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**RE: Response to the Consultation on “Health and Harmony: the future for food, farming and the environment in a Green Brexit” by the Yorkshire Agricultural Society’s Brexit Working Party**

## **Preface**

The [Yorkshire Agricultural Society’s](#) ‘YAS Brexit Working Party’ was established in 2015 following concerns as to the impact of Britain’s exit from the EU (Brexit) on UK Agriculture highlighted by their technical network, the [Farmer-Scientist Network](#). The YAS Brexit Working Party brings together farmers within Yorkshire and academics across the UK who have specialist knowledge and expertise within agriculture, law and world trade, to name a few. Led by Prof Wyn Grant, University of Warwick, and member of the YAS Farmer-Scientist Network, the YAS Working Party published the report [‘The Implications of ‘BREXIT for UK Agriculture’](#) in February 2016 during the lead up to the referendum vote on continued British membership of the EU. The purpose was not to recommend how anyone should vote in the referendum; rather, in order that, those involved in agriculture might be better informed about the consequences for them of a British exit, the report identified issues that needed to be clarified in the referendum debate.

## **The consultation**

On the 27th February 2018, DEFRA launched their consultation to seek views on their proposal for the future agricultural policy in England: ‘Health and Harmony: the future for food, farming and the environment in a Green Brexit’. The YAS Brexit Working Party have once more come together to contribute to the consultation. The purpose of the YAS Brexit Working Party is to recommend a balanced and informed view on the proposal and to highlight any further aspects that the policy may need to consider.

## **Members of the YAS Brexit Working Party**

The YAS Brexit Working Party met in York on Friday 16<sup>th</sup> November for a facilitated session on the future of UK Agricultural Policy post-Brexit. Following on from the workshop, members of the group have further developed these ideas and viewpoints which are detailed within this consultation response. The main contributors as follows:

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## 1. A Successful future for farming

*Section contributors: James Hopwood and Richard Bramley*

### a) farming excellence and profitability

How can we improve the take-up of knowledge and advice by farmers and land managers?

Technology will play a key role and it would be useful to make it uniform and easily managed (intuitive), grant funded and cheap to upgrade, as technology frequently develops and becomes outdated. There also needs to be a pathway for other external influences from other industries to pilot new technology in agriculture.

It would also be useful to improve coordination and streamline the farm assurance system so that all farms can be a part of a system to ensure base line standards and improved knowledge. In particular, there could be a 4-tier risk based system depending on crops grown ((leafy vegetables high risk; cereals low risk) and livestock kept (egg production high risk; upland sheep low risk)).

The suggestion of benchmarking and farmer-to-farmer learning is a good idea; however, caution needs to be taken as it will open up vital information to trade which could be exploited. Moreover, each farm will manage a slightly different system and have different labour structures and land types.

Farmer-to farmer learning is important as shown in initiatives such as the Sustainable Futures project. Knowledge transfer is equally important between research and academia, in that such a synthesis can lead to findings which can be applied practically by farmers – as with the YAS Farmer-Scientist Network.

It would be useful to have a national skills register for agricultural and rural training providers. There also needs to be more recognition for those farmers already investing in continuing professional development (CPD) and this should certainly be linked to any payment system.

What are the main barriers to new capital investment that can boost profitability and improve animal and plant health on-farm? Please rank your top three options by order of the biggest issues (in priority order):

*1: Uncertainty about the future and where to target new investment*

Will new technology link in the future or be redundant? There is an increasing amount of social media driven food trends which must be set against long term commitments and production cycles.

*2: Investments in buildings, innovation or new equipment, are prohibitively expensive*

Adjusting the tax system would be helpful and at present all new equipment is prohibitively expensive, with the position likely to be exacerbated by the introduction of up-coming innovative equipment.

### *3 - Insufficient access to support and advice*

Advice is often 100% sales driven and therefore not transparent.

### *4 – ‘Social’ issues (such as lack of succession or security of tenure)*

‘Social’ issues will always have an impact when part of a business. In addition, there is a lack of skilled persons to run increasingly high-tech equipment and/or to perform tasks which require high levels of concentration and attention to detail.

### What are the most effective ways to support new entrants and encourage more young people into a career in farming and land management?

It would be good to have early stage learning scheme for young people and a favourable ‘get out scheme’ or collaborative working scheme for older farmers. It would also be beneficial to the industry to offer higher wages, but to enable this we need to see food valued better.

### Does existing tenancy law present barriers to new entrants, productivity and investment?

Finance is a major issue. Most farmers farm because they grew up on a family farm, unless they were involved in management already or had a lucky break.

Short term farm business tenancies (FBTs) are not viable in the long term for some of the fundamentals of good agricultural practice, for example, soil health and preventing erosion. Moreover, the costs of setting up are proportionately high when tenancy terms are only 3 – 5 years on average. There is a need for better pathways for new entrants, linked to a fit to farm CPD and base education level. And there should be incentives in favour of landlords to encourage long term tenancies for high-achieving young entrants and industry performers.

## **b) Agricultural technology and research**

### What are the priority research topics that industry and government should focus on to drive improvements in productivity and resource efficiency?

All of the options are critical and cannot be ranked. Improved efficiency should not be just about continued narrow margins. Each of these points needs to be viewed in balance.

How can industry and government put farmers in the driving seat to ensure that agricultural R&D delivers what they need?

In theory, this should be happening already, but delivery is still struggling. We should take examples from the good work that Harper Adams is doing with Hands Free Hectare, which is a positive step in the right direction, and similar positive initiatives may be found at the Centre of Crop Health Protection (CHAP) and the Centre in Excellence for Livestock (CIEL).

In practice, there is much testing of 'proof of concept' and acceleration of novel ideas and approaches, but these are often geared towards larger companies. It would be useful to see a greater involvement of SMEs and better pathways to grower engagement, which AHDB should be steering.

With specific regard to R&D, there would be advantage in creating a central 'hub' where farmers could bring/raise issues and link with research.

What are the main barriers to adopting new technology and ideas on-farm, and how can we overcome them?

There are many obstacles that stand in the way of new technology, such as: variety, cost, quick-moving developments, cost of upgrades (which may not be easy to install), prescriptive grant schemes and access to the requisite skills.

**c) labour - a skilled workforce**

What are the priority skills gaps across UK agriculture?

Commitment and attention to detail by workers are very hard skills to find in the supply chain, where small margins make these skill-sets critical. Options a), b) and c) are directly related to base agriculture and the broader supply chain. The industry needs to be able to afford talent: the skills listed in options d), e) and f) can be headhunted from other industries, but at a cost.

What can industry do to help make agriculture and land management a great career choice?

It would be beneficial to incentivise high achievers at different tiers and in different sectors, potentially as part of a reallocation of direct payments.

## 2. Public money for public goods

Section contributors: Mark Reed and Chris Rodgers

### Key Recommendations:

- *Build on state-of-the art modelling approaches, already used in some Rural Development Programmes, to target public money towards the places where benefits that are valued most by the public can most cost-effectively be delivered.*
- *Provide incentives for cross-boundary collaboration for the provision of services at catchment and landscape scales and supplement public payments with private payments for ecosystem services in locations where there are relevant beneficiaries.*
- *Delivering 'long term sustainable management' will require a review of arrangements for land tenure if those **delivering** public goods are to be the beneficiaries of the new approach. The use of short term farm business tenancies, for example, may be an inappropriate tenurial mechanism to implement long term planning for improved biodiversity and the provision of many public goods.*
- *New legal mechanisms will be needed to encourage – and secure – collaborative programmes that enable producers to join in delivering public goods at a landscape scale or catchment scale.*

There are major barriers to replacing direct, area-based payments with payments that link public money to the provision of public goods. However, the UK has unique capabilities that could overcome these challenges and enable the design and successful operation of such a scheme.

Phasing out direct payments will disproportionately affect the economic viability of farming in certain sectors (e.g. mixed farming) and “less favoured areas” (such as hill farms), where the financial viability of agricultural enterprises is more dependent on subsidies. There are a number of uncertainties for the natural environment if this policy were to lead to a significant reduction or withdrawal of active land management in these areas. For example, in blanket bog habitats currently managed for sheep and game, it is not known how protected plant and animal communities would respond to the withdrawal of active management in a changing climate <sup>1</sup>.

Public money for public goods appears to be a cost-effective way of delivering value for money for taxpayers, however directly linking payments to outcomes (“payment by results”) can be problematic. For example, schemes are costly to monitor, farmers may be exposed to unnecessary risk if a natural disaster prevents them from meeting agreed outcome, or well-

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<sup>1</sup> Reed M.S., Hubacek K., Bonn A., Burt T.P., Holden J., Stringer L.C., Beharry-Borg N., Buckmaster S., Chapman D., Chapman P., Clay G.D., Cornell S., Dougill A.J., Evely A., Fraser E.D.G., Jin N., Irvine B., Kirkby M., Kunin W., Prell C., Quinn C.H., Slee W., Stagl S., Termansen M., Thorp S., Worrall F. (2013) Anticipating and managing future trade-offs and complementarities between ecosystem services. *Ecology & Society* 18(1): 5  
<http://dx.doi.org/10.5751/ES-04924-180105>.

organised NGOs and large landowners could out-compete small individual farmers when competing for payments to deliver a public good <sup>2</sup>.

