

THE DEVELOPMENT AND IMPLEMENTATION OF THE GREENING INITIATIVES OF THE 2013 EU
COMMON AGRICULTURAL POLICY REFORM AND THE PROTECTION OF BIODIVERSITY; A UK
CASE STUDY

by

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The 2013 reform of the European Common Agricultural Policy introduced greening measures into Pillar 1 direct payments and sought to develop the green credentials of support under Pillar 2 rural development policy, in line with EU targets to address biodiversity loss. However, evidence to-date shows the EU as a whole, and the agricultural sector in particular, has made no progress towards the EU Biodiversity Strategy target of halting biodiversity loss by 2020. This research examines the policy-making process of the reform at the EU level, and the implementation at Member State level through a case-study of the four administrations of the UK, to identify how the greening measures were proposed and adopted and whether these deliver the intended biodiversity objectives. Areas of improvement for future reform processes are identified in the European Commission Impact Assessment, public consultation at EU and UK level and national implementation. The degree to which these areas are addressed through the Commission's 2015 Better Regulation Guidelines is considered and, whilst the Guidelines go some way to improving process, further developments to the public consultation process at a national level are suggested.

For my mum, whose love of wildlife has inspired me to follow the path I have taken, and for my dad, who continues to sit patiently while we watch the birds.

I would like to thank my supervisors, Dr Aleksandra Čavoški and Professor Robert Lee, for their support and guidance during the undertaking of this research; for encouraging me to play to my strengths and make the arguments I believe in, and for providing the structure in which I could make those arguments.

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1 - INTRODUCTION

The greening measures introduced into the European Common Agricultural Policy (CAP) during the 2013 reform sought to improve the environmental credentials of the policy; offering developments in the sustainability of European agriculture and the delivery of measures in line with the EU's Biodiversity Strategy objectives. To-date the greening measures have proved ineffective in delivering progress towards the EU Biodiversity Strategy target of halting biodiversity loss by 2020. Here I set out the research undertaken to examine the policy process by which these measures were adopted at EU level and implemented at UK level. I identify points at which the process allowed or facilitated divergence from the biodiversity objectives of the CAP reform and consider areas of improvement for a future reform process.

1.1 Agriculture and Biodiversity Loss

The agricultural industry is responsible for the land management of a large proportion of the EU land mass (c. 42%¹) and farmland covers more of the UK than this EU average; 69% in England², 73% in Scotland³, 60% in Wales⁴ and 69% in Northern Ireland⁵. As a result, the status of biodiversity in the EU and the UK is heavily influenced by agricultural land management, and

¹ Eurostat, 'Agriculture statistics - the evolution of farm holdings' (2014) <http://ec.europa.eu/eurostat/statistics-explained/index.php/Agriculture_statistics_-_the_evolution_of_farm_holdings> accessed 18 September 2017

² European Commission, 'Factsheet on 2014-2020 Rural Development Programme of England (United Kingdom)' <https://ec.europa.eu/agriculture/sites/agriculture/files/rural-development-2014-2020/country-files/uk/factsheet-england_en.pdf> accessed 20 September 2017;

³ European Commission, 'Factsheet on 2014-2020 Rural Development Programme for Scotland (UK)' <https://ec.europa.eu/agriculture/sites/agriculture/files/rural-development-2014-2020/country-files/uk/factsheet-scotland_en.pdf> accessed 20 September 2017

⁴ European Commission, 'Factsheet on 2014-2020 Rural Development Programme for Wales (United Kingdom)' <https://ec.europa.eu/agriculture/sites/agriculture/files/rural-development-2014-2020/country-files/uk/factsheet-wales_en.pdf> accessed 20 September 2017

⁵ European Commission, 'Factsheet on 2014-2020 Rural Development Programme for Northern Ireland' <https://ec.europa.eu/agriculture/sites/agriculture/files/rural-development-2014-2020/country-files/uk/factsheet-northern-ireland_en.pdf> accessed 20 September 2017

agricultural activity is recognised as the largest driver of biodiversity loss in agricultural- and related- ecosystems⁶. Key activities that contribute to biodiversity loss include overexploitation, intensification of agricultural production systems, excessive chemical and water use, pollution and the introduction of alien species⁷.

Data available on the conservation status of key agricultural habitats and population trends of farmland species (such as the European Farmland Bird Index – EFBI)⁸ show declines since the 1990s (and earlier, where data is available)⁹. The Europe 2020 Strategy¹⁰ and the EU Biodiversity Strategy¹¹ both acknowledge the need to address biodiversity loss through the CAP and the greening of the CAP through the 2013 reform was designed to deliver this. This policy-design and implementation process is the focus of this research.

1.2 Motivation

My motivation to undertake this research stems from my involvement in the Common Agricultural Policy (CAP) reform campaign during my employment with the conservation organisation the Royal Society for the Protection of Birds (RSPB) between 2011 and 2013. Part of my time working with the RSPB was spent in South Lincolnshire; an area of England in which the landscape is dominated by intensive agriculture. I saw first-hand how agricultural

⁶ Secretariat of the Convention on Biological Diversity, 'Programmes > Agricultural Biodiversity > About > What's the Problem?' <https://www.cbd.int/agro/whats_the_problem.shtml> accessed 05 May 2018

⁷ Ibid

⁸ See Glossary

⁹ Jana Poláková, Graham Tucker, Kaley Hart, Janet Dwyer, Matt Rayment, 'Addressing biodiversity and habitat preservation through Measures applied under the Common Agricultural Policy' (Report Prepared for DG Agriculture and Rural Development, Contract No. 30-CE-0388497/00-44. Institute for European Environmental Policy: London, 2011) xix

¹⁰ See Ch 3 - 3.1 European Biodiversity Objectives

¹¹ See Ch 3 - 3.1 European Biodiversity Objectives

practices could affect the biodiversity of an entire landscape and my interest in the role of the law in this relationship between farming and biodiversity preservation originated here.

I learnt a little about the capacity of the CAP to support the preservation of biodiversity through environmentally friendly farming and felt the disappointment of my colleagues when the final greening measures of the 2013 reform were announced. I appreciated for the first time the crucial role the law has to play in promoting sustainable industry and protecting biodiversity; I felt that if I wanted to make a positive difference in environmental conservation, involvement in environmental law was the best path I could take.

On the basis of this belief I completed a Graduate Diploma in Law and embarked on the legal research discussed in this thesis in the hope of broadening my own understanding of the topic and of making a contribution to a wider understanding of the importance of the policy-making process for environmental conservation.

1.3 Contribution to existing scholarship and policy discourse

Much has already been written on the challenges of the greening of the CAP and the degree to which the outcome of the 2013 reform supports the preservation of biodiversity on farmland¹². During the initial consultation phase the greening initiatives proposed for Pillar 1 were widely

¹² Guy Pe'er (et al) 'EU agricultural reform fails on biodiversity' (2014) 344 Science 1090-1092

Ben Allen & Kaley Hart 'Meeting the EU's environmental challenges through the CAP – how do the reforms measure up?' (2013) 118 Aspects of Applied Biology 9

Isabelle Doussan & Hendrick Schoukens 'Biodiversity and agriculture: Greening the CAP beyond the status quo?' in Charles-Hubert Born (et al) (eds) *The habitats directive in its EU environmental law context: European nature's best hope?* (Routledge 2015)

Kaley Hart, David Baldock & Allan Buckwell 'Learning the lessons of the Greening of the CAP' (Land Use Policy Group, 2016)

criticised by environmental conservation groups as insufficient to meet the targets of halting biodiversity loss for which they were designed¹³, and the evidence to date¹⁴ has, sadly, vindicated these concerns.

However, the literature includes very little examination of how the proposals, which have failed to deliver any progress against EU Biodiversity Strategy targets¹⁵ since their adoption, passed into law. I hope that my research into the policy-making process and subsequent implementation in the UK can shed some light on how the proposal of these apparently ineffectual measures came about, how they were adopted and how the policy-making process might be improved. I explore the use of impact assessments, specialist reports and public consultations in relation to the CAP to examine the process in terms of evidence-based policy-making.

Current published scholarship addresses conflict between biodiversity conservation and particular aspects of EU agricultural policy¹⁶ and the policy-making process itself¹⁷, but a combined analysis of these two areas in relation to the 2013 reform of the CAP does not currently appear to exist in the academic literature.

¹³ See Ch 7

¹⁴ European Commission, 'Report from the Commission to the European Parliament and the Council: The Mid Term Review of the EU Biodiversity Strategy to 2020, COM (2015) 478 final

¹⁵ See Ch 3 - 3.1 European Biodiversity Objectives

¹⁶ Klaus Henle (et al) 'Identifying and managing the conflicts between agriculture and biodiversity conservation in Europe—A review' (2008) 124 *Agriculture, Ecosystems & Environment* 60; Ann Van Herzele (et al) 'Effort for money? Farmers' rationale for participation in agri-environment measures with different implementation complexity' (2013) 131 *Journal of Environmental Management* 110; Ian Hodge, Jennifer Hauck, & Aletta Bonn 'The alignment of agricultural and nature conservation policies in the European Union' (2015) 29 *Conservation Biology* 996

¹⁷ Norman Lee & Colin Kirkpatrick, 'Evidence-based policy-making in Europe: An evaluation of European Commission integrated impact assessments' (2006) 24 *Impact Assessment and Project Appraisal* 23
Maria Lee, *EU Environmental Law, Governance and Decision-Making* (2nd ed, Hart Publishing 2014)

Finally, I hope that my research may highlight shortcomings in the design and implementation process of the 2013 reform in assessing the potential impacts on biodiversity which might be avoided when the Common Agricultural Policy is reviewed ahead of the next programme period beginning in 2020, and/or a new UK agricultural policy is adopted for a post-Brexit UK. Although the referendum of the UK's membership of the EU occurred after I had begun my research, the UK's exit from the CAP presents a unique opportunity to address the shortcoming of the European policy through design of a UK policy which both promotes agricultural business interests and protects the natural resources on which they depend.

1.4 Research Focus and Methodology

My primary research questions sought to examine the policy-making process in terms of its evidence base. My research could be considered broadly inductive, as it stems from the observation that the greening of the CAP was ineffective in addressing the negative impacts of agriculture on biodiversity and sought to understand the process through which these policy measures were adopted.

The research focuses on the role of documentation, such as the impact assessment, in the formulation of the initial proposals, the role and impact of public consultation on implementation decisions at Member State level and the role of national implementation in the delivery of greening measures. I also discuss whether changes to the policy-making procedures introduced at EU level since the 2013 reform may be sufficient to address the problems identified.

Key questions I wish to address include:

- To what extent was the assessment of the impact of the proposals for the greening of the CAP on biodiversity based on scientific evidence? To which sources of evidence did the policy-making bodies refer and what extent is this reflected in the final policy?
- To what degree can the apparent ineffectiveness of the greening measures of the reformed CAP in delivering against EU Biodiversity Strategy objectives be attributed to issues of national implementation?
- How did the EU and UK devolved administrations carry out public consultation for the reform and implementation proposals, and what was the effect of this consultation on final decisions around greening?
- How can the policy-making process be improved to ensure proposals, policy and implementation decisions result in measures which deliver against the objectives at which they are aimed? How far do the new EU guidelines facilitate better policy-making in this area?

In seeking to answer these questions I began my research with a literature review which spanned the breadth of both academic and popular commentary on the CAP reform process.¹⁸ⁱ This initially included legal texts on agriculture and environmental law¹⁹ and documents published around the CAP reform by EU and UK agencies such as the European Commission and DEFRA. I also reviewed academic articles on individual aspects of the greening initiatives and

¹⁸ Search methodology for articles involved the use of the online FindIt@Bham library catalogue with search terms 'common agricultural policy greening', 'common agricultural policy reform', 'CAP reform' and 'CAP greening' and use of the reference list of relevant articles to expand the search.

¹⁹ Brian Jack, *Agriculture and EU Environmental Law* (Ashgate Publishing 2009)

commentary published by conservation organisations such as the RSPB.²⁰ This breadth of initial oversight within the literature review gave me an understanding of the outcome and impact of the reform. It also highlighted that the greening measures introduced through the reform had failed to delivery progress against EU biodiversity objectives, and drew my attention to the abundance of scientific data around the impact of agricultural management on farmland biodiversity in Europe. However, it did not answer my questions around the reform process itself.

From this point my research was chiefly doctrinal, as I focused on European Commission documents relating to the reform process, examining both the structure of the process at EU level and the documents to which EU bodies referred in the formulation of the greening proposals, including the impact assessment and the Institute for European Environmental Policy (IEEP) report on biodiversity and habitat preservation in the CAP,²¹ commissioned by the European Commission to inform its reform process. This report made a number of recommendations regarding the best way to implement biodiversity and habitat preservation (the elements of the greening process on which my research focuses) through the CAP.

Taking these recommendations as points against which the proposals and implementation of greening could be measured, I examined implementation in the four devolved regions of the UK (England, Wales, Scotland and Northern Ireland) as case studies of national implementation of

²⁰ See Bibliography

²¹ Jana Poláková, Graham Tucker, Kaley Hart, Janet Dwyer, Matt Rayment, 'Addressing biodiversity and habitat preservation through Measures applied under the Common Agricultural Policy' (Report Prepared for DG Agriculture and Rural Development, Contract No. 30-CE-0388497/00-44. Institute for European Environmental Policy: London, 2011)

the EU measures. As a large proportion of this analysis relates to public consultation in the four regions, a separate chapter is dedicated to the analysis of the public consultation documents and reports. Finally, I suggest approaches to improve the process of future CAP reform and refer to the Better Regulations Guidelines adopted by the European Commission in 2015²² to assess how far these address the issues identified.

1.5 Structure

Following this introduction (Chapter 1), I adopt the following structure in my thesis:

Chapter 2 sets the scene of my thesis through an overview of the development of environmental concerns, including biodiversity preservation, within the CAP and the historical context of the 2013 reform. **Chapter 3** then examines the EU biodiversity objectives and the relationship between these objectives and the greening of the CAP.

Having established that the greening measures introduced within the 2013 reform have failed to deliver progress towards the biodiversity objectives, the subsequent chapters examine key aspects of the policy-making process which led to the adoption of said measures. **Chapters 4 and 5** focus on the European Commission Impact Assessment and the IEEP report on biodiversity preservation in the CAP. I look first at the process of policy proposal formulation and assessment adopted by the Commission in the Impact Assessment, which I assert is problematic, and then draw on examples from the IEEP report to highlight areas of potential improvement in this process in delivering evidence-based policy proposals.

Chapter 6 focuses on England, Wales, Scotland and Northern Ireland as case studies for implementation of the CAP greening measures at a national level, using recommendation from

²² European Commission, 'Better Regulation Guidelines' (Commission Staff Working Document) SWD (2017)

the IEEP report to examine whether and to what extent failure of the greening measures in delivery against biodiversity objectives might be attributed to national implementation decisions. **Chapter 7** then examines the purpose and efficacy of public consultation, at EU and UK regional level, as a tool to support the development of evidence-based policy within the reform process and sets out my suggested format for consultation to improve efficacy in future reforms.

Finally, the concluding **chapter (8)** summarises my arguments and briefly examines the EU's Better Regulation Guidelines, introduced after the 2013 reform, to assess whether these can address the issues identified in my research.

ⁱ Search methodology for articles involved the use of the online FindIt@Bham library catalogue with search terms 'common agricultural policy greening', 'common agricultural policy reform', 'CAP reform' and 'CAP greening' and use of the reference list of relevant articles to expand the search.

2 -THE HISTORICAL DEVELOPMENT OF THE COMMON AGRICULTURAL POLICY

This chapter provides an overview of the development of the Common Agricultural Policy (CAP) and sets the greening measures of the 2013 reform within the historical context of the CAP. The chapter focuses on the development of environmental conservation measures focused on biodiversity within the policy and tracks the progressive reforms through which environmental considerations were incorporated. In addition to setting the scene for the 2013 reform on which the remaining of the thesis will focus, this chapter examines some of the issues around motivation for greening during previous reforms which are relevant to my analysis of greening in the 2013 reform.

2.1 The History of the CAP

The Common Agricultural Policy (CAP) is implemented through a collection of EU regulations, directives and guidance which governs the functioning of the agricultural sector in the Member States of the European Union. Most of CAP is governed by directly effective EU regulations which allow Member States little discretion. However, CAP policy also includes EU directives and guidance which results in variation in the format of measures and scheme under CAP in different EU countries.

The CAP governs aspects of every area of the agricultural industry, including the requirements of the industry to safeguard the natural resources which they utilize to conserve the biodiversity which the agricultural landscape supports.

Attempts to address the impacts of agriculture on biodiversity have been both explicit and implicit in the CAP since the 1980s and the new elements of the post-2013 reformed CAP,

discussed in the next chapter, purport to develop this aspect of the policy's objectives further.

However, when the CAP was created by the founding Member States¹ in a Europe still reeling from the ravages of the 2nd World War, the preservation of biodiversity was of little importance and food security was paramount. The CAP has evolved considerably since its inception and developed new processes and priorities to address the impacts of agriculture on biodiversity. In order to understand the shifts in priorities, and the process of reform these engender, we must track the changes and examine the developments.

2.1.1 The Creation of the CAP

Article 43 of the Treaty of Rome² established the legal basis for a Common Agricultural Policy within the countries which comprised the new European Economic Community (EEC). The proposals for the CAP were made at a conference³ just 7 months after the Treaty of Rome founded the EEC in January 1958. At this conference suggestions were made to introduce measures to support food production in an agricultural industry which had been crippled by years of war. The Commissioner for Agriculture, Sicco Mansholt, was tasked with drawing up proposals, which were duly debated and the proposals finally adopted in January 1962⁴.

The original objectives of the CAP were set out in Article 30 of the Treaty of Rome as follows:

¹ Belgium, Germany, France, Italy, Luxembourg and the Netherlands.

² Treaty establishing the European Economic Community [1957] Document 11957E/TXT

³ European Commission 'The history of the common agricultural policy' (Agriculture and rural development: the CAP at a glance, last update 16 September 2017) <http://ec.europa.eu/agriculture/cap-history/early-years/index_en.htm> accessed 16 September 2017

⁴ Ibid

1. The objectives of the common agricultural policy shall be:

- a) to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;
- b) thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;
- c) to stabilise markets;
- d) to assure the availability of supplies;
- e) to ensure that supplies reach consumers at reasonable prices.⁵

There is no mention of environmental protection or preservation in the objectives of the CAP as listed in the Treaty.

The original CAP was concerned with the organisation of six common agricultural markets (cereals, pig-meat, eggs, poultry-meat, fruit and vegetables and wine), the introduction of rules on competition, the establishment of measures to assist intra-Community trade, and the establishment of the European Agricultural Guidance and Guarantee Fund (EAGGF) to finance the operations of the CAP⁶. Funding within in the EAGGF was split between the guarantee section and the guidance section. The guarantee section funded CAP measures around production, such as guaranteed prices paid to farmers for certain goods, and was

⁵ Treaty establishing the European Economic Community [1957] Document 11957E/TXT, Art 43

⁶ European Commission 'The history of the common agricultural policy' (Agriculture and rural development: the CAP at a glance, last update 16 September 2017) <http://ec.europa.eu/agriculture/cap-history/early-years/index_en.htm> accessed 16 September 2017

entirely funded from the central EEC budget. The guidance section funded structural policy measures, which would later be separated into Pillar 2 of the CAP and renamed rural development policy, and was only partly funded by the EC. The percentage of EEC funding varied between measures and the remaining costs of structural support had to be met by the Member State coffers. This is a distinction between funding of product (later producer) support and structural (later rural development) support which continues in the modern-day CAP).

Nowhere in the CAP objectives was there mention of the preservation of natural resources or biodiversity, or any overarching environmental responsibility of the agricultural industry.

This is perhaps unsurprising, as the concept of legislation to protect the environment, for its own sake, or for what are now termed 'ecosystem services', was in its infancy in the 1960s. The first Environment Action Programme was adopted by EU representatives in 1972⁷ and the environmental title was not incorporated into the European Treaties until the 1987 Single European Act⁸. Indeed, the concept of 'biodiversity' and its preservation was not globally recognised until the 1992 Earth Summit in Rio de Janeiro.⁹ The Treaty of Rome also gave the new EEC limited competence to legislate in certain areas, but this competence did not extend to environmental matters.¹⁰

⁷ European Environment Agency '1970s' (*Celebrating Europe and its environment - last modified 13 April 2011*) <<https://www.eea.europa.eu/environmental-time-line/1970s>> accessed 16 September 2017

⁸ Single European Act [1987] OJ L 169/1

⁹ See below - 2.1.4 Environmental awareness and the MacSharry Reforms

¹⁰ Treaty establishing the European Economic Community [1957] Document 11957E/TXT

2.1.2 Early development

True to its objectives of stabilising the farming industry and securing food production¹¹, during its first few years the CAP initiated measures to modernise farming and consolidate farmland, improve training for farmers and build a younger agricultural workforce¹². As these measures began to take effect the cost to the EEC of maintaining the CAP increased and by the late 1960s and early '70s the Commission had begun to issue communications and memoranda around a reform of the CAP.¹³

Schemes to support farming in hilly, mountainous and less-favoured areas (LFAs) were introduced in Directive 75/268¹⁴, for which part-funding of 25% was available to Member States from the EAGGF. The objectives of support under Directive 75/268 was primarily to prevent depopulation and land abandonment in areas which were difficult to farm,¹⁵ but the Directive also alludes to the need to 'protect the countryside, particularly for reasons of protection against erosion or in order to meet leisure needs...(where)the conservation of the countryside are not assured.'¹⁶

¹¹ See above - 2.1.1 The Creation of the CAP

¹² European Commission (n 2) - *European farms modernised (1970s)*

¹³ European Commission, 'A new approach to the common agricultural policy' (Newsletter on the Common Agricultural Policy, No. 11, 1968); 'Memorandum on the reform of agriculture in the European Economic Community' (Bulletin of the European Communities, 1968); 'The Commission's Memorandum on the reform of agriculture in the Community' (Newsletter on the Common Agricultural Policy, No. 1, 1969); 'Reform of agriculture: practical proposals from the Commission' (Newsletter on the Common Agricultural Policy, No. 4, 1970); 'Reform of agriculture: amended proposals submitted by the Commission to the Council' (Newsletter on the Common Agricultural Policy, No. 6, 1971); 'Special report from the Commission to the Council on the consequences of the present situation for the common agricultural policy' SEC (71) 3407 final; 'A new common agricultural policy? Social and structural reform in agriculture' (Newsletter on the Common Agricultural Policy, No. 3, 1972)

¹⁴ Council Directive 75/268/EEC on mountain and hill farming and farming in certain less-favoured areas [1975] OJ L128

¹⁵ Ibid - preamble

¹⁶ Ibid, Art 3

One other significant development during this period was the adoption of Council Directive 79/409/EEC – the Wild Birds Directive¹⁷. As the first piece of EC legislation specifically targeted at species preservation,¹⁸ this directive was instrumental in introducing consideration of environmental preservation into European policy-making. Many of the protections introduced in the Birds Directive were later incorporated into cross-compliance measures within the CAP.¹⁹

2.1.3 Cost cutting in the 1980s

In the 1980s the EC budget expenditure on the CAP grew to its highest level, with 72% spent on the policy in 1985²⁰. By this time a large proportion of CAP funds were spent supporting an agricultural industry producing beyond the needs of the European market,²¹ with the EC purchasing huge amounts of surplus requiring storage or disposal.²² There was also increasing concern that the CAP was distorting world markets and failing to deliver the support to farmers for which it was designed²³.

Initial attempts to address growing costs by limiting the EU's obligations to fund the purchase of surplus produce, through changes to the price support system, met with limited

¹⁷ Council Directive 79/409/EEC on the conservation of wild birds [1979] OJ L 103

¹⁸ European Commission 'The Birds Directive' (European Commission > Environment > Nature and biodiversity > EU Nature Law) <http://ec.europa.eu/environment/nature/legislation/birdsdirective/index_en.htm> accessed 30 April 2018

¹⁹ See below - 2.1.7 Cross-compliance in the CAP

²⁰ European Commission 'CAP expenditure in the total EU expenditure' (*CAP post-2013: Key graphs & figures*, March 2017) Graph 1 https://ec.europa.eu/agriculture/sites/agriculture/files/cap-post-2013/graphs/graph1_en.pdf accessed 16 September 2017

²¹ The EAGGF guarantee fund financed the purchase of agricultural surplus export refunds for farmers selling to outside the EU at lower prices than the EU intervention prices

²² European Commission 'The history of the common agricultural policy - CAP tackles "food mountains" (1980s)' (Agriculture and rural development: the CAP at a glance, last update 16 September 2017) <http://ec.europa.eu/agriculture/cap-history/early-years/index_en.htm> accessed 16 September 2017 -

²³ Ibid

success²⁴. Ongoing concerns around funding led to a broad-scale reform of the policy, with the introduction of a spending limit for the CAP²⁵ based on a limit on quantities guaranteed to receive support payments and a milk quota²⁶ designed to discourage over-production and reduce both surplus and costs. The environmental outcome of these reforms tended to be broadly positive, as discouraging over-production also discouraged intensive farming. Nevertheless, the benefits to wildlife were incidental; the reforms were based on economic rather than environmental objectives.

However, the 1980s did see the creation of the first agri-environment schemes (AES); a significant step forward in the incorporation of environmental considerations in the CAP. These schemes offered financial compensation to farmers for loss of income incurred through management of their land in an environmentally sensitive (but less economically profitable) way. AES originated in the UK in the area of the Norfolk Broads called Halvergate Marches in 1985. At the time, the Broads were not designated as a National Park (they attained National Park status in 1988²⁷), but a group of farmers in the area were persuaded not to drain and plough grazing marshland, which was a rare habitat of high importance for Broads wildlife but less productive farmland as a result. The farmers received financial remuneration from the UK government for the profit they had foregone. This initial Broads Grazing Marshes Conservation Scheme²⁸ led to the development of the first government-funded

²⁴ Brian Jack, *Agriculture and EU Environmental Law* (Ashgate Publishing 2009) 5-6

²⁵ Agricultural Information Service of the Directorate-General Information, Communication, Culture European 'Community Commission, 'The agreement on agriculture of 16 December 1986' (1986)

²⁶ Commission Regulation (EEC) No 1371/84 of 16 May 1984 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) [1984] OJ L 132/11

²⁷ Broads Authority, 'History of the National Parks' (*The Broads*, 2014) <<http://www.broads-authority.gov.uk/about-the-broads/heritage-and-culture/history-of-the-national-parks>> accessed 16 September 2017

²⁸ Brian Jack, *Agriculture and EU Environmental Law* (Ashgate Publishing 2009) 111

Environmentally Sensitive Areas (ESAs) in 1987, and a national Countryside Stewardship Scheme (CSS) was launched in 1992²⁹.

Following the introduction of AES in the UK, and as a result of UK pressure on the EC to introduce an equivalent European scheme (to avoid the risk of such schemes distorted the EC market if not available in Member States), the EC introduced AES at a European level. Article 19 of Regulation 797/85³⁰ authorised Member States to introduce 'special national schemes in environmentally sensitive areas', though funding of these schemes was the responsibility of the Member States. Regulation 2078/92³¹ then made it compulsory for all Member States to offer AES to their agricultural communities, with partial funding available from the European Agricultural Guidance and Guarantee Fund (EAGGF).

Finally, the 1980 saw the introduction of the Environmental Title into the Treaty of Rome³² through the Single European Act³³, which gave the Community competency to 'intervene in environmental matters when this action can be attained better at Community' in pursuit of the following objectives:

- to preserve, protect and improve the quality of the environment;
- to contribute towards protecting human health;

²⁹ Natural England, *Agri-environment schemes in England 2009 - A review of results and effectiveness* (Catalogue Code: NE194, 2009) 10

³⁰ Council Regulation (EEC) No 797/85 1985 on improving the efficiency of agricultural structures [1985] OJ L 93

³¹ Council Regulation (EEC) No 2078/92 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside OJ L 215,

³² Treaty establishing the European Economic Community [1957] Document 11957E/TXT

³³ Single European Act [1986] OJ L 169

- to ensure a prudent and rational utilization of natural resources.³⁴

This first legal basis for a common environmental policy facilitated the incorporation of environmental measures, including those designed to protect biodiversity, into the CAP through subsequent reforms.

The Single European Act also integrated the European structural funds, which provided funding for rural development policy, into an overarching cohesion policy. The cohesion policy was designed to reduce economic and social 'disparities between the various regions' of the EU³⁵ and the actions to achieve its objectives were to be taken into account within the implementation of common policies (including the CAP) and funded through the European Agricultural Guidance and Guarantee Fund, (Guidance Section), European Social Fund, European Regional Development Fund). These included actions delivered through rural development policy, as the regions which were identified as lagging behind the EU average in terms of social and economic development were often rural areas in which agriculture was a major industry.³⁶ Although environmental preservation and the protection of biodiversity were not written into the objectives of the support offered by the cohesion policy at this time, the additional funding it offered for rural development advanced the development of AES and was supported by the Environmental Title introduced in the same

³⁴ Ibid Art 130R

³⁵ Ibid Art 130A

Act.

2.1.4 Environmental awareness and the MacSharry Reforms

The adoption of the Habitats Directive³⁷ in 1992 followed on from the introduction of the Birds Directive in 1979 to broaden the scope of both legislative protection of the environment within EU policy, and the incorporation of environmental measures in the CAP. The Habitats Directive also created the Natura 2000 network³⁸ of protected areas, comprising Special Areas of Conservation (SACs) as designated under the Habitats Directive³⁹ and Special Protection Areas (SPAs) designated under the Birds Directive⁴⁰.

In addition, the 1990s saw an increase in political engagement with issues of environment protection and the 1992 United Nations Conference on Environment and Development (UNCED) (the Earth Summit in Rio de Janeiro) led to the signing of the Convention on Biological Diversity by the EC on behalf of all its Member States. This legally binding Convention committed the EC its objectives of ‘the conservation of biological diversity (*and*)

³⁷ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [1992] OJ L 206/7

³⁸ Natura 2000 currently covers 18% of the EU land-mass and 6% of its marine territory, and ensuring appropriate management of these areas to conserve the wildlife or habitat for which they were designated is the responsibility of the Member States in which they are situated. Funding for management of Natura 2000 sites is available through the European Agricultural Fund for Rural Development, which also funds rural development under Pillar 2 of the CAP, but not from the European Agricultural Guarantee and Guidance Fund (EAGGF), which provides funding for Pillar 1 measures. Kettunen, M., Torkler, P. and Rayment, M. *Financing Natura 2000 Guidance Handbook. Part I – EU funding opportunities in 2014-2020* (a publication commissioned by the European Commission DG Environment, June 2014)

³⁹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [1992] OJ L 206/7, Art 3-4

⁴⁰ Council Directive 79/409/EEC on the conservation of wild birds [1979] OJ L 103

the sustainable use of its components'⁴¹, and addressing environmental issues across of the spectrum of its governance.

The Environmental Title of the Treaty of European Union (TEU, aka the Maastricht Treaty, signed on 7 February 1992)⁴² extended environmental objectives adopted within the Single European Act⁴³ to include 'promoting measures at international level to deal with regional or worldwide environmental problems'.

Within the Economic and Social Cohesion Title⁴⁴, TEU also mandates the establishment of a Cohesion Fund to 'provide a financial contribution to projects in the fields of environment'⁴⁵, which would include projects delivered through rural development policy and accords with CAP reforms of the period which incorporate environmental objectives into CAP measures.

The MacSharry reforms of 1992 introduced a new aid scheme into the CAP to 'encourage farmers to serve society as a whole by introducing or continuing to use farming practices compatible with the increasing demands of protection of the environment'⁴⁶. The details of this aid schemes were set out in Council Regulation (EEC) No 2078/92⁴⁷ and included funding for conversion to less intensive forms of farming (e.g. arable to grassland)⁴⁸, the reduction of use of fertilizer and crop protection products (pesticides etc)⁴⁹ and set-aside⁵⁰

⁴¹ United Nations 'Convention on Biological Diversity' (1992) preamble

⁴² Treaty of European Union [1992], Art 130r

⁴³ Single European Act [1987] OJ L 169/1

⁴⁴ Treaty of European Union [1992], Title XIV

⁴⁵ Ibid, Art 130d

⁴⁶ Council Regulation (EEC) No 2078/92 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside [1992] OJ L 215/85, preamble

⁴⁷ Ibid

⁴⁸ Ibid – Art 1(b)

⁴⁹ Ibid – Art 1(a)

⁵⁰ See Glossary

The 1992 regulation also made it compulsory for all Member States to operate the aid scheme (which would become known as agri-environmental schemes) and sets out that ‘the measures must compensate farmers for any income losses caused by reductions in output and/or increases in costs’⁵¹, which is still the basis of agri-environment schemes today.

Although there were some significant steps forward in the integration of environmental issues into the CAP during the MacSharry reforms, it is worth noting that many commentators attribute the substance of the reform chiefly to the international trade negotiations going on at the time and concerns for the continuing high costs of the CAP within the European budget, rather than any serious commitment to improving the environmental credentials of the policy.⁵²

Cunha and Swinbank⁵³ purport that the move from price support (guaranteed prices, etc) to producer support (direct aid for farmers) was prompted to a large degree by the GATT (General Agreement on Tariffs and Trade)⁵⁴ negotiations. The EC could not reach agreement with its international trade partners (chiefly the US and the Cairns Group⁵⁵) because the substantial level of monetary support given to farmers (in the form of guaranteed prices, etc) was seen to distort the market and form a barrier to international trade. Moving to a producer-support model allowed the EC to continue to support its agricultural industry with

⁵¹ Ibid 1

⁵² Arlindo Cunha and Alan Swinbank, *An Inside View of the CAP Reform Process; Explaining the MacSharry, Agenda 2000 and Fishler Reforms* (OUP, 2011) 92

⁵³ Ibid

⁵⁴ See Glossary

⁵⁵ See Glossary

subsidy whilst attempting to address the issues around market distortion and the high costs of the CAP.

So, despite the apparent lack of focus on environmental issues, the MacSharry reform showed potential to have a positive impact on addressing environmental issues within the European agricultural sector. The agri-environment schemes were compulsory in every Member State and the move from price-support to producer-support lessened the incentive for intensification of agricultural methods which the early years of the CAP had promoted.

2.1.5 The Agenda 2000 Reform and the Creation of the Second Pillar of the CAP

The Agenda 2000 reform built upon measures adopted under the 1992 MacSharry reforms, further decoupling payments from production. Under the new 'single payment scheme'⁵⁶ farmers would receive consolidated direct support payments which were not coupled to (dependent on) the production of crops and livestock. This was to become known as Pillar 1 of the new CAP. The reform also separated measures for the promotion of rural development, which were previously known as 'structural policy',⁵⁷ into a second Pillar of the CAP. This creation of the 2nd Pillar was the major landmark of this reform. Up to this point rural development, which encompassed the rules and funding of agri-environment schemes, support for farmer education and training and any other measures which were not

⁵⁶ See Glossary

⁵⁷ See above - 2.1.1 The Creation of the CAP

directly related to the economic functioning of the agricultural market, was funded under the separate section of the EAGGF⁵⁸ but did not form a separate element of the CAP.

With the creation of the second Pillar of the CAP some of the measures of the 1992 reform (agri-environment, early retirement and afforestation) were broadened to encompass schemes of support for farming in less-favoured areas (LFA)⁵⁹ and areas with environmental restrictions introduced in the 1970s.⁶⁰

Regulation (1257/1999) on support for rural development⁶¹ also states explicitly that ‘in the coming years, a prominent role should be given to agri-environmental instruments to support the sustainable development of rural areas and to respond to society’s increasing demand for environmental services’⁶².

The Regulation⁶³ contains a chapter dedicated to agri-environment measures, which lays out the support available for ‘agricultural production methods designed to protect the environment and maintain the countryside’ and includes support for the extensification⁶⁴ of farming and ‘the conservation of high nature-value farmed environments which are under threat’⁶⁵. The term ‘high nature value farmland’⁶⁶ gains prominence alongside the development of the second Pillar of the CAP in subsequent years.

⁵⁸ See Glossary

⁵⁹ See Glossary

⁶⁰ See above - 2.1.2 Early development

⁶¹ Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations [1999] OJ L 160/80

⁶² Ibid para 29 (preamble)

⁶³ Ibid

⁶⁴ See Glossary

⁶⁵ Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations [1999], Art 22

⁶⁶ See Glossary

One interesting aspect of the Agenda 2000 reform is the method used by the European Commission when considering and proposing its options. In 1995, shortly after implementation of the MacSharry reform, the Commission published the Agricultural Strategy Paper⁶⁷. This considered the 'alternative strategies' open to the EU in relation to the accession of the Central and Eastern European Countries (CEECs)⁶⁸. As this was the largest round of accession the EU had ever faced, and the agricultural sectors in the CEECs were significantly less developed than those of the EU 15 Member States, there was concern about the impact this might have on the operation, and particularly the financing, of the CAP. In the Agricultural Strategy Paper the Commission put forward three possible options:

- 1) Maintenance of the status quo and application of the CAP to the new EU Member States in its existing form (which it considered unsustainable in the long term);
- 2) Radical reform (with potentially devastating social, regional and environmental consequences);
- 3) Development of the 1992 approach (simplifying, deepening and extending the current model).⁶⁹

Unsurprisingly, the Commission favoured the third option⁷⁰. This approach is interesting due to its striking similarity to the approach taken to the 2013 reform, discussed later in the

⁶⁷ European Commission, 'Study on alternative strategies for the development of relations in the field of agriculture between the EU and the associated countries with a view to future accession of these countries' (Agricultural Strategy Paper, 1995) CSE(95) 607

⁶⁸ Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovakia and Slovenia;

⁶⁹ Arlindo Cunha and Alan Swinbank, *An Inside View of the CAP Reform Process; Explaining the MacSharry, Agenda 2000 and Fishler Reforms* (OUP, 2011) 104-06

⁷⁰ European Commission, 'Study on alternative strategies for the development of relations in the field of agriculture between the EU and the associated countries with a view to future accession of these countries' (Agricultural Strategy Paper, 1995) CSE(95) 607, 22

thesis⁷¹. In 2011 the European Commission published its Impact Assessment: 'Common Agricultural Policy towards 2020'⁷² in which it presented three options:

- 1) Adjustment, involving minor changes to promote the best (and remedy the worst) elements of the policy without any fundamental changes;
- 2) Integration, involving structural changes to the CAP with targeting of support on CAP objectives;
- 3) Refocus, involving a major reform to orient the CAP entirely towards environmental and climate-change-mitigation objectives.

As in the Agenda 2000 reform, the Commission favoured the middle-ground option of integration (2) rather than an approach of either minimal change (1) or radical reform (3), citing similar reasons of unsustainability for the former and devastating consequences for the later⁷³, although in this case the Refocus option would reduce the market and socio-economic support to the agricultural sector rather than causing damage to the environment.

I shall discuss the 2011 Impact Assessment in greater depth in a later chapter⁷⁴, but the drawing of parallels at this stage is useful in highlighting the Commission's apparent consistency in its approach to developing recent reform proposals.

The final Agenda 2000 reform proposals, as adopted by the European Council, allocated

⁷¹ See Ch 3

⁷² European Commission, 'Impact Assessment – Common Agricultural Policy towards 2020' (Commission Staff Working Paper, 2011) SEC(2011) 1153 final/2, 37-45

⁷³ European Commission, 'Common Agricultural Policy towards 2020' (Staff Working Paper – Executive Summary of the Impact Assessment) SEC (2011) 1154 final/2, s4.3

⁷⁴ See Ch 4

separate funding for Pillars 1 and 2 and the rules around co-financing of rural development initiatives were refined. Agri-environment schemes were now co-financed under the Guarantee section of the European Agricultural Guidance and Guarantee Fund (EAGGF) and the EU financed 75% of the cost of these measures in Objective 1 regions (where a particular needs for rural development had been identified at EU level) and 50% for other areas, with the Member State providing the remaining 25-50% of the funding⁷⁵. There were few Objective 1 areas in the UK; chiefly areas of western Wales and Cornwall.⁷⁶

The Agenda 2000 reform was a reform of structure rather than content for the CAP. The new Regulations consolidated additional support schemes for less favoured areas (LFA) and areas with environmental restrictions⁷⁷. The reform also separated rural development measures from other CAP measures through the creation of the second Pillar, but most of the measures contained within the rural development strategy were broadly the same as those set out in the MacSharry Reforms.

2.1.6 The Mid-Term Review, aka the Fischler Reform of 2003

In 2002 the European Commission conducted an assessment of the 'evolution of the reform process' of the Common Agricultural Policy since 1992 in its Communication on the Mid-

⁷⁵ European Commission Directorate-General for Agriculture, 'CAP Reform; Rural Development' (Factsheet, Ed. Stella Zervoudaki, 1999) 7

⁷⁶ European Commission, 'Objective 1: Map of eligible regions and regions receiving transitional support' (archived 15 April 2011) <http://ec.europa.eu/regional_policy/archive/objective1/map_en.htm> accessed 16 September 2017

⁷⁷ Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations [1999] OJ L 160/80, Ch V

Term Review (MTR)⁷⁸. According to Cunha and Swinbank⁷⁹ the 2003 reform of the CAP is considered the most radical in its history due to its role in decoupling farm income support from production. Decoupling had been underway since the MacSharry reform of 1992, but it has been suggested that in the early 2000s there was increased pressure from external trade partners to reduce trade-distorting domestic support ahead of World Trade Organisation (WTO) negotiations⁸⁰.

The Commission was initially adamant that the Mid-Term Review was just that; a review of the CAP not a reform proposal. However, the European Union's Commissioner for Agriculture, Rural Development and Fisheries (1995–2004) Franz Fischler was keen for greater reform. He led the introduction of the Single Payment Scheme, funding modulation (transfer) between Pillars 1 and 2⁸¹ and extensive decoupling of farm support from production through the elimination of headage payments in many areas.⁸²

The move to the Single Payment Scheme was particularly effective in promoting environmentally friendly farming as it facilitated the introduction of cross-compliance requirements, statutory management requirements (SMRs) and good agricultural and environmental condition (GAEC) requirements, which applied to a much larger proportion of farmers than voluntary AES as the measures were obligatory if a farmer wished to qualify for

⁷⁸ European Commission, 'Impact analyses of the July 2002 "Mid-term review" proposals (European Commission > Agriculture and rural development > Policy perspectives for EU agriculture > Impact assessment > Impact analyses of the July 2002 "Mid-term review" proposals) (last updated 22 February 2017) <https://ec.europa.eu/agriculture/policy-perspectives/impact-assessment/mid-term-review_en > accessed 01 May 2018

⁷⁹ Arlindo Cunha and Alan Swinbank, *An Inside View of the CAP Reform Process; Explaining the MacSharry, Agenda 2000 and Fishler Reforms* (OUP, 2011) 126

⁸⁰ Ibid 132

⁸¹ See Ch 3 - 3.2.3. Funding for CAP 2014 - 2020

⁸² Arlindo Cunha and Alan Swinbank, *An Inside View of the CAP Reform Process; Explaining the MacSharry, Agenda 2000 and Fishler Reforms* (OUP, 2011) 135

the new Single Payment.

2.1.7 Cross-compliance in the CAP

In simple terms, cross-compliance required farmers to observe basic environmental standards in their land management to qualify for payment under the Single Payment Scheme. As details below, the basic requirements are often aligned with the requirements of other European Regulations relating to the protection of the environment.

Regulation 1782/2003⁸³ deals with cross-compliance in the CAP and introduces the statutory management requirements (SMRs) and good agricultural and environmental condition (GAECs) mentioned above, outlining the requirements to qualify for the Single Payment:

Article 3 - Main requirements

1. A farmer receiving direct payments shall respect the statutory management requirements referred to in Annex III⁸⁴, according to the timetable fixed in that Annex, and the good agricultural and environmental condition established under Article 5⁸⁵.

Article 3 sets out clearly that the receipt of direct payments through the CAP is now conditional on adherence to the SMRs and GAECs in the Regulation.

⁸³ Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 [2003] OJ L 270/1

⁸⁴ See below – p30

⁸⁵ See below – p29

Article 4 - Statutory management requirements

1. The statutory management requirements referred to in Annex III shall be

established by Community legislation in the following areas:

- public, animal and plant health,
- environment,
- animal welfare.

The introduction of SMRs relating specifically to the environment was a significant step forward in the incorporation of environmental consideration into agricultural policy and a precursor to the introduction of the new greening measures into Pillar 1 of the CAP in 2013, discussed in the next Chapter.

Article 5 - Good agricultural and environmental condition

1. Member States shall ensure that all agricultural land, especially land which is no longer used for production purposes, is maintained in good agricultural and environmental condition. Member States shall define, at national or regional level, minimum requirements for good agricultural and environmental condition on the basis of the framework set up in Annex IV, taking into account the specific characteristics of the areas concerned, including soil and climatic condition, existing farming systems, land use, crop rotation, farming practices, and farm structures.

The Regulation also offers flexibility to Member States in their implementation of GAECS at national or regional level, taking account of the different needs in different areas. This flexibility in implementation can also be seen in the 2013 reform greening measures⁸⁶.

The statutory management requirements referred to in Annex III include adherence to Articles 3, 4(1), (2), (4), 5, 7 and 8 of the Birds Directive⁸⁷ concerning the protection and conservation of specified bird species and their habitats, and Articles 6, 13, 15, and 22(b) of the Habitats Directive⁸⁸ concerning the protection and preservation of Special Areas of Conservation (SACs), and the habitats of particular flora and fauna.

