RESEARCH BRIEFING

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Revised version

The Repatriation of Competences in Agriculture after Brexit

"The UK Government sees devolution in agriculture and other Europeanized competences as driven by policy considerations and the aim is to secure the necessary degree of harmonization. In the devolved territories, the allocation of competences is also a matter of constitutional principle, so that policy will have to work around these."

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The UK in a Changing Europe

CENTRE ON CONSTITUTIONAL CHANGE

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THE REPATRIATION OF COMPETENCIES IN AGRICULTURE AFTER BREXIT

PROF MICHAEL KEATING

Summary

- The allocation between the UK and devolved governments of competences after Brexit is a matter of:
  - Constitutional principle
  - Efficiency and convenience
- Agricultural policy involves
  - Support
  - Standards
  - International trade
- Reform of the Common Agricultural Policy has allowed divergence across the UK.
- Support and standards competences are largely Europeanized and devolved.
- There is agreement across the UK on the need for frameworks on standards and for international trade but not on how they will be made.
- The EU Withdrawal Act provides for some competences to be taken back to Westminster by statutory instrument for a temporary period.
- The Scottish Government has not accepted this and did not recommend legislative consent to the Withdrawal Act.
- There are significant differences across the UK in attitudes to agricultural support and how far policy should be governed by market, environmental or social principles. England and Wales are now committed to eliminating direct support.
- There is uncertainty over the future financing of agricultural policy and how much policy divergence this will permit.
- Much depends on the future of UK/English agricultural policy choices and on international trade agreements.

Repatriation of Competences

A number of key competences are currently devolved within the United Kingdom but subject to European law and regulation. There is an argument over what will happen to these after Brexit. The EU Withdrawal Bill initially proposed that the powers come back to Westminster as part of 'retained EU law'. Some could subsequently be released to the devolved governments. These would continue to enjoy as much policy freedom as they do currently under the Common Agricultural Policy (CAP). The Scottish and Welsh Governments opposed this on constitutional and practical grounds. The final Withdrawal Act provides that only some competences come back to Westminster for a limited period. Agreement has now been reached on the need for some common UK frameworks but not on what form these should take. They may be legislative or non-legislative. Nothing has been decided on the allocation of agricultural spending after Brexit.

This paper reviews the current scope and practice of policy divergence and convergence under the CAP. It examines the issues over which common policies and harmonization might be needed. These depend to a great extent on future trade agreements with the EU and other states and on decisions on English policy. It considers the future of agricultural funding and the possible ways in which it might be distributed after Brexit. These are not purely technical matters but also matters of political judgement on the purpose of agricultural spending and ideas about rural policy, which differ across the UK.

Agricultural Competences

Competences in agriculture can be grouped under three connected headings;

- Agricultural support - payments to farmers;
- Regulation - sanitary (animal) and phytosanitary (plant) standards, food standards and health and environment-related items;
- Agricultural trade – European, global and other agreements and rules on trade, tariffs and quotas.

The devolution statutes for Scotland, Wales and Northern Ireland devolve (that is, do not reserve) most of the first two, while trade is reserved. This largely follows the lines of administrative devolution in Scotland and Wales and the Stormont system in Northern Ireland. At the same time, agriculture and rural policy are subject to EU policy under the Common Agricultural Policy (CAP) and other instruments. These cover both financial support for agriculture and regulation, while international trade is an exclusive EU responsibility. It is the CAP that ensures harmonization of agriculture policy within the UK so that, after Brexit, unless something is done, there will be no common framework.

The Common Agricultural Policy

The CAP was introduced in the early 1960s to support European farmers, modernize agriculture and secure food supply.

It was initially based on price support, secured through tariffs on imports and market intervention to buy surplus production. In practice, the objectives of modernization and structural reform were gradually downgraded as beneficiaries were entrenched in the policy community (Roederer-Rynning, 2017). From the 1970s, agricultural spending was locked in by being defined as a 'compulsory' rather than a discretionary element in the budget. In the 1980s, excessive production produced the famous 'butter mountain' and 'wine lake'.

The UK never favoured this model of agricultural support but was obliged to accept it, having joined the EC at a late stage. Since then it has favoured CAP reform. Both the UK and later joining states have complained that support is geared too heavily towards the original member states.

Reform has been encouraged by some member states and consumer interests. Successive rounds of negotiations at the World Trade Organization (WTO) have put pressure on the CAP to be less protectionist.

Beneficiaries of current policies, however, have continued to delay reform, which has been slow and gradual. It was not until the 2014-20 spending period that the CAP was fully subject to the 'ordinary' process of legislation, with full power for the European Parliament.

CAP reform

A succession of reforms since 1992 have transformed the policy:

- Support for farmers has progressively been delinked from production by making direct payments instead of price support;
- There has been an effort to shift the focus from farming towards the concept of rural development on the model of the cohesion and structural funds, although in practice most of the money still goes to farmers (Greer, 2013);
- Agriculture has been linked to land use and environmental policy through 'greening' measures;
- There has been redistribution away from large farmers and agribusinesses, and encouragement for new and young farmers.

