NFU Scotland (NFUS) welcomes the opportunity to respond to this inquiry, which is being conducted at a crucial point for the agricultural sector as it considers its future outside of the EU.

The three clear priorities of NFUS from the Brexit negotiations, which have been in place since the day following the 2016 referendum result, have been to ensure free and frictionless trade with the EU after exit, and for there to be a high level of equivalence in standards for any new trade deals with third countries; for any new immigration system to ensure that non-UK workers can still come to Scotland to take up posts on a seasonal and permanent, on-farm and off-farm, ‘skilled’ and ‘unskilled’ basis; and for Scottish Government to be able to design and implement a new Scottish agricultural policy, fully funded, that is genuinely fitted to the unique agricultural profile of Scotland.

If these principles can be achieved in the Brexit negotiations, and governments support Scottish agricultural businesses and other downstream industries through a managed transition, then there are opportunities for the sector from exiting the EU.

Leaving the EU means leaving the Common Agricultural Policy (CAP) and NFUS has developed detailed proposals on the principles of a future Scottish agricultural support system, entitled ‘Steps to Change: A New Agricultural Policy for Scotland Post-Brexit’1. NFUS has road-tested the proposals with its 8,500 members throughout 2017 and 2018.

This submission sets out those principles of future support in further depth, and elaborates on the other tools and measures which will be required in order for Scottish agriculture to have a profitable and productive future outside of the EU.

Common frameworks

1. NFUS is of the view that Brexit provides an opportunity to move out of the shadow of the CAP. But given the four CAP settlements of the current CAP across the

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UK, it is vital that new agricultural policy must be developed and implemented for the delivery of differing policy outcomes across the UK.

2. However, while there is clear common purpose and mutual objectives, it is also just as clear that the trajectories and speed towards these outcomes must be distinctly different. Change, over an implementation period and an agricultural transition, must be managed and not chaotic. It is critical that the post-CAP policy instruments and their implementation for Scotland are distinct from those to be deployed in England or any other quarter of the United Kingdom.

3. NFUS has, and continues, to make it very clear that the interests of Scottish agriculture will be best served by future agricultural policy that respects and underpins the agricultural profile of Scotland, and how it differs from the rest of the United Kingdom, and England in particular. It is vital that the unique needs of the Scottish agriculture industry are not overlooked in the development of a new regulatory framework governing agriculture.

4. It is vitally important that the current devolution settlement of policy and regulation to the constituent parts of the United Kingdom should be respected and maintained. The UK’s various Governments, Parliaments and regulators should take every step to retain and protect a single market access for food, agricultural commodities, live animals and plant and plant products throughout the UK.

5. Farming Ministers across the UK and agricultural departments must establish and maintain regular, formal and cooperative arrangements to manage policy, legislation and delivery of regulation across the UK economic area. A guiding principle should be that no single country determines or curtail UK policy in the rest of the UK.

6. NFUS has always maintained that commonly agreed frameworks are required in order to avoid regulatory divergence, preserve the integrity of UK internal market and to enable trade deals with the EU27 and third countries to be negotiated and secured. NFUS has also acknowledged the potential risks to intra-UK trade by
unconstrained policy divergence. Measures cannot be so perpendicular across the UK as to cause internal market distortions.

7. The examples of policy areas which to NFUS would be sensibly governed by a common framework would be pesticides, organic farming, fertilisers, animal health and traceability, food and feed safety, and food labelling.

8. However, NFUS is equally clear that beyond these minimum common standards there must be clear flexibility to develop and implement appropriate agricultural and rural policy measures within each devolved administration.

9. As important as the content of common frameworks is the manner in which they are agreed. NFUS is concerned that, to date, it appears that the Joint Ministerial Committee framework has proven inadequate to reach appropriate agreement on key issues regarding EU exit and the administration of agricultural support. In terms of how this arrangement is managed, NFUS fully supports the recommendations outlined in the Royal Society of Edinburgh advice paper as supplied to the Scottish Parliament’s Finance and Constitution Committee in August 2018.