Although SMRs reflect the minimum environmental standards to which farmers must adhere, under existing EU legislation, the particular benefit of incorporation of these standards into the CAP through cross-compliance lies in the use of a Regulation. Many of the requirements of environmental protection enshrined within the Birds and Habitats Directives are dependent on national legislation for their implementation in Member States⁸⁹. However, through incorporation of these requirements in the CAP within a Regulation, which does not require national implementation, their enforcement through reduction or denial of CAP payments becomes more effective.

⁸⁶ See Ch 6 - 6.2 The Implementation of the Greening Measures under CAP and their impact on Biodiversity: the UK as a Case Study

⁸⁷ Council Directive 79/409/EEC on the conservation of wild birds [1979] OJ L 103/1

⁸⁸ Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora [1992] OJ L 206/7

⁸⁹ For example, in the UK the provisions of the Birds Directive are implemented through various piece of legislation, including the Wildlife & Countryside Act 1981 (as amended) and the Conservation (Natural Habitats, & c.) Regulations 2010 (as amended); the Wildlife (Northern Ireland) Order 1985; the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985.

Joint Nature Conservation Committee, 'Directive 2009/147/EC on the conservation of wild birds (codified version) (Home > Conventions & Legislation > European Legislation > EC Birds Directive) (October 2014) <<http://jncc.defra.gov.uk/page-1373>> accessed 01 May 2018

SMRs set minimum standards to which all farmers operating in the European Union who are in receipt of the Single Payment, which is the majority, must adhere. These standards are set at the European level and as such should (in principle) be implemented consistently across the EU.

Unlike SMRs, the rules for GAECs are set at the discretion of individual Member States within a framework set out in Annex IV of the Regulation. This framework requires Member States to set minimum standards of good agricultural and environmental condition for a number of 'issues', a minimum level of maintenance to avoid the deterioration of habitats⁹⁰.

In the UK, the relevant bodies in each of the devolved administration issues comprehensive guidance to farmers around their responsibilities relating to GAECs.

In allowing Member State's discretion in the creation of GAECs to facilitate 'taking into account the specific characteristics of the areas concerned' this area of cross compliance seeks to acknowledge and accommodate the substantial difference in agricultural systems between Member States. Rules around water abstraction, for example, must and should be different depending on the climate and resources of the country – rules appropriate for Scottish wetlands are unlikely to be appropriate in arid southern Spain.

The substantial decoupling of support and the strengthening of the cross-compliance requirements under Pillar 1 of the Common Agricultural Policy was a significant

⁹⁰ Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 [2003] OJ L 270/1, Annex IV

advancement for environmentally friendly farming, even if prompted primarily by pressure from the WTO rather than by conservation concerns. Farmers in receipt of the Single Payment were now required to fulfil a number of environmental responsibilities regardless of whether they were enrolled in an agri-environment scheme under Pillar 2, and in many ways this set the scene for the introduction of the further greening initiatives into Pillar 1 during the 2013 reform.

2.1.8 Simplification and the 2008 Health Check

The period between the 2003 and 2013 reforms was characterised by adjustments rather than radical reform measures. Member States who had opted to retain coupled support for certain areas were now required to phase this out and convert to the Single Payment Scheme. The process of abolishing milk quotas was begun⁹¹ and the requirement for arable farmers to set aside (remove from production) 10% of their land (a hang-over from the crisis years in which production needed to be curbed) was also abolished.⁹²

In 2005 rural development under Pillar 2 was restructured, with policy measures divided into 4 principle areas:

Axis 1 – increasing the competitiveness of the agricultural and forestry sectors;

Axis 2 – enhancing the environment and countryside;

Axis 3 – improving quality of life in rural areas as a whole;

⁹¹ European Parliament resolution of 12 March 2008 on the CAP 'Health Check' (2007/2195(INI)) paras 80 -98

⁹² Ibid para 39

Axis 4 – assisting locally based projects promoting better quality of life and economic prosperity.⁹³

Building on the requirements introduced under Regulation 1257/1999⁹⁴, each Member State was required to develop a multi-annual rural development plan spanning 2008-2013 and the Regulation set out 22 rural development measures from which Member States could choose, though the agri-environment scheme measure was compulsory for all.⁹⁵

In the UK agri-environment schemes, which compensate farmers for income foregone though land management practices which go beyond the basic environmental requirements of cross-compliance, were now a common aspect of modern farming. In 2009 there were 58,000 agri-environment schemes covering 6 million hectares and 66% of agricultural land in England alone. According to Natural England the average annual spend on agri-environment schemes was £400 million and 84% (928,684 ha) of the area of habitats identified as a national priority for protection and restoration (Biodiversity Action Plan priority habitat) eligible for AES was under agreement.⁹⁶

⁹³ Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) [2005] OJ L 277/1, title IV, ch I

⁹⁴ Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations [1999] OJ L 160/80

⁹⁵ Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) [2005] OJ L 277/1, Art 39

⁹⁶ Natural England, *Agri-environment schemes in England 2009 - A review of results and effectiveness* (Catalogue Code: NE194, 2009) 1

The 2008 Health Check also brought an increased focus on the priorities of biodiversity to the CAP, as it was recognised that the EU target to halt biodiversity loss by 2010 would most likely be missed⁹⁷.

In its 2009 publication on the outcomes of the Health Check, the European Network for Rural Development (a body established by the European Commission) highlighted the 'clear link between agriculture, the environment, biodiversity, climate change and the sustainable management of the natural resources such as water and land'⁹⁸ and additional funding of €4.95 billion was funnelled into the 2007-2013 EAFRD⁹⁹ budget by the European Commission, with the largest proportion (31.2%) dedicated to measures under Axis 2 - enhancing the environment and countryside.¹⁰⁰

2.1.9 Build-up to the 2013 reform

Recognition of the role of biodiversity and environmental conservation in the 2007-2013 CAP programme period set the baseline for subsequent discussions around the proposals for the 2014-2020 policy. The environmental aspects of rural development were no longer separate from considerations around industry sustainability. Whilst the period up to 2013 saw a streamlining of the CAP to allow farmers to adapt more independently to market signals in the light of the 2008 economic crisis¹⁰¹, it also saw a development in the expectations of the European public around farmers' responsibilities towards the nature conservation value of

⁹⁷ See Ch 3 - 3.1 European Biodiversity Objectives

⁹⁸ European Commission Directorate-General for Agriculture and Rural Development, *Overview of the CAP Health Check and the European Economic Recovery Plan; Modification of the RDPs* (Factsheet, 2010) 10

⁹⁹ See Glossary

¹⁰⁰ European Commission Directorate-General for Agriculture and Rural Development, *Overview of the CAP Health Check and the European Economic Recovery Plan; Modification of the RDPs* (Factsheet, 2010) 10

¹⁰¹ Ibid 2

land they manage, especially when funded by public money. The process of the most recent reform is examined in subsequent chapters.

Since its inception in 1962 the Common Agricultural Policy has undergone a series of reforms which have transformed it from a post-war food security policy into one of the most environmentally significant policies of the European Union. The gradual introduction of measures to promote environmental sustainability and biodiversity protection led to a policy which, going into the 2013 reform, contained a wide range of both base-line environmental requirements and voluntary options for high nature value farming.

However, there was also recognition that the CAP had still greater potential to preserve and enhance the natural environmental of agricultural Europe, and that this potential must be better utilised if the EU hoped to meet its objectives of halting the loss of biodiversity and the degradation of ecosystem services under the EU Biodiversity Strategy to 2020.¹⁰² As a result, the focus of the 2013 reform of the CAP on greening brought about some of the most significant changes in the CAP's history, as discussed in the next chapter.

¹⁰² European Commission, 'Our life insurance, our natural capital; an EU Biodiversity strategy to 2020' (Communication) COM (2011) 244 final, s2.1

3 – BIODIVERSITY OBJECTIVES AND THE COMMON AGRICULTURAL POLICY REFORM TOWARDS 2020

In this chapter I set out details of the EU biodiversity objectives as a key motivation behind the greening of the CAP in the 2013 reform. The objectives provide the backdrop against which the greening measures were designed and introduced in 2013 and the benchmark against which their success or failure can be assessed. As such, an understanding of these objectives in relation to the greening measures of the CAP reform is crucial in the examination of the policy process which led to adoption of the measures.

I set out the greening measures introduced into Pillar 1, examining their legal basis and drawing illustrative comparison between previous or existing measures where relevant.

I also outline the agri-environment measures offered under Pillar 2 in England, Scotland, Wales and Northern Ireland. A detailed examination of the potential of these measures to deliver benefits to biodiversity is beyond the scope of this chapter but follows in the subsequent chapters.

Finally, I return to the biodiversity objectives in a summary of the 2015 Mid-term review of the EU biodiversity strategy to 2020, which demonstrates the failure (to date) of the greening measures in delivering against the biodiversity targets set in that strategy.

3.1 European Biodiversity Objectives

The EU failed to meet the target to halt biodiversity loss by 2010 adopted by EU Heads of State at the EU Summit in Gothenburg (Sweden) in June 2001¹. In 2011, at the time the European Commission published the EU Biodiversity Strategy to 2020², only 17% of habitats and species and 11% of key ecosystems protected under EU legislation were in a favourable state, while 65% of habitats of EU importance were in an unfavourable state and as many as 25% of European animal species were facing extinction³.

The EU Biodiversity Strategy to 2020 set out a new headline target with a new deadline:

Halting the loss of biodiversity and the degradation of ecosystem services in the EU by 2020, and restoring them in so far as feasible, while stepping up the EU contribution to averting global biodiversity loss.⁴

This is set within the more ambitious 2050 ‘vision’ that:

...by 2050, European Union biodiversity and the ecosystem services it provides — its natural capital — are protected, valued and appropriately restored for biodiversity's intrinsic value and for their essential contribution to human wellbeing and economic prosperity, and so that catastrophic changes caused by the loss of biodiversity are avoided.⁵

¹ Presidency Conclusions – Göteborg European Council 15 and 16 June 2001 (SN 200/1/01 REV 1) s.31

² European Commission, ‘Our life insurance, our natural capital; an EU Biodiversity strategy to 2020’ (Communication) COM (2011) 244 final

³ European Commission, ‘Report from the Commission to the European Parliament and the Council – the Mid-Term Review of the EU Biodiversity Strategy to 2020’ COM (2015) 478 final 1

⁴ European Commission, ‘Our life insurance, our natural capital; an EU Biodiversity strategy to 2020’ (Communication) COM (2011) 244 final, s2.1

⁵ Ibid

The Strategy focuses on six key 'mutually supportive and inter-dependent' targets⁶, of which Target 3a focuses on agriculture: by 2020, the Commission aims to;

Maximise areas under agriculture across grasslands, arable land and permanent crops that are covered by biodiversity-related measures under the CAP so as to ensure the conservation of biodiversity and to bring about a measurable improvement in the conservation status of species and habitats that depend or are affected by agriculture and in the provision of ecosystem services as compared to the 2010 baseline, thus contributing to enhance sustainable management⁷.

Section 3 of the EU Biodiversity Strategy⁸ highlights CAP reform as an opportunity to 'enhance synergies and maximise coherence between biodiversity protection objectives and those of other policies'⁹. The Commission recognises that in order to deliver environmental goods through farming activities the CAP must be reformed to incorporate the implementation of existing cross-compliance requirements *and* measures which go beyond cross-compliance and are restorative for biodiversity in the EU.

The broader 'Europe 2020' strategy¹⁰ also includes biodiversity consideration within its targets around sustainable growth to 'help the EU to prosper in a low-carbon, resource

⁶ Ibid s3. Full list of targets in Appendix

⁷ Ibid s3.3

⁸ Ibid s3

⁹ Ibid s3.3

¹⁰ European Commission, 'EUROPE 2020 – A strategy for smart, sustainable and inclusive growth' (Communication from the Commissions) COM (2010) 2020

constrained world while preventing environmental degradation, biodiversity loss and unsustainable use of resources’¹¹. The ‘Europe 2020’ strategy does not discuss agricultural policy goals specifically, but both the 2013 CAP Regulations (discussed below)¹² and the Impact Assessment (discussed in the next chapter)¹³ refer to these wider goals.

An understanding of the biodiversity objectives which the CAP reform aims to achieve is crucial in assessing both the value of the greening measures in relation to achieving these aims, and the legitimacy of the reform process which led to the adoption of those greening measures. In order to assess whether the reform did what was intended, we must first have a clear idea of that intention. Having set this out above, I examine the greening measures themselves below.

3.2 The Reformed Common Agricultural Policy

The Common Agricultural Policy for the programme period 2014-2020 incorporates new ‘greening measures’ which require farmers to meet basic environmental requirements in order to be eligible for the Basic Payment. This replaces the previous Single Payment Scheme introduced in the 2003 Mid Term Review.¹⁴

The European Commission describes the greening the CAP as intended to ‘make the direct payments system more environment-friendly’ and to ‘support action to adopt and maintain

¹¹ Ibid 12

¹² See below – p41

¹³ See Ch 4

¹⁴ See Ch 2 - 2.1.6 The Mid Term Review, aka the Fischler Reform of 2003

farming practices that help meet environment and climate goals'.¹⁵ As detailed above, the Commission's EU Biodiversity Strategy goals for CAP seek to 'ensure the conservation of biodiversity and to bring about a measurable improvement in the conservation status of species and habitats that depend or are affected by agriculture'.¹⁶ As such, there is a direct link between the biodiversity objectives mentioned and the greening measures introduced into the CAP during the 2013 reform.

The new greening rules apply to all farmland on which the Basic Payment is claimed. These rules must be followed in order for farmers to receive the 'greening payment' which amounts to 30% of the Basic Payment. Around 40% of the land in Europe is farmed¹⁷ and, as large numbers of EU farmers depend on EU subsidy to continue to farm, the aim of this greening payment was to encourage the largest possible number of farmers to operate in more environmentally friendly ways, thereby supporting progress towards the EU biodiversity objectives.

The details of the CAP reform are set out in 5 key pieces of EU legislation:

Regulation 1305/2013 – Rural Development¹⁸

¹⁵ European Commission, 'Greening' (European Commission > Agriculture and rural development > Direct support > Greening) <https://ec.europa.eu/agriculture/direct-support/greening_en> accessed 01 May 2018

¹⁶ European Commission, 'Our life insurance, our natural capital; an EU Biodiversity strategy to 2020' (Communication) COM (2011) 244 final, s3.3

¹⁷ Isabelle Doussan and Hendrik Schoukens, 'Biodiversity and agriculture: Greening the CAP beyond the status quo?' in Charles-Hubert Born et al (eds) *The Habitats Directive in its EU Environmental Law Context; European Nature's Best Hope?* (Routledge Research in EU Law 2014)

¹⁸ Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 [2013] OJ L 347/487

Regulation 1306/2013 - Horizontal issues such as funding, management and monitoring¹⁹

Regulation 1307/2013 - Direct payments for farmers²⁰

Regulation 1308/2013 - Organisation of the markets in agricultural products²¹

Regulation 1310/2013 Provisions covering the transitional period between the 2007-2013 and 2014-2020 CAP²²

The most important Regulation from the perspective of the new greening initiatives in the CAP is Regulation 1307/2013 –establishing rules for direct payment to farmers under support schemes within the framework of the Common Agricultural Policy. Sections 38-47 of this regulation set out the rules by which farmers and land managers must abide to be eligible for the 30% of the Basic Payment categorised as the ‘greening payment’. It also sets out the penalties (deductions to the greening payment) which will result from non-compliance.

3.2.1 CAP Pillar 1 – greening measures for direct payments

¹⁹ Regulation (EU) No 1306/2013 – Of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 [2013] OJ L 347/549

²⁰ Regulation (EU) No 1307/2013 of the European Parliament and of the Council on establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 [2013] OJ L 347/608

²¹ Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 992/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 [2013] OJ L 347/671

²² Regulation (EU) No 1310/2013 of the European Parliament and of the Council laying down certain transitional provisions on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), amending Regulation (EU) No 1305/2013 of the European Parliament and of the Council as regards resources and their distribution in respect of the year 2014 and amending Council Regulation (EC) No 73/2009 and Regulations (EU) No 1307/2013, (EU) No 1306/2013 and (EU) No 1308/2013 of the European Parliament and of the Council as regards their application in the year 2014 [2013] OJ L 347/865

The new requirements under Pillar 1 of the CAP (direct payments) are divided into three areas:

- Crop diversification
- Permanent grassland
- Ecological Focus Areas (EFAs)

The potential benefits to biodiversity offered by these measures are examined in more details in the following chapter, but the outline benefits given by the European Commission include:

- Making soil & ecosystems more resilient by growing a greater variety of crops
- Conserving soil carbon & grassland habitats associated with permanent grassland
- Protecting water & habitats by establishing ecological focus areas.²³

3.2.1.1 Crop diversification – Article 44 (Regulation 1307/2013)²⁴

Where an agricultural holding comprises between 10 and 30ha of arable land, there shall be a minimum of 2 different crops on that land, and no one crop shall cover more than 75% the area.

²³ European Commission, 'Greening' (European Commission > Agriculture and rural development > Direct support > Greening) <https://ec.europa.eu/agriculture/direct-support/greening_en> accessed 01 May 2018

²⁴ Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 on establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 [2013] OJ L 347/608

Where an agricultural holding comprises 30ha+ of arable land, there shall be a minimum of 3 different crops on that land, with a maximum coverage of 75% for one crop and 95% for the combination of 2 crops (i.e. 3rd crop must be no less than 5% of the area).²⁵

When the Commission originally proposed this greening measure, the requirements were much more stringent: all farms with 3ha+ arable land were to have 3+ crops, each with no less than 5% of each crop and no more than 70%.²⁶ After 2 years of negotiation, the final requirement which appears in the legislation is significantly less onerous: farmers with less than 30ha of arable land need only have 2 different crops and farmers with less than 10ha need not diversify at all. This watering down of the requirement effectively exempts 46% of EU agricultural land and 94% of farmers from this rule.²⁷

3.2.1.2 Permanent grassland - Article 45 (Regulation 1307/2013)²⁸

Member States are required to designate permanent grasslands which are environmentally sensitive in areas covered by Directives 92/43/EEC or 2009/147/EC (the Habitats²⁹ and Birds³⁰ Directives) and shall not convert or plough permanent grassland in these areas.

²⁵ Ibid, Art 44

²⁶ European Commission 'Proposal for a Regulation of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy' COM (2011) 625 final, Art 30

²⁷ Isabelle Doussan and Hendrik Schoukens, 'Biodiversity and agriculture: Greening the CAP beyond the status quo?' in Charles-Hubert Born et al (eds) *The Habitats Directive in its EU Environmental Law Context; European Nature's Best Hope?* (Routledge Research in EU Law 2014)

²⁸ Regulation (EU) No 1307/2013 of the European Parliament and of the Council on establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 [2013] OJ L 347/608

²⁹ Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora [1992] OJ L 206/7

³⁰ Council Directive 79/409/EEC on the conservation of wild birds [1979] OJ L 103/1

The area of permanent grassland on a declared holding (a holding for which the Basic Payment is claimed) shall not fall more than 5% below the area declared in 2012 (as a baseline).³¹ For the purposes of the Article, permanent grassland is defined as: grass or herbaceous forage in place for 5 years or more, containing no more than 100 trees.³²

The requirement for the preservation (from conversion to other forms of agriculture, e.g. arable) of permanent grassland is the only one of the three measured to be preserved in negotiations and appear in more-or-less its original form within the Regulation. The only difference between the adopted measure and the original proposal is the baseline year, which was changed from 2014 to 2012.

However, it is worth noting that this not necessarily a significant success in terms of habitat preservation or creation, as Member States have been under EU cross-compliance requirements to preserve levels of permanent grassland since the 2003 Mid Term Reform³³. Under cross-compliance rules, farmers in receipt of direct payments from the Single Payment Scheme were required to observe this basic environmental standard in order to continue to receive their payments. Similarly, under the new greening rules farmers in receipt of the Basic Payment Scheme are required to observe this standard in order to continue to receive their payments.

³¹ Department for Environment, Food and Rural Affairs (DEFRA), 'The new Common Agricultural Policy schemes in England: August 2014 update' (CAPLF003 2014) 10
<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/345073/cap-reform-august-2014-update.pdf> accessed 17 September 2017

³²Ibid 14

³³Alan Matthews, 'Greening agricultural payments in the EU's Common Agricultural Policy' (2013) 2(1) Bio-based and applied Economics 1

3.2.1.3 Ecological Focus Areas (EFA) – Article 46 (Regulation 1307/2013)³⁴

This measure was heralded by environmental conservation groups as showing the greatest potential for significant environmental benefit.³⁵ EFAs have similarities to Agri-Environment Measures (AEMs) administered and funded under Pillar 2 of the CAP, which may be more targeted to specific environmental challenges of an area and, when managed well, have shown significant positive outcomes for biodiversity. Indeed, the degree of potential overlap between EFA measures and those offered as AEMs, such as maintaining buffer strips between cultivated land and water courses, required the EU to include rules to avoid ‘double funding’³⁶ of these measures within the Regulations 1305/2013³⁷ and 1307/2013³⁸, so farmers are not paid twice for the same action.

The EFA measure applies to all holdings with 15ha+ of arable land and requires that an area corresponding to at least 5% of the arable land is declared and managed as an Ecological Focus Area.

³⁴ Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 on establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 [2013] OJ L 347/608

³⁵ Royal Society for the Protection of Birds (RSPB), ‘The RSPB’s views on the Common Agricultural Policy’ (2013) 4 <http://www.rspb.org.uk/Images/CAP_aug2013_tcm9-353073.pdf> accessed 17 September 2017
The Wildlife Trusts, ‘Making CAP count, 1. Ecological Focus Areas’ <<http://www.wildlifetrusts.org/CAP>> accessed 17 September 2017

³⁶ See below - p 57

³⁷ Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 [2013] OJ L 347/487, s22

³⁸ Regulation (EU) No 1307/2013 of the European Parliament and of the Council on establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 [2013] OJ L 347/608, Art 42

Member States have discretion as to the options open for management of EFAs and the Regulation lists the following as potential options, to be selected by the Member States by the 1 August 2014:

- a. land lying fallow;
- b. terraces;
- c. landscape features...
- d. buffer strips, including buffer strips covered by permanent grassland, provided that these are distinct from adjacent eligible agricultural area;
- e. hectares of agro-forestry that receive, or have received, support under Article 44 of Regulation (EC) No 1698/2005³⁹ and/or Article 23 of Regulation (EU) No 1305/2013⁴⁰;
- f. strips of eligible hectares along forest edges;
- g. areas with short rotation coppice with no use of mineral fertiliser and/or plant protection products;
- h. afforested areas referred to in point (b)(ii) of Article 32(2) of this Regulation;

The original Commission proposal for EFA was for the designation of 7% of arable land, excluding permanent grassland, per holding. At the time of the proposal, 3-4% of arable land

³⁹ Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) [2005] OJ L 277/1

⁴⁰ Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 [2013] OJ L 347/487

in the EU was already in a state to qualify for EFA status⁴¹, so even with the more ambitious target of 7% designation the Commission was only proposing to increase the area of land designated (i.e. land to be taken out of standard agricultural production management) by 3-4% of the overall area.

The final measure included in the Regulation requires a 5% designation of arable land, effectively increasing the area to be managed as EFA by 1-2% of the overall arable area. Research suggests that a minimum 10% designation would be required to see significant improvements for the natural environment.⁴²

Article 46 (s1-2) requires the Commission to present an evaluation report on the implementation of the EFA measures no later than the 31 March 2017, with a view to introducing new legislation to increase the EFA area requirement to 7% in line with the Commission's original proposals.⁴³

Under the greening rules currently in place, 35.5% of arable land and 89% of farmers are exempt from the EFA requirement through the minimum holding requirement of 15+ha.⁴⁴

⁴¹ Isabelle Doussan and Hendrik Schoukens, 'Biodiversity and agriculture: Greening the CAP beyond the status quo?' in Charles-Hubert Born et al (eds) *The Habitats Directive in its EU Environmental Law Context; European Nature's Best Hope?* (Routledge Research in EU Law 2014) 447

⁴² Ibid

⁴³ On the basis of the review carried out in March 2017 the Commission has chosen not to increase the percentage requirement for EFA - European Commission, 'Report on the implementation of the ecological focus area obligation under the green direct payment scheme' COM (2017) 0152 final

⁴⁴ Isabelle Doussan and Hendrik Schoukens, 'Biodiversity and agriculture: Greening the CAP beyond the status quo?' in Charles-Hubert Born et al (eds) *The Habitats Directive in its EU Environmental Law Context; European Nature's Best Hope?* (Routledge Research in EU Law 2014) 447

3.2.1.4 Exceptions

According to the calculations of Pe'er (et al), to only 50% of EU farmland will be subject to the new requirements of the greening measures⁴⁵

Those farmers not meeting the greening requirements detailed above will still qualify to receive the Basic Payment if one of the following applies:

- a) 75% + arable land is fallow, temporary grassland or a combination of the 2, and the remaining area is 30ha or less
- b) 75% of total agricultural land is permanent grassland, or temporary grassland, or water crops, or a combination of the 3, and the remaining area is 30ha or less
- c) 50% of land declared on a 2015 Basic Payment Scheme application was not on a 2014 Single Payment Scheme application (i.e. is newly declared land) *and* all arable land parcels were used to grow different crops in 2015 as compared to 2014
- d) Farming on the holding is formally certified as organic.⁴⁶

3.2.1.5 Equivalency

Article 40 of Regulation 1307/2013⁴⁷ states that Member States can accept 'equivalent measures' (which yield equivalent or higher benefits for the climate or environment to the

⁴⁵ Guy Pe'er (et al) 'EU agricultural reform fails on biodiversity' (2014) 344 Science 1090

⁴⁶ Department for Environment, Food and Rural Affairs (DEFRA), 'The new Common Agricultural Policy schemes in England: August 2014 update' (CAPLF003 2014) 10
<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/345073/cap-reform-august-2014-update.pdf> accessed 17 September 2017, 18-21

⁴⁷ Regulation (EU) No 1307/2013 of the European Parliament and of the Council on establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 [2013] OJ L 347/608

three greening measures presented in Articles 44-46) in fulfilment of the requirements for receiving the greening payment, and further details can be found in Annex IX to the Regulation.

For example, Member States may accept:

- crop rotation in place of crop diversification;
- extensive grazing systems in place of permanent grassland; and
- ecological set-aside in place of Ecological Focus Areas.

No equivalency measures have yet been adopted by any of the UK devolved administrations; these decisions are discussed in further details in a subsequent chapter.

3.2.2 CAP Pillar 2 – rural development

Pillar 2 of the CAP deals with the Rural Development Policy (RDP) of the EU and the key piece of legislation for the post-2013 RDP is Regulation 1305/2013: on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)⁴⁸.

Article 3 of Regulation 1305/2013 states the ‘Mission’ of the legislation as:

The EAFRD shall contribute to the Europe 2020 Strategy⁴⁹ by promoting sustainable rural development throughout the Union in a manner that compliments the other instruments of the CAP...

⁴⁸ Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 [2013] OJ L 347/487

⁴⁹ See above – p38

This Article also sets out the objectives of the mission, of which (b) ‘ensuring the sustainable management of natural resources, and climate action’ is the most relevant to the greening of the CAP.

Six detailed priority areas, each containing targets, are set out in Article 5 and priority area (4) focuses on ‘restoring, preserving and enhancing ecosystems related to agriculture and forestry’, with a focus on:

- (a) restoring, preserving and enhancing biodiversity, including Natura 2000 areas, and areas facing natural or other specific constraints, and high nature value farming, as well as the state of European landscapes⁵⁰

One of the key elements of Pillar 2 for environmental conservation is the funding of Agri-Environment Measures (often grouped as part of an Agri-Environment Scheme – AES), and Article 28 of Regulation 1305/2013 deals with the EU support and funding for such measures:

Member States shall make support under this measure available throughout their territories...This measure shall aim to preserve and promote the necessary changes to agricultural practices that make a positive contribution to the environment and climate. Their inclusion in rural development programmes shall be compulsory at national and/or regional level.

⁵⁰ Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 [2013] OJ L 347/487, Art 5

Payment for commitments under Article 28 is made annually to compensate farmers/land managers for costs incurred or income foregone resulting from these commitments.

Commitments (usually in the form of agri-environment schemes) are undertaken for 5-7 years, although these may be longer when approved as necessary by a Member State.

3.2.2.1 Agri-Environment Schemes in the UK

The agri-environmental schemes (AES) of the CAP prior to the 2013 reform formed the most significant aspect of Pillar 2 in terms of environmental conservation. Changes introduced under the new 2014-2020 CAP are less significant for Pillar 2 measures (including AES) than the structural changes introduced through the new greening requirements in Pillar 1. The reform does not introduce fundamental changes to the structure of Pillar 2, and agri-environment schemes supported under Pillar 2 continue to be jointly funded by the EU and the UK devolved governments.

Within the UK, agri-environment schemes are available in different formats in the different regions; England, Wales and Northern Ireland offer schemes at both lower/entry level and higher/advanced level. Entry/lower level schemes allow farmers to sign up to deliver certain simple environmentally friendly measures, which go beyond those required under cross-compliance/the greening measures, but still incur costs or loss of profit for which they can be compensated. Higher/advanced level schemes offer land managers agreements which usually involving active implementation of multiple environmental measures⁵¹.

⁵¹ Natural England, 'Environmental Stewardship' (The National Archives 05/06/2014)
<<http://webarchive.nationalarchives.gov.uk/20140523111208/http://www.naturalengland.org.uk/ourwork/farming/funding/es/default.aspx>> accessed 17/01/2016

In accordance with the UK constitution, the devolved governments in Wales, Scotland and Northern Ireland separately adopted measures to implement both pillars of the CAP at a national level. The UK parliament similarly adopted measures for England. Due to the diverse nature of agriculture across the UK, the devolved administrations have each chosen to implement the new CAP in slightly different ways.

A summary of Agri-Environment Schemes offered by the four devolved administrations under Pillar 2 is given below, with further detail provided in the subsequent chapter on 'Implementation of the CAP in the UK'.

England - Countryside Stewardship Schemes⁵²

These schemes are available as Mid (lower) and Higher Tier, as well as for specific kinds of activities such as historical building restoration and building support and are available to support a wide range of rural development activities, including:

- conserving and restoring wildlife habitats
- flood risk management
- woodland creation and management
- reducing widespread water pollution from agriculture
- keeping the character of the countryside
- preserving features important to the history of the rural landscape

⁵² Natural England 'Countryside Stewardship: Higher Tier Manual' 10
<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/627361/cs-higher-tier-manual.pdf> accessed 17 September 2017

- encouraging educational access⁵³

Wales – Glastir

The Glastir package of agri-environment schemes also allows land managers to sign up for entry level⁵⁴ or advanced agreements⁵⁵, with payment for different management options depending on the options chosen (and the resulting income lost), as well as whether the management options are targeted to the specific geographical area of their farm. As with Countryside Stewardship in England, Glastir also offers a number smaller schemes for activities such as woodland restoration and organic farming.⁵⁶

Scotland – Agri-Environment Climate Scheme (AECs)⁵⁷

Unlike the other areas of the UK, Scotland offers a single scheme through which different options are available depending on geographic/spatial targeting⁵⁸. However, the aim of activities supported under these management agreements are similar to those in the other areas:

⁵³ Natural England (et al) 'Countryside Stewardship' (Rural grants and payments - Last updated 14 April 2018) <<https://www.gov.uk/government/collections/countryside-stewardship-get-paid-for-environmental-land-management>> accessed 01 May 2018

⁵⁴ Welsh Government, 'Glastir Entry' (Last updated 14 December 2016) <<http://gov.wales/topics/environmentcountryside/farmingandcountryside/farming/schemes/glastir/glastir-entry/?lang=en>> accessed 17 September 2017

⁵⁵ Welsh Government, 'Glastir Advanced' (Last updated 4 August 2017) <<http://gov.wales/topics/environmentcountryside/farmingandcountryside/farming/schemes/glastir/glastir-advanced/?lang=en>> accessed 17 September 2017

⁵⁶ Welsh Government, 'Glastir' (Last updated 28 July 2017) <<http://gov.wales/topics/environmentcountryside/farmingandcountryside/farming/schemes/glastir/?lang=en>> accessed 17 September 2017

⁵⁷ See Glossary

⁵⁸ Scottish Government 'Agri-Environment Climate Scheme - 1. Targeting of support under the Agri-Environment Climate Scheme' (2017) <<https://www.ruralpayments.org/publicsite/futures/topics/all-schemes/agri-environment-climate-scheme/>> accessed 17 September 2017

- deliver the 2020 Challenge for Scotland's Biodiversity by supporting appropriate management for vulnerable and iconic species and habitats, strengthening ecological networks, controlling invasive non-native species and enhancing the condition of protected nature sites
- contribute to Scotland's world-leading climate change targets by reducing greenhouse gas emissions from agriculture and securing carbon stores in peatlands and other organic soils
- meet obligations to improve water quality under the EU Water Framework Directive by reducing diffuse pollution
- control flooding through natural flood risk management
- support organic farming
- preserve the historic environment
- improve public access⁵⁹

*Northern Ireland – Environmental Farming Scheme (EFS)*⁶⁰

As in England and Wales, Northern Ireland offers entry and advanced level schemes, named wider- and higher-level schemes. The wider-level scheme is designed to delivery environmental benefits across the wider countryside, outside of environmentally designated

⁵⁹ Scottish Government 'Agri-Environment Climate Scheme' (2017)
<<https://www.ruralpayments.org/publicsite/futures/topics/all-schemes/agri-environment-climate-scheme/>>
accessed 17 September 2017

⁶⁰ See Glossary

areas, whilst higher-level scheme is targeted at site-specific environmental improvements for priority habitats and species.⁶¹

3.2.3 Funding for CAP 2014 - 2020

EU Funding for Pillar 2 remains a low proportion of the overall CAP budget, with the majority (77%) spent on direct payments under Pillar 1 (the Basic Payment Scheme) and only 23% spent on Pillar 2 measures⁶². The final CAP budget for the 2014-2020 period was lower than the initial European Commission proposal: the budget was frozen at the 2013 level, which in real terms results in a 1.8% cut for Pillar 1 funding and a 7.6% cut for Pillar 2 funding over the lifetime of the budget.⁶³

Member States have discretion to transfer up to 15% of their national funding between Pillars, and environmental organisations such as the RSPB in England campaigned for a maximum transfer of 15% from Pillar 1 to Pillar 2 in the UK to support greater implementation of environmental conservation measures such as agri-environmental schemes under the RDP⁶⁴. Modulation decisions within England, Scotland, Wales and

⁶¹ The Department of Agriculture, Environment and Rural Affairs (DAERA), 'Environmental Farming Scheme 2017: Questions and Answers' (Version 06/03/2017) 10 <<https://www.daera-ni.gov.uk/sites/default/files/publications/daera/EFSS%20Q%26As%2007%2003%202017.pdf>> accessed 17 September 2017

⁶² European Commission, 'Overview of CAP Reform 2014-2020' (Agricultural Policy Perspectives Brief - N°5* December 2013) 3 <https://ec.europa.eu/agriculture/sites/agriculture/files/policy-perspectives/policy-briefs/05_en.pdf> accessed 17 September 2017

⁶³ Ibid

⁶⁴ See Ch 7 - 7.2.1 England

RSPB, 'Consultation on the implementation of CAP Reform in England: RSPB response' (Nov 2013) 1 <http://www.rspb.org.uk/Images/capreform_nov2013_tcm9-358508.pdf> accessed 17 September 2017

Northern Ireland are examined in Chapter 6⁶⁵ and the outcome of public consultation on funding issues in each country are discussed in Chapter 7⁶⁶

During the period 2014-2020 the UK is expected to receive €25.1 billion in Pillar 1 direct payments and €2.6 billion in Pillar 2 (rural development) funds from the EU budget. This equates to a reduction of 12.6% and 5.5% respectively compared with CAP payments to the UK in the period 2007-2013.⁶⁷ The table below shows the division of EU CAP funding to each devolved administration.⁶⁸

Table 1: UK CAP allocations 2014-2020

	Pillar 1		Pillar 2	
	€ million (approx non- inflation adjusted)		€ million (approx non- inflation adjusted)	
	Direct subsidies	% share	Environment and Rural Development	% share
England	16,421	65.5	1,520	58.9
Northern Ireland	2,299	9.2	227	8.8
Scotland	4,096	16.3	478	18.5
Wales	2,245	8.96	355	13.7
Total UK allocation	25.1 billion		2.6 billion	

⁶⁵ See Ch 6 - 6.2 The Implementation of the Greening Measures under CAP and their impact on Biodiversity: the UK as a Case Study

⁶⁶ See Ch 7 - 7.2 Public Consultation in the UK

⁶⁷ Emma Downing, 'CAP Reform 2014-2020: Implementation Decisions in the UK' (Science and Environment Section, House of Commons Library, SN06929 2014) s1.1

⁶⁸ Ibid

Double funding

Due to the introductions of the new greening measures under Pillar 1, and the potential overlap of some of these measures (primarily options within the EFA requirement) with activities for which farmers receive payment under agri-environment scheme agreements in Pillar 2, there is a risk of 'double funding' under the new structure of the 2014-2020 CAP. This double funding would result in a farmer or land manager receiving two payments for the same activity; the first within the 30% of the Basic Payment attached to Pillar 1 greening measures and the second within the payment for actions undertaken within an agri-environment scheme agreement.

The avoidance of double funding is explicitly required in EU Regulations 1305/2013⁶⁹ and 1307/2013⁷⁰ and the relevant payment agencies in England⁷¹, Wales⁷², Scotland⁷³ and Northern Ireland⁷⁴ have each published guidance on how this will be avoided.

⁶⁹ Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 [2013] OJ L 347/487 s22

⁷⁰ Regulation (EU) No 1307/2013 of the European Parliament and of the Council on establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 [2013] OJ L 347/608 Art 42

⁷¹ DEFRA, 'Double Funding and Environmental Stewardship agreements' (Revised October 2014) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/362016/Greening_and_Double_Funding.pdf> accessed 17 September 2017

⁷² Welsh Government 'The Common Agricultural Policy Reform: 2016 Greening Booklet' B1.1 <<http://gov.wales/docs/dra/p/publications/150812-basic-payment-scheme-greening-guidance-2016-en.pdf>> accessed 17 September 2017

⁷³ Scottish Government 'Double funding and option incompatibility' (Date published: 20 May 2017) <<https://www.ruralpayments.org/publicsite/futures/topics/all-schemes/agri-environment-climate-scheme/agri-environment-climate-scheme-full-guidance-menu/agri-environment-double-funding>> accessed 17 September 2017

⁷⁴ DAERA, '2017 Guide to the Greening Payment' 58 - <<https://www.daera-ni.gov.uk/sites/default/files/publications/daera/16.17.259k%20Guide%20to%20the%20Greening%20Payment%202017.PDF>> accessed 17 September 2017

For example, there are 19 options available under Countryside Stewardship scheme in England which could also be used to meet the EFA requirement under the Pillar 1 greening payment. In these cases the payment for double funding options will be reduced within the Countryside Stewardship payment, whilst the greening payment will remain the same. A full list of the options and the double funding reduction for each can be found in the Countryside Stewardship Manual 2016⁷⁵.

3.3 Efficacy of the Greening Measures in Promoting Biodiversity

In 2015 the European Commission conducted a mid-term review of the EU biodiversity strategy to 2020 and published details of the progress towards the targets and actions⁷⁶. Whilst the review was conducted only two years into the implementation of the new policy, the indication at that time was that the measures adopted were having little or no effect on progress towards biodiversity objectives of the policy.

The assessment of ‘no significant progress towards the target’ applied to both the 2020 headline target of halting the loss of biodiversity and the degradation of ecosystem services ; specifically, Target 3a: Increase the contribution of agriculture to maintaining and enhancing biodiversity.

⁷⁵ Ibid (n 38)

⁷⁶ European Commission, ‘Mid-term review of the EU biodiversity strategy to 2020: EU assessment of progress towards the targets and actions’
<http://ec.europa.eu/environment/nature/biodiversity/comm2006/pdf/mid_term_review_summary.pdf>
accessed 17 September 2017

In relation to the CAP reform, the mid-term review states;

The CAP reform for 2014-20 provides a range of instruments that can contribute to supporting biodiversity. If the target is to be achieved, these opportunities need now to be taken up by Member States on a sufficient scale. Local examples demonstrate successful sustainable agricultural practices. If implemented more broadly, they could put the EU back on track to achieve the target by 2020.⁷⁷

However, I would suggest that the emphasis on the importance of Member State implementation in putting the EU 'back on track to achieve the target by 2020'⁷⁸ is misleading. This suggests that the failure of the CAP to support progress towards EU biodiversity targets stems from Member State implementation rather than design issues at EU level. This, I will argue in subsequent chapters, does not appear to be the case in the UK.

The content of this chapter has set out the biodiversity objectives against which the greening of the CAP sought to deliver progress, the greening measures put in place to achieve these and the evidence to date which suggests that they are not delivering progress against these objectives. The scene of my research has been set, but the main body of the work is to come. I have established which greening measures have been adopted and that, to date, it does not appear sufficient, but key questions remain: Why and how were these measures chosen?

⁷⁷ Ibid 1

⁷⁸ Ibid

In the following chapters I seek to answer these questions an examination of the policy making process, in the light of the biodiversity objectives of the reform discussed here and the concept of evidence-based policy. I examine two documents central to the policy making process; the Impact Assessment on the policy reform proposals, and the IEEP report on the impact of CAP measures on biodiversity and habitat preservation.

4 - The Common Agricultural Policy Towards 2020 – an Impact Assessment

The following chapter contains an analysis of the information presented in the Impact Assessment in relation to its consideration of biodiversity objectives in the reform and policy design process.

Leading on from my discussion of biodiversity objectives¹ in the CAP in the previous chapter, I examine the information presented in the Impact Assessment and consider its value in evaluating how the CAP reform proposals will deliver against these objectives.

I discuss the depth and scope of information provided in the Impact Assessment in the light of the concept of evidence-based policy and argue that both the restrictive framing of the proposals and the lack of quantitative data on environmental impacts within the document seriously reduces its utility in the reform and policy design process. I also suggest areas which could have been more fully developed and make some suggestions as to why some information may have been consciously omitted from the Impact Assessment.

4.1 An overview of the Impact Assessment

As part of the 2013 CAP reform, the European Commission carried out an Impact Assessment on the proposals contained within five documents dealing with the rules and funding around the Common Agricultural Policy 2014-2020². These proposal documents

¹ See Ch 3 - 3.1 European Biodiversity

² European Commission, 'Proposal for a Regulation of the European Parliament and of the Council :

- establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy' COM (2011) 625 final
- establishing a common organisation of the markets in agricultural products (Single CMO Regulation)', COM (2011) 626 final
- on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)' COM (2011) 627 final

were produced in 2011 to inform the legislative process for the reforms agreed in 2013.

They deal with the introduction of the greening payment into Pillar 1, funding for Rural Development under Pillar 2 and the financing, management and monitoring of both Pillars.

The Commission was not subject to a statutory duty to carry out an Impact Assessment, but the Commission's webpages on the 'law-making process' state that impact assessments are carried out on 'initiatives expected to have significant economic, social or environmental impacts', including legislative proposals³.

Given that the CAP potentially affects 186.4 million hectares (1,8640,000 sq kilometres, or c.42%) of EU land⁴ and accounts for around 40% of the total EU budget⁵, any reform would be considered likely to have a significant impact.

The 2002 Communication from the Commission on Impact Assessment⁶ formed part of the Better Regulation Action Plan (3)⁷ launched that year. The Action Plan highlighted the importance of Impact Assessment within the policy-making process and set out new

- on the financing, management and monitoring of the common agricultural policy' COM (2011) 628 final

'Proposal for a Council Regulation determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products' COM (2011) 629 final

³European Commission, 'Impact Assessments' (Policies, information and services)
<https://ec.europa.eu/info/law-making-process/planning-and-proposing-law/impact-assessments_en>
accessed 18 September 2017

⁴ Eurostat, 'Agriculture statistics - the evolution of farm holdings' (2014)
<http://ec.europa.eu/eurostat/statistics-explained/index.php/Agriculture_statistics_-_the_evolution_of_farm_holdings> accessed 18 September 2017

⁵ European Commission 'CAP expenditure in the total EU expenditure' (*CAP post-2013: Key graphs & figures*, March 2017) Graph 1 https://ec.europa.eu/agriculture/sites/agriculture/files/cap-post-2013/graphs/graph1_en.pdf accessed 16 September 2017

⁶ European Commission, '2002 Communication from the Commission on Impact Assessment' COM (2002) 276 final

⁷ Better Regulation Action Plan, COM (2002)278

standards for a process of integrated Impact Assessment. As the 2011 Impact Assessment on CAP proposals was carried out prior to the launch of the recent Better Regulation Guidelines, the 2002 Better Regulation Action Plan guidance governs the approach to this Impact Assessment. It was designed to provide ‘a common set of basic questions, minimum analytical standards and a common reporting format’⁸ to develop the contribution of Impact Assessments to the policy-making process, but does not mention evidence, evidence-based policy or intervention logic⁹. I would suggest that this absence of focus on developing evidence-based policy contributes to the issues with the Impact Assessment which I identify in this chapter.

