



EUROPEAN COUNCIL FOR RURAL LAW

**XXX European Congress of Agricultural Law
18-21 September 2019, Poznań (Poland)**

Questionnaire

1. Characterise the importance of planning instruments to protect agricultural land resources in your country of origin, taking the following issues into account:

Scope of land-use plans

The devolution settlements established for Scotland, Wales and Northern Ireland have resulted in separate planning systems and frameworks for legislation on land-use planning and conservation across the United Kingdom (UK)¹. The laws, regulations and policies creating the planning systems in these jurisdictions are made separately and distinctly and are becoming increasingly divergent.

Local authorities are responsible for local land-use planning and are allocated funds by the UK government. In terms of setting priorities and objectives for land-use planning, including the allocation of land for specific purposes and steering certain types of development to certain areas as well as controlling the activities and built structures on land, it is the responsibility of the national government and local authority. Under law local authorities (and national park authorities within the boundaries of National Parks) are delegated the powers to set strategic planning policies in their area through their development plan and associated planning policy guidance. They also have the responsibility to determine planning applications which are submitted seeking permission for development on land within a Authority's area².

England, Northern Ireland, Scotland and Wales each have separate long term guidance for spatial development within their jurisdictions, referred to as national or regional planning frameworks³. At a high level these set policies and objectives in relation to land use planning addressing issues such as

¹ There is no devolution settlement for England.

² It should be noted that some local authorities have contracted land-use planning out to the private sector.

³ In England, the *National Planning Policy Framework (NPPF)* sets out how government policies for England should be applied and must be taken into account by local councils and local people in the preparation of their own local and neighbourhood plans. It is accompanied by more detailed Planning Practice Guidance available on-line. In Scotland, the *National Planning Framework (NPF)* outlines a long-term vision for spatial development and investment across Scotland for the next 20-30 years. In Wales, the *Wales Spatial Plan* sets out cross-cutting national spatial policies which provide the context for the application of national and regional policies for specific sectors and different sub regions of Wales. In Northern Ireland, the *Regional Development Strategy (RDS2035)* is a long-term plan to 2035 which informs the spatial aspects of the strategies of all government departments.

housing, infrastructure, the economy, the environment and good design, for example: “making effective use of land”⁴; “building a strong and competitive economy”⁵; “a natural, resilient place”⁶; “productive and enterprising places”⁷; “environment”⁸. These frameworks and strategies do not allocate land for specific purposes, but rather provide a national vision of what is expected in the implementation of the planning system both at a policy formulation stage and at decision-taking⁹. The National Planning Policy Framework (NPPF), relevant to England, explains the purpose of the document to be providing a framework within which locally-prepared plans for housing and other development can be produced¹⁰. Planning Policy Wales (PPW), relevant to Wales, explains its role to be ensuring that “the planning system contributes towards the delivery of sustainable development and improves social, economic, environmental and cultural well-being of Wales”¹¹. The Regional Development Strategy (RDS) in Northern Ireland aims to “influence the future distribution of development throughout the Region”¹². These guidance documents do not contain legally binding elements, however they are material considerations which are required under s.38(6) Planning and Compulsory Purchase Act 2004 to be taken into account by local authorities in their own policy-making and decision-taking. Consequently they are key documents in land use planning.

Development plans are critical to how land is used in an authority’s area. S.38(6) of the Planning and Compulsory Purchase Act 2004 re-established a presumption in favour of the development plan. Therefore, decisions on development proposals should be made in accordance with the local authority’s development plan unless material considerations indicate otherwise. Material considerations are not set out in statute but are often a contentious point subject to judicial scrutiny. It is clear that out of date development plans afford less or no weight in determination and therefore there are circumstances where departure from the development plan is considered appropriate and suitable.

The Localism Act 2011 introduced a new level of plans in England, known as Neighbourhood Development Plans (NDPs). Their purpose was to further decentralise the planning system, to provide greater bottom-up influence by empowering communities to develop land use plans for their own geographic localities. The preparation of a NDP relies upon citizens from self-organising communities creating a Neighbourhood Forum which, once formally designated by the Local Planning Authority (LPA), can steer development in their area where the policies are in conformity with national and local guidance and plans, although it cannot restrict development approved by the LPA’s development plan. There has been varied uptake of this mechanism, largely influenced by geographies and demographics¹³.

⁴ Ministry of Housing, Communities and Local Government (June 2019) *National Planning Policy Framework*. HMRC: London, Chapter 11.

⁵ Ministry of Housing, Communities and Local Government (June 2019) *National Planning Policy Framework*. HMRC: London, Chapter 6.

⁶ Scottish Government (June 2014) *National Planning Framework*. Scottish Government: Edinburgh, Chapter 4.