However, recent research funded by the Valuing Nature Programme, drawing on experience in the Welsh Rural Development Programme, proposed three key changes to agricultural payments that could overcome these problems:

- i) Pay for the ecosystem services that are valued most by society based on economics research into public preferences for different services in different parts of the UK;
- ii) Spatially target payments to locations where ecosystem services can most efficiently be provided, based on evidence from land use modelling, using random sampling within land classes to validate model outputs in place of more widespread farm inspections; and
- iii) Provide incentives for cross-boundary collaboration over the provision of ecosystem services that need to be managed at catchment or wider spatial scales.

Following this approach, land managers would be given a menu of environmental benefits to choose from, with the menu differing between areas, depending on the public preferences,<sup>3</sup> <sup>4</sup> and which benefits can most cost-effectively be provided in any given location. Existing process-based models using combined high-resolution remote sensing imagery can identify locations where there are opportunities to provide key benefits in the most cost-effective way<sup>5</sup> <sup>6</sup>. In this way, spending is prioritized (by increasing scheme points available) to the locations that can most easily provide the benefits that society wants, and land managers in those locations are paid for the work they do on a stable, ongoing basis. It is important to note that there would be both winners and losers if those managing certain areas are paid more or less, based on the different levels of benefits they are able to provide society.

An alternative option, which could be combined with the previous option, is to supplement public funding for the provision of environmental benefits from peatlands with private funding via Payments for Ecosystem Services schemes, such as the Woodland Carbon Code and the Peatland Code. Place-based schemes have the potential to integrate payments for multiple services and habitats to provide payments at higher levels over longer periods than

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<sup>2</sup> Reed, M.S., Moxey, A., Prager, K., Hanley, N., Skates, J., Evans, C., Glenk, K., Scarpa, R., Thompson, K. et al. (2014) Improving the link between payments and the provision of ecosystem services in agri-environment schemes in UK peatlands. *Ecosystem Services* 9: 44-53.

<sup>3</sup> Christie, M., Rayment, M., 2012. *An economic assessment of the ecosystem service benefits derived from the SSSI biodiversity conservation policy in England and Wales*. *Ecosystem Services* 1, 70–84.

<sup>4</sup> Christie, M., Hyde, T., Cooper, R., Fazey, I., Dennis, P., Warren, C.S., Hanley, N., 2011. *Economic valuation of the Benefits of Ecosystem Services delivered by the UK Biodiversity Action Plan*. Defra, London.

<sup>5</sup> Emmett B.E. and the GMEP team (2017) *Glastir Monitoring & Evaluation Programme. Final Report to Welsh Government - Executive Summary* (Contract reference: C147/2010/11). NERC/Centre for Ecology & Hydrology (CEH Projects: NEC04780/NEC05371/NEC05782).

<sup>6</sup> Reed, M.S., Moxey, A., Prager, K., Hanley, N., Skates, J., Evans, C., Glenk, K., Scarpa, R., Thompson, K. et al. (2014) Improving the link between payments and the provision of ecosystem services in agri-environment schemes in UK peatlands. *Ecosystem Services* 9: 44-53.

are currently available for similar work under the EU funding.<sup>7</sup> Landscape Enterprise Networks (LENs) were highlighted in the 25-year plan to improve the environment as an example of this approach, integrating funding from private beneficiaries to deliver benefits for the environment, farmers and businesses. The LENs approach is currently being researched in the Global Food Security Programme's Resilient Dairy Landscapes project<sup>8</sup>. The Yorkshire Integrated Catchment Solution Programme (iCASP) is currently conducting an evidence review to gain insights into how different on farm activities can deliver multiple public goods benefits to flood risk, soil health and water quality, whilst ensuring that farm profit and yields are not negatively impacted, across a catchment scale.

Implementing an ambitious programme involving any, or a combination, of the above would require the development of a legal model to underpin the creation of a new market for the provision of ecosystem services. This will need to be sufficiently flexible and robust to accommodate four objectives: (i) the combination of public and (ii) private funding inputs combined with (iii) long term horizons for environmental planning and also (iv) collaborative implementation at a landscape scale.

Long term planning and implementation requires a stable long-term tenure structure within which the producer can develop land management systems to deliver the public goods incentivised by the chosen scheme model, whether it be the publicly funded provision of ecosystem services using one of the models above, or the provision of environmental benefits with mixed or private funding, such as the Peatlands Code. The use of short term FBTs is inappropriate to meet this need. Most FBTs are currently of approximately 3 years duration, although some landowners use longer term agreements of 10 years or more. Conversely, land that is held under an 'old style' Agricultural Holdings Act 1986 tenancy will give the producer long term security of tenure, but at the same time the permitted purposes to which land can be put will usually be limited to agricultural production. The Tenant Farmers Association has stressed the impact of short term agreements on farmers' ability to participate in current agri-environment schemes, and on their impact on under-investment.<sup>9</sup> If we are to develop an ambitious new policy that builds on the successes of current agri-environment schemes, then this is an issue that must be addressed.

These issues can be resolved in one of two ways: either by:

- (i) the introduction of a new type of tenancy structure for use where a long-term management scheme for providing public goods is to be introduced (for example, an 'environmental land tenancy' of, say, 20 years fixed duration). This might have periodic break clauses allowing for review of the performance of targets for the provision of public goods – accommodating both a "results"-based approach and/or a management prescription-driven approach. Or

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<sup>7</sup> Reed M.S., Allen K., Dougill A.J., Evans, K., Stead S.M., Stringer L.C., Twyman .C, Dunn H., Smith C., Rowcroft P., Smith S., Atlee A.C., Scott A.S., Smyth M.A., Kenter J., Whittingham M.J. (2017) A Place-Based Approach to Payments for Ecosystem Services. *Global Environmental Change* 43: 92-106.

<sup>8</sup> Resilient Dairy Landscapes (accessed 19<sup>th</sup> March, 2018) <https://www.resilientdairylandscapes.com>

<sup>9</sup> <http://www.tfa.org.uk/media-release-mr18-15-government-must-not-leave-tenant-farming-as-the-cinderella-sector/>.

- (ii) the retention of current tenancy structures with the use of contractually binding arrangements between landowner and tenant providing for review of performance at periodic breaks, with a commitment to renew or extend tenure upon satisfactory delivery of public goods (again this could be measured either by delivery of land management obligations or by results). In the case of Agricultural Holdings Act tenancies, the Tenancy Reform Industry Group has recently recommended the introduction of a facility to refer the variation of the terms of the tenancy to arbitration where an “environmental advantage” is to be pursued.<sup>10</sup> This could, if implemented, prove useful to underpin the implementation of long term management for ecosystem services provision. A similar arrangement could be considered where land is held under a long-term Farm Business Tenancy.

The implementation of landscape level management will require the use of collaborative arrangements that will need to be captured and given enforceability in a legal form that is both flexible enough to allow for changed targets and management prescriptions, but also robust in making provision for the monitoring and if necessary legal enforcement of management prescriptions. Agri-environment schemes, such as Higher-level Stewardship and Countryside Stewardship, are currently implemented using a contractual model – management agreements with public bodies (e.g. Natural England) typically for 10 years in duration with publicly funded payments for agreed management prescriptions.

This model suffers drawbacks as a mechanism for landscape level management of ecosystems: it is time-limited and does not guarantee the retention of public goods that have been ‘purchased’ during the term of the agreement. And it operates at the level of the farm or producer, not at a landscape level. LENS offer a wider frame of reference to develop landscape level environmental management - but implementing a programme of this kind will require a new legal framework to underpin performance, monitoring and (important in a long-term arrangement) dispute resolution. Similar challenges will arise from initiatives such as the Natural Infrastructure Scheme (NIS) proposed by the National Trust and Green Alliance.<sup>11</sup> A new legal model will be required that can engage multiple producers and farmers in a collaborative agreement structure which delivers landscape level benefits.

Options:

- (i) The Use of Conservation Covenants. These have been little used in England and Wales, where the National Trust is currently the only body with covenanting power.<sup>12</sup> However, the Law Commission has recommended the establishment of a new, and much wider, statutory scheme for conservation covenants in England and Wales, with ‘core conditions’ that covenants should meet.<sup>13</sup> The covenant

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<sup>10</sup> Tenancy Reform Industry Group, *Working Group on the Agricultural Holdings Act 1986, Final Report 8<sup>th</sup> October 2017* at page 14. Suggested new S 14A AHA 1986: see: <http://www.tfa.org.uk/wp-content/uploads/2017/10/TRIG-AHA-Working-Group-Final-Report.pdf>.

<sup>11</sup> *New Markets for Land and Nature: how natural infrastructure schemes could pay for a better environment*, by Francis, A., Brown, S.A, Tipper, W.A. and Wheeler, N. (Green Alliance 2016), ISBN 978-1-909980-74-7.

<sup>12</sup> See National Trust Act 1937, s 8.