From 2000 the policy was organized in two pillars.

- Pillar 1 was based on direct support to farmers, in the Basic Payment (formerly Single Farm Payment). There is a complex formula for calculating this but in principle the EU is moving towards EU-wide criteria. There are national ceilings for support, which effectively work as national quotas.
- Pillar 2 covers rural development, agro-environmental and environmental programmes through the European Agricultural Fund for Rural Development (EAFRD). There are effectively

national envelopes here as well, although programmes have to be approved in order to release funding. The EAFRD is one of the structural funds, along with the Cohesion Fund, European Regional Development Fund (ERDF), European Social Fund (ESF)) and European Maritime and Fisheries Fund (EMFF).

Flexibility was introduced at national level, allowing governments to choose among schemes. The principle of modulation allowed governments to transfer money (within limits) from Pillar 1 into Pillar 2.

The most recent reform, coming into effect for the 2014-2020 spending period, further increases the scope for differentiation.

There is 'reverse modulation' now known as 'flexibility', which allows governments to transfer funds (up to 15 or 25 per cent) into Pillar 1 as well as out. There is more scope for flexibility within Pillar 1, where some funds can also be used for non-direct support.

There some production-related payments, remain but are discretionary.

Thirty per cent of direct payments are are subject to 'green conditionality'.

Governments may direct more support to small and away from large farms (through 'degressivity') to less favoured areas (now called 'areas with natural constraints'), to new farmers and to young farmers.

The overall CAP budget was reduced in line with the decision to limit the EU budget and to find money for new priorities.

This greater flexibility and variation is still governed by Single Market principles, including the non-distortion of trade.

Member state flexibility has been extended to self-governing territories in Belgium and the United Kingdom, allowing a significant degree of policy diversity across the UK.

Financing of the CAP

The funding of the CAP is the result of historic patterns, modified by successive reforms. Some countries (including the UK) have consistently argued for restricting the budget while the beneficiary countries have sought to maintain it.

Direct payments are fully funded by the EU. Pillar 2 rural development programmes are co-funded by the EU and member state and sub-state authorities.

In principle, the EU seeks uniform treatment across the Union. In practice, as is usual in public budgeting, changes are incremental. Final allocations are as much the outcome of inertia and political negotiations as of objective criteria. In particular:

- The different origins of Pillar 1 (support) and Pillar 2 (related to Structural Funds and need) have conditioned allocations;
- Historical spending priorities by sector and area have persisted over time;
- The new member states have only slowly gained the same levels of support as the older ones;

- There are national ceilings to the amounts that can be claimed under the two pillars. These in effect become national envelopes.

Similar dynamics work within the UK. CAP funding is not part of the block grant and not subject to the Barnett Formula. It does, however, share the feature of being adjusted incrementally and ultimately decided by the UK Government. While all spending must be within EU approved programmes, the UK Government distributes its share across the nations on the basis of historic allocations, modified by political decisions. The devolved governments then have scope for reallocating money within the agricultural envelope.

For the current (2014-10) spending round, the UK Government left the percentage distribution of CAP funding among the nations the same as in the previous round, albeit within a reduced overall budget.[1]

Table 1 CAP Allocations across UK 2014-20

	% CAP Allocation	*% UK Population*	*€ per capita*
England	64	84.2	338
Scotland	17	8.3	863
Wales	9	4.7	866
Northern Ireland	9	2.8	1404

(Figures derived from: DEFRA et al., 2013; Downing, 2014.)

The resulting distribution largely reflects historic differences in conditions.

Only 17 per cent of land in England is in 'areas of natural constraint' (formerly 'less favoured'), compared with 70 per cent in Northern Ireland, 81 per cent in Wales and 85 per cent in Scotland. England is characterized by large, productive farms while small farms predominate in Wales and Northern Ireland. Scotland has large farms but with extensive rather than intensive agriculture. England has a larger presence in horticulture, which is profitable, while farmers in the devolved nations are more dependent on subsidy. It is estimated that between 50 and 60 per cent of farm income in the UK as a whole comes from CAP payments. In Northern Ireland, Wales and Scotland it is 87, 80 and 75 per cent respectively (Greer, 2017).

There are, not surprisingly, continuing arguments over whether the allocations are fair.[2]

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[1] Interestingly, this is exactly the same mechanism used to allocation the structural and cohesion funds, where in the 2014-20 spending period each nation received a 5 per cent reduction (BIS, 2013).

[2] Although Scotland has a higher per capita allocation than England, the Scottish Government has complained that both the failure of UK to negotiate in EU and UK's own decisions on internal distribution worked against Scotland. It argued that the UK's 'convergence uplift' (to even out payments per hectare across the EU) was gained only because Scotland had been below the EU average but the UK had applied the benefit across the UK in proportion to historic allocations. It also argued that, had Scotland been an independent country, it would

Since the reforms there has been divergence in agricultural support but continued convergence on standards.