⁷ Welsh Government (December 2018) *Planning Policy Wales*. Welsh Government: Cardiff, Chapter 5.

⁸ Department for Regional Development (2010) *Regional Development Strategy 2035: Building a Better Future*. Belfast, Chapter 3.

⁹ Scottish Government (June 2014) *National Planning Framework*. Scottish Government: Edinburgh, Ministerial Foreword.

¹⁰ Ministry of Housing, Communities and Local Government (June 2019) *National Planning Policy Framework*. HMRC: London, para 1.

¹¹ Welsh Government (December 2018) *Planning Policy Wales*. Welsh Government: Cardiff, para 1.2.

¹² Department for Regional Development (2010) *Regional Development Strategy 2035: Building a Better Future*. Belfast, para 1.4.

¹³ Mace, A & Tewdwr-Jones, M. (2017) “Neighbourhood Planning, Participation and Rational Choice”. *Journal of Planning Education and Research*.

Land ownership and development rights are considered separate issues in the UK. In general, ownership does not give the automatic right to develop land and s.57 Town and Country Planning Act 1990 establishes that all developments require planning permission. Planning permission can be sought by a third party who does not own the land. This must be declared in the planning application through provision by the applicant of the relevant certificate¹⁴.

Land can be compulsorily acquired for public and private developments under section 226(1)(a) Town and Country Planning Act 1990, for example large scale infrastructure projects such as High Speed 2 (HS2) which is a programme to construct a new high speed railway between London Euston and Leeds and Manchester¹⁵; retail and residential developments. The Compulsory Purchase Act 1965, Land Compensation Act 1961 and 1973, Acquisition of Land Act 1981, the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004 set out the statutory process to be followed by public authorities. The law is clear that compulsory purchase should only be used where there is “a compelling case in the public interest. Where this is demonstrated to be satisfied those affected, freeholders, leaseholders and mortgagees have legal compensation rights where these claims are in direct consequence of the scheme¹⁶. Compensation should be equivalent in that it should put the claimant in the same position after that they were in before, this was established in *Horn v Sunderland* (1941). The basis for valuation in compensation is set out under section 5 LCA 1961. The Pointe Gourde Principle provides that compensation can not include any increase or decrease in value which is entirely due to the scheme underlying the acquisition. Part 1 of the LCA 1973 limits the scope for claims in compensation stating that the mere physical presence of development would not attract compensation, however where there is a demonstrable depreciation in value of the claimant’s land due to the effects of the physical factors emanating from the use of the development then this will be considered to qualify.

Special instruments for the conservation of cultivated land

According to data from the OECD 56% of land in the UK (137674 km²) is identified as agricultural with 27% being developed (this is 20,324km² of land cover nationally)¹⁷. The land coverage has altered between 2000 and 2012 indicating a shift of 32% of the total agricultural land coverage to developed land.

Agricultural land is defined under section 109 of the Agricultural Land Act 1947 as “land used for agriculture which is so used for the purposes of a trade or business”. Agriculture includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes.

¹⁴ All applicants submitting a planning application must complete a certificate that provides details about the ownership of the proposal site. Where they do not own the land, applicants must demonstrate that they have served an appropriate notice on any other owners (and agricultural tenants). The forms of notice are in Schedule 2 to the Town and Country Planning (Development Management Procedure (England) (Order) 2015. Where the appropriate notice has not been served or the relevant certificate is not provided the planning application will not be validated (and therefore will not be determined by the LPA). Furthermore, it is an offence to complete a false or misleading certificate, either knowingly or recklessly, with a maximum fine of up to £5,000.

¹⁵ Housing and Local services (2019) *Claim compensation if your property is affected by HS2*. Available online at: <https://www.gov.uk/claim-compensation-if-affected-by-hs2> correct 12/08/2019.

¹⁶ There is no right to compensation for easements and restrictive covenants unless these are altered by the scheme or extinguished.

¹⁷ The remaining land is comprised of 9% forest (9%) and other (8%).

There is no legislation which specifically seeks to conserve and protect cultivated land across the UK. Land use planning tends to identify settlements or areas where certain types of development are considered to be suitable and appropriate. The planning systems of the UK deal with certain types of designated land differently, referred to in England as Article 2(3) land, in Wales as Article 1(5) land. Land classified as within a conservation area, Sites of Special Scientific Interest, Special Areas of Conservation, National Parks, for example, will be regulated and controlled more stringently than other areas. Similarly, there is greater protection for areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance. This is enshrined for England and Wales in the Planning (Listed Building and Conservation Areas) Act 1990, in Scotland under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and in Northern Ireland largely under the Planning Act (Northern Ireland) 2011 supported by separate secondary legislation regarding listed buildings and conservation areas, namely The Planning (Listed Building) Regulations (Northern Ireland) 2015, as amended and The Planning (Conservation Area) (Demolition) Regulations (Northern Ireland) 2015.