The 85-page Impact Assessment¹⁰ sets out, analyses and compares three policy-reform scenarios; Adjustment, Integration and Re-focus. It considers economic, social and environmental impacts of each, examines the potential administrative issues raised in each case and assesses each scenario in terms of political viability. Annexes 2 and 2A refer to biodiversity related measures and provide a more detailed discussion of these areas in relation to the CAP reform proposals. Annex 9 provides a summary of the public consultation.

The Impact Assessment makes no specific reference to the EU’s approach to evidence-based policy-making¹¹, but the nature of an impact assessment is that it assesses the potential

⁸ European Commission, ‘2002 Communication from the Commission on Impact Assessment’ COM (2002) 276 final, s1.1

⁹ See Glossary

¹⁰ European Commission, ‘Common Agricultural Policy towards 2020’ (Staff Working Paper – Impact Assessment) SEC (2011) 1153 final/2

¹¹ This has changed under the new Better Regulation Guidelines – see Ch 8

impact of proposed policy measures with which it is dealing. As such, the importance of a strong evidence base on which to base this assessment cannot be overstated and this importance is acknowledged in Impact Assessment Board opinion report on the draft Impact Assessment, which recommends that the final Impact Assessment should:

- (1) Provide a more explicit and detailed analysis of the concrete measures envisaged.
- (2) Clarify the intervention logicⁱ underpinning specific measures, and
- (3) (Provide) Better assessment of the expected policy outcome. ¹²

In response to these recommendations, the opening section of the Impact Assessment states that:

Following the Impact Assessment Board opinion and advice, considerable changes have been made to the report in order to provide ample evidence base and facilitate its use to support decision making.¹³

This response suggests that the issues identified in the Impact Assessment Board opinion report are addressed and remedied as far as possible in the final Impact Assessment. I would argue that this gives rise to a legitimate expectation that the Impact Assessment will use the 'ample evidence base' to 'support decision making' in line with the objectives of the policy reform, including the biodiversity objectives discussed below. I would also suggest that this expectation is not fulfilled, as discussed in the remainder of this chapter.

¹² European Commission Impact Assessment Board, 'Opinion: Title DG AGRI - MFF-related Impact Assessment on the Common Agricultural Policy towards 2020', Brussels, D(2011), sec. C

¹³ European Commission, 'Common Agricultural Policy towards 2020' (Staff Working Paper – Impact Assessment) SEC (2011) 1153 final/2, s1.1

4.2 Analysis of the Impact Assessment

4.2.1 Objectives

The EU Biodiversity Strategy¹⁴ was published in May 2011 and the Impact Assessment publication date is October 2011, so it is likely that the draft Impact Assessment was completed prior to the release of the Biodiversity Strategy. The final Impact Assessment makes reference to this strategy within the Policy Context section, to acknowledge that the strategy ‘requires further integration of biodiversity in key sectors such as agriculture’¹⁵, and makes a brief assessment of each of the policy scenario assessments against these targets. However, a detailed assessment of the intervention logic between the problems or objectives to be addressed and the policy options proposed is conspicuously absent, as discussed later in the chapter.

Rather than focussing on the EU Biodiversity Strategy targets, Section 3 of the Impact Assessment introduces the objectives of the reform proposals with reference to the ‘Europe 2020’ strategy mentioned in the previous chapter¹⁶.

This section identifies three broad policy objectives for the reformed CAP, the second focusing on sustainable growth, including the preservation of biodiversity:

¹⁴ European Commission, ‘Our life insurance, our natural capital; an EU Biodiversity strategy to 2020’ (Communication) COM (2011) 244 final

¹⁵ European Commission, ‘Common Agricultural Policy towards 2020’ (Staff Working Paper – Impact Assessment) SEC (2011) 1153 final/2, s2.4

¹⁶ European Commission, ‘Common Agricultural Policy towards 2020’ (Staff Working Paper – Impact Assessment) SEC (2011) 1153 final/2, s2.4 s3

Ensuring the sustainable management of natural resources, such as water and soil, and the **provision of environmental public goods such as preservation of the countryside and biodiversity**, integrating and promoting climate change mitigation and enhancing farmers' resilience to the threats posed by a changing climate, fostering green growth through innovation and reducing environmental damage by agriculture. This contributes to the sustainable growth objective of Europe 2020 with the aim of contributing to a low carbon economy, an expanding bio-economy and **protecting the environment**.¹⁷ (emphasis added)

Within the Executive Summary¹⁸, Section 2(3) identifies opportunities under Pillar 1 to address these objectives through reform of the Basic Payment system:

(3) Enhancing the effectiveness and efficiency of the policy by:

- rebalancing the direct payment support to better reflect income support objectives and environmental performance¹⁹

The categorisation of the 'rebalancing the direct payment support' objective as an issue of effectiveness and efficiency rather than an environmental issue. This is significant, as the introduction of the 30% greening payment in Pillar 1 equates to a figure only slightly lower than the entirety of the funding allocated to Pillar 2 measures.²⁰

¹⁷ Ibid 36 (emphasis added)

¹⁸ European Commission, 'Common Agricultural Policy towards 2020' (Staff Working Paper – Executive Summary of the Impact Assessment) SEC (2011) 1154 final/2

¹⁹ Ibid

²⁰ The total EU budget for direct payments under Pillar 1 for the 2014-2020 period is €291,273 million, of which 30% (€87,392 million) is allocated to greening, whilst the EU budget for rural development (which is supplemented by 25-50% by Member State funding) is €99,587 million

Section 2(2) of the 'Main policy objectives of the CAP reform' identifies elements under Pillar 2 as essential to 'address the economic, environmental, climate change and territorial challenges' of the CAP:

(2) Improving the environmental and climate change performance of the CAP by:

- "increasing the number of agricultural areas which are under agricultural practices providing environmental and climate action benefits and encouraging the take-up of more advanced agri-environmental measures by Member States and farmers;"

The separate categorisation of greening elements of the two Pillars in the impact assessment may be due to the different challenges they address. The direct support provided to farmers by Pillar 1 has come under criticism as a subsidy paid in tax-payers' money which returns very little public benefit²¹, and so justification may be sought in the form of environmental performance. The challenges relate to take-up, particularly of higher-level schemes²². As mandatory measures under Pillar 1 will affect a larger proportion of EU holdings than the voluntary measures under Pillar 2, any reform of Pillar 1 will also affect 'the effectiveness and efficiency of the policy' to a greater degree than changes of Pillar 2.

4.2.2 The Potential Impact of the Different Policy Scenarios:

European Parliament, 'Financing the CAP' (Fact Sheets of the European Union)
<http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_5.2.2.html> accessed 18 September 2017

²¹ Marcus Gilleard, 'Agricultural subsidy should shift towards public benefits' (Inside Track, 27 June 2017) <<https://greenallianceblog.org.uk/2017/06/27/the-balance-of-agricultural-subsidy-should-shift-towards-public-benefits/>> accessed 18 September 2017

²² See Ch 3 - 3.2.2.1 Agri-Environment Schemes in the UK

The three policy reform scenarios, as indicated earlier, were:

- 1) Adjustment – minor changes, optimising those elements which work well and addressing shortcomings without any fundamental changes to the policy
- 2) Integration – targeting CAP support on the objectives of the policy, introducing new elements and changing the structure of CAP
- 3) Re-focus – targeting support to environmental and climate-mitigation objectives, assuming market-concerns will take care of themselves²³

Table 1 (reproduced below) gives an outline of the main policy options and instrument in each scenario.

The policy responses range along a continuum ‘from a free market approach (i.e. no policy intervention) through an incentive-based approach (i.e. through voluntary actions with financial rewards) to a regulatory approach (i.e. through laws and regulations)’²⁴.

The pre-2013 CAP sits somewhere between the incentive-based approach and the regulatory approach, as Pillar 1 support was conditional on certain minimum environmental standards such as GAECs, SMRs and adherence to the requirements of the Birds and Habitats Directives, whilst subscription to an agri-environment scheme was voluntary and offered payment for costs incurred and income foregone, (although the elements of incentive and financial reward are lacking, as payments offered for these schemes cover loss of potential profits rather than profits in their own rights).

²³ European Commission, ‘Common Agricultural Policy towards 2020’ (Staff Working Paper – Impact Assessment) SEC (2011) 1153 final/2, 37-45

²⁴ Ibid 37

	Market instruments (Council Regulation (EC) No 1234/2007)	Direct Payments (Council Regulation (EC) No 73/2009)	Rural Development (Council Regulation (EC) No 1698/2005)
Adjustment: Emphasizing the CAP's achievements and addressing major shortcomings	<ul style="list-style-type: none"> - Streamlining and simplification of existing instruments. - Improving farmers' cooperation within competition rules. 	<ul style="list-style-type: none"> - Redistribution; enhanced cross compliance 	<ul style="list-style-type: none"> - Moderate increase in budget, used for competitiveness/ innovation or environment
Integration: Improving the targeting of the CAP to its objectives	<ul style="list-style-type: none"> - Streamlining and simplification of existing instruments. - Focus on food chain and improved bargaining power of farmers (3 sub-options) 	<ul style="list-style-type: none"> - Redistribution; new direct payment architecture – greening - Enhanced cross compliance, capping, small farmer scheme, young farmer scheme 	<ul style="list-style-type: none"> - Redistribution between Member States - Innovation, climate change and environment and guiding principles - Reinforced strategic targeting and common strategic framework with other funds
Re-focus: Limiting the scope of CAP interventions to environmental aspects	<ul style="list-style-type: none"> - Abolished 	<ul style="list-style-type: none"> - Phased out 	<ul style="list-style-type: none"> - Substantially increased funding; focus on climate change and environment.

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²⁵ Ibid 45

4.2.3 Analysis of Environmental Impacts

Section 5 of the Impact Assessment²⁶ gives projected outcomes of each scenario, with separate sections for economic, social and environmental impacts. In line with the focus of this research I will focus on the discussion of environmental impacts in each scenario as this relates to the protection of biodiversity²⁷.

4.2.3.1 The Adjustment scenario

The Adjustment scenario focuses on the development and improved efficacy of existing measures. As a result, any environmental benefits in this scenario are identified as coming from enhancement of existing protections and increased implementation and funding in the case of rural development measures. No major changes are proposed for the structure of either Pillar 1 or Pillar 2.

The strengthening of GAEC measures and other cross-compliance mechanisms is identified as an area of potential improvement for the environmental performance of the CAP.²⁸ In addition, a 'moderate increase' in available funding for rural development is projected to have the potential for some environmental benefits. However, the Impact Assessment also acknowledges that this benefit will be dependent on the application of the additional funding in each Member State, and given the emphasis on competitiveness and innovation in this scenario it is unlikely that additional rural development funding will be allocated to

²⁶ Ibid 45-76

²⁷ with the understanding that there is cross-over impact in a number of areas

²⁸ European Commission, 'Common Agricultural Policy towards 2020' (Staff Working Paper – Impact Assessment) SEC (2011) 1153 final/2, 51

measures specifically focused on the environment. Any benefit is likely to be incidental to measures designed to improve resource efficiency and modernisation of farming systems.²⁹

Although the Adjustment scenario could see benefits to biodiversity through greater utilisation of agri-environment schemes, the Impact Assessment states clearly that this is unlikely to be enough to attain biodiversity targets:

(...)regarding biodiversity, after the experience of the missed 2010 target, it remains doubtful whether this scenario would be sufficient to ensure the achievement of the Europe 2020 headline target of halting the loss of biodiversity and the degradation of ecosystem services in the EU by 2020, and restoring them in so far as feasible. This target calls for the maintenance of sustainable agriculture with a CAP that covers a considerable area with biodiversity-related measures.³⁰

4.2.3.2 The Integration scenario

The Integration scenario proposes a more substantial reform of the CAP than the Adjustment scenario, with structural changes to Pillar 1 in the form of the 'greening payment' and increased focus on environmentally beneficial measures within the rural development policy of Pillar 2.

²⁹ Ibid

³⁰ Ibid

The Impact Assessment sets out the proposed greening measures for Pillar 1 as the introduction of new requirements in five key areas:³¹

- 1) green cover³²
- 2) crop diversification
- 3) preservation of permanent grassland
- 4) creation of Ecological Focus Areas, and
- 5) measures relating to the Natura 2000 network of protected spaces³³

The measures present a combination of biodiversity related measures in CAP 2014-2020 (1-4) which farmers must meet in order to receive the direct payments under Pillar 1. This also includes the cross-compliance measures³⁴ required for the payment under existing legislation (Birds and Habitat's Directives).

The Impact Assessment asserts that 'the integration scenario is best shaped to achieve the (biodiversity strategy to 2020) target and is in line with the actions called for in the biodiversity strategy, with the greening component of the Pillar I as a major feature'.³⁵ However, there is no claim and little evidence that the integration scenario goes far enough in addressing the issues of biodiversity loss on agricultural land. As we shall see from the

³¹ European Commission, 'Common Agricultural Policy towards 2020' (Staff Working Paper – Impact Assessment) SEC (2011) 1153 final/2, 68-69

³² See Glossary

³³ See Ch 2 - 2.1.4 Environmental awareness and the MacSharry Reforms

³⁴ See Ch 2 - 2.1.7 Cross compliance in the CAP

³⁵ European Commission, 'Common Agricultural Policy towards 2020' (Staff Working Paper – Impact Assessment) SEC (2011) 1153 final/2, 70

IEEP (Institute of European Environmental Policy) report³⁶ discussed in the next chapter, the measures identified as required to put the EU on track to meet the target of halting biodiversity loss are much more strenuous than those proposed in the Integration scenario.

Whilst the Commission's Impact Assessment has identified a palatable middle ground in the form of the Integration scenario, lauding this option as a happy compromise between economic, social and environmental considerations, they fail to specify to what extent the scenario will address the challenges of biodiversity loss and make no commitments in this regard. To say a strategy 'is best shaped to achieve' a target and 'is in line with actions called for in the biodiversity strategy'³⁷ gives no clear indication of whether the scenario will, in fact, achieve its objectives. Of course, there are limitations to the predictions an Impact Assessment can make, as the efficacy of the scenario will depend on its implementation. However, by avoiding clear rhetoric such as 'if we do not adopt these measures the 2020 target will be missed' in the Impact Assessment, the Commission missed an opportunity to address the needs of the strategy at EU level.

4.2.3.3 The Re-focus scenario

This scenario is at the most extreme end of the scale and proposes a total reform of the CAP, including the phasing out of subsidy under Pillar 1 and significantly increased funding for

³⁶ Jana Poláková, Graham Tucker, Kaley Hart, Janet Dwyer, Matt Rayment, 'Addressing biodiversity and habitat preservation through Measures applied under the Common Agricultural Policy' (Report Prepared for DG Agriculture and Rural Development, Contract No. 30-CE-0388497/00-44. Institute for European Environmental Policy: London, 2011)

³⁷ European Commission, 'Common Agricultural Policy towards 2020' (Staff Working Paper – Impact Assessment) SEC (2011) 1153 final/2, 71

measures related to climate change and the environment under Pillar 2. In this instance Pillar 2 would, in effect, be the only remaining element of the CAP.³⁸

However, the Impact Assessment identifies any benefits gained by the greater focus of rural development funding on climate change and the environment measures as failing to counteract the significant negative impacts which the changes to Pillar 1 subsidies would have:

A phasing out of direct payments would lead to strong restructuring in the sector and much larger and more capital intensive farms. Production intensification in the most fertile regions and land abandonment in less advantageous areas would have negative environmental consequences. Focusing policy on rural development-type environmental measures would alleviate these problems, but would not contribute to enhancing the sustainability of agriculture.³⁹

Under this scenario there would also be a significant redistribution of the rural development budget with a new, exclusively environmental focus; this would result in the UK receiving around twice the EU allocation it received in 2013, whilst Member States such as Finland, Sweden and Spain would receive around half the funding they were allocated in that year.⁴⁰

As mentioned above, the major environmental impacts of this scenario would be intensification of agricultural practices in some areas and land abandonment in others, and

³⁸ Ibid 72

³⁹ Ibid

⁴⁰ Ibid 74

whilst land abandonment may provide opportunities for 'wilderness' type environmental conservation, overall the combination of intensification and abandonment is forecast to have detrimental impacts on biodiversity, particularly for those already threatened species which rely on extensively managed agricultural habitats.

In addition, the phasing out of subsidy under Pillar 1 would remove the incentives for farmers to observe the environmentally friendly aspects of cross-compliance currently included in GAECS⁴¹ and SMRs⁴².

At this point it is appropriate to raise a question about the Commission's choice of scenarios to include in its proposals; why was such an extreme scenario for the Re-focus option chosen? Their own analysis has shown that the Re-focus scenario would spell disaster for the agricultural industry on many economic, social and environmental grounds and was never a realistic proposal. When compared to the Adjustment scenario, which would effectively maintain the status quo, and the Integration scenario, which involves significant reform but maintains the current format and focus of Pillars 1 and 2 of the CAP, the Re-focus scenario is impractical.

I would suggest that a scenario further along the continuum towards a focus on environmental objectives such as the preservation of biodiversity, but which still presented a plausible option, would have been more useful in the suite of proposed scenarios, both as an option in its own right and as a tool for comparison against the other scenarios. Viewed from

⁴¹ See Glossary

⁴² See Glossary

another (more sceptical) angle, perhaps the 'disaster scenario' of Re-focus was chosen to make the middle-ground scenario of Integration more attractive, despite the suggestion that this does not do enough to address biodiversity loss and climate change.

The importance of the choice of these options for the protection of biodiversity should not be underestimated as we assess the policy design process; by framing the debate around CAP reform within these three options the proposals and Impact Assessment influence the focus of discussion. The Integration scenario is presented as the only feasible option for sustainable agriculture - Adjustment failing to address the issues and Re-focus going too far - so the discussion focuses around Integration-shaped reform. Some arguments call for softer greening measures for the sake of economic or social stability, some call for more stringent greening measures for the sake of biodiversity, climate change mitigation and sustainability, but the accepted model is one which looks very much like the Integration scenario.

If the Commission had presented a less extreme Re-focus scenario which gave an alternative option for CAP reform this may have changed the shape of the debate. For example, an alternative scenario with a greater focus on environmental concerns and scaled down direct payment support, but which retained Pillar 1 support for farmers in areas with natural constraints and less favoured areas. Rather than discussions around a more-or-less green version of the Integration scenario, the focus might have been around which elements of Pillar 1 direct payment support should be kept and which scaled back. This could have changed the entire direction of the CAP reform. As it was, the Re-focus scenario was presented as engendering such complete economic, social and environmental catastrophe

that consideration of the benefits of a milder version of some of its elements was discouraged from the first.

Evidence of the skewed choice of scenarios can be found in Section 6 of the Impact Assessment, which compares the scenarios with respect to objectives and impacts.⁴³

		Adjustment	Integration	Re-focus
Economic	Sector output	+++	++	+
	Competitiveness (short- and long-term)	++/+	+ / ++	+++
	Response to crisis	++	+++	+
Social	Employment	+++	++	+
	Income	+++	++	+
	Territorial cohesion	++	+++	+
Environmental	Territorial coverage	++	+++	+
	Targeted measures	+	++	+++
	Long-term sustainability	++	+++	+
Simplification		++	+	+++

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As can be seen from the Table above, the total ‘plus points’ of the Re-focus scenario is significantly less than either the Adjustment or Integration scenario. If the Commission had presented a Re-focus scenario which offered a similar number of total points but offered the highest impact in different areas, as in the comparison between the Adjustment and Integration scenarios, the debate between scenarios would conceivably have been more balanced.

⁴³ European Commission, ‘Common Agricultural Policy towards 2020’ (Staff Working Paper – Impact Assessment) SEC (2011) 1153 final/2, 76

⁴⁴ Ibid 76-77

For example, I would suggest that it would have been possible to propose a scenario which increased focus on environmental sustainability without reducing the agricultural industry's ability to respond to crisis through retention of Pillar 1 support in cases of agricultural emergency. The extreme restructuring proposed in the Re-focus scenario decreases its usefulness as an option for comparison with the other options proposed.

As is it, the Impact Assessment reaches the conclusion that 'while the adjustment option may not be sufficiently targeted and the refocus option too risky, the integration option appears to strike the right balance in progressively steering the CAP towards the EU objectives', though it does acknowledge that 'several stakeholders pointed towards opportunities coming from combining elements from more than one scenario.'⁴⁵

4.2.4 Annex 2: Greening the CAP

Annex 2 gives further details of the proposed measures which would make up the 30% greening payment of Pillar 1 direct payments under the Integration scenario.⁴⁶ A summary of these measures, as well as the suggested improvements and the costs and benefits identified for each are listed below.

Although the Annex gives further detail, it does not offer qualitative judgements on the value of each proposed measure or weigh the costs and benefits to present a final

⁴⁵ Ibid 81

⁴⁶ Annex 2: Greening the CAP

recommendation. The comments which accompany each section below are my own assessment of the original proposals.

As (1) green cover and (5) measures relating to the Natura 2000 network of protected spaces are not included in the final Commission proposals⁴⁷, but no explanation for the exclusion of these measures is given in that document, it is also appropriate in this section to examine and discuss potential justifications for the abandonment of these measures in the final proposal.

4.2.4.1 Green cover

– in brief, as this measure did not find its way into legislation, and the suggested benefit of this measure do not relate directly to biodiversity preservation)

Measures already in place include:

- Some GAECs and rules under the Nitrates Directive require certain measures – chiefly focuses on preventing soil erosion;
- Voluntary measures including winter cover are present in 54 RDPs in 16 Member States.⁴⁸

Suggested improvements under the greening measures:

- Proposed measure: 70% of land at farm level (arable, open air horticulture and permanent crops) covered from 15 November to 15 February.

Costs

⁴⁷ European Commission, 'Proposal for a Regulation of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy' COM (2011) 625 final

⁴⁸ Annex 2: Greening the CAP, 11-12

- This measure involves substantial costs for seeds, machinery, energy and labour for sowing in autumn and mechanical destruction and ploughing in spring. There is also the potential of income foregone as farmers would not be able to sell or graze the straw. Some of these costs may be counterbalanced by possible cost savings on fertilizer and a positive impact on yields for the next crop.⁴⁹

Benefits

- The benefits relate chiefly to areas such as water and soil quality (with associated benefits for climate change mitigation and adaptation) and flood prevention.⁵⁰

This measure was identified as particularly difficult to manage and control, as remote sensing would probably have been required to monitor compliance, and green cover is already compulsory in many Nitrate Vulnerable Zone under the Nitrates Directive (1991)⁵¹ (though the objective of this directive related to water pollution rather than biodiversity preservation). The substantial costs and limited benefits of this measure, along with the likely difficulty in implementing and monitoring it, give a good indication of why it was not included in the final greening package of the new CAP.

4.2.4.2 Crop rotation / diversification

Measures already in place include:

- Some optional GAECs around soil organic matter, but no compulsory measures;

⁴⁹ Ibid 16

⁵⁰ Ibid

⁵¹ Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, OJ L 375

- Crop rotation (including crop diversification, sequence and break crops) is present in 20 RDPs in 9 Member States.⁵²

Suggested improvements under the greening measures

- A compulsory measure within the requirement of the greening payment: 3 crops must be grown, with the main crop not exceeding 70% of the arable and open air horticulture area and the third crop covering no less than 5% of the area. An exemption for very small parcels of arable land should apply.

Costs

- This measure would involve significant short-term costs to put into place, and it may require new equipment and skills and alternative marketing outlets for new products. There may also be income foregone for the main crop and a short-term impact on yields in the case of intensive farming.⁵³

Benefits

- This measure also is identified as having offers benefits across a range on environmental concerns (including climate change mitigation and adaptation and improved habitats and landscape diversity), as well as cost-saving elements of improved nutrient management and reduced use of nutrients and plant protection products;

⁵² Annex 2: Greening the CAP, 10

⁵³ Ibid 15

- Potential long-term benefits are also identified, including improved yields and profitability over time, pest and disease control and less need for chemical inputs, though further quantitative and qualitative assessment is required on a large scale.⁵⁴

This measure can be found in Article 30 of the Commission proposal as follows:

Crop diversification

1. Where the arable land of the farmer covers more than 3 hectares and is not entirely used for grass production (sown or natural), entirely left fallow or entirely cultivated with crops under water for a significant part of the year, cultivation on the arable land shall consist of at least three different crops. None of those three crops shall cover less than 5 % of the arable land and the main one shall not exceed 70 % of the arable land.⁵⁵

This measure is designed primarily to address the negative effects which agricultural monoculture has on agricultural biodiversity and long-term sustainability, though it is identified as presenting climate change mitigation benefits as well.

According to data from the Farm Structure Survey carried out across the EU in 2013, arable land accounted for 59.8% of UAA in the EU in 2013 and the average size of holding across all

⁵⁴ Ibid

⁵⁵ European Commission, 'Proposal for a Regulation of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy' COM (2011) 625 final, Art 30

Member States was 16.1ha, though this did vary widely between states (the second highest average was recorded in the United Kingdom at 94 hectares).⁵⁶

The Impact Assessment offers no data on the affect this measure would have on the farm structure of EU agriculture or any benefits or detriments to biodiversity in agricultural areas as a result. Nor does it offer details of the area of land or number of holdings which would be caught by the measure's criteria of 3ha+ of arable land on a holding, which would at least support a separate assessment of biodiversity outcomes using data from other studies. Although this initially appears to be a low threshold, the average holding size of 16.1ha puts this in perspective in relation to a large number of EU farms.

In defence of the measure, this threshold will ensure that larger holdings with a conceivable larger risk of monoculture would be subject to the requirement, thereby targeting the impact at holdings which offer the greatest potential for beneficial change due to their size. However, is it difficult to gain any idea of overall value of the measure without any indication as to the impact in terms of agricultural area, which the Impact Assessment does not provide.

4.2.4.3 Obligation to maintain permanent grassland at farm level

Measures already in place:

⁵⁶ Eurostat, 'Main statistical findings; The size of agricultural holdings' (Farm structure statistics, 2013) <http://ec.europa.eu/eurostat/statistics-explained/index.php/Farm_structure_statistics#The_size_of_agricultural_holdings> accessed 18 September 2017

- The obligation to maintain permanent grassland at Member State/Regional level, and take corrective measures if there is a decrease of more than 5%;
- Protection of permanent pasture as a compulsory GAEC;⁵⁷
- Similar measures are present in 62 Rural Development Programmes (RDPs) in 23 Member States.⁵⁸

Suggested improvements under the greening measures:

- Farm level obligations would prevent the area of permanent grassland from 'moving around' and resulting in high GHG emissions and nutrient release
- Focusing of existing GAEC on biodiversity rich grassland, and introduction of 2 new GAECs for carbon-rich soils and wetlands⁵⁹

Identified costs

- The opportunity costs to farmers of not converting permanent grassland into arable land may be high, given the increased demand for arable land that can be put to a more profitable use;
- There will be relatively low cost of maintenance for this measure, as the focus is on preservation of an existing state.⁶⁰

Benefits

- The suggested improvements offer benefits across a range of environmental concerns including climate change mitigation and adaptation, biodiversity, soil, water management, flood prevention and landscape amenities.⁶¹

⁵⁷See below p79

⁵⁸ Annex 2: Greening the CAP, 9

⁵⁹ Ibid

⁶⁰ Ibid 14

⁶¹ Ibid

The requirement to maintain permanent grassland at Member State/ Regional Level already applies in the EU under Article 6(2) of Regulation (EC) No 73/2009:

Article 6 - Good agricultural and environmental condition

...

2. The Member States...shall ensure that land which was under permanent pasture at the date provided for the area aid applications for 2003 is maintained under permanent pasture⁶²

Extensively managed permanent grasslands have long been identified as beneficial to biodiversity across a broad range of species⁶³ and legislative protection was enacted to combat the progressive loss of permanent grassland from the EU.

Data from Eurostat shows that the proportion of the EU Utilised Agricultural Area for which permanent grassland and meadow accounts grew by more than 2.5% between 2005 and 2010 then declined by 1.2% between 2010 and 2013.

Data ↓, Year →	2005	2007	2010	2013
EU total Utilised Agricultural Area (UAA) (ha)	174,093,270	175,465,080	179,685,870	175,338,130
EU permanent grassland and meadow (ha)	57,026,760	57,936,130	63,407,570	59,736,980
%	32.75	33.02	35.29	34.06

⁶² Council Regulation (EC) No 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 [2009] OJ L 30/16, Art 6(2)

⁶³ Clunie Keenleyside, Guy Beaufoy, Graham Tucker and Gwyn Jones, 'High Nature Value farming throughout EU-27 and its financial support under the CAP' (Report Prepared for DG Environment, Contract No ENV B.1/ETU/2012/0035, Institute for European Environmental Policy, London, 2014)

This reversal of direction may account for the inclusion of a permanent grassland measure in the greening elements of the CAP as a reaction to a perceived risk of further decline. Under the system as it was in 2011, remedial action was only required if there was a decrease in overall area of permanent grassland by more than 5%, and as the decline between 2010 and 2013 was of 1.2%, this would not trigger any action. However, given that the 2007 – 2010 period saw an increase of grassland area of a similar magnitude (the area increased by 5.5 million ha between 2007 and 2010 then decreased by 3.7 million ha from 2010 to 2013), this could easily also have been attributed to a natural fluctuation in grassland area within the UAA, and overall the EU area of permanent grassland in 2013 was 2.7million ha larger than in 2005.

The measure to maintain the level of permanent grassland at a farm/holding level can be found in Article 31 of the proposal for rules for direct payment regulation:

Permanent grassland

1. Farmers shall maintain as permanent grassland the areas of their holdings declared as such in the application made pursuant to Article 74(1) of Regulation (EU) No XXX (HZ) for claim year 2014, hereinafter referred to as “reference areas under permanent grassland.

...

⁶⁴ Eurostat, ‘Permanent grassland: number of farms and areas by agricultural size of farm (UAA) and size of permanent grassland area’ <http://ec.europa.eu/eurostat/web/products-datasets/-/ef_pograss> accessed 18 September 2017

2. Farmers shall be allowed to convert a maximum of 5 % of their reference areas under permanent grassland (...)⁶⁵

This proposes to change the area of grassland which must be retained from the area declared in 2003 (from the 2009 Regulation requirement) to that declared in 2014. On the basis of the Eurostat data above, this baseline is potentially higher by more than 2.5million ha (59,736,980 in 2014 ha vs 57,026,760 ha in 2005), so realigning the baseline could have some advantages, but a 5% reduction (as is permitted) across all holdings would still result in an overall decrease to below the 2005 level (59,736,980 minus 5% equals 56,750,131 ha), so the second section of the proposed measure effectively eliminated any benefits which might have been gained by the realignment of the baseline.

Taking this into account, it appears the only significant advantage of this greening measure over measures already in place is the requirement that areas of permanent grassland are maintained at holding (farm) level rather than Member State or regional level, meaning areas of permanent grassland on individual farms would be preserved over time. As the Impact Assessment identifies, this could offer benefits for the preservation of biodiverse habitats, however any improvement on the benefits of measures already in place is likely to be small.

⁶⁵ European Commission, 'Proposal for a Regulation of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy' COM (2011) 625 final
Art 31

Once again, this does raise questions around the rationale for inclusion of this measure in the CAP reform proposals. The Impact Assessment acknowledges that significant changes are required to meet the EU's biodiversity strategy targets,⁶⁶ but fails to note that the measures presented in the Integration scenario will be insufficient to bring about this change.

This also leads me to speculate about other possible reasons for the choice of this measure as an aspect of the CAP reform proposals. I would suggest that adjustments to the measure protecting permanent grassland were an easy way for the Commission to present a proposal which appeared to prioritise an important form of habitat whilst requiring minimal action from farmers. In addition, monitoring of the permanent grassland area on holdings in receipt of the Single Payment requires minimal additional resource from Member States, as this information is declared by farmers as part of their Single Payment declaration and checks to verify this information already formed part of the monitoring process. In summary, this is an easy measure for Member States to implement as well as for farmers to deliver.

⁶⁶ Annex 2: Greening the CAP, 4

4.2.4.4 Ecological Set Aside / Ecological Focus Areas

Measures already in place include:

- A compulsory GAEC for maintaining some landscape features and buffer strips along water courses, and an optional GAEC on retaining terraces⁶⁷
- There are also similar measures in 23 RDPs in 11 Member States.⁶⁸

Suggested improvements under the greening measures:

- A compulsory measure within the requirement of the greening payment: 7% of land should be set aside as an Ecological Focus Area at farm level (arable, open air horticulture and permanent crops);
- Areas already set aside under cross compliance would count towards this measure, and very small parcels of arable land or permanent crops could be exempt.

Costs

- The opportunity cost to farmers of no production, which would be in the form of income foregone but which should be balanced with possible increase in prices (i.e. the market prices for produce would adjust as all farmers setting aside land as an EFA will be in the same situation).⁶⁹

Benefits

- Ecological Focus Areas would offer benefits for biodiversity, soil and water quality, climate change mitigation and adaptation, pest control, landscapes and pollination.⁷⁰

⁶⁷ Council Regulation (EC) No 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 [2009] OJ L 30/16, Annex III – Options standards – Retain terraces

⁶⁸ Annex 2: Greening the CAP, 15

⁶⁹ Annex 2: Greening the CAP, 15

⁷⁰ Ibid

This measure is set out in Article 32 of the reform proposal as follows;

Ecological focus area

1. Farmers shall ensure that at least 7 % of their eligible hectares as defined in Article 25(2), excluding areas under permanent grassland, is ecological focus area such as land left fallow, terraces, landscape features, buffer strips and afforested areas as referred to in article 25(2)(b)(ii).⁷¹

This measure has some similarities to the permanent grassland measure⁷² in that it has been the subject of previous legislative requirements. Ecological Focus Areas offer many of the same environmental benefits as the set-aside (both compulsory and voluntary) adopted within the CAP in the 1980s⁷³ and '90s.⁷⁴ Set aside was a compulsory requirement for farmers to take 15% of their land out of production (to set it aside), which was abolished in 2008 as part of the CAP Health Check⁷⁵ to address shortages of cereal crops in the European market.⁷⁶ As with permanent grassland, set-aside was widely acknowledged to offer significant environmental benefits in the form of soil and water protection, botanical

⁷¹ European Commission, 'Proposal for a Regulation of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy' COM (2011) 625 final, Art 32

⁷² See Ch 3 - 3.2.1.2 Permanent grassland

⁷³ Council Regulation (EEC) No 2078/92 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside OJ L 215

⁷⁴ Commission Regulation (EEC) No 1272/88 laying down detailed rules for applying the set-aside incentive scheme for arable land [1988] OJ L 121/36

⁷⁵ European Parliament resolution of 12 March 2008 on the CAP 'Health Check' (2007/2195(INI)) para 39

⁷⁶ European Commission, 'Cereals: Commission proposes to set at zero the set aside rate for autumn 2007 and spring 2008 sowings' IP/07/1329 (Brussels 2007)

diversity and habitat creation and in Member States such as the UK a replacement voluntary set-aside system was created to preserve the environmental benefits set-aside delivers.⁷⁷

The proportion of arable land per holding to be allocated as an Ecological Focus Area as originally proposed under the CAP reform was 7%; less than half the compulsory set aside requirement which had been abolished three years earlier. After negotiation this was reduced to 5% and no explanation or justification for this reduction appears in any of the literature I have reviewed within my research.

The measure also allows for areas already set aside voluntarily (as in the UK) to count towards the % allocation and for the exemption of very small areas. Once again the Impact Assessment does not give an indication of how much land would be caught by this measure, or any other quantitative data. Given the significant amount of data available on the benefits of set aside⁷⁸, and the similarities between set-aside and ecological focus areas, some more concrete predictions on the impact of this measure could have been expected.

The potential benefits of the EFA measure over previous set-aside are the more specific elements (land left fallow, terraces, landscape features, buffer strips and afforested areas) which Member States would have discretion in offering as options to recipients of the Basic Payment. As with agri-environment schemes (AES)⁷⁹, the benefit or otherwise of EFAs would

⁷⁷ Campaign for the Farmed Environment 'History of CFE' <<http://www.cfeonline.org.uk/home/history-of-cfe/>> accessed 18 September 2017

⁷⁸ DEFRA 'Advantages and disadvantages of different set-aside types' (4. Environmental Considerations) <<http://adlib.everysite.co.uk/adlib/defra/content.aspx?id=000IL3890W.16NTC130LRC2ST>> accessed 02 May 2018

⁷⁹ See Glossary

depend on the menu of options on offer (and the environmental benefits of each) and the take-up of each option. If Member States offer some measures which are easy to fulfil and which offer minimal environmental benefits these are likely to be the most popular with farmers and this is a risk the Impact Assessment fails to address.

4.2.4.5 Natura 2000⁸⁰

- in brief, as above

Measures already in place include:

- Statutory Management Requirements (SMRs) 1 (protection of wild birds) and 5 (protection of habitats);⁸¹
- Article 38 of Regulation 1698/2005⁸² allows for compensation (costs incurred and income foregone) for the disadvantages of farmers in Natura 2000 areas.

Suggested improvements under the greening measures:

- Proposed measure: Farmers in all designated Natura 2000 areas get an additional payment.

Costs

- There is no additional cost for farmers for the improvements to this measure, as relevant requirements are already mandatory (as above).

Benefits

⁸⁰ See Ch 2 - 2.1.4 Environmental awareness and the MacSharry Reforms

⁸¹ Annex 2: Greening the CAP 13

⁸² Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) [2005] OJ L 277/1

- The measure offered benefits for biodiversity, water quality and climate change mitigation, depending on the conservation measures put in place in each Member State. However, as large number of Natura 2000 sites lack management plans⁸³, additional funding would be of limited use without the framework to create and implement management plans.⁸⁴

The Natura 2000 additional payment measure was not adopted as part of the Pillar 1 greening measures in the final reform package, and I have been able to find very little commentary on why this was abandoned. It appears that the Commission chose instead to urge Member States to produce prioritised action frameworks (PAFs)⁸⁵ for financing Natura 2000 sites,⁸⁶ and as the chief concern around Natura sites relates to the lack of management plans (rather than lack of funding or mandatory requirements) this does seem a reasonable approach.

The Commission has introduced support for farmers in areas facing natural constraints (ANCs – previously LFAs – Less Favoured Areas) under the Rural Development

⁸³ European Environment Agency, 'Natura 2000 sites with management plan(s) or equivalent instruments' <https://www.eea.europa.eu/data-and-maps/daviz/natura2000-management-plan#tab-chart_2_filters=%7B%22rowFilters%22%3A%7B%7D%3B%22columnFilters%22%3A%7B%22pre_config_CountryName%22%3A%5B%22Austria%22%5D%7D%7D> accessed 02 May 2018

⁸⁴ Annex 2: Greening the CAP, 13

⁸⁵ The Prioritised Action Framework for Natura 2000 (PAF) is a planning tool designed to help Member States identify prioritised actions and 'the supportive monitoring and evaluation measures' for which funding is required and point to available EU funding options (including funds such as the EAFRD, which also funds CAP measures) - <http://incc.defra.gov.uk/default.aspx?page=6934>.

⁸⁶ Clunie Keenleyside, Graham Tucker and Evelyn Underwood, 'Farming for Natura 2000' (Document prepared for the European Commission by Concha Olmeda (Atecma/N2K GROUP) (IEEP) under contract N° 070307/2010/580710/SER/B3, 2104) vi

Regulation⁸⁷ and this would act as an additional source of funding for many Natura 2000 sites, as there is significant overlap between designations.⁸⁸ No requirements of actions are attached to ANC payments and so these are unlikely to prompt changes in farming behaviour with biodiversity benefits, as is the aim of the greening measures introduced into Pillar 1.

4.2.4.6 Cost calculation for Greening

Annex 2 of the Impact Assessment (Greening the CAP) also provides a cost calculations summary for a number of greening options, comparing a 'basis' scenario in which there is no greening payment with greening measures forming various alternative options.⁸⁹

However, this section does not give an indication of which of the options are viable under the EU funding allocation. As the amount of funding allocated to each Member State under Pillar 1 was known at the time the Impact Assessment was written, and the costs of each greening measure by hectare are calculated within the assessment, it is surprising that no overall cost calculation for each option was presented. The Commission would conceivably have been able to use data from recent Single Payment applications to estimate the required funds for each scenario. This would give an indication of whether each was viable under the funding allocation, acknowledging potential variations in national implementation, but the

⁸⁷ Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 [2013] OJ L 347/487, Art 31 - 32

⁸⁸ Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 on establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 [2013] OJ L 347/608

⁸⁹ Annex 2: Greening the CAP, 18

Impact Assessment offers no explanation as to why this was not done.

As the Impact Assessment also fails to give any strong indication of which greening measures were necessary to meet the CAP biodiversity targets, an indication of funding viability would have been useful in discussions around greening options from a financial perspective; if the focus was not on what would be effective, it could at least have been on what was affordable.

4.2.4.7 Annex 2 Conclusions

Section 4 of Annex 2 'Greening of the CAP as a Whole' reiterates the concluding messages of the main Impact Assessment i.e. the proposed changes of the Adjustment scenario are insufficient to meet the EU 2020 headline target of halting the loss of biodiversity and the degradation of ecosystem services in the EU by 2020, and restoring them in so far as feasible, while the benefits of an increased focus on greening measures in the Re-focus scenario would be 'severely compromised'⁹⁰ by the phasing out of direct payments and their associated cross-compliance benefits, as well as the risk of intensification and land abandonment in many areas.⁹¹

As in the main Impact Assessment conclusion, the endorsement of the Integration scenario is cautious, with emphasis laid on the importance of striking the right balance in the design of the greening component to offer 'considerable potential to improve resource efficiency

⁹⁰ Ibid 24

⁹¹ Ibid 22

that is a win-win situation for both farmers and the environment.⁹² At no point is there a commitment that the Integration scenario will be sufficient to meet the 2020 target to halt biodiversity loss.

Annex 2A (Fact-sheet – Biodiversity and Agriculture) gives a more detailed analysis of the current status and trends of biodiversity in agricultural areas in the EU, including individual sections on the risks of land abandonment, the concepts of ecosystems and ecosystem-services, and issues around pesticide use, water and soil protection. It also recaps the European biodiversity agenda and provides a summary of the CAP instruments in Pillars 1 and 2 which address biodiversity issues.

Whilst this information is of interest, it is covered in greater detail in the subsequent chapter on the IEEP report⁹³, and so is not considered in detail here.

Annex 9 contains a report on the public consultation on the proposals carried out by the European Commission⁹⁴ and this is examined in a later chapter⁹⁵ alongside the public consultations in the UK regions.

⁹² Ibid 25

⁹³ See Ch 5

⁹⁴ Annex 9: Report on the Public Consultation

⁹⁵ See Ch 7

4.2.5 Annex 11: Methodology; evaluations and research projects relating to CAP

The final section of the Impact Assessment which I will briefly discuss is Annex 11, which deals with methodology, overview of evaluations, Joint Research Centre (JRC) research, studies and research projects relating to the CAP. The annex asserts that:

Analysis of the potential impacts from the different policy options about the future CAP has been carried out on the basis of quantitative analysis which was then complemented with quantitative and qualitative information from the literature and public consultations (mostly on the social and environmental impacts).⁹⁶

The 26-page annex contains sections on the analytic tools used in the Impact Assessment, details of baseline projections and scenario simulations and lists of research activity either past or ongoing in relation to the assessment of the CAP reform proposals. Details of modelling systems and previous studies are provided and the overall impression is that the content of the Impact Assessment was formulated from an extensive and detailed evidence base.

The information in this annex supports my assertion that there is a wealth of data on which the Commission or associated bodies could draw in order to assess the impacts of the policy proposals on biodiversity. As 26 pages are dedicated to demonstrating the scientific basis for the Impact Assessment, this does raise the question of why the Impact Assessment fails to

⁹⁶Ibid 2

give any conclusive indication of whether the reform proposals offer real options for meeting the biodiversity targets of the EU.

I would suggest that the Impact Assessment of the CAP reform proposals is a missed opportunity. By its very name, the Impact Assessment should provide an assessment of the impact of the proposals under discussions, and whilst broad suggestions around the impacts of the Adjustment, Integration and Re-focus scenarios are presented, no clear assessment of the impact of the preferred Integration scenario on the biodiversity objectives of the CAP reform is offered.

The Impact Assessment fails to take account of the EU Biodiversity Strategy objectives⁹⁷ which relate to CAP within its intervention logic, referring instead to the Europe 2020 Strategy objectives⁹⁸. It also fails to make use of the 'ample evidence base'⁹⁹ available to support the assessment of the policy proposals and provides no clear assessment of the degree to which the proposed policy measures would deliver against the objectives mentioned, despite the assertion in Annex 11¹⁰⁰ that the assessment of the scenarios was based on extensive scientific analysis. Finally, the Impact Assessment does not address the issue of the restrict framing of the policy scenario proposals discussed above.¹⁰¹

⁹⁷ See Ch 3 - 3.1 European Biodiversity Objectives

⁹⁸ European Commission, 'Common Agricultural Policy towards 2020' (Staff Working Paper – Impact Assessment) SEC (2011) 1153 final/2, s3

⁹⁹ European Commission, 'Common Agricultural Policy towards 2020' (Staff Working Paper – Impact Assessment) SEC (2011) 1153 final/2, s1.1

¹⁰⁰ See above p97

¹⁰¹ See above p76

On the basis of the assessment above, I question the utility of the Impact Assessment in incorporating biodiversity considerations into the reform and policy design process of the 2014-2020 CAP. In the following chapter I examine the report commissioned by the European Commission to assess the impact of CAP measures on biodiversity and habitat preservation in the EU, as an example of the type of detailed, evidence-based analysis which I would have expected from the Impact Assessment. This report serves as a point of comparison to the Impact Assessment and a source of data through which we can assess the suitability of the greening proposals for addressing the EU biodiversity objectives.

