

## EFRA Committee Agriculture Bill Inquiry

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### Summary:

This Agriculture Bill (AgBill) is the first step towards developing a post-Brexit agricultural policy for England and potentially the rest of the UK. It offers a huge opportunity to re-shape our rural economies and agricultural landscape – but also raises a number of challenges. This submission focuses on the following ones:

- The removal of the Basic Payment Schemes (BPSs) is likely to significantly increase exits from agriculture.
- The shift to 'public money for public goods', while welcome, is interpreted in a way that leaves major gaps including for rural development, food quality and healthy food.
- The focus points for financial assistance in England and Wales highlight the potential for conflicting policies, competitive (dis)advantages between the four jurisdictions and a rudderless Northern Ireland.
- The attention to cutting regulatory burdens raises questions about the depth of environmental commitments and the practicality of the policy (reducing inspections but creating massive information requirements).
- The centralisation of power in London through the use of reserved trade powers imposes constraints on devolved policy-making on agriculture.

Overall, the Agriculture Bill (AgBill) is a conflicted product of its time: centralised, adopting a 'one size fits all' approach, yet not uniform and without relevant common frameworks; ambitious, but burdensome, patchy and unrealistic at times; and striving to be original and different from the EU and CAP, yet unable to break free entirely due to the continuing linkages and the role of WTO Law. The AgBill treats agriculture simply as another sector of the economy (apart from the public goods and rural development provisions – where relevant). It signals the end of agricultural exceptionalism.

## I. Removal of Basic Payment Schemes

- (1) The AgBill proposes gradually to eliminate BPS in England and Wales and replace these with financial assistance linked to the provision of public goods – predominately ecosystem services. The transitional period ends in 2027 (Clause 5, and Schedule 3, Clause 5), but may be extended further. The AgBill does not determine the situation for the other devolved administrations, but they may follow suit perhaps due to trade policy and control of purse strings.
- (2) This is a major shift in agricultural policy – direct payments have been central to the EU’s Common Agricultural Policy (CAP) since the mid-1990s. With appropriate communication and a transitional period that enables farmers to adapt, the proposed focus on increased productivity and efficiency would allow farms – on average – to remain profitable after the abolition of CAP payments. The 50% of farmers in the middle are likely to succeed in moving away from direct payments to environmental payments as they become more profitable. The top 25% will barely feel the change in policy since they are already successful.
- (3) However, some farms that are currently struggling will find the change in the support system particularly difficult. Many UK farms are currently profitable solely because of CAP direct payments. **It is likely that the bottom 25% of English farms that currently struggle or only survive because of the receipt of BPS will disappear.**<sup>1</sup>
- (4) The impact of this radical change will be particularly severe in the devolved administrations compared to England, due to the nature of the farms and farming, the current financial support practices and their limited financial resources. As there are already caps in the other devolved regions (Gravey, Burns, & Jordan, 2016), large cuts in the current direct payments would be required to save money to re-route into new schemes and most farms will not survive any cuts.
- (5) **Protecting small farms** is important as they contribute in rural areas to the culture, society, economy (including directly through farming and tourism) and environment. Contrasting with CAP, a ‘level of farm income’ is not an objective of the AgBill or the consultation paper, which preceded it.<sup>2</sup> Nevertheless the value of small farms was noted in the consultation paper in the context of uplands – with suggestions that they may merit further protection. From an environmental perspective, small farms or considerable variations and patchy farms are fundamental to the development and maintenance of biodiversity – including genetic diversity of crops and livestock – and thereby to agri-sustainability, environmental sustainability and food security on a national and global level. The simple basic management of a farm can be of considerable worth. **Neither hill, uplands nor small farms are mentioned in the AgBill.** The proposed public good in Health & Harmony “Preserving rural resilience and traditional

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<sup>1</sup> See comments made by Ludivine Petetin at the Game and Wildlife Conservation Trust All-Party Parliamentary Group in March 2018, <https://www.gwct.org.uk/policy/appg/march-2018/>; in the Farmers Guardian, <https://www.fginsight.com/news/news/defra-makes-decision-to-let-quarter-of-uk-farms-disappear-57116>; and in UK Business Insider; <http://uk.businessinsider.com/quarter-english-farms-bankrupt-after-brex-2018-4>.

<sup>2</sup> Prof Alan Matthews, March 2018 <http://capreform.eu/a-tale-of-two-policy-documents-defra-vs-commission-communication/>.

farming and landscapes in the uplands” did not make the cut.<sup>3</sup> Whilst financial assistance is possible via other mechanisms, as discussed below, this will be challenging to access and their continued viability will be threatened.

