

Cynulliad Cenedlaethol Cymru | National Assembly for Wales

Y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig | Climate Change, Environment and Rural Affairs Committee

Ymateb gan : Dr Ludivine Petetin – Prifysgol Caerdydd a Dr Mary Dobbs – Dr Ludivine Petetin – Cardiff University and Dr Mary Dobbs – Queen’s University Belfast

Response from : Dr Ludivine Petetin – Cardiff University and Dr Mary Dobbs – Queen’s University Belfast

Ludivine Petetin and Mary Dobbs are Lecturers in Law with expertise in agri-environmental issues and are currently writing a book on Brexit and Agriculture. Both have been and are currently engaging with stakeholders across the UK on the impact of Brexit.

This evidence largely derives from Petetin, Dobbs and Gravey’s submissions to EFRA’s Agriculture Bill and the Welsh Government’s Brexit and Our Land consultations earlier this year.

Summary

- The Agriculture Bill needs to be considered in its broader context, including WTO law, the controls over the financing, the potential review of Barnett and (lack of) progress in developing common frameworks.
- The Agriculture Bill goes beyond what is required by WTO law, with extra powers being re-centralised to the Secretary of State regarding classification of and caps on domestic support. This needs to be contested by Wales and the other devolved administrations.
- Beyond the Bill, following the loss of CAP, Westminster will control the purse strings. Wales may wish to support the review of the Barnett formula for its application to agriculture. Irrespective, Wales will need to justify carefully any funding.
- The general approach in both the Agriculture Bill and WG policy document is to reduce and then remove direct payments, with a gradual transition towards public money for goods – there are substantial similarities, but also significant differences.
- Small farms will be seriously threatened by the loss of direct payments. Without alternative support, it is likely that at least the bottom 30% of Welsh farms that struggle or only survive because of the receipt of BPS could disappear.
- The new Land Management Programme is a much welcome addition to Welsh farming policy. However, careful design and delivery will be needed to avoid double funding and to ensure compliance with WTO obligations under the Agreement on Agriculture.

- The WG proposes to introduce economic resilience payments to help support farmers to become economically viable/profitable – but this is viewed as a temporary system, facilitating investments or changes, rather than a continued payment. Consequently, this will not help the most endangered farmers to survive.
- It is essential to consider whether it is worthwhile (economically, socially, culturally, morally etc) to maintain farmers on the land even where they are not economically resilient/viable without continued support beyond the Public Goods scheme, e.g. if the alternative is they are starving, homeless or depressed.
- The policy move towards ‘public money for public goods’ should be truly embraced. Other valuable public goods could be included, e.g. enhancing habitats and wildlife, promoting rural communities, promoting food quality/public health and improving animal welfare. This needs to be pushed for in the Agriculture Bill if to facilitate such objectives in Wales.
- Establishing environmental standards and compliance regimes across the UK via the creation of common frameworks would encourage a race to the top, rather than a race to the bottom.
- A lack of a fair system for financial support could create huge disparities across the UK for both farmers and their produce. A common framework for financial support should operate to enable a level playing field across the UK. Such a framework must however recognise the variations in farming, land, geography, climate, culture, etc across the UK and be sufficiently flexible to operate in each jurisdiction.

The CCEFRA Committee is considering the English Agriculture Bill in light of the need for Welsh legislative consent, whether the Bill’s provisions are appropriate and proportionate, and whether the Bill facilitates delivering the Welsh Government’s policy objectives, as laid out in the recent consultation document on *Brexit and Our Land*. However, it is essential that the Bill be considered in light of what the WG’s objectives also *ought* to be and valid considerations that are not expressed in either document. Consequently, the following points highlight some of the main issues that need to be reflected upon, critiquing components within both the WG document and the Agriculture Bill.

