

Cynulliad Cenedlaethol Cymru  
Y Pwyllgor Newid Hinsawdd,  
Amgylchedd a Materion Gwledig  
MCD mewn perthynas â Bil  
Amaethyddiaeth y DU  
NHAMG (5) AB09  
Ymateb gan  
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Ben Pontin, Dr Huw Pritchard - Cardiff  
University: Dr Mary Dobbs – Queen's  
University Belfast

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National Assembly for Wales  
Climate Change, Environment and Rural  
Affairs Committee  
LCM in relation to UK Agriculture Bill

CCERA(5) AB09  
Evidence from  
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This piece of written evidence will focus on the specific provisions in the Bill requiring an LCM as well as on wider issues that are not in the Bill but will impact Welsh farming.

## **I. Provisions requiring an LCM**

Many of the provisions requiring an LCM relate to the functioning of the UK internal market and the creation of a limited playing field. The Bill appears to want to ensure that consumers and businesses along the food supply chain in England can be assured regarding products' origins, organic certification or fair dealing and to ensure that products can cross borders within the UK freely and to ensure some consistency across the four nations.

### **1. Clause 17 on food security**

Food production and food security play a much bigger role in the 2020 Agriculture Bill than in the 2018 one. The Secretary of State (SoS) will be under the obligation to report to Parliament on UK food security at least every 5 years, thereby aiming to guarantee the availability of supplies for UK citizens and replicating one of the pillars of the CAP. The clause aims to ensure that British citizens have sufficient food to eat (from both domestic or foreign products) although indirectly placing pressure on the devolved administrations to keep maintaining food production and potentially increasing farming productivity.

Whilst improving the quality of food products could be supported under the Bill, it does not mention the production of healthy, nutritious food (despite the impact of poor diets and high levels of alcohol consumption on the NHS). Promoting

healthy and high-quality food production are two sides of the same coin.<sup>1</sup> The Bill does not prevent UK imports with lower environmental, food and animal welfare standards from future free trade deals.

## **2. Clause 27 on fair dealing obligations of business purchasers of agricultural products**

The provisions on fair dealing in the agri-food supply chain seek to strengthen the role of the primary producers in the agreement-food supply chain and to establish balanced, just contractual relations in a fair and transparent food supply chain. They aim to remedy to the unfairness in the chain by acknowledge the asymmetries in bargaining power between the parties to a contract and the lack of transparency in price formation across the entire food supply chain (rather than simply focusing on the first sale of the product – as the 2018 Bill included).<sup>2</sup>

Other countries, especially Spain, have addressed issues of unfairness in the food supply chain by combining legal commitments and voluntary guidelines to improve the position of primary producers (with a strong focus on local, seasonal and fresh products) and foster a race to the top.<sup>3</sup> The role of Groceries Code Adjudicator should be extended to include relevant powers of enforcement and compliance.

## **3. Clause 31 on fertilisers**

Fertiliser policy is devolved. This clause extends the scope of existing powers to control the import, export, sale or use of fertilisers and amend powers to assess, monitor and enforce the future regime. It gives specific powers to Wales to assess, monitor and enforce compliance with the regime. This clause confirms that the four nations have agreed to continue a common framework for UK fertilisers, while devolved administrations retain their devolved powers.

Powers under Clause 31 are to be read subject to the provisions of the Wales Act 2017, which reserves the regulation of ammonium nitrate, and makes competence over the import and export of fertilisers conditional on it being for the protection of human, animal or plant health.

## **4. Clause 32 on identification and traceability of animals**

The clause enables the data collection and sharing of the identification of animals across the UK. This could be beneficial to have a such a system to minimise risks of

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<sup>1</sup> <https://www.brexitenvironment.co.uk/2020/01/24/agriculture-bill-8-key-provisions/>.

<sup>2</sup> <https://publications.parliament.uk/pa/cm201719/cmselect/cmenvfru/1591/1591.pdf>.

<sup>3</sup> <https://www.soilassociation.org/green-brexit/>.

animal diseases and zoonoses to overall improve animal and human health. However, England appears to want to set its own Livestock Information Service (LIS) that would create a new digital and multi-species traceability service to identify animals, check their health and movement data.

Considering that farming is inherently cross border across the UK (for example in terms of trading animals and their resulting products and slaughter), different, independent systems across the four nations should be coordinated and interact with each other to ensure the effective identification and traceability of animals.

