THE UK AGRICULTURAL BILL AND FUTURE POST-BREXIT AGRICULTURAL POLICY IN NORTHERN IRELAND

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Context

Agricultural policy in the UK before Brexit: diverse implementation of the Common Agricultural Policy

1. The starting point when discussing post-Brexit agricultural policy should be **an evaluation of existing policy** and a recognition of the **pre-existing diverse approaches to agricultural policy across the UK**.
2. Since the UK joined the European Economic Community in the 1970s, UK farming has been supported under the Common Agricultural Policy. Revised many times, this Policy in its latest iteration, from 2014 onwards, represents 36% of the European Union's 2014-2020 budget, split in the CAP between Pillar one (income support, market intervention, 75% of CAP budget) and Pillar two (rural development, including agri-environmental payments). The CAP contains a number of different policy instruments, here are some of the most notable ones:
    a. Income support via the Basic Payment Scheme supplemented by the Green Payment. The Green Payment represents 30% of Pillar 1 funding, and is available to farmers only if they comply with requirements of protecting permanent grasslands, ecological focus areas and crop diversification.
    b. Cross-compliance: in order to qualify for income support, farmers have to comply with a subset of EU law on food safety, environment and animal welfare (called Statutory Management Requirements or SMRs) as well as a list of regionally or nationally tailored Good Agricultural and Environmental Conditions (GAECs).
    c. Rural Development Programmes (Pillar 2) are developed at the national or, e.g. in the UK's case, regional level to address three priorities (1) improving the competitiveness of agriculture (2) the sustainable management of natural resources and climate action (3) a balanced territorial development of rural areas. Each region or state can produce their own programme addressing these priorities. Pillar 2 funding requires local co-funding.
    d. Agri-Environment-Climate Payments – one possible payment as part of the Rural Development Programmes, defined by the European Commission as payments 'designed to encourage farmers to protect and enhance the environment on their farmland by paying them for the provision of environmental services'.
3. The differences in implementation have been thoroughly researched by the Research and Information services of the NI Assembly (Allen, Downing, Edwards, Seaton, & Semple, 2014). Key differences include:

    '**Minimum claim size**: England and Wales have a minimum claim size of 5 hectares, while Northern Ireland and Scotland have chosen 3 hectares. Outside of the UK, Ireland has chosen to have no minimum claim size.

    Coupled support: Northern Ireland, Wales and England have no coupled payments while Scotland and Ireland have chosen to re-introduce these payments in some cases (for beef calves and hill sheep in Scotland).

    Capping payment size: Northern Ireland and Ireland cap direct payments at €150,000. In Wales and Scotland, the caps are much higher (€300,000 and €500,000 respectively). England has no cap.

    Agri-environment-climate payments: These payments represent 21% of Northern Irish and 25% of Welsh Rural Development Funds compared to 19% in Scotland, 69% in England and 38% in Ireland.'(Petetin, Gravey, & Moore, 2019, p. 7).

BREXIT AND THE REPATRIATION OF COMPETENCE – DEVOLUTION IMPACTS

4. There is a notable overlap between competences similarly devolved in Northern Ireland, Wales and Scotland and areas of competences which have been the most Europeanised over 40 years of EU membership: environment, agriculture, fisheries. These **twin processes of Europeanisation and devolution** have seen reduced Westminster involvement in these policy areas. Many devolved actors have seen this reduced influence as positive. For example, back in 2015, then Welsh First Minister Carwyn Jones argued that the CAP 'works pretty well in our interest. What I would not want to see is the CAP replaced with something run from London. That would be disastrous for Welsh farmers" (House of Lords EU Select Committee, 2015, p. 9). Carwyn Jones' comment highlights how 'taking back control' after Brexit entails sorting out (i) **who should be taking back control** (devolved or central administrations, or a mix) as well as (ii) **what is to be done** with this new control.
5. While **the starting point is intra-UK divergence**, the repatriation of agricultural competence after Brexit raises questions concerning further divergence – will UK agricultural policies further diverge internally (between the four nations) and externally (between the UK and the EU)? What are the mechanisms to manage, to constrain or foster policy divergence? Under what conditions is more or less policy divergence positive and for whom – for consumers, primary producers, agri-food industries, the environment, the regulators?
6. This divergence is particularly concerning when it comes to **the regulatory floor**. Neither the Environment Bill nor Agriculture Bill provide a regulatory floor equivalent to the one provided by EU environmental and animal welfare rules (and associated cross-compliance requirements). This raises both questions of internal UK divergence, where producers from one part of the UK could undercut producers in another part, but also of standards for imports.
7. The question of post-Brexit competence is fraught with tensions and concerns of 'power grabs' – between the Executive and the Legislative, and between Central and Devolved Administrations. This is exemplified by the creation of the UK and Welsh Government Bilateral Agreement on WTO provisions within the 2018 Agriculture Bill in order to address Welsh concerns.[1] It is worth noting however that the Welsh government had opted to take much fewer powers in the 2020 Agriculture Bill than in the 2018 Bill. While it had planned in 2018 to take powers to allow the Welsh Ministers to operate or transition to new schemes, the Welsh government now sees the UK Agriculture Bill powers as offering a short transition and aims to publish a White Paper for a Agriculture (Wales) Bill by the end of 2020.[2]