1) A Recentralisation of Powers: Between WTO Obligations and Budgetary Controls

Any Welsh agricultural policy needs to be developed in full awareness of the context including the following two restrictions that need to be considered: legal controls, mostly imposed by WTO law; and the control over the financing.

a. WTO Obligations

From our Brexit and Our Land submission¹: *“There are the legal controls imposed on Wales. These are through international environmental and trade law, especially the WTO and its Agreement on Agriculture, and any potential Trade Agreements with external parties, which the UK as a whole must comply with. However, there are also further obligations imposed on the devolved administrations, by decisions taken effectively by England, such as those linked to the UK Customs Act and Trade Bill. Crucially here, Wales must also look to the English Agriculture Bill, which contains highly relevant provisions.*

*The Agriculture Bill is targeted mainly at England, but with considerable impacts for Wales, Scotland and Northern Ireland. In some respects, it proposes increasing powers in Wales’ hands via Schedule 3, e.g. regarding marketing standards or through enabling Wales to create new financing schemes for a range of legitimate objectives.”*²

From our submission to EFRA on the Agriculture Bill³: *“Part 7 of the Agriculture Bill 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.*

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.

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.

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.

¹ The full WG submission can be found here: Petetin, L., Dobbs, M., and Gravey, V., Written evidence submitted to the Welsh Government ‘Brexit and Our Land’ Consultation, [https://pure.qub.ac.uk/portal/en/publications/written-evidence-submitted-to-the-welsh-government-on-brexit-and-our-land-consultation\(cffc26d7-37bf-4023-be22-59de5e7a7635\).html](https://pure.qub.ac.uk/portal/en/publications/written-evidence-submitted-to-the-welsh-government-on-brexit-and-our-land-consultation(cffc26d7-37bf-4023-be22-59de5e7a7635).html).

² The sections in italics indicate that the text is borrowed from our two previous submissions.

³ The full EFRA submission can be found here: Dobbs, M., Petetin, L. and Gravey, V., Written evidence to the House of Commons EFRA Committee inquiry on Agriculture Bill, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/environment-food-and-rural-affairs-committee/scrutiny-of-the-agriculture-bill/written/91290.html>.

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.

Consequently, there is considerable scope to develop compliant domestic support measures.”

Overall, the Amber Box could be utilised by the UK as a pathway to shift away from area/land-based payments towards productivity/economic resilience and environmental outcome-based payments. If this was undertaken for a transition period only (rather than indeterminately), it would be more politically acceptable to WTO members who do not benefit from the AMS. Crucially, and in the long term, the Green Box provides the best opportunity to secure WTO compatibility for UK domestic support post-Brexit.

However, the Agriculture Bill unilaterally restricts the powers of the devolved administrations when formulating their agricultural policies. As noted in both our submissions but in particular in the EFRA document: *“Clause 26 gives sweeping powers to the [Secretary of State] SoS to create regulations that **recentralise the financial support for farmers and the design of support schemes across the UK.***

*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.*

*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.*

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.”

Consequently, as can be noticed in the Explanatory Notes to the Agriculture Bill, **the Government considers that it does not require a Legislative Consent Motion for Clause 26 since trade is a reserved power. However, the line between reserved and devolved powers becomes blurred when it comes to financial support to farmers. As highlighted in our EFRA submission, “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).”**

Overall, from the WG consultation: *“Wales needs to fight for 1) ‘control over the caps for Green and Blue box support at the very least’, 2) ‘input into the Amber box caps’, and 3) a voice in the classification of any support.”*

b. Control Over the Financing

From the WG consultation: *“On a very practical note, and as recognised in the consultation document, Westminster controls the purse strings. Currently funding is provided under CAP and directed to the individual farms within the devolved administrations. The money may come from Westminster directly and indirectly, but it is ring-fenced for agriculture and for rural development. However, Brexit will lead to CAP not applying and instead there will be reliance on Westminster for funding. Funding promised to farmers has been guaranteed until 2022, but the question is what happens after that? Will there be further ring-fenced money? To the same extent? Will Westminster attach conditions? Or will it be part of the block grant and then be competing against health, education, social welfare etc for its share of the pool?”*

The default would seem to be the block grant under the Barnett formula. This would not be advantageous for Wales, as it would most likely lead to a decrease (a drop of around 50% of funds has been suggested) in the money being granted to Wales. Further that money would not be ring-fenced – it could be used for other objectives, which might be desirable and indeed necessary. However, if desired to be used for agriculture and land management this might lead to extra challenges, as any allocation of funding will now need to be justified within Wales to the population and therefore constituents (para 4.30). This might, however, be the extra incentive needed to introduce and implement the public goods approach, as this helps demonstrate the value of farming/land management to the population.

