

FARMING AND PROPERTY BULLETIN – SEPTEMBER 2011

CAP REFORM SPECIAL

A leaked paper has emerged in the last few days giving some further insights into the EU Commission's plans for CAP reform. It appears to be authentic but, dated 25th May 2011, is now over three months old. Whilst many may wish to be aware of it, it is incomplete and may well have developed and changed both in policy and detail since. Even when the formal drafts are issued, they still cannot be taken as definitive as it will be subject to discussion and negotiation.

Despite the above caution, the draft can be summarised as follows:

End of Single Payment Scheme

The Single Payment Scheme ends with all current entitlements cancelled. The paper is drafted to start from 1st January 2014 but much speculation still sees this as difficult to do before 2015. If it is delayed it is thought that the old schemes continue with less money to fund them - perhaps a more particular problem for the UK's agri-environment schemes.

A New Basic Payment Scheme

The Single Payment Scheme would be replaced by a Basic Payment Scheme with additional payments. The Basic Payment is seen as the income support part of the package.

Access to the Basic Payment Scheme will be by newly allocated entitlements. Those entitlements will be established on the basis of eligible agricultural area (essentially arable, permanent grass and permanent crops) declared on the claim form in the first year of the new scheme.

Member states shall not make the payment where it would be less than €100 or where the eligible area is less than 1 hectare. The UK is free to raise these figures to €200 and 5 hectares.

The money for the Basic Payment is estimated at 65-70 % of the money that would otherwise be available for the Single Payment under the new EU budget from 2014 to 2020.

The Basic Payment would only be available to active farmers - so far undefined.

There is to be a National Reserve though it is unclear how important it might be. In those areas that phase payments it could top up values for people who have taken on land or started since any reference date. It might have a continuing function in some countries for new entrants. Entitlements not used for two years will be lost to the National Reserve.

Transfers will be allowed but the present draft may well not allow leasing. There do not appear to be limits on transfers of National Reserve entitlements. It seems that the transferee will have to be an active farmer to receive entitlements, but the transferor will not.

The default option would be for the Basic Payment to be paid at a standard value in each regional payment area (it is not guaranteed that existing English payment areas would remain unchanged).

The option is given for the new entitlements to start with a payment value of no less than half the average standard area rate with the balance then proportionately based on previous claims (as at an unknown date). That new historic element would then be phased out over five years.

There is no provision for the voluntary modulation used in the UK.

Capping - The Basic Payment (but only the Basic Payment) would be subject to capping under which payments would be made in full up to €150,000 and then progressively withdrawn so that nothing would be paid on entitlements that could result in a claim over €300,000. In principle, the maximum that could be paid would be €235,000. However, capping can be mitigated to the extent that the business paid salaries (including employer's NI) in the previous (perhaps calendar) year. It would appear that a business claiming €500,000 and paying €250,000 in salaries could thus be paid €485,000 of Basic Payment. It is unknown how casual or seasonal staff might be taken into account - or indeed additional pension payments.

Payment for agricultural practices beneficial for the climate and the environment – “Greening”

30 % of the money otherwise available for the Basic Payment is to be available as an additional payment to farmers who take up **all** of three "greening" requirements:

- "crop diversification" on arable land – for farms with more than 3 hectares of arable land, there must be a mix of at least three crops (crop not yet defined but to include temporary grass). No single crop should be more than 70% of the area, and none less than 5%.
- maintenance of permanent pasture, i.e. that over 5 years old. This effectively brings the requirement to maintain the area of permanent pasture from a national level to an individual farm basis.
- devoting at least 5% of a claimant's arable and permanent crops area (so excluding permanent pasture) as "ecological focus area". Details are lacking but this would include fallow land and buffer strips along with landscape features such as woodland, ponds and hedges.

Entitlements will have to be used to unlock this optional payment which is intended to support a basic environmental commitment.

Organic land will qualify for this payment automatically without these measures - presumably with entitlements.

Areas with Specific Natural Constraints

An additional payment, using 5% of the money otherwise available for the Basic Payment, is to be paid to farmers in these areas. Entitlements will have to be used to unlock this payment.

Small Farmers Scheme

Little is known about this alternative system designed to simplify matters for the smallest claimant. It appears that it may not rely on entitlements.

Voluntary Coupled Support

NB This is only used in the UK for the Scottish Beef Calf Scheme. Much of the drafting here appears to relate more to ending the continuing old coupled schemes in some continental countries.

