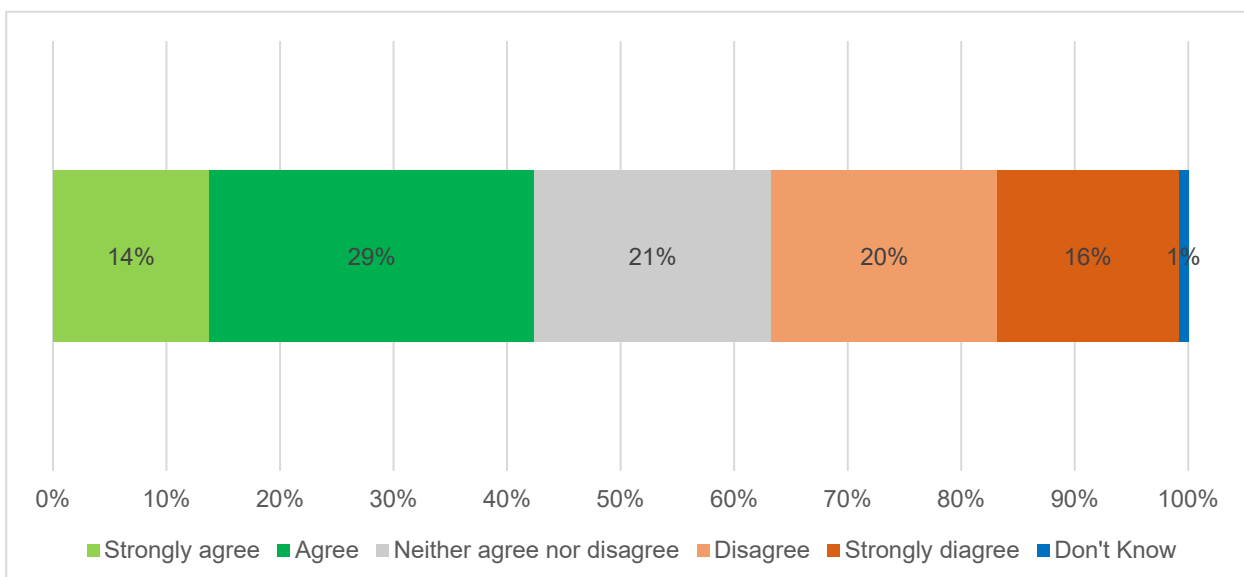
Almost half of respondents 'strongly agree' that the methodology behind price mechanisms should be included within a contract, commonly citing the need for increased transparency. Many respondents indicate that a methodology would enhance understanding of contract terms and demonstrate that terms are fair and reflective of the wider market.

Responses from some processors suggested that, whilst the principle of greater transparency in price formulation is sound, implementation of this could prove extremely challenging and lead to unintended consequences such as increased price volatility.

Volumes and timings

Consultation question and response

7. The volume of milk to be supplied should be fixed in the contract. To what extent do you agree with this statement? Please give reasons for your answer.



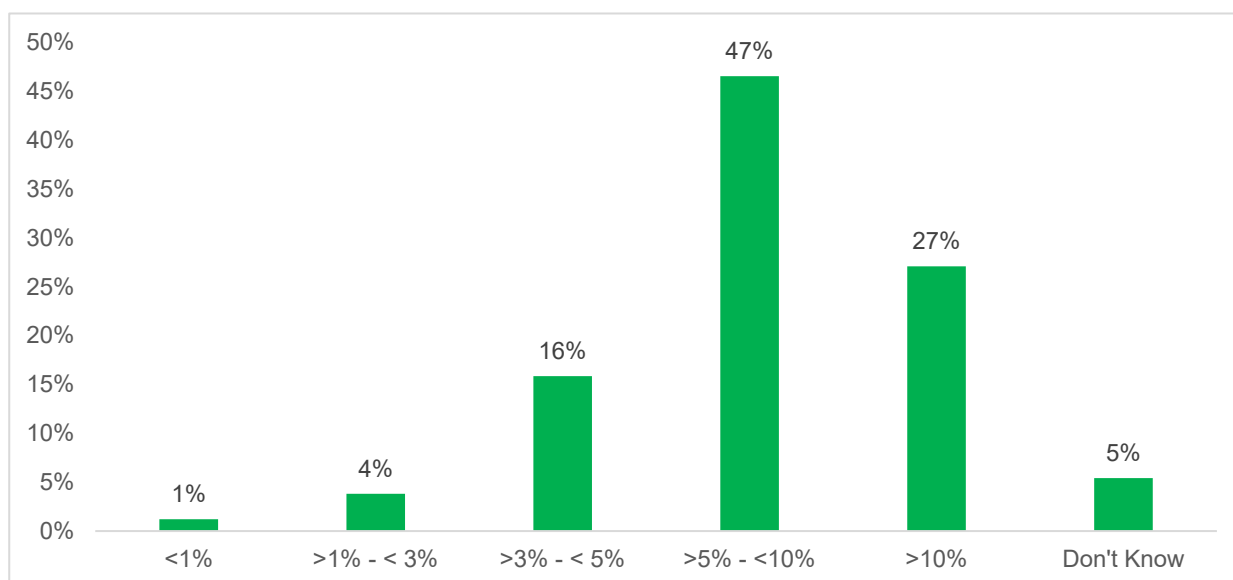
There was no strong consensus among responses to this question. The broad spread of opinion is reflected in contrasting responses received from the same parts of the supply chain. Among producers 42% agree vs 37% who disagree, and among processors 50% disagree vs 33% who agree.

A key concern among both producers and processors is the volatile nature of dairy farming, given its dependency on external factors such as weather and animal health. Many respondents state that it is unrealistic to accurately predict output and, if fixed volumes were required in a contract, these outside factors may detrimentally affect producer volumes and processor supply management.

A few respondents believe that fixed volumes will stop overexpansion in the sector, which responses suggest can have negative effects on the milk price.

Consultation question and response

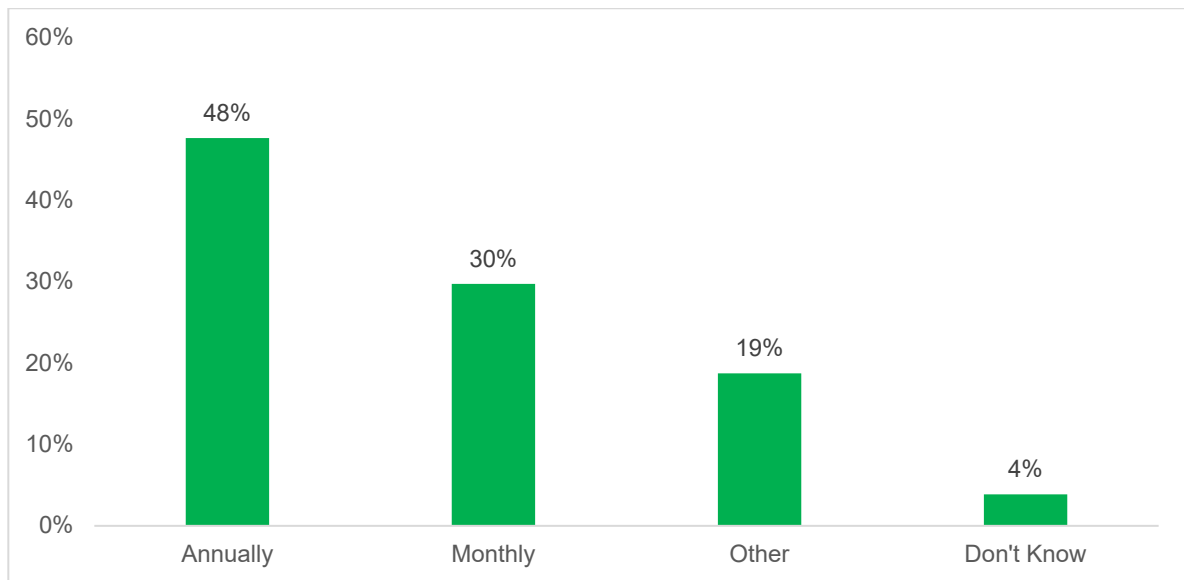
8. If you agree that the volume of supply should be fixed, please include an indication of an appropriate tolerance for variation (+/- X%). i.e. By how much either way should a contracted supply be allowed to vary.



Where respondents agreed with fixed volumes, the majority supported a pre-agreed level of tolerance of between 5 and 10%. This was the most popular option among both producers and processors.

Consultation question and response

9. If you agree that the volumes of supply should be fixed, on what timescales should volumes be calculated? Please give reasons for your answer.



Where respondents agreed volumes should be fixed, the preference was for volumes to be calculated on an annual basis. This view is consistent across respondents; it is the preferred timescale for producers (48% of responses), processors (45% of responses) and representative organisations (47% of responses).

Supply management is the key reason cited by respondents for favouring annual fixed volumes. Many responses suggest that annual volumes enable forward planning and better responses to unplanned events, such as extreme weather conditions.

