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Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref SF/RE/0237/15

Alun Ffred Jones AM
Chair
Environment and Sustainability Committee
National Assembly for Wales

4 February 2015

Dear Alun Ffred,

Thank you for your letter of 20 January regarding my appearance before the Committee on 11 February and confirming what information you would like in advance.

I have provided below a response to each of the queries you have raised. In addition, I attach as an Annex, a detailed paper on the Welsh Government's Policy Decisions for the Basic Payment Scheme (BPS), to further assist the Committee with its considerations ahead of the meeting.

- **When a formal consultation is likely to be published and what the timescales will be for that consultation**

I will publish a formal consultation when I am satisfied that all realistic new options have been identified, and that their impact has been modelled and considered.

The work of the Data Modelling Stakeholder Group is particularly important in this respect because it is considering the detail very carefully. As part of the decision making process, I will also take into account practical issues, such as what are the implications for the timing of payments and securing the good, efficient administration of the BPS. Taking all matters into account, the best estimate presently is that consultation will start in March. Welsh Government consultations are usually at least eight weeks duration and, given the interest in this matter across Wales, my current thinking is that it will be of a similar length, meaning that it would conclude in May. The consultation paper will set out the options which data modelling suggests are practical propositions. It will explain how they would work and what their impact might be.

- **When farmers are likely to be informed of how their land will be classified and if there will be an opportunity for farmers to appeal any new classification**

The answers to these questions depend on what decision is taken for the Basic Payment Scheme. In simple terms the choice is likely to be between a 'flat rate' or 'regional' system.

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Under the former, no distinction is made between any farm land in Wales, whereas a regional system operates by classifying land into two or more categories on the basis of criteria which I would have to set and have approved by the European Commission. The first step in the application of either option in the process will be the consultation exercise. When I have considered the responses I will be able to take an informed decision. This will then need to be considered by the Commission and it is only when I have their approval that I will be able to communicate formally how land will be classified. At best that is likely to be during June.

The question of whether there should be opportunity for farmers to appeal any classification depends on what is decided. It may be necessary if the proposal is to create a regional system with two or more classes of land, but I must reserve judgement on this question until the options are clearer.

- **When farmers are likely to find out how much basic farm payment they are likely to receive**

The consultation paper will provide an overview of the possible options and their forecast impact and will be an indicator to farmers of what payments they might receive.

They will not receive any greater level of certainty until a decision is taken on whether to implement the regional or flat-rate system after the consultation and after the Commission has approved my proposal. As things stand at present this is unlikely to be until around June. Even at this point there may be factors outside anyone's control or ability to predict that will have a bearing on payments. All CAP monies are distributed in euros, and exchange rates play an important role in the payments farmers ultimately receive.

The BPS is a new system and is based on issuing new entitlements for payments. Claimants must apply for these by 15th May 2015 and the demand for them is fundamental to the calculation of their value. Furthermore some individuals will be able to claim from the reserve and the Young Farmer Scheme provides an additional means for eligible young farmers to add to their payments.

Another important point to bear in mind is that the full effect of the BPS is not felt immediately. Although there is an option to move all claimants immediately to new payment rates, neither the industry nor the Welsh Government have favoured that because of its sudden, drastic impact.

The choices otherwise are transition to the new payment rates over five years or a longer time period. During the transition claimants' payments are unique to them because they take account of the value they received historically under the former SPS.

- **The likely impact these changes will have on the issuing of payments in 2015**

Recent events have set back planning and preparation not only of policy but also of the operational arrangements needed to administer payments.

The greater complexity of BPS (the introduction of a brand new payment system) has always meant that we would not be able to maintain our excellent record of making payments at the start of December. With a move to a new basis of scheme entitlements part payments were always likely to be necessary in this first year of the reformed CAP. The exact impact on the timing of payments will depend on the system put in place for the BPS. The more complicated it is, the greater the impact. I will want to take account of this as part of my decision making and the consultation will describe, as far as I reasonably can

at this stage, what the impacts might be of different options. There is in this, however, an element of uncertainty. Ultimately the Welsh Government is committed to making payments as soon as it can in the payment window.