## II. Public Money for (Some) Public Goods

- (6) Part of the current Green Brexit drive aims to modify the support that farmers receive for the farming activities they undertake. Although not express within the AgBill itself, it is apparent from the content, the accompanying Explanatory Notes and previous consultation document that the AgBill puts a strong focus on ‘public money for public goods’. The concept of ‘public goods’ is ambiguous and nebulous at best and the AgBill reflects a patchy and arguably narrow interpretation.
- (7) In Part 1, Clause 1, subsection 1 of the AgBill and in Schedule 3 for Wales we find seven headings relating to environmental protection – predominately enabling payments for ecosystem services. In conjunction with the subsequent Clauses, the AgBill has developed the necessary flexibility since the Consultation document to encompass both existing and new schemes, maintaining and improving environmental standards.
- (8) However, there are noticeable gaps here, including no mention of sustainability, biodiversity (including genetic diversity), or animals or creatures other than ‘livestock’. This is despite their significance for the environment, human health and indeed the long-term sustainability of agriculture. Care needs to be taken to **avoid silo-ed or piecemeal approaches** that do not reflect the nature of the environment, with permeable boundaries and the potential for an activity to pollute multiple environmental media or come from numerous sources. This is also amply demonstrated by the need for habitat protection, buffer zones and green corridors for migratory routes for instance.
- (9) Considering the focus on food production, there was ample opportunity to include healthy or high-quality food production, or food sovereignty for instance. There is a clear lack of focus on public health. Part 1, Clause 1, subsection 2 makes indirect reference to elements of food production, through the definition of ‘improving production’ that includes improving efficiency and improving the quality of products – an approach that is mirrored for Wales, but for both the support is tenuous and without a basis in an overarching food policy.<sup>4</sup> These are valuable objectives and may become more significant in light of global pressures and the uncertainty as to the future trade relationship with the EU.
- (10) This lack of focus on food further impacts reflection on the whole food chain. Clause 25 on fair dealing obligations oddly restricts requirements to the first purchaser of agricultural products. To deal with the issue of unfair trading practices, the whole of the food supply chain should be under the same requirements to aim at creating a certain balance between the different actors of the food chain.

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<sup>3</sup> DEFRA, Health & Harmony, p.35.

<sup>4</sup> See Prof Tim Lang’s post on the lack of vision for food in the AgBill  
<https://greenallianceblog.org.uk/2018/09/18/the-new-agriculture-bill-has-no-vision-for-food/>.

- (11) A difference arises between England and Wales when it comes to rural development. For England, the sole mention of rural development – a key component in existing financing, via Pillar 2 of CAP – is through the potential to abolish, simplify or improve the existing payments. Clause 11 is intended to facilitate the remove of existing rural development payments and specifically not introduce new schemes related to rural policy. Pt. 112 of the Government’s Explanatory Notes indicates that new rural development schemes may be introduced under Clause 1 and financial assistance, but it does not exist as a new independent basis for financial assistance, as noted above. Yet, Schedule 3 provides for Wales to provide financial assistance to businesses or communities in rural areas under new schemes. Potential problems of competition between English and Welsh products could arise if Welsh products would be advantaged by such support (see further in next section).
- (12) Another gap includes administrative support, training and giving advice to farmers. Sufficient provisions on these matters would ease the transition for farmers to ensure the delivery of public goods.
- (13) Two key points need to be made here: (i) a wider range of valuable objectives should be included. The market will promote some and those outlined for England and Wales are important, but they should go further. (ii) Minimal standards for each public good (including the environment) should be required if the purposes are to be achieved and if the approach is not to be a façade – rather than leaving it to the Secretary of State/Welsh Ministers to impose conditions.

### **III.A Missed Opportunity to Create a Fair System of Financial Support and Single UK Market**

- (14) The AgBill enables considerable divergence across the four devolved jurisdictions. Part 1 outlines the potential bases for financial assistance for England; Schedule 3, Part I enables Welsh ministers to do similarly, but with further provisions regarding rural support and supporting ‘persons’ involved in the production, processing or distribution of products deriving from an agricultural, horticultural or forestry activity’; Scotland is omitted entirely from this; and Northern Ireland has its own Schedule, but there is no legal basis for financial assistance.
- (15) The difference in treatment is clearly understandable in light of devolution and the political challenges on-going throughout the Brexit process. Agricultural support had been identified as likely to require a common UK legislative framework in March 2018.<sup>5</sup> This AgBill is not it. This is an English Bill primarily, with the Welsh government having highlighted further elements that are significant to them in the form of rural support and supporting the people themselves – although, as noted the uplands is not included as a separate basis. The Scottish government has indicated its wish to develop its policies and is not amenable to English imposition. The Northern Irish Executive has been missing in action and whilst DAERA have

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<sup>5</sup> See the Cabinet Office Framework Analysis published in March 2018, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/686991/20180307\\_FINAL\\_Frameworks\\_analysis\\_for\\_publication\\_on\\_9\\_March\\_2018.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/686991/20180307_FINAL_Frameworks_analysis_for_publication_on_9_March_2018.pdf).

undertaken an ‘engagement’ on their proposals developed in stakeholder meetings, they nonetheless have not the political authority to truly negotiate for NI or actively legislate (Dobbs et al., 2017). By omitting bases for financial assistance and not abolishing the existing payment schemes in NI (but enabling DAERA to modify these), the AgBill enables the eventual NI Executive to develop its own agricultural policy in accordance with devolution (within limits).