Policy Divergence and Convergence

Support

Over successive reform phases, there has been increasing divergence in support policy among the nations of the United Kingdom.

Some of the divergence stems from the different farming conditions across the nations as noted above. Other elements are due to the balance within the policy communities and to political priorities. Some of the key items are these:

- While England has sought to move towards a more market-driven and intensive model of agriculture, Scotland, Wales and Northern Ireland have emphasized the social and political need to work the land and populate rural areas.
- In England (and now Wales), there has been a desire to move away from production subsidies to direct payments and then to support based on performing specific tasks. In the early 2000s, Scotland and Wales put less into Pillar 2 and, where they did, sought to keep the funding in the hands of farmers (Keating and Stevenson, 2006). In the current round, England and Wales have moved more than the other governments from Pillar 1 to 2.
- Wales, Scotland and Northern Ireland have made the system more progressive by capping payments, while England has imposed only a taper. Scotland and Northern Ireland have also applied the 'active farmer' test more stringently to reduce payments to those not actively working the land and to sporting estates.
- Scotland, alone of the UK nations, has chosen to keep some 'coupled' payments, that is payments linked directly to production levels.

Table 2 Policy Choices for 2014-20 Spending Round

	England	*Scotland*	*Wales*	*N. Ireland*
Basic payment % as of total	68	60	68	68
Coupled support (production)	0	10% (for sheep and beef)	0	0
Capping	5% reduction over €150k	5% reduction over €150k. 100% reduction over €500k	5% reduction over €150k to 100% reduction over €300Fk	100% reduction over €150k.

have got an even higher uplift, rather than being pulled down by the UK average. This all seems down to Scotland's large acreage of low-yielding land. The other nations, not surprisingly, dispute this.

Moving from Pillar 1 to 2	12-15%	9.5%	15%	0
Young farmers	2.0%	0.25%	2.0%	2.0%
Small farmers	0	0	0	0

Source: Allen et al. (2014); European Parliament (2015).

Regulation

Regulation and standards are largely devolved, within European frameworks. The UK Government's list of such powers includes:

- Fertiliser Regulations;
- GMO Marketing & Cultivation;
- Organic Farming;
- Zootech;
- Animal Health and Traceability;
- Animal Welfare;
- Plant Health, Seeds and Propagating Material;
- Genetically modified micro-organisms contained use;
- Food and Feed Law;
- Food Compositional Standards;
- Food Geographical Indications (Protected Food Names);
- Food Labelling;
- Forestry (domestic).

These are dealt with via the EU Single Market programme or specific agricultural regulations and do not allow much scope for variation at member-state or sub-state level. Agricultural products entering the EU also have to meet these standards.

There are also some global standards, which World Trade Organization (WTO) members are expected to use. There is a principle that standards should be based purely on scientific standards and not amount to disguised protectionism. Often, rather than uniform standards, the principle of equivalence is used, which is less precise.

Given the EU rules, the practical scope for divergence on regulation and standards mainly concerns the exact instruments to achieve European standards.

Brexit implications

After Brexit, the UK will in principle be able to design its own agricultural policies and the devolved territories, if nothing else were done, could do likewise. There are, however, reasons to avoid further divergence in support or regulation.

Support

The key issue here concerns production subsidies and how far these might distort trade. There is a lot of uncertainty here. As CAP support has been delinked from production in favour of direct payments and agro-environmental measures, it has been argued that they are not trade-distorting.

The main guide to this are the WTO provisions for permissible agricultural support, which have three boxes:

- The Amber Box includes measures considered to distort production and trade. These are controlled and limited;
- The Green Box includes measures that are not directed at particular products or production levels as well as environmental measures. These are allowed freely;
- The Blue Box includes specific exceptions to the Amber Box rules.

The EU Basic Payment is part of the Green Box, even though it does effectively reduce the cost of production by subsidizing active farmers. Some other measures are in the Amber Box, notably the continuing production payments made in Scotland but not in other parts of the UK. This has not been challenged and the Scottish payment comes under the overall UK allowance for such payments, but any future scheme might be vulnerable.

Standards and regulations

In the absence of European standards, there remains a case for regulatory harmonization to enable trade and avoid a regulatory race to the bottom. Some UK ministers such as former DEFRA Secretary Andrea Leadsom (*Guardian*, 01-01-17) promised to slash regulations after Brexit, while the devolved governments have tended to defend regulation. Recent statements from DEFRA ministers, however have been more favourable to high regulatory standards.

The need for harmonization across both these fields arises in different forms in relation to internal UK markets and international trade deals.