It would be possible for the National Assembly to establish a body in Wales to undertake this work. If the Welsh Government wanted to join the English service this would require ministerial consent from the Secretary of State.

## **5. Clauses 36-37 on organic products**

These clauses confer regulation making powers in relation to the certification of organic products, their import and exports. There appears to be a grey area between what is considered reserved and what is devolved. Imports and exports of organic products would appear to fall under the scope of the Secretary of State.

Clause 36 creates the scaffolding for a framework for organic products to be created UK-wide. This could be done via two pathways according to clause 36. First, by coordinating the different parts of the UK via a political agreement or an MOU allowing each nation of the UK. Second, there could be a UK-wide set of regulations. Clause 37(1)(a) is unusual and questionable giving the SoS the power to make regulations 'in any case' under clause 36 and appear to remove future consent requirements for Welsh Ministers. However, organic products are covered by the 21 areas that may need statutory common frameworks.

## **6. Clauses 43-44 and Schedule 5: Wales**

At the request of the Welsh Government, these provisions relate to Wales. These powers are intended to be time limited until an Agriculture (Wales) Bill can be brought forward and include a sunset clause for the end of 2024. They also allow Welsh Ministers, by regulations, to make transitional, transitory or saving provisions in connection with this section.

Schedule 5 (Wales) generally replicates the provision of the Bill relating to England: financial support (albeit allowing Wales to include a redistributive payment - which does not exist in England), intervention in agricultural markets, collection and sharing of data, marketing standards and carcass classification and data protection. Before 2024, Welsh Ministers can legislate (1) to simplify or improve the basic payment schemes beyond 2020; (2) to terminate greening payments; (3) to modify retained EU law relating to the financing, management and monitoring of the CAP; and (4) to repeal, simplify or improve retained EU law

relating to the rural development with a view to terminate rural development payments.

In contrast to the previous Bill, Welsh Ministers can use enabling powers until an Agriculture (Wales) Bill is introduced or the end of 2024. This change in the Bill will enable Wales to set its own distinct path to fund farmers post Brexit to either reflect the 'public money for public goods' adopted in England or to embrace a stronger Welsh approach to farming.

## **7. Clauses 40 to 42 on WTO provisions**

On multiple occasions, we indicated our concerns to this Committee about the previous Agriculture Bill's recentralisation of powers related to financial support for farmers and the design of support schemes across the UK. This resulted in a UK and Welsh Government Bilateral Agreement on WTO provisions under the previous Bill. We are pleased that some of these concerns – echoed by the Committee – were heard and the provisions which placed a ceiling on the financial support under Amber, Green and Blue Boxes (rather than the Amber Box only) have disappeared (clause 41). Wales will be able to set its own limits for financial support falling under the Green and Blue Boxes without limitations by central Government.

However, a limit will be set centrally for payments falling under the Amber Box and these payments (the most trade-distorting form of financial support because they are linked to agricultural production) could be lower than the amount allowed for the UK under the Aggregate Measure of Support. Further, the SoS will be able to set different limits on Amber Box support across the four nations. This raises concerns both about level playing fields and excessive centralisation.

Clause 42 relates to the classification of financial support by the SoS across the UK and gives powers to the SoS to set the rules for classification and for dispute resolution regarding classification. Whilst devolved authorities may be involved in the initial classification, the Clause provides for the possibility that the SoS will act as the final arbiter. Here the SoS may be the judge in its own court. This does not adequately reflect the UK and Welsh Government Bilateral Agreement on WTO provisions within the 2018 Agriculture Bill created in order to address Welsh concerns.<sup>4</sup>

Thus, whilst the provisions are an improvement on the 2018 Bill, (i) the Secretary of State (SoS) can still conclusively determine the classification of financial support across the UK; (ii) the Bill effectively gives powers to the SoS that belong to the devolved administrations; (iii) the devolved administrations should be able to

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<sup>4</sup> <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>.

input into the Amber Box caps and (iv) they should get a voice in the classification of any support. Powers under clauses 40 to 42 relating to the limits set on financial support and its classification create a recentralisation of powers.