Vehicles to deliver agricultural support and the UK Agriculture Bill

10. Issue 1: 2019 scheme year. NFUS is clear that the Scottish Government will have the legal basis upon which to make direct payments through the Basic Payment Scheme (BPS), Greening and Voluntary Coupled Support (VCS) schemes that operate under Pillar 1 of the CAP for the 2019 scheme year – and likewise, for payments made under the Scottish Rural Development Programme.

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(Pillar 2), such as the Less Favoured areas Support Scheme. This legal certainty is delivered via the UK Government’s European Union (Withdrawal) Act 2018.

11. **Issue 2: 2020 scheme year.** The EU text of the Direct Payments Regulations relating to BPS, Greening and VCS applies to the years up to 2020 – the end of the current round of the CAP. However, Article 130 of the Draft Agreement on the withdrawal of the UK from the EU says that “Regulation (EU) No 1307/2013 [covering rules for direct payments to farmers under support schemes within the framework of the common agricultural policy] of the European Parliament and of the Council shall not apply in the United Kingdom for claim year 2020”. This is all because of the way the EU finances the CAP, and that claim year would see payments from a budget (the so-called Multi-Annual Financial Framework) which is yet to be agreed or implemented. As things stand, there would be no legal basis for direct support (BPS, etc.) payments to be made in the UK for claims made in the 2020 scheme year.

12. It is clear to NFUS that a clause to allow for continuation of BPS and other direct payments in 2020 was left out of the UK Agriculture Bill, which is currently going through the parliamentary processes of Westminster, due to the terms of the Withdrawal Agreement not being confirmed during drafting.

13. At the same time, and in its consultation document ‘Stability and Simplicity’, the Scottish Government has clearly stated its preference to continue with current schemes and payments (i.e. BPS, etc.), with some minimal changes, through an agricultural transition from 2019 to 2024.

14. It is within the competence of the Scottish Parliament to introduce like-for-like primary legislation to allow for this continuation of BPS, etc. in and beyond 2020. At present, the Scottish Government has not confirmed that it intends to pursue this route. However, as per the below, NFUS is seeking clarity in this regard at the current time.

15. **Issue 3: The ability for Scottish Government to develop, implement and make payments for a new (‘non-CAP’) agricultural policy in 2021 and...**
beyond. The two issues outlined above mean that agricultural support will still be entirely tied to the current CAP rules. In order to develop and implement a new, ‘non-CAP’ policy from 2021, primary legislation is required.

16. The Scottish Government has identified various issues with the Agriculture Bill and has declared that it will not take a Schedule in the Agriculture Bill unless these issues are resolved. NFUS shares some of these concerns, which have been set out in earlier evidence to the Scottish Affairs Committee.

17. NFUS also understands that the Scottish Government is keeping open the option of introducing its own Agriculture Bill to the Scottish Parliament. The Scottish Government has indicated that, if it were to pursue this, a Scottish Agriculture Bill could be introduced to the Scottish Parliament in Autumn 2019, in order to go through the parliamentary processes and receive Royal Assent in time for the 2020 payment year.

18. If this option is taken forward, it would provide the same legislative vehicle that is on offer via the UK Government’s Agriculture Bill for Scottish Government to make payments in the 2020 payment year and for Scotland to subsequently develop and implement a new, ‘non-CAP’ agricultural policy beyond the transition period.

19. NFUS is seeking clarity and assurance from the Scottish Government of its intentions not to take powers via a Schedule in the UK Government’s Agriculture Bill, but rather to utilise a Scottish Agricultural Bill to ensure Scottish Ministers can develop and deliver a new Scottish agricultural policy beyond the CAP.

20. Given the wider uncertainties around Brexit, very clear and solid commitments on actions required by governments in Holyrood and Westminster are required.