AGRICULTURE, THE WITHDRAWAL AGREEMENT AND THE FUTURE UK-EU RELATIONSHIP

8. Agriculture in general: a transition period lasts until at least the end of 2020, with the potential to extend it once for up to 2 years (if agreed by July 2020). During this transition period, EU law applies to the UK and UK producers have access to the EU market.
9. Agriculture in the protocol: Under the revised Withdrawal Agreement, Northern Ireland will remain aligned with a specific set of EU rules after Brexit in the following areas.
   i. legislation on VAT and excise in respect of goods
   ii. legislation on product requirements
   iii. sanitary rules for veterinary controls ("SPS rules")
   iv. rules on agricultural production/marketing
   v. State aid rules
10. State aid rules: however, these would not apply to 'funding to support the production of and trade in agricultural products in Northern Ireland up to a determined maximum overall annual level of support' and as long as WTO rules are complied with. This maximum amount will be determined by the Joint

[1] https://www.gov.uk/government/publications/agriculture-bill-progress-with-devolved-administrations/uk-and-welsh-government-bilateral-agreement-on-wto-provisions-within-the-agriculture-bill
[2] https://gov.wales/written-statement-uk-agriculture-bill

Committee and will be 'informed by the design of the United Kingdom's future agricultural support scheme as well as the annual average of the total amount of expenditure incurred in Northern Ireland under the Common Agricultural Policy under the current MFF 2014-2020'. (Art10.2 and Annex 6 Protocol.)

11. Crucially, the alignment between Northern Ireland and the EU, alongside the lack of alignment between GB and the EU has significant impacts on controls within Northern Ireland and between Northern Ireland and GB. The need for checks at the border is set out in the Withdrawal Agreement and was further stressed in Michel Barnier's slides on the Agreement.[3] Simply put, the UK (including the devolved administrations) can determine for the main part what controls are needed for goods being exported to GB, but Northern Ireland must act essentially as an external border to the EU and thereby checks and controls must be undertaken regarding SPS and customs on goods being imported into Northern Ireland from outside the EU – by either UK or NI civil officials. This could become increasingly important in light of the UK Government's varying statements on regulatory divergence/dynamic alignment in the future. **Beyond checks, this has a major impact on the formalities that businesses trading between GB and NI will have to fill out** – while not all consignments may be checked, all consignments will need paperwork, which creates its own burdens.
12. Furthermore, Northern Ireland must ensure that its own agricultural produce complies with the relevant EU rules. It thereby will have to continue to monitor and enforce these rules (including through public bodies undertaking monitoring or inspections) and providing information to the EU as appropriate.
13. A further complexity is added by the desirability of maintaining access to the GB market. In the case of regulatory divergence between GB and the EU, Northern Ireland could find itself having to comply simultaneously with two sets of rules – rules that diverge not merely in level, but also in procedures or for instance information and monitoring requirements, thereby creating heavy burdens for actors in agricultural production.
14. However, beyond those rules specified within the Protocol, unless the future UK-EU relationship includes further obligations, Northern Ireland can diverge from EU law. Of note is that the general level playing field provisions were shifted from the Agreement to the Political Declaration in the revised version of the Agreement (negating any binding force) and concepts such as the non-regression principle are no longer to be expressly found.
15. Agriculture and the future UK-EU relationship: there is no certainty regarding what the future UK-EU relationship will look like. It seems unlikely at this stage that there will be a very close relationship akin to a customs union, but nor is there likely to be a complete rupture. At a minimum for Northern Ireland, there will continue to be the 'frontstop' of the NI Protocol, as outlined. However, there is likely to be increased regulatory divergence between GB and the EU, even if there is agreement not to impose quotas or tariffs.

Taking stock of the last 4 years of UK agricultural policy debates

Public money for public goods and regulatory floor

16. As one of the EU's most criticised policy, the CAP was quickly identified as one area where policy change should be made after Brexit. In early August 2016, the National Trust started the post-Brexit farm funding debate calling for scrapping the basic farm payment and redirecting agriculture policy funding according to a Public Money for Public Goods principle.[4] Such a shift has long been called for by environmental groups as well as agricultural economists, and was key to early CAP2013 debates (Gravey, 2011). But the principle can be applied in many different ways, e.g.: which 'public goods'

[3] https://ec.europa.eu/commission/sites/beta-political/files/slides_the_wa_explained.pdf, at slides 43-46.
[4] https://www.theguardian.com/environment/2016/aug/04/national-trust-calls-for-complete-reform-of-british-farm-subsidies

should be considered, how narrowly should this be defined, and should farmers be paid in reward for (a) currently producing certain public goods or only to support practice changes and (b) increase the production of certain public goods.