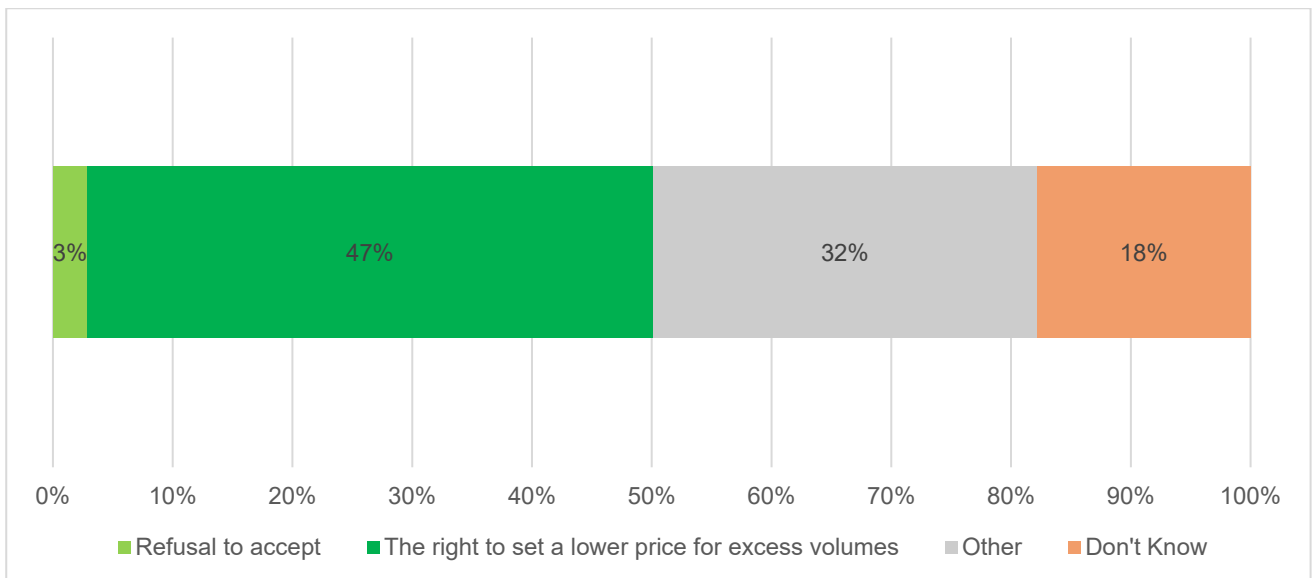
Some respondents suggest that the accuracy of annual fixed volumes could be improved by enabling quarterly discussions between producer and processor:

“I think producers should submit an annual forecast which is updated every quarter. This allows them to plan ahead but also to take account of the vagaries of the production system. Annually could be set as the minimum baseline for all contracts.”

The need to be agile and respond to significant market changes was a concern raised by a number of those who were opposed to annual volume agreements.

Consultation question and response

**10. What options should be available to treat volumes outside these tolerances?
Please give reasons for your answer.**



Most respondents favour the right to set a lower price for excess volumes as a method to address additional volumes. Among producers, this option is favoured by 48% of respondents, compared to 31% of processors. The spread of opinion suggests multiple options should be available, although very few respondents supported the right of refusal to accept.

Some processors argue that unexpected milk volumes can be expensive to collect and sell and therefore should not command the standard milk price. Responses also commonly suggested that excess milk can flood the market and hinder the overall milk price for all producers, and that setting a lower price for excess volumes would limit this.

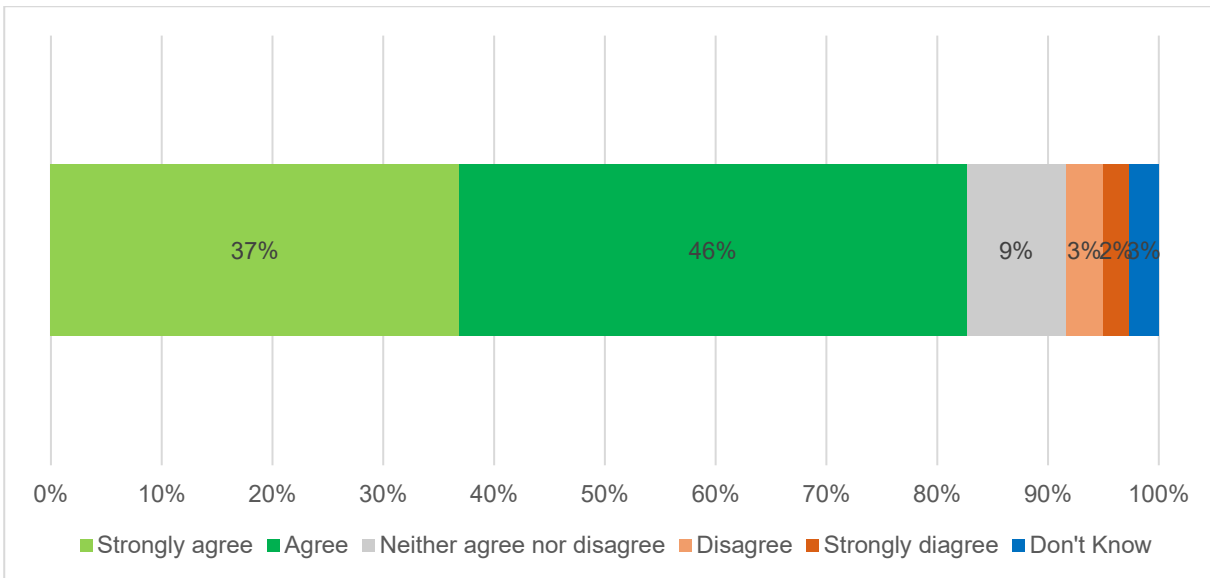
“Processors can’t be expected to just take the milk regardless of how much is produced. Producers that accurately predict and produce to that prediction should be rewarded accordingly.”

Among producers who support the right to set a lower price for excess volumes, it was routinely noted that this secondary price should reflect the prevailing market, meaning there may be occasions where this secondary price is higher than the standard price.

Duration of contracts

Consultation question and response

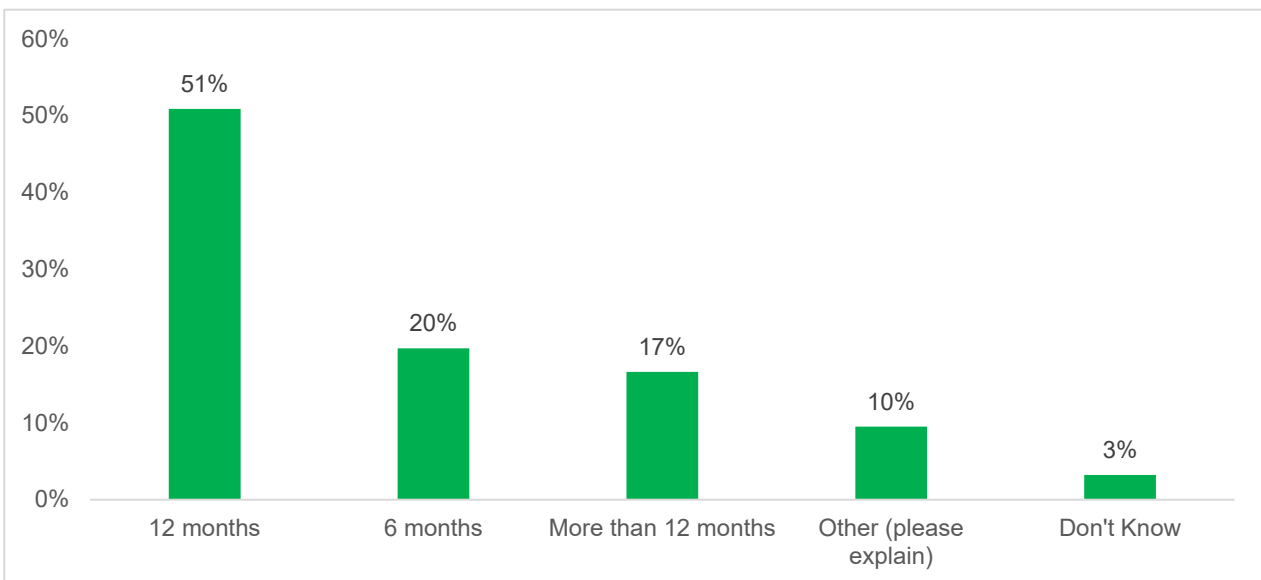
11. The terms of a contract should establish a minimum duration for supply arrangements. To what extent do you agree with this statement? Please give reasons for your answer.



More than three quarters of respondents favour the requirement for minimum duration clauses within supply contracts. Many respondents, of all types, noted that a minimum duration is necessary for business security. These responses suggest that a minimum duration will provide both producers and processors with the certainty needed to plan production levels, especially given the long lead-time needed for milk production.

Consultation question and response

12. If you agree that a minimum duration for supply should be established, please indicate your preference for the length of this period.