NFUS ‘Steps to Change’ proposals on future agricultural support

21. NFUS firmly believes that any future agricultural policy must underpin the huge social and environmental contribution made by farmers and crofters to the Scottish economy. Through extensive and ongoing consultation with its
members, NFUS has published detailed proposals in its document ‘Steps to Change – A New Agricultural Policy for Scotland Post-Brexit’.

22. It is the view of NFUS that if the ‘Steps to Change’ approach were to be adopted, much of what is required by way of future support for Scottish agriculture could be delivered with greater efficiency – in terms of funding, process and outcomes.

23. Efficient food production and the delivery of public benefits must be at the forefront of any future agricultural policy. Central to the NFUS proposals is moving unequivocally away from area-based support, which NFUS considers has often incentivised inertia, thwarted innovation and stifled restructuring. The basis of any future support system must be led by agricultural activity which brings about real gains in productivity and the delivery of tangible environmental benefits. However, as the UK and Scotland moves towards a new, but as yet unknown, operating environment, financial stability will remain vital for the vast majority of Scotland’s agricultural businesses – at least to establish a baseline upon which agricultural businesses could be supported and incentivised to take up environmental and productivity measures.

24. Rather than accessing payments through the simple occupation of land, it is the view of NFUS that a new approach to financial stability should be built on the concept of ‘actively farmed hectares’. NFUS is developing a model of ‘actively farmed hectares’ which it believes could be properly targeted at active farmers and crofters, with eligibility defined by levels of agricultural activity.

25. 85 per cent of the utilisable agricultural area in Scotland is defined as ‘less favoured area’ and the Scottish Government’s current Less Favoured Area Support Scheme (LFASS) provides a vital injection of funding for hill farmers and crofters. NFUS is quite clear that any sudden loss of this life-line support to the most vulnerable areas of Scotland could render many hill farms and crofts unsustainable, leading to much wider ramifications - including the potential for land abandonment. NFUS welcomes that Scottish Government recognises the
unique importance of LFASS to Scottish farmers and crofters and believes similar support should be available under any future agricultural policy.

26. Under the ‘actively farmed hectares’ model, there could be scope for payments to be enhanced with top-ups in more disadvantaged areas to reflect additional costs and poorer market returns, based on existing fragility markers via the current Scottish Government’s Less Favoured Area Support Scheme. NFUS also believes it is important that there is scope for coupled support for vulnerable sectors whose socio-economic contribution is of major importance to Scotland, such as the livestock sector.

27. The NFUS proposals set out that alongside the financial stability component, a suite of productivity and environment measures would be available to enable Scottish agriculture to be more competitive, resilient and profitable – forming the essential first link of a dynamic and fair supply chain while also providing essential public goods.

28. A suite of new and practical options for environmental (figure 1) and productivity (figure 2) benefits would meet the needs of emerging and developing farm businesses, with an overarching objective running throughout the policy to make all farms and crofts across Scotland more resilient. These options would not be mutually exclusive, and they would be designed to suit the full range of farming systems that make up Scottish agriculture – including management and capital options. All agricultural business must be able to draw down support from a range of measures across all three components. Many measures would be non-competitive, with levels of support linked to unit size.

**Figure 1: Annual and multi-annual environmental measures as proposed in ‘Steps to Change’**
Figure 2: Productivity measures as proposed in ‘Steps to Change’
Productivity measures for the livestock sectors could include

- Data management systems for health and welfare, yield/weight gains, breeding and genetics
- Electronic identification and data capture equipment, with herd/flock management software
- New or refurbished housing systems, including fit-for-purpose handling facilities
- Health monitoring and disease eradication programmes
- Automated systems for milking, feeding, etc.
- Grassland and forage monitoring systems, for improved nutrient management and drainage
- Soil health and nutrient management plans
- Soil sampling and targeted input use
- Slurry and manure storage facilities and spreading equipment for better resource utilisation
- Fencing to improve grazing management and biosecurity
- Renewable energy, including biomass and anaerobic digestion, to reduce energy costs of housing, etc.