17. Over the last 3 years and a half **public money for public goods has become the leading principle underpinning future agricultural policy in England**, with a strong steer towards environmental public goods. While public goods are also mentioned in the other 3 nations, public money for public goods and more generally environmentally friendly/sustainable farming is less central in Wales, Scotland and Northern Ireland debates compared to England. Conversely, the devolved administrations have a ‘clear focus also on prioritising keeping farmers on the land, providing a stable level of income and minimising any structural change’ (Hart & Baldock, 2019, p. 4). In their latest comparison of agricultural debates across the UK, Hart and Baldock argue that key themes are:
    - b. England: Public money for public goods, Animal welfare, Increase productivity of the farming sector, Improve environmental sustainability.
    - c. Wales: achieve sustainable land management (SLM), defined as ‘reflecting the use of land for production, while ensuring long-term productive potential and maintenance of key environmental services’.
    - d. Northern Ireland: productivity, economic resilience, an environmentally sustainable agriculture sector, supply chains.
    - e. Scotland: natural capital, production efficiency, strong climate emphasis.
18. While the UK appears to be moving towards further greening of agriculture policy this does not mean support for all green instruments in the existing CAP. Both cross-compliance and the green payments have been heavily criticised – most notably when Andrea Leadsom was DEFRA secretary - and will be discontinued. The move away from cross-compliance raises **concerns about future environmental and animal welfare regulatory floor** – for both production in the UK and imports: will a common regulatory floor apply throughout the UK? Or in GB, with NI following (some) EU standards? Or will 4 sets of rules exist? And will imports also have to meet these standards or will they be able to undercut UK production?

A focus on outcomes and advice

19. All four nations are considering environmental payments which focus not on process – requiring a number of actions and prescriptions, changes in farming practices – but outcomes, a ‘payment by results’ approach which has been trialled across the EU since the mid 2010s (including in England).[5]
20. The IEEP’s latest report states that ‘All four countries highlight the importance of advice, with Wales proposing to strengthen the current advice offered to land managers and committed to consulting further on this. In England there is an ongoing debate about whether or not advice should be publicly funded.’(Hart & Baldock, 2019, p. 4)

Funding agriculture – The Bew Review on Intra-UK allocations

21. Lord Bew was tasked by the May Government to propose a fair way to allocate UK funding for agriculture between the four administrations. The September 2019 Bew Review supports a continuation of ‘internal’ convergence – an EU process to reduce variation in payment per hectares across the block – in order to address disagreement between the four nations as to how EU methods of convergence had been applied in 2013.
22. The Bew review makes two short-term recommendation. First, ‘that the convergence element of the 2020-22 farm support budget be allocated according to the proportion of land in each part of the UK that in 2013 received less CAP funding per hectare than the EU average.’ As this would see England and Northern Ireland lose out, the review makes a second recommendation ‘we are calling on the UK government to offset the budgetary reductions that would otherwise be felt by those in England and

[5] https://ec.europa.eu/environment/nature/rbaps/index_en.htm

Northern Ireland, so that we can fulfil our objective of recommending a fair allocation (recognising Scottish concerns over the original 2013 decision) whilst not disadvantaging any other part of the UK.' The Bew review does not make long term recommendations beyond (a) 'governments in all parts of the UK to recognise this value by protecting, if not enhancing, funding for agriculture in future) and (b) suggesting that 'the UK government agrees with the devolved administrations principles for the allocation of that funding after 2022' (Lord Bew, 2019, pp. 7–9)

23. UK Government response to the Bew review[6] was threefold – first, it accepted the recommendations for the short term, going even further and paying Scottish farmers for missed funding over the previous period. Second, it made a pledge that 'the government will work with the devolved administrations to develop an approach to future funding allocations' and that this would be take place in parallel to 'close collaboration to continue with the Welsh Government, Northern Ireland administration and the Scottish Government on future working and coordination on agriculture.' Third, the new Johnson government has reiterated the promise of its predecessor – that the current annual budget for farmers in the UK would be guaranteed for every year of this Parliament (i.e. until the end of 2024).[7]
24. Hence, funding for farming is guaranteed until the end of this Parliament but **agriculture funding after this Parliament is likely to become once more** a 'Treasury target'[8], rekindling the UK Treasury's long term vision for a sharp fall in agricultural subsidies. [9]

Debates in Northern Ireland

25. Stakeholder groups meeting at the invitation of the Department for Environment, Agriculture and Rural Affairs have met over the last three years to discuss NI positions on UK-wide directions of travel on future environmental and agricultural policies (amongst others). The work of these stakeholder groups led to a NI Future Agriculture Policy Framework being published for a stakeholder engagement exercise[10] between August and October 2018, with DAERA publishing a summary of responses in June 2019 (1277 responses, including 1190 via a template).[11] The proposals for NI echo UK-wide trends towards more attention to advice and a switch to outcomes-based environmental payments, but stands out in its attachment to continuing some forms of income support and no mentions of forest/agroforestry.
26. In addition to these DAERA led proposals, another exercise in mapping future policy for Northern Ireland has been led by the RSA Food, Farming and Countryside Commission, launched in September 2019.[12] The RSA report stands out from other contributions to these debates as it:
    a. Frames future policy as a need to respond to international obligations on climate, biodiversity, SDGs and water quality; and
    b. Suggests three pillars for future policy: healthy food; a fourth agricultural revolution driven by public values; and a countryside that works for all and rural communities are a powerhouse for a fair and green economy.