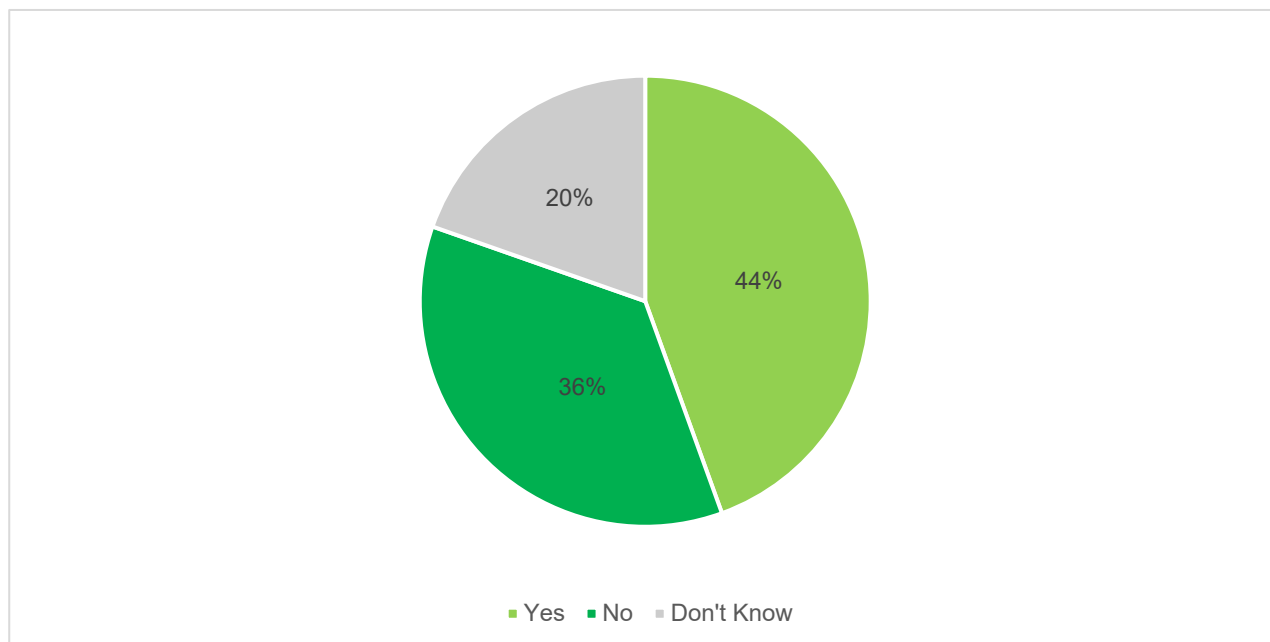
The responses show a preference for a minimum contract duration of 12-months. However, substantial numbers of respondents preferred both longer and shorter durations, suggesting that different contract durations are appropriate for different businesses. This sentiment was echoed repeatedly in response explanations.

Numerous respondents also noted their support for current “evergreen” contract arrangements, defined as a contract that automatically renews until either party serves

notice to terminate it. These respondents have no wish to see these evergreen arrangements prohibited.

Consultation question and response

13. Should there be a maximum contract period after which the contract must be refreshed and reviewed?

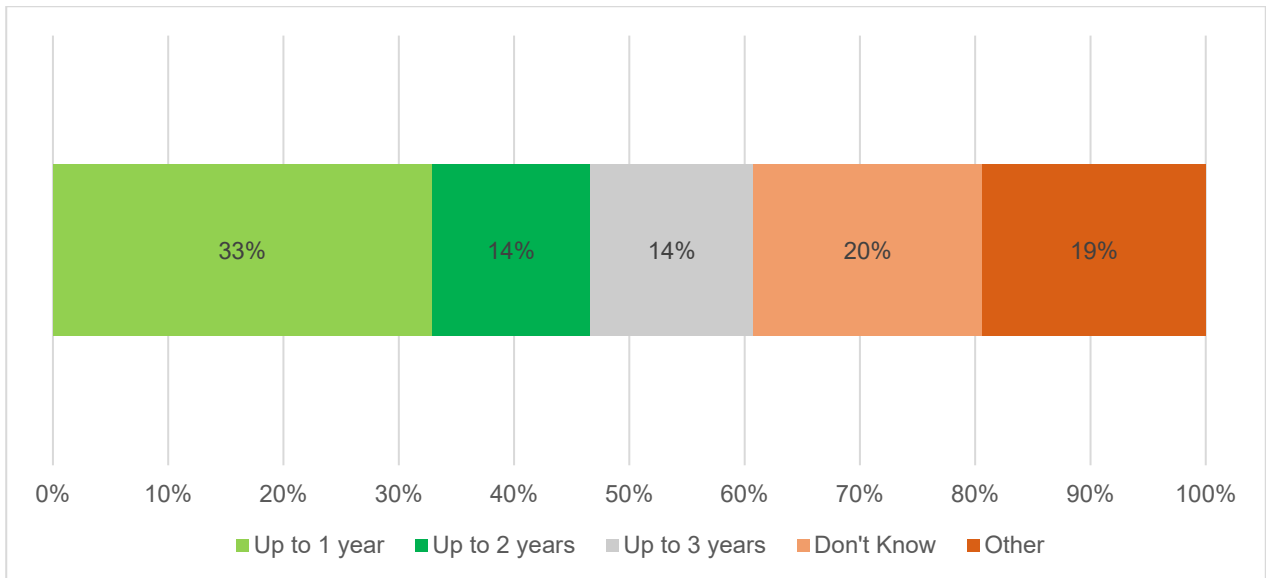


Opinions were evenly divided on the issue of statutory reviews after a proscribed period. A slight majority of respondents supported the view that contract terms should be subject to review after a minimum period, although this view is not shared between both producers and processors.

While 45% of producers state that contracts should be refreshed and reviewed, only 22% of processors share this view. In general, processors do not support the introduction of pre-determined periods after which a contract must be formally reviewed.

Consultation question and response

14. Where a contract is established using a fixed price mechanism, what should be the maximum length of this contract? Please give reasons for your answer.



Responses revealed a marginal preference for fixed price contracts of one year's duration. Market volatility is the key determining reason for this, with many respondents noting the need to account for natural market fluctuations. These respondents suggest that it would be difficult to commit to a price for longer than a year.

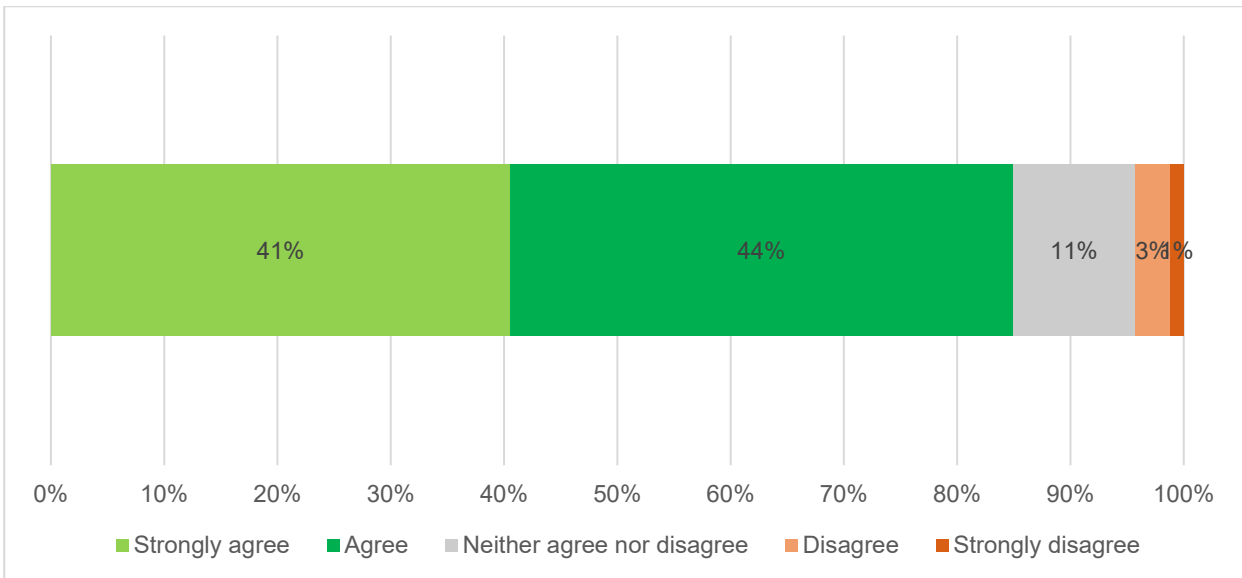
Some responses note the need for flexibility and the ability for either party to change or serve notice on a contract, should market circumstances justify such a change. These responses suggest that the more transparent contract terms are, the less important the contract duration becomes.

A few respondents suggest that legislation should not specify the duration of fixed price terms, which should instead be left open for both parties to the contract to determine through negotiation.

Termination of contracts

Consultation question and response

15. Termination clauses should be mandatory in all contracts. To what extent do you agree with this statement? Please give reasons for your answer.



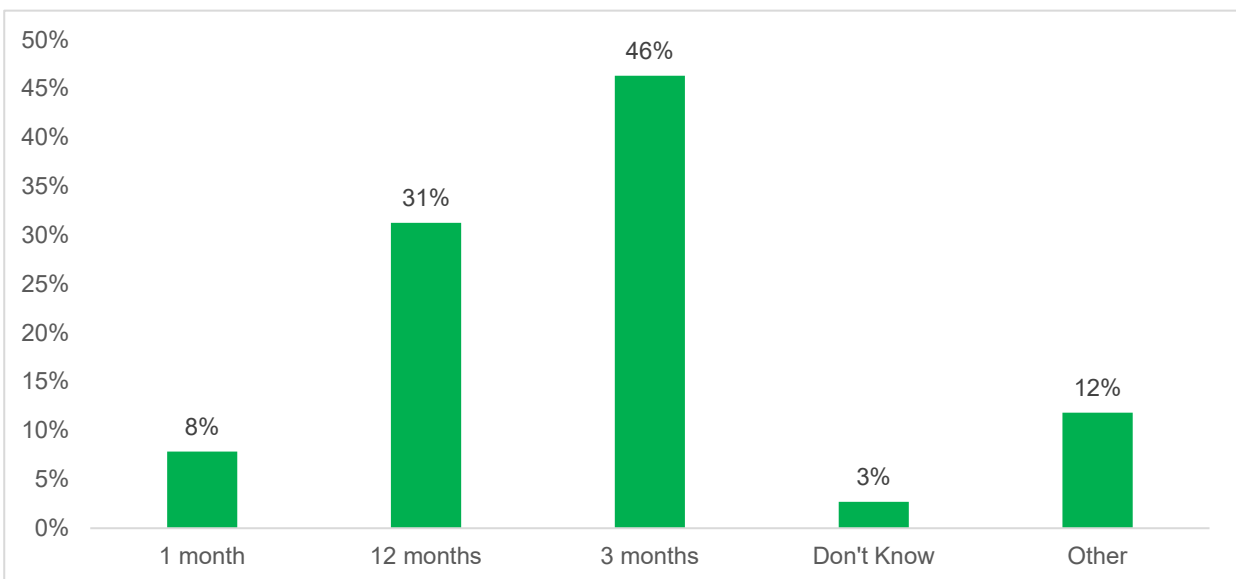
The overwhelming majority of respondents agree that termination clauses should be mandatory in all contracts. There is support for this across both producers and processors; 85% of producers either strongly agree or agree, as do 96% of processors.

