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Commission/Kommission II Part II

Rapport national pour/National report/Landesbericht
National Report for the United Kingdom

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SUMMARY

This first part of this report is restricted to England whilst the second part is written in respect of the whole of the United Lingdom (UK), however different laws apply in Scotland and to a lesser degree in Wales and Northern Ireland.

Part I

The Rural Development Programme for England (RDPE) focuses on four objectives: environmental land management; farming and forestry competitiveness, productivity and skills; rural growth including rural communities; and LEADER. The greatest part of the programme (and funds) focuses on delivering biodiversity and environmental benefits. Countryside Stewardship is the newly established, competitive scheme. It provides incentives for land managers to look after the environment.

A decisive aspect of the RDPE is its emphasis on 'local areas' for its implementation in relation to all four objectives through the establishment of various programmes, groups and partnerships. The RDPE is situated in a local context to respond to local problems and therefore increase responsiveness to specific issues.

Part II

Currently there are no restrictions on ownership of land by forgein nationals or companies within the UK in respect of most agricultural real estate. Despite this there are political moves within Scotland to limit ownership by non – EU nationals. The political mood in Scotland is that there are too many non-domiciled or otherwise distant landowners owning large rural estates, and that the sustainable development of the countryside is adversley effected. This is not a universally held view.

Throughout the remainder of the UK there are various restrictions on the use of agricultural land which derive from policies intended to protect the rural economy and landscape. There are also fiscal policies designed to restrict corporate ownership of domestic property in order to limit avoidance of Stamp Duty Land Tax, which is a tax on real estate transfers.

I. The new rural development period of the EU 2014-2020 and the maintenance of rural communities

Agriculture and rural development are matters devolved to each UK administration. For the purposes of this section, the main focus is on England (unless otherwise stated). Although England is part of the United Kingdom, the legal systems and rural policies in the other parts of the UK –Wales, Scotland and Northern Ireland – are significantly different and it would require separate section to do justice to their perspectives.

1. Which specific national objectives were determined and promoted by your country during the negotiations of the EU's new rural development legislation? Will your country be able successfully to implement these national objectives under Regulation No. 1305/2013 and other EU provisions? (For non-member states: what are the goals provided in national rural development legislation?)

The English countryside has been heavily shaped by agricultural activities. Over half the land area of the UK is currently under productive agriculture or developed land (around 70% of England is currently farmed) which has resulted in the loss of biodiversity and habitats.[1] It has been estimated that almost 70% of the UK farmland animal and plant species have been threatened by land use practices and agricultural intensification.[2] Some estimates indicate that as much as 70% of soil erosion in England stems from agricultural practices and inadequate management techniques,[3] mainly due to early CAP reforms and their heavy reliance on fertilisers and pesticides. Under the Biodiversity 2020 Strategy, agriculture has been identified as one of the priority actions: the aim is to improve the delivery of environmental outcomes from agricultural land management practices, whilst increasing food production by reviewing how advice and incentives are used.[4]

During EU negotiations on the CAP, the UK successfully urged for each Member State to have the option to channel a greater proportion of CAP funding into delivering environmental benefits.[5] In December 2013, the Government agreed that in each year of the CAP period from 2014 to 2019, there will be a transfer of 12% of the budget from Pillar 1 to Pillar 2. The balance of total rural development funding in England is £3.7bn.[6] In 2016, a review will assess the demand for agri-environment schemes and the competitiveness of English agriculture with the intention of moving to a 15% transfer level in 2018 and 2019.[7] This shows a strong commitment to invest in environmental protection and rural development.

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[1] National Ecosystem Assessment, 'The UK National Ecosystem Assessment: Synthesis of the Key Findings' (2011) 29. See also J. Lawton et al., 'Making Space for Nature: A Review of England's Wildlife Sites and Ecological Network' (2010); and RSPB et al., 'The State of Nature in the UK and its Overseas Territories' (2013).

[2] National Ecosystem Assessment, 69. See also, DEFRA, 'Wild Bird Population in the UK, 1970-2010' (2012) 50; and Birdlife International, 'Through the Green Smokescreen: How is CAP Cross Compliance Delivering for Biodiversity?' (2010) 20.

[3] See e.g., DEFRA, 'Safeguarding our Soils: A Strategy for England' (2009); and WWF, 'Soil Erosion in England and Wales: Causes, Consequences and Policy Options for Dealing with the Problem' (2006).

[4] DEFRA, 'Biodiversity 2020: A Strategy for England's Wildlife and Ecosystem Services' (2011) 25.