As one of the central tenets of the planning systems is the presumption in favour of sustainable development, in rural areas and areas identified as in the open countryside, development will be limited to exceptional situations and circumstances, for example diversification projects, rural workers dwellings, rural enterprise dwellings and sustainable dwellings which are superior and high quality examples of architecture demonstrating the highest standards of sustainability¹⁸.

Furthermore, the NPPF (2019) uses the Agricultural Land Classification¹⁹ as a basis on which to identify the types of development which may be capable of coming forward. Highlighting that importance of harnessing the economic and other benefits associated with the best and most versatile agricultural land and trees and woodland through planning policies and decisions²⁰. The guidance sets out a priority order for land use planning and development proposals whereby “they distinguish between the hierarchy of international, national and locally designated sites; allocate land with the least environmental or amenity value”. This means that areas of poorer quality agricultural land is preferred to those of higher quality. The intention being to retain the higher quality agricultural land. Guidance on assessing development proposals on agricultural land was published in January 2018 by the Government together with Natural England²¹. This seeks to mitigate loss of the best and most versatile agricultural land and soils, capable of delivering both food and non-food crops in England from inappropriate and unsuitable development proposals.

Similarly, PPW para 4.10 sets out the national policy in Wales towards conserving Wales’ Best and Most Versatile agricultural land. Technical Advice Note 6: Planning for Sustainable Rural Communities advice on the role of the planning system in supporting the delivery of sustainable

¹⁸ Referred to in England as Paragraph 79 houses, in Wales one planet development and personal and domestic circumstances of an applicant in Northern Ireland under Policy CTY6, Planning Policy Statement 21: Sustainable Development in the Countryside.

¹⁹ The Agricultural Land Classification (ALC) uses a grading system (1-5) to assess and compare the quality of agricultural land and various levels. This is achieved through a combination of climate, soil and site characteristics along with their interaction to determine how this is likely to affect: (i) the range of crops which can be grown; (ii) the yield of the crop; (iii) consistency of the crop; and (iv) cost of producing the crop.

²⁰ NPPF (2019) paragraph 170(b). The best and most versatile land is classified as 1-3a (excellent quality to good quality agricultural land).

²¹ <https://www.gov.uk/government/publications/agricultural-land-assess-proposals-for-development/guide-to-assessing-development-proposals-on-agricultural-land#agricultural-land-classification-alc> [correct 10/09/2019]. In Wales, Welsh Government (November 2017) *Guidance Note: Predictive Agricultural Land Classification Map (Wales) The Hollington Map*. Cardiff. <https://gov.wales/sites/default/files/publications/2018-02/agricultural-land-classification-predictive-map-guidance.pdf> [correct 13/08/2019].

rural communities and includes, for instance (i) the repurposing of rural buildings; new dwellings on established residential enterprises; and (iii) low impact development, referred to in Wales as “One Planet Development”²².

The National Scale land capability for agriculture map provides information on the types of crop that may be grown in different areas of Scotland. The LCA is a seven class system and are land is ranked on the basis of its potential productivity and cropping flexibility, determined again through an analysis of the physical characteristic of the land with Class 1 – 3.1 being land capable of producing a wide range of crops and high yields of a more narrow range of crops respectively.

Whilst work has been undertaken on land classification in Northern Ireland, it does not appear prominently within land use policy. Research was commissioned as a joint initiative between the University of Ulster and the Department of the Environment (NI) and subsequently published in 2017²³. The aim of the study was to quantify the distribution of land use, ecological resources and landscape attributes using both previous studies and field surveys.

The Town and Country Planning (Environmental Impact Assessment) Regulations 2017, requires the submission of an Environmental Statement to accompany proposals for certain types of agricultural projects involving the use of uncultivated land or semi-natural areas for intensive agricultural purposes where it will cause or is likely to cause significant detrimental effects on the environment by virtue inter alia of its nature, size or location. Regulation 3 prevents the relevant authority from granting planning permission or consent for EIA development unless an EIA has been carried out in respect of that development.

Permissibility of activities on agricultural land

The use of undeveloped land for building has more than tripled from 4,500ha a year in the 2000s to 15,800ha (2013-2017). At current rates around 1% of England’s farmland is converted to built development each decade.

Permitted development entitles certain operational and material changes of use to be undertaken without the need for planning permission. This is set out separately in the four jurisdictions of the UK. In England this is provided under Part 6 of the Town and Country Planning (General Permitted development) (England) Order 2015, as amended and the Town and Country Planning (General Permitted development) Order 1995, as amended for Wales. In Scotland, Part 6 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended and in Northern Ireland the Planning (General Permitted Development) Order (Northern Ireland) 2015, Part 7.