Many respondents believe that clear termination clauses increase the transparency of the contract, as well as providing more stability that can facilitate better business planning for both producers and processors.

Termination of contracts - producer

Consultation question and response

16. If you agree that termination clauses should be mandatory, please indicate your preference for the minimum notice period for a producer to terminate the contract.



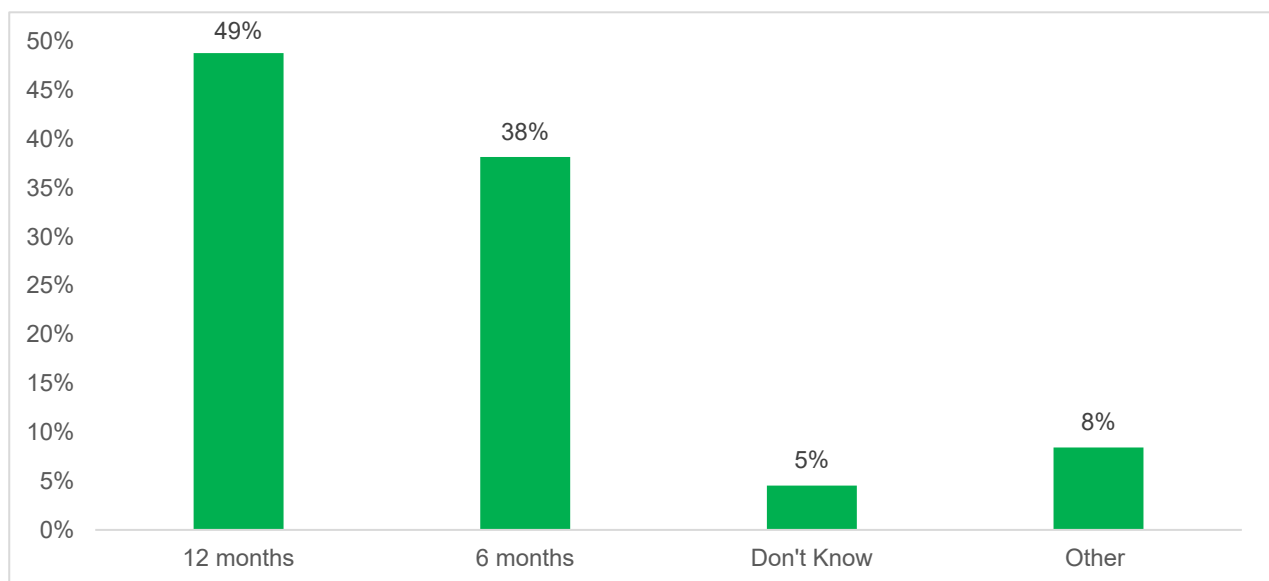
The most popular option for the minimum notice period for a producer to terminate the contract is three months. Producers suggest that three months provides sufficient time to adapt their business and find a new buyer for their milk, while ensuring the business can remain agile.

Those who are currently part of a co-operative support a longer-term notice period, with 51% of co-operative respondents indicating their support for a twelve-month notice period. These responses indicate that a twelve-month notice period underlines the stability of a co-operative and facilitates reinvestment in the business.

A few respondents wish to see a six-month minimum notice period. Many of these responses support a flexible approach to termination, with a three-month termination period for those producers on exclusive contracts with processor discretionary pricing, and a six-month termination period for those not.

Consultation question and response

17. Please indicate your preference for the maximum notice period for a producer to terminate the contract.



While the most popular option for the maximum notice period for termination of the contract by a producer is 12 months, there is no clear consensus for a duration that would be suitable for all business relationships.

A few respondents are in favour of a 3-month maximum notice period, with some suggesting that this could improve competitiveness in the sector if producers could move more freely between processors.

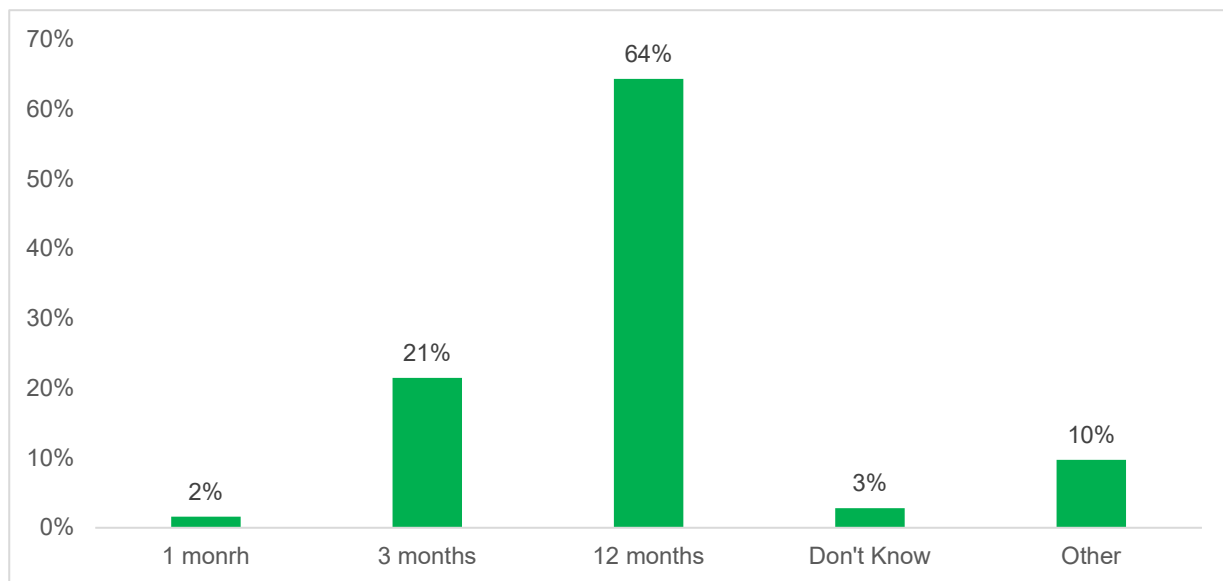
Certain responses highlighted specific practices which can restrict opportunities for a producer to terminate a contract, such as contracts which only allow termination notices to be issued on a limited number of days.

“We see some dairy contracts currently that say a dairy farmer has to give 12 months’ notice and they can only issue that notice on 2 specific days in a year. We see no justification for such a long notice period and such restrictions on when notice can be served.”

Termination of contracts - processor

Consultation question and response

18. If you agree that termination clauses should be mandatory, please indicate your preference for the minimum notice period for a purchaser to terminate the contract.



Twelve months is the preferred minimum termination period on the part of the processor. 66% of producers and 50% of processors select this option, indicating support for a twelve-month minimum duration across the supply chain.

Many respondents note that a twelve-month period allows sufficient time to adapt and find a new buyer or supplier. Responses suggest a shorter length of time would hinder long-term business planning, such as the need to prepare cattle sales or alter breeding policies.

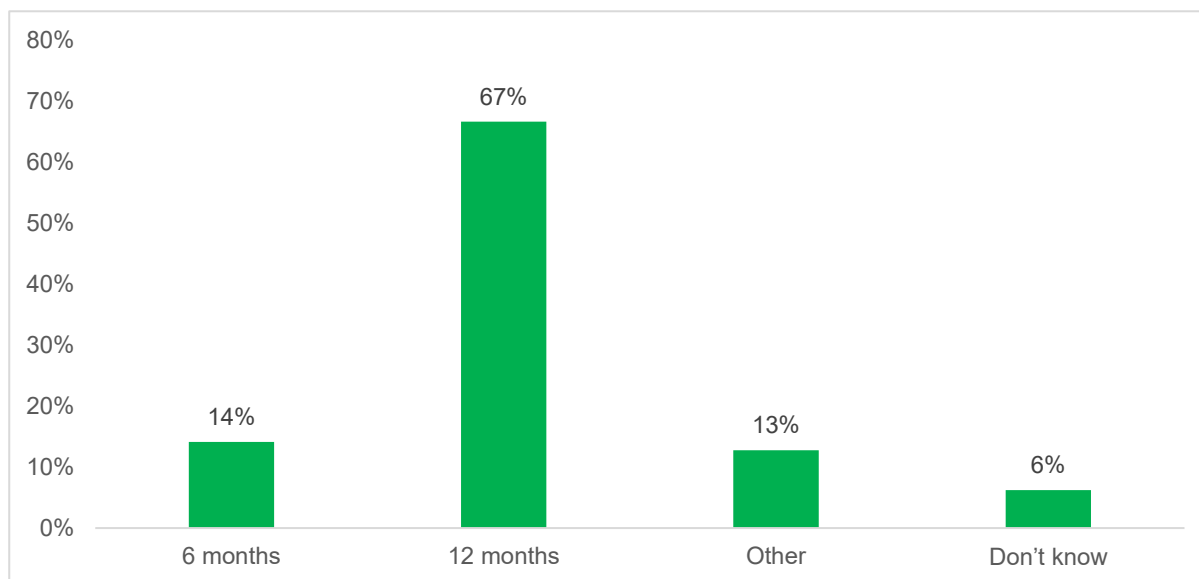
Some responses suggest a shorter ‘get-out’ clause may be required in those circumstances where there has been a clear breach of contract, such as animal welfare failings. There is no consensus for the preferred length of this shorter period.