- **If the modelling of the new payment regions demonstrates that different groups of farmers are likely to be affected by a redistribution of payments, than was previously the case, and whether you will need to consider re-designing some of the schemes contained within the RDP**

Any new arrangements for BPS will certainly affect farmers in different ways than had been forecast. My previous proposals were designed to minimise the size of change to payments that farmers currently receive for as many farmers as possible, as well as to recognise the agricultural potential and character of the land attracting the subsidy. The industry supported this approach, but it understood that some change was inevitable. Of all the options available, the Welsh Government's proposals caused the least overall change and, although some farmers would have got less, the majority stood to get either more than they had previously or much the same. This was true for farmers with land in the moorland region and for farmers with land elsewhere. Thus the proposals benefitted the vast majority of farmers in Wales and it is regrettable for the industry that they cannot now be put into action.

Moving to an area based payment system within a fixed budget means it is inevitable that some will get more and others less. Presently a notable number of farmers receive high payments when considered in the context of how much land they farm. Previous modelling has shown that whilst there are general trends within sectors like dairy, sheep or beef, within all these sectors, and in every part of Wales, there are farmers who stand to gain greatly, a little, or will get less. This is because the circumstances of each farmer are unique. How they fare is a function of how much land they claim and their historical SPS payment.

The Welsh Government considered the case for using the RPD to provide targeted support for upland areas. This will be looked at further once new arrangements for the BPS have been decided. The core content and schemes in the RDP will apply regardless of the outcome of this review of BPS options as they are designed to be applicable to all parts of Wales and all sectors. What we will be considering is our prioritisation of how those schemes are deployed.

- **How many Stage 2 Technical Review process appeals were outstanding when the decision was taken to quash the regulations**

All Stage 2 cases for reclassifying land from Moorland to SDA were outstanding when the regulations were quashed because they were to be considered by an expert panel later in December. There were 107 cases.

Additionally 44 claimants had brought a stage 1 case for reclassifying SDA to Other Land and were eligible to ask for a stage 2 review if they had submitted a report for that by 31 December.

- **What the cost of reimbursing Stage 2 claimants who had employed contractors to undertake technical reports will be**

The Welsh Government will reimburse some £140,000 to claimants for the cost of contractors preparing reports for cases about Moorland. Claimants who commissioned a

report for reclassifying SDA to Other Land will also be reimbursed. I am unable to provide an estimate of that cost because few claimants have submitted an invoice so far.

- **Whether approval was given by the European Commission to the original payment region classifications prior to the regulations being laid before the Assembly**

The European Commission was advised of Welsh Government proposals throughout the CAP reform process and has noted the development of work. Final proposals, including the classification of regions, were submitted in July 2014 in accordance with the Commission's timetable and procedures. There was further detailed discussion in autumn 2014 during which Welsh Government officials explained the proposals for the regions in detail. The Commission noted the proposals and was content that they were in accordance with the regulations.

- **The number of land parcels and hectares previously eligible for direct payments that are now likely to be deemed ineligible**

An accurate figure will not be available until we have digitally mapped such areas in our Land Parcel Identification System (LPIS) which is due to be completed by this summer. To give an indication we know that the number of SPS claimed parcels containing wholly grazed woodland in 2014 was 2,068 and the total area previously eligible that will no longer be eligible under BPS is approximately 1,530 hectares. This ignores parcels with groups of trees for which a greater, although currently unknown, area will be deductible under BPS compared to SPS. The approximate total area of land paid SPS in Wales is 1.4 million hectares.

- **Whether this land was taken into consideration when modelling of the payment regions was completed**

The new regulations concerning trees were not taken into consideration when modelling was undertaken previously because the issue has emerged subsequently at EU level. The modelling was completed and decisions announced in a Cabinet Statement in January 2014 and the delegated regulations with Articles 9 and 10 of 640/2014 in final form were not received by the Welsh Government until March 2014. Also, the detailed implications of the articles could not be established until assessed against EC mapping LPIS guidance that was discussed in a meeting with the EC on 6 October 2014.

It is not possible to be exact in data modelling work because only estimates can be made of the total area of land that will be eligible for payments and where it is. The area to be claimed will not be known until claimants apply for new BPS payment entitlements and those allocations are made. Furthermore, applications to the reserve will also have to be resolved. It is also important to consider that modelling is a forecast of payments after a five year transition to wholly area based payments by 2019. In that time there will be changes in the area of land farmed and eligible for claims.