Notwithstanding the different forms of legislation for permitted development across the UK, the laws all set out the different categories and classes of development which can change automatically and those developments which require the submission of a notification to the regulatory authority (usually the local authority) allowing some proactive oversight and control but not to the extent of the standard planning application process. There are a restrictions on the scope of, set out as Conditions for permitted development rights. Where a proposal satisfies one of the conditions set out in the legislation it will fall outwith the remit of PDR and instead require planning permission. For

²² Welsh Assembly Government (July 2010). *Technical Advice Note 6: Planning for Sustainable Development*. Cardiff. Available online at: <https://gweddill.gov.wales/docs/desh/policy/100722tan6en.pdf> [correct 10/09/2019].

²³ Available online at: <https://www.daera-ni.gov.uk/publications/land-classification-and-landscape-ecological-study-northern-ireland> [correct 10/09/2019].

agricultural activities certain types of development are capable of going ahead without the need for planning permission but these remain controlled through the process of prior notification with the scope of these rights depending upon the size of the farm, the proximity to heritage assets and the location of the site in relation to designated sites. Effectively, PDR removes certain development from the control and regulation of the planning system. This streamlines the planning process reducing the administrative burden and is intended to reflect a proportionate response in land use planning in situations or with types of development proposals which are considered to be harmless.

Consequences of changing the intended use of agricultural land to purposes not related to agriculture

The difference between the price of land with planning permission for development and other land is substantial. The Government Office for Science indicated that obtaining permission to change use from agricultural to residential use can increase the price of the land by as much as 600–700-fold, creating significant gains for the landowner and high costs for house buyers²⁴. Regional disparities in relative land scarcity between the South East of England and other parts of the UK could grow if existing patterns of development continue. Research undertaken by Barker in 2010 found that agricultural land in Cambridge was worth approximately £18,500 a hectare whilst residential land was worth £2.9 million. Compared to Belfast where agricultural land had a value of £24,000 hectare and residential land £1.25m²⁵. Indeed, the latest farmland estates review conducted on behalf of Strutt and Parker note the price ranges for arable land in Quarter 1 to be between £6,000 - £16,000 acre and pasture between £5,000 0 £8,000 acre. The principal influence affecting the land price being location.

To qualify for the Basic Payment Scheme, a subsidy offered to farmers with at least 5 hectares of agricultural land, the land must be used for an agricultural activity all year round. Where land is predominantly used for agricultural then a claim can still be made but the payment may be reduced. For a claim to be valid farmers must also meet the “cross compliance” requirements. This requires farmers to demonstrate that they are keeping their land in Good Agricultural and Environmental Condition (GAEC) and that they are complying with the specific statutory management requirements. GAEC relates to soil erosion, soil structure, soil organic matter and sets minimum levels of maintenance to avoid deterioration of habitats and protects water. The conversion of permanent pasture requires authorisation since the ratio of permanent pasture to total agricultural are must be retained. Statutory management requirements relate to animal welfare, the environment and public and plant health. Consequently, where agricultural land is used for purposes other than farming, entitlements will not be allocated to that proportion of land. Entitlements are allocated to every eligible hectare of agricultural land, deductions are made for areas such as woodland, ponds, scrub, bracken etc... For example, a farm of 100ha might only be allocated 97 entitlements to mirror the farmable ground, accounting for the appropriate reductions.

Similarly, Agricultural Property Relief (APR) enables some agricultural property to be free from Inheritance Tax where certain conditions are fulfilled. However, where a new non-agricultural use of land or related buildings is introduced through farm diversification projects such as holiday lets, property rental, solar farming there are tax implications²⁶ these activities fall outwith the scope of

²⁴ Foresight Land Use Futures Project (2010) Making the most of land in the 21st Century. The Government Office for Science: London. Available online at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/288845/10-634-land-use-futures-summary.pdf [correct 11/09/2019].

²⁵ Barker, K (2014) *Housing: Where's the Plan?* London Publishing Partnership: London.

²⁶ Farm diversification is defined by the National Framers Union as “using your farm’s assets, such as land, buildings or machinery, to develop a new business activity beyond farming your land”.

APR and may instead to qualify under the 50% Business Property Relief (BPR). To claim BPR land or buildings must usually be used for trading rather than investment purposes therefore diversification involving collecting rent with little management or provision of services will be considered an investment and will not satisfy the criteria for a successful claim for BPR. The tax implications of diversifying land from farming can be considerable, however DEFRA's Farm Business Survey found that 62% of UK farms have diversified.