Agriculture and climate change ahead of COP26

27. 2020 will be a key year for UK climate action as the UK prepares for hosting the next Conferences of Parties of the UN Framework Convention on Climate Change in November in Glasgow. In Northern Ireland, promises to deliver a Climate Change Act were prominent in the New Decade, New Approach

[6] https://www.gov.uk/government/publications/domestic-farm-support-funding-bew-review-government-response/uk-government-response-to-the-independent-intra-uk-allocations-review-bew-review
[7] https://www.gov.uk/government/news/agriculture-bill-to-boost-environment-and-food-production
[8] https://ukandeu.ac.uk/wp-content/uploads/2020/02/Brexit-what-next-report.pdf
[9] https://publications.parliament.uk/pa/cm200607/cmselect/cmenvfru/546/546i.pdf
[10] https://www.daera-ni.gov.uk/consultations/northern-ireland-future-agricultural-policy-framework
[11] https://www.daera-ni.gov.uk/publications/stakeholder-responses-northern-ireland-future-agricultural-policy-framework-stakeholder-engagement
[12] https://www.thersa.org/discover/publications-and-articles/reports/lay-of-the-land

agreement. The growing importance given to climate change raises challenges for the agricultural sector. These are highlighted in the most recent report from the UK's Committee on Climate Change arguing for major shift in UK land use[13]

a. Need for afforestation – which raises twin questions of how to support afforesting while continuing farming the land (developing agroforestry) and changing use of areas of land from farming into forests.
b. Restoring peatlands
c. Encourage low-carbon farming practices and bioenergy crops
d. 'Reduce food waste and consumption of the most carbon-intensive foods – reduce the 13.6 million tonnes of food waste produced annually by 20% and the consumption of beef, lamb and dairy by at least 20% per person, well within current healthy eating guidelines.'[14]

28. This report now sets out criteria to judge future UK and NI agricultural policy's ambition on climate change mitigation.

The 2020 Agriculture Bill

Overview

29. The Bill builds upon the 2018 Agriculture Bill. Overall, it sees a shift in policy from CAP (and especially direct payments) to a focus on public money for public goods (primarily environmental and linked within the surrounding debates to outcomes rather than process) and productivity. Whilst predominately focussing on England, some provisions apply to the UK as a whole (e.g. regarding classification of subsidies for the purposes of the WTO and application of caps), some provisions apply specifically to the devolved administrations (e.g. Schedules 5 and 6 on Northern Ireland and Wales) and the Bill as a whole will have indirect effects on Northern Ireland (e.g. as it will impact on the internal market, internal competition and potentially grants to the devolved administrations). Scotland has consistently refused to engage with the Bills (both 2018 and 2020).
30. The new Bill also responds in part to conversations with stakeholders and the devolved administrations, with some considerable improvements in quality and vis-à-vis the devolved administrations. However major concerns remain related to domestic UK policy and international trade.

Key provisions

31. The Bill addresses core aspects of (i) Financial assistance; (ii) Food security and market intervention; (iii) transparency and fairness in the agri-food supply chain; (iv) matters relating to farming and the countryside; (v) marketing standards, organic products and carcass classification; (vi) Agreement on Agriculture and subsidies; (vii) Wales and Northern Ireland; and (viii) general and final provisions. Of these, the following are aspects we would light to highlight in particular (again, please note that the provisions primarily relate to England):
32. As with the 2018 Bill, the Bill signals **the end of guaranteed income support** for farmers in England, currently achieved through direct payments. While overall funding for agricultural policy is guaranteed until the end of this Parliament, it will be spent via other instruments. Part 1, Chapter 2 outlines the end of the 'basic payment scheme' for farmers. There is to be a seven-year transitional period from 2021 (subject to extension by the Secretary of State), beyond which no payments under the scheme may be made. During the transitional period (2021-2028 initially), the scheme may be amended and the payments gradually phased out. [There does however remain the possibility for the Secretary of State to make payments where there are 'exceptional market conditions' under Part 2, Chapter 2.]

[13] https://www.theccc.org.uk/2020/01/23/major-shift-in-uk-land-use-needed-to-deliver-net-zero-emissions/
[14] Ibid.