PRESERVATION WITHIN THE COMMON AGRICULTURAL POLICY

The previous chapter examined the use of the Impact Assessment as a tool within the policy design process of the 2014-2020 CAP, focussing on the evidence-base for the assessment of the greening proposals against EU biodiversity objectives. I identified a number of issues relating to the use of scientific evidence in the formulation and assessment of these proposals. I also argued that the Impact Assessment failed to make use of an ample evidence base to draw useful conclusions about the likely impact of the proposals on delivery against the biodiversity targets.

This chapter examines the IEEP¹ report on the impact of CAP measures on biodiversity and habitat preservation commissioned by the European Commission to inform the policy reform process. The report serves as a useful point of comparison to the Impact Assessment². It showcases the degree to which the substantial body of scientific evidence around the impact of agricultural management on the preservation of biodiversity can be used to carry out a meaningful and instructive assessment of policy proposals. This is something I assert is absent from the Impact Assessment, which minimises its value as a tool in the policy design process.

5.1 The IEEP and Report Overview

As part of its preparation for the Common Agricultural Policy reform of 2013, the European Commission commissioned the Institute for European Environmental Policy (IEEP)³ to produce a

¹ Jana Poláková, Graham Tucker, Kaley Hart, Janet Dwyer, Matt Rayment, 'Addressing biodiversity and habitat preservation through Measures applied under the Common Agricultural Policy' (Report Prepared for DG Agriculture and Rural Development, Contract No. 30-CE-0388497/00-44. Institute for European Environmental Policy: London, 2011)

² See Ch 4

³ According to its website the IEEP is 'a sustainability think tank...working with stakeholders across EU institutions, international bodies, academia, civil society and industry' whose work 'spans nine research areas and covers both short-term policy issues and long-term strategic studies'

Institute for European Environmental Policy (IEEP), 'About IEEP' (2017) <<https://ieep.eu/about-us>> accessed 19

report on the impact of CAP measures on biodiversity and habitat preservation. The in-depth report (the full text of which is 357 pages) was published in September 2011, slightly ahead of the Commission's initial policy proposals on CAP reform, which were published in October 2011.⁴ The report is entitled 'Addressing biodiversity and habitat preservation through measures applied under the Common Agricultural Policy'.⁵ As with timing around the publication of the EU Biodiversity Strategy mentioned in the previous chapter⁶, the close proximity of publication dates raises the question of whether the timeline of the reform process may have exacerbated the issues of full consideration of scientific evidence highlighted in my examination of the Impact Assessment⁷. No mention of this 2011 IEEP report is made in the Impact Assessment and this also raises the question of why the Commission commissioned a report, presumably at substantial expense, if it was not to be used to inform the policy-design process.

The IEEP report offering cautious support for the greening proposals of EFAs, maintenance of permanent grassland and crop diversity⁸. This suggests that these proposals were provided to the IEEP prior to their publication within the Commission communication to inform the report.

However, the IEEP report does not include a detailed assessment of these draft proposals, as the proposals had not been finalised and, crucially, because a detailed assessment of the proposals fell

September 2017

⁴ European Commission, Proposals for a Regulation of the European Parliament and of the Council:

- establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy, COM (2011) 625 final
 - establishing a common organisation of the markets in agricultural products (Single CMO Regulation), COM (2011) 626 final
 - on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), COM (2011) 627 final
 - on the financing, management and monitoring of the common agricultural policy, COM (2011) 628 final
- Proposal for a Council Regulation determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products, COM (2011) 629 final

⁵ Poláková (etal) (n1)

⁶ See Ch 4

⁷ See Ch 4

⁸ Poláková (etal) (n1) 160

within the remit of the Impact Assessment as previously discussed.⁹ The report refers to biodiversity objectives in general terms and to the Europe 2020 Strategy objectives specifically¹⁰, but does not make reference to the EU Biodiversity Strategy to 2020¹¹ objectives published in May 2011, again perhaps due to the proximity of publication dates.

The purpose of the report refers to a more general assessment of past and potential future CAP measures which support the delivery of biodiversity objectives:

(T)he purpose of this study is to consider how policies, particularly the Common Agricultural policy (CAP), have worked in terms of their design, coordination and implementation for sustaining biodiversity and associated ecosystem services through agriculture, and how their role can be enhanced in the future to contribute towards meeting the EU's biodiversity goals.¹²

The report closely examines the relationship between agriculture and biodiversity in Europe, focusing on the development and importance of agricultural habitat types within the wider countryside and the challenges facing the preservation of these habitats within the modern agricultural context. It cites a number of scientific studies and the evaluation of the CAP measures is made through reference to key biodiversity indicators such as the status of habitats of Community importance and the population of Annex I species (both under the Habitats Directive¹³).

⁹ See Ch 4

¹⁰ Poláková (et al) (n1), 129

¹¹ European Commission, 'Our life insurance, our natural capital; an EU Biodiversity strategy to 2020' (Communication) COM (2011) 244 final

¹² Poláková (et al) (n1), xviii

¹³ Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora [1992] OJ L 206/7

The report encompasses a pan-European literature review as well as case studies from six Member States, including the UK, and introduces key issues in the relationship between farmland management and farmland wildlife by identifying agricultural habitats and priority farmland species. The report presents the biodiversity importance of agricultural habitat types¹⁴ in a number of ways, including illustrative tables on priority farmland habitats¹⁵ and agricultural bird species¹⁶.

It also gives a summary of how trends in EU agriculture (such as mechanisation) have impacted on farmland biodiversity¹⁷ to date and the impact future trends (such as abandonment) may have. The relationship between agriculture and biodiversity conservation is illustrated through case studies from six Member States, including the UK.

5.1.1 The UK Study (2007)

The first key study I discuss in this section (cited in detail in Annex 2.9: Quantification of risks and impacts of land-use change on species and the potential impacts of mitigation measures¹⁸) was carried out by Simon Butler and colleagues at the University of Reading in 2007 and involves modelling the impacts (and risks) of various changes in agricultural practices on populations of UK farmland birds.¹⁹ The study was then adapted to Europe in 2010 using the European Farmland Bird Index (EFBI)²⁰ to examine the impacts and risks to species covered by this agri-environmental indicator.

I discuss this study in detail here as, although it is only one of a number cited in the report, it is an

¹⁴ Grouped by habitat type (e.g. grassland, dunes, bogs, etc) , conservation status and geographical region - 9.8 Annex 2.8: The status of Habitats of Community interest

¹⁵ See appendix – Table 3

¹⁶ See appendix – Table 4

¹⁷ Ibid 31-34

¹⁸ Ibid 278-85

¹⁹ Simon J. Butler, Juliet A. Vickery, and Ken Norris, 'Farmland biodiversity and the footprint of agricultural change' (2007) 315 Science 381

²⁰ See Glossary

exemplar of an evidence-based scientific study which both demonstrates that the impact of agricultural management on biodiversity is known, and that impacts of proposed changes can be forecast. It is also an excellent example of a study which is initially based in a single Member State and then scaled up to a European level to broaden the scope of the application. Finally, as it is initially based in the UK, and focuses on impacts on biodiversity of measures under agri-environment schemes on UK farmland before scaling up to the CAP as a whole, it is particularly relevant for the purposes of my research.

The 2007 UK study used a 'trait-based modelling methodology'²¹ to predict the impact of changes in agricultural practices on different species on the basis of their ecological traits and previous population fluctuation in reaction to similar changes in the past, taking into account the species' ecological resistance. There are three key elements of the model:

- 1) Characterisation of each species' ecological needs (what does it need from agricultural habitat);
- 2) Assessment of the exposure to risk from agricultural changes (how much would changes to agricultural habitat effect its ability to survive);
- 3) Determine the level of effect of risk exposure by adjusting for the ecological resilience of the species (how much could it adapt to a few changes);

For example (in simplified terms), if a species is heavily reliant on farmland cover such as hedgerows for breeding habitat (1), how much would this be affected by the development of larger farms with larger field sizes and fewer hedgerow (2), and could the impact on the species be

²¹ Poláková (et al) (n1), 278

mitigated through its ability to adapt by nesting in other areas (3)?

The trait-based modelling system creates a risk assessment approach²², which gives an indication of the risks faced by species under various instances of change in agricultural practices, as well as an indication of where resource should be focused in order to best address these risks.

From the UK research, Butler (et al) identified that the greatest risk across the farmland bird species in their study was the loss of food resources in cropped areas²³ (as compared to the risk of loss of food resources or nesting habitat in margins or hedgerows), and that resource would be best directed to address this risk. However, they also found that the options which were most widely taken up by farmers in Entry Level Stewardship (ELS)²⁴ schemes (English AES²⁵) were those which require actions applicable to margins and hedgerows, and so failed to address the greatest risk of the loss of food resources in cropped areas, as identified in the 2007 study. Although the ELS scheme did include ‘a wide variety of options that have the potential to address all the main risk factors’, the options chosen by farmers under the scheme were those less likely to provide the broadest benefit to biodiversity.²⁶

This ‘trait-based risk assessment approach’ was later applied to a large number of non-avian species fully or partially dependent on agricultural habitats, including bumblebees, butterflies, mammals and arable plants.²⁷ The results from these further UK studies were combined with the farmland bird assessments to give an overall picture of the health and sustainability of the UK’s

²² Ibid 282

²³ Areas under crop, i.e. arable

²⁴ See Ch 6 - 6.2.3 Rural Development Policy

²⁵ See Glossary

²⁶ Poláková (et al) (n1), 282

²⁷ Simon J. Butler, David Brooks, Ruth E. Feber, Jonathan Storkey, Juliet A. Vickery, and Ken Norris, ‘A cross-taxonomic index for quantifying the health of farmland biodiversity’ (2009) 46(6) *Journal of Applied Ecology* 1154

farmland wildlife given the threats faced. The results suggested that the populations of two-thirds of the 333 plant and animal species assessed were could not be maintained at favourable conservation status²⁸ under current UK agricultural practices²⁹. Furthermore, the potential for the ELS scheme to mitigate impacts on biodiversity was not being realised due to insufficient uptake of options that address risks in the cropped area.³⁰

5.1.2 EU study (2010)

In 2010, the content of the 2007 study described above was further developed and its implementation broadened to assess the potential impact of agricultural changes on 54 common farmland bird species across all the EU Member States.³¹ The study focused on the six agricultural changes³² covered in the 2007 UK study (rather than providing a comprehensive assessment of all changes within the EU), and also took into account migration patterns within the European area.³³

The 2010 study reaffirmed findings from the 2007 UK study, including the finding that greatest risk (76%) was associated with ‘detrimental changes that occurred in the cropped area of landscapes’; three-quarters relating to reductions in food resources, and one quarter linked to reduced nesting success.³⁴ The EU study also proposed four scenarios of land-use and policy change and estimated the potential impacts projected to 2020:

Scenario 1: a baseline scenario

²⁸ See appendix

²⁹ Poláková (et al) (n1), 282

³⁰ Ibid

³¹ Ibid 283

³² Spring to autumn sowing; increased agrochemical inputs; loss of non-cropped habitat; land drainage; switch from hay to silage and, intensified grassland management (9.9.1 The trait-based modelling methodology and UK results) Ibid 280

³³ Ibid 281

³⁴ Ibid

- Rates of intensification and abandonment at the time persist to 2020
- The continuation of the old set-aside policy
- Result: a fall of 23% in the EFBI compared to 2005 levels.

Scenario 2: as in Scenario 1, but in addition

- the loss of compulsory set-aside (which has now occurred)
- Result: the predicted EFBI in 2020 would be 8% lower than under the baseline Scenario 1
(23% fall in scenario 1 + 8% scenario 2 = 31% fall in the EFBI compared to 2005 levels).

Scenario 3:

- Accelerated agricultural intensification in east Europe
- Result: an EFBI with 2020 levels between 20% and 25% lower than baseline Scenario 1
(23% fall in scenario 1 + 20-23% fall due to accelerated agricultural intensification in east Europe = total fall of 43% - 48% in the EFBI below 2005 levels)

Scenario 4: an abandonment scenario –

- A reduction of 5%, 10% and 15% of UAA (Utilised Agricultural Area)
- Result: each 5% decline in the UAA would lead to a 2–2.5% reduction in the EFBI by 2020 compared to the baseline scenario (1). (23% fall in EFBI from scenario 1 + 2-2.5% fall per 5% reduction of UAA = 25-25.5% fall with a reduction of 5% of UAA, 27-28% fall with a reduction of 10% of UAA or 29-30.5% fall with a reduction of 15% UAA.

I have included the specific details of this EU study as it demonstrates the kind of scenario assessment which I suggest should have been included in the Impact Assessment discussed in the previous chapter.³⁵ The study uses data held on the impact of particular agricultural management measures to forecast the impact on biodiversity indicators of changes in management. Although

³⁵ See Ch 4

the scenarios in the 2010 study do not forecast the impact of the same agricultural changes as the greening proposals would engender, the study demonstrates that the data exists which would facilitate such an assessment to be made around the proposed greening scenarios.

Given that the greening measures proposed under the Integration scenario within the Impact Assessment bear many resemblances to management measures which have been used under the CAP either in the past or in other areas of the policy, the data on the impact of these measures on biodiversity might have been used in a similar way to the data in the EU study, i.e to provide quantitative impact forecasting for the reform proposals. This would be provided a much more material indication of whether the proposals would delivery against the biodiversity objectives.

5.1.3 IEEP Study on Biodiversity and the CAP (2011)

Within this report the IEEP have worked with Simon Butler and the University of Reading team to develop and adapt the 2010 study to assess the potential impacts of the (pre-2013) agricultural biodiversity conservation measures within the CAP on farmland birds.³⁶

The IEEP study also examined a set of proposed scenarios³⁷, in this instance to assess ‘the amount of land that needs to be managed in a beneficial way to halt and reverse farmland bird declines and meet related biodiversity policy objectives’, focusing on three key elements as in the 2007 study:

- *How much?* – Comparing the potential benefits of 5% and 10% land allocation to conservation management measures.
- *Where?* - Comparing the benefits of delivering beneficial management to the cropped

³⁶ Ibid 285

³⁷ See Appendix.

area, margin and hedgerow compartments of the agricultural landscape.

- *What?* - Exploring the relative merits of a range of types of management action that deliver different resources.ⁱ

Although this study does not examine the greening proposals of the 2013 CAP reform directly, the report does refer to the EU Biodiversity Strategy objectives³⁸ within the 'related biodiversity policy objectives'. Furthermore, the focus of the study on management to halt and reverse farmland bird declines makes use of a measurable biodiversity indicator as indicative of the state of farmland biodiversity more widely.

The results of the study demonstrate some fairly obvious outcomes: allocating larger areas of land to specific management measures provides greater benefit. However, it also provided some more surprising findings:

On a species level, distributing management effort evenly between the three main landscape components reduced the overall benefit, whereas focussing effort on one specific component was always more beneficial.

However, because the most beneficial component varied between species, splitting management effort evenly between components had a greater overall benefit, in terms of the number of species, than either margin- or hedgerow-focussed effort.

Cropped area-focussed management is expected to have greater benefits for more species than evenly distributed effort, and the species affected are of higher conservation concern.³⁹

³⁸ Poláková (et al) (n1), 1

³⁹ Ibid 290-91

As in the 2007 UK and 2010 EU studies, findings suggested that focussed management in cropped areas would offer the greatest benefits for most species when compared to efforts distributed between cropped areas, margins and hedgerows, and that the benefits would impact species of higher conservation concern.⁴⁰

Crucially, the study concluded that ‘whilst all scenarios were favourable compared to Scenario 1, most benefits were slight and none was sufficient to halt farmland bird decline’.⁴¹

This is another example of the type of detailed scientific study cited in the IEEP report, which combines evidence from its own case studies with the findings of studies from the extensive literature review to set out not only current state of play between agriculture and biodiversity in the UK, but also forecasts the state of biodiversity under various future scenarios.

5.2 Comparison: Impact Assessment and IEEP Report

The scenario style presentation of the Butler (et al) studies is also closely mirrored by the policy scenarios of Adjustment, Integration and Re-focus found in the Commission’s own proposals and Impact Assessment. The key difference to note is that the scenarios in the Butler (et al) studies are projections on the basis of scientific data collected and collated by an academic institution. Whilst there is some uncertainty in the models, the projected impacts on the EFBI are formulated based on this scientific data. In this way, the studies are able to present likely outcomes in quantitative terms, such as a % decline in the EFBI under each scenario.

⁴⁰ This significant finding is not mentioned in the discussion around the impact of the proposed CAP greening measures on biodiversity within the Impact Assessment.

⁴¹ Poláková (et al) (n1), 294

The Commission proposals and Impact Assessment, on the other hand, set out broad economic, social and environmental costs and benefits for each scenario but do not give quantitative estimations of the impact on biodiversity. As such, the likely impacts on biodiversity of any measures proposed under the scenarios are difficult to define beyond ‘good for biodiversity’ or ‘bad for biodiversity’.

Given the depth and breadth of scientific study around the biodiversity of farmland species (which is evident particularly in the UK), the Commission might have been expected to produce some more indicative figures to support its proposals. The EU Biodiversity Strategy objective of ‘halting the loss of biodiversity and the degradation of ecosystem services in the EU by 2020, and restoring them in so far as feasible’⁴² is very clear in the Commission’s mandate. As the CAP is identified as a key tool in the delivery of this objective it would seem reasonable to expect the proposals around CAP reform, which was designed at least in part to address the delivery of the objective, to provide more detailed indications of how and to what extent the proposed measures would impact on biodiversity.

Of course, it could be argued that the outcomes of implementation of any European policy across 28 member states and 174.4 million hectares of land (UAA)⁴³ is impossible to accurately forecast, particularly when the policy allows Member States flexibility in implementation, as with the CAP. However, as we can see from the development of the Butler (et al) 2007 UK-specific modelling study into an EU-wide model in 2010, if sufficient data exists at Member State level it is possible to ‘scale up’ the impacts of local practices and develop quantitative estimates of impact across a

⁴² European Commission, ‘Our life insurance, our natural capital; an EU Biodiversity strategy to 2020’ (Communication) COM (2011) 244 final s.1

⁴³ Eurostat, ‘Farm structure survey 2013 - main results’ <http://ec.europa.eu/eurostat/statistics-explained/index.php/Farm_structure_survey_2013_-_main_results> accessed 19 September 2017

wider area. It is true that not all Member States will have such detailed historic data as the UK, and the availability and reliability of data in some of the new Baltic States may result in the scaled-up models suffering from greater uncertainty, but in this instance the models could be presented along a scale of perceived accuracy.

As the Commission would have access to CAP data for all Member States since their accession, including data for take-up of various agri-environment measures, this could have been used to model the impact of changes to the delivery of the policy.⁴⁴ In addition, if data on the impacts of an agricultural activity on a particular species or habitat in one Member State was not available, data related to that habitat or species from a Member State with similar agricultural systems, but a more developed monitoring and data collection system (for example in cases in which environmental organisations carry out monitoring of a species/habitat in one country but not another) could be used in the modelling. This would be particularly relevant for migratory species.

This approach could have enabled the Commission to present their scenario proposals in a way which would give quantitative indications of the impact of measures in each proposal in relation to the biodiversity objectives.

This raises the question of why the Commission chose not to take the data-collation approach I suggest. The complexity and cost of the exercise, which would conceivably be significant, is one potential reason. However, they commissioned the IEEP report discussed in this chapter, which carried out the 2011 study⁴⁵ in a similar forward to that which I suggest should have formed a part

⁴⁴ Annex 11 of the Impact Assessment refers to models or modelling 54 times in a 26-page document, so the value of this method of impact forecasting within the policy-design process is recognised within the Commissions documentation.

⁴⁵ See above p108

of the Impact Assessment on the CAP proposals; this suggests that cost and complexity were not a bar to this kind of exercise. A cynical reader might suggest that the Commission chose not to carry out such an assessment of the greening proposals because they were aware that the proposals likely be shown to fall short of what was required to meet the biodiversity objectives at which they were aimed, if subject to the type of quantitative assessment demonstrated in the IEEP report.

5.3 Report summary conclusions and recommendations

The final section of the IEEP report⁴⁶ makes six recommendations for addressing the areas of improvement identified in the design and delivery of biodiversity through agriculture, though only point 4 is directly related to the greening measures introduced to Pillar 1 in the 2013 reform. I have provided a summary of all points below to give a final overview of the breadth of the IEEP report, adding a brief commentary to each as explanation of its relevancy to my research.

Recommendation 1:

The full and effective implementation and enforcement of the existing legislative framework to protect and preserve biodiversity and sites of high nature value. The reoccurring example of Natura 2000 sites is used again to highlight the importance of core protection, on which CAP measures to delivery biodiversity can then build.⁴⁷

Greater protection of Natura 2000 sites is a recurring theme within proposals and discussion around the 2013 CAP reform but as we saw in the previous chapter, the proposal for a Natura 2000 greening measures within the Pillar 1 reform was abandoned at the proposal stage. The ‘effective implementation and enforcement of the existing legislative framework’ is, of course, an important

⁴⁶ Poláková (et al) (n1), 168-178

⁴⁷ Ibid 175

aspect of biodiversity preservation within the EU, but this does not relate directly to the introduction of new greening measures within the 2013 CAP reform.

Recommendation 2:

The clear articulation of biodiversity priorities at EU level, which must be more fully integrated into the CAP as part of national and regional rural development programmes.⁴⁸

This point touches on the issues I have discussed previously in relation to the apparent disconnect between EU biodiversity objectives and the measures introduced to deliver them through the CAP.⁴⁹

Recommendation 3:

Greater funding for agri-environment measures from the CAP budget through an increase in Pillar 2 funding, as well as contribution from other national and EU funding instruments, e.g. the Life+ programme.⁵⁰

Whilst increased funding of agri-environment measures under Pillar 2 has the potential to delivery significant biodiversity benefits through targeted schemes, the application of these benefits is limited by the voluntary nature of agri-environment schemes. For this reason, the Re-focus scenario of the reform proposals, which suggested a 100% transfer of funds from Pillar 1 to Pillar 2, was considered unviable.⁵¹ The combination within the Integration scenario of increased funding for Pillar 2 in combination with mandatory greening measures under Pillar 1 was the preferred

⁴⁸ Ibid

⁴⁹ See Ch 4 - 4.2.4 Annex 2: Greening the CAP

⁵⁰ Ibid 176

⁵¹ See Ch 4 - 4.2.3.3 The Re-focus scenario

proposal. The allocation of funds between Pillars 1 and 2 of the CAP and the transfer of funds between Pillars within Member State budgets are discussed in the Chapter 6.

Recommendation 4:

Changes to the design and implementation of the policy – this point covers a number of areas, including CAP eligibility of certain high nature value farmland and greater understanding of the conservation needs of some key farmland species. It also professes cautious support of the initial Commission proposals for Ecological Focus Areas, permanent grassland and crop diversity, identifying the EFA measures are offering the most potential for biodiversity benefits.⁵²

This point is most relevant to my research and identifies the issues of policy design and implementation as central to the impact of CAP measures on biodiversity and habitat preservation.

Recommendation 5:

Improvement is needed in the ‘policy and political commitment to achieving biodiversity goals and targets in relation to agriculture’, particularly in relation to political will at Member State level.

The importance of political will to make ‘policy and political commitments to achieving biodiversity goals’ can be seen in the policy design process at EU level, for example in the requirements (or apparently lack thereof) of the Impact Assessment⁵³ to provide clear intervention logic between objectives and proposals. A possible development in this area can

⁵² Poláková (et al) (n1), 176-177

⁵³ See Ch 4

also be seen in the Better Regulation Guidelines⁵⁴ since adopted at EU level, which support the move towards an evidence-based policy design process.

At Member State level, the report suggests that the EU should provide support and guidance to those responsible for national implementation, to foster greater understanding of ‘the importance of biodiversity for the long-term sustainability of land as a productive resource’.⁵⁵ I touch upon this topic in the following chapter.⁵⁶

Recommendation 6:

Further development of monitoring and evaluation systems, including revision of the CMEF (Common Monitoring and Evaluation Framework)⁵⁷ and greater use of qualitative evaluations alongside quantitative assessment.

Unfortunately, a detailed examination of the monitoring and evaluation systems of the CAP is beyond the scope of this research. Whilst not discussed in direct relation to the adoption of the greening measures within the 2013 reform, I recognise that these systems are crucial in the continual assessment of the CAP and play an essential role in the effective and ongoing delivery of biodiversity benefits within the policy, through provision of data to inform policy reform.

Through an examination of the IEEP report on the impact of CAP measures on biodiversity and habitat preservation, I have sought to support my suggestions in the previous chapter that the Commission’s Impact Assessment on the reform proposals fell short of its potential value within the

⁵⁴ See Ch 8 - 8.2 Better Regulation Guidelines

⁵⁵ Poláková (et al) (n1), 177

⁵⁶ See Ch 6

⁵⁷ See Glossary

policy-design process.

The IEEP report highlights the capacity for the development of evidence-based policy through the availability of scientific data around the issues of biodiversity preservation through agricultural management. I believe this demonstrates that the absence of clear intervention logic between the biodiversity objectives of the CAP reform and the greening measures adopted therein is a failing within the policy design process, not a result of an absence of scientific data with which to assess the proposals.

I suggest that it is this failing within the policy design process which resulted in the adoption of greening measures within the 2013 reform which have, to date, proved ineffective in delivering against EU biodiversity objectives.

However, as the IEEP report also identifies, the implementation of these greening measures at Member State level has a role to play in their success or failure in delivering against biodiversity objectives⁵⁸, and this thesis would be incomplete with an exploration of this issue. Consequently, the following chapter examines the implementation of the greening measures of the CAP 2014-2020 in the UK, with a more in-depth analysis of the factors of success and failure of national implementation of biodiversity preservation measures in the CAP discussed in Section 4 of the IEEP report.⁵⁹

⁵⁸ See above p115-6

⁵⁹ Poláková (et al) (n1), 98-118

6 - IMPLEMENTATION OF THE CAP IN THE UK

This chapter explores the implementation of the greening measures of the 2014-2020 CAP, and their efficacy in delivering against biodiversity objectives, at UK level in light of the national implementation recommendations presented in the IEEP report¹ discussed in the previous chapter.

In considering UK implementation, I seek to examine to what degree the ineffectiveness of the greening measures in delivering against biodiversity objectives in the UK might be attributed to issues of national implementation. I have suggested in the thesis so far that the primary issues around the failure of the greening measures to deliver biodiversity benefits lie in their formulation in at EU level. However, as Member States have discretion in the implementation of these measures, I would be remiss not to consider the effect that national implementation decisions can play in the practical effectiveness of the greening measures.

I briefly set out evidence demonstrating that the greening of the CAP has so far failed to delivery against biodiversity objectives in the UK to the same degree as it has failed to deliver against EU-level objectives.

As the CAP Regulations allow Member States to implement measures under both the Basic Payment Scheme (Pillar 1)² and Rural Development Programme (Pillar 2)³ at a regional level, I

¹ See Ch 5 - 5.3 Report summary conclusions and recommendations

² Regulation (EU) No 1307/2013 of the European Parliament and of the Council on establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 [2013] OJ L 347/608, art 23

³ Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 [2013] OJ L 347/487, art 6

then outline the approach to national implementation adopted by the UK government in

England and the devolved governments in Wales, Scotland and Northern Ireland.⁴

Finally, I examine these implementation decisions in the light of the IEEP recommendations and

offer comments on the degree to which the apparent ineffectiveness of the measures in

delivering against biodiversity objectives in the UK can be attributed to national implementation

decisions.

6.1 The Protection of Biodiversity in the EU and the UK

As of 2015, no progress had been made towards achieving either the headline target or the objectives relating to agriculture within the EU Biodiversity Strategy⁵. The mid-term review of the Strategy demonstrated that the greening measures adopted had, at that time, delivered no measurable progress towards achieving the biodiversity objectives at an EU level.⁶

In 2017 the governments of the UK jointly published a report on UK Biodiversity Indicators⁷ which demonstrates the same lack of progress can be seen in the UK as is evident at the EU level.

⁴ The devolved governments of Wales, Scotland and Northern Ireland have competence to legislate on agricultural issues on the basis of their respective devolution Acts: the Government of Wales Act 2006 (Schedule 7), the Scotland Act 1998 (by omission - agriculture is not on the 'reserved matters' list of areas for which Scotland does not have legislative competence in Schedule 5) and the Northern Ireland Act 1998 (by omission - agriculture is not on the 'reserved matters' list of areas for which N.I. does not have legislative competence in Schedule 3)

⁵ See Ch 3 - 3.1 European Biodiversity Objectives

⁶ See Ch 3 - 3.3 Efficacy of the Greening Measures in Promoting Biodiversity



























⁷ DEFRA, 'UK Biodiversity Indicators 2017'

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/635832/UKBI2017_rev.pdf> accessed 19 September 2017

Although the UK report deals with biodiversity indicators rather than progress against EU biodiversity objectives, we can see in Table 1 (below) that the area of land under agri-environment scheme management (indicator B1a) has declined since the 2013, and there has been deterioration or little/no change in all-but-one of the habitat or species related indicators (C3 – C7). On the basis of this report one can conclude that, so far, the greening measures introduced under the 2013 CAP reform have failed to deliver any measurable benefit to the state of biodiversity in the UK.

Previous chapters have identified the issues at the EU level which I suggest contribute to the failure of the greening measures in delivering progress towards biodiversity targets ; the ineffective use of scientific data within the Impact Assessment and a lack of intervention logic between the greening proposals and biodiversity objectives . However, as the IEEP report affirms, the large degree of flexibility allowed to Member States in the implementation of the greening measures means that their efficacy may depend to a significant extent on the method of national implementation, which I examine in detail in the following section.

Table 1

Indicator / measure(s)		Long-term change ³	Short-term change ⁴
B1. Agricultural and forest area under environmental management schemes	B1a. Area of land in agri-environment schemes	 1992–2016	 2011–2016
	B1b. Area of forestry land certified as sustainably managed	 2001–2017	 2012–2017
C3. Status of European habitats and species	C3a. Status of UK habitats of European importance		 2007–2013
	C3b. Status of UK species of European importance		 2007–2013
C4. Status of UK priority species	C4a. Relative abundance	 1970–2015	 2010–2015
	C4b. Distribution	 1970–2016	 2011–2016
C5. Birds of the wider countryside and at sea	C5a. Farmland birds	 1970–2014	 2009–2014
	C5b. Woodland birds	 1970–2014	 2009–2014
	C5c. Wetland birds	 1975–2014	 2009–2014
	C5d. Seabirds	Not Assessed	Not Assessed
	C5e. Wintering waterbirds	 1975/76–2013/14	 2008/09–2013/14
C6. Insects of the wider countryside	C6a. Semi-natural habitat specialists	 1976–2016	 2011–2016
	C6b. Species of the wider countryside	 1976–2016	 2011–2016
C7. Plants of the wider countryside		Under development	
C8. Mammals of the wider countryside (bats)		 1999–2015	 2010–2015



Improving



Deteriorating



Little or no overall change



Insufficient or no comparable data

8

⁸ Ibid 4-6 (adapted)

6.2 The Implementation of the Greening Measures under CAP and their impact on

Biodiversity: the UK as a Case Study

As the content of the 2013 CAP reform is set out in European Regulations, these have direct effect and the elements and initiatives are automatically binding in Member States from the dates on which the Regulations enter into force⁹. All the regulations¹⁰ on CAP 2014-2020 are now in force.

However, these regulations allow Member States discretion in the implementation of measures under the CAP and all Member States were required to submit details of their implementation plans to the European Commission no later than 1 August 2014¹¹; EU delegated Regulations govern how this should be done¹². Each of the devolved governments of Wales, Scotland, and Northern Ireland have legal competence to legislate in the areas of environment and agriculture under their acts of devolution¹³. Given that the agricultural systems of England, Wales, Scotland and Northern Ireland vary considerably, and the Regulations allow flexibility in implementation with the aim of enabling Member States to implement the reform in the most effective and appropriate way for their particular agricultural systems, separate implementation plan were developed for England, Wales, Scotland and Northern Ireland.¹⁴

⁹ Treaty on the Functioning of the European Union, Art 288

¹⁰ See Ch 3 - 3.2 The Reformed Common Agricultural Policy

¹¹ Emma Downing, 'CAP Reform 2014-2020: Implementation Decisions in the UK' (Science and Environment Section, House of Commons Library, SN06929 2014) 4

¹² See Appendix

¹³ See footnote (3)

¹⁴ Emma Downing, 'CAP Reform 2014-2020: Implementation Decisions in the UK' (Science and Environment Section, House of Commons Library, SN06929 2014) 4

Using the UK as a case study presents a number of advantages. Firstly, there is a great deal of data on the impact of agricultural changes on biodiversity in the UK and much of this data is collected and collated independently by research institutions and environmental organisations. Secondly, due to the devolved implementation of the CAP in England, Scotland, Wales and Northern Ireland, an examination of implementation in the UK allows for comparison between methods of implementation in different regions. Finally, the data and analysis of implementation available in the UK was most accessible to me because it is published in English.

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6.2.1 CAP Funding

Before examining the implementation measures themselves it is useful to briefly discuss the CAP budget allocation for 2014-2020, as the division between the devolved administrations

plays a significant part in the implementation choices; each region must work within the funding allocated to it.

The EU budget allocation was made to the UK as a whole and the decisions on division of these funds between the regions were made by central government in Westminster. As such, although Wales, Scotland and N.I. have increased flexibility in how they implement CAP in their regions, this sits within the bounds of the funding allocated to them.

This has caused some controversy, as Scotland raised objections around the allocation of funds. Under the 'external convergence mechanism' Member States that receive less than 90% of the EU average payment per hectare are allocated additional funds between 2014 and 2019 to close the gap between their average payment and 90% of the EU average by one-third. In the UK this resulted in additional Pillar 1 funding of around €10m in 2015, rising to €60m in 2019; a total of €230m over the period.¹⁵ The shortfall in average payment stems exclusively from Scotland (see table below) and Scottish politicians and farmers unions have argued that all the additional funds received as a result of the external convergence mechanism should be allocated to the Scottish budget.¹⁶

¹⁵Mark Allen, Emma Downing, Tom Edwards, Nia Seaton and Maggie Semple, 'CAP Reform 2014–20: EU Agreement and Implementation in the UK and in Ireland (updated)' (House of Commons Library, RaISe paper 702-14, 30 October 2014) 27

¹⁶ Ibid 28

Table 4 - Average Pillar 1 payment per hectare 2012

Country	Total Pillar 1 Envelope €m	Number of Eligible Hectares (million)	Pillar 1 € /ha hectare (% of EU average)	Number of eligible claimants	Pillar 1 €/eligible claimant
England	2615	8.7	301 (115%)	103,952	25,162
Ireland	1320	4.7	280 (107%)	132,031	9,976
Northern Ireland	351	0.95	369 (141%)	37,420	9,390
Scotland	653	4.48	146 (56%)	18,670	35,020
Wales	357	1.38	258 (99%)	16,550	21, 544

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However, the decision was made to allocate the additional funds evenly between the four regions, with the justification offered that although Scotland has a lower average payment per hectare, average farm sizes in Scotland are much larger, meaning Scottish farmers receive more per farm than farmers in other regions.¹⁸

At an EU level both Pillar 1 and Pillar 2 budgets have been cut (by 14% and 12% respectively) when compared to the 2007-2013 budgets¹⁹. The UK budget allocation for 2014-2020 is a reduction in overall funding by around 12.6% for Pillar 1 and 5.5% for Pillar 2²⁰.

¹⁷ Ibid 29

¹⁸ Ibid 28

¹⁹ Ibid 16-19

²⁰ Ibid 31

Table 5 - UK CAP allocations 2014-2020

	Pillar 1 / € million (approx non-inflation adjusted)	% share	Pillar 2 / € million (approx non-inflation adjusted)	% share
England	16,421	65.5	1,520	58.9
Northern Ireland	2,299	9.2	227	8.8
Scotland	4,096	16.3	478	18.5
Wales	2,245	8.96	355	13.7
Total allocation UK	25.1 billion		2.6 billion	

Note: Figures are in nominal terms (i.e. they have not been adjusted for inflation over the period)

Source: UK Government, November 2013.⁶⁷

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Under the 2013 CAP reform Member States may choose to modulate up to 15% of the budget of one Pillar into the other (though the assumption is that any modulation would be from Pillar 1 to Pillar 2). Setting the level of modulation is included in the flexibility allowed to the devolved administrations. The level of modulation by region has been a point of contention between farmers unions and environmental groups in Scotland and England, with unions campaigning for lower rates of modulation to maintain higher funds for direct support under Pillar 1, while environmental groups sought higher rates of modulation to increase funds for environmental services such as agri-environment schemes under Pillar 2.²²

The final modulation rates have been set as follows (all from Pillar 1 to Pillar 2):

²¹ Ibid 29

²² See Ch 7

England – 12% initially, with a potential rise to 15% in 2018-19 after review

Wales – 15%

Scotland – 9.5%

Northern Ireland – 0% (review planned August 2017 – outcome not yet published at time of writing)

England, Wales and Scotland have opted for some of the higher transfers among Member States; for comparison, France and Germany have opted for (P1 to P2) modulation of 3% and 4.5% respectively.²³

The transfer of funds between Pillars of the CAP was an issue of significant controversy in the UK, as farming communities were broadly against the loss of funding from Pillar1 producer support, whilst conservation organisations and other public groups campaigned from the largest possible transfer to support the provision of public goods (including environmental measures) under Pillar 2. This debate is examined further in the following chapter, which examines public consultation of the CAP reform measures.

6.2.2 Greening Measures under the Basic Payment Scheme

Aspects of the implementation of Pillar 1 measures by the devolved administrations of the UK are similar across the regions in some ways and dissimilar in others. There are a number of differences in the implementation of the new greening measure required for the 30% greening

²³ Mark Allen, Emma Downing, Tom Edwards, Nia Seaton and Maggie Semple, 'CAP Reform 2014–20: EU Agreement and Implementation in the UK and in Ireland (updated)' (House of Commons Library, RaISe paper 702-14, 30 October 2014) 35

payment under the new Basic Payment Scheme. The table below show the implementation decisions for the greening measures in England, Wales, Scotland, and Northern Ireland.²⁴

²⁴ Ibid (collated from 'Table 7: Implementation of the CAP 2014-20 in the UK and in Ireland' 37–52

Pillar 1 – direct producer support – The Greening Measures			
England	Wales	Scotland	Northern Ireland
<p>General –</p> <p>The greening measures will be implemented as set out in the European legislation - there will be no use of the equivalence option (creation of measures equivalent to those in the European legislation) or introduction of a National Certification Scheme.</p>	<p>General –</p> <p>As in England and N.I.</p>	<p>General –</p> <p>The greening measures will be implemented as set out in the European legislation initially and the Scottish Government has applied to the European Commission for approval to implement a Greening Equivalence Scheme in Scotland (details below) – not yet implemented as of September 2017²⁵.</p>	<p>General –</p> <p>As in England and Wales</p>

²⁵ Scottish Government; Rural Payments and Services, 'Greening guidance - Introduction and updates' (Date published: 9 January, 2017) <<https://www.ruralpayments.org/publicsite/futures/topics/all-schemes/basic-payment-scheme/greening-guidance/greening---introduction-and-updates-for-2017/>> accessed 20 September 2017

<p>Crop diversification –</p> <p>Standard Greening Practices:</p> <ul style="list-style-type: none"> - Agricultural holding of 10-30ha of arable land; minimum of 2 different crops on the land, and no one crop shall cover more than 75% the area. - Agricultural holding 30ha+ of arable land; minimum of 3 different crops on that land, with a maximum coverage of 75% for one crop and 95% for the combination of 2 crops (3rd crop not less than 5% of the area). 	<p>Crop diversification –</p> <p>Standard Greening Practices as in England and N.I.</p> <p><i>(Estimates exemption of 86% of farms over 20 ha and 98% of smaller farms in Wales under the derogation for both crop diversification and EFA which exempts farms where 75% of the eligible agriculture area is classified as permanent pasture.)</i></p>	<p>Crop diversification –</p> <p>Standard Greening Practices initially – seeking equivalence scheme as above.</p>	<p>Crop diversification –</p> <p>Standard Greening Practices as in England and Wales.</p>
<p>Permanent grassland –</p> <p>The requirement to preserve permanent grassland will be applied at a national level.</p> <p>This may be of little additional benefit given that existing levels of semi-natural grassland were already protected under the Environmental Impact Assessment (Agriculture) (England) (No.2) Regulations 2006 – Regulation 17</p>	<p>Permanent grassland –</p> <p>As in England.</p> <p>Semi-natural grassland protected under the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007 – Regulation 16</p>	<p>Permanent grassland –</p> <p>As in England.</p> <p>Semi-natural grasslands protected under the Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006 – Regulation 15</p>	<p>Permanent grassland –</p> <p>As in England.</p> <p>Semi-natural grasslands protected under the Environmental Impact Assessment (Agriculture) Regulations (Northern Ireland) 2007 – Regulation 17</p>

<p>Ecological Focus Areas</p> <p>Initial indications were that the full list of options²⁶ would be available for EFAs but the list of options finally selected was:</p> <ul style="list-style-type: none"> • Land lying fallow • Buffer strips • Catch and cover crops used to manage soil fertility and quality • Nitrogen Fixing Crops such as legumes (peas and beans) and hedgerows 	<p>Ecological Focus Areas</p> <p>Options available</p> <ul style="list-style-type: none"> • Land lying fallow • Hedges and traditional stone walls, • Short rotation coppice • Afforested areas used to claim SFP in 2008 and • Nitrogen fixing crops. <p><i>(As with crop diversification – estimated exemption for 86% of farms over 20 ha and 98% of smaller farms.)</i></p>	<p>Ecological Focus Areas</p> <p>Options available</p> <ul style="list-style-type: none"> • Land lying fallow • Buffer strips along water courses • Field margins • Hedges and ditches defined as landscape features under GAEC • Catch crops • Nitrogen fixing crops 	<p>Ecological Focus Areas</p> <p>Options available:</p> <ul style="list-style-type: none"> • Land lying fallow • Landscape features required to be retained under cross compliance • Areas of agro-forestry • Short rotation coppice • Afforested areas • Nitrogen fixing crops
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²⁶ Land lying fallow; terraces; landscape features; buffer strips; hectares of agro-forestry; strips of eligible hectares along forest edges; areas with short rotation coppice with no use of mineral fertiliser and/or plant protection products; afforested areas; areas with catch crops or green cover; areas with nitrogen-fixing crops.

- Regulation (EU) No 1307/2013 of the European Parliament and of the Council on establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 [2013] OJ L 347/608, Art 46

As can be seen, Wales and Northern Ireland have made the same implementation decisions as England in most cases, the only difference being some of the available options for Ecological Focus Areas in each region. At present Scotland has adopted many of the same measures, but they have also submitted a proposal to the European Commission for a Greening Equivalence Scheme, as permitted in place of the standard greening requirements under Article 43 of Regulation 1307/2013²⁷, and any key differences will only manifest if and when Scotland is granted approval for this scheme. The content of the proposal would give farmers alternatives to meeting the crop diversification requirements (so they could choose the Greening Equivalence Scheme options or the standard measures applied in England, Wales and N.I.) and would impose additional requirements to the permanent grassland measures, but would make no alteration to the Ecological Focus Area requirements²⁸:

Greening practice	Equivalent certification scheme practice	
Crop diversification	Winter soil cover <i>(alternative)</i>	Ensure that 25 per cent of arable land is covered by winter soil cover between 1 October and 31 December.
Crop diversification	Catch crops <i>(alternative)</i>	Ensure that 25 per cent of arable land is covered by catch crops between 1 October and 31 December.
Permanent grassland	Nutrient management plan <i>(additional requirement)</i>	Farmers must complete a table identifying how much inorganic fertiliser and lime they intend to apply on each field during the scheme year.

²⁷ Regulation (EU) No 1307/2013 of the European Parliament and of the Council on establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 [2013] OJ L 347/608

²⁸ Scottish Government: Rural Payments and Services 'Greening guidance archive - Annex K - equivalence scheme' < <https://www.ruralpayments.org/publicsite/futures/topics/updates/guidance-archive/greening-archive/>> accessed 20 September 2017

Ecological Focus Areas	No equivalency available – standard greening practice applied.
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The latest guidance on the Scotland's Rural Payments and Services website (at time of submissions) confirms that the Greening Equivalence Scheme will not be available in 2017 as planned but does not confirm an expected implementation date²⁹.

6.2.3 Rural Development Policy

Under Regulation 1305/2013, each EU Member State must produce either a national Rural Development Programme (RDP) for its entire territory or a set of regional programmes. In the UK there are separate RDPs for England, Wales, Scotland and Northern Ireland, and each RDP contains details of environmental measures part-funded by the EU under CAP, including agri-environment schemes.

The changes to Pillar 2 (rural development policy - RDP) at EU level are less drastic than those introduced to Pillar 1 through the new greening payment and associated requirements, but there are still new elements to be implemented at Member State level. As the rural development policies for the UK regions are designed and administered separately, the flexibility in how these changes are implemented regionally applies in the same way as for Pillar 1 changes; each devolved administration can apply the changes in the way they see as best in their region.