<sup>13</sup> Law Commission *Conservation Covenants* (Law Comm.349, 2014) at paras 2.82 et seq.

would have to be agreed by two parties, one of whom would be a landowner<sup>14</sup> and the other a ‘beneficiary’ holding the covenant on behalf of the public – this would be a ‘responsible body’ with responsibility for monitoring and enforcing the obligations in the covenant.<sup>15</sup> There would be no need for the beneficiary to hold adjoining land that could benefit from the covenant, and it could be of either a positive or restrictive nature. Finally, the covenant would bind the land in the hands of successors of the original covenanting parties, if the land were subsequently sold or transferred. The covenant would, in other words, be ‘perpetual’ in effect and bind the land indefinitely. Perpetual effect is important for delivering the conservation goals to be pursued by a covenant - long term conservation management of the land which, once dedicated, cannot be released when the land passes into the hands of successors or new owners. This could be a model for an arrangement binding land in a collaborative landscape scale scheme indefinitely, with multiple landowners/tenants/ and beneficiaries of each covenant. The range of possible beneficiaries would need, however, to be wider than proposed under the Law Commission’s proposed scheme e.g. the utilities may wish to enter into a covenant where land management for ‘clean slow water’ is to be established in a water catchment.

- (ii) Management agreements may offer a more flexible legal mechanism. Natural England has wide power under Section 7 of the Natural Environment and Rural Communities Act 2006 to enter into an agreement “with any person who has an interest in land about the management of that land”. This power is not limited (as are other management agreement powers) to securing management in Sites of Special Scientific Interest or other protected areas and could be used to underpin an arrangement for the provision of ecosystem services. It could be used to provide long term (or even perpetual) obligations to provide public goods, but greater flexibility in the legal enabling power to enter agreements would be required if this was to be achieved. Nothing in Section 7 prevents the power being used to create a perpetual agreement. It is currently used mainly to enter into short term agreements with periodic payments by Natural England for environmental management. Its use to create long term or perpetual obligations for environmental management would require substantially increased resourcing: for example, the payment by Natural England of a lump sum payment on conclusion of the agreement. If private finance were to be provided in an agreement for the provision of ecosystem services by land managers, it will also be necessary to widen the scope of potential participants - which is currently limited to Natural England and those with a legal interest in the land over which the agreement is taken. And a widened management agreement power would also need to ensure that agreements bind any successors of both the land managers providing the service, and also any recipients of ecosystem services who are paying for that service under the terms of the agreement, for example, a utility company paying for land management in a water catchment. Section 7 (3) (a) currently

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<sup>14</sup> That is, someone with a freehold interest in the land burdened with the covenant, or someone with a lease of at least 7 years duration (see para 2.82 *ibid*).

<sup>15</sup> This is a similar model to that in Scotland, where only designated conservation bodies can hold the benefit of a conservation covenant: Title Conditions (Scotland) Act 2003, 38.

provides that a management agreement is “binding on persons deriving title under or from the persons with whom Natural England makes the agreement”. The term “deriving title” may be problematic in some circumstances, A new power should make it clear that an agreement will be binding on all successors of the contracting parties, whether deriving legal title to the land or a property interest in it or not.

### 3. Fulfilling our responsibility to animals

*Section contributor: Michael Cardwell*

The Consultation Document identifies world-class animal welfare and high animal health standards as two of the outcomes to be delivered by a post-Brexit policy of paying farmers and land managers for “public goods”.<sup>16</sup> And such an approach chimes well with a history of the United Kingdom having “raised the bar” in this area of regulation: for example, as noted in the Yorkshire Agricultural Society Report, *The Implications of ‘Brexit’ for UK Agriculture*, national legislation anticipated EU legislation in effectively banning sow stalls as from 1 January 1999 (as opposed to 1 January 2013).<sup>17</sup> Moreover, this heritage receives emphasis in the Consultation Document itself,<sup>18</sup> while there are also clear indications that Brexit will provide opportunities to “raise the bar” yet further: thus, two early dividends to be identified are the compulsory provision of CCTV in slaughterhouses in England and steps to control the export of live animals for slaughter. Significantly, the latter initiative would operate to reverse the implications of the decision of the Court of Justice of the European Union in *The Queen v. Ministry of Agriculture, Fisheries and Food, ex parte Hedley Lomas (Ireland) Ltd.*<sup>19</sup>

In this context, however, two potential policy developments within the Consultation Document may be highlighted. First, when compared with earlier government pronouncements, there is arguably greater focus on animal health than on animal welfare. For example, in the “Unfrozen Moment” speech by Michael Gove, Secretary of State for Environment on 21 July 2017, focus was directed to the latter, and in terms which were firmly based on moral principle: for example, he declared that “[c]ruelty towards animals driven by man’s worst exploitative instincts needs to be met with the full force of the law”.<sup>20</sup> Likewise, at the Oxford Farming Conference in January 2018 he foresaw high animal welfare standards as a key factor in the United Kingdom succeeding on world markets, “competing at the top of the value chain not trying to win a race to the bottom”.<sup>21</sup> By contrast, in the Consultation Document animal health is accorded at least equal billing to animal welfare. While there is

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<sup>16</sup> Consultation Document, 33-34.

<sup>17</sup> Grant, W. *et al*, *The Implications of ‘Brexit’ for UK Agriculture*, (2016) <http://yas.co.uk/brexit-and-agriculture/> (accessed 8 May 2018).

<sup>18</sup> Consultation Document, 43.

<sup>19</sup> Case C-5/94, *The Queen v. Ministry of Agriculture, Fisheries and Food, ex parte Hedley Lomas (Ireland) Ltd* [1996] ECR I-2553.

<sup>20</sup> ‘The Unfrozen Moment – Delivering a Green Brexit’ (21 July 2017) <https://www.gov.uk/government/speeches/the-unfrozen-moment-delivering-a-green-brexit> (accessed 8 May 2018).

<sup>21</sup> ‘Farming for the Next Generation’ (5 January 2018) [https://www.ofc.org.uk/sites/ofc/files/papers/Farming%20for%20the%20next%20generation%20-%20GOV.UK\\_.pdf](https://www.ofc.org.uk/sites/ofc/files/papers/Farming%20for%20the%20next%20generation%20-%20GOV.UK_.pdf) (accessed 8 May 2018).

much to recommend the full incorporation of animal health within the policy agenda as agriculture faces such challenges as persistent levels of Bovine TB and increased risk of anti-microbial resistance (AMR), it may be noted that the argument in favour of its incorporation is framed largely in economic terms. For example, the Consultation Document states that “[p]oor animal health and endemic disease costs millions of pounds each year in lost productivity for the livestock industry”; and even animal welfare is seen through a similar lens, in that “[b]etter welfare can contribute towards healthier animals and this can drive up farm productivity and profitability”.<sup>22</sup> Accordingly, although the economic case is strong and, in particular, the eradication of endemic disease has the capacity both to deliver financial benefits and, by ushering in lower use of antibiotics, to reduce AMR, a change of tone from the earlier speeches of the Secretary of State may be detected. Further, there is no sense of the vigorous debate on the status of the principle of animal sentience in United Kingdom law post-Brexit, a debate where economic considerations played a relatively limited role - and which led to the introduction of the Animal Welfare (Sentencing and Recognition of Sentience) Bill 2017.<sup>23</sup>

Secondly, the Consultation Document would also seem to mark a policy departure in terms of the animal welfare standards to be required of farmers and of the levels of animal welfare payments which they could expect to receive. Notably, George Eustice, the Minister of State for Agriculture, had regarded the promotion of animal welfare as a key opportunity of Brexit,<sup>24</sup> while the Secretary of State had affirmed that he wanted “to see higher standards across the board of animal welfare”.<sup>25</sup> Subsequently, however, in the Consultation Document the proposal was that, as opposed to “significantly raising the UK legislative baseline”, there should rather be pilot schemes offering targeted payments.<sup>26</sup> And the extent of animal welfare payments may prove an issue of greater importance if imports were to be permitted which have been produced to lower standards. Indeed, this concern is expressly recognised in the Consultation Document, which states that “[w]e are mindful that farmers have to compete with overseas producers whose farm animal welfare standards may not be as robust as our own”,<sup>27</sup> and one of the consultation questions inquires “[h]ow can we best protect and promote our brand, remaining global leaders ...in standards of production and animal welfare?”.<sup>28</sup> That having been said, little detail is provided as to government thinking on the measures by which this might be achieved and, in particular, on the scope to condition imports based upon their method of production: it may be observed, for example, that there is no express consideration of the contentious issue of prospective imports of chlorine-washed chicken or hormone-treated beef.

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<sup>22</sup> Consultation Document, 33.

<sup>23</sup> See, eg, House of Commons Library, Briefing Paper Number 8155, *Animal Sentience and Brexit* (2 February 2018).

<sup>24</sup> House of Lords European Union Committee, *Brexit: Agriculture*, 20<sup>th</sup> Report of Session 2016-17, HL 169, para 17.

<sup>25</sup> ‘The Unfrozen Moment – Delivering a Green Brexit’ (21 July 2017)

<https://www.gov.uk/government/speeches/the-unfrozen-moment-delivering-a-green-brexit> (accessed 8 May 2018).

<sup>26</sup> Consultation Document, 8-9.

<sup>27</sup> *Ibid*, 43.

<sup>28</sup> *Ibid*, 63.

## 4. Supporting rural communities and remote farming

*Section contributor: Wyn Grant*

Farm businesses in severely disadvantaged areas are particularly fragile and would be hit particularly hard by the phasing out of direct payments. They would benefit from a longer transition period than other types of farm. Indeed, in light of the economic data for such farms in the Evidence Compendium accompanying the Consultation Document, there would seem to be a good argument that the maintenance of existing levels of support is justified.

