



## Direct payment to farmers: Lump sum exit scheme and delinked payments in England

### Defra Consultation

Date: 11 August 2021

### Introduction

1. The Country Land and Business Association (CLA) is the membership organisation for owners of land, property and businesses in rural England and Wales. We help safeguard the interests of landowners, and those with an economic, social and environmental interest in rural land. Our members own or manage around half the rural land in England and Wales and more than 250 different types of businesses.
2. The CLA welcomes this opportunity to respond to the consultation, 'Direct payment to farmers: Lump sum exit scheme and delinked payments in England' published on 19 May 2021.

### Consultation background

This consultation applies to England only.

In the Agricultural Transition Plan (ATP) released in November 2020, Defra stated that delinked payments will be introduced to all applicants from 2024.

The ATP outlines Defra's intention to introduce lump sum payments in 2022. These one off payments will be made based on the value of the recipient's remaining Basic Payment Scheme (BPS) payments. Lump sum payments will only be available to those planning to exit the industry and will likely be capped, perhaps at £100,000.

### Consultation proposals

#### *Delinked payments*

Delinked payments will mean that recipients of the annual Basic Payment Scheme will continue to receive annual payments on a declining profile, but will no longer need to complete an annual application or continue to farm the land. Cross-compliance will end, but a new regulatory approach is currently in development under a review of regulation and enforcement. Delinked payments, will allow Defra to simplify the administration for both recipients and government.

#### *Key features*

- Recipients will receive remaining annual payments, based on a reference year or period, from 2024.



- No annual BPS application or requirement to follow cross compliance rules.
- No requirement to own entitlements in order to receive BPS.
- No requirement to continue farming in order to receive payments.

### *Lump Sum Exit Scheme*

In order to facilitate some restructuring in the industry and open opportunities for new entrants, Defra is planning to offer a lump sum exit scheme. This scheme will allow eligible BPS recipients to receive a lump sum payment in place of the remaining payments that they would have been entitled to receive during the transition period up to 2027, on the condition that they leave the sector.

### *Key features as proposed*

- This scheme is expected to be open for applications in 2022 only.
- The lump sum payment will be based on a reference year or period, with a proposed maximum payment cap of £100,000.
- The recipient must have claimed BPS in 2015 or earlier, with exceptions for inherited farms and tenancy successions.
- The lump sum recipient will have their entitlements cancelled and must either sell, gift or let their farmed land. If the farmland is let, it is proposed that tenancies will have to have a minimum 5 year term.
- It is proposed that the lump sum recipient will be permitted to retain up to 5ha or 5% of their farmland, whichever is smaller, along with residential and commercial property on the farm.
- It is proposed that holders of Agricultural Holdings Act tenancies will be permitted to claim the exit payment and pass the tenancy on to an eligible successor.
- The recipient will have to repay the lump sum, should they claim Countryside Stewardship or the Sustainable Farming Incentive (SFI) before the end of the transition.
- Directors or partners in businesses that receive the lump sum will not be permitted to continue receiving Direct Payments via any other farming business they are linked to.

