

## Agriculture Bill

### DAERA Response to Issues Raised in Committee Memo on the RalSe Report

**Are the numbers of responses to the consultation low or does this reflect the number of organisations that might be impacted by the issues which were consulted on?**

The Department wrote to more than 200 organisations including UFU and NIAPA, as well as environmental NGOs and representative groups in the horticulture sector (including Veg NI, Soft Fruit Growers, and British Growers). This was in addition to the current recipients of support under the FVAS, as well as the Northern Ireland Mushroom Growers Association, with whom officials have engaged on several occasions. As part of the FVAS policy review, officials also met other relevant stakeholders, including the UFU, to gather views on the legacy scheme, including exploring issues such as why uptake here is limited (mainly) to the mushroom sector. Those meetings provide an opportunity to flag the Bill and its content and aims.

It may therefore simply be that the limited number of responses reflects the narrowness of the Bill's content and those who considered themselves directly impacted, which would not be unusual.

#### **Examples of legislation DAERA is considering making under the new powers.**

The consultation specifically sought comments on the proposal for the legislation which, as reflected in the RalSe Report, is an 'enabling Bill'. That is, it does not introduce new policy per se, leaving that to future decisions.

However, as stated in the consultation "*while the consultation will specifically relate to the proposal to provide the power to update the governing legislation in line with developing policy, engagement on the Bill will also form part of a broader engagement on a policy review of the legacy EU FVAS*". Therefore, matters raised by stakeholders during the consultation and subsequently with the Committee, would be considered as part of the ongoing review of the FVAS – and would be used to inform future policy. They are beyond the scope of the Bill itself.

The issues raised during consultation will form part of the Department's consideration in bringing forward any new legislation, which would itself then be subject to the normal requirements of further stakeholder engagement and business case development etc. The Committee can therefore be reassured that if changes to the schemes are being considered, further engagement with stakeholders will take place, as would formal engagement with the Committee.

#### **Areas of the FVAS Regulations DAERA is planning to modify.**

The RalSe Report highlights areas of legislation that the Department might modify using the powers proposed in the Bill, including issues relating to expenditure for

environmental actions, the type and number of objectives that FVAS operational programmes must meet, the length of operational programmes and the level of financial assistance. Each of these highlighted matters is a potential area for future change. However, as set out above, the Bill simply provides scope to make changes as necessary in the future, including in the areas highlighted. Importantly, precisely how these powers will be used is for future consideration and Assembly scrutiny.

It should be recognised that having the powers proposed in the Bill would allow the same issues to be kept under review and updated on an ongoing basis in line with future policy development, which would then be subject to further consultation and Assembly scrutiny.

### **What policy directions may drive the need for revocation, repeal or amendment of the Regulations identified in Clause 2?**

The primary driver for the exercise of these powers will be the outcome of the ongoing policy review of the FVAS and the Minister's decisions on next steps. Wider plans to support the horticulture sector, including as part of the Sustainable Agriculture Programme, the budget available to DAERA post 2025/26 and future support arrangements in GB and Ireland will also have a bearing. At present, the position on budget and GB developments remains uncertain.

The Review etc. will inform the more immediate future of the FVAS. However, in line with best policy practice, and in the event the scheme continues here post 2025, the rules and legislation would need be kept under regular review to ensure that they continue to meet DAERA strategic objectives and industry needs, as well as demonstrating Value for Money (VfM). Any future amendments to the scheme, including via secondary legislation, would be brought to the Assembly for consideration.

### **Areas of the food information provision and promotion measures Regulations DAERA is planning to modify.**

As with the Assimilated Law governing FVAS, the RalSe Report refers to areas within the legacy legislation governing agri-food promotions schemes, including eligible products, proposing organisations and types of financing, that the Department may consider amending. Again, as with FVAS, it is not possible to say which, or any, of these may be considered given that a full review of the legacy legislation has not been undertaken, and the development of food promotion under the recently published Food Strategy Framework is at a very early stage.

That said, the issues highlighted for potential amendment using the enabling powers in the Bill would appear to cover the sort of issues that may be considered in developing any future call under this legislation.

### **What policy directions which may drive the need for revocation, repeal or amendment of the Regulations identified in Clause 3?**

As set out in evidence to the Committee previously, the Assimilated Law in question was saved from being 'sunsetting' under the Retained EU Law Act, given it could

potentially prove useful to have these powers in the future, even though no decisions had been made to use them at that point, nor any review undertaken. At that stage, revocation of the legislation was considered outside of scope of DAERA officials in the absence of an Executive.