However, Secretary of State Gove announced recently that he is seeking to review how funding will be assigned regarding agriculture, with representatives of all devolved administrations to be involved in the review.⁴ If implemented, it is likely that this would lead to further ring-fencing, with the payment being parallel to the block grant. Further, there are hints of an alternative approach that looks to the needs and objectives of the different devolved administrations – reflecting the suggestions in para 4.29. This indicates that a more tailored division of money may be made, where the devolved administrations can make claims for X amount of money on the basis that it is needed to fund new schemes in light of the relevant objectives, nature of the farms, environmental conditions etc. Funding will not be limitless though and will most certainly decrease over time, so the question is whether the devolved administrations will be able to establish and justify their relative needs effectively. This will be in part related to the efficiency of the schemes, but also the very acceptability of the schemes in the eyes of Westminster.

Thus, whether under the legal restrictions or the practical restrictions, the impact is potentially much the same: Wales need to create a policy that has acceptable objectives (in the eyes of Westminster/its population) and demonstrate that it will be good value for money, in order to obtain the funding/support in applying the funding to land management and in order to obtain SoS approval for such schemes in the context of the AoA and WTO law.”

Consequently, in light of the loss of CAP, the Agriculture Bill, the AoA and whether the Barnett formula applies or not, Wales needs to plan carefully the underlying objectives and justify these in both Wales and Westminster.

⁴ <https://www.gov.uk/government/news/fair-funding-for-farmers-across-all-parts-of-the-uk>.

2) The Consequences of the Removal of Direct Payments

Under both the Agriculture Bill and *Brexit and Our Land*, the direct payments under CAP Pillar 1 are to be reduced and gradually removed. The payments are guaranteed by the UK government until 2022, but at that point other financial support systems will be need.

From the WG submission: *“The removal of direct payments in Wales (and England) constitutes a tremendous change in agricultural policy – direct payments have been a tenet of the EU Common Agricultural Policy (CAP) since the mid-1990s. The agricultural transition period (up to 2027) is crucial for farmers to adapt to the Welsh agricultural policy post Brexit after the end of CAP payments and become more productive and resilient. The top 20% of farmers will hardly feel the change in policy since they are already productive and resilient, whilst the 50% of farmers in the middle are likely to succeed in moving away from direct payments to environmental payments as they become more business minded and profitable.*

*However, struggling farms will find the change in the support system particularly difficult. Many Welsh farms are currently profitable solely because of CAP direct payments. They also have limited ability to adapt and become more profitable due their limited finances available for investment, as well as the size and nature of the farms. **It is likely that at least the bottom 30% of Welsh farms that struggle or only survive because of the receipt of BPS could disappear.**⁵ Consequently, proper support (financial and beyond) will be needed if farmers are to be kept on the land. Although re-wilding can be valuable, generally speaking land abandonment is not desirable, small farms and traditional farming in particular can contribute to biodiversity, and pushing farmers out of farming may have wide-sweeping negative social and economic impacts (Petetin and Dobbs 2018b).”*

Overall, the shift towards reliance on an annual budget and potentially volatile policies also undermines certainty for farmers, where they are currently used to multi-year cycles. The loss of a huge number of farms following such radical changes could be highly consequential to the Welsh farming countryside, rural areas and Wales.

3) The Welsh Land Management Programme – Towards a Holistic and Integrated Approach

From the WG submission: *“The programme aims to adopt a holistic and integrated approach that acknowledges the broad and multi-faceted contribution of land managers to Wales with the goal of building a more circular economy that would increase the efficient use of natural resources and reduce the amount of waste produced by improving the utilisation of by-products*

⁵ See comments made by 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>).

in line with the holistic/joined-up approach adopted under the Well-being of Future Generations (Wales) Act 2015 (FGA 2015) and the Environment (Wales) Act 2016.”

Generally speaking, the principles encompassed within the Welsh consultation document are very positive and to be welcomed, e.g. “**Generation renewal** is central to ensuring the perennity of Welsh farming since the average age of farmers across Wales is 61.2 years old.⁶’ However, these are not always reflected in the remainder of the consultation document, e.g. regarding food production and also ‘[d]espite principle 5, another aspect of the Welsh Agricultural Consultation document that adopts a one-size-fits-all approach is the **absence of focus on small, family and hill farms.**’ The principles go beyond the Agriculture Bill’s content, but are not prevented as such by the Bill – the potential conflicts arise more in the context of the specific scope of provisions or how they are implemented.