In terms of land use planning, the development and diversification of agricultural business and other land-based rural businesses are encouraged through the NPPF in England under paragraph 83 which provides: "Planning policies and decisions should enable...(b) the development and diversification of agricultural and other land-based rural businesses..." Similarly, in Wales PPW encourages rural business diversification requiring planning authorities to adopt a "positive approach to diversification projects in rural areas". The National Planning Policy Guideline 15 on development in Scotland encourages planning authorities to adopt a positive and proactive approach to providing development opportunities in rural areas. To this end The Scottish Executive published A Guide to Farm Diversification and Planning Permission in Scotland²⁷.

In Northern Ireland PPS21 at Para 5.9: "Agriculture continues to be of major importance to the economy of the rural area. With the restructuring of the industry ongoing in response to the continuing change to agricultural support measures by the European Union, agricultural diversification is likely to increase in importance as a means of maintaining or increasing farm income and employment. The planning system will therefore continue to sympathetically view appropriate farm diversification schemes"²⁸. PPS21 for Northern Ireland establishes a main objective the facilitating of "development necessary to achieve a sustainable rural economy; including appropriate farm diversification and other economic activity". Consequently, there is support and encouragement in the planning system for project proposals which seek to diversify existing farm businesses. The uptake of this has been slower in Northern Ireland, but it is anticipated that the uncertainties and potential implications of Brexit are increasing. Consequently, the number of diversified businesses are increasing as farmers look to strategies for achieving resilience and adapt to the changing economic and political frameworks.

2. Characterise the importance of instruments to counteract the degradation and devastation of agricultural land in your country of origin

Degree of agricultural land degradation and devastation of agricultural land.

In June 2019 the Environment Agency published a briefing on the state of the soil environment, finding that over 2 million hectares of soil are at risk of erosion in England and Wales with around 10 billion tonnes of carbon currently stored in UK soils. Inappropriate land management techniques and natural events are the main causes of soil degradation and destruction with figures indicating that soil is being destroyed at approximately 10 times the rate it is created, costing England and Wales

²⁷ Scottish Executive (2003) *A Guide to Farm Diversification and Planning Permission in Scotland*. Scottish Executive: Edinburgh. Available online at: <https://www.gov.scot/publications/guide-farm-diversification-planning-permission-scotland/pages/1/> [correct 18/08/2019].

²⁸ Department of Environment (2010) *Planning Policy Statement 21: Sustainable Development and the Countryside*. Available online at: https://www.planningni.gov.uk/index/policy/planning_statements_and_supplementary_planning_guidance/planning_policy_statement_21_pps21_sustainable_development_in_the_countryside-3.pdf [correct 10/09/2019].

around £1.2bn/year. The July flood event in Yorkshire, where 82mm of rain fell in 24 hours for example, saw topsoil removed from land as well as livestock drowned. The consequences of this will be felt by landowners into the long term and similarly the impact on England's rivers caused by these types of events and land practices has resulted in just 14% classed as healthy following pollution with sediment, nutrients, chemicals and slurry²⁹.

Data from a study conducted by Cranfield University (2010) found that one third of UK soils are degraded. In terms of arable land 1 million hectares of all arable land in the UK is identified as at risk from erosion. Current figures suggest that up to 2.9 million tonnes of topsoil is estimated to be lost in water and wind erosion every year across the UK. Groves et al (2015) found that soil degradation results mainly from three factors: (1) the loss of organic content of the soil; (2) the composition of the soil; and (3) the possibility of erosion³⁰. Indeed, the previous Minister of Agriculture and Environment, Michael Gove MP, commented that the UK is between 30 and 40 years away from eradication of soil fertility. He recognised at a Parliamentary launch of the Sustainable Soils Alliance that the Government has failed to conduct regular soil monitoring since the Countryside Survey in 2007. The lack of action was further highlighted by the UK's position (supported by a number of other member states) on the proposed EU Directive establishing a framework for the protection of soil which was subsequently withdrawn in May 2014. Research undertaken by Lilly et al (September 2018) on behalf of Climate XChange, Scotland's Centre of Expertise on Climate Change found that the full extent of soil erosion and compaction is not known in Scotland; with more information needed on the interaction between climate and soils as well as compaction and erosion in order to improve predictions and understand how it occurs and develop avoidance and investigation measures³¹.

Soil science literature shows that there has been a focus in the past on physical and chemical properties of soils, and little study on biological processes and the interpretation of soil science for economic appraisal and policy purposes. Therefore, the links into impacts, policy and practice are not yet adequately developed. Furthermore, whilst it is clear that there is spatial variability associated with both the processes of soil degradation and their impacts how this occurs and the influences and determinants which shape particular outcomes requires greater understanding. In general, there remains insufficient data on the health of soils across the UK and investment is needed in soil monitoring. This is supported by the Department of Environment, Food and Rural Affairs (DEFRA) (2018) which found that there are difficulties in complete and reliable estimates of the benefits provided by soils and how changes occur. Indeed, knowledge about erosion rates come from individual studies of erosion events. The body of evidence is growing on the role of land use (current and historic), soil type and erosion susceptibility, however the consistency and reliability of this data remains uncertain. In England DEFRA published a 25 Year Environment Plan, entitled "A Green Future" which aims, amongst other things to reverse soil degradation and restore fertility by

²⁹ World Wildlife Fund, Angling Trust and The Rivers Trust (April 2018) *Saving the Earth: A Sustainable Future for Soils and Water*. WWF: UK. Available online at: https://www.wwf.org.uk/sites/default/files/2018-04/WWF_Saving_The_Earth_Report_HiRes_DPS_0.pdf [Correct 15/08/2019].