- **What information has been provided to those affected by the change and what support is being offered to them**

An explanation of the changes under BPS for the deduction of trees was included in the "*Basic Payment Scheme – Update*" booklet issued to all known SPS applicants and published online in November 2014. There is also an article on the new rules in the January 2015 edition of GWLAD magazine. To support farmers having to make the

deductions on their SAF 2015 we will publish an online video soon to demonstrate what needs to be done and will provide full details in the SAF Rules Booklet. This will be published online at the end of February and issued in a booklet to all claimants later in March 2014.

- **What account was taken of this change in the re-design of Glastir and other relevant schemes under the RDP**

This was not specifically taken into account during the re-design of Glastir Woodlands, which can only compensate for income foregone and costs incurred, of which BPS payments cannot be taken into account. However, the Glastir Woodland Management scheme will be made available to farmers across Wales to enable them to receive payments for actively managing their woods. Capital support will also be made available through the RDP to help those seeking to generate an economic return from woodland products. Within the existing Glastir Advanced scheme farmers can also receive payments for managing their woodlands for environmental benefit by being re-imbursed for the loss of agricultural income from lost grazing and shelter.

- **Whether a similar approach to this issue is being taken by other administrations in the UK and, if not, why Wales has selected this particular option?**

In Wales we used a provision under the SPS rules (article 34.4 of 1122/2009) that permitted, in certain circumstances, grazed woodland to be claimed for payment subject to a reduction for the tree trunks. As far as we are aware the other regions of the UK did not permit this and simply adhered to article 34.2 of that regulation which required grazed woodlands with a density of greater than 50 trees per hectare to be deducted from the eligible area.

Therefore, only farmers in Wales benefitted from payments on grazed woodland under the previous regime and the provision is no longer available in the current regulations under which the maximum tree density has been increased from 50 (as used by other UK regions) to 100 trees per hectare.

Under the new regulations we can choose between:

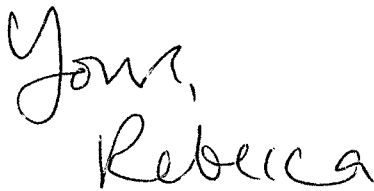
- Article 9 of 640/2014, which sets two tests - first that agricultural activity can be carried out in a similar way as on parcels without trees and second that the number of scattered trees does not exceed a maximum density (100 per ha).
- Article 10 of 640/2014, which allows a pro-rata deduction that is limited to assessing permanent grass with scattered (ineligible) landscape features and trees. This requires an assessment of all the ineligible features for each homogenous area and where the area taken up by all the ineligible features exceeds 50% of the total field size, the entire field becomes ineligible.

Any area taken up by grazed woodlands becomes ineligible under either option, but if we use article 10 it would result in some clear grass agricultural land, within some fields, becoming ineligible. For example:

If a 1ha field contained 79 scattered trees and a 0.2ha pond, 0.8ha would be eligible under article 9, with a deduction for trunks and stumps. However, under article 10 as more than 50% of the total field was taken up by ineligible areas the entire field would be ineligible under article 10.

The Welsh Government has selected article 9 for BPS as it represents the lowest possible additional deductions when compared to the SPS rules. The other UK regions have also told us that they are operating under article 9, but as they already operated the 50 tree per hectare rule outlined above the increase in the maximum permissible tree density is beneficial, except in NI which has elected to maintain the 50 tree per hectare limit. Officials in England have very recently informed us that they are looking at an alternative that could avoid the deductions for scattered trees referred to above and we will be considering this information carefully to see whether it would be suitable for Wales.

I look forward to meeting with the Committee on 11 February and discussing these issues in more detail.

A handwritten signature in black ink, reading "Yours, Rebecca". The word "Yours," is written in a cursive style, and "Rebecca" is written in a more formal, slightly cursive script below it.

Rebecca Evans AC / AM
Y Dirprwy Weinidog Ffermio a Bwyd
Deputy Minister for Farming and Food