The UK single market

The UK Government has declared that a reason for having common frameworks is in order to maintain the UK's own single market after withdrawal from the EU Single Market. It is not clear exactly what this means. The idea of the UK as a common market has been around since the Union of 1707 and certainly affected the limits of devolution in 1999 and subsequent devolution Acts. These retained key powers over economic regulation at the centre and do not permit obstacles to the free movement of goods, services, capital and people. In this sense, the UK might be called a single market although the term is used only in the Northern Ireland Act of 1998. The analogy with the European Single Market, however, is potentially misleading (https://www.centreonconstitutionalchange.ac.uk/blog/what-uk-single-market). That is a long-term programme intended to remove barriers to the free movement of people, capital, goods and services. It is a transversal principle, which can impinge on any policy sector. The programme is led by the Commission, legislated by the Council of the EU and policed by the Commission and the Court of

Justice of the EU. It is subject to the principles of subsidiarity and proportionality, intended to prevent the Single Market for becoming a pretext for centralization. Nothing like this exists within the United Kingdom devolution settlement.

In some recent papers, the UK Government has replaced 'single market' with 'internal market'; that is also the term used in the communiqué of the JMC (EN) of October 2017. This avoids misleading comparisons with the EU single market but raises similar questions as to how it will be defined. The UK Government has so far not elaborated what the UK single or internal market means or how it will be maintained. It does imply limits to divergence in both support and regulation. This is not a purely technical matter. Such a decision will inevitably involve a political judgement about the role of public intervention in economic and social life.

Trade Scenarios

Devolution of agricultural policy will also depend on the international regimes under which it operates. There are several scenarios.

WTO + continuing support

One scenario for Brexit is to have no special deal with the EU but to rely on global trade under WTO rules while maintaining domestic support for agriculture. This does have implications for our theme.

There are rules on permissible support (the three boxes), and these would be applicable across the UK.

Production-linked subsidies in particular are limited and this could affect some of the specific schemes adopted by the Scottish Government. While these are currently WTO-compatible, we cannot assume that the UK, negotiating alone within WTO, could get the same interpretation of subsidy rules that the EU, with its greater weight, has done.

The UK is a member of the WTO but works entirely via the EU membership. It does not have its own schedules or Tariff Quotas (amounts that can be traded without incurring the full tariff). These would all have to be negotiated but we do not know on what basis. A population-based share of the EU quotas would not work well, as some of these quotas are effectively used only by the UK and they affect the nations of the UK in different ways. In October 2017, a preliminary agreement was reached that the WTO quotas would be distributed between the UK and the EU on the basis of their historic use of them. These would then have to be allocated within the UK. At the time of writing, some of the third countries enjoying these quotas have not accepted the idea of dividing them, as it could restrict and divide their future markets.

Trading within the WTO system also requires adherence to various global standards which would apply across the UK.

WTO rules, however, might also imply a downward pressure on standards. Within WTO rules, the United States, for example US works on the principle that harm must be demonstrated if goods are to be banned, while the EU works on the precautionary principle, requiring that the product be proven to be safe. Any WTO-derived decisions on standards would have to apply across the UK.

Unilateral free trade

One option that has gained some support is unilateral free trade, with the abolition of both tariffs and subsidies in relation to agriculture and moving to a fully marketized model. This would permit a cheap food policy but result in a sharp decline in UK agricultural production. Vulnerable sectors and less favoured land, which are so important in the devolved territories, would be most affected. Producers in the devolved territories would be unable to compete in global markets without subsidies.

Yet, even if the devolveds had the competence to continue subsidies, it would be difficult in practice. With the abolition of UK subsidies, there would be no resources flowing from the centre for agricultural support. The UK Government (on behalf of English producers) might object to agricultural subsidies as trade-distorting and violating the UK single market.

A Free Trade Agreement with EU

The UK Government proposes a wide-ranging free trade agreement with the EU. Free trade agreements including agriculture are difficult and unusual and it is not at all clear at this stage whether a UK-EU free trade agreement would do so. The protectionist CAP has made this difficult elsewhere. In so far as agriculture were included, however, there would be implications for domestic policy, including in the devolved territories.

Depending on how subsidies are defined, there might have to be harmonization of agricultural support to provide a level playing field. Of course, the UK could just mirror CAP rules on permissible subsidies but that would preclude developing its own agricultural policy.

The UK would have to meet EU standards in production, environment and sanitary and phytosanitary standards. Where these are higher than WTO standards, that could require additional UK frameworks including wholesale importation of EU standards and regulations. Again, these would apply across the UK.

Bilateral FTAs

The UK Government has proposed to negotiate a series of bilateral free agreements with non-European countries. These could have direct implications for the UK and also affect any trade agreement with the EU.

Free trade agreements might permit the entry of goods at lower than existing standards. Examples cited have been on American practices in poultry (washing of chickens), hormone-treated beef and genetically modified crops. So, whereas EU standards generally have exercised upward pressure, other countries might exert downward pressures. They could also risk the exclusion of British products from European markets and prevent the devolved territories from adopting the EU standards themselves in order to gain access to European markets.

Third countries would also ask questions about farming subsidies, which have bedevilled efforts to get agricultural free trade in the past. They might go beyond WTO rules about what constitutes a subsidy so that direct payments to farmers might be at risk. Judging from past positions, the UK Government itself would be unlikely to resist such arguments as it does not like subsidies.