Those on evergreen contracts support the continuation of these arrangements, while supporting a shorter termination period in those instances whereby contract terms are broken.

Of those who selected ‘other’, some respondents suggested that this matter should not be dictated by legislation and parties should be free to negotiate and agree on an appropriate time period themselves.

Consultation question and response

19. Please indicate your preference for the maximum notice period for a purchaser to terminate the contract.



As with the minimum termination period, twelve months is also the preferred maximum termination period on the part of the processor. This is reflected across submissions from both producers and processors.

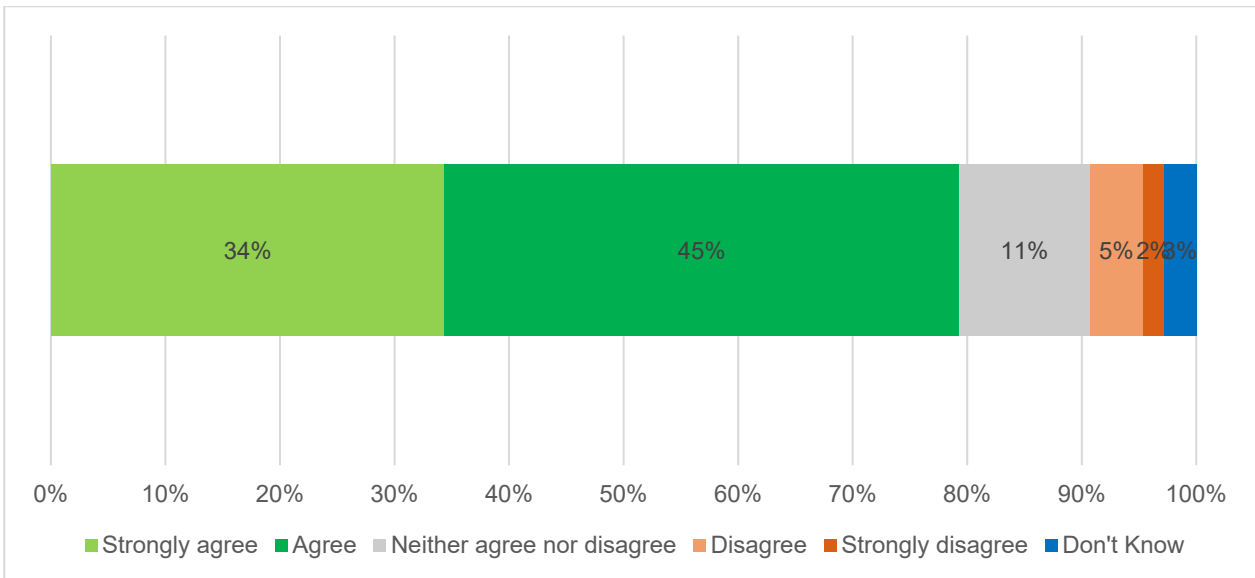
Responses suggest a twelve-month period provides sufficient time for both parties to adjust and to find alternative arrangements. Some producers are concerned that a shorter period risks the producer being unable to find a new buyer to accommodate their milk volume. Other responses suggest that there should be no maximum termination period, to provide producers with the longest possible time to secure new contracts.

As with the minimum duration period, some respondents prefer a shorter termination period in those instances of a clear breach of contract, such as a consistent failure to meet standards. Similarly, demand remains for evergreen contracts to be permitted under any new legislation.

Variations in agreement

Consultation question and response

20. All parties should be able to request changes to the terms of a contract, with that change only coming into force if agreed unanimously. To what extent do you agree with this statement? Please give reasons for your answer.



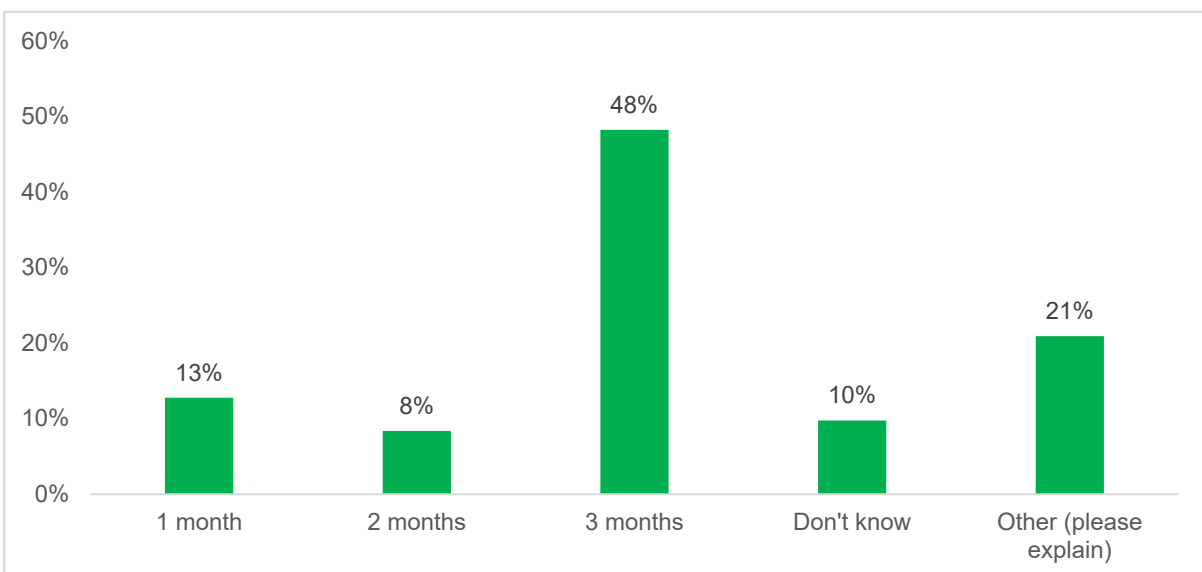
Respondents overwhelmingly agree or strongly agree that contract changes should be unanimously agreed before coming into force.

Respondents generally recognise that contractual changes may sometimes be necessary in order to adapt to changing market conditions. However, there was a commonly shared view that mutual agreement of changes is preferable to imposition and more likely to benefit both parties to a contract.

Other responses indicate that collective agreement may be difficult to implement in practice. Some respondents suggest that the greater bargaining power of processors can sometimes force producers to accept unfavourable contract terms. Similar responses suggest that representative organisations are discouraged from requesting contractual changes on behalf of their members.

Consultation question and response

21. Before any agreed changes are implemented, what should be the length of a mandatory minimum notice period?



Most respondents seek a three-month minimum notice period for any agreed contractual changes. Some respondents note that three months is enough time to adjust business plans and to make new financial or production arrangements accordingly.

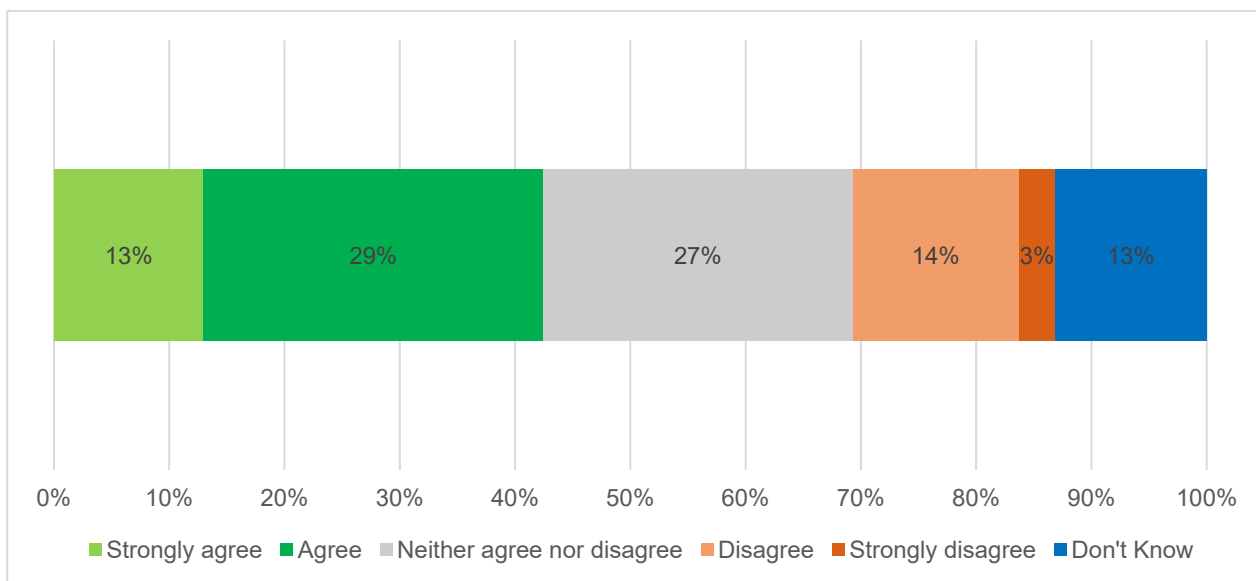
Some respondents suggest the period of notice should depend on the nature of the proposed, and that more significant or complex changes in contract require more time to adjust to than smaller changes.