Welsh Government Policy Decisions for the Basic Payment Scheme

Summary

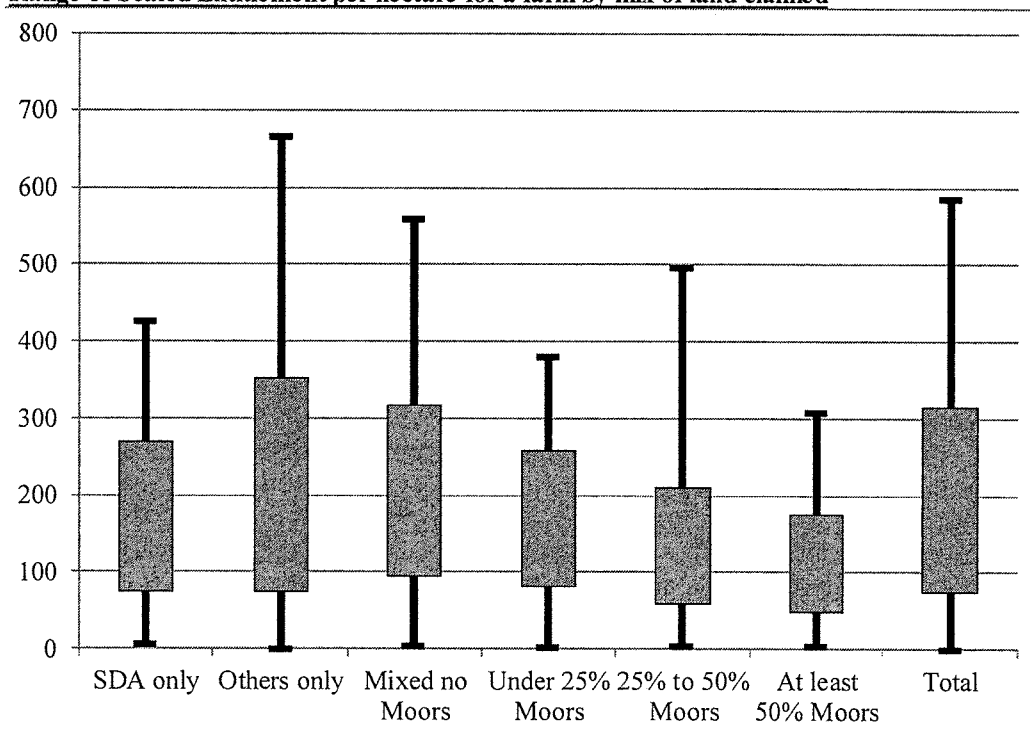
1. This paper explains the Welsh Government's rationale for decisions taken in 2014 for the Basic Payment Scheme to make CAP Pillar 1 payments to farm claimants from 2015. It sets out the principles for the decisions taken, illustrates the rationale behind the original proposals and provides information about the forecast impact of those decisions, before making brief comment on the impact of recent events.

Background

2. CAP Reform 2014-20 requires the introduction of a Basic Payment Scheme (BPS) with a move to payments being made on the basis of the area of eligible land actively farmed by a claimant. The regulations provide choice about the speed at which this change must take effect (as long as a minimum level of change is achieved by 2019) and whether all land is treated the same or not; land may be classified into two or more payment regions.
3. Payments under the Single Payment Scheme (SPS) originated from production levels on farms in a reference period circa 2000-2002. With subsequent change in farm activity and opportunity to trade entitlements their value when expressed on a per hectare basis is extremely varied as shown by **Chart 1**. The blue boxes capture 80% of farms in a land classification but the tails show a very wide spread of values (the most extreme 1% of values are actually excluded) with all classifications having at least one farm with entitlement values exceeding €1,000

Chart 1

Range of Scaled Entitlement per hectare for a farm by mix of land claimed



Source: SPS claimants from 2012

Deputy Minister for Farming & Food

per hectare¹. Farms are grouped by the three regions in which their land was provisionally classified (Moorland, SDA, Other Land) with further grouping according to the proportion of their land which was Moorland.

4. Two points are very evident. Firstly SPS was an arbitrary system, awarding substantially different sized payments to farms which have the same type of land. Across Wales, some farms paid considerably more for farming in the same circumstances as others who got little if any payment at all. Secondly any move to an area based payment system will result in change to payments – within a fixed budget the fact that some will get more and others less is unavoidable.