If farms were abandoned, there would be serious landscape effects in areas that are important for tourism and/or have cultural significance. Consolidation of existing businesses into larger farms would inevitably lead to depopulation and in turn place greater strain on the delivery of essential services. For example, the maintenance of retained rural fire services depends on the existence of a sufficiently large population below the maximum age for service.

As is noted in the Evidence Compendium which accompanied the Consultation Document, agri-environmental schemes already make a greater contribution to upland farm income than in the case of lowland farms. New schemes need to be designed in such a way that they address the particular environmental contribution of upland farms and are not burdensome for farmers to access. Payment for ecosystem services has the potential to deliver substantial benefits to upland farms. Due regard should be paid to the contribution they make to mitigating climate change.

Although this applies to a greater extent to the devolved administrations of Scotland and Wales, it should be noted that farmers on islands face particular challenges, for example, higher transport costs and lack of access to veterinary services. Agriculture on the Isles of Scilly faces considerable challenges, particularly since the decline of the specialist flower industry. Within an overall UK framework, attention should be given to the special needs of island communities.

Diversifying the economy, engaging with the opportunities of the digital age and retaining a younger population are highly reliant on good broadband coverage which still remains deficient in remote rural areas. This is why it is the most important of the options listed. Of the others, transport connectivity should be ranked second to reduce the cost of inputs and facilitating the dispatch of goods to markets. Access to skilled labour should be ranked third, although some of this is of a rather special character, for example, itinerant shearers for sheep.

Government needs to recognise that farming in the uplands will need to continue to receive some general financial support after Brexit. There has been wide acceptance of this by policy makers for decades, for example, the work of the Hills Task Force and the 2011 Report by DEFRA, *Upland Policy Review*. Otherwise support should be focused on the improvement of broadband coverage which will enable remote areas to participate in and benefit from the digital economy.

Government should not accept arguments for ‘wilding’, i.e., reintroducing animal species no longer present which may act as predators on farm livestock.

## 5. Changing regulatory culture

*Section contributor: James Hopwood*

How can we improve inspections for environmental, animal health and welfare standards?

These suggestions are of equal importance but further comment has been supplied below.

### *1 – Greater use of risk-based targeting*

Such an approach is key and it is often the best-performing units across all sectors that are continually monitored and inspected, from health and safety to animal welfare.

### *2 - Greater use of earned recognition, for instance for membership of assurance schemes*

Assurance schemes are currently under-recognised as they form the fundamental principles of GAP. All farms should be assured, but currently assurance is over-complicated, with individual retailer requirements. There should instead be industry standard on a 3 or 4 tier system, banded depending on the points that a farm scores within their relevant sector assessment. This could form the basis for the risk-based targeting.

### *3- Increased remote sensing*

Remote sensing can be used successfully, although there may be a lack of the requisite expertise for analysing the data. Further, care needs to be taken in the processing and holding of data and significant problems can arise as where, for example, satellite images are used and field boundaries have been removed and added without question under the current direct payments regime.

### *4 – Increased options for self-reporting*

Self-auditing can work as under the current direct payments regime; however, it can carry high cost to farms if it is too complicated (for example, when the use of agents is required).

### *5 – Better data sharing amongst government agencies*

This would be extremely beneficial in so many situations. It would also be helpful to share data between specific assurance schemes to prevent repetition (if assurance schemes are not rationalised and streamlined as suggested).

Which parts of the regulatory baseline could be improved, and how?

There would be benefit in the streamlining of farm assurance schemes, to set clear standards for the consumer to understand, with all farms and producers being required to participate so as to ensure high standards across the supply chain. Imports should also be assessed

against the same criteria to ensure transparency in the supply chain, and to ensure high UK productions standards are not undermined.

#### How can we deliver a more targeted and proportionate enforcement system?

Likewise, there would be benefit in a move towards a risk-based system with links between government agencies. For example, this could be (i) based on the products/livestock produced (as mentioned above) or (ii) based on a red flag system: farming units that present a high-risk due to poor performance might receive a red flag due to poor welfare standards which increase their level of risk and therefore prompt action. And, finally, it would be possible to allow the system to be more targeted.

## **6. Risk management and resilience**

*Section contributor: James Hopwood*

#### What factors most affect farm businesses' decisions on whether to buy agricultural insurance?

The most critical areas for a farm business to protect itself are (i) general risks and (ii) specific risks such as flooding, pests or disease. A concern, however, is whether insurance will deliver when required, since it is not always based on cost.

#### Please give a short explanation as to your given ranking of preferences:

Property is a priority, along with equipment, where there may be mandatory insurance requirements. Specific insurance is becoming more frequent following variable weather patterns and extreme events, for example, hail insurance on oil seed rape. Yet, farmers may struggle to obtain effective crop insurance on flooding, disease or pests, since these may be considered "agronomic fails" or/and an "act of god". Importantly, this is another example of significant supply chain risk being found at the bottom of the food chain.

#### What additional skills, data and tools would help better manage volatility in agricultural production and revenues for:

From a farm business perspective, operators deal on commodity markets controlled by the weather, with the primary way to manage volatility being to secure forward business. But the producer is often forced to pay the difference if there is a crop failure and contracts are not met; and, moreover, it may not be possible to obtain insurance to cover this shortfall. Nonetheless, there is more scope for advanced forecasting, with farmers taking better notice of market trends: for example, how well utilised is the AHDB potato marketing data?

Industry sector training is important, and certainly key for the next generation. Data management tools and automation will make the management of BIG Data and subsequent decision management simpler at farm level.

### How can current arrangements for managing market crises and providing crisis support be improved?

Currently there appears to be no comprehensive set of arrangements in this arena ultimately the largest operators seem to ride out the crisis best, with the retailers emerging relatively unscathed. There is a need for farmers to work together and to talk to professionals in times of crisis, organisations such as the Farm Community Network or the YAS Yorkshire Rural Support Network. In financial terms, recourse may be had to the Royal Agricultural Benevolent Institution, but its ability to assist is not such as to be able to support the farming community generally. Ultimately, the direct payments that farmers currently receive help to mitigate crises as well as keep the price of food at a depreciated value and these must be factors for consideration going forward.

## **7. Ensuring fairness in the supply chain**

*Section contributor: Richard Bramley, James Mills and Fiona Smith*

### **Key points:**

1. Farmer collaboration allows farmers to negotiate better terms and conditions from processors and suppliers in some circumstances. High profile failures of some collaborative ventures mean some farmers are reluctant to pursue this option.
2. Supply chains operate in a global market place. Even where farmers work together to negotiate price and supply terms, their market power is only marginal.
3. Voluntary Codes of Practice work to a limited extent to support farmers when they seek better terms and conditions from processors and supermarkets. The evidence shows that some of these processors and supermarkets 'game the system,' partially implement the Codes, or ignore their terms.
4. Sharing supply chain data with farmers is useful, but it is difficult to see how this will work in practice. Supply chain data is commercially sensitive and may be held 'off-shore' because supply chains are global.
5. Farmers' competitiveness should be supported through the introduction of adequate competition laws and trade remedies (e.g. antidumping duties) imposed in response to unfair trade practices.
6. It is unrealistic to assume the EU will cease to be the most important market for the UK processed food and drink sector after Brexit. Failure by the UK government to secure tariff- free access to the EU after Brexit, will adversely affect the processed food and drink sector and lead to business failures and job losses. At least in the short

term, no trade deal with the EU could see a reduction in the variety of foods available to the consumer. Food and drink consumer prices may also increase as a consequence of rises in production costs, tariffs and transport costs.

7. Transport emissions may increase too if the UK processed food and drink sectors' supply chains must rely on more distant non-EU markets for raw materials and processing after Brexit. The UK government could find it difficult to achieve its international treaty commitments on emissions levels.
8. The Consultation Document does not adequately link food policy, industrial policy and international trade policy after Brexit. Notably, without some support, farmers will be unable to compete if UK trade policy permits imports of food with lower quality standards than the quality standards required of UK farmers and growers.
9. If the UK imports cheap food produced to lower quality standards, whilst mandating UK farmers retain higher standards, this policy reduces consumer choice because only richer consumers will be able to afford to select good quality food; poorer consumers who cannot afford to choose, must instead rely on the cheap, potentially poorer quality imported food.

Ensuring fairness in the food supply chain is a key aspect of the UK government's vision for a coherent and effective farm policy after Brexit. This is an aspect of policy that straddles the "transition period" when direct payments will still form part of farmers' incomes, albeit in a reduced form, and the period after transition, when farmers may receive some form of payment tied to environmental land management and/or animal welfare schemes, but direct payments, in their current form, will no longer be available. The Consultation Document seeks views on three issues: how to encourage collaboration among farmers so they obtain the best prices for their products; how to increase transparency across the supply chain, particularly supermarkets' terms and conditions and grading systems in abattoirs; and the role of government in promoting supply chain transparency and farmer collaboration. These three issues are linked.