²⁹ Scottish Government: Rural Payments and Services 'Greening guidance archive - Annex K - equivalence scheme' < <https://www.ruralpayments.org/publicsite/futures/topics/updates/guidance-archive/greening-archive/>> accessed 20 September 2017

The 'spending options' for funding under the RDP are similar to those available during the 2007-13 CAP session, but they are now grouped into six priority areas rather than the previous four axes³⁰. Spending within the RDP is relatively unrestricted, with the proviso that a minimum of 30% of Pillar 2 budget must be spent on agri-environment, climate, forestry, Natura 2000 and Less Favoured Area measures (and a minimum of 5% must be spent on LEADER³¹ (Links between the Rural Economy and Development Actions) programmes)³².

As can be seen from Table 5 (above), England received the majority of Pillar 2 funding from the EU (58.9%), with Wales, Scotland, and Northern Ireland receiving 13.7%, 18.5%, and 8.8% respectively. As Wales has opted for the maximum 15% modulation rate this increases their proportion slightly.

³⁰ Regulation (EU) No 1305/2013 of the European Parliament and of the Council 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 [2013] OJ L 347/487 art 5

³¹ See Glossary

³² Mark Allen, Emma Downing, Tom Edwards, Nia Seaton and Maggie Semple, 'CAP Reform 2014–20: EU Agreement and Implementation in the UK and in Ireland (updated)' (House of Commons Library, RalSe paper 702-14, 30 October 2014) 20

Pillar 2 – Rural Development Policy³³			
England	Wales	Scotland	Northern Ireland
1- Agri-environment climate measures - €2,900million	1- Productive and non-productive investments - €333million	1- Areas facing natural constraints - € 551million	1- Agri-environment-climate measures - € 194 million
2- Productive and non-productive investments - €323million	2- Agri-Environment-Climate - €310million	2- Forestry - € 332million	2- LEADER - € 83 million
3- Forestry - €218million	3- Co-operation - €84million ³⁴	3- Agri-environment-climate measures- € 318million	3- Areas facing natural constraints - € 79 million
4- LEADER - €174million	4- Forestry - €72million	4- Investments in physical assets - € 255million ³⁵	4- Investment in physical assets - € 57 million
5- Farm and business development - €107million			

³³ Ibid

³⁴ European Network of Rural Development, 'RDP analysis: Measure 16 'Cooperation' ' <https://enrd.ec.europa.eu/sites/enrd/files/rdp_analysis_m16-1.pdf> accessed 04 May 2018

³⁵ European Network of Rural Development, 'RDP analysis: Support to environment & climate change: M04 - Investment in physical assets' <https://enrd.ec.europa.eu/sites/enrd/files/rdp_analysis_m04.pdf> accessed 04 May 2018

<p>Total budget of €4,056million: €3,471million from the EU budget, including €1,694 million transferred from the UK envelope for CAP direct payments (modulation), plus €495million of national co-funding, plus €90 million of national funding top- ups.</p>	<p>Total budget of €1,122million: €655.8million from the EU budget, including € 292.4 million transferred from the envelope for CAP direct payments (modulation), and € 470.2 million of national co-funding).</p>	<p>Total budget of € 1,680million; €844million from the EU budget, including €335million transferred from the envelope for CAP direct payments (modulation), and €489million of national co-funding plus € 12 million of additional national funding top-ups.</p>	<p>Total budget of €760.1million: €228.4million from the EU budget and €315.8million of national co-funding, plus €215.8million in additional national funding top-ups).</p>
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Common themes between the four RDPs can be easily identified; agri-environment climate measures feature in the top three budgetary commitments in every RDP and forestry and LEADER spending is high in more than one. The RDP for Wales does not mention an Areas of Natural Constraint Scheme³⁶, which is initially a little surprising given that hill farming with sheep comprises a significant proportion of Welsh agriculture.

However, the Deputy Minister for Farming and Food in Wales released a statement to justify why Wales has not adopted a standalone Areas of Natural Constraint Scheme for the 2014-2020 session, asserting that 'such a scheme could not be targeted to help those most affected' and that provision of support for upland farmers would more appropriately be provided under prioritised elements of AES measures within the Glastir Advanced³⁷ schemes.³⁸

Within the agri-environment-climate measure each RDP features a slightly different format of agri-environment scheme, but most share the common characteristics of entry and higher-level schemes (under different names) with menus of options with which farmers can deliver environmental benefits.³⁹ These options all deliver benefits above the baseline set in

³⁶ Mark Allen, Emma Downing, Tom Edwards, Nia Seaton and Maggie Semple, 'CAP Reform 2014–20: EU Agreement and Implementation in the UK and in Ireland (updated)' (House of Commons Library, RaISe paper 702-14, 30 October 2014) 60

³⁷ See Appendix - Chapter 6 – Summary of agri-environment measures offered under agri-environment schemes in the UK

³⁸ Rebecca Evans, Deputy Minister for Farming and Food, *Written Statement - Support for the uplands of Wales through the Rural Development Programme 2014-20* <<http://gov.wales/about/cabinet/cabinetstatements/previous-administration/2014/uplands/?lang=en>> accessed 08 April 2018

³⁹ See Ch 3 - 3.2.2.1 Agri-Environment Schemes in the UK

SMRs⁴⁰ and GAECs⁴¹ and have been adapted to ensure the avoidance of double-funding with the new Pillar 1 'greening' measures.⁴²

⁴⁰ See Glossary

⁴¹ See Glossary

⁴² See Ch 3 - 3.2.3 Funding for CAP 2014 - 2020

6.3 IEEP report recommendations on national implementation

Having set out the implementation decision of each UK region above, I shall examine these in light of the recommendations made by the IEEP report discussed in the previous chapter identified a number around of key factors which might affect the of success and failure of national implementation in relation to biodiversity objectives. In this chapter I will examine implementation in each of the four UK regions in relation to these factors.

Section 4⁴³ of the IEEP report sets out factors of success and failure of national implementation of the CAP in its pre-2013 form under five broad categories:

- 6.3.1 Measure and scheme design at Member State level;
- 6.3.2 Farmer attitudes and the role of advice and training;
- 6.3.3 Institutional factors;
- 6.3.4 Implementation of other policies;
- 6.3.5 Other intervening factors.

The IEEP report asserts that important lessons can and should be learnt in the implementation of the reformed CAP measures in EU Member States going forward, as ‘the way in which the current suite of policy measures are designed and implemented in Member States is insufficient to meet the EU’s biodiversity objectives associated with agriculture’.

⁴³ Jana Poláková, Graham Tucker, Kaley Hart, Janet Dwyer, Matt Rayment, ‘Addressing biodiversity and habitat preservation through Measures applied under the Common Agricultural Policy’ (Report Prepared for DG Agriculture and Rural Development, Contract No. 30-CE-0388497/00-44. Institute for European Environmental Policy: London, 2011) 98 - 119

Many of the factors identified within the five categories cover broad areas and few can be assessed as simplistically as having been achieved or not achieved. As a result, much of the analysis of the UK implementation must be made either by comparison with the previous implementation arrangements or in relation to an abstract ideal implementation model. This thesis will focus on comparison to the previous implementation arrangements in the four regions, with reference to relevant identifiable biodiversity objectives where appropriate. This approach will allow identification of improvements in the implementation systems at the UK level, as well as areas requiring ongoing development.

6.3.1 The measure and scheme design at Member State level

The IEEP report recommends that the measure and scheme design at Member State level should facilitate a number of outcomes, as follows;

- a. A coherent and complementary mix of policy measures with clarity of objectives⁴⁴*

Much of the coherence and harmonisation of policy measures within the CAP is already set at an EU level (e.g. GAECs & SMRs)⁴⁵ and as such the opportunity for differences between regions in their implementation is limited. There are areas in which cross-over between EU greening measures and national legislation appears to reduce the effectiveness of the greening measures significantly, for example the cross-over between the Pillar 1 greening measure to protect areas of permanent grassland and the Environmental Impact Assessment

⁴⁴ Ibid 99-101

⁴⁵ Ch 2 0 2.1.7 Cross-compliance in the CAP

(EIA)⁴⁶ Regulations in each devolved administration, which protect semi-natural grassland on the basis of requirements under the Habitat Regulations⁴⁷. However, as the EIA Regulations implement a protection granted at EU level by the Habitats Directive, in this instance the cross over in habitat protection is between requirements in two pieces of EU legislation, the Habitats Directive⁴⁸ and Regulation 1307/2013⁴⁹, rather than between EU and UK legislation.

Each devolved UK government has addressed the risk of cross-over between measures in its producer support (Pillar 1) and rural development measures (Pillar 2) by issuing 'double funding' guidelines⁵⁰. These are designed to ensure that activities which were previously covered by agri-environment schemes under Pillar 2, but which now fall under greening in Pillar 1, do not result in double payments to those carrying them out and are a good example of coherent and complementary implementation of changes to the EU policy.

The clarity of objectives is a recurring issue for measures under both Pillars of the CAP and at both an EU and UK level. The issues around the lack of intervention logic between biodiversity objectives and the greening measures at policy design level has been discussed at length in the previous chapters, and these issues also filter down into UK implementation.

⁴⁶ See Glossary

⁴⁷ Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora [1992] OJ L 206/7

⁴⁸ Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora [1992] OJ L 206/7

⁴⁹ Regulation (EU) No 1307/2013 of the European Parliament and of the Council on establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 [2013] OJ L 347/608

⁵⁰ See fn51-51 in 'Biodiversity Objectives and the Common Agricultural Policy Reform 2013'

The absence of coherence and connectivity between biodiversity objectives and the choice of greening measures for Pillar 1 at EU level results in a lack of coherence and connectivity between the objectives and the implementation of the greening measures at a Member State level, including the four UK regions.

The implementation of RDP measures is much more closely focused on environmental objectives, which is unsurprising given the EU requirement that 30% of the budget allocation is spend on environmental measures (including agri-environmental schemes). This 30% requirement is exceeded in all cases, with England, Wales, Scotland and Northern Ireland spending 87%⁵¹, 56%⁵², 49%⁵³ and 40%⁵⁴ respectively.

The RDP documents published by each devolved administration⁵⁵ range from 774 to 1422 pages in length and contain an in-depth and extensive analysis of the objectives of the programme (environmental and socio-economic), the measures designed to meet these, budgetary considerations and progress indicators (such as the abundance of terrestrial

⁵¹ DEFRA, 'United Kingdom – Rural Development Programme (Regional) – England' (Version 2.3/ 2016) 116

⁵² European Commission, 'Factsheet on 2014-2020 Rural Development Programme for Wales (United Kingdom) – Annex 1' < https://ec.europa.eu/agriculture/sites/agriculture/files/rural-development-2014-2020/country-files/uk/factsheet-wales_en.pdf > accessed 20 September 2017

⁵³ European Commission, 'Factsheet on 2014-2020 Rural Development Programme for Scotland (UK)' < https://ec.europa.eu/agriculture/sites/agriculture/files/rural-development-2014-2020/country-files/uk/factsheet-scotland_en.pdf > 98 accessed 20 September 2017

⁵⁴ European Commission, 'Factsheet on 2014-2020 Rural Development Programme for Northern Ireland - Annex' < https://ec.europa.eu/agriculture/sites/agriculture/files/rural-development-2014-2020/country-files/uk/factsheet-northern-ireland_en.pdf > accessed 20 September 2017

⁵⁵ DEFRA, 'United Kingdom – Rural Development Programme (Regional) – England' (Version 2.3/ 2016); Scottish Government, Agriculture and Rural Development Division, 'United Kingdom – Rural Development Programme (Regional) – Scotland' (Version 2.2/ 2016); Welsh Government, Agriculture, Fisheries and Marine Group - CAP Planning Division, 'Rural Development Programme (Regional) – Wales' (Version 1.3/ 2016); DAERD - Rural Development Programme Management Branch, 'United Kingdom – Rural Development Programme (Regional) – Northern Ireland' (Version 2.0/ 2015)

breeding birds⁵⁶). In this regard they go much further to meeting the first recommendation of the IEEP report than the direct support measures.

Each of the RDP documents sets out the objectives and/or targets which it aims to meet and these include international commitments such as the Aichi targets in the Strategic Plan for Biodiversity for 2020,⁵⁷ obligations under the EU Birds and Habitats Directives and both UK and regional targets such as those in the Natural Environment and Rural Communities (NERC) Act.⁵⁸ However, the RDP documents do not go into detail around how the programmes will deliver each target or objective across the full range mentioned. The measure of achievement is set against identified targets within the RDPs, using indicators, as discussed below.

b. Targeted and tailored schemes to achieve those objectives - targeted locations, habitats and species (though including a landscape element where possible).⁵⁹

⁵⁶ Scottish Government, Agriculture and Rural Development Division, 'United Kingdom – Rural Development Programme (Regional) – Scotland' (Version 2.2/ 2016) 306

⁵⁷ The Strategic Plan for Biodiversity includes 20 time-bound, measurable targets to be met by the year 2020 (Aichi Biodiversity Targets).

Secretariat of the Convention on Biological Diversity, 'Strategic Plan for Biodiversity 2011–2020 and the Aichi Targets' (2010) <<https://www.cbd.int/doc/strategic-plan/2011-2020/Aichi-Targets-EN.pdf>> accessed 21 September 2017

⁵⁸ 'The Act makes provision in respect of biodiversity, pesticides harmful to wildlife and the protection of birds, and in respect of invasive non-native species. It alters enforcement powers in connection with wildlife protection and extends time limits for prosecuting certain wildlife offences. It addresses a small number of gaps and uncertainties which have been identified in relation to the law on sites of special scientific interest. And it amends the functions and constitution of National Park authorities, the functions of the Broads Authority and the law on rights of way.'

–Natural Environment and Rural Communities Act 2006, Explanatory Notes, 10,

⁵⁹ Mark Allen, Emma Downing, Tom Edwards, Nia Seaton and Maggie Semple, 'CAP Reform 2014–20: EU Agreement and Implementation in the UK and in Ireland (updated)' (House of Commons Library, RaISe paper 702-14, 30 October 2014) 101-103

This recommendation clearly does not apply to the Pillar 1 greening measures, as by their nature they are generic and designed to cover broad areas. Applied to agri-environment schemes under Pillar 2 we can see evidence of targeting and tailoring within each of the four RDPs; England, Wales and Northern Ireland each offers a layered system with a basic scheme for simple measures and a higher-level scheme for more complex and/or targeted measures. Scotland operates a system in which options are available on the basis of spatial targeting (different options for different areas). Under all the schemes options may be combined in a variety of ways as best suits the land and the environmental objectives sought, though some options are only available for the higher-level schemes where applicable.⁶⁰

The implementation of Pillar 2 schemes in the devolved administrations does appear to offer targeted and tailored schemes to deliver RDP objectives. Each RDP also contains provisions to facilitate cooperation between land owners to deliver landscape scale measures⁶¹ as required by Article 35 of EU Regulation 1305/2013⁶²;

- In England, a Facilitation Fund supports landscape-scale delivery⁶³.
- A similar fund called the Environmental Co-operation Action Fund was created in Scotland⁶⁴

⁶⁰ See Appendix - Chapter 6 – Summary of agri-environment measures offered under agri-environment schemes in the UK

⁶¹ Sub measure 16.5 ‘Support for joint approaches to environmental projects and ongoing environmental practices’ in all four RDPs

⁶² Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 [2013] OJ L 347/487

⁶³ Natural England (et al), ‘Guide to Countryside Stewardship: facilitation fund’

<<https://www.gov.uk/government/publications/guide-to-countryside-stewardship-facilitation-fund/guide-to-countryside-stewardship-facilitation-fund>> accessed 21 September 2017

⁶⁴ Scottish Government - Rural Payments and Services, ‘Environmental Co-operation Action Fund’ <<https://www.ruralpayments.org/publicsite/futures/topics/all-schemes/environmental-co-operation-action-fund/>> accessed 23 September 2017

- The Northern Ireland RDP offers a separate group-level scheme within the EFS⁶⁵.
- No separate scheme or funding for landscape scale delivery appears to have been made available under the Welsh RDP, but 'Financial grants to support co-operation activities between at least two entities'⁶⁶ are identified to support 'landscape scale action towards conserving and enhancing Wales's native wildlife & biodiversity'⁶⁷.

*c. Accessibility and attractiveness to farmers, including flexibility (where appropriate)*⁶⁸

One of the challenge for national implementation is to make the most beneficial agri-environment schemes and measures more attractive to farmers, and public consultation (discussed in the next chapter) has shown that flexibility and perceived administrative burden are key considerations for farmers entering into schemes. The balance which must be struck is to offer enough options to give farmers the flexibility they desire within the schemes whilst ensuring that all available options do offer genuine environmental benefit, and encouraging those that sign up to select the options most appropriate for the environmental objectives in their area.

The devolved administrations have attempted to strike this balance in different ways;

⁶⁵ DAERA, 'Agri-Environment' <<https://www.daera-ni.gov.uk/articles/agri-environment#toc-0>> accessed 21 September 2017

⁶⁶ Welsh Government, Agriculture, Fisheries and Marine Group - CAP Planning Division, 'Rural Development Programme (Regional) – Wales' (Version 1.3/ 2016) 1214

⁶⁷ Welsh Government, Agriculture, Fisheries and Marine Group - CAP Planning Division, 'Rural Development Programme (Regional) – Wales' (Version 1.3/ 2016) 123

⁶⁸ Mark Allen, Emma Downing, Tom Edwards, Nia Seaton and Maggie Semple, 'CAP Reform 2014–20: EU Agreement and Implementation in the UK and in Ireland (updated)' (House of Commons Library, RaISe paper 702-14, 30 October 2014) 103-104

- England: Application to the Countryside Stewardship⁶⁹ schemes available in England is competitive and 'scored against local priority targets to maximise environmental benefit'⁷⁰, meaning applicants are encouraged to select the best options for the environment in order to maximise the likelihood that their application will be successful.

- Wales: Glastir in Wales also uses a points-based system calculated using the management options selected in the application, with a minimum threshold for the entry-level scheme⁷¹ and competitive applications for the Advanced scheme⁷²

- Scotland: Under the Agri-Environment Climate Scheme in Scotland, only those options which are appropriate for the geographical area in which the holding is situated are available to applicants; this effectively removes the option to choose easy but inappropriate options and does limit flexibility.

⁶⁹ See Ch 3 - 3.2.2.1 Agri-Environment Schemes in the UK

⁷⁰ Natural England (et al), 'Countryside Stewardship'
 <<https://www.gov.uk/government/collections/countryside-stewardship-get-paid-for-environmental-land-management>> accessed 23 September 2017

⁷¹ Welsh Government, 'Glastir Entry'
 <<http://gov.wales/topics/environmentcountryside/farmingandcountryside/farming/schemes/glastir/glastir-entry/?lang=en>> accessed 23 September 2017

⁷² Welsh Government, 'Glastir Advanced'
 <<http://gov.wales/topics/environmentcountryside/farmingandcountryside/farming/schemes/glastir/glastir-advanced/?lang=en>> accessed 23 September 2017

- Northern Ireland: Applications to the Environmental Farming Scheme in Northern Ireland are prioritised to deliver most environmental benefit⁷³, with the wider-level scheme open to all applicants with an eligible holding of 3ha +⁷⁴ and the higher-level scheme open to applicants with holdings in environmentally designated areas⁷⁵. This restriction of the higher-level scheme ensures tailoring measures are targeted in the most appropriate areas and, whilst limiting flexibility as under the Scottish scheme, aims to ensure limited resources are deployed in the most important areas.

The Department for Environment Food and Rural Affairs (DEFRA) publishes annual statistics for take-up of agri-environment schemes across the four regions and these give an indication of the ‘attractiveness’ of the schemes, though it is important to acknowledge that other factors, e.g. economic fluctuations within the industry may also impact on take-up.

⁷³ DAERA, ‘Agri-environment’ <<https://www.daera-ni.gov.uk/articles/agri-environment>> accessed 23 September 2017

⁷⁴ DAERA, ‘Environmental Farming Scheme 2017 - Questions and Answers’ (Version 06/03/2017, 10) <https://www.daera-ni.gov.uk/sites/default/files/publications/daera/EFS%20Q%26As%2007%2003%202017.pdf> accessed 23 September 2017

⁷⁵ DAERA, ‘Agri-environment’ <<https://www.daera-ni.gov.uk/articles/agri-environment>> accessed 23 September 2017

Table 10.5 Agri-environment schemes – area under schemes

thousand hectares		31 December				
		2012	2013	2014	2015	2016
England						
Organic Farming Scheme		-	-	-	-	-
Countryside Stewardship Scheme (a)		100	36	-	-	-
Environmentally Sensitive Areas Scheme (a)		269	92	-	-	-
Environmental Stewardship Scheme						
Entry Level Scheme (b)		6 094	6 514	6 389	5 132	3 661
Higher Level Scheme (c)		1 047	1 276	1 348	1 344	1 278
new Countryside Stewardship Scheme (d)						75
Wales						
Organic Farming/Organic Farming Conversion Scheme (e)		132	51	97	-	-
Tir Cymen/Tir Gofal (f)		372	358	12	-	-
Environmentally Sensitive Areas Scheme		-	-	-	-	-
Tir Cynnal (f)		253	297	-	-	-
Glastir (g)						
Glastir Entry (h)		155*	203	508	546	546
Glastir Advanced (on Entry)			29	184	251	251
Glastir Commons (i)		23	34	111	117	119
Glastir Organic		..	..	..	64	65
Decoupled Advanced (j)		..	..	..	..	34
Scotland						
Organic Aid Scheme (k)		4	2	-	-	-
Countryside Premium Scheme/Rural Stewardship Scheme (k)		-	-	-	-	-
Environmentally Sensitive Areas Scheme (k)		9	1	-	-	-
Land Management Contracts (k)		-	-	-	-	-
Land Managers Options (l)		405	387	338	136	63
Rural Priorities (m)		1 122	1 158	1 212	980	623
Agri-environment Climate Scheme (n)						67
Northern Ireland						
Organic Farming Scheme (o)		2	1	-	-	-
Countryside Management Scheme (p)		350	295	280	221	46
Environmentally Sensitive Areas Scheme (q)		103	91	84	84	0

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In England the entry-level scheme closed to new applicants in 2015 which explains the sharp reduction, and we can see the (very low) initial update of the new Countryside Stewardship schemes in 2016. Uptake of the higher-Level scheme increased sharply between 2012 and

⁷⁶ Department for Environment, Food and Rural Affairs Department of Agriculture, Environment and Rural Affairs; (Northern Ireland); Welsh Assembly Government, The Department for Rural Affairs and Heritage, and The Scottish Government, Rural & Environment Science & Analytical Services, 'Agriculture in the United Kingdom 2017' (75)

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/615965/AUK-2016-25may17i.pdf>

2014 (perhaps due to an influx of applicants wishing to enrol before the new schemes were implemented). There was then a decline between 2014 and 2016 as these new schemes were rolled out.

Glastir enrolment increased substantially between 2012 and 2016 across all levels, levelling out between 2015 and 2016.

The Land Managers Options⁷⁷ and Rural Priorities⁷⁸ schemes were Rural Development contracts in the 2007-2013 Scottish RDP and these schemes closed to new applicants in 2014 and 2013 respectively. This accounts for the decrease in coverage as previous agreements expired, as with the Environmental Stewardship schemes in England. Take-up of the new Agri-Environment Climate Schemes in Scotland is low for the first year as comparable with take-up of the Countryside Stewardship scheme in England.

Enrolment on the Countryside Management Scheme, the predecessor of the Environmental Farming Scheme in Northern Ireland, decreased sharply between 2012 and 2016 and was closed to new applicants in 2015; as the new EFS only opened for applications in 2017⁷⁹ there is no data on uptake to date, but we can expect to see a similar slow start to that seen with the new schemes in England and Scotland.

⁷⁷ Scottish Government, 'Rural Development Contracts - Land Managers Options' <<http://www.gov.scot/Topics/farmingrural/SRDP/Land-Managers-Options>> accessed 23 September 2017

⁷⁸ Scottish Government, 'Rural Development Contracts – Rural Priorities' <<http://www.gov.scot/Topics/farmingrural/SRDP/RuralPriorities>> accessed 23 September 2017

⁷⁹ DAERA, 'Agri-environment' <<https://www.daera-ni.gov.uk/articles/agri-environment>> accessed 23 September 2017

Unfortunately, this data does not give us any conclusive indication of whether the new AES schemes under the 2014-2020 RDPs are more or less accessible and attractive to farmers than the previous schemes, as data from the first year of the new schemes is not comparable to data from the previous 5 years in any useful way. Until further data is released we must make our assessment on the basis of scheme content discussed above.

- d. Payment rates which reflect both the income forgone and compensation for the perceived risk of the restriction of the ability to react to fluctuating markets (with the potential for higher profits) involved in a multi-year agreement. Payment for the 'hassle factor' (transaction costs) of entering into AESs should also be considered;⁸⁰*

Article 28(6) of EU Regulation 1305/2013 states that for agri-environment-climate schemes:

Payments shall be granted annually and shall compensate beneficiaries for all or part of the additional costs and income foregone resulting from the commitments made. Where necessary, they may also cover transaction costs up to a value of 20 % of the premium paid for the agri-environment-climate commitments. Where commitments are undertaken by groups of farmers or groups of farmers and other land managers, the maximum level shall be 30 %.⁸¹

⁸⁰ Mark Allen, Emma Downing, Tom Edwards, Nia Seaton and Maggie Semple, 'CAP Reform 2014–20: EU Agreement and Implementation in the UK and in Ireland (updated)' (House of Commons Library, RaISe paper 702-14, 30 October 2014) 104-105

⁸¹ Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 [2013] OJ L 347/487 art 28(6)

The EU regulation makes provision for two of the three recommendations (income foregone and 'hassle factor' transaction costs) but neither requires nor allows for payments to take account of any perceived risk in entering into restrictive long-term agreements. Any payment for such a risk may be in conflict with World Trade Organisation rules around 'green box' agricultural subsidy, which require that any payments must be relate solely to income foregone or costs incurred.⁸²

This provision is closely reflected in all four RDPs and is broadly similar across the regions. In this instance, any failure to embody the third recommendation in national implementation (as regards compensation for the perceived risk) can be attributed to the EU regulation rather than decisions at national level:

England - Payment rates for the options and commitments are set on the basis of the costs of participation which include: changes in gross margin for a crop, savings on working capital, savings on fixed costs, cost of additional management required by the option and transaction costs.⁸³

⁸² World Trade Organisation, 'Agreement on Agriculture - Annex 2: Domestic Support – The Basis for Exemption from The Reduction Commitments' (General Agreement on Tariffs and Trade 1994)

⁸³ DEFRA, 'United Kingdom – Rural Development Programme (Regional) – England' (Version 2.3/2016) 411

Scotland – Payments rates are calculated on income forgone and the additional cost incurred calculated for each individual AEC operation, plus transaction costs up to a value of 20% of the premium paid for the agri-environment-climate commitments (30% for groups).⁸⁴

Wales – As in Scotland, but transaction costs (up to 20%) are only provided to groups of farmers delivering co-operative management of larger scale AECM projects.⁸⁵

Northern Ireland - Payment for costs incurred or income foregone for actions over and above those delivered under GAEC, SMR and other cross-compliance requirements⁸⁶, including transaction costs up to 20% of the AECM commitment⁸⁷

*e. Ongoing evaluation and review to allow scheme adaptation to deliver the objectives in the most effective way.*⁸⁸

As with the previous recommendations, this refers primarily to measures under Pillar 2 RDPs. There is limited scope for adaptation within the implementation of Pillar 1 greening measures during the 2014-2020 period, and this will most likely take the shape of

⁸⁴ Scottish Government, Agriculture and Rural Development Division, 'United Kingdom – Rural Development Programme (Regional) – Scotland' (Version 2.2/ 2016) 309

⁸⁵ Welsh Government, Agriculture, Fisheries and Marine Group - CAP Planning Division, 'Rural Development Programme (Regional) – Wales' (Version 1.3/ 2016) 450

⁸⁶ DAERD - Rural Development Programme Management Branch, 'United Kingdom– Rural Development Programme (Regional) – Northern Ireland' (Version 2.0/ 2015) 296

⁸⁷ Ibid 298

⁸⁸ Mark Allen, Emma Downing, Tom Edwards, Nia Seaton and Maggie Semple, 'CAP Reform 2014–20: EU Agreement and Implementation in the UK and in Ireland (updated)' (House of Commons Library, RaISe paper 702-14, 30 October 2014) 105

implementation of an equivalency scheme in Scotland part-way through the period, and a possible increase in the budget transfer rates.

For Pillar 2 measures, evaluation plans are included in each RDP document and give details of: the objectives and topics for evaluation; how data collection will be carried out to ensure accurate evaluation; the bodies involved in delivery, and timelines. They also outline how results will be reported and communication to wider audiences and the resources required to deliver the evaluation plans:

England - £8.4million⁸⁹

Scotland – no total figure but £530,000 for contracted works and £70,000 per annum staffing costs⁹⁰

Wales - £5,125,509^{91 92}

Northern Ireland - £600,000⁹³

The England RDP document specifically identifies lessons learned from the previous RDP in each area of the evaluation plan, and areas of improvement (e.g. IT systems and changes in operations databases) are highlighted in the Wales, Scotland and Northern Ireland documents.

⁸⁹ DEFRA, 'United Kingdom – Rural Development Programme (Regional) – England' (Version 2.3/ 2016) 653

⁹⁰ Scottish Government, Agriculture and Rural Development Division, 'United Kingdom – Rural Development Programme (Regional) – Scotland' (Version 2.2/ 2016) 701-02

⁹¹ Welsh Government, Agriculture, Fisheries and Marine Group - CAP Planning Division, 'Rural Development Programme (Regional) – Wales' (Version 1.3/ 2016) 1300-02

⁹² €5,882,354 - Conversion 1GBP = 1.14766 EUR as of 02/06/2017

⁹³ DAERD - Rural Development Programme Management Branch, 'United Kingdom – Rural Development Programme (Regional) – Northern Ireland' (Version 2.0/ 2015) 930

Article 75 of EU Regulation 1305/2013⁹⁴ requires that all Member States submit Annual Implementation Reports (AIRs) to the Commission and enhanced AIRs in 2017 and 2019 will track RDP progress against objectives through performance indicators.

On the basis of the information above, the processes in place for ongoing evaluation and review are comprehensive and based on identified strengths and weaknesses from previous programmes. However, there is little information in any of the RDP documents around the process for scheme adaptation in response to the outcomes of this evaluation. The RDP for England sites a primary purpose for the evaluation plan as enabling the programme 'to be reviewed and, where appropriate, modified or changed to reflect lessons learned from delivery'⁹⁵ but no detail is given to clarify how changes will be made.

The devolved administrations face challenges around scheme adaptation during the 2014-2020 period because there is a need for continuity, both for farmers already enrolled in schemes and those considering entry, alongside a need to adapt the schemes to ensure maximum benefit in line with the objectives. There is also an issue of fairness to consider, as any change to a scheme which requires farmers to deliver a more stringent measure for the same payment will disadvantage farmers who enter the scheme after this change is made in comparison with those who enrolled prior to the change.

⁹⁴ Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 [2013] OJ L 347/487 art 75

⁹⁵ DEFRA, 'United Kingdom – Rural Development Programme (Regional) – England' (Version 2.3/2016) 644

6.3.2 Farmer Attitudes and the Role of Advice and Training⁹⁶

The IEEP report identified advice and information provision alongside training and skills development as key for the successful implementation of both voluntary (e.g. AES) and mandatory (cross-compliance) policy measures for biodiversity.

Evidence within the report shows that greater provision of training and advice leads to greater uptake and success of agri-environment measures. It also shows that there is a common lack of understanding around the reasons behind the rules or required measures, possibly stemming from the prescriptive nature of most requirements, which are perceived as depriving farmers of the opportunity or flexibility to address the challenge in their own way and failing to encourage active engagement with the objectives of the measures.⁹⁷

Advice and training is covered directly by the first of the overarching CAP objectives set at EU level, 'fostering knowledge transfer and innovation in agriculture, forestry, and rural areas'⁹⁸ and Article 12 of Regulation 1306/2013⁹⁹ expands and clarifies the principles and

⁹⁶ Mark Allen, Emma Downing, Tom Edwards, Nia Seaton and Maggie Semple, 'CAP Reform 2014–20: EU Agreement and Implementation in the UK and in Ireland (updated)' (House of Commons Library, RaISe paper 702-14, 30 October 2014) 106-110

⁹⁷ Jana Poláková, Graham Tucker, Kaley Hart, Janet Dwyer, Matt Rayment, 'Addressing biodiversity and habitat preservation through Measures applied under the Common Agricultural Policy' (Report Prepared for DG Agriculture and Rural Development, Contract No. 30-CE-0388497/00-44. Institute for European Environmental Policy: London, 2011) 106-09

⁹⁸ Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 [2013] OJ L 347/487 art 5(1)

⁹⁹ Regulation (EU) No 1306/2013 – Of the European Parliament and of the Council 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 [2013] OJ L 347/549 art 12

scope of the Farm Advisory Service (created in 2003), which each Member State must provide to its agricultural industry.

However, this is not related directly to agri-environment-climate objectives and does not mention application to agri-environment schemes. The importance of advice and training within the implementation of agri-environment schemes under the fourth objective of 'restoring, preserving and enhancing ecosystems related to agriculture and forestry'¹⁰⁰ is acknowledged in each of the RDP documents, but only the RDP for England specifies particular funds (€19million) as set aside for advice provision within agri-environment-climate scheme funding.¹⁰¹

The RDP for Wales give extensive detail around advisory services (Measure 2), particularly the Farm Advisory Service, but does not give an indication as to the funding allocated to agri-environment schemes specifically.¹⁰² No details on funding specific to advice and training under the agri-environment-climate scheme measure appear in the RDP document for Scotland. Northern Ireland's RDP also mentions advice and training in the 'general description of the measure' for agri-environment-climate measure but lacks detail regarding proportions of funding for these elements.¹⁰³

¹⁰⁰ Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 [2013] OJ L 347/487 art 5(4)

¹⁰¹ DEFRA, 'United Kingdom – Rural Development Programme (Regional) – England' (Version 2.3/ 2016) 128

¹⁰² Welsh Government, Agriculture, Fisheries and Marine Group - CAP Planning Division, 'Rural Development Programme (Regional) – Wales' (Version 1.3/ 2016) 238-58

¹⁰³ DAERD - Rural Development Programme Management Branch, 'United Kingdom – Rural Development Programme (Regional) – Northern Ireland' (Version 2.0/ 2015) 291-294

6.3.3 Institutional Factors

Institutional factors related to the delivery of biodiversity and habitat preservation through implementation of the CAP in the UK fall into two broad categories; a) administrative and technical resources, and b) involvement of relevant bodies during scheme development.

The first concerns the delivery of both the greening measures through Pillar 1 and agri-environment measures under Pillar 2, though the methods of delivery are very different; the second also applies to both Pillars and relates to the policy consultation processes followed by each Member State or region.

- a. Appropriate administrative and technical resources and expertise are required, including appropriately trained staff who understand the dynamic interactions between agriculture and the environment, adequate databases, and suitable systems to be able to:*
- target and monitor measures;*
 - deliver payments efficiently; and*
 - ensure effective control and enforcement.¹⁰⁴*

The examples given in the report refer to Member States (such as the Czech Republic)¹⁰⁵ which do not yet have the experience in policy making or the institutional capacity to effectively deliver greening through the CAP, and the issues identified (e.g. availability of national data through accessible systems) do not apply to the UK to a degree which warrants

¹⁰⁴ Mark Allen, Emma Downing, Tom Edwards, Nia Seaton and Maggie Semple, 'CAP Reform 2014–20: EU Agreement and Implementation in the UK and in Ireland (updated)' (House of Commons Library, RaISe paper 702-14, 30 October 2014) 110-111

¹⁰⁵ Ibid

close analysis. As discussed elsewhere, issues arising in the UK implementation relate to the choices around the delivery of greening measures rather than capacity to deliver these.

b. Involvement of the relevant bodies (government, farmers etc) in the scheme development is essential to ensure engagement and ongoing support.¹⁰⁶

Public consultation on the reform and greening of the CAP was carried out at EU level as well as within the four regions of the UK, and as such the examination of this process and its impact on both the EU policy and UK implementation is examined in-depth in the subsequent chapter on public consultation on the greening of the CAP¹⁰⁷.

6.3.4 Implementation of other policies¹⁰⁸

The impact of implementation of other European and national policies on the effectiveness of national implementation of the CAP exists in two forms; lack of support and counteractive effect.

Instances of lack of support, in which other policies that have the potential to facilitate or enhance the positive impact of CAP measures on biodiversity but fail to do so, include the implementation of the Birds and Habitats Directives and actions under Natura 2000. Article

¹⁰⁶ Ibid

¹⁰⁷ See Ch 7

¹⁰⁸ Mark Allen, Emma Downing, Tom Edwards, Nia Seaton and Maggie Semple, 'CAP Reform 2014–20: EU Agreement and Implementation in the UK and in Ireland (updated)' (House of Commons Library, RaISe paper 702-14, 30 October 2014) 112-114

12 of the Birds Directive¹⁰⁹ requires Member States to report on implementation of measures under the directive to the European Commission every 3 years, and Article 17 of the Habitats Directive¹¹⁰ requires reporting every 6 years. Unfortunately, these UK reports¹¹¹ do not break down their finding by country or region.

The IEEP report particularly identifies the failure to develop management plans for Natura 2000 sites in many Member States as a missed opportunity which restricts the effective use of agri-environment schemes and other measures under the CAP in the preservation of biodiversity on these sites.¹¹²

Data from Joint Nature Conservation Committee on Natura 2000 sites in the UK¹¹³ indicates that, as of January 2017, 788 (80%) of the 989 sites in the UK did not have management plans. In 2015 Natural England launched the Improvement Programme for England's Natura 2000 Sites (IPENS)¹¹⁴ and Wales announced a Prioritised action framework for Natura 2000

¹⁰⁹ Council Directive 79/409/EEC on the conservation of wild birds [1979] OJ L 103/1

¹¹⁰ Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora [1992] OJ L 206/7

¹¹¹ Joint Nature Conservation Committee, '3rd UK Habitats Directive Reporting 2013' (Home > European > European Reporting > Habitats Directive Reporting > 3rd UK Report) < <http://jncc.defra.gov.uk/page-6387>> accessed 03 May 2018

Joint Nature Conservation Committee, '10th UK Report for Article 12 of the EU Birds Directive for the period 2008-2012' (Home > European > European Reporting > Birds Directive Assessment) < <http://jncc.defra.gov.uk/page-6526>> accessed 03 May 2018

¹¹² Jana Poláková, Graham Tucker, Kaley Hart, Janet Dwyer, Matt Rayment, 'Addressing biodiversity and habitat preservation through Measures applied under the Common Agricultural Policy' (Report Prepared for DG Agriculture and Rural Development, Contract No. 30-CE-0388497/00-44. Institute for European Environmental Policy: London, 2011) 59

¹¹³ Joint Nature Conservation Committee, 'Summary data for UK SACs, SCIs and cSACs' (Home > UK > UK Protected Sites > Special Areas of Conservation > Download UK SAC data) < <http://jncc.defra.gov.uk/page-1461>> accessed 23 September 2017

¹¹⁴ Natural England, *Improvement Programme for England's Natura 2000 Sites (IPENS) - Planning for the future: Summary Report* (2015)

sites in 2016¹¹⁵. I have been unable to find any documentation issued by the governments of Scotland or Northern Ireland detailing plans to address this issue.

The report also identifies differing application of Environmental Impact Assessments in national implementation can result in stricter requirements in some areas and more leniency in others¹¹⁶. Under Annex II of the Environmental Impact Assessment Directive¹¹⁷, Member States may exercise discretion as to the criteria/thresholds which govern which agricultural projects require an EIA.

These criteria are set out in separate Regulations for England¹¹⁸, Wales¹¹⁹, Scotland¹²⁰ and Northern Ireland¹²¹ and the thresholds above which an EIA should be considered do vary between regions. For example, under the Scottish Regulations the threshold for projects to restructure agricultural holdings outside an environmentally sensitive area is 200 hectares¹²², whilst the threshold for the same type of project in Wales is 100 hectares¹²³.

This difference in implementation between regions takes into account the different

¹¹⁵ Welsh Government, 'Prioritised action framework for Natura 2000 sites'

<<http://gov.wales/topics/environmentcountryside/consmanagement/conservationbiodiversity/habitatdirective/paf-for-natura-2000-sites/?lang=en>> accessed 23 September 2017

¹¹⁶ Roel Slootweg, *Biodiversity in environmental assessment: enhancing ecosystem services for human well-being* (Cambridge : Cambridge University Press, 2010)

Katherine Drayson, Stewart Thompson, 'Ecological mitigation measures in English Environmental Impact Assessment' [2013] *Journal of Environmental Management*

¹¹⁷ Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment [1985] OJ L 175/40

¹¹⁸ The Environmental Impact Assessment (Agriculture) (England) (No.2) Regulations 2006

¹¹⁹ The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007

¹²⁰ The Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006

¹²¹ The Environmental Impact Assessment (Agriculture) Regulations (Northern Ireland) 2007

¹²² The Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006 sch 1

¹²³ The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007 sch 1

agricultural systems (as the average holding size in Scotland is larger than in Wales) in the same way that CAP greening measures are implemented differently in the UK regions.

There is little data to assess the impact of differing implementation of EIA in the UK devolved administrations in relation to the impact of CAP measures on biodiversity, but reference to EIAs is made in each of the RDPs for the regions in relation to projects under these programmes, which suggests a recognition in each region of the importance of the interaction of these policies. It is beyond scope of this thesis to examine the consideration of biodiversity within EIA in the UK. However, the relationship between CAP measures through Rural Development Policy in the UK and the biodiversity consideration of EIA for agricultural development projects should be acknowledged in an assessment of UK implementation of greening measures in the RDPs.

Instances in which policies are implemented in a way that causes one environmental objective to counteract another are also mentioned in the IEEP report; the primary example given is from Germany, where the national incentives provided by the Renewable Energy Sources Act (EEG) to grow energy crops outweigh the incentives offered to farmers to join agri-environment schemes¹²⁴. Other issues identified include measures within national RDPs which create conflicts between objectives, e.g. between infrastructure development to

¹²⁴ Jana Poláková, Graham Tucker, Kaley Hart, Janet Dwyer, Matt Rayment, 'Addressing biodiversity and habitat preservation through Measures applied under the Common Agricultural Policy' (Report Prepared for DG Agriculture and Rural Development, Contract No. 30-CE-0388497/00-44. Institute for European Environmental Policy: London, 2011) 114

support economic growth which leads to more intensive farming vs. support under agri-environment schemes.

No examples from the UK are cited in the IEEP report and of the varied and substantial criticism of the CAP which I had read during my research, very little has focused on clashes between CAP greening and other environmental policies.

6.3.5 Other Intervening Factors¹²⁵

The IEEP report identifies a number of other factors which impact on the effective national implementation of biodiversity measures through the CAP in Member States; many of these are beyond the influence of CAP legislation at either EU or UK level and are difficult to address, but should never-the-less be taken into account when implementing policy at a national level where possible:

Variations in climate and weather

Article 25 of EU Regulation 1306/2013¹²⁶ establishes the 'reserve for crises in the agricultural sector' consisting of €2,800 million (€400 million per year 2014-2020), which is set aside through a reduction in direct payments under Pillar 1 to fund action or aid in times of 'major crisis' in the sector. Article 25 does not specify what would constitute 'major crisis' but serious issues arising from variations in climate and weather that, for example, resulted in an

¹²⁵ Ibid 144

¹²⁶ Regulation (EU) No 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 [2013] OJ L 347/549 art 25

EU-wide crop failure, would probably fall into this category. No provision for similar support is implemented at Member State level as the reserve is set aside from direct payments which are fully funded at EU level through the European Agricultural Guarantee Fund (EAGF)¹²⁷

Minor variations in climate and weather, such as the suitability of different crops or livestock in different national regions, is taken into account in the UK in a very practical sense through the devolved administration of the CAP in England, Wales, Scotland and Northern Ireland, which allows for implementation to accommodate these variations.

Hunting or other forms of killing of species, inside and outside Europe;

There is an ongoing concern for the importance of ensuring that endangered species are protected from illegal persecution. This applies to a number of protected species in the UK which make use of farmland habitat, most notably birds of prey which are subject to trapping and shooting. Other forms of wildlife crime also affect farmland species and the RSPB Birdcrime report 2015 provides a useful snapshot of incidents reported to them between 2010 and 2015:

¹²⁷ European Commission, 'Commission proposes annual reduction in direct payments to finance crisis reserve' (European Commission > News) <https://ec.europa.eu/info/news/commission-proposes-annual-reduction-direct-payments-finance-crisis-reserve-2017-mar-31_en> accessed 12 April 2018

Report type	2010	2011	2012	2013	2014	2015
Shooting and destruction of birds of prey	243	211	210	178	187	196
Taking, sale and possession of birds of prey	37	35	26	30	16	27
Poisoning and use of poisoned baits	124	102	79	77	73	50
Import and export of live or dead birds	2	0	3	1	1	1
Taking, sale and possession of non-bird of prey species	65	84	65	36	44	26
Taxidermy and possession of dead wild birds	12	13	6	8	5	3
Egg collecting and egg thefts	43	33	26	16	25	17
Sale of eggs	2	5	7	3	11	12
Photography and disturbance	50	18	26	14	17	17
Total	578	501	448	363	379	349

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UK breakdown for above incident types in 2015	Count
England	242
Scotland	69
Wales	17
Northern Ireland	17
United Kingdom (country unspecified)	4
Total	349

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Measures to address wildlife crime and the illegal persecution of species protected under the Birds¹³⁰ and Habitats Directives¹³¹ are implemented through different legislation in the devolved administrations: the Wildlife and Countryside Act 1981 in England and Wales, the Wildlife and Natural Environment (Scotland) Act 2011 and the Wildlife and Natural

¹²⁸ RSPB, 'Birdcrime 2015 - Appendix I: Incidents reported to the RSPB 2010-2015' <https://www.rspb.org.uk/Images/Birdcrime_2015_Appendices_tcm9-437148.pdf> accessed 23 September 2017

¹²⁹ Ibid

¹³⁰ Council Directive 79/409/EEC on the conservation of wild birds [1979] OJ L 103/1

¹³¹ Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora [1992] OJ L 206/7

Environment Act (Northern Ireland) 2011. Each region also has a Partnership for Action Against Wildlife Crime (PAW)¹³² to assist implementation.