Rationale for BPS Proposals

5. From the outset of CAP reform the Welsh Government worked closely with industry bodies and provided opportunities for them to offer their opinions. It was established early on, and accepted by the farming unions and other stakeholder bodies, that the policy decisions should be guided by the principles of:
 - managing the risk posed by payment change to current claimants' businesses; and
 - recognising the different character of farmland across Wales, with higher support being available for better quality farmland.
6. CAP Reform 2014-20 has taken place against the backdrop of significant pressure on European Union budgets. This will almost certainly continue into the next reform and beyond. The long term Welsh Government policy aim is for the farming industry to become sustainable – in the widest sense – prospering with a lower level of public payment support.
7. Detailed data modelling explored a range of options which were shared and discussed with the farming unions and other stakeholder bodies and consulted upon extensively. This work established that there was no policy option which could avoid change – it was inevitable that some claimants would get higher payments and others less. However the work found that a regional approach, with different payment rates for different regions, was the best way to minimise the level of change for most current claimants as well as recognising the different character of farmland. There was support in the industry for this approach. Various combinations were tested and the option which best achieved the aims set out in paragraph 5 above, used Moorland, SDA and Other Land (ie the DA and Lowland together). These proposals were scrutinised by the European Commission which raised no objection to them. **Table 1** shows what this option was forecast to mean if all current claimants moved to having all their land funded at the target payment rates by 2019. **Table 2** shows the target payment rates, the ratio between them, the area of land in the three regions and the aggregate payments to them.
8. The striking feature of this three region model was that it forecast that 85% of claimants² would either gain significantly³, have much the same or only a small

¹ The highest value of all is over €40,000 per hectare.

² 13,699 of 16,048 claimants in 2012.

Table 1: Farms with significant gains or losses under the original policy option

	Significant gain	Neither	Significant loss	Total
SDA only	263	2,290	202	2,755
Others only	993	5,168	979	7,140
Mixed no Moors	492	2,180	601	3,273
Under 25% Moors	531	926	304	1,761
25% to 50% Moors	198	454	170	822
At least 50% Moors	60	144	93	297
Total	2,537	11,162	2,349	16,048

Source: SPS claimants from 2012

reduction⁴. Only 15% were forecast to face a significant loss⁵. **Table 1** also shows that whether claimants would gain more, or get less, was not linked to the classification of land into three regions and the payment rates forecast for them. Instead the outcomes were driven mainly by the payment value of claimants' SPS entitlements which are, as discussed above, hugely varied (see **Chart 1** again). Claimants in all situations stood to gain or lose, and the same was also true when the forecasts were analysed by farm sector and different counties.

Table 2: claimed land area and payments for the three regions under the original policy option

Characteristic	Land region			Total
	Moorland	SDA	DA/lowland	
Area (ha)	157,300	617,700	558,000	1,333,500
% claimed area	12	46	42	100
Payment ratio	1	10	12	n/a
Indicative payment rates €	20	200	240	196 (Wales indicative flat rate)
Indicative aggregate payment €m pa	3.1	123.7	134.2	261

Source: SPS claimants for 2012.

³ A significant gain was judged to be both an increase of more than €5,000 a year which was also more than 10% of a claimant's SPS payment scale to the budget for BPS.

⁴ A small reduction was judged to be both €5,000 a year and less than 10% of a claimant's SPS payment scaled to the budget available for BPS.

⁵ A significant loss was judged to be both more than €5,000 a year and more than 10% of a claimant's SPS payment scaled to the budget available for BPS.

9. Moorland was defined by reference to vegetation of that character which was widely agreed by industry bodies to be agriculturally poor quality. The definition limited the Moorland Region to areas at 400 metres altitude or higher in order to ensure that the region excluded that land which had been agriculturally improved since being mapped in the early 1990's. This, backed by an appeal mechanism to allow for land to be reclassified, was recognised by industry bodies as a fair, efficient way to limit the region to the most agriculturally limited areas and to finalise land classification.
10. The Judicial Review was predicated on the basis that the policy proposals were "unfair". In seeking to meet the policy aspirations that were widely accepted amongst stakeholders, the modelling work based on the three regions put simply, showed those claimants who had received high payments (when expressed in per hectare terms) historically to the present day stood to get less with the money being redirected to those claimants who have received less than was arguably an equitable distribution of funds under the SPS including new entrants to the industry. The policy proposals set out in paragraph 5 sought to strike a balanced redistribution of the BPS budget across the industry as a whole. Any option which removed the Moorland region or increased the payment rate for it significantly resulted in greater change to current claimants' payments, with more claimants getting less. It is also overlooked that amongst farms with more than half their land in the proposed Moorland region, the allegedly hardest hit group of claimants, there were many who stood to gain, and others who only faced a small reduction (**Table 3**). Even amongst those forecast to have a significant loss the average payment would have been €54,000 a year with one claimant standing to receive €339,000⁶. In fact the average and median payments to this group were forecast to exceed those made to the whole group of farm claimants with half or more of their land in the moorland region. The data do not support an argument that having a Moorland region with a low payment rate automatically reduces payments to farms with a high proportion of their land in that region. Many were forecast to do better and others would have seen relatively little change.