[5] DEFRA, 'New Environmental scheme for Farmers to Prioritise Biodiversity' (26 February 2014), https://www.gov.uk/government/news/new-environmental-scheme-for-farmers-to-prioritise-biodiversity.

[6] DEFRA, 'CAP Reform in England: Status Report on the new Rural Development Programme' (2013) 4.

[7] DEFRA, 'Impact Assessment: Rural Development Programme, 2014-2020: Final Impact Assessment' (2104) 7.

England's ambitions for the 2014-2020 Rural Development Programme are: promoting strong rural economic growth; improving the environment; and increasing the productivity and efficiency of farm and forestry businesses, in order to improve their competitiveness and reduce the reliance of farmers and land managers on subsidies.[8] The Rural Development Programme for England (RDPE) is critical to achieving key aims and commitments leading up to 2020 and building on the achievements of the previous programme to 'secure optimum impact and long term strategic gains within the available budget'.[9]

The RDPE focuses on 4 objectives:

- environmental land management including Countryside Stewardship (83% of the total rural development funding in England);
- farming and forestry competitiveness, productivity and skills (5%);
- rural growth including rural communities through the Growth Programme (via Local Enterprise Partnerships) (8%); and
- LEADER (via Local Action Groups) (4%).[10]

Objective 1: Environmental land management

Countryside Stewardship is the primary source of government funding until 2020 to help secure delivery of environmental objectives on agricultural land. The primary focus will be biodiversity. Water is also be a key objective, with multiple objectives delivered where possible.

Countryside Stewardship provides incentives for land managers to look after the environment. The scheme is open to all eligible farmers, woodland owners, foresters and other land managers through a competitive application process. Applications are scored against criteria, and not everyone who applies will be successful. Targeting and scoring will encourage applicants to choose options that help achieve the environmental priorities in their local area.[11] This departure from open applications constitutes a sea-change in RDPE funding. It is hoped that this process will lead to farmers and landowners entering schemes that address the key priorities for environmental management on their land and local area.[12] Only applications which are able to deliver the greatest environmental priorities and benefits will be accepted into the scheme. An exception to the competitive process is applications for organic conversion and management options.[13]

The main priority for Countryside Stewardship is to protect and enhance the natural environment, in particular the diversity of wildlife (biodiversity) and water quality. Other outcomes include:

- flood management;

[8] See DEFRA, 'United Kingdom – Rural Development Programme (Regional) – England (2015) (RDPE).
[9] DEFRA, Impact Assessment (n 7), 12.
[10] Ibid, 7. See also DEFRA, CAP Reform in England (n 6), 4.
[11] Natural England, 'Countryside Stewardship Manual' (29 July 2015), https://www.gov.uk/guidance/countryside-stewardship-manual/.
[12] Brown & Co, 'Natural England Announce Details on their New Environmental Land Management Scheme' (11 February 2015), http://www.brown-co.com/countryside-stewardship. See also DEFRA, New Environmental scheme for Farmers to Prioritise Biodiversity (n 5) .
[13] Natural England, Countryside Stewardship Manual (n 11).

- the historic environment;
- landscape character;
- genetic conservation; and
- educational access.

This single scheme supersedes the following schemes which are now closed to new applications:

- Environmental Stewardship (ES);
- the English Woodland Grant Scheme (EWGS); and
- capital grants from the Catchment Sensitive Farming (CSF) programme.

There are three main elements within Countryside Stewardship:

1) Mid Tier aims to address environmental issues in the wider countryside, such as reducing diffuse water pollution from agriculture; and improving the farmed environment for farmland birds and pollinators.

2) Higher Tier agreements are for the most environmentally significant sites and woodlands. These sites will usually need complex management such as habitat restoration and creation; woodland creation and associated maintenance; and measures for priority species, and vegetation mosaics.

3) Capital grants support the delivery of environmental outcomes. These grants are for: hedgerows and boundaries; water quality grants; feasibility studies; implementation plans; and woodland tree health issues.

Countryside Stewardship also provides support for: organic conversion and management; wild pollinator and farm wildlife; water quality; and access to a facilitation fund.

All Mid Tier and most Higher Tier agreements will last 5 years. Standalone capital-only agreements will be shorter, and generally last a year. Some Higher Tier agreements may be longer, up to 10 years.