Policy communities

Agriculture has long been subject to separate administration. Before devolution, it was within the remit of the territorial secretaries of state and offices (and in Northern Ireland, under Stormont). The offices in turn were closely linked to the local policy communities, allied with them in getting the best deal for the territory. Farming unions are organized by the individual nations and, within them, there are different bodies.

- The National Farmers' Union (NFU) was founded in 1908 to represent the farmers of England and Wales. It describes itself as the 'voice of British farming' and its documents talk about 'UK' farming policy although it does recognize the existence of the devolved nations and the role of the other farming unions.
- Country Land and Estates, founded in 1907, represents large landowners in England and Wales.
- The National Farmers Union of Scotland (NFUS) was founded in 1913, later declining a suggestion to affiliate with the NFU in England.
- In the Highlands and Islands, the Scottish Crofting Federation was established in 1985 (as the Scottish Crofters' Union).
- Scottish Land and Estates (formerly Scottish Landowners' Federation) represents large estates.
- NFU Cymru started out as a council of the NFU, adopting its present name and structure in 1999, to deal with devolution. It remains part of a common England-and-Wales body.
- The Farmers Union of Wales was formed in 1955 as a purely Welsh body.
- The Ulster Farmers' Union was formed in 1918.

While these bodies mainly deal with their respective territorial administrations, there is also a UK wide policy network. The various unions do cooperate on matters of common concern and there are links at the administrative level. Farming bodies in the devolved territories lobby in London as well as in their own nations. UK agriculture ministers do visit the devolved territories in a way that is not true in, for example, education or health. For many years (before devolution) there was even an unwritten convention that there should be a Scottish MP in the (mostly English) Ministry of Agriculture.

There is also cooperation in Europe; the UK farming unions have a joint office in Brussels

As well as cooperation, there is some competition among the devolved territories for support and argument about the criteria. Farming interests in Northern Ireland and Wales have complained about Scotland keeping direct support for beef sector (they it see as unfair competition). There is also some unease about Scotland seeking a larger share of CAP allocations and an awareness that inter-territorial competition will intensify as resources become more scarce.

It is not known how farmers voted in the Brexit referendum. *Farmer's Weekly* published surveys suggesting large numbers of them voting Leave. These were unscientific and based on a self-selecting sample, so are not reliable on the overall figures. A random telephone survey conducted by the NFU in late 2016 showed 52 per cent of English farmers in favour of remaining and 29 per cent for leaving but with many undecided. The *Farmer's Weekly* surveys may say little about overall voting, but are not without interest. A post-referendum one showed that, while leave won by 54 to 44 per cent, only 28 per cent of respondents thought they would be better off (and 41 per cent thought they would be worse off) (Grant, 2016). The best we can say is that there was a substantial Brexit vote in the farming community, based on opposition to what are seen as intrusive regulations as well as more general political considerations in rural communities.

The farming unions, however, believed that Remain was the best option, conscious of the financial support gained from CAP and the difficulties of defending those levels of support within the domestic political system. At the same time, they had to be aware of the strength of Euroscepticism among their members. They therefore did not play an active part in the campaign or advise their members how to vote although NFU did register as a pro-Remain participant.

Currently, the farming unions are seeking to retain levels of support, while recognizing that the old CAP model was likely to change even in the absence of Brexit. There is talk of Brexit as an opportunity for a new start in farming, but no support for the more radical ideas about deregulation and marketization found among some Brexiters. The unions in the devolved territories particularly emphasize the needs of less favoured areas and the importance of agriculture in socially and ecologically fragile communities.

Farming unions outside England consequently are suspicious of centralization as envisaged in the original Withdrawal Bill. They want powers over support and rural policy to come back to the devolved level where more coherent policies, linked to supply chains and the rural environment, can be forged.

On the other hand, they are strongly in favour of common standards and regulatory frameworks in order to retain access across the UK and avoid duplication. While farmers tend to complain about regulation, the unions are more conscious of the value of regulation in providing a guarantee of quality. UK and Irish agricultural products, with some exceptions, cannot compete in world markets on price, so quality is crucial. With some exceptions, farming unions would also want to keep as least equivalence with EU regulations. They also support the precautionary principle rather than the US principle of proven risk.

There is less agreement across the sector as to how far support measures should be harmonized to avoid unfair competition.

The unions are engaged in intensive work to try and influence the new agricultural policies that might emerge post-Brexit, at devolved and UK levels.

What kind of frameworks?

There has been a major difference in principle between the UK and devolved governments over their role in agricultural policy. The UK position is that the devolveds do not make policy in agriculture, but rather implement EU policies. After Brexit, they will implement UK policy, which amounts to much the same thing. The initial EU Withdrawal Bill proposed to address the issue of coherence by reserving all existing EU competences to Westminster under the guise of 'retained EU law'. Then particular competences would be devolved again over time. According to the UK Government, this would not mean the loss of policy control by the devolved governments; on the contrary they might gain powers. The devolved governments' perspective is that they make policy within EU frameworks. It is disingenuous to suggest that an imposed UK framework would be the equivalent of the EU frameworks as the latter are the product of multilateral negotiations in which devolved territories might share some interests with other EU member states rather the rest of the UK.