## II. Wider considerations

There are also wider considerations to take into account that will impact on Wales but are not included in the Bill:

1. There is a **lack of vision for British agriculture**. Farming is much broader than the Agriculture Bill: what is the future of agricultural policy for the UK? agroecology? agroforestry? Firmer commitment to net-zero ambitions? Currently, the driver for reform appears to be mostly Brexit and how to fill the gaps created by the UK exit from the EU. A bigger picture is needed. Further, agreement on cross-border issues should be agreed upon by the four nations. So far, Scotland has consistently refused to engage with the bill.
2. **A closer engagement with other policies** is needed, especially with health policy, migration policy and trade policy. Joined up policies are essential to create a British agriculture fit for the 21<sup>st</sup> century (rather than siloed approaches). The beginning of process to develop a 'National Food Strategy' in England has started and follows the EAT-Lancet report. However, these initiatives ought to be linked food production and farming. Closer linking between food and agriculture is underway in the EU. The new President of the EU Commission Ursula von der Leyen will shortly launch a Farm to Fork Strategy as part of the European Green Deal that will aim to create greater links between food production and farming by 'stimulat[ing] sustainable food consumption and promote affordable healthy food for all'.
3. **Changes to the UK immigration system** create concerns within the agri-food system for two professions, in particular veterinarians and seasonal labourers.<sup>5</sup> Indeed, 95% of veterinarians working in abattoirs come from overseas, mostly the EU,<sup>6</sup> and of the 80,000 seasonal workforce in horticulture, 98% are migrants from the EU27.<sup>7</sup> Questions remain as to who

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<sup>5</sup> <https://ukandeu.ac.uk/cloud-nine-or-down-to-earth-the-implications-of-a-no-deal-brex-it-on-agriculture/>

<sup>6</sup> <https://www.bva.co.uk/media/3168/bva-response-to-mac-salary-threshold-and-points-based-system.pdf>.

<sup>7</sup> <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-energy-and-environment-subcommittee/brexit-agriculture/written/47086.html>

will pick the fruit and veg in British fields and work in our slaughterhouses after free movement of persons ends.

4. The level of financial support has only been **guaranteed until the end of this Parliament**, which creates a relative certainty to farmers. But beyond the end of 2024, uncertainties remain as to the amount of financial support farmers will receive. Consideration should also be given to how the financial support for the devolved administrations for agriculture will be calculated.
5. Issues around **enforcement and compliance** might emerge. Currently, if there is a breach of cross-compliance requirements then a penalty can be deducted at source from direct payments. Post exit, the polluter pays principle will apply (which is a positive shift) and farmers will no longer be supported for complying with regulatory requirements. They will be financially supported only for going beyond the regulatory baseline. Issues of enforcement due to this change in approach will have to be addressed. However, irrespective of the approach, enforcement and compliance with both regulatory requirements and conditions for payments linked to achieving targets/goals beyond regulatory baselines will be essential.
6. The Bill raises issues of **competition and changes in the level playing field** between:
  - The four nations of the UK: in terms of **different regulatory baselines and conditions for and levels of financial support** (possibility of keeping direct payments in Northern Ireland and Scotland but not in Wales and England) across the UK;
  - The UK and the EU: in terms of **different regulatory baselines and conditions for and levels of financial support** – especially if the EU keeps direct payments; and
  - The UK and the rest of the world: the Bill fails to **protect farmers (or consumers) from imports** with different, lower environmental, food and animal welfare standards than in the UK that may result from free trade deals.

UK farmers could be at a **competitive disadvantage** both internally and externally in terms of both domestic support and regulatory baseline.

7. At the heart of the Brexit was the governmental promise to depart from the CAP. Yet, it appears to lean more towards **doing more of the same** as to what existed under the CAP and Article 39 of the TFEU: increasing agricultural productivity, stabilise markets, ensure the availability of supplies. Yet, two key objectives of the CAP, income support to farmers and reasonable prices for consumers are not replicated, which could be detrimental to farmers and lead to the disappearance of a number of farms across the UK and increased food prices for consumers (unless there are cheap imports).
8. **The compatibility of future schemes with WTO Law and the Agreement on Agriculture is uncertain.** Proposed schemes in England could be opened to farmers, foresters and land managers according to paragraph 17 of the Explanatory Notes accompanying the Agriculture Bill. This could be contrary to the obligations set by the Agreement on Agriculture since direct payments can only be made to 'agricultural producers'.<sup>8</sup> In contrast, indirect payments for 'general services' can support agricultural and non-agricultural producers.

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<sup>8</sup> <https://www.brexitenvironment.co.uk/2020/01/24/agriculture-bill-8-key-provisions/>