

An update provide by the Brexit Working Party for the Yorkshire Agricultural Society

Paper 4: Devolution aspects of Brexit and Agriculture

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Scope of paper

This paper considers the post-Brexit debate on agricultural policy in relation to the devolved territories on four issues: trade arrangements, future subsidies, regulation, and relations with the Republic of Ireland.

Devolution, uniformity and differentiation in agricultural policy

Agriculture in the UK is a devolved matter and policy is characterised by a degree of territorial variation across the four territories - England, Scotland, Wales and Northern Ireland. While all share broad objectives about fostering agri-food sectors focused on sustainable growth, competitiveness and exports, there are important differences relating to farm structures and production, the importance of subsidies, the institutional and policy framework, and political preferences. For example, while arable crops are important in England and Scotland, Wales and Northern Ireland have smaller holdings characterised by livestock production (especially dairy and sheep), with a high share of upland Less Favoured Areas.

A central consideration post-Brexit is the extent to which variation may increase if further powers are devolved to the territories, and the potential for opening up differences in how farmers are treated, both in subsidies and regulation. A crucial consideration is that international trade and competition policy are 'reserved' to the 'UK' government, but have major implications for the exercise of devolved powers. Agriculture in the devolved territories for example could be seriously affected by the striking by the 'UK' government of bilateral trade deals with countries such as Argentina, Australia and New Zealand. While the governments in Scotland and Wales consider that Brexit will necessitate a complete rethinking of the distribution of functions between devolved and reserved matters, there is no indication that responsibilities for external trade will be devolved. Nonetheless there is likely to be a need for robust inter-governmental machinery for the resolution of disputes between the territories.

Main principles of agricultural policy in the territories in relation to Brexit

The devolved governments have collaborated closely in an attempt to shape an agreed UK negotiating position, facilitated by a consensus on the need to protect their agri-food sectors. They are united on three principles: (1) there should be no attempt to use Brexit to re-centralise powers in agricultural policy at Westminster; (2) they should have substantial input into any new UK wide policy framework; and (3) that there should be substantial scope for flexibility and variation in agricultural policy.

To date, scope for divergence has been set by the framework of the CAP and its presumption in favour of level playing fields which constrains the room for flexibility. For the devolved governments, removal of the CAP umbrella should not result 'in greater concentration of powers at Westminster', with powers over agriculture remaining fully devolved (Scotland's Place in Europe, p. 4). This was accepted in the UK White Paper which further stated that bringing decision making back to the UK would be used 'to ensure that more decisions are devolved' (HM Government 2017, p. 18).

The devolved governments accept that exit from the CAP will require a replacement UK-wide policy framework, but insist that this should be collectively agreed, not imposed, and also retain 'at least the current levels of flexibility to implement policies tailored to the specific need of each nation' (Securing Wales' Future, p. 26). The Northern Ireland Executive also wants to ensure that 'our unique circumstances' in areas such as cross-border trade and agri-food exports are 'fully recognised' (DAERA 2016). However some worry that more devolution could lead to unfair competition within the UK and NFU Scotland, for example, argues that 'significantly divergent agricultural policies across the UK are not considered to be desirable at this stage' (2016, p. 5).

There is consensus in the devolved territories on the main issues for post-Brexit agricultural policy: (1) single markets; (2) funding and subsidies; and (3) the regulatory framework. Overall, a priority is that the policy framework ensures that UK farmers have parity of treatment in relation to each other and the rest of Europe.

Single market access

The territories agree that the most important consequence of Brexit will be its impact on free trade. Around 90 per cent of Welsh food and drink production is exported to the EU and there are concerns about the potential introduction of tariffs on beef and lamb. For the Scottish Secretary for Rural Economy, a 'hard Brexit' that involves leaving the single market 'would be devastating for Scottish agriculture and the many food companies which rely on Scottish produce' (Fergus Ewing, 2017). Maintenance of tariff-free access to the single market and customs union (including freedom of movement and employment) is the overarching objective for all of the devolved governments. For the Northern Ireland Executive, the agri-food sector is 'uniquely vulnerable' and its core priorities are to have trade agreements that are as free as possible and to retain the substantial EU funds for the peace process and the economy (FM/DFM 2016). Continued access to migrant labour is regarded as vitally important in all of the territories, and there is also a perceived need to secure protection against cheap imports and products produced to lower regulatory standards such as in pesticides and animal welfare.

However, following the Supreme Court decision that the devolved assemblies could not 'veto' the approach of the UK government, Theresa May indicated at a meeting of the Joint Ministerial Committee (JMC) on 30 January 2017 that maintenance of the single market will not be possible, so much will depend on the nature of post-Brexit trade agreements.