During the passage of the EU Withdrawal Act, the UK Government conceded a great deal. Instead of a blanket reservation of all retained EU powers, there would be a reservation only of specified powers. This reservation expire in a set period, effectively up to seven years. The Welsh Government then gave legislative consent to the Withdrawal Act, although the Scottish Government did not.

At the same time, a consensus emerged that there might need to be UK-wide frameworks for some agricultural policy matters. Following the JMC (EN) of 16 October 2016, it was agreed that:

A framework will set out a common UK, or GB, approach and how it will be operated and governed. This may consist of common goals, minimum or maximum standards, harmonisation, limits on action, or mutual recognition, depending on the policy area and the objectives being pursued. Frameworks may be implemented by legislation, by executive action, by memorandums of understanding, or by other means depending on the context in which the framework is intended to operate.

Intergovernmental negotiations have been taking place on the basis of a UK paper which identifies 49 policy areas where frameworks are not needed; 82 areas where non-legislative frameworks are needed; and 24 areas where legislative frameworks may be needed. Most agricultural matters are in the last list.

This consensus is most marked in relation to agricultural and food standards. Yet this question is not confined within the borders of the United Kingdom and cannot be resolved there. There are the needs of the integrated Irish agricultural market; and the needs to comply with European and global standards.

There is less consensus on the need for a unified approach to agricultural support and subsidies. The issue of what counts as a subsidy has been contested at the WTO, in the EU and within the UK. Recent reforms of the CAP have allowed more leeway on this, but future trade agreements may be more constraining. The question is, to a large degree, a matter of political judgement, shaped by the different circumstances of agriculture across the UK and by ideological considerations. These differences were highlighted in 2018 by the decisions by the UK and Welsh governments to eliminate direct support payments in England and Wales.

As to the form, the key issue is whether these will be set by Westminster or negotiated among the nations.

Whatever the format for joint policy making and cooperation, there is likely to be an imbalance of influence. The UK Government is responsible for international trade for the whole of the UK and this will condition what is possible domestically. It is also the government of England in relation to agriculture and English priorities on issues of support and regulation could be privileged; alternatively English agricultural interests might even argue that they had no distinct voice.

There is a more radical critique of the present approach which is that it starts with existing overlapping competences rather than general principles and so does not address the central issues of fair competition, externalities and international agreements, which might arise in unanticipated places. Any future UK competition policy to replace EU policy will also have implications for permissible levels of agricultural support.

More broadly, the UK single market (or internal market) could have wider repercussions than the existing lists of competences, which might have to be revised to conform with whatever understandings of the internal market emerge over time.

The scope of the devolved governments in agriculture policy will further to be constrained by international agreements on trade (as well as environment and other matters), so that new questions might arise at any time in the future.

The Agriculture Bill

At the same time as the frameworks discussions, a separate process has unfolded under the Agriculture Bill. This mostly applies to England, but the devolved governments have been invited to join it through schedules of their own. The Welsh Government has chosen to do so, and Northern Ireland has been included while devolution is suspended there. This was made possible because the Welsh Government had withdrawn its objections to the Withdrawal Act and because, in a radical turn, it had aligned itself with English policy on agricultural support. The Bill has thus become an important vehicle for policy across England, Wales and Northern Ireland, aside from whatever frameworks emerge. The Scottish Government has declined to enshrine its agricultual policy in a UK bill and continues to argue that all the relevant powers are its by right. The Bill proposes the eventual elimination of all direct support for agriculture in England and Wales, which has implications for the finance available across the UK. It also gives UK ministers the power to determine into which WTO box and subsidies across the UK will go. This effectively gives it a power to determine whether the devolved governments will be able to continue paying direct support. A UK minister at one point did argue that the Basic Payment should really be in the WTO Amber Box, as a trade-distorting subsidy, while other schemes should not.[3] Under a new UK agricultural framework, continued basic payments might be considered to violate UK single (internal) market principles (by allowing variations in support) - or they might not. We just do now know. As far as the UK is concerned, the issue of support levels in the devolved territories might be considered so marginal as not to be worth worrying about, in the same way as it has not considered the Barnett Formula a problem for overall UK public finances; or it could become an issue of principle.

Finance

As explained above, agricultural spending is allocated under the CAP by functional category, by member state and by nation within the UK. Change has been incremental and the outcome has been that the devolved nations have higher per capita allocations than England. As the UK Government intention is to reduce overall spending, this will result in reduced allocations across the nations. As agriculture is outside the block grant and the Barnett Formula, we do not know how this will work.