## General comments

3. This consultation response reflects comprehensive CLA engagement with a wide range of members over a 12 month period. The members consulted are involved in the running of a broad range of farming businesses across England.
4. The CLA view is that the scheme, as proposed, will generate interest but with limited uptake. Interest will be limited largely to those that are already planning on exiting the industry. However, it could serve to initiate conversations regarding the future and may stimulate change in businesses broader than the eligibility.
5. Family farming partnerships are the dominant farm business type in England. Older members of family farming partnerships will wish to take advantage of the exit scheme however, the proposal to prevent all partners or directors in a business that receives the lump sum from entering into any new environmental land management agreements such as Countryside Stewardship or the Sustainable Farming Incentive, will prevent the remaining partners from accessing support. This proposal would penalise family partnerships that have conscientiously considered business succession and planned for the future. We disagree that the remaining partners should be prohibited from entering into any new environmental land management agreements such as Countryside Stewardship or the Sustainable Farming Incentive. There are more details on the implications of this rule and our proposed solutions in our response to question 17.
6. There needs to be clarity on leased BPS entitlements, both for the purposes of the exit scheme and delinked payments. Leased entitlements are the property of their owner; those holding leased entitlements should not be eligible to apply for the exit payment without the express permission from the owner of the entitlements. In situations where entitlements are leased, the CLA view is that the remaining delinked payments should be transferred to the owner of the entitlements when the entitlements return to them.
7. The proposal to allow the recipient of the lump sum to retain up to 5% or 5 ha of the land that comprised part of their BPS claim is acceptable in the case of owner occupiers. However, it is not appropriate to apply the same rule to tenants participating in the scheme, given their tenancy agreements will likely be terminated as a result of their participation.
8. The exit schemes rules, as proposed, require the lump sum recipient to repay the lump sum, should they go on to enter future support schemes, such as Countryside Stewardship or the Sustainable Farming Incentive (SFI). This makes sense, where the future support schemes require an element of farming in order to deliver the scheme however, there should be an explicit exception for environmental schemes that are not linked to farming activities, such as the hedgerow and woodland standards within the SFI, or the woodland creation schemes under Countryside Stewardship. Exceptions may also include scenarios where the lump sum recipient goes on to enter into a scheme or schemes that fall under the two other components of E.L.M- Local Nature Recovery and Landscape Recovery, provided that they are not required to farm to deliver the schemes.

## Specific Comments

9. We have the following additional comments in relation to the consultation document and have limited our response to those questions which are relevant to the CLA membership.

**Q9. 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 five years. Do you agree? Please give reasons for your answer and if you select 'no' please explain what rules you would prefer to see instead.**

No.

10. The CLA's preference is for there to be no restriction on the length or type of new agreement, provided it allows another party to occupy the land. Parties should have the freedom to negotiate a suitable agreement. Prescriptive rules may reduce the appeal of the scheme and by requiring a specified minimum agreement length, the range of potential new occupants, including new entrants, may narrow.

**Q10. 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? Please give reasons for your answer.**

Yes.

11. The CLA supports this proposal in that it would encourage a more timely succession subject to the rights of succession set out in statute.

**Q11. Should a successful applicant be allowed to keep their residential or commercial property, non-agricultural land, and up to 5% or 5 hectares, whichever is the smallest, of their agricultural land in England? Please give reasons for your answer.**

The answer to this question will vary according to tenure.

12. The CLA supports the proposal that owner-occupiers should be permitted to retain up to 5% or 5ha of the agricultural land that comprised part of their BPS claim, in addition to other property that should be outside the scope of the scheme in any case. This is a scheme that deals with the cancellation of BPS entitlements which are used to claim payments on farmland, not on commercial or residential property, or non-agricultural land. Therefore the proposed agricultural land allowance for owner-occupiers should be calculated as a proportion of that claimed-on land.
13. It is not clear how this might work in the tenanted sector. With Agricultural Holdings Act agreements, a surrender of entitlements and an industry exit will require the surrender of the entire tenancy agreement, including any farmhouse or other buildings, as the basis

under which the tenant occupies the holding will have changed. For agricultural tenancies on which diversification has taken place, the landowner and tenant may wish to set up a new tenancy to facilitate the continuation of the diversified business. This should be possible where there is agreement and would not require new legislation.

14. With tenancies governed by the Agricultural Tenancies Act (known as Farm Business Tenancies/ FBTs), parties are afforded greater flexibility. It may be that where certain business conditions are met together with the notice conditions, parties could agree a surrender of the majority of the agricultural land, retaining a minimal amount to be farmed under the original FBT however, this would require the landlord's agreement.
15. There should not be any presumption that the farmhouse or farm buildings can be retained if the agricultural land is being surrendered, because they may be required for a new entrant taking on the agricultural land. However, in situations where it suits both parties, the exit scheme should not preclude a tenant from making a separate agreement with the landlord where the tenant wishes to be granted a new agreement for the occupation of land or buildings on commercial terms. Such an agreement would be entirely separate from any preceding tenancy.

**Q12. Should it be a requirement to have first claimed Direct Payments in 2015 or earlier to qualify for the lump sum? Please give reasons for your answer.**

Yes.