- (16) However, there are dangers associated with the differences in treatment. Firstly, the divergences enable valuable objectives to be excluded within some jurisdictions. Secondly, farmers (and other land users) in one jurisdiction may receive a competitive advantage over farmers in the other jurisdictions – even where they live and work next to each other and sell into the same market. This is only emphasised and accelerated by the future lack of common frameworks for issues relevant to agricultural production at all stages, e.g. water quality, nature protection, and air pollution.<sup>6</sup> Hence, there is, thirdly, the increased risk of a race to the bottom in order to (re)gain competitive advantages.
- (17) To summarise, (i) whilst implementation and the degree of relevance of the objectives may vary in practice across the devolved jurisdictions, the objectives are relevant to all four jurisdictions and should be available as a basis for payments for all four. This would necessitate a limited common framework for financial assistance and would help address some of the devolution issues noted below. (ii) Suitable financial support will be required from Westminster for the short or long-term continuation of direct payments and the injection of capital for new financial assistance schemes.

#### **IV. Cutting Regulatory Burdens?**

- (18) One of the main objectives reflected in the AgBill is simplifying matters for farmers and cutting regulatory burdens. It is clear from the earlier Consultation document and implicit within the AgBill that the English government have decided to move away from CAP – including its greening criteria, cross-compliance requirements and inspections. The aims were primarily to simplify, cut regulatory burdens and avoid paying farmers twice for the same thing (environmentally friendly behaviour). This is worrying as, whilst there are significant flaws with CAP and its requirements, these could be addressed through developing and reforming the greening approach, rather than discarding it entirely – it seems to be very much a case of throwing the baby out with the bathwater.
- (19) However, the AgBill leaves open to the Secretary of State/Welsh Minister to introduce conditions to any financial assistance and make payments subject to compliance with these. Lessons should be learned from CAP and conditions should be imposed to require at least compliance with minimum standards for receipt of any payments. Again, the application of common frameworks here would support this and would ease the daily business of cross-border farms. Further, the UK White Paper on the Future Relationship Between the United Kingdom and the European Union commits to the non-regression of environmental standards. However, no regulatory floor exists in the Bill.

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<sup>6</sup> See <https://www.brexitenvironment.co.uk/2018/03/12/common-environmental-frameworks/>.

- (20) Appropriate compliance mechanisms are essential. Sufficient independent, expert monitoring and inspections are required to enable enforcing conditions (Brennan, 2016), which also require appropriate investment of resources. Potentially reducing inspections or monitoring, including through focusing on ‘risk-based’ inspections as suggested in the Delegated Powers Memorandum could undermine enforcement and thereby compliance. Further, the Secretary of State (SoS) appears to hold various enforcement powers. Where relevant, some of these powers should be delegated to the most appropriate body such as the Environment Agency or Natural England.
- (21) Implementation raises further concerns, as the new approaches will require a willingness to invest by farmers. The AgBill attempts to address this need through a gradual reduction in existing payments, a transitional period and a broad range of objectives underpinning the schemes. However, the details of the financial assistance schemes are not apparent, e.g. it is not clear at what point(s) the farmers/land users will receive the financing. Originally the Consultation document focussed on ‘outcomes’ – goals needed to be achieved to obtain financial support. Whilst the Explanatory Notes refer again to outcomes, the AgBill itself is loose on detail. This raises interconnected issues relating to legal certainty and effectiveness.
- (22) Firstly, outcome-based rewards obviously have their advantages. However, farmers may not risk investing if there is no guarantee of at least off-setting their costs. An alternative would be to provide some initial investment funds, instalments for steps/procedures, milestones and then eventual outcomes (as is proposed in the Welsh Consultation ‘Brexiteer and Our Land’). The AgBill has the potential to enable this, but it could be provided for expressly at this point.
- (23) Secondly, a related key issue for farmers highlighted regularly in Brexit discussions is the need for certainty – certainty regarding access to markets, regulatory standards and also financial support. Some investments may not have pay-offs on a short-term basis, but may only materialise in several years or decades. Farmers need to know how long financing will be guaranteed for and what objectives are priorities, in order to determine what investments are worthwhile and will guarantee financial reward. If the policy might change in the meantime, then there is no (economic) point in investing. CAP operated in 7-year cycles and even that could be considered too short. Hence, a group of Welsh farmers suggested a period of 30 years or longer for establishing a policy.<sup>7</sup>
- (24) In this regard, it should also be borne in mind that some farms may struggle more to make capital investments, may not be able to risk diversify through growing multiple crops/engaging in other economic activities and also may not be able to survive economically if they do not receive a regular income year-in, year-out (Gravey & Dobbs, 2018). In other words, once again, small, less-profitable farms will be worst hit if the schemes are not suitably tailored. The AgBill provides a quasi-fix, but it is self-defeating. Under Clause 7, delinked payments could be offered during the transition period. According to Pt. 90 in the Explanatory Notes, the