Productivity measures for the cropping sectors could include

- Precision farming technologies, including GPS software to aid sowing and the application of fertilisers and plant protection products
- Soil health and nutrient management plans
- Soil sampling and targeted input use
- Investment in minimum tillage equipment for higher yields and improved soil health
- Capital investments to improve energy/fuel efficiency
- Improved field drainage and increased organic matter
- Precision harvesting, picking and crop analysis technologies
- Automation of horticulture operations, such as weeding, harvesting, grading and packing
- Renewable energy, including biomass and anaerobic digestion, to reduce energy costs of crop drying machinery, etc.

Productivity measures for people could include

- Support for the production of business plans
- Support for succession planning
- Benchmarking – enhanced benchmarking across all enterprises
- Education and skills development for the agricultural workforce
- Continued personal development for the agricultural manager
- Business skills training - cost-control techniques, etc
- Technical skills Training
- Participation in an apprenticeship scheme
- Membership of quality assurance and health scheme
- Hosting of farm visits
- Membership of a co-operative or ‘Producer Organisation’

Funding
29. The CAP budget forms almost 40 per cent of the overall EU budget, and in the period 2014 to 2020 Scotland would have received around €4.6 billion (£3.5 billion) under the CAP from the EU. Funding to support a new agricultural policy for Scotland, particularly during any agricultural transition period, will be vital and NFUS has consistently argued that at least the same quantum of funding should be delivered to the Scottish agricultural industry after EU exit. This budget must be ringfenced to agriculture and rural development support.

30. The Conservative Party 2017 manifesto committed to provide the “same cash total” in CAP funding up to the end of the parliament, in 2022. Since that time, NFUS has received written and verbal assurances that this guarantee will cover all EU and Exchequer funding currently provided as farm support under both Pillars 1 and 2 of the CAP, and that the funding will not be subject to the Barnett Formula when it is passed from HM Treasury to the Scottish Government.

31. What has not been made clear is how this commitment will impact multi-annual support schemes for which claimants will hold contracts that extend beyond the lifetime of the parliament. NFUS has asked for clarity in this regard but has not yet received assurances from UK Government.

32. The level of CAP funding that each devolved administration in the UK receives has previously been allocated on the basis of historic values that do not reflect the different agricultural conditions in each of the four nations.

33. 85 per cent of Scotland’s landmass is deemed to be ‘Less Favoured Area’ (disadvantaged or severely disadvantaged) compared to only 15 per cent in England. For many years, NFUS has argued that the natural disadvantage of Scotland’s landscape should be recognised within the funding envelope awarded via the CAP – indeed, it was due to Scotland’s lower-than-average payment rate per hectare under the previous CAP reform that the UK was awarded a convergence uplift in 2013 in order to bring parity of payments across the UK.
34. Despite this, Scotland currently only receives 17 per cent of the UK’s ‘envelope’ of CAP funding – an allocation share which NFUS has disputed since the uplift decision was taken in 2013.

35. NFUS understands that the allocation of funding is currently subject to a review which will report in spring 2019, with recommendations on how intra-UK funding should be allocated up to 2022.

36. Whilst this long-overdue review is welcome, and NFUS will engage very strongly with it, NFUS is disappointed that the review will not firstly revisit and redistribute funding, and that the Terms of Reference for the review indicate that its findings will not inform any post-2022 decisions on future allocations of funding outside of the EU. NFUS strongly considers that this review provides the opportunity to evaluate how agricultural funding is distributed to the devolved administrations post-Brexit.

37. Figure 3\(^3\) compares how EU Pillar 1 funding would be distributed if it was based on 5 different indicators (utilisable agricultural area (UAA), grassland, less favoured area (LFA), farm woodland, organic farming area (OFA)) instead of historic shares. Compared with its current share of Pillar 1 payments, Scotland gains under every indicator.