1. *Farmer collaboration and fair contract terms and conditions throughout the supply chain.*

Well co-ordinated farmer and grower collaboration enables farmers and growers to obtain better prices from buyers in the supply chain. For example, NFU Sugar negotiates with a single buyer, British Sugar, on behalf of all British Sugar Beet growers in the UK.<sup>29</sup> Likewise, Arla Foods UK, the UK's largest cheese producer and main supplier of fresh milk to supermarkets, is the UK's largest dairy cooperative owned by 3,200 dairy farmers; in the grain, potato and arable crop storage and marketing business, Openfield Group Ltd (2,693 members) and United Oilseeds Ltd (2,861 members) recorded turnover of £743,751,000 and £110,093,731 in 2015.<sup>30</sup> Collective turnover for the top 25 agricultural cooperatives in the UK for 2015 was £5.09 billion, generated on behalf of the 49,000 cooperative members; over half of all British farmers are members of a cooperative. Farmers' cooperatives are not a new phenomenon,

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<sup>29</sup> <https://www.nfuonline.com/sectors/nfu-sugar/>.

<sup>30</sup> *Agricultural Cooperatives: Report on the Cooperative Farming Sector*, (2016) Coop, 7.

so the issue highlighted in the Consultation Document is more likely to be on encouraging the remaining farmers into some form of collaborative working.<sup>31</sup>

Farmers may be reluctant to join cooperatives, or work in other collaborative ways, due to high profile failures and failure of some cooperatives to secure better terms and conditions through the supply chain. For example, whilst ADHB's Monitor Farm has been successful, Wellgrain's collapse in March 2017 owing £15 million to its 300 creditors, including many farmers, strikes a note of caution.<sup>32</sup> The independent company, operating primarily in East Anglia, acted as an intermediary between arable farmers and the global food supply chain offering services covering grain, animal feeds and seeds. Prior to its collapse in March 2017, it was still taking deliveries of grain from farmers as late as February 2017. Reports in the local press that "no-one saw it coming;" that the collapse "came very quickly;" and, more importantly, that complex terms in Wellgrain's contracts with major buyers further along the supply chain meant that it had outstanding invoices, fuel farmers' fears that collaborative working may not necessarily lead to better supply terms and conditions and price.<sup>33</sup>

Farmers' hesitancy is supported by research. An independent report, compiled by a research consortium led by University of Wageningen, The Netherlands, and conducted on behalf of the European Commission, shows mixed success for farm collaborations: whilst farm cooperatives enabled farmers to achieve a better market price, lower supply costs and better supply terms and conditions in some cases from both upstream (from buyers) and downstream (from input companies, e.g. seed suppliers), farmers' ability to influence prices and terms and conditions is limited because supply chains are global. Even the best organized domestic farmer collaborations have only a marginal influence on large players operating in multiple markets on a global scale.<sup>34</sup>

To combat these risks, the study found that cross-border mergers of some cooperatives is not uncommon. As cooperatives grow and improve their governance by introducing professional directors and managers, so the original farmer members lose control of decision-making with the consequence that terms and conditions negotiated by the group are homogenous and no longer favour all farmer members. Any newly formed cross-border producer organization is also subject to the competition rules in another state, and possible litigation if their practices violate the World Trade Organization's rules on agricultural subsidies.<sup>35</sup> Some forms of collaboration, like bargaining groups, seem more successful than formal cooperatives, but uncertainty surrounding the legal position of such collaborations in domestic competition law in particular, can mean such groups struggle with high legal costs as the precise legal position on the collaboration is determined.<sup>36</sup>

These findings suggest that UK farm policy must be better integrated with the UK government's industrial strategy and international trade policy, so the legal position of all

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<sup>31</sup> Ibid.

<sup>32</sup> Farmers Weekly, 8 March 2017, <http://www.fwi.co.uk/business/wellgrain-owes-300-creditors-in-excess-15m.htm>

<sup>33</sup> Ely Standard, 13 March 2017. Farm collaboration in dairy and cereal sector failed to secure better terms and conditions from major buyers.

<sup>34</sup> Bijman, J. et al, *Support for Farmers' Cooperatives*, (2012), European Commission, 9.

<sup>35</sup> Ibid, 9. .

<sup>36</sup> Ibid, 10.

forms of farmer collaboration can be determined before farmers should contemplate further collaborative working. It is not clear from the Consultation Document how UK competition policy will sit alongside agricultural policy after Brexit. Agricultural policy is devolved, with the consequence that there may be regional variations in how farmers' collaboration is organized. It is not clear from the UK government's industrial strategy, nor its trade strategy, that such coordination between a devolved agricultural policy and these different areas of policy has been properly thought through.<sup>37</sup>

The UK's reliance on Voluntary Codes of Conduct to strengthen farmers' bargaining power (whether within farmers' collaborations, or independently) has seen some success, particularly in the dairy sector, but problems remain.<sup>38</sup> For example, a 2017 YouGov survey conducted by the Groceries Code Adjudicator showed food retailers, ASDA and Iceland, at the bottom of the league table for compliance with the Groceries Code.<sup>39</sup> The levels of complaints against ASDA remained consistent across the two years covered by the survey (2016-2017).<sup>40</sup> The survey revealed that one anonymous retailer in particular showed worsening performance with a range of Code breaches, including incorrect deductions from invoices without notice; incorrect input data; unfair charges; unreasonable notice for changes; abusive third party audits and unjustified lump sum payments covering margin shortfall not agreed in the original contracts.<sup>41</sup> It is notable that whilst the Groceries Code has enjoyed success, the Code does not cover large input companies or processors or intermediate suppliers, with farmers reporting problems with processors "gaming the system" to keep costs down.

Such results also suggest that even where farmers collaborate to agree better contract terms and conditions, adherence to those contract terms by some dominant buyers remains problematic. For example, some Voluntary Codes of Practice, like the Dairy Industry Code of Best Practice on Contractual Relationships (2012), govern contractual relationships between the farmers and processors, but do not cover farm gate prices.<sup>42</sup> Whilst the voluntary nature of the Dairy Industry Code provides farmers with flexibility and better, more consistent supply terms, there are reports that farmers must request a Code Complaint contract, with some processors "cherry picking" aspects of the Code.<sup>43</sup>

Effective supply chain governance requires some form of intervention from the government: a 'hands off,' "the market will intervene" strategy based on Codes of Conduct has seen only partial success. Only properly regulated markets will smooth the transition from farmers' reliance on direct payments to open competition (on the assumption that only limited forms

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<sup>37</sup> There is no sector deal currently for agriculture, or the food and drink industry in the government's industrial strategy and Local Enterprise Plans do not necessarily include agriculture: HM Government, *Industrial Strategy: Building a Britain Fit for the Future (Industrial Strategy)*, (2017), 187, 188.

<sup>38</sup> Eg *Dairy Industry: Code of Best Practice on Contractual Relationships*, 2012.

<sup>39</sup> Groceries Code Adjudicator, *Annual Survey Results*, YouGov, March and April 2017, 22.

<sup>40</sup> *Ibid.* 21.

<sup>41</sup> *Ibid.* 19.

<sup>42</sup> [http://www.dairyuk.org/images/2012\\_Voluntary\\_Code\\_of\\_Practice.pdf](http://www.dairyuk.org/images/2012_Voluntary_Code_of_Practice.pdf)

<sup>43</sup> "Consider contract terms, not just price, when signing new milk contracts," *Farmers Guardian* (7 April 2017); NFU, "The Importance of Fair Milk Contracts," <https://www.nfuonline.com/sectors/dairy/dairy-rh-panel/building-better-fairer-supply-chain-relationships/the-importance-of-fair-milk-contracts/>; and House of Commons Environment, Food and Rural Affairs Committee, *Dairy Prices*, 5<sup>th</sup> Report of Session 2014-15, HC 817, paras 30 and 33.

of payment for environmental land management are made available after the transition period).

## 2. Agri-Food Supply Chains are International

One surprising omission from the Consultation Document is the recognition that agri-food supply chains are global. Global agri-food supply chains span input companies (including research and development), farmers, processors, intermediate traders, supermarket and hypermarkets, smaller food retailers (local shops) and consumers. The agri-food supply chain has a global value of over US \$5 trillion and those operating in the chain generate a combined global annual profit of approximately US \$600 billion.<sup>44</sup> UK farmers supply into this chain, either directly to processors and supermarket buyers in the UK, or into longer supply chains into the EU, China, Korea and elsewhere facilitated by the EU's free trade agreements with third countries.<sup>45</sup>

Farmers' ability to influence the terms and conditions under which they supply into these global chains is limited because the volume they can supply is small when measured across a global chain for supermarkets like ASDA Walmart's, with its 12,000 stores across 28 countries. Any government attempts to increase transparency along the supply chain by requiring sharing of data with farmers must inevitably be limited to the UK. It is also difficult to see what methods the government can use to extract commercially sensitive data from private processors and supermarket buyers even when this data is accessible in the UK.<sup>46</sup> It is not clear from the Consultation Document how farmers will be able to gain access to this data: will DEFRA have an enhanced role as a main source of data like the United States Department of Agriculture (USDA), or will another government agency control the data? It is also unclear whether farmers will have to pay to access that data and what the cost will be.

Suggesting UK farmers may compete in global supply chains based on high animal welfare and food quality may only provide a partial solution. Farmers report processors opening up alternative import lines as a substitute during times when UK crop quality drops. In some cases, these processors have not returned to UK sources subsequently, and if the value of sterling strengthens against the Euro and US Dollar, not only would key export markets be harder to access, cheap imports would fill the void. The food industry will respond by buying on price.