33. This includes **signalling the end of the rural development programme** in England (and Wales via Schedule 5). The programme concludes in 2020, although those who have agreements extending beyond 2020 will continue to receive funding for the full duration of their agreements – confirmed in the memorandum concerning delegated powers (para 92).[15]
34. Similarly, as with the 2018 Bill, the Bill **introduces potential funding of 'public money for public goods'.** These are crucially focussed on environmental goods, with a series of 10 goods listed in Chapter 1, section 1(1), as well as regarding productivity of agricultural, horticultural or forestry activity, and related ancillary activities under section 1(2). It is further to be linked to encouraging food production and in 'an environmentally sustainable way'. [It is worth noting that food security is also the subject of Part 2, Chapter 1, which introduces reporting requirements for the Secretary of State and applies across the UK. However, there is no clear focus within the 'public goods' on objects such as the production of high-quality food, healthy food or promoting human nutrition – something that could be targeted and would be highly desirable. This is also highlighted by the existing GB red meat levy, which is referred to in Part 4 (Section 33)] The financial assistance includes grants, loans and guarantees. Despite debates focussing on achieving outcomes, the **Bill is not expressly restricted to outcomes** and could encompass funding procedures, steps, milestones etc.
35. It is worth noting that Section 2 provides for the Secretary of State to impose conditions that they consider appropriate (not specified as to the type). Section 3 provides for the Secretary of State to create regulations addressing **'checking, enforcing and monitoring'**. This includes ensuring compliance with conditions imposed via Section 2, as well as the potential to impose monetary penalties – including 'with reference to the amount of financial assistance'. The difficulty here is that we do not have any clarity regarding how the Secretary of State will implement these sections, including what will be in the conditions, to what extent cross-compliance might be envisaged and how the penalties might manifest.
36. In determining how the funding is to be assigned, Chapter 1, section 4 outlines that the Secretary of State is to create a '**multi-annual financial assistance plan'** lasting a minimum of 5 years and with the first plan lasting 7 years (2021-2028). This is to provide some crucial certainty to those who seek financial assistance, approximating the duration of CAP schemes. It will outline the UK Government's strategic priorities for funding for the duration of the plan and outline relevant financial assistance schemes.
37. Moving to Part 3, Chapter 1 provides for requiring **extensive information across the supply chain**, although interestingly not including the final consumer or ideas of consumer information or protection. Although the rest of Part 3 applies to the UK as a whole, Chapter 1 only applies to England and Wales. At this stage, there is no certainty regarding the information that might be required of individuals, but the Secretary of State must publish 'draft requirements'. Uncertainty regarding the requirements creates significant challenges for actors. Further, even though this is targeted at activities in England, this has a clear impact on actors beyond England where they seek to export to England. Part 3 also addresses issues of fairness in the supply chain (see below) and producer organisations.
38. Part 4 contains a haphazard collection of clauses that are of considerable significance. Section 33 as noted above addresses a red meat levy for GB, whilst Section 31 addresses fertilisers (providing for further controls in future) and Section 32 addresses the identification and traceability of animals (essential regarding smuggling, animal health, human health and fraud, with UK system(s) needed post-Brexit).
39. However, Section 34 bears particular mention as it addresses the **issue of agricultural tenancies in England and Wales** via Schedule 3. Many environmental and other land-use projects/schemes related to farming are long-term, taking several seasons, years or decades to come to fruition. However, much of farming is undertaken by tenants or individuals with similar relatively short-term interests in the land they farm. Consequently, the Bill **provides for amending legislation to facilitate changes to legal agreements** between landowners and their tenant farmers in order to further the objectives of the Bill

[15] https://publications.parliament.uk/pa/bills/cbill/58-01/0007/hcb007_Agriculture_DPM_200115.pdf.

and corresponding schemes, including arbitrators making mandatory orders where this would be reasonable and just. This could be something that Northern Ireland could draw on in relation to **conacre** when developing their own approaches to agriculture.

40. Sections 35 and 36 within Part 5 provide for the Secretary of State to **regulate marketing standards and organic classification criteria. Section 35 provides that the marketing standards are to apply to those products marketed in England.** This enables considerable regulatory divergence across the UK, whether England increases or decreases standards or simply amends the approach. As with information requirements, this will have knock-on effects on producers in the devolved administrations seeking to export to England. **In contrast, section 36 provides for organic classification to apply to the UK as a whole (with potential flexibility for devolved administrations under section 37).**
41. Part 6 is a crucial component and **aims to ensure UK-wide compliance with the WTO Agreement on Agriculture.** Section 41 provides for the UK to impose **limits on subsidies** that fall within the Amber Box (the most trade-distorting form of subsidies, e.g. payments linked to agricultural production). This includes a UK-wide limitation and also individual limits for the devolved territories, thereby facilitating compliance by the UK as a whole. Section 42 also provides for creating regulations to address the **classification of domestic support** across the UK, which is necessary in order to see whether the limit on Amber Box support is being complied with.
42. Part 7 operates in conjunction with Schedules 5 and 6, alongside the Bill as a whole to an extent, to outline **the extent and nature of the application of the Bill to Wales and Northern Ireland**. Whereas Section 44 provides for the main provisions applicable to Wales solely to expire in 2024 (not affecting regulations/schemes etc created in the meantime), the same is not done for Northern Ireland or to provisions applicable to the UK as a whole. Consequently, there is no sunset clause for Northern Ireland – reflecting the lack of an operational Northern Assembly during the creation of this Bill.
43. **Schedules 5 (Wales) and 6 (Northern Ireland) mirror much** of what is undertaken for England in the main provisions of the Bill, including for instance providing for **the end of financing under CAP** (including the basic payment scheme) in Wales and Northern Ireland. However, in both cases, the Schedules leaving **the possibility to extend the basic payment schemes** (if legislated for in Wales by 2024).
44. **Two further key distinctions** exist vis-à-vis Wales and Northern Ireland: (i) as in the case of England, the Bill provides for Wales to amend the rural development fund provisions in order to bring them to an end (or simplify/improve with cessation as the end objective), but Northern Ireland is provided with powers to amend the provision of rural development payments without the requirement that this be with the intention of bringing them to an end. I.e. **rural development payments may be continued in Northern Ireland in principle**, even if this proves more challenging in practice (see below). (ii) **The Bill does not specify the type of new financial assistance/support schemes that might be introduced by Wales or Northern Ireland (or indeed Scotland)**. This does not prevent Wales or Northern Ireland from creating new schemes/policies, but means that they must create legislation at a later date to enable such schemes. The original Bill had proposed providing powers to Wales to create schemes based on a range of 'public goods', but the Welsh Government expressly decided that they did not want these included in the 2020 Agriculture Bill – instead extending direct payments for the time being and taking the time to develop and legislate for their own schemes in future.[16] One would expect the future Welsh approach to build on the considerable work undertaken in Wales to date and thereby linked to public goods but with greater flexibility than in England.

[16] https://gov.wales/written-statement-uk-agriculture-bill.