Objective 2: Farm and forestry productivity support

RDPE support for farm and forestry productivity will help increasing long-term productivity by focussing expenditure on improving:[14]

- the rate of innovation, technology diffusion, and knowledge exchange;
- business competitiveness and supply chain relationships;
- resource efficiency and management; and
- animal health and welfare.

The programme ties productivity improvements to solving environmental externalities, such as diffuse water pollution or air quality issues.[15]

[14] DEFRA, Impact Assessment (n 7), 22.
[15] Ibid.

Objective 3: Rural growth and communities

See question 3.

Objective 4: LEADER

The bottom-up, community-led LEADER approach, focuses on job creation and growth in rural areas. It is a delivery mechanism using local knowledge and founded on a principle of delegating powers of strategy and decision making to the local level through Local Action Groups (LAGs). 64 LAGs implement the approach. LEADER will also work alongside the Growth Programme. The justification for having a local focus is that LEADER 'offers an added value compared with traditional top-down implementation […] through mobilisation of local potential, identification of local problems and increased responsiveness'.[16]

The main priorities for investment through LEADER will be:[17]

- support for micro and small enterprises and farm diversification;
- support for increasing farm productivity;
- support for rural tourism;
- support for increasing forestry productivity;
- provision of rural services; and
- support for cultural and heritage activity.

Three additional cross cutting areas are established under the RDPE: innovation; climate change mitigation and adaptation; and environment. Each area is supported in every main objective.

1) Innovation

In the programme, the term 'innovation' refers to the 'successful exploitation of new ideas, business practices, techniques or technologies or the take up of existing practice by new businesses or sectors […] [to] generate higher productivity, the protection and enhancement of the natural environment, improved animal health and welfare, and economic growth'.[18] The UK government is already encouraging innovation through various means, with specific focus on application in the field, including linking businesses and practitioners more closely with researchers and making use of existing research that has not yet been fully applied.[19] Decisively, innovation is set as a priority across all investments under RDP in practice.

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[16] Ibid, 7. For more on LEADER and LAGs see, DEFRA, 'LEADER Approach in the RDPE National Delivery Framework' (16 January 2015), https://www.gov.uk/government/publications/leader-approach-in-the-rdpe-national-delivery-framework/leader-approach-in-the-rdpe-national-delivery-framework.
[17] DEFRA, Impact Assessment (n 7), 24.
[18] RDPE (n 8), 135.
[19] Ibid.

2) Climate change adaptation and mitigation

Climate change adaptation is entrenched into the design and implementation of the RDPE.[20] Adaptation activity in the RDPE covers directly increasing a farm, forest or ecosystem's resilience to the impacts of climate change and climate proofing other activities to ensure they are suitable for the future climate.[21]

3) Environment

The environment is a component to achieve smart, sustainable and inclusive growth: 'the continuation and optimisation of the benefits received from the natural world is critical to future sustainable prosperity and wellbeing'.[22]

2. Which rural development measures in Regulation No. 1305/2013 have a particular significance for your country? (For non-member states: which provisions of the rural development legislation are of particular importance?)

11 measures mentioned in Regulation No. 1305/2013 are central to the RDPE:

- Measure 1 - Knowledge transfer and information actions (art 14)
  - support for vocational training and skills acquisition actions
  - support for demonstration activities and information actions

- Measure 2 - Advisory services, farm management and farm relief services (art 15)
  - support to help benefiting from the use of advisory services
  - support for the setting up of farm management, farm relief and farm advisory services as well as forestry advisory services
  - support for training of advisors

- Measure 4 - Investments in physical assets (art 17)
  - support for investments in agricultural holdings
  - support for investments in processing/marketing and/or development of agricultural products
  - support for investments in infrastructure related to development, modernisation or adaptation of agriculture and forestry
  - support for non-productive investments linked to the achievement of agri-environment-climate objectives

- Measure 6 - Farm and business development (art 19)
  - business start-up aid for young farmers
  - business start-up aid for non-agricultural activities in rural areas
  - support for investments in creation and development of non-agricultural activities

[20] DEFRA, 'The National Adaptation Programme: Making the Country Resilient to a Changing Climate' (2013).
[21] RDPE (n 8), 136.
[22] Ibid. See also, Ecosystem Markets Task Force, 'Realising Nature's Value: The Final Report of the Ecosystem Markets Task Force' (2013).

- Measure 7 - Basic services and village renewal in rural areas (art 20)
    - For further details, see question 5.