16. This is reasonable, given the desire for the scheme to appeal to those that wish to exit the industry and that are likely to have been farming for some time.

**Q13. 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? Please give reasons for your answer.**

Yes.

17. The CLA is supportive of this proposal, which will encourage the succession of Agricultural Holdings Act tenancies and could also be appropriate for those that have inherited a farm but do not wish to farm. There should be an appeals process where rigid enforcement of the 2015 date would cause excessive hardship.

**Q14. How long, from the publication of the scheme rules, should an applicant be given to transfer their land? Please give reasons for your answer.**

2 years.

18. Applicants will only be able to make the necessary plans when they have full sight of the scheme rules in October 2021.
19. Given the seasonal cycle of the farming calendar, applicants from all farm types need to be given an adequate opportunity to conclude their business arrangements. Different farm types will reach peak activity at different points in the year. Even in the most straightforward, outright owner-occupier scenario, concluding business arrangements is likely to take at least 12 months. The owner-occupier would need to determine whether to sell, let or gift their land, before taking steps to do so, with unforeseeable delays a possibility with each of these options. The owner-occupier would also need to sell or relocate their stock and machinery and close their business trading accounts, settling any debts.
20. The tenancy scenario is more complex given that terminating their tenancy agreement will often require the tenant to find alternative accommodation, as well as dispose of livestock and equipment (if no successor). Notice to end the tenancy needs to be given at least 12 months in advance of the term date, which might, for example be on 25<sup>th</sup> March or 29<sup>th</sup> September. For example if the scheme rules are published in October 2021 and the tenancy term date is 25<sup>th</sup> March, a notice could be served in October 2021, but it would not be effective until 25<sup>th</sup> March 2023. If both parties are in agreement with the tenant taking up this option then the parties will be able to agree a surrender which must be documented in writing. It should be noted that some Farm Business Tenancies can require a notice period in excess of 12 months. In instances where tenancy succession is opposed, the process to resolve this can be very lengthy and could run into years.

**Q15. To claim the lump sum, should farmers who use common land to claim BPS have to give up their rights of common as proposed? Please give reasons for your answer and if you select 'no' please explain what rules you would prefer to see instead.**

Yes, though the scheme will hold limited appeal in cases where the rights are tied to accommodation.

21. Common land is highly variable. No two commons are the same and there is no standardised operational model, nor a “one size fits all” approach. Some common rights are exercised and some are not. Rights of common are always fiercely guarded and access to moorland grazing in particular is limited. It is therefore likely that a condition that requires the lump sum recipient to cease exercising common rights would mean few commoners would take part in the scheme.

Owners of property with attached common rights (commoners):

22. Commoners do not ‘own’ their rights as such, with rights of common being attached to property, rather than individuals. The permanent severance of grazing rights from the subject holding land (that enjoys the benefit of the right to graze the common) was banned by the Commons Act 2006. Please see [this](#) Defra guidance note from 2006. This means that in selling their rights of common, the commoner may be required to sell the subject

holding, which may include the farmhouse. This is different from a more conventional land tenure situation, where the lump sum recipient could sell their farmland land and remain in occupation of the farmhouse and 5% or 5ha of farmland. This element of the proposal could limit the appeal of the scheme for those farming common land attached to farmhouses.

Tenants of farms let with common rights:

23. Grazing rights can be temporarily transferred via licence between a landlord and a tenant within a tenancy agreement, or the rights themselves can be comprised within a tenancy agreement. Often, the inclusion of grazing rights underpins the viability of a tenanted holding. In such situations, the tenant could apply for the lump sum, which would require the surrender of the whole tenancy agreement, with the rights remaining with the landlord. In this sense the tenant would 'give up' their right to exercise the common rights, along with the tenancy, though the rights would remain free to be used, without the ability to claim BPS- either by the landowner, a new tenant or licenced to another user.

Temporary licence of common rights:

24. Although the Commons Act 2006 prohibits the permanent severance of common rights from the subject holding land, rights can be temporarily granted via licence agreement for a maximum of 2 years. In such situations, whilst the licensee may be permitted to apply for BPS for the duration of the licence, they would not be permitted to 'give up' the rights on behalf of the owner of the rights.