³⁰ Research conducted by the University of York, Sheffield and Leeds as part of the Soil Security Programme found that reintroducing leys within the UK arable farming rotations in combination with zero tillage is capable of providing an effective way of restoring soil functions degraded by intensive cultivation.

³¹ Studies have found a link between soil compaction and erosion. Soils which are quickly compacted have a reduced capability to store rainfall and therefore generate greater overland flow which causes erosion. Machinery weight causes soil compaction but this can be reduced through the use of wide tyres, dual wheels and low pressure types of vehicles.

2030. In order to assist in achieving this ambition the Department are investing £200,000 to develop health metrics and test them on farms across the country³².

Legal instruments to counteract the degradation and devastation of agricultural land

Legal instruments that seek to protect the degradation of agricultural land are mostly indirect with their objectives being, for example the management of waste, remediation of identified contaminated land, control of nitrates and land use planning priorities.

The Environmental Stewardship scheme, which rewards farmers for managing their land in ways that protect and enhance the environment, has encouraged 40% of the 20,000 participants to complete a soil management plan as part of the agreement³³. The purpose of the Soil Management Plan is to assist in managing soils to reduce the risk of compaction and erosion, optimise yields and quality of crops and pasture as well as reducing the risk of damaging the environment. Equally, Under the Basic Payment Scheme³⁴, which is a condition for receipt of support under the Common Agricultural Payment, land managers are required to maintain their land in good agricultural and environmental condition (GAEC) and protect agricultural soils particularly focusing on erosion, soil structure and soil organic matter. Soil management problems must be addressed at a farm level through undertaking a Soil Protection Review. As part of the requirements UK farmers must also maintain a minimum soil cover with vegetation, crop, cover crop, stubble or crop residue. Compliance is enforced by inspection of a minimum of 1% of farms per year.

England, Wales, Scotland and Northern Ireland have signed up to the Sustainable Development Goals (SDGs) and the UN Commitment on Land Degradation Neutrality. The former recognises that the condition and quality of the soil has a bearing on the ability to accommodate habitats and species and the wider objective of conserving biodiversity whilst the latter places measures to conserve, sustainably manage and restore land in the context of land use planning³⁵.

In cases where environmental damage has been caused since the late 1990s, environmental damage, referred to as damage to (a) a protected species or natural habitat, or site of special scientific interest; (b) surface water or groundwater; (c) marine waters; or (d) land, is dealt with through The Environmental Damage (Prevention and Remediation) (England) Regulations 2015 SI 2005/810; the Environmental Damage (Prevention and Remediation)(Wales) Regulations 2009 SI 2009/995; The Environmental Liability (Scotland) Regulations 2009, SI2009/266 and The Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009, as amended. These separate instruments implement the Environmental Liability Directive (2004/35/EC) which was introduced to make operators of activities which cause environmental damage financially liable for the damage caused, reflecting the Polluter Pays Principle. Strict liability applies to environmental damage to land, water and protected species and habitats where the damage is caused by certain polluting activities listed in Schedule 2 of the Regulations. This sets out a list of

³² The Department for Environment, Food and Rural Affairs A Green Future: Our 25 Year Plan to Improve the Environment. HM Government: London, Chapter 3. Available online at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/693158/25-year-environment-plan.pdf [correct 15/08/2019].

³³ Department of Environment, Food and Rural Affairs (September 2012) *Assessment of the Implementation of the Soil Protection Review 2010 and Soil Management Practices in England*. Ref:SP1309. London: DEFRA.

³⁴ The Basic Payment Scheme replaced in 2015 the Single Payment Scheme.

³⁵ United Nations. The LDN Target Setting Programme. Available online at: <https://www.unccd.int/actions/ldn-target-setting-programme> [correct 17/07/2019].

activities causing damage and includes, inter alia: operation of permitted installations³⁶, waste management operations and genetically modified organisms. Environmental damage to a protected species or natural habitat of site of special scientific interest incurs liability where it can be proven that the operator *intended* to cause environmental damage or was negligent.