Criticisms of the Bill

Concerns about 2018 Bill addressed by new Bill

45. The 2018 Bill was welcome overall, but a number of concerns were addressed, from a range of stakeholders such as farmers and environmental organisations, as well as the devolved administrations. Some of these have since (to a certain extent) been addressed in the 2020 Bill:
46. **Gaps in the environmental public goods** considered. How many types of public goods should be considered worthy of support? Changes between the 2018 and 2020 Bill see the inclusion of payments for additional public goods such as the protection and improvement of soil quality and conserving native breeds of livestock as well as rare agricultural plants.[17]
47. The 2018 Agriculture Bill was accused of having **'no vision for food'**[18]. The 2020 Bill now has a duty for the DEFRA SoS to report at least every 5 years to Parliament about UK food security. This echoes concerns, notably expressed in the NI Future Agriculture Policy Framework about the need to consider food security at the UK level. But the 2020 Bill remains focused on a narrow understanding of food security – focussed on availability not quality of food.[19]
48. A major concern for farmers in particular was the **lack of long-term certainty** regarding the schemes and whether it was worth investing in the land/scheme in light of the length of time it might take for the investments to bear fruit and rewards to be reaped. The Bill addressed this in two key ways, as it provided for tenant farmers to gain greater security and it provided for multiannual plans. As the plans must be a minimum of 5 years long (with the first being 7 years long), this provides some security for farmers.
49. The UK had been lagging behind other European countries, most notably Spain,[20] in addressing concerns about the **unfairness of agri-food supply chains**. The 2020 Bill sees a strengthening of provisions on fair dealing – while the Groceries Code Adjudicator had improved fairness in relations between supermarkets and their direct providers, farmers who did not sell directly to supermarket were outside its remit. The 2018 Bill tried to improve this situation but focused oddly on first purchasers of agricultural products. The 2020 Bill now gives the DEFRA SoS 'power to make regulations to introduce obligations that promote fair contractual relationships between primary producers, producer organisations, associations of producer organisations, produce aggregators and the business purchasers of their products.'[21]
50. Concerns about **over-centralisation of WTO compliance** – we had expressed concerns to the Assembly for Wales and the Welsh government that the 2018 Bill gave the DEFRA SoS the ability to set UK-wide caps on Green, Blue and Amber box payments, whereas only Amber Box payments (the most trade-distorting) are capped under the WTO Agreement on Agriculture. While Section 42 of the 2020 Bill provides for all payments to be classified according to the three boxes and the Secretary of State may be the final arbiter in any disputes on this (Section 42(3)), only Amber payments are capped to ensure that the UK does not breach its international commitments.

Remaining concerns about 2020 Agriculture Bill

51. Despite providing for multiannual plans, the 2020 Bill **leaves considerable uncertainties unaddressed.** Thus, the Secretary of State still has to provide detail of the schemes clearly, but also we do not know for instance what information will be required of actors in the supply chain (arguably more challenging than having detailed, specific requirements under EU law). Furthermore, UK farming relies currently, as does farming in the rest of the EU, on migrant labour in farming and agri-food – this is particularly

[17] https://greeneruk.org/sites/default/files/download/2020-01/GreenerUK-Link_AgBill_2nd_reading_briefing_28Jan20.pdf
[18] https://greenallianceblog.org.uk/2018/09/18/the-new-agriculture-bill-has-no-vision-for-food/
[19] https://www.brexitenvironment.co.uk/2020/01/24/agriculture-bill-8-key-provisions/
[20] https://www.brexitenvironment.co.uk/2020/01/24/agriculture-bill-8-key-provisions/
[21] https://publications.parliament.uk/pa/bills/cbill/58-01/0007/en/20007en.pdf

critical for veterinarians and seasonal labour.[22] **Uncertainties around the rules for employing migrant labour remain** and make the UK a less attractive destination for mobile labour.

52. One very public concern relates to the **risk that future agri-food imports would not be held to the same high animal welfare and environmental standards, thereby undercutting local production**. The Agriculture Bill is one avenue for the Government to fulfil its 2019 Conservative manifesto commitment that 'In all of our trade negotiations, we will not compromise on our high environmental protection, animal welfare and food standards'[23] – but the government has not currently chosen to do so. Over 60 organisations bringing together farming unions and the environmental sector have signed an open letter calling on high UK standards to also be required of imported products.[24] This was also raised in Parliamentary debates by individuals such as the MP Caroline Lucas but the Secretary of State, Theresa Villiers, rejected the need to incorporate such a guarantee within the legislation – again referring to the promise in the manifesto.[25] However, the difficulty is that this remains merely a political promise rather than a legally binding commitment and there is no shared 'regulatory floor' across the UK guaranteed for the future (as noted above).
53. Despite addressing the main concerns regarding the Agreement on Agriculture, there remains **over-centralisation of powers.** Section 41(4) specifically provides for the Secretary of State to set a lower overall limit on Amber payments that is **lower than that required by the Agreement on Agriculture**. This still indicates an attempt for the UK to maintain some centralised control beyond that required by WTO law, presumably to help protect the internal UK market, facilitate external trade negotiations and generally further the UK's desire to reduce this type of financial support. Furthermore, there are still concerns over the respective powers of the DEFRA SoS and the devolved administrations regarding the classification of the different instruments into the relevant WTO boxes (section 42).
54. The Bill raises more general concerns about **changes to the UK-EU level playing field in farming.** For instance, 'differences in levels [and types] of financial support […] lead to an uneven playing field between UK and EU farmers whilst they will be in direct competition post-Brexit on international agricultural markets.'[26] Beyond income support, the level playing field will further be affected by changes to broader rural development, placing UK producers at a competitive disadvantage. The same will also be true regarding internal UK competition if funding varies across the devolved administrations. Furthermore, the level playing field within the UK or between the UK and the EU might be considerably affected if regulatory divergence arises – something not addressed at all as noted in (b) above regarding regulatory floors.
55. Finally, the Bill threatens both small farms and those are dependent on financial support for their survival, as well as the rural community more generally. The phasing out of income support in England will lead to the disappearance of a number of farms (approx. 25%)[27] and would have a more profound effect in both Wales and Northern Ireland due to the nature of farming there (approx. 30%).[28] Furthermore, '**the Bill appears to confirm the end of financial support for rural development as we know it** – an aspect of rural life and communities we consider essential and deserving of continued funding. The Bill does not allow England, Wales or Northern Ireland to introduce new schemes under