Other considerations:

25. The consultation proposes a rule that would allow exit payment recipients to retain 5% or 5ha of their agricultural land. Consideration needs to be given to determine how this rule would apply to those with common rights and whether commoners would still be permitted to exercise an agreed proportion of their rights. Many commoners will have access to owned farmland as well as common land and there will be farmers who declare say 50 acres of non-common land, but have a common rights claim that gives a notional total payment area of 500 acres. This raises the question to which will the 5% or 5ha limit be applied to.

**Q16. 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? Please give reasons for your answer and if you select 'yes', please provide details.**

Yes.

26. The exit scheme rules, as proposed, require the lump sum recipient to repay the lump sum, should they go on to enter future support schemes, such as Countryside Stewardship

or the Sustainable Farming Incentive (SFI). This makes sense where the future support schemes require an element of farming in order to deliver. However there should be an explicit exception for environmental schemes that are not linked to farming activities, such as the hedgerow and woodland management standards within the SFI, or the woodland creation schemes under Countryside Stewardship.

27. Defra has not yet confirmed whether lump sum repayment will be required upon entry into the two other components of E.L.M. (Local Nature Recovery and Landscape Recovery). The publication of the exit scheme rules in October should provide clarity on this. The CLA view is that the individual that claims the exit payment and goes into any of the three E.L.M. components should be permitted to retain their lump sum provided that there no farming elements to the E.L.M scheme/s they enter in to.
28. The CLA has outlined its proposed treatment of farm business partnerships in our response to question 17. Farm business partnerships where those retaining an interest in the partnership are permitted to retain the partnership's agricultural land, could also constitute an exception.

**Q17. Do you have any other comments on the proposed conditions and eligibility rules for the lump sum exit scheme?**

29. There are different farm business structures that sit behind the Single Business Identifier and an understanding of these is required to gauge how certain rules will impact the appeal of the scheme. Partnerships are the dominant form of farming business ahead of sole trader, with many farming partnerships being multi-generational, family partnerships. Some families may operate their family's farming business through a limited company. We have provided various scenarios below which we recommend Defra considers in detail.
30. The proposal to prevent all partners or directors in a business that receives the lump sum from claiming future direct payments will make the scheme unattractive for these businesses, particularly where steps have been taken to begin the process of bringing the next generation of the family into the business as part of the family's plans for succession planning. Again, when applied to this scenario, the proposed rule that a recipient of the lump sum would have to repay it if the partnership or company with which they were involved subsequently enters into Countryside Stewardship or the Sustainable Farming Incentive during the remainder of the agricultural transition, seems unfair where there is an ongoing partnership or corporate farming business where an outgoing partner/partners have exited the industry, and contrary to the government's wider environmental objectives. The CLA has spoken with senior partners in family farming partnerships that are interested in the scheme and our conversations have informed the scenario outlined below.

***Scenario 1: Family Farming Partnership***

31. In a family farming partnership, where the parent wishes to retire and exit the industry and child wishes to continue farming, the current proposal may not be workable. In this

scenario, there are two cases: (a) the land and farm buildings and other assets, including the entitlements, are legally owned by the parents and they hold them outside the partnership and allow the partnership to use them; (b) the parents have made the land and buildings partnership assets, which is reflected in any partnership agreement and in partnership accounts, with a corresponding capital account to reflect the assets that they have contributed to the partnership business.