Funding and the Basic Payment

EU funding is crucially important to UK farmers generally but even more so to those in the territories, that collectively receive around 40 per cent of UK CAP payments. While subsidies make up between 50 and 60 per cent of farm income in the UK as a whole, the estimate for NI is 87 per cent, 80 per cent

in Wales, and around two thirds in Scotland. EU funding is therefore crucial to the viability the agri-food sectors as a whole and represents the difference between making at a profit and running at a loss for many farms.

A central aim of the territories for post-Brexit agricultural policy is to ensure that the level of funding after 2020 (the Treasury has guaranteed funding at current levels until that date) will not be lower than they would be inside the EU, and certainly be on a par with principal competitors there (who will continue to receive substantial subsidies, even if lower after the next revision of the CAP for the period after 2020). If subsidies are continued, even at a lower level, arrangements for funding them are likely to provide a source of tension. For example if agricultural funding is calculated on a per capita basis through the Barnett formula, farmers in the territories would be substantially affected. For example Scotland's population is about 8 per cent of the UK total, but Scottish farmers receive 18 per cent of the UK's CAP funding.

There are big questions about what funding will be used for and how it will be paid out. Some farmers' organisations want continued direct payments, which are especially important in the territories because of the predominance of livestock-based enterprises, especially in upland areas. However the UK Treasury is a long-standing critic of CAP subsidies, and it is questionable whether direct payments will be maintained in the longer term (although devolved governments tend to like direct payments so this depends on the extent of flexibility allowed to them). Critics of the CAP also argue that funding should support public goods provision in areas such as the environment and rural development. Some movement in this direction is likely, perhaps payments for ecosystem services (such as supporting valued habitats and afforestation) which will be of most benefit to upland farmers. Overall a shift from direct payments to moving subsidies 'up the hill' can be expected (YAS/FSN Briefing 1).

Regulation and agri-environment

An area of controversy after Brexit will relate to whether, and to what extent, the territories will be able to exploit self-government to vary regulatory arrangements. If regulation is devolved, this could work in two directions: some sort of 'gold plating' in relation to the environment and animal health for example – where some parts of the UK choose to have more stringent regulations, and 'a race to the bottom' where the territories try to gain competitive advantage. Indeed this is precisely why the farmers' organizations argue for a UK-wide policy framework.

It seems likely that there will be some slackening of rules that currently apply. The 'over-burdensome red tape' of the CAP, e.g. on the 'three-crop rule' (a condition for receiving 'greening payments' introduced in the 2013 reform) seems to have been a prime concern of the substantial number of farmers who voted to leave the EU. Certainly the farmers' unions advocate a rolling back of regulations, with those that remain justified by 'sound science' and in set in the context of a voluntary approach. However the devolved governments have so far been non-committal on regulation, although the Welsh minister (Lesley Griffiths) has referred to 'many regulations that are necessary and valuable'. Single market and competition issues again will be a constraining factor. Farmers' unions suggest that because it will remain an important trading partner, the UK might align its regulations to those in the EU, which in any case already provide the foundation for the UK's high standards and 'world-class food and drink reputation' including protected food names (NFU Scotland 2016, p. 10).

Aspects relating to the Republic of Ireland

A particular concern is the implications of Brexit for the inter-relationships between the territories of the UK and the Republic of Ireland. In agricultural trade the Republic of Ireland is the largest destination for UK farm exports, and also is the third largest importer of food and drink commodities into the UK. There is also substantial cross-border trade, especially in milk and livestock products, with integrated food supply chains that criss-cross the frontier (on trade links see RAISE/L&RS 2016). As well as questions about customs union and the free movement of goods and people, this also concerns existing arrangements such as the all-island strategy for animal health.

For the Irish government (and devolved governments), the maintenance of an open border and customs union is a core political imperative in Brexit negotiations. However while the UK government have expressed a desire to take the 'special circumstances' of Northern Ireland into account and not to return to the 'borders of the past', there is considerable concern about the potential economic and political consequences if a 'hard border' is imposed.

Conclusions

After Brexit a core issue will be the balance of agricultural policy functions between a UK framework and the devolved territories. Broader trade relations and overall funding seem likely to remain within a UK framework, but a key issue is the scope for policy variation allowed to the territories. If this increases – for instance on the distribution of subsidies and the nature of regulation – then there is the possibility of the emergence of 'un-level playing fields' and differentiation in the treatment of farmers across the UK. Countervailing pressures include maintain free competition within the UK and wider trade agreements. Overall, for those who want to maintain parity of treatment between farmers across the UK then the approach should be to ensure that as many policy functions as possible are included within the new UK framework.

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