[22] ' 95% of veterinarians working in abattoirs come from overseas, mostly the EU, and of the 80,000 seasonal workforce in horticulture, 98% are migrants from the EU27.' Ibid.
[23] Conservative Party Manifesto https://assets-global.website-files.com/5da42e2cae7ebd3f8bde353c/5dda924905da587992a064ba_Conservative%202019%20Manifesto.pdf
[24] https://www.ufuni.org/news/ufu-and-rspb-call-to-pm-to-protect-uk-food-standards
[25] https://hansard.parliament.uk/commons/2020-02-03/debates/CD69351D-4AAC-4DAF-AF3F-911152D8C582/AgricultureBill#contribution-D072B8A3-C442-45D3-97C6-80DD34A5A7C9.
[26] https://www.brexitenvironment.co.uk/2020/01/24/agriculture-bill-8-key-provisions/
[27] https://www.fginsight.com/news/news/defra-makes-decision-to-let-quarter-of-uk-farms-disappear-57116
[28] See comments made by Dr. Ludivine Petetin at the Game and Wildlife Conservation Trust All-Party Parliamentary Group in March 2018 in relation to English farms, 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-brexit-2018-4).

retained EU legislation. With the disappearance of EU Structural Funds and the uncertainty around the Shared Prosperity Fund, there is an increased risk to continued economic viability and sustainable vitality in remote areas.'[29] Whilst in principle Northern Ireland can retain rural development funding (and Wales could re-introduce it in some fashion), firstly it would need to comply with the Agreement on Agriculture still and secondly the funding would no longer be ring-fenced but fall within the general block grant and thereby affected by England's decision not to continue with such funding (since it is directly related proportionately to English funding).

Implications for Northern Ireland

Nature of farming in Northern Ireland

56. A brief overview of farming in Northern Ireland is important to bear in mind in considering how the Bill will impact. Extensive detailed analysis is available from reports previously undertaken for the NI Assembly[30] or by DAERA.[31] The majority of farms in NI are deemed very small (1-2 farmers) (DAERA, 2018, p. 41; in less favoured areas (land is less amenable to arable farming or significant changes in use); is mostly cattle or sheep farming; and heavily reliant on the direct income from CAP schemes. Variations exist across the farming sector, with some areas generally being profitable. However, without direct financial support, approximately 30% of farms are likely to cease functioning, leading to unemployment, land abandonment and knock-on effects within the agri-food sector and rural communities in particular. Other elements such as the existence of conacre (a form of leasing land for approx. 11 months) provide for differentiation between Northern Ireland and farming elsewhere across the UK.[32]
57. Northern Ireland also is a net exporter, with GB and Ireland being the two key markets. The production lines are also heavily interlinked with Ireland, whether this be in processing of dairy, sales of live animals or the exporting of animal waste for treatment (Dobbs, McGowan, Melo Araujo, & Gravey, 2017; Gravey, Jack and McGowan, 2017). As with GB, there is also considerable reliance on migrant workers, including seasonal workers employed in harvesting crops. While GB is a major market for NI agri-food products, the food industries are well integrated on the island of Ireland, leading to supply chains crossing the Irish border a number of times (from raw milk to cheese, or lived animals to meat products). These particularities will need to be considered in particular if the UK is to ban the export of live animals.
58. Finally, although requiring considerable financial support, the NI agri-food industry is a major part of the economy. It is a major employer, whether directly or indirectly, e.g. c. 22,000 in the food and drink sector, and 78,000 in farming and support services (McFarlane et al., 2018, p.11; Gravey and Dobbs, 2018).

Key provisions

59. Schedule 6 is the main component of the Bill that is directly relevant to Northern Ireland. It provides for a similar approach to that outlined above regarding financial support, emergency intervention,

[29] https://www.brexitenvironment.co.uk/2020/01/24/agriculture-bill-8-key-provisions/
[30] E.g. Allen, M. (2016). Northern Ireland's agri-food sector – background and possible "Brexit" considerations. Belfast: Northern Ireland Assembly. Retrieved from http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2016-2021/2016/aera/6616.pdf.
[31] E.g. DAERA. (2018). *Statistical Review of Northern Ireland Agriculture 2017*. Belfast. Retrieved from https://www.daera-ni.gov.uk/sites/default/files/publications/daera/Stats Review 2017 final.pdf.
[32] https://www.daera-ni.gov.uk/sites/default/files/publications/daera/Stats%20Review%202017%20final.pdf, p.38.

collection and sharing of data etc. Key differences between the provisions for England and Northern Ireland include that the direct payments in Northern Ireland may in principle be extended longer; rural development funding may be extended; no outline of public goods or alternative objectives is included; and the amendments to agricultural tenancy legislation do not apply.