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[3] George Eustace, House of Lords Select Committee on the European Union. Energy and Environment Sub-Committee, 8 March 2017.

One possibility would be to roll agricultural spending into the block grant and the Barnett Formula. This would not, as many commentators have suggested, mean that each nation would only get its population-share of spending. Barnett, which is used for most transfers to the devolved administrations, gives each of the devolved nations the same spending as in the previous round, increased or reduced by the change per head in England on the same services. So if England gets £10 per head extra for education, each of the devolved nations gets an additional £10 per head. The devolved nations do not have to spend that money (known as Barnett consequentials) on education but can spend it any way they like as it is part of their block grant. Cuts are distributed in the same way (generating negative consequentials).[4]

When new competences have been transferred to the devolved authorities, the practice has been to set spending at the existing level and then roll it into Barnett. So future spending *changes* (but not the initial allocation) are governed by population relativities. Given their higher levels of spending in agriculture, applying Barnett to it would thus be good news for the devolved territories.

It has been decided, however, that agicultural spending will not be rolled into the Barnett Formula and block grant. A committee under Lord Bew has been established to recommend how a dedicated agriculture budget will be distributed. The territorial secretaries of state have already each expressed the view that this is good news for them, although it is impossible for them all to gain. The Secretary of State for Scotland repeated the incorrect, but common, intepretation of the Barnett Formula, saying that 'Under the present arrangements, Scotland receives twice as much money for farming support than might be expected were the Barnett formula alone to be used. The commitment that future agriculture funding will not simply be Barnettised should be welcomed across the board.'[5] Barnett does not, of course, distribute funding by population. It protects Scotland's favourable position and only allocates increases and reductions by population. Wales has always criticized Barnett for locking it into a system that does not cater for its needs.

The problems in finding a new formula are legion. There is no objective means of measuring need or distinguishing it from policy decisions. For example, Scotttish policy takes account of the objective of maintaining population in fragile rural communities. This might be seen as a need or a policy choice. Scotland has also maintained some direct support. In the future, rural policy might be defined quite differently in the various parts of the UK, with differing objectives, making it impossible to compare the needs of each. It may be that payments will be tied to a future agricultural policy framework but discussions about frameworks to date have focused on detailed competences rather than shared policy objectives.

Whatever formula is chosen, the losers will complain. What seems clear is that, after the end of the current funding cycle, overall expenditure will be reduced. The Agriculture Bill confirms that the UK will withdraw direct support for farmers in England, and this will mean a reduction in overall spending on agriculture.

The Barnett Formula, however illogical, has the merit of avoiding the difficult business of measuring needs and resources and is relatively easy to apply. The same is true of the decision to apply equal percentage cuts to all four nations in the last round of CAP and Structural Funds allocations. In practice. political presssures are likely to cancel each other out to reproduce much the same

[4] We need not, at this stage, get into the complications generated by the new Scottish tax powers.

[5] https://www.gov.uk/government/news/fair-funding-for-farmers-across-all-parts-of-the-uk

distribution in the future, with changes only at the margin. It remains to be seen whether these will be tied to common objectives or an agricultural policy framework.

It might be that support payments and Pillar 2 rural development payments are split, with Pillar 2 rolled into the Shared Prosperity Fund that is to replace the EU Structural and Cohesion Funds. We do not know how this fund will operation but a precedent may be the City Deals, now extended to the devolved territories, in which small amounts of money are given to influence policy direction and gain the UK Government credit for spending across the devolved nations. This would give greater leverage to the UK Government and require matching funding from the devolveds.

The Irish Question

Brexit has particular implications for the two parts of Ireland and the border between them. The UK and Irish agricultural markets are highly integrated and since 1973 have modernized considerably. Where Ireland once exported live animals, it is now linked into supply chains spanning the border and into Great Britain.

Agriculture is not as large a component of Irish GDP as in the 1970s but it is, outside the foreign direct investment sector, a key element in the economy and the agrifood business is an important employer. Food and drink account for 7.6% of Irish GVA, 10.7% of exports, and 8.4% of total employment. The UK accounts for 37% of food and drink exports (compared with 13% of all exports), the EU for 32% and the rest of the world for 31%. In some sectors, it is higher. So both EU and UK markets are vital.

Cross-border flows between the Republic of Ireland and Northern Ireland. are particularly important. After Brexit, it will be important to keep open the border for agricultural trade and avoid delays, which can affect the freshness of products. Regulatory equivalence is also important.

As well as a single European and a single UK agricultural market, there is an all-Ireland dimension to agriculture. Policy is made separately in the two parts of Ireland but there is a great deal of exchange of ideas, mutual learning and cooperation with a view to providing a common all-island approach to matters of mutual concern. On two key issues, the (initial) non-use of flexibility and capping of direct payments, Northern Ireland and the Republic took identical decisions for the 2014-10 spending period. In animal health, there is an all-Ireland strategy made necessary by the free movement of animals and the lessons of the BSE and Foot and Mouth emergencies. In plant health, there is cooperation without a formal strategy. Political questions have prevented an all-Ireland approach to Brexit, in view of the lack of a Northern Ireland Executive and the role of Ireland as one of the EU 27.