The Department is seeking the powers to amend this legislation on the same basis as it was saved from sunset, i.e., that it may prove a useful foundation for support for food promotion in the future. However, seeking the powers to do so at this point reflects on the opportunity provided by there being a Bill at the Assembly now. It is therefore not clear whether, or how, new powers may be used to amend the current legislation. Importantly again, any plans to use the Bill powers in the future to amend the rules in advance of using this assimilated legislation as the basis of a promotion scheme would again be subject to its own consultation, and to further Assembly scrutiny before any changes could be introduced.

A review of the most recent support made under the legacy EU information and promotions legislation is at a very early stage, a review which will initially consider if the support given by DAERA has met the business case aims, delivered benefits, and provided value for money. To that end, it is too early to consider whether that scheme will be opened again in the future using these powers, and therefore if the powers in the Assimilated Law will be needed and how these would be used.

In the longer term, this legislation will be considered alongside wider policy developments for promoting food, under the Food Strategy Framework, and other powers available to the Department for food promotion, including under the Agriculture Act (Northern Ireland) 1949 (1949 Act).

### **The name of the Agriculture Bill and a Future Agriculture Bill.**

The Department does not see any reason for confusion with, for example, the Agriculture Act 2020, nor indeed the 1949 Act referred to above, or any future Agriculture Bill/Act. In addition to the date, a Bill's long title, in this case, "*A Bill to make provision for the modification of assimilated direct legislation in relation to aid in the fruit and vegetables sector and information and promotion schemes for agricultural products*", should make it clear as to the specific content and therefore the specific Bill/Act. It would theoretically be possible to have an Agriculture Bill every year, as with an annual Budget Bill, identified by its unique number and date.

The Report notes, as set out in the options in the Explanatory and Financial Memorandum, that the Department considered whether it was possible to wait for a more encompassing Northern Ireland Agriculture Bill which might come forward. At that point, it was clear that such a Bill, if needed, would not be progressed on time. Hence the small Bill was introduced in the Assembly late last year.

What is being scoped is whether additional powers are needed to deliver developing agriculture policy (or whether there are adequate powers already to do this), while being cognisant of the time available to bring something forward. As noted by the Minister at the Bill's Second Stage, the shortened Assembly mandate has impacted on the time available for policy development and legislation. He also indicated that scoping the need for a more comprehensive Bill, remains at an early stage. Should a more comprehensive Bill be needed, it is unlikely that this could come forward quickly enough to meet the timetable set for this Bill.

Given the Bill's long title, we do not believe there is a lot of scope to expand the current content to perhaps address any need for a more comprehensive Bill – albeit this would ultimately for the Assembly Speaker to accept or reject any proposed amendments.

### **Terms of reference (ToR) and progress of the reviews.**

As set out in previous oral and written submission by the Department, the ToR for the dedicated FVAS Review are to consider whether the legacy EU scheme has met its objectives as laid out in EU legislation, the UK Strategy and relevant business cases. As a scheme inherited from the EU, the review is assessing how it best fits with NI agricultural and food policy post EU Exit and the future needs of the NI horticulture, and wider agricultural sector. It is considering the impact of the scheme, whether it has or can provide value for money, what lessons can be learned and whether there is coherence with other post EU strategies and policies. It is also examining the existing legislative framework, and the scope for changes to meet future policy needs, including if necessary to align with developments elsewhere.

The FVAS review is nearing completion, and the report is being drafted. Completion of the review has been challenging given staff resource constraints and wider policy developments in DAERA, and GB. The review report will be shared with the Minister to assist his decisions on the future of the FVAS here and inform the wider development of DAERA agricultural and food policies.

The review of the information and promotions legislation is at a very early stage. The first step is a standard Post Project Evaluation considering if the support provided by DAERA for recent Dairy Council CNI programmes met the desired outcomes and provided value for money. To that end, it is too early to consider whether that scheme will be opened again in the future. In the longer term, it will be considered alongside wider policy developments for promoting food, under the Food Strategy Framework and, as noted, the availability of other powers for example under the 1949 Act.

The Committee asks whether bringing the Bill forward now, in advance of the outcome of the reviews, would limit subsequent policy decisions. The Department would take the contrary view. As noted above, this is enabling legislation. The nature of an enabling Bill is to provide the legal authority for implementation of future decisions without the need to return to primary legislation. In this case the Bill gives Department the powers to amend the legislation governing the FVAS and promotions schemes and gives the DAERA Minister discretion on funding. Importantly, the clause 2 and 3 powers are narrow, in that they are limited to amending the named Assimilated Law. Furthermore, subordinate legislation using these powers requires the approval of the Assembly.