Reclamation of degraded or devastated agricultural land

Part 2 A of the Environment Act 1990 establishes a system for historic land contamination and clean-up. This was introduced as a mechanism for addressing harmful substances already in the land at the point they are or are likely to cause significant harm to human health or the environment³⁷. The contaminated land regime applies across the UK, although the secondary legislation which establishes the regime in detail has been made separately in England, Wales, Scotland³⁸ and Northern Ireland. By its nature this legislation deals retrospectively with the remediation of land identified as contaminated under the domestic law. The test for contaminated land is a high one, requiring the harm to be significant before remediation is required. The allocation of liability is challenging with various parties potentially seen as liable depending upon the activities on the site and its current ownership. These are split into Class A and Class B persons. The former tend to be those who have caused or knowingly permitted the contamination of the land, for example through the introduction of a pathway or receptor which has resulted in the land being identified as contaminated. Whereas Class B persons are landowners and those with an interest in the land who will benefit from its clean-up.

The Environmental Impact Regulations, as discussed above, protect rural land that is classified as uncultivated or semi-natural from changes in activities, even where the proposed activities are related to agriculture, for example moving or redistributing earth or restoring semi-natural grassland or semi-natural heathland. Compliance with the EIA regulations forms part of cross compliance for the purposes of the farm subsidies including the Basic Payment Scheme, Environmental Stewardship and Countryside Stewardship. As a consequence, where the landowner fails to comply with the EIA requirements not only can they be prosecuted, but their payment can also be detrimentally affected.

3. Are there any specific regulations concerning agricultural property transactions in your country?

³⁶ Permitted activities refer to those activities and operations requiring an environmental permit from the appropriate regulator, reflecting the objectives under Directive 2010/75/EC on Industrial Emissions. The regime is implemented through a joint secondary instrument for England and Wales, The Environmental Permitting (England and Wales) Regulations 2016, SI2016/1154, for Scotland the Environmental Authorisations (Scotland) Regulations 2018 and in Northern Ireland the Pollution Prevention and Control Regulations (Northern Ireland) 2013, SI2013/160.

³⁷ Section 78A(2) establishes the scope of the contaminated land regime: *which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land that; (a) significant harm is being caused or there is significant possibility of such harm being caused; or (b) significant pollution of controlled waters is being caused or there is significant possibility of such pollution being caused.*

³⁸ In England, the Contaminated Land (England) Regulations (2006 amend by the Contaminated Land (England) (Amendment) Regulations 2012; in Wales under the Contaminated Land (Wales) Regulations 2006, amended by the Contaminated Land (Wales) (Amendment) Regulations 2012; in Scotland under the Contaminated Land (Scotland) Regulations 2000, amended by the Contaminated Land (Scotland) Regulations 2005; in Northern Ireland The Model Procedures for the Management of Land Contamination 2004 provide the technical framework for applying the risk assessment when dealing with land affected by contamination. Part 3 of the Waste and Contaminated Land (Northern Ireland) Order 1997 has been enacted but is still not in force and a timetable for implementation has not been agreed.

According to Knight Frank the average value of farmland over the past half a century has risen from £161 in Sept 1966 to a high of £8,300 in September 2018 but has fallen to £7,672 per acre. The UK's membership of the then EEC boosted performance of agricultural land values in the 1970s as institutional investors such as pension funds and insurers invested in farmland as a safe and income producing asset. The introduction of the Agriculture Tenancies Act 1995 which changed the security of tenure provisions for farming tenants made agricultural land more attractive for investors. This made it easier to recover possession at the end of the fixed term. Notwithstanding this, limited agricultural land comes onto the market with between 100,000 and 150,000 acres have been available to buyers over the past eight years. Despite the uncertainties of Brexit, land prices remain buoyant, supported by a lack of supply.

There are no specific regulations concerning agricultural property transactions in the UK. Stamp Duty Land Tax (SDLT) is the transaction tax payable by the buyer on agricultural land in England and Northern Ireland where the property or lease premium or transfer value is over £150,000. Land and Buildings Transaction Tax replaced SDLT in Scotland (0% for value under £145,000) and the Welsh Land Transaction Tax (0% for value under £180,000) applies in Wales. All of these transaction taxes irrespective of jurisdiction are characterised by a banding system and is calculated on the portion of the value falling within each band.

Farm buyers can claim tax relief on the value of fixed assets and other fixtures which comprise part of the farm business. When buying a property tax relief may be claimed on parts of the purchase under the Annual Investment Allowance. This form of tax relief is available to British Businesses and is designated for the purchase of associated business equipment. In the case of agricultural businesses, plant machinery for example can qualify as a deductible capital expenditure for the business. Capital gains tax is realised on the disposal of land and whilst this usually attracts a 20% rate or indeed a 28% rate where it is classified as a business, providing the owner has been actively involved in the agricultural activities on the land this tax can be reduced to 10%.

