THE UNITED KINGDOM'S EXIT FROM THE EU AND THE IMPLICATIONS FOR AGRICULTURE.

To: External Affairs and Additional Legislation Committee ('Brexit' Committee) of the National Assembly for Wales.

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Agri Advisor Solicitors welcomes the opportunity to provide comment to the External Affairs and Additional Legislation Committee in relation to the UK's exit from the European Union and the implications for agriculture. This submission is provided in advance of the public meeting to be held on 10th October, 2016. Our comments are divided into (1) aspects of agricultural business which is it likely to be affected by Brexit and (2) Transition period and (3) Post Brexit.

1. ASPECTS OF AGRICULTURAL BUSINESS AFFECTED

The Common Agricultural Policy (CAP)

The CAP is the mechanism by which farmers in the UK obtain direct support for protecting and enhancing the countryside and supporting the development of rural areas. Although the UK is the Member State, implementation of the CAP takes place at a regional level, with each of the devolved administrations adopting their own interpretation and application of the EU CAP rules. The two pillar model provided by the CAP allows direct support under Pillar 1 and rural development focused measures under Pillar 2. This second pillar includes support for diversification, competitiveness as well as environmental schemes on farms. Demonstrating that subsidies received by farms are proportionate and justifiable will form an influential backdrop to the development of new agricultural policy going forward.

Promoting High Quality Agricultural Products

The EU runs a number of schemes which promote and support high quality agricultural product, for example the Protected Geographical Indicators Scheme. This scheme has been crucial in denoting the significance of certain agricultural products in the UK e.g. Welsh Lamb, Welsh Beef. Standards of animal welfare and food traceability will be required to trade with EU countries so these requirements will be needed in the new legislative framework.

EU Regulations and agriculture

There are EU Regulations relating to animal health, hygiene and welfare, the control of diseases, welfare of animals at slaughter and during transportation, and export and import of live animals and animal products. The impact of these, and those relating to the regulation of trade across the single market, have enabled UK agricultural products to have the benefit of trade agreements in place with countries such as South Africa. International trade deals are currently negotiated by the EU and include tariff reductions and import quotas providing preferential trade agreements.

2. TRANSITIONAL PERIOD

This transitional period allows for a completely new book to be written and that is an exciting challenge which policy makers must fulfil if the agricultural industry is to thrive going forward.

The majority of EU agricultural law and policy is implemented by Regulations, which have direct effect. This means that the majority of CAP legislation at MS level will need to be replaced and reviewed ostensibly. Matters which are implemented at EU level by Directives, will have been implemented fully in to MS legislation and thus may not require as much amendment/replacement.

Withdrawal from the EU will require the European Communities Act 1972 to be repealed and given that a significant proportion of the UK's legislation (including that made by devolved legislatures) is made under section 2(2) of that Act, its repeal will lead to the automatic loss of all secondary legislation made under that power, leaving a lacuna in agricultural and environmental law across the UK. The reality is that we may end up with transitional provisions enacted which keep most existing EU law in place until such time as a full review and consideration of what to keep and what to delete is made. Achieving a consistent approach in this review is crucial as any policy or rules without statutory support are bound to be questioned through the Courts.

Agriculture, fisheries and rural affairs, animal health and welfare, food and environment are devolved competences and this has resulted in significant differences in approach within the various administrations. **Will there be a UK wide agricultural policy with regional differences or will there be separate agricultural policies for each region. The latter will inevitably lead to further divergence**?

It is envisaged that the process of withdrawal from the EU, will conclude in 2018/2019. This means that the last Basic Payment Scheme payment for UK farmers will be 2018, possibly 2019, depending on the exact timing of the use of Article 50. Agreement will have to be reached as well in relation to the funding of that claim, as payments normally made from the 1st December following through to the June thereafter. Provisions to deal with appeals and disputes relating to payments or applications made before Brexit will also be required. **Who will fund the resolution of those disputes if they fall in favour of the farmer?**

Will new entitlements will be allocated via the National Reserve, a category which was supposed to be available for young farmers and new-entrants to gain access to the industry and this payment in each year of the Basic Payment Scheme?

<u>Agri-Environmental Schemes</u>
Farmers will have to continue to adhere to cross compliance and greening to avoid penalties being incurred. This is likely to cause dissatisfaction among farmers and it is envisaged may lead to increased issues being identified at inspection. Most of the law relating to environmental requirements, although embedded within EU law, are UK regulations and thus will not disappear under Brexit e.g. the Birds and Habitats Directives which have been implemented fully in to UK law.

Under Pillar 2, there are a number of existing agri-environment schemes (which it is understood will be honoured by the Government) and will continue until their contracted terms are completed. The grant of new schemes seems to be on hold and decisions are awaited on this.

3. POST EU EXIT

The form of exit from the EU and the characteristics of the new relationship between the UK, devolved administrations and the EU is uncertain. Jobs, growth, investment and competitiveness and the role of agriculture in the rural economy should be a focus. The UK must adhere to the International Agreement on Agriculture. There are a number of options available:

(i) The UK leaves the EU but remains a part of the EEA (retaining access to the single market);

The UK would follow most of the rules of the Single Market, without having a vote on how those rules are made. This could cause issues for farmers and the profitability of farming enterprises. Under this model the UK would make no contributions to or receive CAP funding and only allows access to the EEA internal market, providing free movement of persons, goods, services and capital is guaranteed in return.

(ii) The UK leaves the EU but joins European Free Trade Association (with EU relations governed by bilateral agreements and some limited access to the single market);

The UK would negotiate a direct bilateral agreement with the EU in return for partial access to the Single Market. This is likely to involve the acceptance of free movement of persons, contribution to EU spending and compliance with most rules of the Single Market. Impact on agricultural business would be similar to under Model 1 above.

(iii) The UK leaves the EU and trades with the EU pursuant to a bilateral trade agreement

This would see the negotiation of a bespoke bilateral trade agreement between the UK and the EU. It is possible that a Free Trade Agreement created in this way could allow market access, tariff levels and quotas being agreed between the EU and UK. Again, there would be no say in how the Single Market rules were made or amended, but the crucial difference for UK taxpayers is that there would not necessarily need to be a contribution to the EU budget, except under certain circumstances to be agreed.

(iv) UK relies on membership of the World Trade Organisation (WTO)

UK would use the access to the Single Market on the same basis and same tariffs as 161 members of the WTO which have not negotiated their own arrangements. This would require minimal obligations to the EU and limited access to the Single Market. There would be no contribution to the EU budget without consent. A farmer that is trading with the EU would normally be expected to comply with its rules but that would be a decision for those individual businesses and dependent on UK law and policy on that matter.

Whichever model is chosen above, there will be a new British Agricultural Policy (or several devolved policies or regional variations) to be developed.