“This will depend on the changes being requested - if a farmer has to change operating protocols it may take months or even a year for them to be enacted. However, as a minimum a month is reasonable as farmers may need to respond to market signals without delay.”

A few respondents, primarily those who selected ‘other’, indicate that the notice period should be mutually agreed by both parties to a contract, without needing to be specified in legislation.

Consultation question and response

22. Any mandatory minimum notice period to vary a contract should be set longer than any minimum termination notice period. To what extent do you agree with this statement? Please give reasons for your answer.



There are a diverse range of views regarding the appropriate notice period for a change in contract and whether this should be longer than the period of notice required for the termination of a contract. This pattern is consistent across responses from both producers and processors.

Some of those who agree that a change in contract should require a longer notice period than that required for contract termination believe that this will provide clarity and business security for both parties to the contract. It is suggested that a longer notice period for contractual changes, will lead to more equitable positions in the supply chain. If a contract

change cannot be agreed, then a longer duration empowers both parties to secure a new contract elsewhere.

Of those who disagree, some suggest that if the notice period for contractual changes is too long that this will restrict business responsiveness. These responses suggest that contractual changes are often justified by changes in the market making it imperative that businesses can adapt to new conditions quickly.

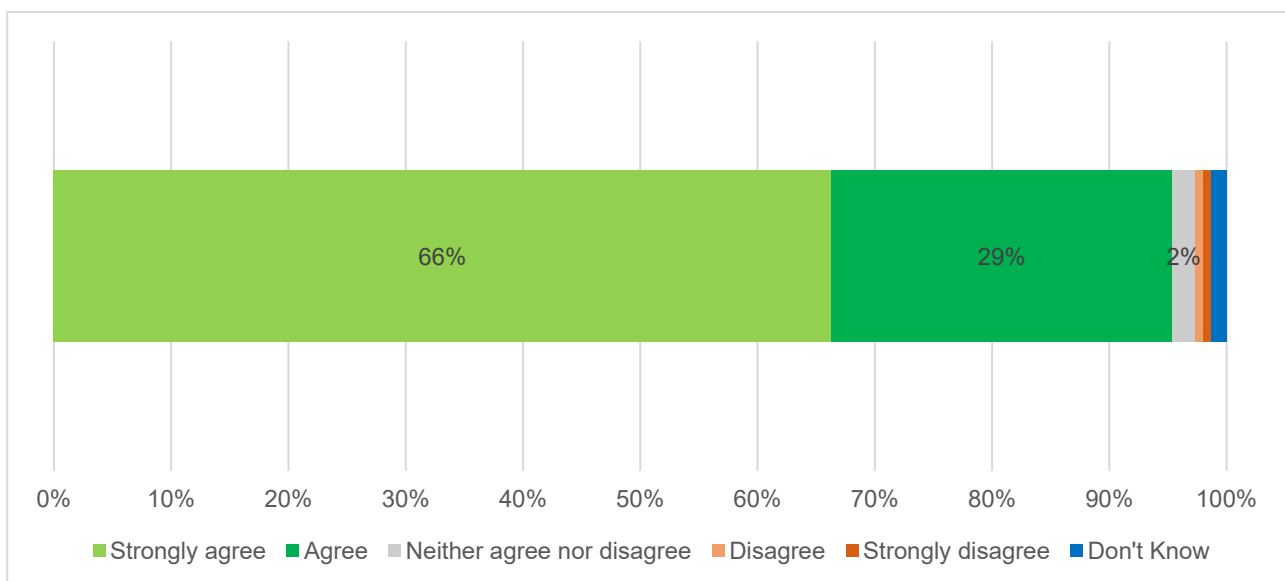
Other responses suggest that all notice periods should be the same duration.

“They should be more or less the same - if a change is coming and the farmer doesn’t agree with the changes they should be allowed to move before any change comes in.”

Charges and premiums

Consultation question and response

23. A contract must contain, in clear and unambiguous language, all terms and conditions relating to payments and deductions. To what extent do you agree with this statement? Please give reasons for your answer.



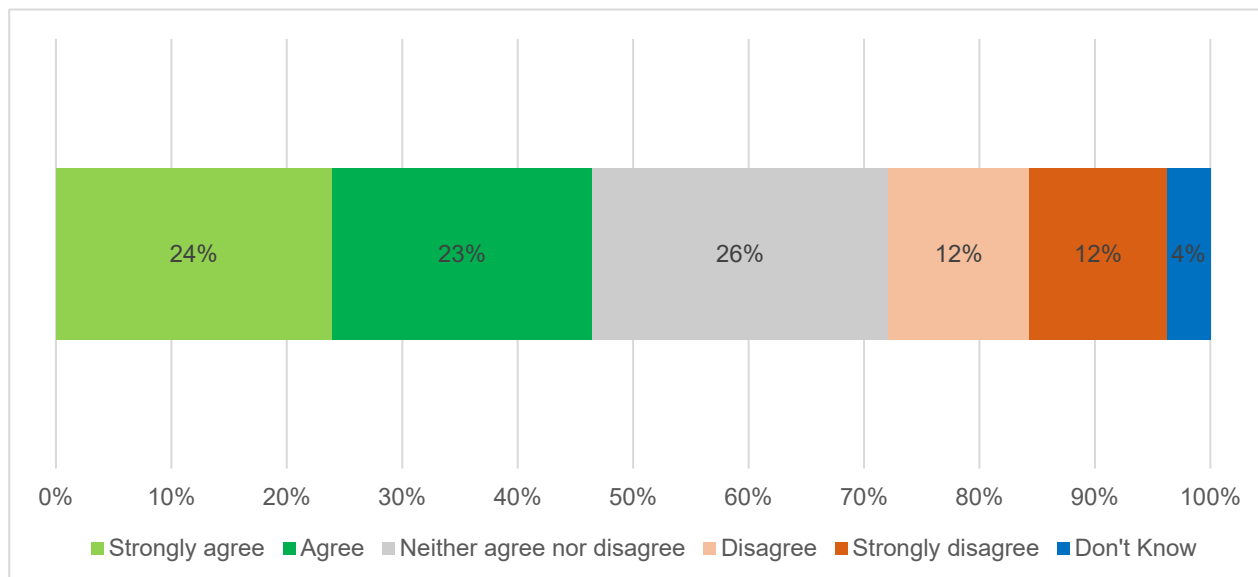
There is a strong consensus that contractual terms and conditions should be set out in clear and unambiguous language. This result is consistent across both producers and processors.

Most respondents suggest that this will improve understanding by both parties and will help to facilitate business planning. Some other responses also suggest that clearer contractual terms could limit the likelihood of retrospective changes, thereby reducing the scope for contractual disagreements.

Exclusivity

Consultation question and response

24. Exclusivity clauses should be prohibited. To what extent do you agree with this statement? Please give reasons for your answer.



Opinion is divided as to whether exclusivity clauses should be prohibited. This trend is consistent across producers and processors, as well as across all nations in the UK.

Many respondents believe that this should be left for parties to a contract to decide. Among these responses there is consensus that, where parties agreed that exclusive contracts are appropriate, then they should be free to make such arrangements. The main concern among these respondents is where contractual exclusivity is considered the standard and included in contracts without consideration. There is also concern about instances where exclusive contracts also include other terms, such as tiered pricing or restrictions on milk volume.

Some respondents are concerned that non-exclusive contracts would be challenging to implement. Potential difficulties are suggested, including the need for individual milk storage units per each strand of supply, co-ordinating supply timings and increased logistic costs. Responses also indicate that non-exclusive contracts may harm the environment by resulting in increased transportation, if farmers were servicing multiple processors.

Among the responses agreeing that exclusivity should be prohibited, it was commonly believed that producers can better manage their risk by being able to supply multiple buyers. A few responses also suggested that this will facilitate producer expansion and diversification opportunities.

Other respondents, particularly those in co-operatives, support exclusive contracts, if milk buyers are contractually bound to purchase all the milk produced by each producer.

A few respondents indicate that exclusivity is a more pressing issue for markets in Great Britain, given the co-operative nature of the Northern Ireland milk market. As a result, half of respondents from Northern Ireland disagreed or strongly disagreed that exclusivity should be prohibited, with responses highlighting that evergreen contracts allowed for all milk to be collected by a single processor.

Further provisions

Consultation question and response

25. Are there any additional clauses which should be mandatory in contractual terms? Please provide details.

The consultation aimed to gather views on any additional clauses that should be either made mandatory or prohibited in legislation.

Many respondents prefer clear force majeure clauses within contracts, with transparent definitions of when this is applicable and the process to be followed. Responses indicate that, without greater clarity, force majeure can be used to the detriment of smaller producers:

“Force majeure should be defined. It seems to be a phrase which everyone uses to suit themselves. Every milk contract should be specific about what they consider force majeure to be.”

A significant number of responses also suggest that contractual terms stipulate the procedure in cases of succession or liquidation. These respondents cited instances of farms being required to continue production even in the event of the serious injury or death of a producer. Another example cited was a farmer needing to supply a processor in liquidation, with the risk that they might not be paid for their production.

Consultation question and response

26. Are there any additional clauses which should be prohibited in contractual terms? Please provide details.

There are a diverse range of opinions in response to this question.