Organisations such as the RSPB have also raised concerns around the impact of hunting (legal and illegal) of migratory species in countries outside the UK and EU. In some cases work to provide habitat and feeding grounds in the UK is counter-acted by threats on migration¹³³ (for example for the Turtle Dove - a Farmland Bird Indicator¹³⁴ and IUCN Red List¹³⁵ species). In this case the incomplete implementation of protection afforded to species under the Birds¹³⁶ and Habitats Directives¹³⁷ in Malta impacts the effectiveness of UK conservation measures¹³⁸.

Invasive alien species

Regulation No 1143/2014 on the prevention and management of the introduction and spread of invasive alien species¹³⁹ legislates on this issue and the associated risks at an EU

¹³² DEFRA, 'Partnership for Action Against Wildlife Crime' <<https://www.gov.uk/government/groups/partnership-for-action-against-wildlife-crime>> accessed 23 September 2017

¹³³ Operation Turtle Dove, 'Ensuring safe passage for turtle doves on migration' <<http://www.operationturtledove.org/international-conservation/hunting/>> accessed 23 September 2017

¹³⁴ RSPB, 'UK Farmland Bird Indicator (1970-2007)' <<https://www.rspb.org.uk/our-work/conservation/conservation-and-sustainability/farming/whyfarming/whyfarming/fbi/>> accessed 23 September 2017

¹³⁵ International Union for Conservation of Nature and Natural Resources (IUCN), 'The IUCN Red List of Threatened Species - *Streptopelia turtur*' <<http://www.iucnredlist.org/details/22690419/0>> accessed 23 September 2017

¹³⁶ Council Directive 79/409/EEC on the conservation of wild birds [1979] OJ L 103/1

¹³⁷ Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora [1992] OJ L 206/7

¹³⁸ <https://www.theguardian.com/environment/2016/may/03/malta-should-consider-moratorium-on-turtle-dove-hunting-says-eu>

¹³⁹ Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species [2013] OJ L 317/35

level. UK implementation is covered by the Wildlife and Countryside Act 1981 in England and Wales, the Wildlife and Natural Environment (Scotland) Act 2011 and the Wildlife and Natural Environment Act (Northern Ireland) 2011, and options for control of invasive non-native species also exist under agri-environment schemes in each region.¹⁴⁰

Predators, including large carnivores, such as bears and wolves

Not applicable to the UK.

Habitat loss taking place both inside and outside Europe that affects migratory species

As above regarding migratory species and hunting; measures for the benefit of migratory species delivered through implementation of the CAP in the UK may be compromised by habitat loss in other areas of the migratory range and this should be addressed through support for cooperative conservation work both within and beyond EU borders, such as that delivered by Birdlife International.¹⁴¹

Incompatible actions taking place on neighbouring land

As the UK does not share terrestrial borders with non-EU countries, the risk of incompatible actions taken on neighbouring land which is not subject to CAP requirements does not apply.

However, this issue does have the potential to affect the efficacy of implementation of CAP measures to conserve and promote biodiversity in the UK in a number of ways: differences

¹⁴⁰ See Ch 3 - 3.2.2.1 Agri-Environment Schemes in the UK

¹⁴¹ Birdlife International <<http://www.birdlife.org/>> accessed 23 September 2017

in implementation strategies between Member States in the case of Ireland and Northern Ireland; differences between implementation in England, Wales, Scotland and Northern Ireland within the UK, and difference between options taken up on individual holdings within each region.

In the case of difference between implementation in Ireland and Northern Ireland, this has the potential to affect the small number of agricultural holdings which span the 310-mile terrestrial border. The decisions around the implementation of greening measures within the Basic Payment Scheme (Pillar 1) are broadly similar to those adopted in Northern Ireland¹⁴²; the key difference being that Ireland offers an equivalency scheme as an alternative to the crop diversification requirements, through which farmers may plant catch crops as part of the Irish AES (Green, Low-Carbon, Agri-Environment Scheme - GLAS¹⁴³) instead of diversifying their arable crop.¹⁴⁴ Farmers in Ireland also have a different lists of options through which they may meet the EFA requirements¹⁴⁵ and, under Pillar 2, AES options in Ireland¹⁴⁶ differ from those available in Northern Ireland to a similar degree to the difference between AES offered by the UK regions.

Whilst the differences between implementation in Ireland and Northern Ireland present some minor risks in terms of possible incompatible actions taking place on neighbouring land

¹⁴² See above – p129-131

¹⁴³ Department of Agriculture, Food and the Marine (Ireland) 'Green, Low-Carbon, Agri-Environment Scheme – GLAS' <<https://www.agriculture.gov.ie/farmerschemespayments/glas/>> accessed 04 May 2018

¹⁴⁴ Department of Agriculture, Food and the Marine (Ireland), 'A Guide to Greening 2015' <<https://www.agriculture.gov.ie/media/migration/farmingschemesandpayments/basicpaymentscheme/greeningdocuments/Greeningmanual200215.pdf>> accessed 29 April 2018

¹⁴⁵ Land lying fallow, Nitrogen fixing crops, Catch crops, Areas of agro-forestry, Short rotation coppice, Field Copse, Hedgerows/trees in a line, Buffer Strips, Drains

¹⁴⁶ Department of Agriculture, Food and the Marine (Ireland) 'Green, Low-Carbon, Agri-Environment Scheme – GLAS' <<https://www.agriculture.gov.ie/farmerschemespayments/glas/>> accessed 04 May 2018

over the border, these risks are minimised by the fact that both regions are subject to the new CAP requirements. I would suggest that in this case the risk is no greater than that presented by the differences in implementation of CAP measures between UK regions, which may be outweighed by the advantages of regions having flexibility to implement greening and AES in the most appropriate way for their areas.

For farmers who have agricultural holdings which either span borders in the UK (e.g. England and Wales), or which include separate parcels of land in different regions (e.g. Wales and Scotland) the land owners must submit a Basic Payment Scheme application to each part of the UK in which they have land¹⁴⁷. The greening requirements apply to the holding as a whole, for example if a holding with land in England and Wales includes more than 15 ha of arable land (e.g. 5 ha in Wales and 10 ha in England), the 5% EFA requirements would apply to that holding. However, where greening requirements differ between regions, the farmer would be required to observe these different rules, for example where EFA options differ between regions, they could use fallow land in both England and Wales, but buffer strips in England only.¹⁴⁸

In terms of Agri-Environment Schemes (AES) delivered under Pillar 2, the risk of actions on neighbouring land compromising measures to conserve and promote biodiversity presents a challenge to the delivery of these schemes, but this risk is relatively minor.

¹⁴⁷ DEFRA, 'Basic Payment Scheme 2015: Guidance for farmers with land in more than one part of the UK (England, Northern Ireland, Scotland and Wales)' <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/418703/Land_in_more_than_one_part_of_the_UK.pdf> accessed 04 May 2018

¹⁴⁸ See above – p136-137

In principle, cross-compliance requirements¹⁴⁹ which apply to all farmers claiming the BPS should minimise the risk of any detrimental effects of land managed either outside of an AES, or under a different AES, which border land managed for biodiversity under an AES in any of the UK regions. Cross-compliance requires farmland management in line with a baseline of EU environmental standards, and voluntary AES actions should deliver environmental benefits, such as biodiversity conservation, beyond this baseline without reliance on the management of the wider landscape. As such, cross-compliance requirements on neighbouring land should prevent actions which actively counteract benefits to biodiversity.

However, there is recognition within all of the Rural Development Programmes of the UK regions that AES is more effective at a landscape scale, where biodiversity preservation measures are coordinated across multiple holdings to deliver joint benefits which are greater than the sum of the benefits delivered on individual farms.¹⁵⁰ In this case the risk would appear to be a failure to make the most of the potential of landscape-scale delivery and each of the RDPs for England, Wales, Scotland and Northern Ireland includes reference to an increased focus on landscape-scale delivery of benefits under AES. In England, Scotland and Northern Ireland additional financial support is also available to support the delivery of landscape-scale AES through coordination of land managers.

Finally, the risk of incompatible actions taking place on neighbouring land also applies to holding within each UK region. This applies to a lesser degree to Pillar 1 greening

¹⁴⁹ See Ch 2 - 2.1.7 Cross compliance in the CAP

¹⁵⁰ See above – pg 144-145

requirements, as these are standardised across each region. In the case of AES, the same risks as discussed above (in relation to AES in different UK regions) also apply to different area of AES in the same UK region. However, as above, the risks of differences in AES actively counteracting benefits to biodiversity are minimal due to the requirements of cross-compliance.

I began this chapter by setting out an intention to examine the implementation of greening measures introduced within the CAP reform in the UK and their capacity to deliver biodiversity benefits at this level. My intention was to discuss the degree to which the poor performance of the greening measures in delivering against biodiversity targets at the UK level could be attributed to national implementation decisions, as compared with the policy-design issues I have discussed in previous chapters.

Using the framework of analysis of the implementation of biodiversity preservation measures in the CAP presented by the IEEP report, I would suggest that UK implementation of the Pillar 1 greening measures is probably as well delivered as could be expected, given the policy design issues identified. Each UK administration has adopted the greening measures in a fairly standard form, with Scotland proposing an equivalency scheme which has yet to be adopted.

However, Member States have more flexibility in relation to implementation of Pillar 2 measures, and most opportunities to improve biodiversity protection are delivered through AES under this Pillar. As such, the majority of the IEEP recommendations relate to implementation of the Pillar 2 RDP measures and there is significant scope for comparison between the RDPs of the four UK regions.

Various opportunities for improvement were identified in relation to these recommendations, and in some instances implementation in one region of the UK went further in delivering against biodiversity benefits than another, for example through difference in funding allocation for scheme evaluation and training, or addressing the issue of non-existent management plans for Natura 2000 areas. I do not assert that the implementation of RDP in England, Wales, Scotland and Northern Ireland is perfect. Quite the contrary; my examination of the RDP measures in the light of the IEEP recommendations has highlighted numerous areas of potential improvement in the delivery of biodiversity preservation.

However, I would assert that none of the issues identified under implementation of Pillar 2 at Member State level are comparable with the problems of policy design at EU level which led to the adoption of apparently ineffective greening measures into Pillar 1. I would suggest that these issues contribute to a much larger degree to the failure of the CAP reform to deliver progress against biodiversity objectives at the EU and UK level.

The key difference between the measures introduced in Pillars 1 and 2 is that changes to Pillar 2 under the 2013 reform aimed to improve measures which were already targeted at biodiversity preservation, and the recommendations within the IEEP report also identified ways to maximise deliver of acknowledged environmental goods under RDP. Pillar1 measures, however, were designed to deliver new environmental goods, and their failure to do shows a much more fundamental problem in policy design than the 'room for improvement' issues identified in implementation of Pillar 2 measures.

I have suggested that the Impact Assessment of the 2013 CAP greening proposals did not offer the required level of analysis to contribute usefully to the policy design process. On this

basis I have included the following and final chapter as an examination of the role of public consultation. I examine its role in policy design at EU level, as the EU public consultation was carried out through the Impact Assessment, and in terms of policy implementation at Member State level, as recommended in relation to RDP design by the IEEP report.¹⁵¹

I have questioned whether the greening measures of the CAP reform can be said to be evidence-based in terms of the development of their intervention-logic. In the following chapter I explore whether they may be ‘consultation-based’, and the impact that public consultation had on the adoption of measures to deliver against biodiversity objectives.

¹⁵¹ See Ch 5 - 5.3 Report summary conclusions and recommendations

7 - PUBLIC CONSULTATION ON THE GREENING MEASURES OF THE CAP

This penultimate chapter examines the use and impact of the public consultations on the greening measures introduced into the CAP through the 2013 reform. It explores the part that the consultations played in the policy design at the EU level and implementation decisions at the UK level.

As such, it considered a source of input to the policy design and implementation process which, whilst it differs from more 'scientific' sources to which evidence-based policy might be expected to refer, still forms an important part of the policy design process. Within the concept of evidence-based policy, I would suggest that the outcome of public consultation does not belong directly alongside the input of, for example, scientific reports such as the IEEP report on biodiversity delivery through CAP measures. Public consultation does not formally examine the intervention logic between policy objectives and policy proposals in the same way. However, public consultation on policy proposals is a key requirement of the policy design process and, when participants have the capacity to provide constructive and well-informed commentary on proposals, can prove a useful and influential contribution.

The role of public consultation is worthy of attention within this thesis from the perspective of examining the degree to which public consultation might contribute to a design process which results in evidence-based policy. This is of particular interest in relation to the impact of public consultation around measures designed to deliver public goods (biodiversity preservation) through a policy (CAP) funded by public money.

My examinations of the EU and UK consultations take different forms due to their varied format and content. My discussion of the EU consultation briefly outlines both its context

within the Impact Assessment and the similarities between the analysis presented in the main Impact Assessment and the analysis presented in the public consultation in terms of value, or lack thereof, within the policy-design process. My analysis of the UK consultations focuses on their input into implementation decisions and I discuss the degree to which the consultation responses appear to inform the policy-making process within the flexibility in implementation available at Member State and region level.

7.1 Public Consultation at EU level

The EU-wide public consultation on the proposals for CAP reform was conducted as part of the Impact Assessment carried out by the European Commission in 2011. The 11 questionsⁱ and responses were broadly qualitative rather than quantitative and deal with general trends rather than specific measures.¹

On one hand, the framing of the consultation questions in general terms is understandable, as the EU consultation was carried out at an earlier stage of the reform process than the UK consultations, at a point at which no formal measures had been decided. On the other hand, the same criticism which I have levelled at the Impact Assessment as a whole also applies to public consultation. Any value to the reform process which can be found in the Impact Assessment is minimised though the lack of specific information which it presents.

¹ For example, 1) Are the policy scenarios outlined consistent with the objectives of the reform? Could they be improved and how?

See appendix for full list of questions

In the consultation report we are given details of the contributors (522 in total²) and the groups into which they fall. Of the 363 organisations which contributed to the consultation, around 36% were from the farming sector and around 11% were classified as ‘environmental organisations’³. Think-tank/research institutes and regional/local authorities were also amongst the highest represented groups. From the perspective of assessing the public consultation’s potential contribution to the development of evidence-based policy, an understanding of the sources of consultation response is important, particularly in terms of organisation contributions. As with the UK consultations, the level of expertise (and also the potential for institutional/industry bias) around greening measures will influence the value of the contributions to the policy design process. For example, I would suggest that the contribution from an independent Think-tank would be more likely to present an unbiased analysis of policy proposals, and would therefore be more useful in terms of development of evidence-based policy, than a contribution from, e.g. a farming industry lobbying body with ties to large scale, intensive farming businesses.

In some cases the details of responses indicated which group of respondents expressed support or opposition in an area. For example there was little support expressed for greening of Pillar 1 by farming organisations but much more by conservation organisations⁴. Overall, the EU public consultation gives general information about views we could have reliably predicted. Responses from the farming industry broadly focused on minimising

² 522 contributions: 72 from private persons, 18 empty and 363 from organisations (69 repetition from the same organisations)

European Commission, ‘Common Agricultural Policy towards 2020 – Annex 9: Report on the Public Consultation’ (Staff Working Paper – Impact Assessment) SEC (2011) 1153 final/2, 12

³ Ibid, 13

⁴ Ibid, 9

administrative burden and risk to farmers' income⁵ and environmental organisations focused on the benefits of greening measures, including their impact on biodiversity.⁶ However, any attempt at analysis of the contributions received from different fields to assess the potential value of the consultation as a whole would be of limited use in this case. The report gives no detail as to the account which was (or was not) taken of the responses received; rather it simply 'summarizes the contributions and the process and provides information on the methodology and the participants'

No indication regarding the degree to which the consultation responses influenced the shaping of the policy is given in the report and due to the absence of questions specific to any particular measure, I cannot make this assessment (as I do for the UK consultations below) to any meaningful degree. Approaches to remedy this issue are examined in the final part of the thesis.

7.2 Public Consultation in the UK

The duty of public consultation at Member State level differs for implementation of measures under Pillars 1 and 2 of the CAP. There is no overarching EU legislation which requires that Member States consult on implementation of EU regulations of any particular type (e.g. environmental), however these may be found in individual EU regulations.

⁵ Ibid 10-11

⁶ Ibid 7

Regulations 1307/2013⁷ sets out the rules around direct support under Pillar 1 and does not contain any requirement of public consultation at Member State level; only consultation at EU level is required if the Commission wish to adopt delegated acts relating to the regulation⁸.

Article 8 of Regulation 1305/2013⁹ requires that the content of Rural Development Programmes under Pillar 2 include 'the actions taken to involve the partners referred to in Article 5 of Regulation (EU) No 1303/2013 and a summary of the results of the consultation of the partners'. Article 5 of Regulation 1303/2013 requires that Member States shall consult specific groups during the development of 'partnership agreements', including agri-environment schemes:

Article 5 - Partnership and multi-level governance

1. For the Partnership Agreement and each programme, each Member State shall in accordance with its institutional and legal framework organise a partnership with the competent regional and local authorities. The partnership shall also include the following partners:
 - a. competent urban and other public authorities;
 - b. economic and social partners; and

⁷Regulation (EU) No 1307/2013 of the European Parliament and of the Council on establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 [2013] OJ L 347/608

⁸ Ibid (5)

⁹ Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 [2013] OJ L 347/487, art 8

- c. relevant bodies representing civil society, including environmental partners, non-Governmental organisations, and bodies responsible for promoting social inclusion, gender equality and non-discrimination.¹⁰

Although public consultation at Member State level is only a requirement under EU law for RDP schemes, each devolved administration in the UK carried out a consultation for implementation of measures under both Pillars of the reformed CAP.

In 2012 a 'Consultation principles: guidance' document was published on the gov.uk webpages¹¹ outlining the purpose and proposed structure of public consultations in the UK. Within the guidelines are the following points which should be borne in mind when considering the UK public consultations:

B: Consultations should have a purpose...Do not ask questions on issues on which you have a final view.

C: Consultations should be informative...Include validated assessments of the costs and benefits of the options being considered when possible.

¹⁰ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 [2013] OJ L 347/320 art 5

¹¹ UK Cabinet Office, 'Consultation principles: guidance' <<https://www.gov.uk/government/publications/consultation-principles-guidance>> accessed 23 September 2017

These guidelines are not binding and the UK and its devolved administrations may carry out public consultation in the way they consider most appropriate for the topic under consultation. In the case of consultation around RDP partnership agreements this must be made within the bounds of requirements under Article 8 of Regulation 1303/2013, as above.

The public consultation documents for implementation of greening measures under Pillar 1 and RDP under Pillar 2 of the CAP are publicly available online for England, Wales, Scotland and Northern Ireland and are analysed below. The difference in format and content of the public consultations in the four devolved administrations makes direct comparison difficult, as the consultations each ask different questions in different ways. The impact of the consultation responses upon the final implementation decisions in each region is set out explicitly in some consultation response documents but not at all in others. As such, a direct comparison between impact in each region is challenging, though the fact that some regions set out their approach to incorporating consultation responses into their decision-making processes and some do not is significant in its own right.

Below, I examine the implementation decisions in each region in light of their consultation response to consider to what degree the responses affected the implementation decisions. Where justification is offered for an implementation decision I have referred to this in the text, but the format of my analysis of the consultations in each region also varies in line with the consultation formats themselves. Where tables or charts are provided in the consultation reports I have reproduced them here as a visual aid.

7.2.1 England¹²

Unlike public consultations in the other devolved administrations, the summary of consultation responses and Government response for England is presented in a single document dealing with implementation of both Pillars of the CAP.¹³

In total 4928 responses were received, with a large proportion of these submitted through an RSPB campaign:

Response type	Number of responses
Email and written	4161
Of which campaigns:	
RSPB	3797
Soil Association	36
Wildlife Trusts	21
Citizen Space (on-line) ¹⁴	767
Total: 4928	

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¹² DEFRA, 'Consultation on the implementation of CAP reform in England: Summary of responses and Government response' (2013)

¹³ The documents available for all contributors to review to assist their contribution can be viewed on the [consult.defra.gov.uk](https://consult.defra.gov.uk/agricultural-policy/cap-consultation/) webpages and include a 96page RDP impact assessment <<https://consult.defra.gov.uk/agricultural-policy/cap-consultation/>>; a 109page consultation document <https://consult.defra.gov.uk/agricultural-policy/cap-consultation/supporting_documents/131022%20CAP%20reform%20consultation%20full%20doc%20%20Final.pdf>; 94page evidence paper <https://consult.defra.gov.uk/agricultural-policy/cap-consultation/supporting_documents/131022%20CAP%20Evidence%20Paper%20%20Final.pdf>; a 9page consultation summary document <https://consult.defra.gov.uk/agricultural-policy/cap-consultation/supporting_documents/131022%20CAP%20reform%20consultation%20Summary%20%20Final_no_closing_date.pdf>, and a 3page consultation letter¹⁵ detailing the consultation process and confirming that the consultation has been planned and will be delivered in line with the consultation principles mentioned above <https://consult.defra.gov.uk/agricultural-policy/cap-consultation/supporting_documents/Consult%20letter%20%20Final%203%202.pdf> All accessed 23 September 2017

¹⁴ Online consultation software for government consultation and citizen engagement - <<https://www.citizenspace.com/info>> accessed 15 April 2018

¹⁵ DEFRA, 'Consultation on the implementation of CAP reform in England: Summary of responses and Government response' (2013), 85

On the basis of the population of England in 2013 (53.9 million¹⁶), this gives a population proportion response of 0.009%.

Contributors were also classified on the basis of information provided in the consultation response document:

Category	E-mail and Written	Citizen Space	Total
Business	34	46	80
Environmental Organisation	68	53	121
Farming and Horticultural Organisation	35	40	75
Forestry Organisation	8	2	10
Individuals	3,975	523	4,498
Local Authority	15	27	42
Government			
Local Enterprise Partnerships (LEP)	5	3	8
LEADER Local Advisory Groups (LAG)	7	21	28
Non-Farming Organisations	14	52	66
Total		4,928	

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The format of questions within the consultation in England varied depending on the nature of response required. In some cases the document gives the Government's proposed stance and asks the contributor to agree or disagree and provide reasons and/or comment, e.g.

The Government is not minded to take up the option to implement greening through a National Certification Scheme containing additional, equivalent measures. Do you agree with this approach or do you see a case for a National Certification Scheme and, if so, on what grounds?¹⁸

¹⁶ Office of National Statistics, *Annual mid-year population estimates, UK: 2013*
<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/bulletins/annualmidyearpopulationestimates/2014-06-26> accessed 23 April 2018

¹⁷ DEFRA, 'Consultation on the implementation of CAP reform in England: Summary of responses and Government response' (2013), 85

¹⁸ Ibid 20

For other questions, the consultation presents the contributor with a selection of options and asked them to choose, e.g.

(a) Should we transfer funding from Pillar 1 to Pillar 2?

(b) If so, should we transfer the maximum 15% or less?

(c) If less, what should the Rural Development Programme fund less as a result?

- Environmental land management
- Rural economic growth
- Farming and forestry competitiveness and productivity
- Other, please specify¹⁹

In others, the question required a purely qualitative response, e.g.

How should we support advice and skills for the farming, forestry and land-based sectors under the new Rural Development Programme?²⁰

Due to this variation in question format, response data was also provided in various formats and this poses challenges in assessing the degree to which account was taken of responses in the adoption by the Government of stances on implementation. In cases in which options were offered and contributors expressed their preference it is easy to identify a quantifiable

¹⁹ Ibid 76

²⁰ Ibid 60

outcome (e.g. 30% selected option 1, 10% option 2, 60% option 3), but where comment or another form of qualitative data is collected this becomes more difficult. Examination of particular examples below will highlight this. From a perspective of consultation design this also raises the issue of whether question styles create a particular response direction, and whether the value of public consultation contributions to an evidence-based policy design process could be increased through standardisation.

After each question the Government response is set out and in most cases this provides an explanation of how the views expressed in the consultation have been taken into account. As not all questions in the consultation are related to implementation of greening measures, only those with a direct impact on greening and/or biodiversity are analysed below.

7.2.1.1 Pillar 1 - Direct Payments and Greening

Implementation of greening through a National Certification Scheme:

The Government is not minded to take up the option to implement greening through a National Certification Scheme containing additional, equivalent measures. Do you agree with this approach or do you see a case for a National Certification Scheme and, if so, on what grounds?

Agree with suggested Government approach not to implement a National Certification Scheme	Do not agree with suggested Government approach	Reply did not state whether agreed or disagreed, but contained other information
286 (47%)	103 (17%)	224 (36%)

Two distinct categories of respondent in favour of a National Certification Scheme were identified; those who advocated an NCS as an opportunity to reduce the administrative burden of greening on farmers, and those who advocated it as an opportunity to maximise the environmental (public) benefits of greening under Pillar 1. Environmental organisations in favour of an NCS included the RSPB, Plantlife, Wildlife Link & the Countryside and Wildlife Trusts, but the Government response maintained that:

Most organisations and individuals who supported NCS (also) failed to account for the fact that an NCS would almost certainly have to offer the basic measures alongside any alternative ones. Providing more environmentally beneficial options through an NCS would have substantial cost and risk implications; with no guarantee that there would be significant uptake by farmers. In effect they may have over-estimated the actual level of benefits that would arise.²²

As can be seen above, explicit support for an NCS was expressed by only 17% of respondents, whilst 47% expressed their support for the Government's position and 36% neither agreed nor disagreed but provided other information. The consultation report does not indicate whether these 36% sought to provide a more nuanced approach, perhaps proposing alternatives to the options suggested; an examination of individual consultation responses would be required to explore this and this is unfortunately beyond the scope of this thesis. On the basis of information within the consultation report, we know that support

²¹ Ibid 20

²² Ibid 22

for an NCS was dismissed as misguided (above) and no change was made to this aspect of the implementation plan for England.

Balance between environmental benefit and administrative cost:

Do you agree that this approach to the implementation of greening in England strikes the right balance between environmental benefit and administrative cost, in the context of our approach to the CAP Reform package as a whole?

Agree that suggested approach strikes the right balance between environmental benefit and administrative cost	Disagree
279 (58%)	204 (42%)

23

The Government response acknowledges the concerns raised by ‘all the main environmental stakeholders’ in relation to the decision not to adopt an NCS (as above) but reiterates their position, stating that they ‘we see no compelling argument to abandon the approach set out in the consultation paper’²⁴ There is significant difference in the proportion of support for the Government’s proposed implementation choices here than compared to support for their stance on NCS, but the approach does have majority support by a margin of 8%.

Ecological Focus Area (EFA options):

Making available the full list of proposed Ecological Focus Area (EFA) options would enable the EFA requirement to be met without the need for additional action.

²³ Ibid

²⁴ Ibid

However, individual EFA options may realise differing levels of environmental benefit. Which selection of Ecological Focus Area options do you favour?

The consultation returned broad support for the maximum or a large number of the options from most respondents. Alternative views were expressed that the proposed balance between environmental benefits and burden was wrong, but these respondents typically preferred a more restricted list of options determined by environmental benefit.²⁵

The Government response indicated uncertainty around the biodiversity value of some options, and the EFA measures as a whole²⁶, but suggested a preliminary intention to select the full list of option. This was later restricted to the shorter list given in the previous chapter with the justification that ‘the Government has had to balance conflicting pressures to make greening compliance as simple as we can for farmers, to only commit to those options which we believe are deliverable and to optimise the environmental benefits of greening.’²⁷

²⁵ Ibid 25-26

²⁶ Ibid 26

²⁷ DEFRA, Consultation on the implementation of CAP Reform in England: Government decisions on Greening June 2014, 3

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/318605/cap-greening-decision.pdf> accessed 04 May 2018

7.2.1.2 Pillar 2 - Rural Development Policy

This section of the consultation document begins with broad-based questions around lessons which can be learnt from the previous RDP and important areas which were not addressed under the proposals for the programme. Two questions of particular interest for the purposes of my research ask respondents to comment on sources of evidence:

Are there any key areas we have missed in our assessment of need to support the new Rural Development Programme?

Are there any further sources of evidence of social, economic and environmental need in rural areas for England that have not been captured?²⁸

Of the 535 and 339 responses received to these questions respectively only 21% indicated satisfaction with the assessment, though the consultation report states that criticism was not typically accompanied by supporting evidence.²⁹

Evidence gaps identified in 5.19 included ‘a general lack of evidence on HNV benefits’ and ‘a broader body of evidence on the benefits of agri-environment schemes, including socio-economic benefits’.³⁰ The Government response acknowledges that improvements could be made in some areas. However, it maintains that ‘overall the evidence available is sufficient for (them) to make an informed high-level decision on the size and shape of the

²⁸ DEFRA, ‘Consultation on the implementation of CAP reform in England: Summary of responses and Government response’ (2013) 33

²⁹ Ibid

³⁰ Ibid 34

programme’.³¹ This is despite 79% of respondents considering the assessment unsatisfactory in some way.

The consultation also included questioned relating directly to agri-environment schemes under the new RDP:

What are your views on the structure of the proposed new environmental land management scheme, in particular the new “landscape scale” approach?

Do you agree that we should not be prescriptive about how groups of farmers or land managers could be brought together to deliver landscape scale agreements under the proposed new environmental land management scheme?

How could we help facilitate landscape-scale approaches under the proposed new environmental land management scheme?³²

593 responses were received in narrative form (and so are difficult to quantify) but the document broadly categories these as follows:

Positive or supportive	Negative or unsupportive	Unclear/ undecided/other
329 (55%)	112 (19%)	152 (26%)

33

³¹ Ibid 35

³² Ibid 43

³³ Ibid

A narrow majority were supportive of the new schemes and less than 20% were actively opposed to the new structure. The consultation document highlights that environmental organisations such as the RSPB and Wildlife Trusts were amongst supportive contributors.

The concluding Government response on agri-environment schemes under the new RDP acknowledges concerns and confirms that ongoing consultation with stakeholders will form a key aspect of the development of 'firm proposals' which will be published in the future, but does not state any definite action in relation to the consultation response.

As can be seen from the comparably low response figures (typically 300-600) for most questions, many respondents did not engage with the majority of questions in the consultation. In large part this is because the RSPB campaign, which accounts for 77% of total respondents, was focused on the transfer of funding (modulation) between Pillars 1 and 2:

From 2014, we have the facility to transfer up to 15% of the CAP budget from direct payments (Pillar 1) to fund rural development measures (Pillar 2) under the new CAP regulations. We asked:

- (a) Should we transfer funding from Pillar 1 to Pillar 2?
- (b) If so, should we transfer the maximum 15% or less?
- (c) If less, what should the Rural Development Programme fund less as a result?
 - Environmental land management

- Rural economic growth
- Farming and forestry competitiveness and productivity
- Other, please specify³⁴

Responses:

Should we transfer funding from Pillar 1 to Pillar 2?

Summary of responses	
Yes	4,537 3,797 RSPB campaign response 740 other
No	138

³⁵

If we transfer funding from Pillar 1 to Pillar 2, should we transfer the maximum 15% or less?

Summary of responses, for those who addressed this issue	
15%	4,392 3,797 RSPB campaign 595 other
Less	217

³⁶

What would you want to fund less of if we transferred less than 15%?

Option	Number	%
Environmental land management	65	8.5%
Rural economic growth	73	9.5%
Farming and forestry competitiveness and productivity	45	5.8%
Other	43	5.6%
Not answered	541	70.5%

³⁴ Ibid 67

³⁵ Ibid

³⁶ Ibid 69

(812 specific responses)³⁷

The Government response confirms an increase in spending on the environment compared to the previous RDP programme; 87% compared with 83%.³⁸

As a response to this aspect of the consultation, the Government proposed to transfer 12% of the budget from Direct Payments (Pillar 1) to Rural Development (Pillar 2) between 2014 and 2019, with a review in 2016 into 'the demand for agri-environment schemes and the competitiveness of English agriculture' and an intention to increase to a 15% transfer rate in 2018 and 2019.³⁹

However, I would suggest that the impact of the consultation response in relation to funding modulation between Pillars 1 and 2 is less than could be expected, given that the consultation response report indicated substantial majority support for a maximum transfer of 15% (95% including the RSPB campaign responses and 73% discounting these)

Given the majority support in favour of a 15% transfer, and the fact that Government has been content to accept a lesser majority in support of other proposed measures (e.g. 58% agreement that the approach to Pillar 1 greening strikes the right balance between environmental benefit and administrative cost)⁴⁰ it is surprising that the Government response gives no explanation for their decision in the consultation response. However, the 2014 document detailing the final implementation decisions in the UK and Ireland states

³⁷ Ibid 71

³⁸ Ibid 76

³⁹ Ibid 78

⁴⁰ See above – p185

that ‘the UK Government had initially indicated that it favoured a 15% modulation as the best use of tax payers’ money’⁴¹, but that the NFU and the House of Commons Environment, Food and Rural Affairs Committee called for a lower rate. As a result, the approach of 12% transfer rising to 15% after review was identified as a compromise on this basis. No reference to the affect which this compromise would have on the delivery of biodiversity objectives under the new CAP would have .

Without a full analysis of all responses to the consultation, the report alone can only give a broad indication of the degree to which the public consultation responses affected the implementation decisions around CAP greening measures in England. Although this final example is the most striking, there are other questions relating to greening of the CAP which suggest that the consultation response may have had limited impact on the final implementation decisions. In some instances in which consultation responses supported DEFRA’s proposals, it appears they were accepted as meaningful, where as in cases in which the responses did not support the proposals, the Government response dismissing objections to proceed with their proposals could be justified further.

Given that the consultation guidelines detailed above⁴² specifically state that the Government should not consult on areas about which they have already made final decisions, this does raise questions around the value of public consultation within the

⁴¹ Mark Allen, Emma Downing, Tom Edwards, Nia Seaton and Maggie Semple, CAP Reform 2014–20: EU Agreement and Implementation in the UK and in Ireland (updated) (House of Commons Library, RaISe paper 702-14, 30 October 2014) 64

⁴² See above – p178

implementation decision-making process at Member State level. If contributors to public consultation (e.g. organisation or individuals able to provide evidence-informed analysis of proposals) have the potential to make public consultation responses a useful tool in the evidence-based policy making process, it is important that the process facilitates meaningful consideration of their value. This is also true from the perspective of the importance of public consultation on public-funded policies designed to deliver public goods.

7.2.2 Wales

The public consultations in Wales were carried out separately for Pillars 1 and 2.

7.2.2.1 Pillar 1 - Direct Payments and Greening⁴³

The consultation document on direct payments comprised eight pages of introduction and background information followed by six questions relating to 'key issues' around direct payments, in which respondents were invited to provide qualitative responses in the form of comments or preferences in relation to the proposed measures, for example 'do you favour/do you support/do you have comments on?' Each of the questions was prefaced by a brief introduction to the 'subject', an 'intention' section presenting the proposed measure

⁴³ The documents available to contributors include the 28 page Consultation Document <<http://webarchive.nationalarchives.gov.uk/20140410071515/http://wales.gov.uk/docs/drah/consultation/131010capdirectpaymentstofarmersreviseden.pdf>>; a 9 page document containing supplementary information about raising the payment rate for moorland <<http://webarchive.nationalarchives.gov.uk/20140410071515/http://wales.gov.uk/docs/drah/consultation/131010capdirectpaymentstofarmersreviseden.pdf>>; and a 13 page document on containing supplementary information about payment models <<http://webarchive.nationalarchives.gov.uk/20140410071515/http://wales.gov.uk/docs/drah/consultation/131010capdirectpaymentstofarmersreviseden.pdf>>.

and a 'reason' section to justify the proposal.⁴⁴ This consistent format in the introduction of each proposal differs from the style of the consultation response in England, in which reasons and justifications for proposals were given alongside decision details. This difference in format of the consultation response documents raises questions around the differences in 'quality' of the consultation in the different regions of the UK, and the impact this may have on the usefulness of these consultations in the decision-making process in each region.

The consultation response document states that the Pillar 1 consultation in Wales received just 127 respondents, by far the lowest level of response (for Pillar 1 consultations) across the UK regions⁴⁵. On the basis of the population of Wales in 2013 (3.1 million)⁴⁶, these 127 responses account for 0.004% of the population; less than half the response rate of England. However, if the RSPB-organised response is discounted from the English figures (to take account of the absence of an organised response in Wales), the response rate in England (364 in 53.9 million) is lowered to less 0.0007% of the population; almost 10 times lower than in Wales.

The responses to the Wales Pillar 1 consultation are categorised as follows:

Sector	Number of respondents
Farming unions and other collective farming organisations	23

⁴⁴ Welsh Government, 'The Common Agricultural Policy Reform - Welsh Government's proposals for direct payments to farmers' (Consultation Document WG19027, Date of issue: 23 July 2013)

⁴⁵ Welsh Government, 'Response to the Welsh Government Consultation Document – The Common Agricultural Policy Reform – The Welsh Government's proposals for direct payments to farmers' 2 <<http://webarchive.nationalarchives.gov.uk/20140410071516/http://wales.gov.uk/docs/drah/consultation/140130capdirectpaymentstofarmersresponseen.pdf>> accessed 23 September 2017

⁴⁶ Office of National Statistics, Annual mid-year population estimates, UK: 2013 <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/bulletins/annualmidyearpopulationestimates/2014-06-26> accessed 23 April 2018

Individual farmers	83
Private sector organisations	8
Local authorities (LA) and LA representative bodies	5
Third sector bodies	7
Political parties	1
Total	127

47

A full list of respondents is attached to the report in Annex A⁴⁸ and includes environmental groups such as the RSPB, Wildlife Trusts and National Trust, who also contributed to the consultations in England, Scotland and Northern Ireland. However, no campaign response was organised for either the Pillar 1 or 2 consultations in Wales.

The report and analysis of the public consultation presents the responses but does not identify to what degree these were taken into account in the final decisions around implementation of Pillar 1 measures. Therefore they will be assessed by comparison between the responses as presented and the final implementation choices adopted in Wales. The 'key issues' of the consultation relating to greening and/or biodiversity are examined below.

⁴⁷ Welsh Government, 'Response to the Welsh Government Consultation Document – The Common Agricultural Policy Reform – The Welsh Government's proposals for direct payments to farmers' 2 <<http://webarchive.nationalarchives.gov.uk/20140410071516/http://wales.gov.uk/docs/drah/consultation/140130capdirectpaymentstofarmersresponseen.pdf>> accessed 23 September 2017

⁴⁸ Ibid 12-14

Q1:

Do you have comments on (the) proposed decisions for eligibility for CAP direct payments?⁴⁹

The report states that ‘a number of comments’ were received in relation to the proposed a minimum claim size of 3ha or €100⁵⁰ but the overall number of respondents to this questions is not given, nor is a percentage of respondents commenting for or against the proposal (as in other consultation reports); rather, we are told that ‘10 respondents specifically agreed with the minimum claim size of 3ha’ whilst 13 preferred an increase in the minimum size of 5 hectares and one response asked for 10 hectares.⁵¹

The final decision for implementation in January 2015 was for a minimum claim size of 5ha,⁵² however when dealing such small numbers to it is difficult to say whether the small majority preference for a 5ha minimum was taken into account for this measure. Of the 2 comments quoted in the consultation report, neither mentions environmental considerations (i.e. the environmentally beneficial potential of small holdings) in the rationale for their preferences.

In the section dedicated to greening under Pillar 1⁵³ the consultation proposed that the

⁴⁹ Welsh Government, ‘The Common Agricultural Policy Reform - Welsh Government’s proposals for direct payments to farmers’ (Consultation Document WG19027, Date of issue: 23 July 2013) s29

⁵⁰ Welsh Government, ‘Response to the Welsh Government Consultation Document – The Common Agricultural Policy Reform – The Welsh Government’s proposals for direct payments to farmers’ 4 <<http://webarchive.nationalarchives.gov.uk/20140410071516/http://wales.gov.uk/docs/drah/consultation/140130capdirectpaymentstofarmersresponseen.pdf>> accessed 23 September 2017

⁵¹ Ibid

⁵² Welsh Government, ‘The Common Agricultural Policy Reform - Direct Payments to Farmers: Decisions’ (WG20743, January 2014) 4

⁵³ Welsh Government, ‘Response to the Welsh Government Consultation Document – The Common Agricultural Policy Reform – The Welsh Government’s proposals for direct payments to farmers’ 7-8

standard greening proposals be implemented rather than the use a certification scheme or other compulsory measure. This proposal was made on the basis that the standard greening measures would be the easiest for Welsh agriculture to accommodate and that Pillar 2 RDP measures offer 'a more effective means to target the protection and enhancement of the natural environment in Wales'.⁵⁴ The consultation asks respondents whether they supported this proposal.

Q4:

Do you support the decision to apply the EU's original 'greening' proposals in Wales?⁵⁵

Of the 61 responses to this question, 49 supported the decision to apply the standard greening measures, whilst 12 disagreed (we assume 1 offered no preference). Some comments provided argued against a certification scheme on the basis of complexity and administrative cost, whilst others supported the standard greening measures on condition of a substantial transfer of funds from the Direct Payments budget into the RDP (from Pillar 1 to Pillar 2).

In contrast, RSPB Cymru advocated a 'well-designed National Certification Scheme' as 'the most effective means of achieving genuine environmental enhancements' given the 'limited

<<http://webarchive.nationalarchives.gov.uk/20140410071516/http://wales.gov.uk/docs/drah/consultation/140130capdirectpaymentstofarmersresponseen.pdf>> accessed 23 September 2017

⁵⁴ Ibid

⁵⁵ Welsh Government, 'The Common Agricultural Policy Reform - Welsh Government's proposals for direct payments to farmers' (Consultation Document WG19027, Date of issue: 23 July 2013) s66

environmental benefit that the original greening proposals will deliver for Wales (over 80% of farms will automatically qualify)⁵⁶.⁵⁷

The final decision adopted by the Welsh Government was in line with the majority preference expressed in the consultation, to adopt the standard greening measures despite evidence put forward by RSPB Cymru of the minimal benefit offered to the Welsh natural environment.

The consultation also asked respondents to comment on the Welsh Government's proposal to transfer the maximum level of funding (15%) from the Pillar 1 budget (direct payments) into Pillar 2 funds for rural development:

Q5:

Are there any additional factors that should be taken into account in determining the level of any transfers from Pillar 1 to Pillar 2?⁵⁸

Of the 55 respondents, 19 were in support of a pillar transfer and 20 were opposed; the report does not indicate the opinion of the remaining 16 which makes it difficult to assess

⁵⁶ Meaning only 20% of farms will be required to take any action likely to have a beneficial environmental impact.

⁵⁷ Welsh Government, 'Response to the Welsh Government Consultation Document – The Common Agricultural Policy Reform – The Welsh Government's proposals for direct payments to farmers' 8 <<http://webarchive.nationalarchives.gov.uk/20140410071516/http://wales.gov.uk/docs/drah/consultation/140130capdirectpaymentstofarmersresponseen.pdf>> accessed 23 September 2017

⁵⁸ Welsh Government, 'The Common Agricultural Policy Reform - Welsh Government's proposals for direct payments to farmers' (Consultation Document WG19027, Date of issue: 23 July 2013) s75

the level of support for a 15% transfer and, by extension, the extent to which this was taken into account in the implementation decision.⁵⁹

The final decision adopted was to transfer the full 15% from Pillar 1 to Pillar 2, with the justification provided by the Welsh Government that:

Welsh farmers will need to get used to lower levels of public subsidy and the intention is that this transfer boosts RDP support schemes that will make the industry more resilient, more profitable and less reliant on subsidy. The increased level of funding to Pillar 2 will aim to put farming on the best possible footing by 2020 when CAP budgets are likely to fall again.⁶⁰

As can be seen, the justification is on economic rather than environmental grounds.

Interestingly, Wales was the only region in which no campaign response around modulation rates of funding (from Pillar 1 to Pillar 2) was organised by an environmental organisation, and I have been unable to find reference to specific justifications for this lack of campaign response. It may be that the environmental groups which organised the campaign responses in the other regions were confident enough in the support for a maximum 15% transfer in Wales, perhaps due to an understanding of the support for/reliance on RDP funding within the farming industry, to feel that a campaign response on this issue was not required.

Although this support does not show particularly clearing in the response data above, the

⁵⁹ Welsh Government, 'Response to the Welsh Government Consultation Document – The Common Agricultural Policy Reform – The Welsh Government's proposals for direct payments to farmers' 8 <<http://webarchive.nationalarchives.gov.uk/20140410071516/http://wales.gov.uk/docs/drah/consultation/140130capdirectpaymentstofarmersresponseen.pdf>> accessed 23 September 2017

⁶⁰ Welsh Government, 'The Common Agricultural Policy Reform - Direct Payments to Farmers: Decisions' (WG20743, January 2014) 12

final implementation decision and justification would suggest that such confidence would be well placed.