60. Furthermore, the general provisions within the core of the Bill, e.g. regarding classification of subsidies under the Agreement on Agriculture will impact directly on NI.

Developing a policy tailored to NI?

61. As with the other devolved administrations, there is a concern that the UK government is still **over-centralising aspects** regarding the Agreement on Agriculture. Further, as the money will no longer be ring-fenced via CAP (going effectively directly to the devolved administration for the specific purposes and thereby not affecting the block grant) but instead will be linked to what England spends due to the Barnett formula. Thereby, even though the Agriculture Bill is primarily about England, it will have profound impacts on the devolved administrations including Northern Ireland. Northern Ireland can spend more (provided within the Amber Box limits), but it will have to do so within its normal budgetary allowance and thereby taking stock of other objectives and commitments. Consequently, despite the Brexit slogan of taking back control, it appears that there will be **a further diminution of power within Northern Ireland** – unless Northern Ireland and the other devolved administrations could convince the UK for instance to take a needs-based approach or provided a minimum level of ring-fenced funding.
62. Linked to this, there are **pressures to follow the English approach**. Without an operational Assembly, NI has been restricted in engaging in the political debates. England has taken the lead for itself and effectively for UK as a whole (although Scotland has followed its own path here). NI also has had limited resources to invest in developing well-founded, independent policy (although DAERA has undertaken considerable valuable work on its Agricultural Strategy). The seemingly 'easy' route would be to mirror the English approach, as it could be copy-pasted and it would be likely to receive political support from Westminster (important regarding Amber box payments, if funding is shifted to be linked to needs and in case of concerns over the internal UK market).
63. However, adopting the **English approach without tailoring it appropriately to Northern Ireland would have significant negative impacts**. The English approach is already problematic, but it would impact even more harshly in Northern Ireland due to the limitations in productivity and processing capacity, the infrastructural needs, the level of the economy (especially in rural areas) and the limitations regarding waste management. Many Northern Ireland farms cannot survive without direct financial support, with the alternative being land abandonment and unemployment (with subsequent knock-on effects). Even with capital investments, substantial changes to avail of future support may not be feasible. Consequently, continued direct payments (at some level) and rural development funding, alongside other funding for public goods (widely interpreted) might be appropriate in NI. Further, the English public goods or schemes themselves might not be suitable for Northern Ireland.
64. **Focussing on individual/cooperative action by private actors in achieving environmental goods also risks clouding two key aspects**: (i) the state needs to act to assist farmers and urban and rural communities, e.g. through improving **general infrastructure and services** (internet, health, waste management etc); and (ii) **the state needs to ensure a high level of environmental, human health and food standards**. These aspects are of increased importance in Northern Ireland where the infrastructure, services and general support could be improved considerable and where there is simultaneously a history of poor environmental governance and a perception of high-quality food. The latter at least could be included via minimum regulatory standards within binding legislation for Northern Ireland, whilst the former might be more suitable for either a political commitment or an explanatory memorandum. The forthcoming NI Environmental Strategy could articulate such holistic vision.

65. An English approach also could lose out on **potential benefits** that could be accrued, e.g. building on the positive reputation for quality of food, green tourism on the island and the pockets of valuable biodiversity present across Northern Ireland[33] – including within the soil in uplands and the importance of invertebrates.
66. In designing its own schemes, Northern Ireland should also build upon the debates surrounding the 2020 Bill (as well as the draft NI Agricultural Strategy) – including the **potential for varied environmental and other 'public goods'** (widely understood). For instance, public nutrition, high-quality food, and soil quality can all be introduced. There is an opportunity to improve the supply chain and promote shorter supply chains, impacting simultaneously on quality, environment and self-sufficiency. Again, here there is need for capacity building regarding processing and also waste disposal, rather than simply focussing on individual actors and final support for them.
67. Similarly, the **importance of certainty should be recognised in any NI proposal.** Thus, the transition period must be sufficiently long and the future schemes/objectives must be designed well in advance and remain in place for appropriately long cycles. Linked to this, the 2020 Bill's amendment of tenancy legislation is a fundamental proposal that NI should consider very careful. As Greener UK note, the Bill includes '[n]ew powers relating to agricultural tenancies, including a provision to ensure that tenants can secure better access to public goods schemes"[34]. In particular, consideration should be given to **legislating to amend the conacre system**, equating to something akin to a short-term tenancy (approx. 11 months), which disincentivises farmers from investing in the land and thereby environmental or other schemes.

[33] E.g. https://www.cbd.int/doc/world/gb/gb-nbsap-v3-p3-en.pdf and research conducted by https://www.ecosystemlab.com/the-lab-group/amy-arnott
[34] https://greeneruk.org/sites/default/files/download/2020-01/GreenerUK-Link_AgBill_2nd_reading_briefing_28Jan20.pdf

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