4. Are there any restrictions as to the acquisition of agricultural property by foreigners in your country?

Throughout the UK, the real estate market is a free market, meaning that the government does not control or interfere with the buying and selling of land and property. There are no restrictions in the UK on foreign ownership of land or the amount of land that foreign individuals or companies may own. Essentially, the purchasing of agricultural land is unrestricted. Since 2014 rich investment buyers from Northern European countries such as Denmark and Scandinavia as well as investors from China are buying up agricultural land across the UK considering that land is a stable repository for capital. This has increased agricultural land prices. Land prices have been rising in the UK, increasing by 2% in the last year which indicates a resilience in farmland even with Brexit. There are a number of possible reasons for this:

- (i) ongoing European and global economic challenges are enhancing the reputation of agricultural land as a safe investment and asset;
- (ii) Traditional investment option which provides a tangible and physical asset
- (iii) Perception of versatility with agricultural assets for example variation of uses from grazing and farming to paddocks, recreational or amenity purposes;
- (iv) Competition between purchasers/investors in agricultural land results in a situation where demand is outstripping supply;
- (v) Increasing number of purchasers/investors from overseas interested in agricultural land for lifestyle, farming or investing;

- (vi) Sharp increases in food prices have encouraged farmers to expand production;
- (vii) Lower interest rates attract farmers to buy land and banks are positive about lending since the loan is held against the physical asset which is unlikely to depreciate in value;
- (viii) Inheritance Tax Relief for agricultural holdings;
- (ix) A weak Pound Sterling which has buoyed the market, making land more attractive for overseas buyers³⁹.

The result of increased interest in purchasing agricultural land in the UK raises the value of land as demand outstrips supply. Often the impact of this is that farmers are being priced out of the market in some areas. Indeed, the latest review of farmland market from Strutt and Parker concludes: "Brexit uncertainties may have seen vendors take a more cautious approach, but we are finding that buyers, and particularly those with capital sourced from outside of agriculture, are still keen to invest in farms and estates in the right location".

In February 2019 the government published a consultation on plans to introduce a 1% SDLT surcharge for non-residents buying UK land and property⁴⁰. This expected to apply to residential property only, at least for the moment.

5. Given the data available to you, does the issue of the so-called land grabbing exist in your country and are there any regulations concerning it, to counteract this phenomenon?

Understood as large scale land acquisitions, or the buying and leasing of large pieces of land, the UK has become more prone to this in recent years. Land grabbing is a new phenomena in the UK which as yet has not been addressed or controlled through legislation. The Pension Funds are the fourth biggest buyer of rural land in the UK, owning 550,000 acres in total achieving a rental income from the land of about 7% per annum. The Crown Estate (where revenue goes to the Treasury⁴¹) and Ministry of Defence (land used for training purposes) own considerable amounts of land which, when large parcels come to market attract significant interest, particularly where there are varied income streams. Recently, Inventor James Dyson has come to the attention of the media for owning more land now than the Queen following his purchase of Cranwell and Roxholme estate. This is considered to amass his land holdings to 25,0000 acres.

Scotland has recently consulted on introducing a threshold which would set a maximum amount of land that a person, company or organisation could own. Whilst this suggests that the Scottish Government has identified land grabbing of sufficient concern to consider land reforming. However what this cap would be has not been suggested. To date, there is nothing in law which prevents cumulative purchases of large swathes of land in the UK.

Land banking, however is a challenge which affects the UK and can lead to problems with the real delivery of new and needed development. This is the activity of buying land for investment purposes but with no specific plans. The owner then retains this land with a view to selling it on at some point in the future for a profit. The housing land supply crisis has been blamed on land banking strategies.

³⁹ Strutt and Parker (2019) *English Estates and Farmland Market Review: Winter 2018/2019*. Available online at: <https://www.struttandparker.com/knowledge-and-research/english-estates-farmland-market-review-winter-20182019> [correct 16/07/2019].

⁴⁰ HM Treasury (February 2019) *Stamp Duty Land Tax: Non UK Resident Surcharge Consultation*. <https://www.gov.uk/government/consultations/stamp-duty-land-tax-non-uk-resident-surcharge-consultation>

⁴¹ The Crown Estate is statutory corporation created by the Crown Estate Act 1061 to maintain The Crown Estate as an estate in land and maintain and enhance its value.

A review of land banking was undertaken in 2018, referred to as the Letwin Review which explored the lacuna between planning permissions granted and housing completions⁴², recommending a number of ways in which the planning system could be altered to release land for development including providing powers to local authorities to purchase the land designated for large sites compulsorily reflecting the value of the once they once they have planning permission.

⁴² Housing, Communities and Local Government (October 2018) *Independent Review of Build Out: Final Report*. Available online at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752124/Letwin_review_web_version.pdf [correct 15/08/2019].