The degree to which responses to the public consultation appear to have been taken into account in the final decisions around implementation regarding greening in Wales is difficult to ascertain. This analysis was the most difficult of any consultation report in this chapter due to the limited information and lack of clarity provided in the consultation report. In some areas measures have been adopted in line with majority preference, whilst in others the Welsh Government has adopted its proposals despite apparent opposition and has justified this through pragmatic considerations, e.g. the funding transfer. As with the consultation in England, this does raise questions around the purpose of the public consultation within the decision-making process.

7.2.2.2 Pillar 2 - Rural Development Policy⁶¹

The consultation on rural development policy in Wales provided respondents with a 92-page consultation document containing details of the programme intervention logic, proposed interventions, cross-cutting themes, the delivery framework and a SWOT (Strengths,

⁶¹ The documents available to contributors include the 92page Consultation Document <<http://webarchive.nationalarchives.gov.uk/20140410071742/http://wales.gov.uk/docs/drah/consultation/130306capnextstepsen.pdf>> and a 162page situational analysis document (in 4 parts) <<http://webarchive.nationalarchives.gov.uk/20140417205830/http://wales.gov.uk/consultations/environmentandcountryside/rdp-2014-2020-next-steps-consultation/?status=closed&lang=en>> accessed 23 September 2017

Weaknesses Opportunities, Threats) Analysis (Annex 1) in addition to the 17 questions which form the response section of the consultation.

The format of the questions is similar to that of the direct payments consultation; respondents were asked to what extent they agree with the proposals set out and invited to comment on potential improvements, e.g. 'Q16. How might implementation of the future RDP programme be simplified and streamlined?'⁶² As such, the responses provide both quantitative and qualitative data.

The RDP consultation for Wales received 85 responses, representative of 0.0027% of the Welsh population in 2013. As with the Pillar 1 consultation, there was no campaign response

Sector	No. of responses
Environmental Organisations (non-statutory)	6
Farming Unions and Farming Representative Bodies	10
Third Sector	15
Local Government, local partnerships and local action groups	27
Elected Members and Individuals	5
Welsh Government Sponsored Bodies (WGSBs)	9
Private Sector and Business/Employer Organisations	13
Total	85

63

The Welsh consultation includes a section (4.2)⁶⁴ specific to the impacts of the RDP proposals

⁶² Huw Bryer (Welsh Government), 'The Common Agricultural Policy Reform - Rural Development Plan 2014-2020: Next Steps Consultation Analysis' (Version: FINAL / August 2013) 57
<http://webarchive.nationalarchives.gov.uk/20140417205830/http://wales.gov.uk/consultations/environmentandcountryside/rdp-2014-2020-next-steps-consultation/?status=closed&lang=en> accessed 23 September 2017

⁶³ Ibid 12

⁶⁴ Ibid 32–3

on the environment, to which around 60 detailed contributions were received.⁶⁵ No indication is given within the response report as to which of the sectors above the respondent belonged.

Q5.

Do you agree with the proposed areas of support under the Environment heading?⁶⁶

As the framing of the question was very broad, comments received covered a wide range of issues and are not presented in any quantitative form in the response report.

The response indicated general support for proposals around Glastir, the Welsh agri-environment schemes, though around 25% of respondents also welcomed the acknowledgement that the Glastir scheme was in need of review, citing particular issues around eligibility criteria (and subsequent up-take) and the need for administrative simplification.⁶⁷

The consultation also invited comment on the implementation of measures required under the Habitats Directive and eight respondents supported specific actions on species and habitats in support of Glastir.⁶⁸

Q8:

⁶⁵ Ibid 32

⁶⁶ Welsh Government, The Common Agricultural Policy Reform - Rural Development Plan 2014-2020: Next Steps (Date of issue: 31 January 2013) 53

⁶⁷ Huw Bryer (Welsh Government), 'The Common Agricultural Policy Reform - Rural Development Plan 2014-2020: Next Steps Consultation Analysis' (Version: FINAL / August 2013) 31

⁶⁸ Ibid 33

What percentage of the EAFRD investment should be targeted at agri-environment activities and why?⁶⁹

Of the 51 respondents, 25 commented specifically on the percentage of EAFRD to be invested in agri-environment schemes, 20 agreed with the proposals to reduce the current 70% allocation to 60%. However, three respondents (including Natural Resources Wales and the National Trust) advocated increasing the allocation above 70%, as consistent with previous Welsh RDPs.⁷⁰

As in the consultation report for direct payments, there is no indication of the extent to which the outcome of the response shapes the final policy. As most of the questions in this consultation are general rather than specific to particular measures it is difficult to draw direct comparisons between preferences expressed and measures adopted.

The Welsh Government also does not appear to have published any documentation which considers how final decisions on RDP were reached; although the RDP document includes a section on the consultation, the summary refers to general themes rather than specific measures:

⁶⁹ Welsh Government, The Common Agricultural Policy Reform - Rural Development Plan 2014-2020: Next Steps (Date of issue: 31 January 2013) 54

⁷⁰ Huw Bryer (Welsh Government), 'The Common Agricultural Policy Reform - Rural Development Plan 2014-2020: Next Steps Consultation Analysis' (Version: FINAL / August 2013) 45-46

- Development of broader and more flexible schemes to enable the Welsh Government to respond to changing circumstances over the life of the programme;
- Widening the access of RDP support to include other rural sectors;
- Stronger support on improving the profitability and efficiency of farm enterprises;
- Simplification of Glastir and improvements to its accessibility.⁷¹

Of all the consultation documents, the Wales RDP consultation report provides the least indication of whether and to what extent the contributions shaped the final implementation. The final RDP document reiterate the overall theme of the report, which is that ‘the feedback received from (the) consultation was very positive and supportive of the main interventions proposed under the new programme’⁷² but compared to the information provided in the consultations in England, Scotland and Northern Ireland, the process of incorporation lacks clarity and transparency.

7.2.3 Scotland

The public consultation for CAP implementation in Scotland was also carried out and published in two parts; measures relating to direct payments (Pillar 1) and Rural Development Policy (Pillar 2)

7.2.3.1 Pillar 1 - Direct Payments and Greening⁷³

⁷¹ Welsh Government, Agriculture, Fisheries and Marine Group - CAP Planning Division, ‘Rural Development Programme (Regional) – Wales’ (Version 1.3/2016) 1403

⁷² Ibid

⁷³ The documents available to contributors comprised the main 45page ‘Scottish Government Consultation on future CAP direct payments in Scotland from 2015’ document

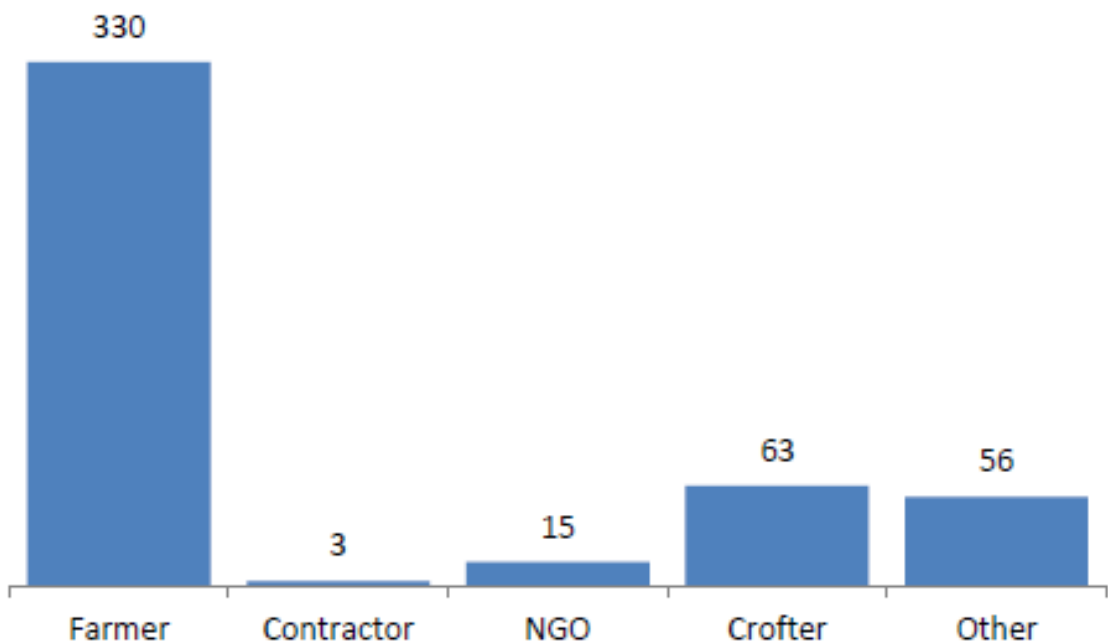
Questions within this public consultation were more quantitative than those in the England and Wales consultations, with responses invited through 56 questions comprising single option tick-boxes, ranking questions, multiple option tick-box questions and three general comment boxes. Questions were split into four areas, one of which was dedicated to environmental measures and greening, also making this analysis much more straightforward than the analysis of the previous consultations. However, it was noted in the results report that 'response rates to most questions were relatively high with the exception of the "Environmental Measures" section 4.4 where the response rate was generally lower' – no speculation as to a reason for this lower rate of response is presented in the report.⁷⁴

This focus on quantitative data also makes comparison to the other UK consultation results challenging, as many of the questions in consultations from the other UK regions invited opinion and comment on the approach of implementation, e.g. on the balance between environmental benefit and administrative costs, which the Scotland consultation lacks. The Scotland consultation focuses on much more practical issues of implementation and as such the detail behind motivation for responses is often lost.

<<http://www.gov.scot/Resource/0044/00440738.pdf>>; a 7page general introduction
 <<http://www.gov.scot/Resource/0044/00440740.pdf>>; a 2page Aide Memoire on how to complete the electronic version of the consultation <<http://www.gov.scot/Resource/0044/00440741.pdf>>; a 3page annex document containing further details on greening options
 <<http://www.gov.scot/Resource/0044/00440743.pdf>>; an 18page Partial Business and Regulatory Impact Assessment <<http://www.gov.scot/Resource/0044/00440744.pdf>> and a 'Reader Reckoner... designed to help farmers understand what future direct payments might look like under the next CAP
 <<http://www.gov.scot/Publications/2013/12/5922/291515>> all accessed 24 September 2017
⁷⁴ Scottish Government, 'Report on results from the Scottish Governments consultation on future CAP direct payments in Scotland from 2015' (2014) 5
 <https://consult.scotland.gov.uk/cap-reform-and-crop-policy/cap-direct-payments/consult_view/> accessed 24 September 2017

The Scotland consultation report does not include details of the impact of the consultation outcome on implementation decisions; as with the Wales Pillar 1 report, these must be assessed by comparison to the decisions finally adopted.

The total number of consultation responses received was 467, of which 83% were from individuals and 17% were from organisations/groups. Based on a population estimate for Scotland in 2013 of 5.3 million⁷⁵, this response rate accounts for 0.009% of the population; a similar response proportion to the English consultation. The respondents classified themselves as follows:



76

⁷⁵ Office of National Statistics, Annual mid-year population estimates, UK: 2013
<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/bulletins/annualmidyearpopulationestimates/2014-06-26> accessed 23 April 2018

⁷⁶ Scottish Government, 'Report on results from the Scottish Governments consultation on future CAP direct payments in Scotland from 2015' (2014) 4

There was no campaign response to this consultation and the proportion of the contribution was much more heavily weighted toward the farming community than for either England or Wales. However, the result report does also note in its conclusion that;

...the 467 respondents amount to approximately 2% of the 22,000 or so registered rural land use businesses in Scotland. Therefore to develop policy solely on the strength of the consultation results would be misguided. Likewise it is difficult to determine the weighting that should be applied to responses from organisations which represent the views of their (often many) members.⁷⁷

This does rather beg the question; why bother to consult? Although the Scottish consultation documents is not declaring that the outcome of the public consultation will have no impact of the decision-making process of national implementation, it does highlight the use, or lack therefore, which is likely to be made of the output of the consultation process.

Consultation on Environmental Measures

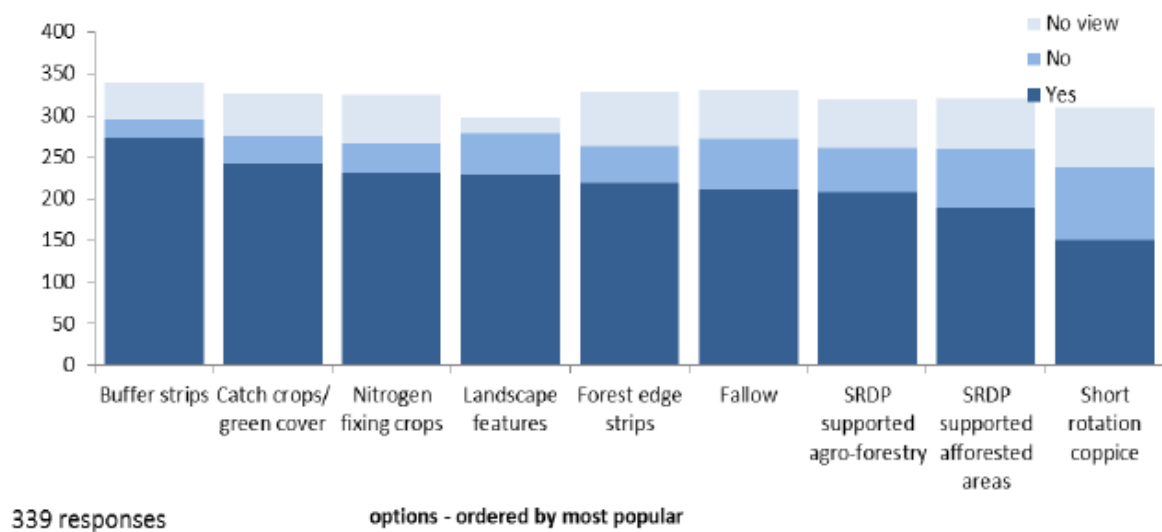
As with previous consultations, I focus on sections relating to greening and biodiversity in my examination of the questions and responses below.

Q23: Ecological Focus Area options

<https://consult.scotland.gov.uk/cap-reform-and-crop-policy/cap-direct-payments/consult_view/> accessed 24 September 2017

⁷⁷ Ibid 22

Which of the following areas do you think we should consider as being part of EFA in Scotland (bearing in mind the measurement and verification issues for landscape features)?⁷⁸



79

The most popular option was buffer strips, with coppice and forestry options less popular, but the overall trend was for all options to be included (this can be seen from the relatively low number of options marked 'no'); it is likely that the maximum number of options would have been seen as giving farmers maximum choice and flexibility in meeting the greening requirements.

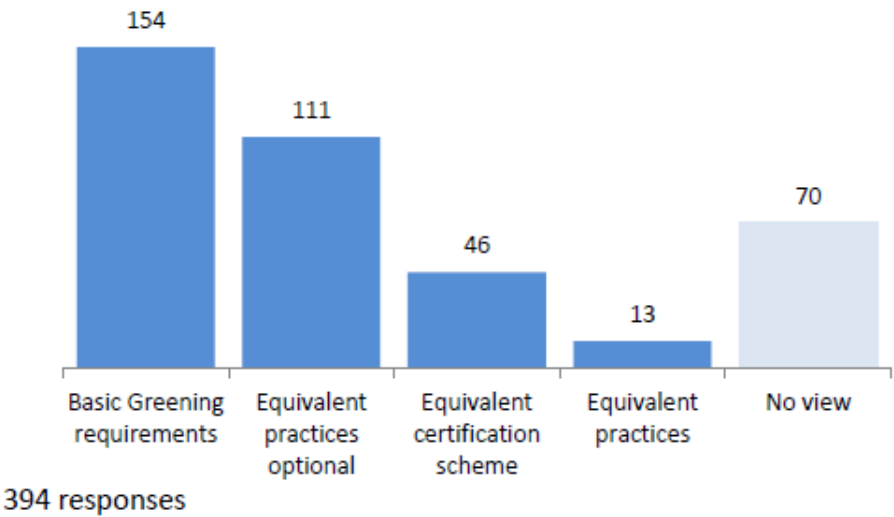
⁷⁸ Ibid 10

⁷⁹ Ibid

The final list of options adopted did not include all the available options⁸⁰ but many of the most popular were offered, including buffer strips (along water courses), catch crops and nitrogen fixing cropsⁱⁱ.

Q27: Greening Equivalency Scheme options

Should we consider using the equivalence option in Scotland and if so how?



81

Although the majority preference was for the basic greening requirements, there was significant support for equivalency scheme options and this support is reflected in the final decision to develop the scheme detailed in the previous chapter. Respondents were also

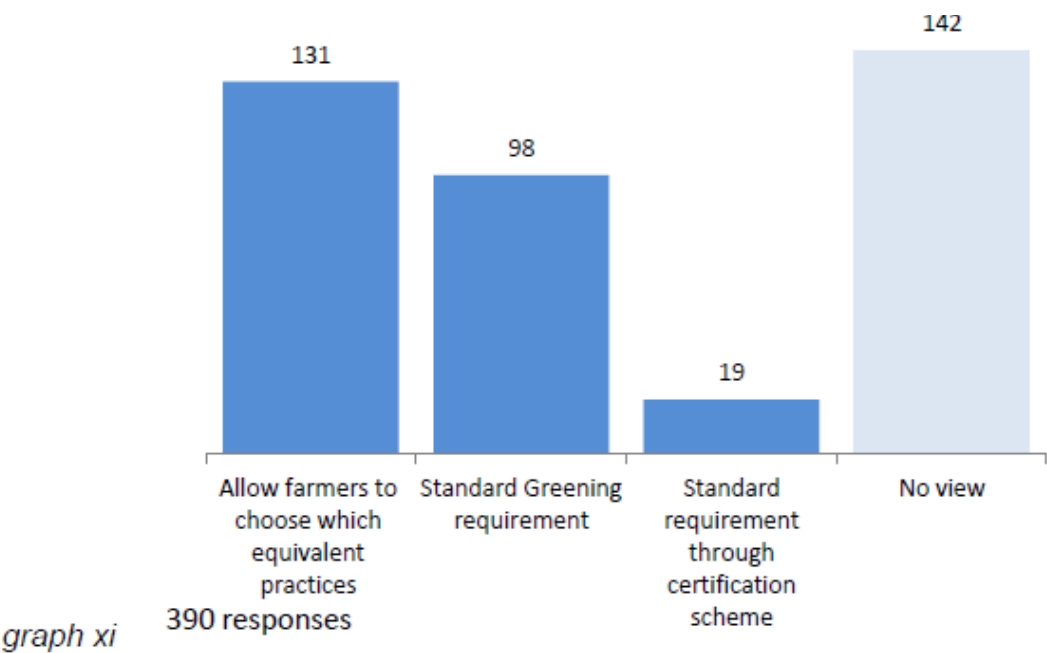
⁸⁰ See Ch 6 - 6.2.2 Greening Measures under the Basic Payment Scheme

⁸¹ Scottish Government, 'Report on results from the Scottish Governments consultation on future CAP direct payments in Scotland from 2015' (2014) 4
<https://consult.scotland.gov.uk/cap-reform-and-crop-policy/cap-direct-payments/consult_view/> accessed 24 September 2017

invited to indicate which elements of the greening requirements they felt should be subject to an equivalency scheme

Q28:

As far as the Greening crop diversification requirement is concerned, how do you think it should be implemented in Scotland?⁸²



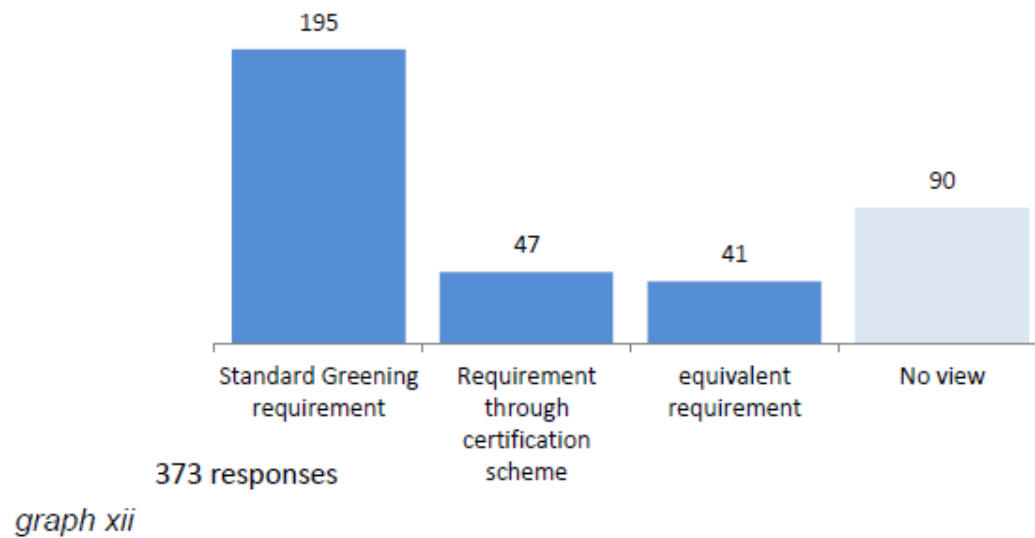
83

Q33:

As far as the EFA requirement is concerned how do you think it should be implemented in Scotland?

⁸² Ibid 12

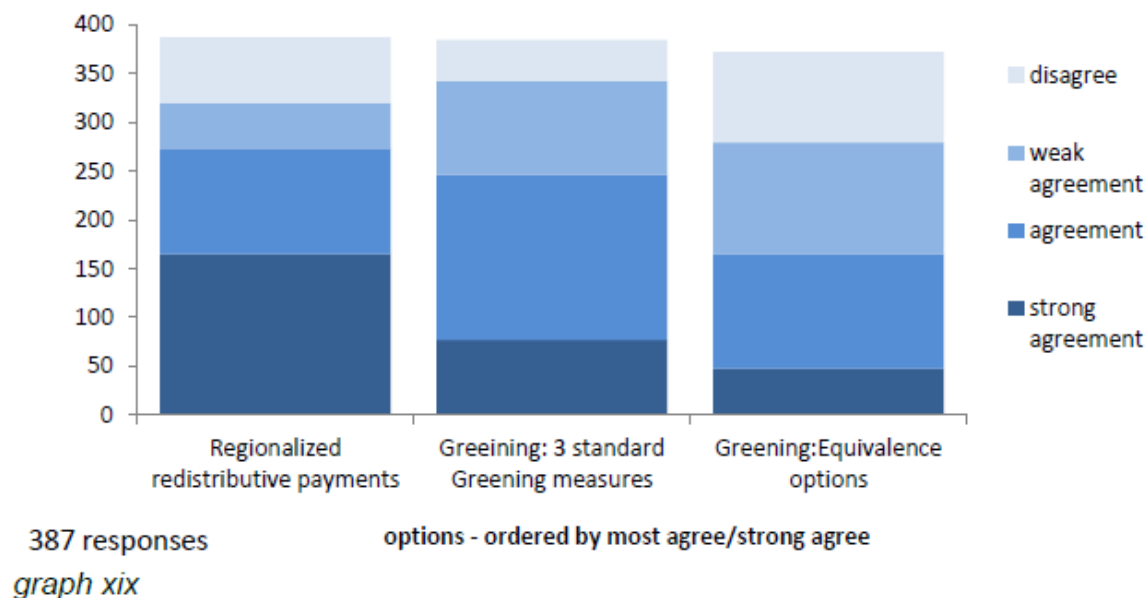
⁸³ Ibid



Options under an equivalency scheme for the crop diversification element of the greening requirements were more than 25% more popular than the standard requirements, whereas less than 25% of respondents preferred either equivalency option to the standard requirement for Ecological Focus Areas; this preference was also adopted, as above, to develop an equivalency scheme for crop diversification but not for EFA requirements.

A summary of support for the greening measures vs equivalence options can also be found in response to Q55:

Please score the following possible aspects of the future package that feature should be in final package;



84

One of the three comment boxes in this consultation invited respondents to comment on greening and GAEC proposals and, as with the quantitative questions, fewer respondents completed this comment box than the other two; 39%.⁸⁵

Of the themes highlighted through comments received, the most common was the perceived need to 'avoid unnecessary complexity in how greening is implemented in Scotland' (perhaps unsurprising given the high proportion of respondents who are farmers), followed by the need to deliver a meaningful environmental benefit.

Section 5 of the report presents the Scottish Government's conclusions on the public consultation and recognises the support for an equivalency option for crop diversification, a

⁸⁴ Ibid 18

⁸⁵ Ibid 19-20

wide range of EFA options and the need for a balance in implementation of the CAP between effective targeting and minimal complexity.⁸⁶

Overall the preferences expressed in the public consultation for implementation of CAP Pillar 1 greening in Scotland appear to have been taken into account in the final implementation choices made by the Scottish Government to a larger degree than that seen in consultations in other regions. Although not all EFA options are available, the list does include a wider range than is available in either England or Wales and an equivalency scheme is under development, though this had not yet opened to participants at the time of thesis submission.

7.2.3.2 Pillar 2 - Rural Development Policy⁸⁷

The format of this consultation is different to that for Pillar 1; most questions asked respondents to indicate their satisfaction with the proposals made, with the option to provide additional comment in each case in which they indicated dissatisfaction. As such, the responses to this consultation contain more qualitative data and bear a stronger resemblance to the consultation responses for the RDP in the other UK regions.

⁸⁶ Ibid 22

⁸⁷ The documents available to contributors included a 100 page Final Proposals document <<http://www.gov.scot/Resource/0044/00440079.pdf>> and supporting annexes (56 pages) <<http://www.gov.scot/Resource/0044/00440080.pdf>>, and an 8 page summary <<http://www.gov.scot/Resource/0044/00440081.pdf>> all accessed 24 September 2017

In a similar vein, responses to this public consultation included a campaign response coordinated by the Scottish Wildlife Trusts in support of a maximum rate of budget transfer between Pillar 1 and 2 (as with the RSPB campaign in the consultation for England).

Sector	No. of responses
Organisations	148
Individuals (not Campaign)	192
Individuals <i>Scottish Wildlife Trust's views on the budget</i>	607
Total	947

88

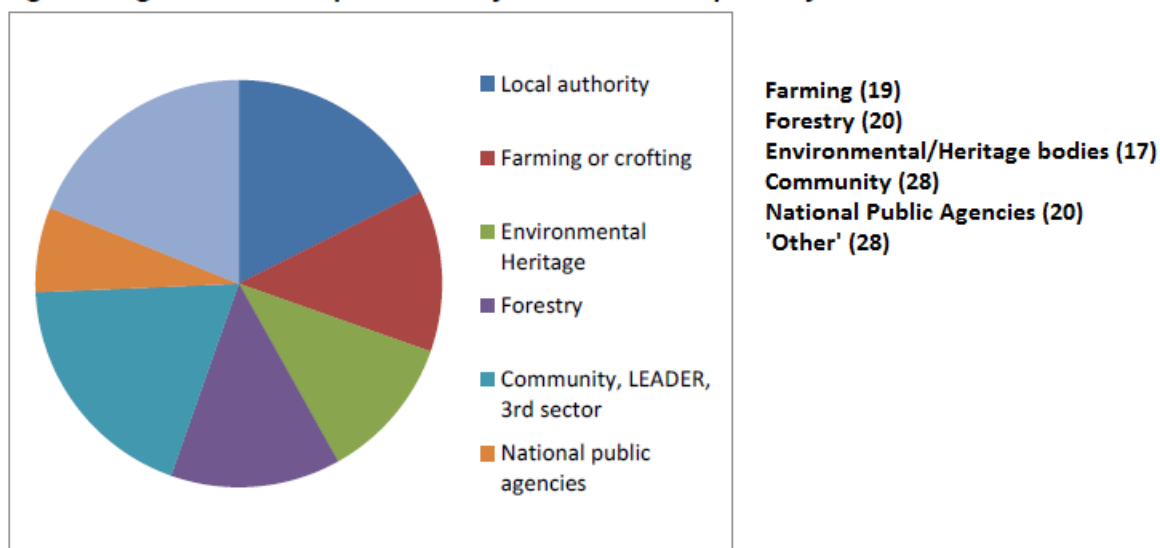
Based on a population estimate for Scotland above⁸⁹, this response rate accounts for 0.017% of the population.

Organisations and individuals were asked to self-select their interest from a pre-determined list:

⁸⁸ Rural and Environment Science and Analytical Services (Scottish Government), Analysis of Responses to The Second Consultation on The Scottish Rural Development Programme (2014-2020): Summary Report (2014) 5 <<http://www.gov.scot/Publications/2014/06/1462/0>> accessed 23 April 2018

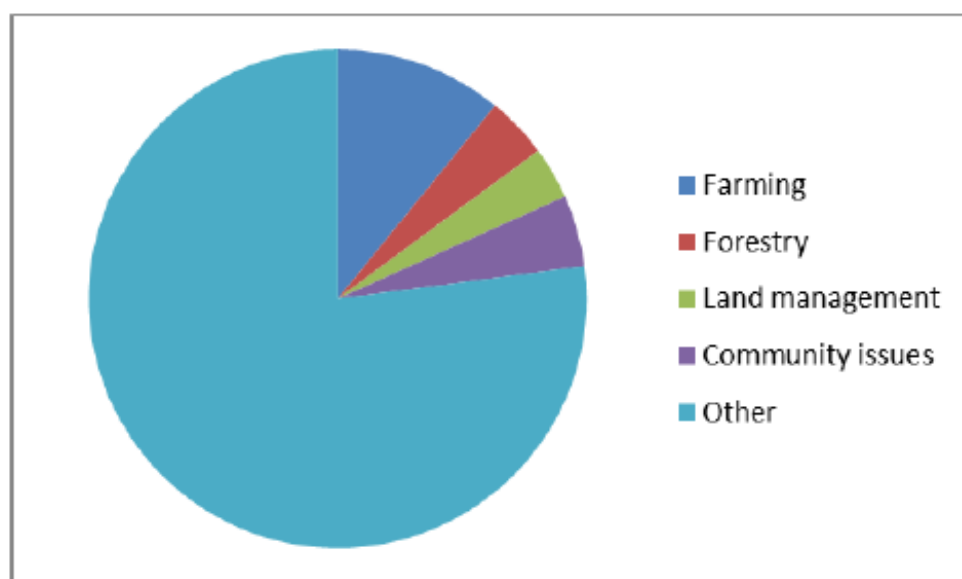
⁸⁹ Office of National Statistics, Annual mid-year population estimates, UK: 2013 <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/bulletins/annualmidyearpopulationestimates/2014-06-26> accessed 23 April 2018

Fig 1.1 Organisation respondents by their selected primary interest



90

Fig 1.2 Individual respondents by their selected primary interest

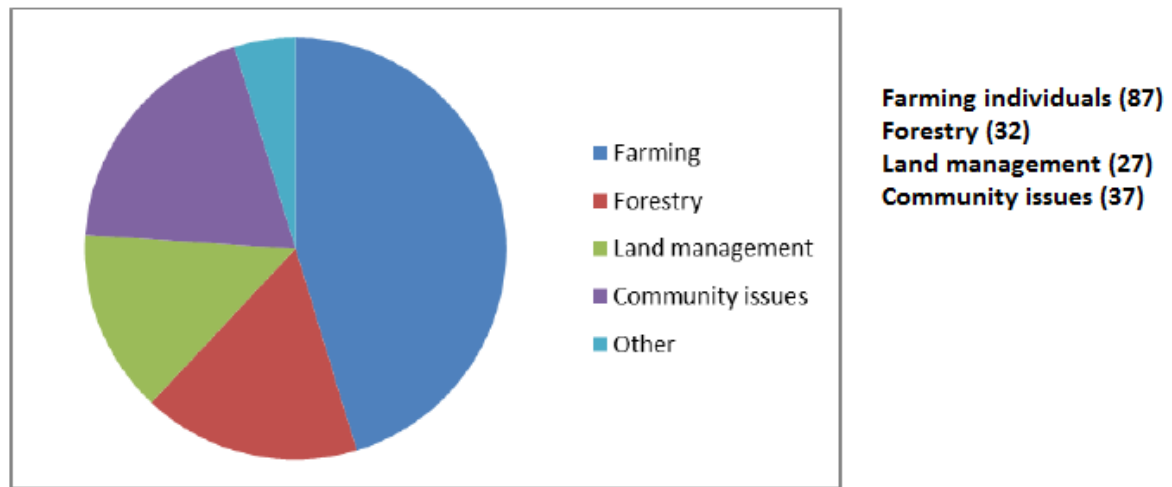


91

⁹⁰ Rural and Environment Science and Analytical Services (Scottish Government), Analysis of Responses to The Second Consultation on The Scottish Rural Development Programme (2014-2020): Summary Report (2014) 5 <<http://www.gov.scot/Publications/2014/06/1462/0>> accessed 23 April 2018

⁹¹ Ibid 6

Fig 1.3 Individual respondents by their selected primary interest (excluding the campaign response).



92

The campaign response comprised the majority of responses in the “other” category and the majority of these (607 of 614) were individuals whose views suggest a personal interest in environmental issues; unsurprising given the campaign was coordinated by the Wildlife Trusts.

The summary finding of the report show uncertain support for the RDP as a whole, with less than 50% of respondents satisfied with the agri-environment scheme proposals and less than 35% satisfied with the balance of the budget.

Satisfaction level with the proposals	Scheme/ Approach	Level of Satisfaction and key points made by Respondents
35-49% Satisfied	Agri Environment	39% Mixed views with some support. Main points of

⁹² Ibid

	Scheme	dissatisfaction related to the budget being too constrained and that insufficient detail had been provided around options and targeting.
Less than 35% satisfied	Balance of the Budget	13% General dissatisfaction with the level of the budget evident. Interest groups arguing that their sector should receive more funding. Large campaign response arguing for more funding for the agri-environment scheme.

93

The majority of the campaign response was directed to answering Q1;

How would you rate your satisfaction with the budget as a whole?⁹⁴

The report acknowledges that the amount to be transferred from Pillar 1 to Pillar 2 was “contentious”, with support for transfer of less than the proposed 9.5% from farming organisations whilst those with environmental and community interests arguing that 9.5% was too low.⁹⁵ However the report also explicitly stated that the budget modulation was not part of the SRDP consultation, appearing thereby to deny any obligation to take this part of consultation response into account when making implementation decisions. This accords with the stance taken in the response document for the Pillar 1 consultation, which highlights the potential limitations of the consultation outcome on the decision-making process.

Q9 deals with agri-environment schemes:

⁹³ Ibid 7-8

⁹⁴ Ibid 9

⁹⁵ Ibid

How would you rate your broad satisfaction with the proposal for the Agri-
Environment Climate Scheme?

Satisfied	Neither Satisfied nor Dissatisfied	Dissatisfied
39%	19%	42%

Of the responses above, the report indicated that farmers and land managers were more likely to fall into the 'satisfied' category and those with environmental, forestry and local authority interests (including organisations) were more likely to indicate dissatisfaction.⁹⁶

Due to the option to provide comment if a 'dissatisfied' response was selected, the report includes details of a large number of suggestions for improvements which were submitted as part of the consultation. These included calls for improved targeting of schemes and greater support for cooperative, landscape scale action⁹⁷ which echo the IEEP recommendations discussed in the previous chapter. This supports my earlier point regarding the potential for public consultations to produce commentary and analysis of proposals which may contribute to the development of evidence-based policy.

However, the Scottish Government does not address these suggestions for improvement in the consultation report or confirm to what extent contributions to the public consultation on Pillar 2 were incorporated into the development of the SRDP. As the response data is also less quantitative than in the Pillar 1 consultation, it is difficult to assess to what extent the

⁹⁶ Ibid 12

⁹⁷ Pg 12

consultation outcome influenced the final implementation decisions in Scotland; on the basis of the consultation report and the final RDP, no changes appear to have been made.

As the consultation report explicitly excludes the campaign responses relating to budget modulation from consideration, asserting that the consultation did not invite or admit the responses received relating to this aspect of implementation, it is not surprising that no change was made in the planned transfer of 9.5%. This outcome does appear more than just the equivalent decision under the English RDP; in Scotland no change was made because comment was not (explicitly) invited, whilst in England it appears comment was invited then ignored.

7.2.4 Northern Ireland

The public consultation on implementation of the new CAP in Northern Ireland was also carried out separately for measures under Pillars 1 and 2.

7.2.4.1 Pillar 1; Direct Payments and Greening⁹⁸

In total 851 responses were received for the Pillar 1 consultation;

Respondent Type	Number Received	Percentage
Individuals	808	95%
Organisations	43	5%
Total	851	100%

⁹⁸ The documents available to contributors included an introductory 3 page letter <<https://www.daera-ni.gov.uk/sites/default/files/consultations/dard/cap-pillar-i-letter-to-stakeholders-1-october-2013.pdf>>; 80 page consultation document <<https://www.daera-ni.gov.uk/sites/default/files/consultations/dard/final-cap-reform-consultation-pillar-one-Oct-2013.pdf>> and supporting annexes <<https://www.daera-ni.gov.uk/consultations/consultation-policy-options-arising-reform-common-agricultural-policy-pillar-1-direct>> all accessed 24 September 2017

On the basis of a population estimate of 1.8 million in 2013¹⁰⁰, the response of 851 amounts to a representation of 0.047% of the population of Northern Ireland.

The consultation report does not give a break-down of respondents by category as the reports for consultation in other regions do, but lists of organisation and individual respondents are provided in the annexes.¹⁰¹

A number of environmental conservation organisations are listed within Annex A (List of Respondents to the CAP (Pillar I Direct Payments) Consultation:

Organisations/ Representative Groups), including Butterfly Conservation Northern Ireland, the Council for Nature Conservation and the Countryside (CNCC), the National Trust, the RSPB and Ulster Wildlife.¹⁰²

Respondents had the option to submit their responses through one of eight different templates available through the consultation website¹⁰³ and each asked respondents if they

⁹⁹ DAERA, 'Summary of Responses to the Consultation on Policy Options Arising from the Reform of the Common Agricultural Policy (Pillar I Direct Payments)' (2014) 1
<<https://www.daera-ni.gov.uk/sites/default/files/publications/dard/pillar-i-summary-of-responses.pdf>> accessed 24 September 2017

¹⁰⁰ Office of National Statistics, Annual mid-year population estimates, UK: 2013
<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/bulletins/annualmidyearpopulationestimates/2014-06-26>> accessed 23 April 2018

¹⁰¹ DAERA, 'Summary of Responses to the Consultation on Policy Options Arising from the Reform of the Common Agricultural Policy (Pillar I Direct Payments)' (2014) 34-44
<<https://www.daera-ni.gov.uk/sites/default/files/publications/dard/pillar-i-summary-of-responses.pdf>> accessed 24 September 2017

¹⁰² Ibid 34

¹⁰³ DAERA, 'Consultation Response Templates' <<https://www.daera-ni.gov.uk/sites/default/files/publications/dard/pillar-i-consultation-responses-template-responses-3.pdf>> accessed 24 September 2017

agreed with a number of proposals; they could then give yes/no answers and provide comments for each questions regardless of their answer.

As with the consultations in England, Wales and Scotland, not all questions related to greening. An analysis of those which did follows below:

Q8:

Do you agree with the Department's suggestion to set (i) the minimum area for which the establishment of entitlements can be requested and (ii) the minimum claim size at 5ha?¹⁰⁴

Of the 802 responses to this question, 33 (4%) were from organisations/representative groups and 769 (96%) from individuals. Of the 666 responses (83%) that did not agree with a 5ha minimum claim size, 648 suggested a minimum of 3ha or less and 631 (79%) preferred the minimum mandatory amount; (1ha or €100).

The report states that many of those who did not agree with the proposal noted the environmental potential of smaller farms, including Butterfly Conservation Northern Ireland, CNCC and the RSPB.¹⁰⁵

¹⁰⁴ DAERA, 'Summary of Responses to the Consultation on Policy Options Arising from the Reform of the Common Agricultural Policy (Pillar I Direct Payments)' (2014) 4
<<https://www.daera-ni.gov.uk/sites/default/files/publications/dard/pillar-i-summary-of-responses.pdf>>
accessed 24 September 2017

¹⁰⁵ Ibid 5

The decision on minimum claim size for the Basic Payment Scheme showed a change in the proposal in line with the responses of the consultation; a minimum claim size of 3ha was adopted in the final implementation decisions.¹⁰⁶

Q19: Permanent grassland greening measure

Do you agree with the Department's suggestion to monitor the permanent grassland requirement at regional level rather than farm level?¹⁰⁷

Of the 153 responses to this question, 29 (19%) of responses were from organisations/representative groups and 124 (81%) were individual responses. 20 (69%) of responding organisations/representative groups and 122 (98%) of responding individuals agreed with the proposal; many of the responses from the environmental organisations stated that permanent grassland should be monitored at farm level, as 'monitoring permanent grassland on a regional basis will not take account of the differing level of environmental value of various grassland types'.¹⁰⁸

¹⁰⁶ DAERA, 'CAP Pillar 1 Direct Payments - summary of decisions' (Date published: 25 February 2015) 2-3 <<https://www.daera-ni.gov.uk/sites/default/files/publications/dard/cap-pillar-i-direct-payments-summary-of-decisions-250215.pdf>> accessed 24 September 2017

¹⁰⁷ DAERA, 'Summary of Responses to the Consultation on Policy Options Arising from the Reform of the Common Agricultural Policy (Pillar I Direct Payments)' (2014) 14 <<https://www.daera-ni.gov.uk/sites/default/files/publications/dard/pillar-i-summary-of-responses.pdf>> accessed 24 September 2017

¹⁰⁸ Ibid

The final decision implemented the monitoring of permanent grassland at the regional (NI: national) level in line with both the original proposal and the majority preference as expressed in the consultation response.¹⁰⁹

Q1: Ecological Focus Areas

What are your views on which areas should be eligible for use as EFA?

Of the 74 responses to this question 29 (39%) were from organisations and 45 (61%) from individuals and ‘the majority’ of responses indicated that all possible areas should be eligible for use as an EFA.¹¹⁰

In the final implementation decisions, Northern Ireland adopted more options than both England and Wales, and the same number (though not the same options) as Scotland.

Q25: Equivalency Scheme

Do you agree with the Department’s suggestion not to make use of the ‘equivalence’ option?¹¹¹

¹⁰⁹ DAERA, ‘CAP Pillar 1 Direct Payments - summary of decisions’ (Date published: 25 February 2015) 8 <<https://www.daera-ni.gov.uk/sites/default/files/publications/dard/cap-pillar-i-direct-payments-summary-of-decisions-250215.pdf>> accessed 24 September 2017

¹¹⁰ DAERA, ‘Summary of Responses to the Consultation on Policy Options Arising from the Reform of the Common Agricultural Policy (Pillar I Direct Payments)’ (2014) 15 <<https://www.daera-ni.gov.uk/sites/default/files/publications/dard/pillar-i-summary-of-responses.pdf>> accessed 24 September 2017

¹¹¹ Ibid 17

Of the 59 responses to this question, 24 (41%) of responses were from organisations and 35 (59%) from individuals. A total of 13 (54%) of responding organisations/representative groups and 32 (91%) of responding individuals agreed with the proposal.

As in consultation for the other region, environmental organisations (Butterfly Conservation Northern Ireland, CNCC and RSPB) supported an equivalency scheme which would offer more options for farmers to actively deliver greening measures, arguing that this would be beneficial in the longer term.¹¹² However, in line with the majority preference (but not necessarily on the basis of the evidence-base of the contribution), no greening equivalency scheme was offered in Northern Ireland.

It would be useful to compare support for an equivalency scheme in the public consultation of Northern Ireland with that demonstrated in Scotland, but unfortunately due to the questions and responses presented this is not possible. In the consultation in Scotland questions were asked about an equivalency scheme for each element of the greening measures, with support for a scheme as an alternative to the crop diversification measure but not for EFA or permanent grassland. In the Northern Ireland consultation this distinction was not made, so the opportunity to identify support for equivalency in one area of the greening measures may have been missed. In fact, the crop diversification element of greening is not discussed at all in this Northern Ireland consultation, perhaps because it was not deemed relevant to the agricultural industry in that area; 82% of the Utilized Agricultural

¹¹² Ibid

Area (UAA) in Northern Ireland is permanent grassland and meadows and 88% of farms in Northern Ireland are dairy, sheep and beef.¹¹³

This difference in the format of public consultation between regions once again draws attention to the potential discrepancy this creates between the value of the exercise to the decision-making process.