From the WG submission: “*The two components of the Land Management Programme that are the Economic Resilience scheme and the Public Goods scheme parallel the two main strands of funding present in the Agriculture Bill under Clauses 1.1. and 1.2. This is most likely undertaken with the aim of maintaining similarities with the English framework to ensure the receipt of financial support post Brexit and ensure trade compatibility across the UK. However, the Welsh programme is more ambitious and follows the line of more ambitious, holistic and integrated Welsh policies and pieces of legislation including the FGA and Environment (Wales) Act.*”

Again, from the WG submission: “*On multiple occasions in the Welsh Agricultural Consultation document, the thin line between what is covered in the Economic Resilience scheme and the Public Goods scheme becomes quite blurred. On pages 29, 30 and 33, it is mentioned that the delivery of public goods under the Economic Resilience scheme could be rewarded. In particular, on page 33 it is clearly stated that one option for diversification includes the production of public goods. If public goods are indeed going to be rewarded in the Economic Resilience scheme, it would benefit farmers that will participate in both schemes and put at a disadvantage farmers who can only contribute to one scheme. and would result in double funding. Further, para 5.16 suggests that businesses should ‘be able to demonstrate potential for improvements in their social and environmental resilience as a consequence of improved economic resilience’. How would this be achieved? What would be measured? Who would be excluded?*”

Overall, as indicated in our WG submission: “It is unclear how WG intends to differentiate between the actual two schemes and how support will be split between the two schemes. Double funding should be avoided and clarity is required.” If the WG does not address this issue, this creates difficulties in classifying the support under the appropriate AoA box. It may also lead to difficulties in justifying funding from Westminster. Further, supporting small-scale farming should become a clear focus of the future Welsh policy – with appropriate caveats regarding meeting minimum health and environmental standards.

⁶ Welsh Agricultural Statistics 2016. See <https://gov.wales/statistics-and-research/welsh-agricultural-statistics/?lang=en>.

4) Economic Resilience

Promoting economic resilience for land users is an essential component of the WG proposal. In light of the focus on *economic* resilience and productivity, and as highlighted in our WG submission, there is a concern *“that the Welsh Agricultural Consultation document reflects DEFRA’s sustainable intensification policy (as with NI DAERA’s framework proposal), without considering the characteristics of the Welsh countryside [for more on our submission to the DAERA proposal, see Dobbs et al 2018a].”* Diversification might appear to reflect a sustainable, environmental theme, but it is about economic diversification and might actually lead to land abandonment or less beneficial activities. However, *“Para 7.9 highlights an important criterion for economic resilience support – it cannot be ‘at the expense of broader outcomes, particularly relating to animal health and the environment’. This therefore should provide a counterweight to for instance increased productivity, market access and diversification.”*

Crucially, Schedule 3, Part 1, clause 1, subsection 2 of the Agriculture Bill appears to provide insufficient scope to facilitate the entire breadth of the Economic Resilience scheme as outlined by the WG: either the provision should be widened or a careful delivery of the Economic Resilience scheme should be put in place to ensure its compatibility with the provision and also to avoid potential double-funding.

Further, as noted in our WG submission: *“The 5 areas of support noted in the Welsh Agricultural Consultation document are all valuable to developing economic resilience.”* However, the 5 areas also highlight the lack of clear delineation between the Economic Resilience scheme and the Public Goods Scheme, for example in Area 2 regarding productivity broadly understood or Area 5 regarding knowledge and innovation.