The House of Commons Business, Energy and Industrial Strategy Committee found in its inquiry into *The impact of Brexit on the UK processed food and drink sector*, that the UK's food and drink sector too relies heavily on "just in time" delivery of products with very short shelf lives, sourced through complex supply chains that spread across the UK and other EU countries (particularly Ireland).<sup>47</sup> The sector's supply chains' competitiveness is predicated on

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<sup>44</sup> KPMG, *The agricultural and food value chain: entering a new era of cooperation*, (2013), 5; and Food and Agriculture Organization, *The Future of Food and Agriculture: Trends and Challenges*, (2017) United Nations, 106.

<sup>45</sup> House of Lords European Union Committee, *Brexit: Agriculture*, 20<sup>th</sup> Report of Session 2016-17, HL 169, paras 22-157.

<sup>46</sup> The *Industrial Strategy* is unclear on this point.

<sup>47</sup> House of Commons Business, Energy and Industrial Strategy Committee, *The Impact of Brexit on the Processed Food and Drink Sector*, 7<sup>th</sup> Report of Session 2017-19, HC 381, Summary.

the free movement of skilled labour and tariff free access guaranteed by the UK's membership of the EU Single Market:<sup>48</sup> The Committee found that 60% of all UK exports of processed food and drink go to the EU, with 50% of all such UK exports destined for five countries, of which, four are within the EU.<sup>49</sup>

As the Committee notes in its report, it is unrealistic to assume the EU will cease to be the most important market for this sector after Brexit, and in fact, failure to secure any form of tariff- free access to the EU following the UK's departure, will not only adversely affect the sector and result in business failures and job losses, it will also lead to a reduction in the variety of foods available to consumers, as well as an increase in food and drink consumer prices as a result of the higher production costs (particularly higher tariffs imposed on unprocessed agricultural products crossing the Irish border for partial processing and imposed again when those products cross back into Northern Ireland for final processing and ultimate sale to the consumer).<sup>50</sup> This consequence of the UK's departure from the EU was identified too in the earlier report by the House of Lords EU Energy and Environment Subcommittee in its report, *Brexit: Agriculture*.<sup>51</sup>

Once the UK leaves the EU, the UK will be able to negotiate preferential trade terms with non-EU countries: however, it should be noted that whilst UK farm, processed food and drink businesses may benefit from lower tariffs negotiated with these countries, the increased physical distances between the UK and those countries means it will be difficult to still maintain 'just in time' deliveries at low cost. It is likely too, that as goods travel longer distances, the resulting increases in transport emissions may impact on the UK's emissions targets and its international commitments on climate change.<sup>52</sup>

The Consultation Document identifies that "[A] transparent and properly functioning food supply chain should provide affordable, safe food for consumers," but neglects the international character of supply chains, their complexity, and the relationship between supply chains, international trade (particularly tariff levels, standards and regulatory barriers) and international environmental commitments (particularly climate change).<sup>53</sup> This is an important omission.

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<sup>48</sup> Ibid, paras 61-72.

<sup>49</sup> Ibid, paras 2 and 8: Ireland, France, The Netherlands and Germany.

<sup>50</sup> Ibid, passim.

<sup>51</sup> House of Lords European Union Committee, *Brexit: Agriculture*, 20<sup>th</sup> Report of Session 2016-17, HL 169, Summary.

<sup>52</sup> House of Commons Business, Energy and Industrial Strategy Committee, *The Impact of Brexit on the Processed Food and Drink Sector*, 7<sup>th</sup> Report of Session 2017-19, HC 381, para 20.

<sup>53</sup> Consultation Document, 57.

## 8. Devolution: maintaining cohesion and flexibility

*Section contributor: Alan Greer*

With reference to the principles set out by JMC (EN) and listed in the devolution chapter, what are the agriculture and land management policy areas where a common approach across the UK is necessary?

The most important areas where commonality is needed is in (1) ensuring compliance with international obligations, (2) allowing the smooth functioning of the UK internal market (including in relation to trade in agricultural products between Northern Ireland and Great Britain, although the nature of this relationship depends on wider negotiations with the EU), and (3) in relation to the calculation of any resources provided to ensure the provision of public goods.

In areas including (1) the regulatory framework for animal and plant health and animal welfare, and (2) in relation to a base level of interventions (including regulatory and inspection requirements) for preserving, protecting and enhancing the environment, some commonality is desirable. However, what is meant by a 'common approach' needs to be clarified. This should not be interpreted to mean 'uniform' approaches across the UK but allow the territories flexibility to move above a minimum 'base level' of requirements, depending on their local characteristics and policy preferences. The white paper notes that under the CAP 'some discretion' is allowed but room for acting differently arguably is quite substantial (for example within the suites of measures within Rural Development Programmes, e.g. relating to new entrants and organic farming) and any new UK frameworks need at least to maintain, if not increase, existing levels of policy flexibility.

What are the likely impacts on cross-border farms if each administration can tailor its own agriculture and land management policy?

The White Paper is correct to identify the need to 'administer and provide access to justice in cases with a cross-border element'. However cross-border farms have operated for many years under an EU system where substantial policy discretion has been possible, and territorial administrations have been able to tailor their own policies. If the common frameworks and regulatory arrangements are properly devised, and any payments to farmers are focused on the provision of public goods, then the implications for cross border farms should not be increased. One possible area for dispute - or at the very least where cooperation between farmers and policies in different jurisdictions will be necessary – could be on new land-based environmental management schemes and collaborative projects. Clearly the issue of the Irish border also is crucial, and any agreements need to protect the interests of farmers in Northern Ireland. The construction of 'new' borders that would disadvantage farmers (e.g. based on increased inspections between Northern Ireland and the rest of the UK or requiring enhanced regulatory checks on 'internal' UK trade) should be avoided.

The key here is to avoid policy interventions and ensure as 'common' a market as possible.

## 9. International Trade

*Section contributor: Fiona Smith*

### **Key Points:**

1. The UK is a net-food importer. An international trade strategy that increases UK agri-food exports has the potential to narrow the UK agri-food trade deficit.
2. Marketing UK agri-food exports as high farm animal welfare, good food quality, and sustainable, will, at best, create a niche brand. UK consumers buy on price, but it is unclear whether overseas consumers do the same. More data is needed to establish whether relying on a high farm animal welfare, good food quality and sustainable UK brand alone to generate profits for farmers and the UK processed food and drink sectors after Brexit is a viable strategy.
3. Continued tariff free access to EU markets is crucial for UK farmers. Whilst the Consultation Document shows the UK government is attempting to secure such a deal with the EU after Brexit, tariff free access to the EU cannot be guaranteed. If the UK is unable to secure an EU-UK trade deal, then UK farmers must supply into the EU through the EU's existing tariff quotas, with the consequence that farmers must compete in already crowded markets. Yet the consultation document proceeds on the assumption that an EU-UK trade agreement that continues tariff free access to EU markets will be forthcoming. The government should devise a 'Plan B' to cover the possibility that the UK is unable to reach a favourable EU-UK trade deal after Brexit.
4. The Consultation Document assumes that the UK will retain access to all the EU's existing trade agreements negotiated with non-EU countries after the UK formally leaves the EU. Continued UK access to these agreements is not guaranteed. Some countries may insist on renegotiating the terms of these agreements with the UK. The UK government should, at a minimum, evaluate the impact of any renegotiated trade agreements on UK farmers and on the UK processed food and drink sectors.
5. The Consultation Document assumes that the Basic Payment Scheme and the Greening Payment paid to farmers currently can continue during the agricultural transition period, after the UK formally leaves the EU in March 2019. The EU declares both payments as non-trade distorting subsidies ("Green Box") for the purposes of the payments' compatibility with the WTO rules. This compatibility is challenged by some authors who argue these payments are trade-distorting support, or "Amber Box." The UK is not entitled automatically to an Amber Box allowance after BREXIT, but instead must negotiate a share of the EU's. The UK's attempts to negotiate a share of the EU's Amber Box with other WTO members has been unsuccessful. The UK government should set out, therefore, how it intends to continue supporting UK farmers during the agriculture transition period on the assumption it cannot secure an Amber Box allowance.
6. UK farmers' ability to move towards more efficient production models without subsidies will be undermined if the UK government introduces zero tariffs on agri-food imports into

the UK, and/or does not impose the same food quality, animal welfare and environmental standards on agri-food imports into the UK as the standards it imposes on UK farmers. The positive effect on UK consumers of zero tariff, low food quality, animal welfare and sustainability import strategy is marginal, and it is clear that UK consumers will not tolerate a lowering of standards that lead to a “race to the bottom”. If the UK government moves towards importing cheap food not produced to the UK’s high standards, this will disproportionately affect poorer consumers, who are unable to choose to pay more for higher quality, high farm animal welfare and sustainable food. The consultation paper does not address this point. The UK government must set out clearly what the relationship is between its industrial strategy, its trade strategy and its farm policy after Brexit.

7. UK agricultural policy is devolved. The Consultation Document does not set out how the UK intends to manage the relationship between the devolved administrations’ agricultural policies and UK international trade policy after Brexit. This is an important omission.

The Consultation Document sets out the following government policy priorities for international agri-food trade after Brexit:

- To increase UK farm exports.
- To maintain and “enhance” the UK’s existing high animal welfare standards, food safety and environmental protection.
- To maintain or reduce the cost of food for consumers.