Table 3

Summary statistics of payments to farms with 50% or more land in the moorland region

Payment €'000s	Gain other	Significant gain	Significant loss	Loss other	All 297
Average	17	54	36	15	30
Median	10	38	34	13	23
Maximum	115	339	185	89	339
Minimum	1	14	1	0	0
Number of farms	66	60	93	78	297

Source: SPS claims 2012

11. Furthermore, it is important to recall that decisions for the BPS were taken in the context of CAP having two Pillars. The prospective RDP for 2015 onwards has

⁶ Prior to application of the payment capping rules, which set progressively higher levels of deduction with a 100% cap on payments of €300,000 a year or more.

been designed to enable targeted support for the farming industry with recognition that opportunities for conventional farming are more limited in the uplands but conversely there is usually greater scope for land being managed for environmental goods and attracting payments for that. Thus as claimants manage farm businesses which potentially receive payments from several sources, fixation on the impact of the BPS alone ignores the wider picture with farms with a high proportion of their land in the Moorland region having much greater potential to attract payments from RDP schemes. **Table 4** summarises data for 93 claimants with half or more of their land in the Moorland Region who were forecast to face a significant loss in their BPS payment by 2019. The table is an estimate of what their total payments from BPS, RDP Schemes and NRW section 15/16 agreements might have provided in 2019 assuming historic levels of activity and support continued. It was forecast that total support would be as high as £256,000 a year, with 37 claimants receiving over £50,000 a year and 34 between £20,000 to £50,000. These are considerable levels of public support and the data also suggest that there was scope for higher levels of participation in RDP schemes amongst the 22 claimants forecast to receive less than £20,000 a year.

Table 4: forecast total payments in 2019 (BPS, RDP land based schemes, NRW S15/16 agreements) to 93 claimants with 50% or more of the claimed land in the moorland region

Number of claimants	93
Maximum payment £'000	256
Minimum payment £'000	1
Average payment £'000	51
Median payment £'000	41
Number of claimants receiving >£50k a year	37
Number of claimants receiving >£20k but <£50k a year	34
Number of claimants receiving <£20k a year	22
<i>Of claimants receiving <£20k a year</i>	
Number not in any Glastir Schemes	5
Number in Glastir Commons only	11
Number in Glastir Entry only	2
Number in Glastir Entry and Commons	2
Number in Glastir Advanced	0
Number of Glastir Organic Scheme	2

Source: compiled using data from Pillar 1 modelling sourced from 2012 SPS claimants, Pillar 2 payments from RPW payment records. S15/16 from NRW. Source data may contain minor rounding errors. Calculations from Euro payments to £ Sterling assume an exchange rate of 85 pence to the Euro.

Implications of the Judicial Review for the BPS

12. The Welsh Government does not propose to pursue a Moorland region for the time being because it would require more work to map Wales to define the necessary boundaries in accordance with the criteria set by the EU legislation.

The High Court Consent Order states that the evidence before the Court did not show that it is unlikely that land at particular altitudes below 400 metres had the actual character of moorland. As such, it was not evidenced that excluding land below 400m in altitude from the Moorland Region was a proportionate means of achieving a legitimate aim. In the absence of there being a Moorland region, it is inevitable that whatever is decided for the BPS will now be less balanced for the industry as a whole, will not best achieve the original policy aspirations and will tend to cause higher levels of change to current claimants' payments. It is also inevitable that a greater proportion of the total funding for the BPS will now be spent on upland areas, albeit that the quality of the land farmed is very varied. This will also unavoidably impact farms elsewhere in Wales, which whilst regrettable, unfortunately has been forced on the Welsh Government.

11. The Data Modelling Stakeholder Group has considered alternative models for the BPS which include approaches based on regions and a flat rate model using different time lines for claimants to reach common payment rates. I will consult on these options in March and expect to be able to announce a decision around June, subject to approval by the European Commission of my proposals. In view of the anticipated impact on BPS payments I will also be considering the implications for the RDP, notably the balance of support for different types of farm business within the Schemes outlined in the Programme.

Rebecca Evans AM
Deputy Minister for Farming and Food