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38. NFUS has always been clear in its view that any barrier to non-UK nationals coming to work in Scotland during or after the UK’s exit from the EU would cause considerable disruption to the entire agriculture and food supply chain. To name just some examples from across the sector:

a. Scottish farm businesses employ up to 10,000 non-UK nationals in seasonal positions in the soft fruit and field vegetable sectors every year;
b. Approximately 80 per cent of vets in approved meat establishments come from outside the UK;
c. 33 per cent of permanent staff in the dairy sector are non-UK;
d. 50 per cent of staff in Scottish red meat processing are non-UK;
e. 40 per cent of temporary and permanent egg sorters and packers in the integrated egg industry are non-UK;
f. 60,000 hauliers and HGV drivers are non-UK.

39. NFUS continues to lobby for a new immigration system after Brexit that ensures the agriculture industry and the whole range of ancillary industries can continue to employ non-UK staff on a seasonal and permanent basis for positions of varying skill levels. Non-UK nationals are employed extensively in what UK Government
would deem ‘lower skilled’, but which are nonetheless highly competent, positions in agriculture and throughout the supply chain and any new immigration system must ensure these positions can continue to be filled. NFUS is very concerned that there is a misleading and damaging rhetoric about where the gaps in skills and labour are across the sector and the wider economy.

40. Whilst it is true that there are opportunities for formal education in farm skills to encourage the UK workforce into these positions, the problems of attracting and training enough suitable UK workers is long-standing and the work is simply not as appealing to many people. Any future immigration system must be based on a realistic expectation of the ability and availability of UK workers to fill the jobs currently carried out by non-UK migrant workers.

41. NFUS is in the process of responding to the UK Government’s consultation on its Shortage Occupation List as government considers a new immigration framework after Brexit. NFUS has also fed evidence to the Migration Advisory Committee as part of its inquiry on EEA nationals.

42. Having fed extensively in to the Migration Advisory Committee’s deliberations since the launch of its inquiry on EEA nationals in summer 2017, NFUS is very disappointed that the Committee’s recommendations have not heeded its strong evidence that Scottish agriculture and associated industries such as food processing and road haulage require routes to employ non-UK workers in what are deemed less ‘skilled’, but nonetheless very competent, permanent positions.

43. NFU Scotland is concerned by the Migration Advisory Committee’s recommendation that there should not be employer-led or sector-based routes for ‘lower-skilled’ migrants. Saying that employers need to improve pay and conditions to compete for workers is not straight forward – and to characterise the industry in this way is deeply troubling to NFUS and its members.

44. What is of some comfort is the report’s recognition that the labour market for seasonal agricultural labour is separate from the market for resident workers, and that without a specific scheme for seasonal agricultural labour there is likely to be
contraction within the sector. Following intensive lobbying from NFUS, supported by the Scottish Affairs Committee, the UK Government has given some ground in introducing a limited trial seasonal agricultural workers scheme for 2019 and 2020.

45. However, NFU Scotland is also of the view that to classify the soft fruit and field vegetable sectors which depend so strongly on non-UK seasonal workers as “low productive and low wage” is an over simplification and significantly talks down the potential for the sector. In Scotland, soft fruits and field vegetables deliver over ten per cent of Scotland’s entire agricultural output, despite only occupying 0.7% of Scotland’s utilisable agricultural area.

46. In addition, the influence of the Scottish Agricultural Wages Board (SAWB) and the statutory minimum wage means that for seasonal workers in Scottish agriculture there is generally a standard entry level wage of £7.83 per hour. More experienced workers are capable of earning considerably higher hourly wage rates, with many on more than double this rate. Many businesses will also offer incentives and bonuses to encourage the most skilled workers to stay on for the season. Whilst the report is right to mention that there is potential for technological advancements in these sectors, it is not yet deliverable in the horticulture sector and will take many years and considerable investment. There is simply no substitute for skilled staff.

47. Beyond the timeframe of the UK Government’s trial Seasonal Agricultural Workers Scheme, NFUS and the UK farming unions will continue to make a strong case for a permanent Scheme to be put in place which ensures the 60,000 non-UK seasonal workers required by the UK horticultural sector are able to take up positions.

December 2018