The UK is a net food importer. In 2016, exports of feed, food and drink were valued at £20.1 billion, whereas imports into the UK were £42.6 billion. The gap between UK exports and imports has widened by £16.6 billion between 2005 and 2016; a trend that shows no sign of reversing.<sup>54</sup> Despite the UK farmers’ ability to produce varieties of vegetables, some fruits, meat and dairy, imports in all these categories continue to increase year on year.<sup>55</sup> A strategy to increase UK agri-food exports may narrow the trade deficit, perhaps even narrowing UK’s food self-sufficiency deficit from its current levels, but the government’s international trade strategy is not without problems.

Marketing a UK high welfare, low environmental impact, good quality agri-food brand (high animal welfare/environmental sustainability/food quality), will at best create a niche brand. Evidence compiled by DEFRA, accompanying the consultation, shows that UK consumers demand UK farming based on these values, but ultimately they buy on price, with the majority of people choosing not to pay more for high animal welfare/environmental sustainability/food quality.<sup>56</sup> Whilst food quality scandals, like the contamination of infant milk formula in China, may mean some consumers outside the UK favour a high animal welfare/environmental sustainability/food quality brand, there is no data in the Consultation Document or its supplementary evidence appendix showing that global consumers will behave any differently to UK consumers when it comes to buying food.

In addition to the increased *production* costs of the government’s high animal welfare/environmental sustainability/food quality strategy, there may be additional costs

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<sup>54</sup> DEFRA, *Agriculture in the United Kingdom*, (2017), 94.

<sup>55</sup> *Ibid*, 94.

<sup>56</sup> Consultation Document - Evidence Compendium, 10 and 52.

incurred by UK farmers if the UK is not able to secure continued tariff free access to the EU after the implementation period, nor to the preferential trade terms currently in place under the EU's existing free trade agreements with non-EU countries. Loss of tariff free market access to the EU is a major concern. The EU is the largest export market for UK farmers, with 17% of all UK food, feed and drink destined for the Irish Republic, 11% to France and 6.5% to The Netherlands.<sup>57</sup> For some products, the EU is the main export market: for example, 92% of British beef exports and 95% of all UK sheep meat exports go to the EU.<sup>58</sup> Without tariff free access, UK beef exports, for example, would potentially be subject to very high tariffs (for high quality beef, this is around 50% on top of the value of the product), with the consequence that it is difficult to see why EU consumers would choose UK food over that produced elsewhere in the EU, particularly as the EU already imposes high animal welfare/environmental sustainability/food quality standards on EU farmers. Whilst the Consultation Document commits the UK government "to securing continuity in the effect of existing EU Free Trade Agreements (FTAs) and other EU preferential arrangements," such access cannot be guaranteed. For example, South Korea has already indicated that it may seek additional trade concessions in return for continued access to the South Korean market for UK goods; without such access, UK agri-food goods exported to South Korea must pay import tariffs, which will push up the price of UK goods on the export market.<sup>59</sup>

The Consultation Document includes the government's aspiration to continue supplying into EU and third country markets with which the EU has free trade agreements, but there is no information on the progress of negotiations, with the consequence that it is difficult to see whether such a strategy is viable, and whether farmers need prepare for the consequential increase in their export costs if the strategy fails.

Failure to secure a tariff free trade deal with the EU for agricultural products means UK farmers must access EU markets via the EU's existing tariff quotas. Some quotas like, for example, those for high quality beef (the 'Hilton Beef quota' and the 'Autonomous Beef Quota'), are already allocated wholly among major beef exporters, like the United States, Brazil and Argentina, so the UK cannot access the EU through these channels.<sup>60</sup> Instead, the only *erga omnes* quotas (available to all) are the frozen beef and manufacturing beef quotas, which will not accommodate all UK farmers' current beef exports to the EU, with the consequence that the UK would be trying to compete in an already crowded market.<sup>61</sup>

If exports of high welfare/environmental sustainability/food quality agri-food products from the UK is the *primary* basis on which UK farmers are to compete globally after Brexit, rather than simply a *supplemental* basis to existing exports of agri-food products, then some statistics demonstrating the viability of such a strategy should be included in the Consultation Document. This omission raises more questions than answers and means it is difficult to comment on the strategy's viability without further information.

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<sup>57</sup> DEFRA, *Agriculture in the United Kingdom*, (2017), 93.

<sup>58</sup> 45-55% of UK sheepmeat exports go to France: ADHB, *What might BREXIT mean for UK trade in beef and lamb products*, (12 December 2016),7.

<sup>59</sup> "EU Trade Partners Demand Concessions for BREXIT Transition Rollover," 2<sup>nd</sup> February 2018, *Politico*, <https://www.politico.eu/article/eu-trade-partners-object-to-brex-it-transition-roll-over/>

<sup>60</sup> Revell, "Brexit and Tariff Rate Quotas on EU Imports: A Complex Problem," (2017) 16(2) *EuroChoices* 10, 11.

<sup>61</sup> *Ibid*, 13.

The post-Brexit agri-food strategy's relationship to other government strategies, like the industrial strategy, needs to be better thought through. For example, the Government's industrial strategy seems to suggest that the UK food and drinks sector's strengths in terms of exporting is technological innovations in the transport and the manufacturing process, rather than to the food's high welfare/environmental sustainability/food quality credentials as suggested in *Health and Harmony*.<sup>62</sup>

The Consultation Document is opaque too on the relationship between the UK government's agri-food international trade policy and domestic farm policy, particularly during the "implementation period" (30<sup>th</sup> March 2019-31<sup>st</sup> December 2020)<sup>63</sup> and the subsequent "agricultural transition period" (while the Basic Payment Scheme and the Greening Payment are being phased out, but after 2020 -"for a number of years," as yet undecided).<sup>64</sup> The Consultation Document works on an assumption that the government will be able to continue with the Basic Payment Scheme and the Greening Payment funding for UK farmers in their existing forms at least until 2020 after the UK has formally left the EU, and then afterwards during the undetermined agricultural transition period, albeit at a reduced rate.

The Basic Payment Scheme and the Greening Payment are defined as agricultural subsidies for the purposes of determining the EU's compliance with its World Trade Organization (WTO) commitments. The Basic Payment Scheme and the Greening Payment are currently notified to the WTO as "decoupled income support" and therefore within the "Green Box:" that is, they are subsidies that do not distort trade.<sup>65</sup> There is uncertainty about this assumption, however, particularly as the Green Box compatibility of the Greening Payment, in particular, has been challenged some commentators.<sup>66</sup> If the Basic Payment Scheme and the Greening Payment are not Green Box compliant, this is less problematic for the EU because it already has a considerable allowance for trade distorting subsidies within the "Amber Box" negotiated during the Uruguay Round multilateral trade negotiations that created the WTO. This means that the EU could notify the Basic Payment Scheme and the Greening Payment as Amber Box if these subsidies were challenged by another WTO member.

The UK and EU jointly notified WTO members in October 2017 that they intended to divide the Amber Box, but this has met with significant opposition from other WTO members. Without an Amber Box allowance, the only alternative open to the UK would be to cut the amount of financial support from the date of the UK's formal exit from the EU, (31<sup>st</sup> December 2019), to permitted *de minimis* levels (5% of total value of production in the relevant year).<sup>67</sup> There may also be some possibility of sheltering these payments within the Green Box, but aspects of the scheme would have to be radically reconfigured.

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<sup>62</sup> *Industrial Strategy* 75 and 188.

<sup>63</sup> European Commission, *Draft Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community*, TF50 (2018) 35, (19 March 2018), Article 121 (agreed text).

<sup>64</sup> Consultation Document, 62.

<sup>65</sup> Annex 2:6 WTO Agreement on Agriculture; and Consultation Document, 62.

<sup>66</sup> Smith, F., 'Mind the Gap: 'Greening' Direct Payments and the World Trade Organization,' in McMahon, J.A. and Cardwell, M.N. (eds), *Research Handbook on EU Agriculture Law*, (2015) Edward Elgar, 412.

<sup>67</sup> Article 6.4(i) & (ii) Agreement on Agriculture.

Although it is now beyond debate that the UK is a founding member of the WTO and able to take up its full WTO membership after leaving the EU, it is *not* certain that the UK will be able to take over a share of the EU's Amber Box allowance. There is no indication in the Consultation Document that the UK government has a 'Plan B' covering the phase out or terms of the Basic Payment Scheme or Greening Payments should it be unable to negotiate a share of the Amber Box.<sup>68</sup>

The Consultation Document also makes it clear that the government intends to open up new agri-food export markets by concluding bilateral and multilateral trade agreements with non-EU countries, presumably in addition to those agreements already concluded by the EU.<sup>69</sup> New trade agreements have the potential to open up markets for products farmers find difficult to sell in the UK; like for example, exporting to China parts of the animal carcass (feet, some offal) not eaten by UK consumers.<sup>70</sup>

What is less clear is how the UK government intends to manage market access *into the UK* for agri-food imports in these new bilateral and multilateral trade deals.<sup>71</sup> The consultation paper is silent on this point, but the Government's White Paper on the UK's Future Trade Policy after Brexit emphasises the benefits of free trade and that "new trade arrangements and trade deals will ensure markets remain open and fair behind the border," including, presumably, behind the UK border.<sup>72</sup> Although some areas of UK domestic policy will be explicitly excluded from the effects of free trade and inward investment-like the NHS- currently farming and food production is not one of those areas.<sup>73</sup>

The Consultation Document makes it clear that farmers should move to the new high welfare/environmental sustainability/food quality standards, but that the cost of implementing those standards cannot be passed on the consumer, but must instead be absorbed either by the farmer, or by other processors and buyers along the food supply chain.<sup>74</sup> The Basic Payment Scheme and the Greening Payment will be gradually removed, with the hope that farmers will move towards more efficient, market oriented production where the costs of maintaining high standards can be internalised.