32. It is not yet clear whether the lump sum payment is to be treated as a capital or income receipt. If it is an income receipt then in case (b) it will be part of the partnership's business income and this will be reflected in the profits. In case (a) the parents may have chosen to record the income from the entitlements as business income, even though the entitlements are held outside the partnership. The division of profits between the partners will include the next generation to reflect the effort they contribute to the business. This means that the payment will not have the effect of encouraging the parents to retire, as they cannot claim the full lump sum, unless they reach an agreement on this from the other partners.
33. If the lump sum payment is a capital payment, then who is entitled to receive this within the partnership will be dependent on the partnership arrangements.
  - a. If the assets, including the entitlements, are held outside the partnership then the asset owners can receive the lump sum. In this case it is not the partnership that receives the payment, even though it may enable those partners to retire from the partnership business.
  - b. If the entitlements are partnership assets, then the parents in this example will be entitled to receive the lump sum if the partnership agreement entitles them to receive the proceeds from the capital assets attributed to them.
34. In either case, the continuing partnership would not own any entitlements that give them a right to any future BPS payments. The current proposal will, rightly, prevent the remaining partners e.g. the children, from claiming any direct payments, because they were a partner in the business that received the lump sum. However, the CLA disagrees that the remaining partners should be prohibited from entering into any new environmental land management agreements such as Countryside Stewardship or the Sustainable Farming Incentive, leaving the ongoing business without support. This proposal would penalise family partnerships that have conscientiously considered business succession and planned for the future.
35. This issue could apply to owner occupiers or tenants and will apply to all partnerships, including non-family, where one or more parties wants to leave the business but another wishes to continue.

### **Scenario 2: Companies**

36. The consultation paper also refers to directors being unable to claim future direct payments. A limited company has a separate legal personality to the directors. The assets

of a company are owned by the shareholders. If as part of succession plans the next generation have been brought in as company directors, they may not yet have any shareholding in the company. Also, whilst the farming business may be operated through a company, the land farmed may be owned by individuals outside of that company. If the entitlements are also owned by the land-owning individuals, so that they and not the company receive the lump sum, the company should not be prohibited from entering into any new environmental land management agreements, if the land-owning individuals resign as directors from the company.

*Solution to scenarios 1 and 2:*

37. The CLA understands the rationale behind not wishing to continue paying individuals that receive the exit payment. However, if the senior partners or the company shareholders in the above scenarios have retired from the partnership/company so that the next generation are responsible for the ongoing management of the business which will not be able to claim ongoing BPS payments, those businesses should not be prohibited from claiming payments for entering into environmental land management arrangements such as Countryside Stewardship or payments under future land management agreements.
38. It is not a practical solution to require the partnership or company to be dissolved and a new partnership to be created. This would impose an unacceptable level of business disruption to the ongoing business as this would necessitate the creation of a new partnership/company; opening new business bank accounts; re-negotiating any bank finance; registering the new partnership with HMRC; obtaining a new Single Business Identifier from the RPA; obtaining a new VAT registration; re-negotiating new business contracts in the food supply chain; incurring associated professional costs while losing goodwill attached to the existing business name.
39. All that should be necessary is for the outgoing partner or shareholder of the business who receives the lump sum to demonstrate that they have left the partnership or transferred shares so that they no longer remain as majority shareholders.
40. It may be helpful to align these rules with those for claiming Business Assets Disposal Relief, formerly known as Entrepreneur's Relief. That relief is only available if there is a material disposal of their interest in the partnership or company. This requires a minimum level of disposal of a partnership interest or shares of at least 5%. In addition, there must be no arrangements for the individual or a person connected with them to reacquire an interest in the partnership or company.

**Scenario 3: Involvement in multiple farming businesses**

41. There will also be instances where individuals are partners or directors in multiple farm businesses. If the rules only refer to the role of partners or directors, in extreme circumstances, a director with no shareholding in a business, or a partner with no capital holding in a partnership which opts to take the exit payment, would be prevented from receiving direct payments in any other farming business they run through a separate

partnership or company, which would unfairly penalise an otherwise unconnected business. For example, X is land agent who is a director of a number of client's farming companies. X also owns a family farm which they run in partnership with family members which has its own single business identifier. X should be able to continue to claim direct and environmental payments through their business and not be penalised by a decision to take a lump sum by any of their client companies. Likewise, the decision of one client should not impact any of the other clients purely because they have a director in common.

*Solution:*

42. The proposed restrictions should be limited to the recipients of a lump sum that have a capital stake in the business behind the RPA single business identifier. This would enable other registered farming business to continue to receive direct payments where there is a common partner or director but not common ownership.

***Other issues***

*Trusts*

43. The consultation does not consider that trustees may have a role in a farming partnership or company alongside beneficiaries. In a trust with multiple generations of beneficiaries, a lump sum may encourage the older generation to retire from the business so that the next generation can step in. Where professional trustees are concerned, they may be trustees of several trusts so care needs to be taken in how the rules are framed so that the actions of one trust, with professional trustees should not impact on any other trust purely because they may have the same professional trustees.