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<sup>7</sup> Jane Ricketts Hein, Eifiona Thomas Lane and Arfon Williams, The Future of the Welsh Uplands after the Common Agricultural Policy : Stakeholder Policy Priorities, May 2017, <https://uplandsalliance.files.wordpress.com/2017/06/future-of-the-uplands-post-cap-report-final.pdf>.

recipient of these payments will be under no requirement to farm the land. This could increase the amount of food imported into the UK, increase food insecurity and decrease UK self-sufficiency. Conversely, delinked payments could enable farmers to deliver public goods without a focus on food production.

- (25) Part 3, Schedule 3 Part 3 and Schedule 4 Part 2 provide quite broad ranging obligations for the collection and sharing of data. These additional requirements on the actors of the food supply chain will not ease their day-to-day work and create a different kind of red tape – again more crippling for small farms.
- (26) Consequently, the proposals (i) potentially undermine mechanisms to enforce compliance with environmental and animal welfare standards, (ii) replace EU bureaucratic burdens with UK bureaucratic burdens and (iii) currently provide no long-term certainty for farmers as to whether they should invest or not.

## **V. A Recentralisation of Powers in the Name of Trade**

- (27) Part 7 addresses the need for the UK to guarantee that all schemes established across the four jurisdictions comply with WTO Law and in particular the Agreement on Agriculture's (AoA) Amber, Green and Blue Boxes. In doing so, the Bill proposes effectively to curtail the devolved jurisdictions' relevant powers.
- (28) The AoA is not as restrictive as is generally thought – there is some room in the agreement to design future schemes that will be compliant and thereby some leeway for the four jurisdictions to modify their respective support regimes post-Brexit to address regional and local needs.
- (29) The Amber Box comprises all domestic support measures considered to distort production and trade. Such measures typically must not exceed 'de minimis' support levels. 'De minimis' supports can be divided into two types of support: product-specific (5% of the total value of production of an agricultural product); and non-product specific (5% of the total agricultural production). However, some WTO Members (including the EU) can benefit from higher support than the de minimis level called the 'Total Aggregate Measurement of Support' (AMS). There is a strong argument for the UK to successfully negotiate the allocation of a portion of the EU Total AMS post-Brexit with EU member states and the WTO (Petetin, 2018). These ceilings limit the amount of spending for the UK and the devolved administrations under the Amber Box.
- (30) To qualify for the Green Box, the support must have no or minimal trade-distorting effects on production and programmes must comply with the basic and policy-specific criteria set out in Annex 2 of the AoA, relating to environmental and regional development for example. Blue Box support broadly relates to payments coupled with production but must reduce trade distortion. The AoA imposes no limits on Green and Blue Boxes spending by WTO countries – or therefore by each devolved jurisdiction.

- (31) Consequently, there is considerable scope to develop compliant domestic support measures.
- (32) Clause 26 gives sweeping powers to the SoS to create regulations that **recentralise the financial support for farmers and the design of support schemes across the UK**.
- (33) This includes the potential for the SoS to (i) **conclusively determine**, the classification of financial support across the UK; (ii) set limits of spending for the whole of the UK; (iii) set individual ceilings of support across the devolved administrations; and (iv) create different ceilings across the devolved administrations.
- (34) Crucially, Clause 26(4)(b) gives powers to the SoS to fix the upper limits spent **within each box** by each devolved administration – despite WTO law **not** imposing any limits on Green or Blue box spending.
- (35) As the WTO Member, the UK is responsible for ensuring compliance. However, (i) Clause 26 exceeds what is required; (ii) it effectively gives powers to the SoS that currently belong to the devolved administrations (using reserved powers on finance, trade and compliance with international agreements to trump the powers of the devolved administrations for agriculture); and (iii) although WTO mechanisms do not provide a forum for discussions or consultations with regions of a specific State, the UK may and should proactively engage the devolved administrations itself. As such, Clause 26 does not require a Legislative Consent Motion. This shift of powers from the devolved administrations to Westminster reflects the loss of the principle of subsidiarity present within EU law (for more on this point, please see Engel and Petetin, 2018).

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Dobbs, Petetin and Gravey

October 2018