- Measure 8 - Investments in forest area development and improvement of the viability of forests (art 21-26)
    - support for afforestation/creation of woodland
    - support for prevention of damage to forests from forest fires and natural disasters and catastrophic events
    - support for restoration of damage to forests from forest fires and natural disasters and catastrophic events
    - support for investments improving the resilience and environmental value of forest ecosystems
    - support for investments in forestry technologies and in processing, mobilising and marketing of forest products

- Measure 10 - Agri-environment-climate (art 28)
    - payment for agri-environment-climate commitments

For specific details for each type of operations see sub measures: arable; boundaries, tress and orchards; coastal; grassland; historic environment and landscape; lowland heathland; soil and water; supplements and educational access; uplands; wetlands; and woodland and scrub

- Measure 11 - Organic farming (art 29)
    - payment to convert to organic farming practices and methods
    - payment to maintain organic farming practices and methods

- Measure 15 - Forest environmental and climate services and forest conservation (art 34)
    - payment for forest -environmental and climate commitments

- Measure 16 - Co-operation (art 35)
    - support for the establishment and operation of operational groups of the EIP
    - support for pilot projects, and for the development of new products, practices, processes and technologies
    - (other) co-operation among smalls operators in organising joint work processes and sharing facilities and resources, and for developing/marketing tourism
    - support for horizontal and vertical co-operation among supply chain actors for the establishment and development of short supply chains and local markets, and for promotion activities in a local context relating to the development of short supply chains and local markets
    - support for joint action undertaken with a view to mitigating or adapting to climate change, and for joint approaches to environmental projects and ongoing environmental practices
    - support for cooperation among supply chain actors for sustainable provision of biomass for use in food and energy production and industrial processes
    - support for drawing up of forest management plans or equivalent instruments

- Measure 19 - Support for LEADER local development (CLLD – community-led local development) (art 35 Regulation (EU) No 1303/2013)
    - preparatory support
    - support for implementation of operations under the community-led local development strategy
    - preparation and implementation of cooperation activities of the local action group
    - support for running costs and animation

3. Is the maintenance of rural communities an important issue in the national rural development programme of your country, as provided for under art. 6 of Regulation No. 1305/2013?

The third objective of the RDPE, the Growth Programme places rural communities at its centre. The European Regional Development Fund (ERDF), the European Social Fund (ESF) and part_of the EU rural development funding are being brought together as a single 'EU Growth Programme'.[23] The Growth Programme will enable the funds to be managed in a more consistent and complementary way, targeted on fewer, more specific activities. This funding supports local activity in four priority areas: building knowledge and skills in rural areas; new and developing micro, small and medium sized rural business; small-scale renewable and broadband investments in rural areas; and tourism activities in rural areas.[24]

Local Enterprise Partnerships (LEPs) will identify through investment strategies how the funds concerned should be focused in their own areas. LEPs are partnerships between the public sector (local authorities) and the private sector (businesses). There are 39 LEPs in England. LEPs determine local economic priorities and undertake activities to promote economic growth and create local jobs.[25] Like LEADER, it adopts a bottom-up approach. The Government deems that 'growth will be most successfully delivered by identifying gaps and barriers at a local level; and by involving local partners in defining actions needed to overcome them'.[26] This approach is consistent with the Government's commitment to encourage the ambition and creativity of local leaders, by devolving resources and responsibilities to smaller areas and at local level.[27]

4. Which noteworthy difficulties are arising during national implementation of Regulation No. 1305/2013? (For non-member states: are there any noteworthy difficulties arising during the enforcement of the relevant law on rural development?)

For each of the 11 measures adopted under the RDPE, implementation risks have been identified. They include availability of IT tools, administrative support (within delegated delivery bodies such as

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[23] RDPE (n 8), 4.
[24] DEFRA, CAP Reform in England (n 6), 4.
[25] For more on LEPs, see European Funding Network, 'Local Enterprise Partnerships', http://europeanfundingnetwork.eu/policy/cohesion-policy-2014-2020/local-enterprise-partnerships; BIS, Development and Delivery of the European Structural and Investment Funds Strategies: Supplementary Guidance to Local Enterprise Partnerships' (2013).
[26] DEFRA, Impact Assessment (n 7), 23.
[27] BIS, Development and Delivery of the European Structural and Investment Funds Strategies (n 25), 3.

Natural England and the Forestry Commission), advice, preventive actions, application of public procurement rules and private tender procedures.