Up to 5% of the money that would otherwise be available for the Basic Payment may be used for such schemes.

Some comments at this stage based on the above, are as follows.

Existing Scheme - Existing entitlements appear to have no value beyond the present scheme. However, where the optional phasing basis is used then payments made under them at the unknown reference date will add value to new entitlements for their early years.

Active Farmer? - A key factor for a claimant considering the approach to the reform will be whether they can be an active farmer or not. That will depend on the definition which is not yet known and may not be known for some time - strictly, not until the regulation is agreed and even then may still depend on later domestic regulations. For those who clearly would qualify under any test and those who might that suggests that it may often be worth retaining as much flexibility as possible in the interim. Those claimants who could not expect to be considered active farmers can only obtain value by making land available to others who can - that may have an interaction with using that land to support APR on a farmhouse.

Value of Entitlements - With less money allocated and a more complex payment structure, entitlements will generally carry less payment value than now. The English experience suggests that an area basis for allocation leads to a much closer match between the area of entitlements and the area of eligible land, and so tending to restrain the value of entitlements.

Greening and Agri-Environment Schemes - These provisions, aside from any other changes that may come through cross compliance, may force major changes to many basic agri-environment schemes, such as ELS, as Pillar 2 money cannot be used to fund what will already be funded under Pillar 1 Basic Payment Scheme.

Land - As in England in 2005, access to land in the initial year of the new scheme will give access to entitlements. Using a fresh declaration of land to make a fresh allocation of entitlements simply stimulates problems in the land market in the interim. While in 2003 the expectation of a purely historic system disrupted land sales considerably, it may be that the present draft based so substantially on area held in the initial year will be more disruptive of tenancy arrangements.

Even in areas that use phasing, the value of previous history will be less significant than it was in England for 2005 (then 90% of the first year payment and phased out over seven years, now not more than 50% and phased out over five years). That suggests that those who can be active farmers and who wish to maximise their claims under the new regime (if it looks like this draft) will want to have the maximum land area at their disposal in the first year of reform and so move to control this as soon as possible. That may mean both landlords retaining possession of land that comes or can come in hand and also tenants holding onto land they might otherwise give up.

Using a fresh declaration of areas will tend to dilute payment rates, already to be reduced by budget cuts. A little more land may still be there to come forward in England. We understand there is a 7% margin between eligible land and the number of entitlements in Wales and a 20% margin of spare land in Scotland over entitlements. In Wales, studies suggest it will be difficult to use payment areas to cushion the loss of payment from cattle and dairy farms, once the upland commons are separated out. Scotland with its very varied agriculture and large land surplus is going to have to look carefully at how this might be done.

If you would like any advice or help with Single Payment Scheme matters please do not hesitate to contact Emily Quinton or Sarah True at Adkin on (01235) 862888.

OTHER NEWS

New Cross-Compliance Requirement

GAEC 19 will come into force on the 1st January 2012 and puts in place buffer zones around water sources. The rules mimic those under Nitrate regulations and effectively brings those farmers not in NVZs up to the same standard as those in designated areas. The new legislation will mean farmers will not be able to spread manure within 10m or fertiliser within 2m of watercourses, and manure within 50m of boreholes, wells and springs.

New Wayleave Rates

New rates for electricity poles on farmland have been agreed between the NFU/CLA and the Energy Networks Association. These cover the 12 months to 31st March 2012. Payments to farmers should be automatically recalculated by the electricity supply companies. However, many wayleaves are somewhat historical. It may be worthwhile for landowners to check they are actually being paid on the apparatus they host – especially if this has not been done for some decades.

Pre-season Slurry System Checks

The Environment Agency is asking farmers to carry out pre-season checks on their slurry, dirty water and effluent collection systems to reduce the risk of pollution, following an increase in pollution incidents last winter.

New SSSI Enforcement Regime

Historically warning letters and criminal procedures have been the only enforcement tools for SSSI and Environmental Impact Assessment (Agriculture) Regulation breaches. Natural England is now conducting a consultation on their compliance, enforcement work and specific civil sanction proposals which may soon be put in force as an alternative to the existing regime.

Farmland Values Rise Again

The RICS Rural Land Market Survey has found bare land averaged £6,115/ac during the first six months of the year, an increase of 5% over six months.