7.2.4.2 Pillar 2 - Rural Development Policy¹¹⁴

The consultation around RDP in Northern Ireland received comparably few responses, with the 175 responses accounting for 0.0097% of the population. However, the majority of responses were received from organisations which represent the views of many individuals and may therefore be more representative than they initially appear:

Respondent Type	Number Received	Percentage
Individuals	14	8%
Organisations	161	92%
Total	175	100%

¹¹⁵

Table 2 classifies respondents (individuals and organisations by type):

¹¹³ European Commission, 'Factsheet on 2014-2020 Rural Development Programme for Northern Ireland' 2 <https://ec.europa.eu/agriculture/sites/agriculture/files/rural-development-2014-2020/country-files/uk/factsheet-northern-ireland_en.pdf> accessed 24 September 2017

¹¹⁴ The documents available to contributors included the main 106 page consultation documents <<https://www.daera-ni.gov.uk/sites/default/files/consultations/dard/rdp-2014-2020-consultation-document-web-version.pdf>> and a 1 page summary of indicative costings <<https://www.daera-ni.gov.uk/sites/default/files/consultations/dard/rdp-2014-2020-consultation-cost-range-of-schemes.pdf>>

¹¹⁵ DAERA - RDP Management Branch, 'Public Consultation on Rural Development Programme 2014-2020' (February 2014) 2

<<https://www.daera-ni.gov.uk/sites/default/files/consultations/dard/rdp-2014-2020-consultation-responses-and-dard-response-2-14.pdf>> accessed 24 September 2017

Respondent Type	Number Received	Percentage
Farming, Food and Forestry organisations	48	27%
Community and Rural organisations	41	23%
Local Authorities	18	10%
Environment, nature and conservation	16	9%
Local Action Groups/ Delivery Bodies	11	6%
Economic development organisations	7	4%
Equality Organisations	5	3%
Universities and research institutes	5	3%
Elected Representatives/Political Parties	5	3%
Other	19	11%
Total	175	

116

Annex 1¹¹⁷ also provides a full list of respondents by type.

Questions within this consultation were grouped under five key RDP areas and consultation responses for each are summarised in each section, with the Department of Agriculture and Rural Development (DARD) response to these provided at the end of each. Questions under ‘Priority 4: Preserving and enhancing ecosystems dependent on agriculture’¹¹⁸ are most relevant for the purposes of this analysis and an examination of questions, consultation

¹¹⁶ Ibid

¹¹⁷ Ibid 52

¹¹⁸ Ibid 20–25

responses and DARD responses is presented below. As in consultations in other regions, not all respondents answered questions in all areas; in the Northern Ireland RDP consultation 51% of respondents answered the questions on Priority 4.¹¹⁹

Unlike other consultation reports, this document does not provide a break-down of responses for each question, instead providing a general summary, and this lack of details creates challenges in assessing the level of support for proposals, as well as in drawing comparison with other regions.

Q12: Agri-Environment Schemes

Do you think that the proposed structure of the next Agri-Environment Scheme (AES) is appropriate?¹²⁰

Whilst there was general support for the overall proposed structure of the next AES, some stakeholders (such as the RSPB and the CNCC) felt that there was ‘not enough detail within the consultation document to evaluate the structure’.¹²¹

Q13:

Do you agree that funding should be prioritised in the first instance to support management of designated sites?¹²²

¹¹⁹ Ibid 20

¹²⁰ Ibid

¹²¹ Ibid

¹²² Ibid

Most respondents supported the prioritisation of designated site management, though there was difference of opinion on the sources of funding for management of these sites.

Q15:

Do you think the co-operation measure should be used to provide higher levels of funding to farmers who take collective action through the AES: for example, in a river catchment?¹²³

This question refers to aspects of cooperative delivery at landscape scale that were highlighted in both the IEEP report and other RDP consultations. There was broad support for the co-operation measure, particularly from environmental groups.

DARD Response¹²⁴

The DARD response concludes that ‘no fundamental changes are required to the proposed structure for the next AES’ other than the adoption of a group-level element of the scheme (mentioned in the previous chapter ¹²⁵and now in operation). It also acknowledges the importance of appropriate training and support to help farmers implement their AES agreements, another recommendation also made in the IEEP report.

¹²³ Ibid 21

¹²⁴ Ibid 22

¹²⁵ See Ch 6 - 6.3.1 The measure and scheme design at Member State level

The degree to which this response takes account of the public consultation is difficult to assess, as the data regarding percentage of satisfaction/agreement or dissatisfaction/disagreement which was presented in some other consultation reports for are not presented here. Aspects which were highlighted by contributors appear to have been taken into account in the DARD response, but greater detail is needed.

Funding

Rather than incorporating questions about finance and resources into each of the Priority areas, the consultation included a separate section with questions relating to these aspects of the RDP. A total of 87 (50%) respondents answered questions on this area.¹²⁶

Q41:

If there are insufficient funds to support the proposed programme should funds be transferred from Pillar 1 (Direct Payments) to Pillar 2 (Rural Development) to bridge the funding gap? If yes, how much?¹²⁷

Almost 50% of respondents to this question supported a transfer of funds from Pillar 1 to Pillar 2 in this situation, with around half of those supporting a transfer of the maximum 15% of funds; some suggested an increase of up to 25%. Around 30% of respondents, 'predominantly from the farming sector', were opposed to any transfer of funds from Pillar 1

¹²⁶ Ibid 48

¹²⁷ Ibid 50

to Pillar 2, arguing that Pillar 1 payments offered an essential support mechanism for farmers in Northern Ireland.¹²⁸

On 20th December 2013 Minister for Agriculture Michelle O'Neill announced her intention to transfer an average 7% of the Pillar 1 allocation to Pillar 2, which would have provided an additional €137.5m for the 2014-2020 RDP. Given the contentious nature of a transfer, and the opposing preferences expressed in the consultation, this would appear to have been a happy-medium.

However, due to a judicial review hearing requested by the Finance Minister, the deadline to notify the European Commission of the intended transfer (December 30th) was missed and the transfer amount defaulted to 0%. The consultation report stated that 'DARD (was) considering the implications of this decision for the level of funding remaining for rural development'. Unfortunately, in this instance what appears to be an implementation decision which offered an equitable compromise between stakeholders was thwarted by the delays of legal process. No review of the transfer amount has yet been announced.¹²⁹

In this chapter I have considered the potential impact of the outcome of public consultation on the decision-making process at EU and Member State/region level. I have included an examination of public consultation on the decisions around greening the CAP alongside examination of other sources of input in the policy-making process because I suggest public

¹²⁸ Ibid

¹²⁹ Ibid 51

consultation has the potential to make a valuable contribution of the development of evidence-based policy. In the case of the greening of CAP, the impact of public consultation around measures designed to deliver public goods (biodiversity preservation) with public money adds further import to the process.

As with the examination of the other sources of input, both the way in which the information was gathered and the way in which it was used in the policy-design and decision-making process is significant. They may both have affected decisions around the greening elements of a policy which has so far failed to deliver against biodiversity objectives.

My examination of the public consultation process at EU and UK level has identified aspects of the way in which the information was gathered and the way it was used, which I suggest call into question the value of the exercise within the policy-making process. Whilst public consultation has the potential to make a valuable contribution to the development of evidence-based policy, in this instance, the value and impact of the public consultations on the greening of the CAP appears to be minimal.

The weaknesses I identify in the EU-wide consultation are different to those which can be found in the UK consultations, but they can be traced back to the same key issues; lack of clarity around the impact of consultation responses on decisions, and an absence of justification around this impact (or lack there-of).

In order to make a meaningful assessment of the impact of a public consultation on the policy-making process, at either EU or UK level, I would suggest the following elements are required within a standardized consultation process:

- 1) *Clear proposals which allow respondents to provide clear preferences;*
- 2) *A consultation format which provides quantitative data on public preference/approval of proposals;*
- 3) *Collection of qualitative data where proposals do not receive support (to identify improvements);*
- 4) *Reporting which clearly sets out the level of public support for each proposal and the influence of this on adoption/adaptation of that proposal;*
- 5) *In cases where a proposal is adopted despite limited public support, details of justification for this.*

As previously mentioned, these issues are addressed to a large degree in the European Commission's new 'Better Regulation Guidelines'¹³⁰, and to a lesser degree in the UK Government's Consultation Principles¹³¹, though neither are binding at Member State level.

The degree to which the public consultations in the UK follow the format I suggests varies, even within regions. For example, the Scottish consultation on Pillar 1 implementation provides sufficient quantitative data to assess public preference for specific measures and allows analysis of the degree to which this is reflected in the final implementation decisions, though details of the degree to which the consultation responses impacted on the final decisions are absent from the consultation report itself. In contrast, the consultation format for Pillar 2 measures in Scotland is chiefly qualitative and the report does not address the impact of the consultation response on any implementation decisions.

¹³⁰ http://ec.europa.eu/smart-regulation/guidelines/toc_guide_en.htm

¹³¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/492132/20160111_Consultation_principles_final.pdf

Similar variation can be seen in England, Wales and Northern Ireland and the standardised approach I suggest would also address this inconsistency.

I would also suggest that some consideration should be given to the nature of the contributors where possible, as some responses (e.g. from independent research bodies) may offer contributions of a higher value in terms of development of evidence-based policy than others. There are inherent difficulties in this approach, as the nature of public consultation grants a voice to all and many respondents will contribute based on personal preference (e.g. in consideration of biodiversity objectives vs commercial interest); few contributors will have agenda in their choice to contribute. However, I suggest that it should be possible to take the value of the evidence-base of the contributions into account when using these to assess policy or implementation proposals, without invalidating the rights of all contributors to be heard.

8 - CONCLUSION

With this thesis I have considered the policy-making process through which 'greening measures' were introduced to the 2014-2020 Common Agricultural Policy, in light of EU Biodiversity Objectives¹ against which the greening measures were designed to deliver.

Having traced the development of the incorporation of biodiversity considerations through the history of the CAP, I initially set out the biodiversity objectives which the greening of the CAP sought to promote. I then presented evidence to suggest that the greening measures as adopted were failing to delivery against these objectives.

In examining the process of policy proposal at EU level, I have suggested that the design and use of the Impact Assessment within this process contributed to the adopted of ineffective greening measures through a failure to contribute meaningfully to the development of evidence-based policy. I have drawn on examples in the IEEP report to support my suggestion that the potential for a meaningful assessment of the impact of the policy proposals on the delivery of biodiversity objectives was a missed opportunity within the reform process.

The IEEP report also offered recommendations for effective national implementation of measures to promote biodiversity through the CAP. Through an examination of the implementation process within the UK in light of these recommendations, I have considered whether and to what degree the failure of the greening measures to delivery against biodiversity objectives at Member State could be attributed to issues of national

¹ See Ch 3 - 3.1 European Biodiversity Objectives

implementation. I concluded that the issues around the failure of the greening of the CAP to deliver against biodiversity objectives lie primarily in ineffective policy design at EU level.

Finally, I considered the role which public consultation has to play in the design and implementation of evidence-based policy measures within the greening of the CAP. I identified public consultation as a tool within the policy-making process which presents a potential source of data on which an evidence-based policy process might draw, whilst acknowledging the challenges inherent in the collection and consideration of such data.

In this conclusion I will briefly recap the main elements and arguments of the thesis. I will also consider to degree to which the barriers to the development of evidence-based policy which I have identified in the 2013 CAP reform policy-design process are addressed in the EU's 2015 Better Regulation Guidelines.

8.1 Overview

My examination of the historical development of the inclusion of biodiversity objectives within the objectives of the CAP set out the legislative context from which the most recent CAP reform emerged and examined the changing motivations of the greening of the CAP during its history. The gradual incorporation of environmental protection and biodiversity preservation into the EU treaties and agricultural policy led to an increased focus on the public funding of sustainable agriculture, rural development and biodiversity preservation. This sets the scene for an examination of the priorities in the most recent reform and the approach to policy-making around the introduction of the greening measures.

In setting out the EU Biodiversity Strategy² objectives, towards which the greening of the CAP was intended to make a significant contribution, I examined the backdrop against which the reform was conducted. An understanding of the biodiversity objectives and the role and responsibility of the CAP in delivering against those objectives is crucial in my examination of the development of the policy proposals, as the success or failure of the greening of the CAP, from a biodiversity preservation perspective, is measured by its delivery against these objectives.

I set out the greening measures of the CAP as they were adopted for 2014-2020 and consider the potential benefits they offer in comparison to both the original proposals and previous or existing requirements which deliver similar biodiversity benefits. These comparisons, for example between EFA vs set-aside³ and the permanent grassland requirement vs protection of semi-natural grassland under the Environmental Impact Assessment Regulations⁴, support my assertion that the greening measures have a very limited capacity to deliver against the biodiversity objectives; an assertion supported by the findings of the EU's 2015 Mid Term Review⁵ and the UK's 2017 Biodiversity Indicators report.⁶

² European Commission, 'Our life insurance, our natural capital; an EU Biodiversity strategy to 2020' (Communication) COM (2011) 244 final

³ See Ch 4 - 4.2.4.4 Ecological Set Aside/ Ecological Focus Areas

⁴ See Ch 4 - 4.2.4.3 Obligation to maintain permanent grassland at farm level

⁵ European Commission, 'Mid-term review of the EU biodiversity strategy to 2020: EU assessment of progress towards the targets and actions'

<http://ec.europa.eu/environment/nature/biodiversity/comm2006/pdf/mid_term_review_summary.pdf>
accessed 17 September 2017

⁶ DEFRA, 'UK Biodiversity Indicators 2017'

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/635832/UKBI2017_rev.pdf>
accessed 19 September 2017

In my assessment of the policy-making process through which these measures were adopted I analyse the European Commission's Impact Assessment for the CAP reform proposals and the IEEP report in relation to the evidence of intervention logic between the greening proposals and the EU Biodiversity Strategy⁷ objectives. I highlight what I consider to be missed opportunities within the Impact Assessment; the potential to use this process to develop evidence-based policy around biodiversity preservation in the CAP. In particular, I contrast the extensive use of scientific evidence around the impacts of agricultural activities on biodiversity as presented in the IEEP report with the limited use of such data in the Impact Assessment. I focus on the case-studies at UK and EU level presented in the IEEP report, which provide examples of the scientific evidence base for biodiversity preservation measures which I suggest should be provided in the Impact Assessment of greening measures. These case-studies provide quantitative assessment of the impacts of changes to the management of agricultural systems which should have been presented in the Impact Assessment on the CAP reform proposals of Adjustment, Integration and Refocus. I argue that the lack of this quantitative analysis seriously restricted the value of the Impact Assessment as a tool in an evidence-based policy-making process.

In an analysis of the implementation of the greening measures in the UK regions, I examined implementation choices in each region in light of recommendations made by the IEEP report. Whilst this examination identified some areas of potential improvement in implementation practice, I conclude that the main issues around the failure of the greening measures to

⁷ European Commission, 'Our life insurance, our natural capital; an EU Biodiversity strategy to 2020' (Communication) COM (2011) 244 final

deliver against biodiversity objectives at a national level are primarily a result of poor policy design at EU level rather than failures in national implementation.

I also examine the public consultation process for the CAP reform followed by the European Commission at proposal stage and the UK administrations at national implementation stage.

I suggest that the public consultation reports at both EU and UK level provide limited instructive or consistent input into the policy reform process, thereby limited their usefulness as a source of meaningful input within an evidence-based policy making process. I also suggest an approach to consultation which would standardise formats and facilitate constructive analysis of the consultation response to feed into the reform process.

Within this thesis I have sought to identify aspects of the policy-making process which contributed to the adoption of greening measures within the reformed CAP that fail to deliver against the EU biodiversity objectives. I have suggested that the biggest barrier to effective evidence-based policy-making within the policy-making process was the limited use of scientific evidence within the EU's Impact Assessment of the policy proposals. I have also suggested that changes to the public consultation process at EU and UK level could improve the quality of data collected through consultation, which could in turn contribute more meaningfully to the evidence base on which policy decisions are made.

Having identified these aspects, this final stage of the thesis will briefly examine the degree to which these suggestions for improvement in the policy-making process are represented in the Better Regulation Guidelines, introduced by the European Commission in 2015.

8.2 Better Regulation Guidelines

The Better Regulation Guidelines deal with both of the main areas of the policy-making process which I have identified as problematic in terms of the 2013 CAP reform: Impact Assessments and public consultations. The instructions set out in the Guidelines for these aspects of policy-making are now mandatory at the EU level.⁸

8.2.1 Impact Assessments

The first key requirement for Impact Assessments under the 2015 Guidelines highlights the key issue I have raised in the thesis; the need for clear intervention logic between policy objectives and policy measures;

(Impact Assessments) must set out the logical reasoning that links the problem (including subsidiarity issues), its underlying drivers, the objectives and a range of policy options to tackle the problem. They must present the likely impacts of the options, who will be affected by them and how.⁹

Within 'The Questions An Impact Assessment Should Answer' the Guidelines specify two key questions which I would suggest the 2013 reform Impact Assessment failed to answer satisfactorily:

5. What are their economic, social and environmental impacts and who will be affected?

⁸ European Commission, 'Better Regulation Guidelines' (Commissions Staff Working Document) SWD (2017) 350, 3

⁹ Ibid 14

6. How do the different options compare in terms of their effectiveness and efficiency (benefits and costs)?¹⁰

These questions were addressed in broad terms, but the lack of either specific detail on how the proposals would deliver effectively against the biodiversity objectives, or reference to the evidence on which the proposed measures was based, significantly reduced the value of the Impact Assessment as a tool within the policy design process.

The 2015 Guidelines set the requirements which the Impact Assessment must meet in order to satisfactorily answer these questions at a level much closer to that I would consider sufficient than the level demonstrated in the 2013 reform. As such, if the Guidelines are followed I believe they will offer a significant improvement in the policy-making process which would be in line with my recommendations, and be much more likely to result in evidence-based (and therefore, hopefully, effective) policy. As I have demonstrated through my comparison on the evidence in the Impact Assessment and IEEP report, the assessment of impacts on biodiversity in this form is possible with the data available, so I hope the Guidelines facilitate greater use of this data in future.

8.2.2 Public Consultations

The Guidelines specify a 'mandatory scope' of consultations on Impact Assessments (etc), which would apply to any consultations related to the CAP:

¹⁰ Ibid 17

- Stakeholders must be consulted on all IA elements in the IA process. The key issues which must be addressed in the consultation strategy, including in the public consultation, are therefore:

- The problem to be tackled;
(...)
- The available policy options;
(...)
- The impacts of the policy options.¹¹

They also include an obligation to report on the use of the consultation contributions was set out as follows:

For legislative proposals, (an) explanatory memorandum should reflect how far the main contributions have been taken into account in the draft policy initiative and if not, substantiated why not.

Give the reasons for the options chosen:

- Report why certain options were discarded (especially when those were widely supported by the respondents);
- Highlight the link between respondents'/participants' input, impact assessment or any other factor that justifies the options the Commission proposes.¹²

¹¹ Ibid 75

¹² European Commission, 'Tool #55. Informing Policymaking – The Synopsis Report' (Better Regulation Toolbox) < https://ec.europa.eu/info/files/better-regulation-toolbox-55_en > accessed 23 September 2017

Although these issues do not address all of the key aspects I suggest should be included in the CAP public consultation in the previous chapter¹³, they represent a step in the right direction when compared to the EU public consultation on the CAP. The public consultation of implementation decisions in the UK regions does not fit the EU model for public consultation on policy in the same way. Therefore I maintain that a standardised consultation process for implementation decision across the UK would facilitate easier assessment of the degree to which consultation informs decision making in the devolved administrations, as well as support the sharing of best practice between the regions.

The final point I wish to make returns to the motivation section of my introduction, in which I explain my reasons for undertaking research in this area of law. The Common Agricultural Policy is not recognised as offering protection to the natural world in the same way as, for example the Birds¹⁴ and Habitats Directives¹⁵, but as a policy it has the potential to delivery biodiversity benefits across a huge area. I believe the effective greening of the CAP could achieve more for European biodiversity than almost any other legal intervention, and I sincerely hope that the improvements in the reform process which I have identified in this thesis can delivery this as part of the next CAP reform.

¹³ See Ch 7

¹⁴ Council Directive 79/409/EEC the conservation of wild birds [1979] OJ L 103/1

¹⁵ Council Directive 92/43/EEC 1992 on the conservation of natural habitats and of wild fauna and flora [1992] OJ L 206/7

Glossary

AECS	<p>Agri-Environment Climate Scheme</p> <p>The form of agri-environment scheme (see below) offered in Scotland</p> <p>https://www.ruralpayments.org/publicsite/futures/topics/all-schemes/agri-environment-climate-scheme/ - accessed 04 May 2018</p>
AEIs	<p>Agri-Environmental Indicators</p> <p>Agri-environmental indicators are used to track the integration of environmental concerns into the Common Agricultural Policy (CAP) at EU, national and regional levels.</p> <p>http://ec.europa.eu/eurostat/web/agri-environmental-indicators - accessed 04 May 2018</p>
AEM	<p>Agri-Environment Measures</p> <p>Individual measures which provide payments to farmers who subscribe, on a voluntary basis, to environmental commitments related to the preservation of the environment and maintaining the countryside.</p> <p>which provide payments to farmers who subscribe, on a voluntary basis, to environmental commitments related to the preservation of the environment and maintaining the countryside</p> <p>https://ec.europa.eu/agriculture/envir/measures_en - accessed 04 May 2018</p>
AES	<p>Agri-Environment Schemes</p> <p>Schemes offered by EU Member States, comprising measures which provide payments to farmers who subscribe, on a voluntary basis, to environmental commitments related to the preservation of the environment and maintaining the countryside.</p> <p>https://ec.europa.eu/agriculture/envir/measures_en - accessed 04 May 2018</p>
AIR	<p>Annual Implementation Reports</p> <p>Annual Implementation Reports (AIR), submitted by EU Member States to the European Commission, contain evaluation findings such as the quantification of operational programme (e.g. RDP) achievements, answers to evaluation questions and progress towards strategy objectives.</p> <p>https://enrd.ec.europa.eu/evaluation-rural-development-policy_en - accessed 04 May 2018</p>
ANC	<p>Areas facing Natural Constraints</p>

	<p>Areas facing natural or other specific constraints, to which additional payments are available through the RDP to mitigate the risks of land abandonment and thus a possibility of desertification, loss of biodiversity, and valuable rural landscape.</p> <p>https://ec.europa.eu/agriculture/rural-development/areas-facing-natural-or-other-specific-constraints_en - accessed 04 May 2018</p>
BPS	<p>Basic Payment Scheme</p> <p>The payment scheme under which farmers receive direct payment through Pillar 1 of the CAP, 2014-2020</p> <p>https://ec.europa.eu/agriculture/glossary#glossary-b - accessed 04 May 2018</p>
Cairns Group	<p>The Cairns Group is a coalition of 19 agricultural exporting countries which account for over 25 per cent of the world's agricultural export -</p> <p>http://cairnsgroup.org/Pages/Introduction.aspx - accessed 04 May 2018</p>
CAP	<p>Common Agricultural Policy</p> <p>The European Union's farm policy</p> <p>https://ec.europa.eu/agriculture/cap-overview_en - accessed 04 May 2018</p>
CEEC	<p>Central and Eastern European Countries</p> <p>An Organisation for Economic Co-operation and Development (OECD) term for the group of countries comprising Albania, Bulgaria, Croatia, the Czech Republic, Hungary, Poland, Romania, the Slovak Republic, Slovenia, and the three Baltic States: Estonia, Latvia and Lithuania.</p> <p>https://stats.oecd.org/glossary/detail.asp?ID=303 - accessed 04 May 2018</p>
CMEF	<p>Common Monitoring and Evaluation Framework</p> <p>A system used assess the performance of the CAP and its main instruments at EU level</p> <p>https://ec.europa.eu/agriculture/evaluation/cap-monitoring-evaluation_en - accessed 04 May 2018</p>
Cross - compliance	<p>Rules concerning food safety, animal health, plant health, the climate, the environment, the protection of water resources, animal welfare and the condition in which farmland is maintained, which farmers must observe to receive direct payments under Pillar 1 of the CAP</p> <p>https://ec.europa.eu/agriculture/glossary#glossary-c - accessed 04 May 2018</p>
CSS	<p>Countryside Stewardship Scheme</p> <p>The form of agri-environment scheme (see above) offered in England.</p> <p>https://www.gov.uk/government/collections/countryside-stewardship-get-paid-for-environmental-land-management - accessed 04 May 2018</p>

DAERA	<p>Department of Agriculture, Environment and Rural Affairs</p> <p>Government department in Northern Ireland with responsibility for the administration of CAP in the region.</p> <p>https://www.daera-ni.gov.uk/ - accessed 04 May 2018</p>
DEFRA	<p>Department for Environment, Food and Rural Affairs</p> <p>UK government department responsible for CAP</p> <p>https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs/about - accessed 04 May 2018</p>
EAFRD	<p>European Agricultural Fund for Rural Development</p> <p>Funds the EU's rural development policy: worth c. €100 billion from 2014-2020, with each EU country receiving a financial allocation for the 7-year period.</p> <p>https://ec.europa.eu/agriculture/rural-development-2014-2020_en - accessed 5 May 2018</p>
EAGF	European Agricultural Guarantee Fund
EAGGF	<p>European Agricultural Guidance and Guarantee Fund</p> <p>A fund within the overall European Union budget for the financing of the Common Agricultural Policy (CAP).</p> <p>On 1 January 2007 the EAGGF was replaced by the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD).</p> <p>https://stats.oecd.org/glossary/detail.asp?ID=864 - accessed 04 May 2018</p>
EEC	<p>European Economic Community</p> <p>Formed by the Treaty of Rome in 1957 as the original European Common Market.</p>
EFA	<p>Ecological Focus Area</p> <p>Greening elements of 2014-2020 CAP - an area of arable land dedicated to ecologically beneficial element.</p> <p>https://ec.europa.eu/agriculture/direct-support/greening_en - accessed 04 May 2018</p>
EFBI	<p>European Farmland Bird Index</p> <p>An Agri-Environmental Indicator (see above) which tracks population trends of 39 selected bird species that are common and characteristic of European farmland landscapes.</p> <p>http://ec.europa.eu/eurostat/statistics-explained/index.php/Agri-environmental_indicator_-_population_trends_of_farmland_birds - accessed 04 May 2018</p>

EFS	<p>Environmental Farming Scheme</p> <p>The form of agri-environment scheme (see above) offered in Northern Ireland</p> <p>https://www.daera-ni.gov.uk/topics/rural-development/environmental-farming-scheme-efs - accessed 04 May 2018</p>
EIA	<p>Environmental Impact Assessment</p> <p>The product of the EU environmental assessment procedure designed to ensure that the environmental implications of decisions are taken into account before the decisions are made. Legal bases: EIA Directive (85/337/EEC)</p> <p>http://ec.europa.eu/environment/eia/index_en.htm - accessed 04 May 2018</p>
ESAs	<p>Environmentally Sensitive Area schemes</p> <p>A scheme introduced in the UK in 1987 to conserve specially designated areas of the countryside where the landscape, wildlife or historic interest is of particular importance and where these environmental features can be affected by farming operations. Now closed.</p> <p>https://naturenet.net/status/esa.html - accessed 04 May 2018</p>
EU	<p>European Union</p> <p>An economic and political union, established by Treaty, between 28 European countries.</p> <p>https://europa.eu/european-union/about-eu/eu-in-brief_en - accessed 04 May 2018</p>
Extensification	<p>Refers to extensive farming methods which are generally characterized by a low level of inputs and outputs, and which are usually relatively labour intensive.</p> <p>https://ec.europa.eu/agriculture/glossary#glossary-e - accessed 04 May 2018</p>
GAEC	<p>Good Agricultural and Environmental Condition</p> <p>An element of CAP cross-compliance: a set of European Union standards (described in Annex III of Council Regulation 73/2009) defined at national or regional level, aiming at a sustainable agriculture</p> <p>http://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:Good_agricultural_and_environmental_conditions_(GAEC) - accessed 04 May 2018</p>
GATT	<p>General Agreement on Tariffs and Trade</p> <p>A set of multilateral trade agreements aimed at the abolition of quotas and the reduction of tariff duties among the contracting nations.</p> <p>https://www.britannica.com/topic/General-Agreement-on-Tariffs-and-Trade - accessed 04 May 2018</p>

Green cover	<p>Temporary plant cover of arable land that would otherwise remain bare at certain times in the year</p> <p>European Commission, 'Common Agricultural Policy towards 2020' (Staff Working Paper– Impact Assessment) SEC (2011) 1153 final/2, 68</p>
HNV farmland	<p>High nature value farmland</p> <p>An Agri-Environmental Indicator (see above) - Refers to the causality between certain types of farming activity and corresponding environmental outcomes, including high levels of biodiversity and the presence of environmentally valuable habitats and species.</p> <p>- http://ec.europa.eu/eurostat/statistics-explained/index.php/Agri-environmental_indicator_-_High_Nature_Value_farmland#Indicator_definition</p>
Holding	<p>An agricultural holding is a single unit (technically and economically) operating under a single management and which undertakes agricultural activities within the economic territory of the European Union</p> <p>http://ec.europa.eu/eurostat/statistics-explained/index.php?title=Glossary:Agricultural_holding - accessed 04 May 2018</p>
IEEP	<p>Institute for European Environmental Policy</p> <p>A sustainability think tank working with stakeholders across EU institutions, international bodies, academia, civil society and industry to produce evidence-based research and policy insight.</p> <p>https://ieep.eu/about-us - accessed 04 May 2018</p>
Intervention logic	<p>Intervention logic provides a (narrative) description and / or diagram summarising how the intervention (e.g. greening measures) was expected to work / achieve the objectives of the intervention.</p> <p>European Commission, 'Tool #46. Designing the Evaluation' (Better Regulation Toolbox) s3.3 <https://ec.europa.eu/info/sites/info/files/file_import/better-regulation-toolbox-46_en_0.pdf> - accessed 04 May 2018</p>
IPENS	<p>Improvement Programme for England's Natura 2000 Sites</p> <p>An improvement programme (2015-2017) through which Natural England worked with organisations and individuals who owned, managed or had an interest in Natura 2000 sites in England.</p> <p>https://www.gov.uk/government/publications/improvement-programme-for-englands-natura-2000-sites-ipens/improvement-programme-for-englands-natura-2000-sites-ipens - accessed 04 May 2018</p>
IUCN	<p>International Union for Conservation of Nature and Natural Resources</p> <p>A membership Union composed of government and civil society organisations, which provides public, private and non-governmental organisations with 'the knowledge</p>

	<p>and tools that enable human progress, economic development and nature conservation to take place together'.</p> <p>https://www.iucn.org/about - accessed 04 May 2018</p>
JRC	<p>Joint Research Centre</p> <p>The European Commission's science and knowledge service, which employs scientists to carry out research to provide independent scientific advice and support to EU policy.</p> <p>https://ec.europa.eu/info/departments/joint-research-centre_en - accessed 04 May 2018</p>
LEADER	<p>Liaison Entre Actions de Développement de l'Économie Rurale (Links between the Rural Economy and Development Actions)</p> <p>A local development method used to engage local actors in the design and delivery of strategies, decision-making and resource allocation for the development of their rural areas.</p> <p>In the rural development context, LEADER is implemented under the national and regional Rural Development Programmes (RDPs) of each EU Member State, co-financed from the European Agricultural Fund for Rural Development (EAFRD).</p> <p>https://enrd.ec.europa.eu/leader-clld_en#_edn1 - accessed 04 May 2018</p>
LFAs	<p>Less Favoured Areas scheme</p> <p>The Less Favoured Areas (LFA) payment scheme is available to farmers in areas designated as "less-favoured", where agricultural production or activity is more difficult because of natural handicaps and there is a significant risk of agricultural land abandonment.</p> <p>https://ec.europa.eu/agriculture/glossary_en#glossary-l - accessed 04 May 2018</p>
MFF	<p>Multiannual Financial Framework</p> <p>A multiannual spending plan that translates the European Union's policy priorities into financial terms. It applies for a period of seven years and includes funding allocation to the CAP.</p> <p>https://ec.europa.eu/agriculture/glossary#multiannual-financial-framework - accessed 04 May 2018</p>
PAFs	<p>Prioritised Action Frameworks</p> <p>A planning tool compiled at EU Member State level which aims to integrate financing for the Natura 2000 network into EU financial instruments for 2014-2020.</p> <p>http://jncc.defra.gov.uk/page-6934 - accessed 04 May 2018</p>
RDP	<p>Rural Development Policy</p>

	<p>Second Pillar of the CAP - a policy designed to support the rural areas of the EU to meet a wide range of economic, environmental and social challenges.</p> <p>https://ec.europa.eu/agriculture/rural-development-2014-2020_en - accessed 04 May 2018</p>
RSPB	<p>Royal Society for the Protection of Birds</p> <p>The UK's largest nature conservation charity</p> <p>https://www.rspb.org.uk/about-the-rspb/ - accessed 04 May 2018</p>
Set-aside	<p>A process in which a proportion of farmland (usually arable) is taken out of active agricultural use.</p> <p>https://ec.europa.eu/agriculture/glossary#glossary-s - accessed 04 May 2018</p>
SMR	<p>Statutory Management Requirements</p> <p>Elements of CAP cross-compliance which concern public health, animal and plant health, identification and registration of animals and environment and animal welfare.</p> <p>https://ec.europa.eu/agriculture/glossary#glossary-s - accessed 04 May 2018</p>
SPS	<p>Single Payment Scheme</p> <p>Precursor to the Basic Payment Scheme (see above) which ran 2003 - 2013</p> <p>https://ec.europa.eu/agriculture/glossary#glossary-s - accessed 04 May 2018</p>
UAA	<p>Utilised agricultural area</p> <p>The total area taken up by arable land, permanent grassland, permanent crops and kitchen gardens on an agricultural holding (see above)</p> <p>http://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:Utilised_agricultural_area_(UAA) - accessed 04 May 2018</p>

APPENDIX

Chapter 3:

EU Biodiversity Strategy to 2020 – Targets.

Target 1

To halt the deterioration in the status of all species and habitats covered by EU nature legislation and achieve a significant and measurable improvement in their status so that, by 2020, compared to current assessments: (i) 100% more habitat assessments and 50% more species assessments under the Habitats Directive show an improved conservation status; and (ii) 50% more species assessments under the Birds Directive show a secure or improved status.

Target 2

By 2020, ecosystems and their services are maintained and enhanced by establishing green infrastructure and restoring at least 15% of degraded ecosystems.

Target 3*

A) Agriculture: By 2020, maximise areas under agriculture across grasslands, arable land and permanent crops that are covered by biodiversity-related measures under the CAP so as to ensure the conservation of biodiversity and to bring about a measurable improvement(*) in the conservation status of species and habitats that depend on or are affected by agriculture and in the provision of ecosystem services as compared to the EU2010 Baseline, thus contributing to enhance sustainable management.

B) Forests: By 2020, Forest Management Plans or equivalent instruments, in line with Sustainable Forest Management (SFM)²¹, are in place for all forests that are publicly owned and for forest holdings above a certain size** (to be defined by the Member States or regions and communicated in their Rural Development Programmes) that receive funding under the EU Rural Development Policy so as to bring about a measurable improvement(*) in the conservation status of species and habitats that depend on or are affected by forestry and in the provision of related ecosystem services as compared to the EU 2010 Baseline.

(*) For both targets, improvement is to be measured against the quantified enhancement targets for the conservation status of species and habitats of EU interest in Target 1 and the restoration of degraded ecosystems under target 2.

(**) For smaller forest holdings, Member States may provide additional incentives to encourage the adoption of Management Plans or equivalent instruments that are in line with SFM.

Target 4

Fisheries: Achieve Maximum Sustainable Yield (MSY)²² by 2015. Achieve a population age and size distribution indicative of a healthy stock, through fisheries management with no significant

adverse impacts on other stocks, species and ecosystems, in support of achieving Good Environmental Status by 2020, as required under the Marine Strategy Framework Directive.

Target 5

By 2020, Invasive Alien Species and their pathways are identified and prioritised, priority species are controlled or eradicated, and pathways are managed to prevent the introduction and establishment of new IAS.

Target 6:

By 2020, the EU has stepped up its contribution to averting global biodiversity loss.

European Commission, 'Our life insurance, our natural capital; an EU Biodiversity strategy to 2020' (Communication) COM (2011) 244 final, s3

Chapter 5

IEEP Report Table 3 & 4:

Table 3: Agricultural habitats in the EU, their importance for selected threatened habitats and species, and their overall biodiversity importance

Key: HD = Habitats Directive, BD = Birds Directive

	Permanent grassland and other habitats grazed by livestock					Crops					
Habitat types	Natural habitats	Semi-natural habitats		Improved grassland		Cultivated			Permanent		
		Pastures	Meadows	Organic	Conventional	Extensive	Organic	Intensive	Extensive	Organic	Intensive
HD Annex 1 habitats ¹	63										
BD Annex 1 species ²	54				32				5		
European HD Annex II Butterflies ³	9	25		0	0	0	0	0	0	0	0
European threatened amphibians ⁴	3	5		0		1	0		0	0	
European threatened reptiles ⁵	1	4		0		0	0		4	0	
Overall biodiversity importance	Very high, many species are restricted to such habitats	Very high, these habitats tend to be species-rich and declining; some species are restricted to such habitats and dependant on specific agricultural practices		Moderate, species diversity is much reduced compared to natural and semi-natural habitats, but some species of conservation importance use such habitats, sometimes in important numbers		High, such habitats are now rare and support some threatened species (esp birds)	Low, especially in intensive farmland dominated landscapes, but biodiversity levels can be enhanced by appropriate measures		Moderate - High, such habitats are declining and support some threatened species	Low, especially in intensive farmland dominated landscapes, but biodiversity levels can be enhanced by appropriate measures	

Sources: 1 Halada *et al* (2011); 2 adapted from Tucker and Evans (1997); 3 adapted from van Swaay *et al* (2006) using updated annexes available from Butterfly Conservation Europe (<http://www.butterflyconservation.org/upload/Butterfly%20habitats%20-%20Appendix%201.pdf>); 4 (Temple and Cox, 2009a); 5 (Temple and Cox, 2009b).

Note: Habitat divisions for each taxa group reflect the habitat types distinguished in the available data.

Table 4: Totals of agricultural bird species according to habitat type and conservation status category

Key: Moor = grazed moorland and tundra; Med = grazed Mediterranean shrublands; AIG = arable and improved grasslands; SG = steppe grasslands; MG = montane grasslands; WG = wet grasslands; PC = permanent crops; PW = pastoral woodlands. NB. The number of species occurring in all habitats is not equal to the sum of totals in each habitat, because many species occur in more than one habitat type. Habitat use relates to the proportion of the European population that is estimated to occur within each habitat.

	All	Moor	Med	AIG	SG	MG	WG	PC	PW
Total agricultural species	62	3	21	32	32	6	13	5	12
Unfavourable status	55	3	19	28	27	5	12	5	10
Habitat use									
• 10-75% of population		0	11	22	21	5	10	5	11
• >75% of population		3	10	10	11	1	3	0	1

Source: adapted from Tucker and Evans (1997)

Jana Poláková, Graham Tucker, Kaley Hart, Janet Dwyer, Matt Rayment, 'Addressing biodiversity and habitat preservation through Measures applied under the Common Agricultural Policy' (Report Prepared for DG Agriculture and Rural Development, Contract No. 30-CE-0388497/00-44. Institute for European Environmental Policy: London, 2011) 22-24

Chapter 5

Definition of favourable conservation status under Article 1 of the Habitats Directive¹

- (e) conservation status of a natural habitat means the sum of the influences acting on a natural habitat and its typical species that may affect its long-term natural distribution, structure and functions as well as the long-term survival of its typical species within the territory referred to in Article 2

The conservative status of a natural habitat will be taken as 'favourable' when:

- its natural range and areas it covers within that range are stable or increasing, and
- the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and
- the conservation status of its typical species is favourable as defined in

...

- (i) conservation status of a species means the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations within the territory referred to in Article 2;

The conservation status will be taken as 'favourable' when:

- population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and

¹ Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora [1992] OJ L 206/7

- the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and
- there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis;

Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora [1992]
OJ L 206/7, Art 1

Chapter 5

IEEP Study on Biodiversity and the CAP (2011) - scenarios

- Scenario 1: Current conditions persists (No risk mitigation, current levels of risk persist)
- Scenario 2: 5% land allocated, management all in cropped area
- Scenario 3: 5% land allocated, management all in margin
- Scenario 4: 5% land allocated, management all in hedgerow
- Scenario 5: 10% land allocated, management all in cropped area
- Scenario 6: 10% land allocated, management all in margin
- Scenario 7: 10% land allocated, management all in hedgerow
- Scenario 8: 5% land allocated, management split between cropped area, margin & hedgerow
- Scenario 9: 10% land allocated, management split between cropped area, margin & hedgerow
- Scenario 10: 5% land assigned, management provides crop nest resource only
- Scenario 11: 10% land assigned, management provides crop nest resource only
- Scenario 12: 5% land assigned, management provides crop summer food resources only
- Scenario 13: 10% land assigned, management provides crop summer food resources only
- Scenario 14: 5% land assigned, management provides crop winter food resources only
- Scenario 15: 10% land assigned, management provides crop winter food resources only
- Scenario 16: 5% land assigned, management provides full range of resource types
- Scenario 17: 10% land assigned, management provides full range of resource types

Jana Poláková, Graham Tucker, Kaley Hart, Janet Dwyer, Matt Rayment, 'Addressing biodiversity and habitat preservation through Measures applied under the Common

Chapter 6 -

Delegating and implementing legislation

There are two key pieces of legislation which deal with the implementation of the greening initiatives of the reformed Common Agricultural Policy in Member States (and devolved administrations):

- Commission Delegated Regulation (EU) No 639/2014 of 11 March 2014 supplementing Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and amending Annex X to that Regulation [2014] OJ L 181/1, and
- Commission Implementing Regulation (EU) No 641/2014 of 16 June 2014 laying down rules for the application of Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy [2014] OJ L 181/74

Delegated regulation No 639/2014 'lays down provisions supplementing certain non-essential elements of Regulation (EU) No 1307/2013 in relation to (*amongst other things*) ...the payment for farmers observing agricultural practices beneficial for the climate and the environment'¹ and Chapter 3 of the Regulation deals with greening measures.

This chapter includes a number of passages providing clarification of elements of Regulation (EU) No 1307/2013, including the requirements applicable to the national or regional certification schemes (Article 38) which is relevant to Scotland (see below), details around the calculation of shares of different crops for crop diversification (Article 40) and additional rules around the maintenance of permanent grassland (Articles 41-44).

Article 45 gives comprehensive guidance on the criteria for the types of ecological focus area covered by Article 46(2) of Regulation (EU) No 1307/2013, with detailed descriptions of what will constitute a terrace, buffer strip and area under catch crops or green cover (etc) for the purposes of the designation of Ecological Focus Areas.

Article 46 sets out the rules for the regional implementation of ecological focus areas, but as the UK's devolved administrations are implementing greening as if they were separate Member States this does not apply directly to the UK. Never-the-less, it is worthy of note as it highlights the flexibility of implementation within the CAP on a regional basis.

Commission Delegated Regulation (EU) No 639/2014 is the shorter of the two acts (8 pages compared to 47) and in relation to greening simply provides details of the procedure for Member States (or devolved administrations) to notify the European Commission of proposed equivalency schemes (Article 10) and defines the limits for the maintenance of permanent grassland in absolute terms under that greening requirement; a maximum decrease of 5 % of the areas of permanent grassland established in accordance with Article 45(2)(a) of Regulation (EU) No 1307/2013 (Article 11).

Chapter 6 –

Summary of agri-environment measures offered under agri-environment schemes in the UK

England - Countryside Stewardship Schemes

- 64 Mid (lower) Tier options, including wildlife boxes, flower-rich margins/plots and hedgerow planting
- 107 Higher Tier options include habitat creation (fen, reedbed etc) and management (pond, moorland)

Wales – Glastir

- 46 Entry level options, including retaining winter stubble and maintenance of hay meadows
- 92 Advanced level options, including grassland management for particular bird species (curlew, golden plover etc.) and habitat restoration (bog, fen, saltmarsh etc.)

Scotland – Agri-Environment Climate Scheme (AECs)

- 65 options available depending on the spatial targeting; some, such as retention of winter stubbles for wildlife and water quality are available across most of mainland Scotland and its islands, whilst others, such as beetle-banks are only available in restricted areas.

Northern Ireland – Environmental Farming Scheme (EFS)

- 30 Wider-level scheme options, including creation of pollinator margins and rebuilding of dry stone walls
 - 31 Higher-level scheme options, including remedial management of habitats (sand dunes, maritime cliffs etc) and lapwing plots
-

Chapter 7 -

Questions from public consultation on 2014-2020 CAP proposals

- 1) Are the policy scenarios outlined consistent with the objectives of the reform? Could they be improved and how?
- 2) Are there other problems apart from those set in the problem definition section of this document that should be analysed when considering the architecture of the CAP in the post 2013 period? What causes them? What are their consequences? Can you illustrate?
- 3) Does the evolution of policy instruments presented in the policy scenarios seem to you suitable for responding to the problems identified? Are there other options for the evolution of policy instruments or the creation of new ones that you would consider adequate to reach the stated objectives?
- 4) What do you see as the most significant impacts of the reform scenarios and the related options for policy instruments? Which actors would be particularly affected if these were put in place?
- 5) To what extent will the strengthening of producer and inter-branch organizations and better access to risk management tools help improve farmers' income levels and stability?
- 6) What environmental and climate-change benefits would you expect from the environment-targeted payments in the first and the second pillar of the CAP?
- 7) What opportunities and difficulties do you see arising from a significant increase of the rural development budget and a reinforcement of strategic targeting?
- 8) What would be the most significant impacts of a "no policy" scenario on the competitiveness of the agricultural sector, agricultural income, environment and territorial balance as well as public health?
- 9) What difficulties would the options analysed be likely to encounter if they were implemented, also with regard to control and compliance? What could be the potential administrative costs and burdens?
- 10) What indicators would best express the progress towards achieving the objectives of the reform?
- 11) Are there factors or elements of uncertainty that could significantly influence the impact of the scenarios assessed? Which are they? What could be their influence?

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