Various instruments facilitating implementation are already in place:

- LEADER will contribute to implementation of related measures and sub-measures including:[28]
  - Measure 4 - Investments in physical assets
  - Measure 6 - Farm and business development
  - Measure 7 - Basic services and village renewal in rural areas
  - Measure 8 - Investments in forest area development and improvement of the viability of forests

- The UK National Adaptation Programme embeds climate change adaptation and mitigation into the design and implementation of the RDPE. It sets out actions to address priority risks.[29]

- The England PAF (Prioritised Action Framework for Natura 2000) sets out the potential measures required to achieve favourable condition for England Natura 2000 sites. It provides beneficiaries with help in designing and undertaking operations to deliver outcomes which meet a range of objectives such as delivery for habitats and species prioritised for conservation action.[30]

- The National Rural Network (NRN) provides information and forums to help actors (farmers, foresters, researchers…) to meet and develop ideas. The NRN concentrates its activities to enhance programme implementation. The NRN will play a key role in:[31]
  - promoting the whole programme among potential beneficiaries;
  - providing effective networking, co-operation and knowledge transfer so that beneficiaries can benefit from their peers' experience; and
  - ensuring strategic stakeholder engagement with the Programme.

5. Does the support of "basic services and village renewal in rural areas" under art. 20 of Regulation No. 1305/2013 have a significant role in your national rural development programme? (For non-member states: are there any provisions comparable to those governing basic services and village renewal?)

Measure 7 of the RDPE focuses on 'basic services and village renewal in rural areas'. This measure aims at developing a 'more thriving and resilient rural economy and communities and to enhance landscape quality and character to meet the challenges specific to rural communities'.[32]

[28] RDPE (n 8), 582.
[29] Ibid, 37.
[30] Ibid, 192.
[31] Ibid, 728.
[32] Ibid, 310.

Four key sub-measures have been identified:

1) support for investments in the creation, improvement or expansion of all types of small scale infrastructure, including investments in renewable energy and energy saving

2) support for broadband infrastructure, including its creation, improvement and expansion, passive broadband infrastructure and provision of access to broadband and public e-government

This is decisive as now all application (under both pillar 1 and pillar 2) are online – as well as the payment system. In circumstances where customers may be unable to use an online system for all or part of their needs, assisted digital support will be offered.[33]

3) support for investments for public use in recreational infrastructure, tourist information and small scale tourism infrastructure

4) support for studies/investments associated with the maintenance, restoration and upgrading of the cultural and natural heritage of villages, rural landscapes and high nature value sites including related socio-economic aspects, as well as environmental awareness actions

6. Do the thematic sub-programmes under art. 7 of Regulation No. 1305/2013 (especially, "young farmers", "small farms" and "women in rural areas") have a significant role in your national rural development programme? (For non-member states: are there any comparable provisions and, if so, of what importance are they in your country?)

Two sub-themes are mentioned in the RDPE:

1) Short supply chains

Measure 16 on cooperation (Article 35) and more specifically, sub-measure 16.4 on 'support for horizontal and vertical co-operation among supply chain actors for the establishment and development of short supply chains and local markets, and for promotion activities in a local context relating to the development of short supply chains and local markets'. Investments will include bringing farmers and foresters, processors and retailers together to improve the effectiveness of supply chains and to enable businesses throughout the supply chain to produce value-added products.[34]

2) Young farmers

Over €13m will be allocated to encourage young people and new entrants into farming to create more effective generational change. This type of activity has not been funded in England before. Young farmers (as well as new entrants) are eligible for support under the Farm and Business Development

[33] DEFRA, CAP Reform in England (n 6), 6.
[34] RDPE (n 8), 564.

measure which assists them in building businesses and sustainable careers in agriculture and forestry, including technical and business skills provision and early capital investments based on business plans.[35] Young farmers, i.e. farmers under forty years of age, are given extra support and are able to claim a top-up payment for up to ninety hectares of their holding for the first five years of its operation.[36]

7. What other national legislation (i.e., in addition to national implementation of EU-law) addresses rural development in your country?

Various national instruments address rural development in some kind of way. Several Agriculture Acts, the Environmental Protection Act 1990, the Water Resources Act 1991, the Environment Act 1995, the Natural Environment and Rural Communities Act 2006 and the Town and Country Planning Act 1990; Wildlife and Countryside Act 1981; and the Countryside and Rights of Way Act 2000. For instance, the Countryside and Rights of Way Act (2000) was decisive in introducing legislation that encouraged active management of wildlife sites through statutory consultation mechanisms, management agreements and planning controls.[37] Since 2000, the rate of favourable (or recovering) English Site of Special Scientific Interest (*SSSI*s) has increased from 50% to 93%,[38] indicating how active management from farmers can lead to substantial improvement in the management of national wildlife sites.