*Partnerships and AHA agreements.*

44. The consultation proposes that where a business claims the lump sum payment, directors or partners in the business will be unable to claim future direct payments. It is also proposed that in situations where an Agricultural Holdings Act tenant accepts the exit payment and the tenancy passes to a successor, this will be treated as a tenant having surrendered their tenancy for the purposes of them qualifying for the lump sum. There needs to be clarity on how these two proposed scheme rules will interact, as in many cases, the successor to the tenancy will be a partner in the existing business and therefore under current proposals presumably would not be able to claim direct payments, Countryside Stewardship agreements or the SFI.

*Tax*

45. It is not yet clear how the lump sums will be treated for tax purposes. This could have a significant bearing on the uptake of the scheme. The CLA first raised the tax issues with Defra in February 2019 when we suggested that recipients should be able to elect whether the lump sum is treated as income or capital according to their circumstances (i.e. whether the recipient intends to use the lump sum as an income and/ or as a pension, or whether they intend to use it as an investment). If payments are income, then it would help if they can be

treated as qualifying earnings for pension tax relief (though the annual limit for relief would also need to be looked at). If they are capital payments, then it would encourage take up if they qualified for capital gains tax reliefs. The CLA have discussed the tax treatment of the de-linked payments with Defra, HMRC and HM Treasury in a recent meeting. It is reassuring to see the reference to a discussion between Defra and HMRC in paragraph 5.29 of the consultation document.

#### *Cancelled/ leased entitlements*

46. The consultation proposes that recipients of the exit payment will have their entitlements cancelled – whether the entitlements are owned, leased-in or leased-out. This raises questions regarding the eligibility of those holding leased entitlements which may have been leased beyond the end of the agricultural transition in 2027, or may return to their owner midway through the transition, depending on what was agreed when they were leased. This is more a concern for Farm Business Tenancy agreements, where entitlements can be leased by the landlord to the tenant for the duration of the tenancy agreement. There may also be more informal instances outside the landlord- tenant scenario, where entitlements are leased by their owners to another party for an agreed period. Leased entitlements are the property of their owner and those holding leased entitlements should not be eligible to apply for the scheme without the express permission of the owner of the entitlements.

#### *Agri-environment scheme agreement holders*

47. Defra should make recipients of the lump sum aware that in exiting the industry, their ability to deliver on existing agri-environment schemes could be affected.

#### *Lump sum multiplier*

48. Paragraphs 5.26 and 5.27 of the consultation document outline how the 2.35 multiplier will be used to calculate the lump sum. Industry modelling work based on this multiplier has suggested that those accepting the lump sum are likely to be a worse off than if they accept the reducing annual BPS payments, with the cumulative annual payments totalling between 12-14% more than the lump sum. In order to make the scheme attractive, lump sum payments need closer to the full payment of the remaining BPS payments. Discounting will create a significant disincentive to take-up.

#### **Q18. What reference period should the lump sum payment be based on? Please give reasons for your answer.**

- **The average of the 2018 to 2020 BPS scheme years**
- **The 2020 BPS scheme year**
- **Other. (Please state your preferred reference period).**

49. The CLA suggests the reference period should be based on 1 year as close to the time of change as possible, either 2020 or 2021, to minimise the impact on businesses that have recently restructured.



50. However, there should be a process in place to deal with those who have had business change or force majeure, resulting in an anomalous claim in the chosen reference year.
51. On commons, the Rural Payments Agency allocates BPS payments based on the number of claims made on the area of common land in any given year. This means that the notional area claimed can vary from year to year, depending on who submits a claim. If there are fewer claimants than usual in a given year then everyone who does claim receives more, but if for some reason there are more claimants in a given year, everyone receives less. The scheme as it stands does present at least a theoretical risk that if the reference year is the one with more claimants not less, everyone will receive less than they otherwise would, except that one extra person who will receive a great deal more.

**Q19. What cap should be applied to the recipient's lump sum payment? Please give reasons for your answer.**

£100,000.