Inevitably, during the transition and beyond, UK farmers will be competing with farmers in the EU and elsewhere (like the United States) who still receive subsidies to offset their costs of production, including any increase in costs from implementing high welfare/environmental sustainability/food quality standards. UK farmers' ability to move towards more efficient production models without subsidies will be undermined significantly if the UK government imposes zero tariffs on agri-food imports and/or does not impose the same food quality, farm animal welfare and environmental standards on agri-food imports as those expected from UK

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<sup>68</sup> Although it should be noted that the Consultation Document refers to a need to amend the eligibility conditions farmers must meet to receive these payments: Consultation Document, 17.

<sup>69</sup> Ibid, 62.

<sup>70</sup> Eg DIT, *Preparing for our future UK trade policy (Preparing for our future trade policy)*, Cm 9470, October 2017, 7.

<sup>71</sup> It has already been highlighted that the UK's membership of the EU Single Market and existing EU-free trade agreements with non-EU countries is of importance to the UK processed food and drink industry.

<sup>72</sup> *Preparing for our future UK trade policy*, 7.

<sup>73</sup> Ibid, 8.

<sup>74</sup> Consultation Document, 57.

farmers.<sup>75</sup> This concern is not without foundation. For example, the government's White Paper on Future Trade Policy suggests that whilst the UK government will promote high standards for consumer protection, labour rights and environmental protection in future trade agreements, animal welfare is only one of the possible areas that can be protected via trade agreements, whereas food quality is not listed at all.<sup>76</sup> Likewise, the UK media reported that the government is considering importing hormone treated beef as the "price" of concluding a trade deal with Australia after Brexit.<sup>77</sup> There is no indication in the consultation paper how the devolved administrations may deal with the use of growth hormones by British farmers, or how the UK government intends to "square" any divergence between the developed administrations' position on this issue with the UK's international trade policy.

It should be noted that despite claims to the contrary in the Consultation Document, the House of Commons Business, Energy and Industrial Strategy Committee report found that any positive effects of a low or zero tariff strategy on consumers in terms of increasing their food choices and lowering food prices will be, at best, marginal because import prices make up only one part of the price consumers are charged.<sup>78</sup>

Further pressure from imports into the UK may come from the division between the UK and the EU of the EU's existing agri-food tariff quotas. Although the UK and EU proposed that the quotas be divided on the basis of historic import flows into the UK and the EU-27, some WTO members objected to this division on the grounds that it would prejudice their trade interests. Some WTO members even suggested maintaining the same quantitative limits for both the EU *and* UK markets. UK farmers' will not be able to compete in such an asymmetric market if both import volumes increase and lower standards apply to imported products than to domestically produced good.

It is unclear how the government's trade strategy aligns with the domestic farm policy. An aggressive free trade policy with zero tariffs and/or significantly lower standards at the border for large agri-food exporters as the political price for early free trade deals after Brexit, will mean many UK farmers will not be able to compete if they are required to meet higher food quality, environmental sustainability and farm animal welfare standards. Greater alignment between the UK government's trade, industrial and agricultural strategy is an important consideration going forward.

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<sup>75</sup> House of Commons, Environment, Food and Rural Affairs Committee, *Brexit: Trade in Food*, 3<sup>rd</sup> Report of Session 2017-19, HC 348, paras 50-57.

<sup>76</sup> *Preparing for our future UK trade policy*, 29-30. Note food quality seems to be part of the government's *Industrial Strategy*.

<sup>77</sup> "Australia to demand Britain accept Hormone treated beef after BREXIT," *The Times* (2 April 2018).

<sup>78</sup> House of Commons Business, Energy and Industrial Strategy Committee, *The Impact of Brexit on the Processed Food and Drink Sector*, 7<sup>th</sup> Report of Session 2017-19, HC 381, para 17.

## 10. The Agriculture Bill

*Section contributor: Fiona Smith*

The Consultation Document's final chapter contains the proposed legislative framework designed to implement the "policy ambition" set out throughout the rest of the consultation paper. Although comments are invited on the proposed powers and potential additional measures needed to implement the Agriculture Bill, it is difficult to comment on these proposals in detail because the ambit of the Bill and the proposed powers needed to implement the new food, farm and environment policy after Brexit are contingent on the scope of that final policy. Any comments must be, at best, speculative, and at worst, might imply that the consultation paper sets out the new policy in sufficient detail that meaningful legal rules can be drafted on the basis of it.

Whilst the Consultation Document suggests seven possible legislative powers, it is difficult to determine whether these will be necessary and what the scope of such powers should be, until the final shape of the food, farm and environment policy is determined. Rather, what remains are a series of questions:

1. On what basis will financial support for farmers be available after Brexit? Will the delegated power to amend eligibility criteria for financial support be subject to review? If this power is subject to review, what form will that review take? For example, will this review process be contained in the Agriculture Bill, will it be the subject of Parliamentary scrutiny, or judicial review through the courts?
2. The Bill will include measures to remove "unnecessary bureaucracy." But how is "unnecessary bureaucracy" defined? What are the criteria for determining whether bureaucracy is "unnecessary," and, will those criteria be contained within the Agriculture Bill, or in other legislation? Who will decide if bureaucracy is "unnecessary", and will that decision-making process be subject to review, and if so, by whom? On what time-scale will bureaucracy be considered "unnecessary:" for example, how long must bureaucracy be in place before it is deemed to be "unnecessary"? Does the government have in mind only existing bureaucratic structures from the CAP?
3. Which of the proposed "new schemes" to support farmers and land managers will be chosen, and on what basis will that decision be reached? Will that decision on scheme priority be subject to review, and if so, by whom will this review be undertaken? Will that review process be contained in the Agriculture Bill, will it be the subject of Parliamentary scrutiny, or judicial review through the courts? Will all the proposed new schemes be contained within the Agriculture Bill, or will a decision on which scheme is to prioritise be made before the Bill is drafted?
4. Will food safety and nutrition be issues addressed in the Agriculture Bill, or are these issues to be addressed in another Draft Bill?

5. What form will a new compliance/inspection regime take after Brexit? To what extent, if any, will important aspects of the EU's existing inspection regime be taken forward into the Agriculture Bill? Will the Agriculture Bill also contain provision for inspection regimes carried out outside the UK in other countries importing food into the UK, or will such overseas inspection procedures be contained in other legislation?
6. What is the nature of the "emergency" and of the "extreme events" envisaged in the consultation paper in the context of the consultation paper's proposal to introduce "emergency measures" in response to "extreme events"? What form will the emergency measures take and who is to be the beneficiary of that protection? Are "emergency measures" imposed at the border- like, for example, emergency tariff increases in response to unforeseen imports of food- the kind of emergency measure envisaged for the Agriculture Bill, or will this kind of emergency response be addressed elsewhere in other legislation, and if so, where?
7. Which elements of the CAP will be retained in the Agriculture Bill?
8. What is the definition of the "agricultural transition" period? Will this period be defined in the Agriculture Bill?
9. How will the relationship between the devolved agricultural policies and UK-wide policies be managed after Brexit? In particular, will the relationship between the UK trade policy and devolved agricultural policies be set out in the Agriculture Bill? Is the *management* of the relationship between UK-wide policies and devolved policies to be set out in the Agriculture Bill, or will the proposals for management be contained in other legislation or memoranda, or will the relationship between the policies be managed at the political level only?

The Consultation Document, 'Health and Harmony: the future for food, farming and the environment in a Green Brexit', sets out multiple options for the future of food, farm and the environment after Brexit, with the consequence that the paper implies the UK government remains uncertain regarding the direction future policy will take. In the light of this uncertainty, a *further consultation* should be undertaken once views on this initial consultation paper have been collated and a clearer sense of the future direction for food, farm and environmental policy emerges.

It is premature to move forward with comprehensive legislation when so much of government policy on food, farming and the environment remains obscure.

## 11. Conclusion

Farm businesses clearly face many challenges after Brexit. Policy should seek to enhance the resilience of farm businesses and their ability to cope with these challenges. The various aspects of policy need to be coherent and integrated, in particular attention needs to be paid to the relationship between trade policy and domestic agricultural policy.

If you wish to discuss any of these sections in more detail with the YAS Brexit Working Party, please contact: Holly Jones, Secretariat for the Farmer-Scientist Network, email: [hollyj@yas.co.uk](mailto:hollyj@yas.co.uk) or call 01423 546 251 (Monday and Thursday).

Yours faithfully,

A handwritten signature in black ink that reads "Wyn Grant". The signature is written in a cursive style with a long, sweeping flourish at the end of the name.

Professor Wyn Grant  
**Chair, YAS Brexit Party**