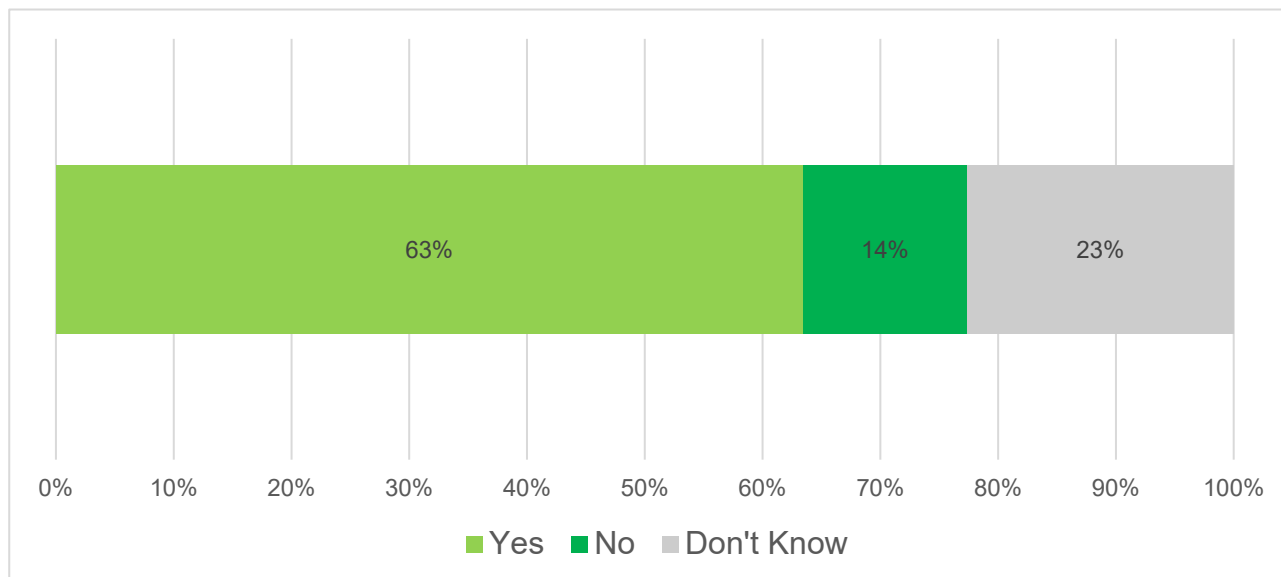
Some respondents are concerned about poor treatment of parties to a contract once notice has been served. These respondents are also concerned at the risk of discrimination following the making of complaints or rejection of proposed changes in contract. A few respondents suggest that this practice, referred to as a 'loyalty bonus', can typically involve the producer receiving a lower price for their milk once they have served notice on a contract.

Some producers support the prohibition of discretionary pricing, suggesting that this permits the passing of supply chain price risk to producers in periods of market difficulty. A common view was that retrospective changes to contract terms should be prohibited.

Confidentiality

Consultation question and response

27. Should regulations be introduced to cover confidentiality clauses? Please give reasons for your answer.



Most respondents agree that legislation should include conditions relating to confidentiality clauses. This view is shared by both producers and processors.

The most typical response was that producers should have opportunity to seek advice before signing any contract; 52% of respondents who provided reasons for their answers referenced this.

“Farmers should be able to take expert advice when making significant business decisions, which may result in existential threats to their businesses. Contract law is complex, and it is essential for producers to be able to take expert advice, and manifestly unfair to deny them that right.”

Responses from some producers suggest that they may be prevented from obtaining professional advice, such as legal or financial. There is concern that this limits understanding of the terms being agreed to as part of the contractual agreement.

The importance of treating commercial information with sensitivity was routinely raised. These responses suggest that while producers should be free to seek professional advice on the terms of a contract, terms should be prohibited from being shared more widely and the traditional protections for *bona fide* commercially sensitive information should remain in place.

Responses from Northern Ireland were less conclusive, with fewer than half of respondents (46%) believing that there should be regulations to cover confidentiality clauses.

Consultation question and response

28. If you agree that regulations should cover confidentiality clauses, which confidentiality clauses should be prohibited, and which (if any) are acceptable? Please give details.

Many respondents want to see the prohibition of contractual clauses that may restrict producer consultation with third parties, such as those that forbid a producer seeking legal advice before signing a contract or raising a complaint to their processor or representative organisation.

Many responses also recognise that confidentiality clauses are acceptable when they prevent commercial information being widely shared. Such commercial information may include processor plans for new product launches or acquisitions, long term business plans and retailer relationships.

“I think that it is perfectly reasonable for the commercially sensitive nature of an agreement to be able to be kept between the two parties and their advisers and that, unless both parties agree to it, that should not be for public broadcast. Otherwise there should be little within a contract that should be confidential.”

Dispute resolution

Consultation question and response

29. Please provide your views on the most effective means of dispute resolution and whether this should be binding or advisory.

There are a diverse range of views on the best approach to enforcement and dispute resolution, particularly as to whether this should be binding or advisory.

23% of respondents explicitly indicated support for a binding resolution, compared with 10% who specifically support an advisory approach. Some responses suggest that any enforcement mechanism should incorporate both, with a binding solution only to be used as the final step in a tiered process of dispute resolution. This approach has support among both producers and processors.

A few responses suggest that a voluntary approach must first be used, allowing for the parties in question to meet and discuss the issue at hand. These responses indicate that this internal process must aim to resolve the issue quickly, with the steps to be followed clearly set out in the contract.

Other responses raised the possibility of an industry arbitration board. To maintain an objective dispute resolution process, it is suggested that this board should contain representatives for both producers and processors. Responses suggest that an industry board would act only in an advisory capacity, listening to individual cases in those instances where internal discussions have failed to provide a clear resolution.

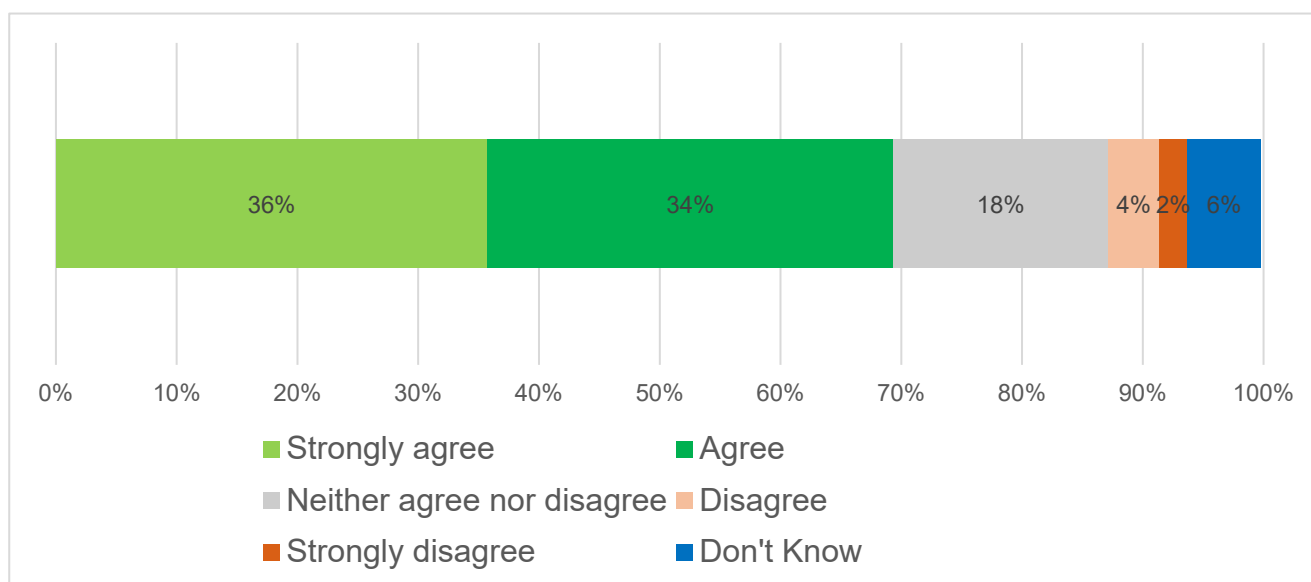
Many respondents also wish to see an independent adjudicator or ombudsman to enforce new regulations. A common view was that new legislation will only succeed if there are meaningful sanctions for non-compliance.

Producer organisations

The aim of this question is to establish the level of support for Producer Organisations and whether they should be promoted alongside legislation.

Consultation question and response

30. The promotion of Producer Organisations should be considered alongside legislation. To what extent do you agree with this statement? Please give reasons for your answer.



Most respondents either strongly agree or agree that producer organisations should be considered alongside legislation. This trend is consistent across responses from all nations within the United Kingdom.

Many responses suggest that Producer Organisations will help to create a more equitable sector through the promotion of farmer representation and enhanced bargaining power. Some other respondents also question the value in a Producer Organisation scheme if processors might refuse to recognise or negotiate with such bodies.

Many of those in co-operatives believe that it is important that any legislation involving Producer Organisations should not undermine the co-operative structure:

“We strongly agree, provided Cooperatives are also promoted alongside producer organisations. Any opportunity for farmers to work together cooperatively should be encouraged.”

A few other respondents expressed concern about the implementation of a Producer Organisation regime and questioned whether this is appropriate for the structure of the UK

market. They suggest that there are potential risks that the additional costs or bureaucracy involved with PO recognition could be passed to farmers.

Impact on business

Consultation question and response

31. Are you aware of any impacts to businesses which could arise from the introduction of a dairy contract regulation? Please give reasons for your answer, including any additional annual costs or savings for your business and any specific impacts in one or other parts of the UK.

There are mixed opinions regarding the potential impact to business. Some responses believe that the benefits of legislation will mitigate any potential costs, while others suggest that it will improve security of business. Some processors did voice concern that legislation may result in increased costs to business and that contract revisions could be time intensive.