Irish Cream, Irish Poitin and Irish Whiskey are protected 'geographical indications' under EU law, on an all-Ireland basis. It is not clear what will happen to these after Brexit.

There are particular sensitivities in the border region itself. Agriculture is an important source of income and employment there and operates across the open border. Disruption of markets and supply chains would be economically damaging but also politically highly sensitive as growth in the agricultural sector provides an important economic underpinning for the peace process and cross-border cooperation in general.

One option that has been canvassed is for Ireland to be treated as a single market, whether for everything or just for agriculture and agri-food products (Connelly, 2017). This would involve Northern Ireland remaining in the Customs Union and possibly the Single Market with the border 'in the Irish sea.' There is little support for this within the policy community. It would not resolve the border issue but just move it. Trade of food and live animals from the Republic of Ireland to Great Britain is six times that to Northern Ireland (CSOI, 2016). Northern Ireland sells twice as much food and drink to GB as to the EU including the Republic (NOFD, 2016).

Short of this, there is the possibility of a differentiated agreement for Northern Ireland, whether in the form of the 'backstop' or as part of a longer-term trade deal. A large measure of devolution to Northern Ireland could make it easier for it to match EU/ Irish standards and support measures. While the Northern Ireland Government currently enjoys about the same amount of discretion as the Republic in applying CAP rules, it lacks other powers, including taxation and allowances, which may give the south a competitive advantage. There may therefore be calls for greater devolution in Northern Ireland within whatever agriculture regime emerges. The decision in principle to allow Northern Ireland to change Corporation Tax from 2018 may provide a precedent here.

Following the December 2018 agreement on proceeding to the second phase of the withdrawal negotiations, these issues remain open.

Policy Directions

Outside the EU the pace of reform of agricultural policy is likely to increase, with more pressures for divergence across the UK.

Successive UK governments have called for radical reform and marketization of the CAP, reduction of support and an end to direct subsidies, to be replaced by payments for carrying out specific tasks. This is reflected in the Agriculture Bill. The devolved administrations in Scotland and (before suspension) Northern Ireland, on the other hand, continue to support direct payments (Greer, 2013) although there is a recognition in the policy community that in the longer term this might need to be revised. The UK Government has also been less sympathetic to small farmers, as witnessed by its refusal befor Brexit to cap payments for the largest farms in England. This represents a preference for large-scale, industrial farming, contrary to the preferences and the reality of farming in the devolved nations (Greer, 2013).

Underlying this is a deeper issue of whether agricultural support, as the CAP moves from production subsidies towards income support, should be regarded as social policy, or environmental policy, rather than economic policy. If it is, then it may not be a suitable matter for supranational regulation, whether in the EU, the WTO or bilateral free trade agreements. To the extent that this is accepted, and there is a move (as supported by the UK) from direct support, that might make it easier to devolve agricultural policy without distorting international or internal UK markets and render UK frameworks less important.

In England, attention has focused on the idea of 'public goods'. This does not refer to public goods as that term is used by economists, but rather to broader societal benefits. The ideas seems unobjectionable until we have to decide exactly what it covers. In England the emphasis has been on environmental benefits. In the devolved territories, there is a stronger emphasis on the role of agriculture in supporting fragile communities and in its social and cultural role. The agricultural sector is a stronghold of the Welsh language and of language and culture in the Scottish Highlands and Islands. There are important differences in tenure systems and land law among England, Scotland and Northern Ireland. There is wide concern that common frameworks and tied funding might hamper the ability of the devolved governments to tailor policy to their local conditions and the preferences within their own policy communities as agricultural policy morphs into broader rural policy, with linkages into other policy fields.

Of course, continued support would require funding. While the present system does provide higher levels of support in the devolved territories, recognizing the difficult production conditions, the Treasury is not likely to finance agriculture there while England gets nothing. We do not know how far the new funding formula will allow policy divergence.

The UK Government sees devolution in agriculture and other Europeanized competences as driven by policy considerations and the aim is to secure the necessary degree of harmonization. In the devolved territories, the allocation of competences is also a matter of constitutional principle, so that policy will have to work around these. The UK Government seems to work on the basis of individual competences, which might be released, rather than broad principles which might govern the future devolution settlement and proceeding from there. Its approach is sectoral but its justifications are often transversal. Once again, this exposes differences in the way the constitution is viewed from the centre and from the periphery.

This is not a purely technical matter but a question of different constitutional perspectives and of different ideas on what the scope of agricultural and rural policy should be.

The debate on agriculture mirrors that on Brexit as a whole. Different actors have different visions of the shape of a post-Brexit United Kingdom and of how far it will move to a deregulated, free-market, global free trading posture, or stay close to the European social and economic model. The future of agricultural policy and hence the scope for devolution will depend to a large extent on the resolution of those debates.

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