Rural development can be partially achieved through linked policy commitments and EU legal obligations. These include:

- legal commitments such as the Birds and Habitats Directives; the Water Framework Directives; and the Flood Risk Regulations 2009 (which transpose) requiring the development of Flood Risk Management Plans (FRMPs)[39]; and

- government policy commitments including those made in Biodiversity 2020; the Natural Environment White Paper (NEWP); the Lawton Report; government Forestry and Woodlands Policy Statement; The Forestry Skills Action Plan; European Landscape Convention; Uplands Policy Review; Farm Regulation Task Force; Water White Paper; the National Ecosystem Assessment; and the Government's statement on the Historic Environment for England.[40]

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[35] Ibid, 119.
[36] DEFRA, New Environmental scheme for Farmers to Prioritise Biodiversity (n 5).
[37] L. Petetin, 'The EU Common Agricultural Policy: Towards a More Sustainable Agriculture?' in R. Ako and D. Olawuyi (eds), *Food and Agricultural Law: Readings on Sustainable Agriculture and the Law in Nigeria* (Afe Babalola University Press, 2015) 201, 217.
[38] Lawton Report (n 1), 13. For more on SSSIs, see e.g., Natural England, 'Site of Special Scientific Interest', http://www.sssi.naturalengland.org.uk/Special/sssi/index.cfm.
[39] RDPE (n 8), 37.
[40] DEFRA, Impact Assessment (n 7), 7.

II. Specific topic: cross-border acquisitions and acquisitions by non-agricultural capital of agricultural land

1. Background information, facts and figures: is cross-border acquisition and/or acquisition by non-agricultural capital an issue in your country's agricultural policy (e.g., investors in your country wishing to engage in cross-border acquisitions or your country being a target for cross-border acquisitions; non-agricultural investors in your country intending to buy land in your country)?

The UK farming area is about 17.2 million hectares and there are about 212,000 farming units, or holdings. The average size is 77 hectares and each holding receives an average of £13,500 in EU support[41] which is mainly from direct support payments under the Single Farm Payment Scheme. From 1st January 2015 this is the new Basic Payment Scheme.

The farming area of England is just over 9 million hectares and about 30% is occupied on tenancies or leases of one year or more[42]. 60% of these lettings are secure tenancies under the Agricultural Holdings Act 1986[43]. By comparison, in Scotland where the farmland area is some 5.8 million hectares, the tenanted land makes up 24%[44].

There are no nationally collated figures available for foreign investment in UK agricultural land. In England and Wales there is no firm government policy either for or against cross-border acquisitions. However the situation in Scotland is rather different with a history of land reform beginning with the Land Reform Act 2003.

Whilst there may be no wholly reliable statistical evidence for cross-border acquisitions, there is plenty of anecdotal evidence from real estate agents and others. This suggests that the stable nature of the English and Welsh land market and fiscal incentives have encouraged both foreign buyers and other investors within the UK. Internally within the UK it has been suggested that investors may have moved out of other assets which have been perceived as risky and are seeking a "safe haven". This movement appears to have been accelerated by the recession commencing in 2008 and continued to date.

A notable example of purchases from non-agricultural buyers is Sir James Dyson's purchase of 25,000 acres (10,000 hectares) of English farmland over the last 10 years. Dyson is the inventor of the Dyson vacuum cleaner and many similar consumer products and according to the Sunday Times Rich List is worth over £3 billion.

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[41] DEFRA Agriculture in the UK 2014

[42] DEFRA Farming Statistics October 2014

[43] DEFRA Farm Rents 2013/2014

[44] Tenanted Agricultural Land in Scotland 2102

All land in England and Wales now has to be registered at Her Majesty's Land Registry on any significant change in title[45]. The Land Registry is an executive agency of the UK government first created in 1862 and the present system of land registration was established by the Land Registry Act 1875. However registration was not compulsory initially. Compulsory land registration began in London in 1899, but did not extend to all rural areas until 1990. This does not affect land which has not changed hands and the Land Registry estimates that 20% of the land mass in England and Wales remains unregistered and most of this is rural land. This means that it is very difficult to produce accurate statistics on the identity of land owners and the nature of land holding in the UK.

Land ownership in the UK is not allodial or absolute, it is, at least technically, derived from absolute ownership by the Crown and the two common forms of tenure held from the Crown are freehold, or fee simple and leasehold.