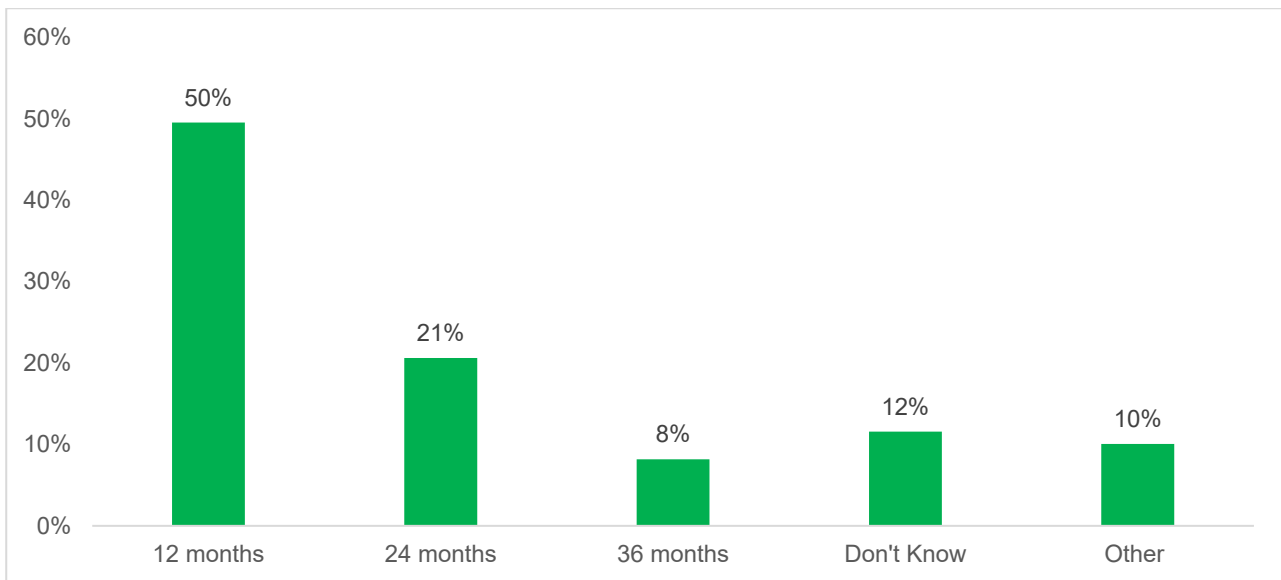
Some respondents suggest that legislation will impact the milk price, and that this could be either a positive or a negative. There is some concern that processors will seek to pass any associated costs to producers through a lower milk price. Other respondents believe that regulation will result in an improved milk price as costs and risks are more likely to be shared equally across the supply chain.

Those in co-operative businesses are concerned that legislation could have unintended negative consequences on this business model. Responses from co-operative members support co-operatives' current pricing structures, which are considered to be sufficiently transparent and responsive. These respondents argue that co-operative members already feel included in business decisions via a democratic process.

Transition period

Consultation question and response

32. How much time would you estimate you need to be ready to implement new legislation and enter into new contracts? Please give reasons for your answer.



Almost half of respondents estimate they will need 12 months to become compliant with any new legislation. This preference is consistent across responses from each nation in the United Kingdom. Many respondents believe 12 months will enable businesses to adapt any outstanding contractual issues, without leaving parties vulnerable to poor practice for any great duration.

This preference is not consistent between respondent types; processors instead favour a 24-month period. Those seeking 24 months believe this is needed to facilitate business planning; for certain businesses, legislative changes may create the need for consultation and shareholder discussions.

Government Response: Conclusions and next steps

The primary purpose of this consultation was to establish whether a legislative solution is required to address persistent issues in the relationships between dairy producers and buyers. The responses received provide strong evidence that legislation in this area is necessary.

The overall response has demonstrated that many existing contracts are satisfactory and there are widespread examples of constructive, mutually beneficial business relationships. Despite this, strong support for legislation suggests that a statutory baseline is required to ensure all contracts meet an acceptable standard.

The detailed questions contained in the consultation were an invitation to share views on common aspects of contractual practice. These will ultimately inform what is covered in future legislation. Some of the key conclusions are outlined below.

Flexibility

A notable view shared by all types of correspondent is that legislation should be flexible and not overly prescriptive. It is generally agreed by all types of respondent, that a rigid set of requirements risks undermining business growth, potentially negatively impacting milk prices.

Answers to questions on termination notice periods, volumes and contract duration indicate wide support for the specific detail of contract provisions to be freely agreed between the contracting parties, provided that basic minimum standards are met.

UK-wide scope

The consultation included a question on the application of legislation across the UK. Among respondents from England, Scotland and Wales there was strong agreement that any new legislation should be uniform across the whole of the UK. Responses revealed a more mixed picture with respect to Northern Ireland, with the unique market situation there routinely highlighted. We will continue to engage with stakeholders to ensure that legislation works for all parts of the UK.

There was a strong consensus that action must be taken on two key areas, but a broad range of opinions as to *how* the issues in these areas are best addressed. These areas were pricing mechanisms and enforcement.

Pricing mechanisms

A large majority of respondents agreed with the principle of greater transparency through the inclusion of a mechanism or methodology to underpin the milk price. Responses proposed a broad range of approaches to achieving this. There are also some concerns, primarily from processors, that price formulas could prove inflexible.

Enforcement

Responses noted the need for a robust penalty system to underpin effective legislation. There were, however, varied views on the best method of dispute resolution with no clear consensus as to the best approach to administering penalties.

As part of the consultation, respondents were asked to note any specific impacts to business as a result of legislation in this area and a wide range of views were received. We will conduct all relevant assessments of this legislation before its implementation and will continue to assess impacts on an on-going basis.

Next steps:

- The UK Government, working in close collaboration with the devolved governments, will develop a statutory Code of Conduct, using the regulation making power in section 29 of the Agriculture Act 2020
- Regulations will provide a framework, establishing legally binding minimum standards of contractual practice, whilst providing businesses with the flexibility to adapt contracts to their individual circumstances.

- We will work on the basis of introducing regulations with UK-wide application but will consider the unique position of Northern Ireland and will consider incorporating special provision for differing circumstances, if necessary.

Chapter two: annex documents

Annex 1: About the analysis

It is important to keep in mind that public consultations are not necessarily representative of the wider population. Since anyone can submit their views, individuals and organisations who are more able and willing to respond are more likely to participate. Because of this likelihood for self-selection, the approach of this analysis has not only been to count how many respondents held a certain view but also to include qualitative analysis of the additional comments provided to understand the range of key issues raised by respondents, differences in views and the reasons for them holding their view. In presenting the results, we have aimed to provide a broad picture of all views and comments. Therefore, a range of qualitative terms are used, including 'most' 'many' 'some', and 'a few'. 'Most' refers to a significant majority, 'many' refers to when a substantial number of respondents have a similar view, 'some' refers to when there is a reasonable number of respondents with a similar view and 'a few' refers to a small number of respondents. Interpretation of the balance of opinion must be taken in the context of the question asked, as not every respondent answered all the questions, and not every respondent who provided an answer to a closed question provided additional detail. In this respect, qualitative terms are only indicative of relative opinions to questions based on who responded. Therefore, they cannot be assumed to relate numerically back to the total number of people and organisations.

Annex 2: Types of responses

Online survey

Respondents were encouraged to submit an online response by completing an online survey hosted on Defra's consultation website, Citizen Space².

The online survey followed the questions asked in the consultation paper: featuring both closed (for example, tick box questions), and open questions (asking for respondents to detail their views or provide further evidence or examples). Respondents were able to answer as many or as few questions as they wanted. For the closed questions statistics are provided on the responses to each proposal. For open questions, a summary of the main themes emerging from the responses is provided within this response.

² <https://consult.defra.gov.uk/agri-food-chain-directorate/contractual-relationships-in-the-uk-dairy-industry>

Email and post

Responses could be submitted directly by email or post. Some of these responses answered the consultation questions directly. Others provided a more general commentary on the use of contracts within the dairy sector. Where responses answered the specific consultation questions, these have been included in the data analysis of each question. Where responses provided additional general views on the use of contracts, we have reflected these in the general analysis of relevant question areas.

Organisational responses

Organisations and stakeholder groups were able to submit responses to the consultation on behalf of their members. As with the responses obtained via email and post, some of these responses followed the consultation format, while others provided general views on the role of possible legislation in the sector. The key arguments raised in these organisational responses are included alongside individual responses in each of the relevant sections. A list of organisations who submitted a response is included in Annex 3.

Consultation events

Defra attended nine virtual events during the consultation window. These events typically covered an organisational presentation, followed by an open discussion between attendees to share their views on various proposals contained in the consultation. Officials joined these events primarily in a listening capacity. Events were held with the following organisations:

- Arla Foods UK
- Muller Milk Group
- National Farmers Union

Notes on each of the group discussions were taken and have been analysed and summarised separately in the relevant sections of this response

Annex 3: List of responding organisations

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. This list also does not include those that asked that their responses be kept confidential.

- Agrisgôp

- Arla Foods UK
- Belton Farm Ltd
- Clinton Devon Farms Partnership
- Co-Operatives UK
- Crediton Dairy
- Dairy UK
- DCD
- Farmers' Union of Wales
- Holstein Northern Ireland
- Lakeland Dairies
- Meadow Foods
- Muller Milk Group
- National Farmers Union
- National Farmers Union, Cymru
- National Farmers Union, Scotland
- Omsco
- Provision Trade Federation
- Sainsbury's
- Saputo Dairy UK
- Tenant Farmers Association
- Trewithen Dairy
- Ulster Farmers Union

- Welsh Conservative Group