Awaiting the outcome of a review, and then seeking the necessary powers to deliver new policy, would simply cause further uncertainty and delay delivery of such policy, potentially for up to a further two years. Furthermore, policy does not remain static, and the powers would enable further changes over time – for example to continue to align with changes elsewhere, if necessary. As noted, there will be a need for ongoing engagement and consultation with stakeholders as legislation is brought forward under the Bill powers, legislation that would be subject itself to Assembly scrutiny.

### **Proposed move to discretionary funding for FVAS.**

The Report reflects on the Minister's publicly stated position, including during the debate on the Bill's Second Stage, that he has no intention of 'pulling the rug' from those who

currently avail of support under the FVAS. As has been stated, discretion means that he will have the full scope to decide on DAERA funding priorities and levels of funding, to ensure support is provided where it provides best value for money, and to target it where it best meets local needs, bringing support in line with other grant aid which is also discretionary.

One of the issues the Review is considering is how the FVAS fits with NI agricultural and food policy post EU Exit and the future needs of the NI horticulture, and wider agricultural sector. The conclusions drawn from this will therefore be used to inform the future of the scheme here, including its relationship with other support. Without prejudice to any decision by the Minister, the FVAS could continue to operate separately or complement new horticultural supports; alternatively, it is possible that as policy develops, support could be consolidated.

With respect to the impact on the mushroom sector if the FVAS was stopped or significantly reduced, the local industry has made clear its view on the detrimental impact of any loss of FVAS support. That is a consideration in the Review, along with the broader needs of the local horticulture sector and proposed future support.

However, as the Minister has also said, he has made no decisions yet.

### **DAERA budgetary challenges – potential impacts on discretionary spend.**

The Committee has queried the likelihood of reducing or removing FVAS support if funding becomes discretionary. As noted previously, no decisions on this have yet been made, but the Minister has set out his commitment to fostering sustainable growth of the horticulture sector and that making this support discretionary should not necessarily be seen as a signal of his plans to end the scheme here.

Therefore, while the Bill does not commit to future support under the FVAS, nor does it signal an end to such support.

What must be recognised is that by making support under the FVAS discretionary, the Bill would simply bring that support in line with other grant aid which is also discretionary; with policy objectives at any given time driving who or what can or cannot be funded, in addition to the level of funding, and to this end priorities may change over time. The FVAS should be no different in terms of its discretionary nature, the current mandatory aspect being a legacy of it stemming from the EU.

The aim of this clause is to ensure the Minister has discretion to best use the available budget allocation for farm support and to decide on DAERA funding priorities and levels of funding, to ensure support is provided where it provides best value for money, and to target it where it best meets local needs.

### **The Rural Needs Impact Assessment (RNIA).**

The draft RNIA concluded that there would be no direct impact on rural communities from the proposals on which the Department consulted. This conclusion is drawn in recognition that the legislation is an enabling Bill and itself makes no policy changes, including to current funding levels.

As the RalSe Report recognises, legislation brought forward under the powers in clause 2 and clause 3 would be subject to further assessment of impact. However, DAERA

Guidance on the Rural Needs Act (NI) 2016 recommends “*that public authorities undertake a Rural Needs Impact Assessment when developing, adopting, implementing or revising policies, strategies and plans and when designing and delivering public services*”, means that any policy changes, including in relation to future funding, would also be assessed for their impact, if the Bill is enacted.

As no decisions have been made and are not made as a result of the Bill itself, the Bill has no impact; any other conclusion could be seen as signalling a policy direction that has not yet been determined.

### **Potential administration costs for NI-Specific FVAS and Food promotion/information schemes.**

The RPA has been responsible for administration of certain legacy EU CMO schemes on behalf of the four constituent nations of the UK, since Brexit. These arrangements are governed by individual Service Level Agreements with each administration. The future of these arrangements is yet to be confirmed.

As part of the review of the FVAS, DAERA is considering the current and potential future costs for delivery of the FVAS and whether this represents value for money; any future delivery arrangements would form part of a business case.

Any future consideration of running a programme under the promotion’s legislation, will also require a review of the options for delivery, which in turn would form part of a future business case.

### **Impact/risk assessment for increasing number of Producer Organisations seeking FVAS support from DAERA.**

This is being considered as part of the FVAS Review. A number of factors are at play, including the future of the FVAS in GB. There are however restrictions in the current FVAS legislation regarding DAERA’s liability for funding. Specifically, Article 14A of Regulation 2017/891 provides that DAERA is liable to fund POs which have their head office in Northern Ireland. The head office of a PO is where it achieves the majority of its value of marketed production or, by agreement, where the majority of its members are located.

The uncertain position in GB might see POs with NI grower members seeking to restructure. Therefore, the estimated risk is two additional POs in NI. However, in the absence of new legislation, this could mean GB members of such POs would benefit from DAERA funding.