The nearest approximation to academic research into UK land ownership was by Kevin Cahill in 2002[46]. He found that two thirds of the UK land was owned by 189,000 families, but he still could not account for 10% of the country's land ownership. Recently in a speech in Singapore Prime Minister David Cameron has called for more transparency in land ownership in an effort to overcome fears that proceeds of foreign crime are being "laundered" through the UK property market. He has announced proposals for the Land Registry to publish details of land held by foreign investment companies. The Financial Times has estimated that at least £122 billion of property in England and Wales is owned by offshore companies. Most of this investment will be in commercial and residential property in London and the south east, but some will be in agricultural property across the UK.

There are a number of fiscal attractions to land ownership as an investment within the UK. Agricultural land and buildings are largely free from Inheritance Tax on death and farm land and buildings used as part of a business can obtain significant relief from Capital Gains Tax which is a tax on increases in the capital value between purchase and sale. This, combined with poor returns elsewhere during the recession, has made farmland an increasingly attractive investment. Average farm land values in England and Wales have risen from around £4,000 per acre (£9,885 per hectare) in 2005 to £10,000 per acre by the second quarter of 2014[47]. Real estate agents report no let-up in prices yet, with the best arable land selling at around £15,000 per acre (£37,000 per hectare). This level of value is making it increasingly difficult for ordinary farmers to purchase land, however conversely, many of the buyers from outside of the industry are not interested in farming themselves and are making the

[45] The Land Registration Act 2002

[46] Kevin Cahill: Who Owns Britain? ISBN-10: 1841953105. Canongate Books 2002

[47] RICS/RAU Rural Land Market Survey 2014 H2.

land available to rent to existing farmers. The land is not always made available on traditional tenancies, but often on contract farming arrangements and share cropping agreements in order to allow the new owner to enjoy the fiscal benefits of being an "active farmer" whilst leaving the responsibilities to those better skilled and equipped.

2. **Does national legislation in your country address the issue of cross-border acquisition and/or acquisition by non-agricultural capital? If so, please outline the legal framework**.

There is currently no regulation of foreign investment in UK real estate. There are certain restrictions on foreign acquisitions of companies operating in certain sensitive areas such as banking, financial services and utilities. However these are unlikely to directly affect agricultural real estate.

Within Scotland there are radical changes proposed within the Land Reform Bill published on 22nd June 2015 which is currently out to consultation. The Consultation recommends:-

"…limiting legal entities that can, in the future, take ownership of land in Scotland".

More specifically the Land Reform Review Group suggests limitations on non EU land ownership. The Bill also proposes that the Scottish Ministers can:-

"…intervene in situations where the scale or pattern of land ownership in an area, and the conduct of the owner, is acting as a barrier to sustainable development."

The Scottish Land Reform Act 2003 began this process with a Community Right to Buy land when it came up for sale and a crofters community right to buy land which applies to croft tenants who can have the right to purchase at any time. A croft is a small tenanted agricultural unit in Scotland with a house, arable land and rights of communal grazing.

These proposals will undoubtedly be seen as populist amongst the ruling Scottish National Party in the devolved Scottish Parliament. Cahill (2002) suggests that just over 400 private individuals own over half the land in private ownership in Scotland and there are still deep feelings of resentment going back to the 18th and 19th centuries when absentee landlords cleared peasant tenant farmers in a sometimes cruel manner in favour of sheep farming. The Bill has been met with outrage by landowners and likened to a Robert Mugabe-style land grab by Prime Minister David Cameron in allusion to the Zimbabwean government's seizure of white-owned farmland. It is reported by real estate agents that the effect has been to cause uncertainty in the Scottish land market and deter foreign investors.

3. What is the intended purpose of any such legal framework (e.g., the maintenance of rural communities)?

Scotland is reputed to have vast tracts of rural land owned by a very small number of individuals/entities. Again there is little empirical evidence for this and the Scottish Government's own figures suggest that the tenanted farming sector is actually smaller than in the rest of the UK. However this may be skewed by a relatively small number of large landowners farming land in hand.

The stated purpose of the proposed legislation in Scotland is to promote a more sustainable rural community. It remains to be seen whether this will have the intended effect.

4. Are there any legal instruments in the national law of your country which address cross-border acquisition and/or acquisition by non-agricultural capital of agricultural land: e.g. special rules which limit rights *in rem* such as liens, mortgages and beneficial interest (*usufructus*); and restrictions on types of contract for agricultural land use (such as leasehold contracts or share-cropping)?