52. The maximum payment level will have an impact on the attractiveness and efficacy of the scheme. Whilst the CLA understands the wish to cap payments at a certain level, and many members expressed concern about potential negative press, a cap set too low risks limiting the impact of the scheme and opportunities for tenancy progression and for new entrants.
53. A £100,000 cap equates to an eligible farm size of 450 acres (182 ha) and would mean that 87% of BPS recipients would be eligible for the scheme. The consultation states that of those that are presumed to have exited the industry in 2020, the vast majority of those that exited were claiming BPS on less than 30 hectares, though these figures may change if future agricultural policy and trade deals have an impact on those wishing to leave the sector.
54. The CLA view is that the £100,000 cap is acceptable, but there should be mechanism available for exceptional circumstances up to £200,000. This could be required in the larger arable businesses where profit margins are low for example, and would open up more opportunities for new entrants and expanders.
55. Whilst historic BPS payment rates have varied, there is potential for greater variability across years in BPS payments on common land, therefore the chosen reference period may take some claims in excess of the £100,000 cap.

**Q20. 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? Please give reasons for your answer and any supporting evidence you have.**

No, very limited interest.



56. Given the finalised details of the exit scheme including scheme eligibility, tax treatment and timescales will not be published until late October 2021, it is difficult to gauge the true appeal of the scheme.
57. The lump sum scheme generated significant interest when it first aired, though interest has been tempered by the realisation that it is an industry exit scheme, requiring recipients to leave farming.
58. The uncertainties surrounding farming prospects, the impacts of trade agreements and the phased development of E.L.M. schemes, means that many are considering their future in the industry. However, the timescales for the introduction of the exit scheme in 2022 and the full roll out of E.L.M. in 2024 are such that many BPS recipients will simply postpone the decision on their future, accepting the dwindling BPS payments and making a better informed decision in 2024.
59. There is an industry consensus that the scheme could kick start conversations about exiting the industry, though the scheme is very unlikely to be sufficient on its own. In circumstances where an Agricultural Holdings Act tenant without a successor is considering exiting the industry, the prospect of the combination of the lump sum, releasing capital from the sale of farming assets and any other incentive payments may be sufficient to encourage an exit from the industry.
60. For part-time farmers that claim on small areas of grazing, the scheme may have some appeal.

**Q21. Is extra professional advice and guidance needed to help a farmer decide whether to participate in the scheme? Please give reasons for your answer.**

Yes.

61. It is highly likely that those considering the scheme will require additional specialist advice. As well as advice from land agents, advice from accountants is likely to be required on tax matters and with terminating exiting business structures. Tenants that enter into tenancy surrender negotiations are likely to require comprehensive advice from their agents, solicitors and accountants.

**Q22. Which groups do you think are likely to benefit from the lump sum exit scheme? Please tick all that apply and give reasons for your answer.**

- Farmer exiting the industry
- New entrant entering the industry
- Existing farmer expanding business onto vacated land



62. We anticipate limited take of up the exit scheme, but for those that do there will be opportunities for new entrants and expanders.
63. There should be no restrictions on the choices the outgoing farmers, or landowner in the case of tenancies, make for the future of the land.
64. Defra is developing a separate scheme to incentivise opportunities for new entrants and support them.

**Q23: What reference period should the delinked payment be based on? Please give reasons for your answer.**

- 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
- Other. (Please state your preferred reference period).

65. The CLA supports a 1 year reference period as close to the time of introduction as possible, so either 2022 or 2023, to minimise the impact on businesses that have recently restructured. Whichever reference period is chosen, there must be an appeals process in place to deal with those who have had business change or force majeure, resulting in an anomalous claim in the chosen reference year.

**Q24: Do you have any other comments on the proposed eligibility rules for delinked payments?**

66. BPS entitlements can be held by the BPS claimant on either an owned or leased basis. Leased entitlements are often transferred for a specified, temporary period. It is not clear how leased entitlements will be dealt with, particularly where they are part of a tenancy agreement that ends between 2024 and 2027. In such instances, the CLA view is that the remaining delinked payments should be transferred to the owner of the entitlements on the return of the entitlements when the tenancy agreement expires.

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