There is no existing legislation on ownership.

5. Are there any special provisions in the national law of your country which concern the status of the individual land owner or land user (e.g., requirements as to citizenship, agricultural qualifications or proof of intention to pursue agricultural activities on the land in question)?

There are none in respect of land ownership, however there are some restrictions on use through the Town and Country Planning Acts, first introduced post-World War Two. Similar, although not identical provisions apply throughout the UK. In England, any change of use other than that permitted by a General Development Order requires prior Planning Consent from the Local Planning Authority, which is usually the local administrative council. Specifically any change of use of agricultural land to some non-agricultural use, such as garden land associated with a dwelling house, another form of business use outside of agriculture or a leisure or recreational use, normally requires prior planning consent. Planning consent or another form of prior approval is also required for any development comprising building work, such as the erection of buildings, whether for agricultural use, or some other purpose.

The decision to grant Planning Consent is made by the Local Council based on both national and local planning policy. Local Councils are required to produce Local

Development Framework plans setting out their policy having consulted locally and regionally and these plans are subject to a formal public inquiry and must abide by national policy. National policy is principally the National Planning Policy Framework[48] and the presumption is in favour of "sustainable development". This is a change of emphasis following the Localism Act 2011. The provisions can be summarised as follows[49]:

- *new freedoms and flexibilities for local government*
- *new rights and powers for communities and individuals*
- *reform to make the planning system more democratic and more effective*
- *reform to ensure that decisions about housing are taken locally*

The Localism Act recognises the failure of the Planning System to deliver sufficient new development, especially housing.

Planning policy is also used to restrict and protect use of land or buildings to certain essential purposes that might not otherwise be permitted such as agricultural workers' dwellings in the countryside. Planning policy would not normally permit new development in open rural areas outside of settlements identified for growth. The imposition of conditions restricting use to those employed locally in agriculture or forestry assists the sustainable rural community. Similar conditions are also used in popular tourist areas to restrict use of new houses and apartments to local residents who may otherwise be priced out of the market by holiday home owners.

6. Is there any relevant national legislation for the acquisition of land ownership or use of agricultural land by legal persons (legal entities)? Please focus solely on the conditions which differ from the conditions regulating the acquisitions of natural persons.

There are different rates of Stamp Duty Land Tax (SDLT) payable by the purchasers of real residential property and commercial property. Natural persons and corporate entities pay the following rates for commercial property which would normally include agricultural land and farm houses:-

Purchase price/lease premium or transfer value	SDLT rate
Up to £150,000 - if annual rent is under £1,000	Zero
Up to £150,000 - if annual rent is £1,000 or more	1%
£150,001 to £250,000	1%

48 The National Planning Policy Framework 27 March 2012

49 Department of Communities and Local Government Guide to Localism Act 15/11/2011

Purchase price/lease premium or transfer value	**SDLT rate**
£250,001 to £500,000	3%
Over £500,000	4%

However, much higher rates are payable on residential property unless it is part of a mixed use, such as a farm. The rates payable by a natural person used to be on a much hated stepped slab scale, but since December 2014 they have changed and the new system is expected to be revenue neutral. The new rates are as follows:-

Property or lease premium or transfer value	**SDLT rate**
Up to £125,000	Zero
The next £125,000 (the portion from £125,001 to £250,000)	2%
The next £675,000 (the portion from £250,001 to £925,000)	5%
The next £575,000 (the portion from £925,001 to £1.5 million)	10%
The remaining amount (the portion above £1.5 million)	12%

However most corporate entities pay higher rates starting at 15% over £500,000 and they may also be subject to an annual charge if worth over £1 million. The purpose of these increased charges is to discourage residential ownership through companies that has led to avoidance of SDLT by trading in share capital rather than the underlying property title.

7. How is any national law on cross-border acquisition and/or acquisition by non-agricultural capital enforced in your country (e.g., prior authorisation procedure for the acquisition of agricultural land and control systems)?

This is not applicable.

8. How is judicial control of the acquisition of agricultural land ensured in your country? Does national law lay down any special legal procedures (e.g., special courts or special arbitration procedures for the settlement of land-related legal disputes)? How does national law prevent the circumvention (e.g., by sham contracts) and violation of restrictions on agricultural land acquisition?

Whilst there are no controls on land ownership, all land law matters are dealt with by the civil courts and the ultimate arbiter is the Supreme Court, previously the House of Lords.