The impacts of trading agricultural products at three interlinked levels, i.e. within the UK, with the EU and beyond, will permanently change post Brexit. These consequences must be carefully planned in order to ensure the perennity of Welsh farming. As indicated in our WG submission, *“Area 1’s focus on markets will clearly be challenging and depend significantly on the future relationship with the EU, as well as potential trade deals internationally. Important for Wales will also be whether the UK agrees to reduce standards for imports or enable a flood of cheap, poor quality imported produce – impacting on competition within the internal UK market. Similarly, a common UK framework on standards for agricultural production and the environment would help ensure competitive fairness, whilst avoiding a race to the bottom. A further consideration for Wales would be through developing the linkages between producers and the local communities/population, which could bolster the internal market. Cooperatives noted in para 5.25 could also help ensure a fair price for farmers. Regarding supporting improved products, depending on the nature of the quality of the product, this could alternatively be achieved by the public goods scheme.”*

The WG consultation also indicates limits to the Economic Resilience scheme: *“[B]y stating that not all farms will be ‘economically resilient’ (para 5.18), WG appears to already have decided that those that cannot be effective and productive will have to either produce*

environmental outcomes or more radically will disappear. This would be a dramatic change in the Welsh countryside and such consequences should be assessed. Further, who will make the decision that farmers are no longer ‘economically resilient’? Will it be WG or will it be the market conditions?’

The WG consultation states that it will provide ‘support for other businesses critical to the wider supply chain’, but for us “*it is unclear how wide the scheme would apply, e.g. could supermarkets or restaurants benefit from such funds? What form would such payments take?*

The support for the extended supply chain links to an important element that appears to have been largely neglected: what of guarantees of resources? Provision of feed is extremely important for farmers, highlighted by the negative impact of the hot summer on the availability of silage⁷ and previously by snow. This is about availability in Wales, access to farms, cost, regularity of supply etc. Supporting local, independent supplies of resources for farms would be an important step to ensuring economic resilience, whilst also promoting those suppliers and thereby circulating further funds within the community.

Short supply chains should be promoted, e.g. with farmers directly selling to the public/farmers offering to the public to pick fruits and vegetables themselves/some processing on the farm itself.”

Again, from the WG submission: “[I]t is also important to consider whether it is worthwhile for Wales and society as a whole to continue to fund land managers to stay on the land even if not economically viable as a business. Even if not producing a public good (or insufficiently as to fund the continued land management), would paying land managers be worthwhile if the alternative were to pay them social welfare? If the alternative were to make the land managers homeless? It is important to bear in mind that these individuals may not have any pensions, savings or alternative sources of income, especially considering the age of many farmers in Wales. This is an economic question, but also a social and moral one.”

Overall, it is important to consider the economic resilience of Welsh farms in a changed trading environment post Brexit. It is, however, crucial to consider the resilience of Welsh farming beyond its economic aspects and explore the importance of farms for rural areas and the possibility of maintaining farmers on the land simply for the sake of keeping social links and ties within the rural communities. The WG will also need to consider whether to adapt the scope of the scheme or push Westminster to adapt the Agriculture Bill to facilitate greater flexibility.

5) Towards Public Money for Public Goods?

As outlined in our EFRA submission: “*In Part 1, Clause 1, subsection 1 of the AgBill and in Schedule 3, [Part 1, clause 1, subsection 1] for Wales we find seven headings relating to*

⁷ <https://businesswales.gov.wales/farmingconnect/posts/feeding-livestock-effectively-winter-following-recent-drought-conditions-and-forage-shortages>; and <https://businesswales.gov.wales/farmingconnect/posts/welsh-farmers-urged-plan-now-prevent-winter-feed-deficits>. For comparison, Ireland: <https://www.teagasc.ie/news--events/news/2018/drought-impact-farm-incom.php>; and <https://www.msn.com/en-ie/finance/news/why-the-quality-of-first-cut-silage-crop-could-pose-big-issues-this-winter/ar-BBOOUm8>.

environmental protection – predominately enabling payments for ecosystem services. In conjunction with the subsequent Clauses, the AgBill has developed the necessary flexibility to encompass both existing and new schemes, maintaining and improving environmental standards. 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.”

In *Brexit and Our Land*, para 6.15 indicates that public goods “stretch beyond purely environmental to include also heritage and recreation, which can be an important role for the land” but there is much greater scope to include a far wider range of valuable objectives as outlined in our WG submission, including:

- *Promoting rural communities* [despite the impact of the loss of Pillar 2 of CAP, reference within *Brexit and Our Land* and being expressly provided for by the Agriculture Bill, Schedule 3, Clause 1, it was not included as a public good];
- *Ensuring generational renewal/avoiding land abandonment;*
- *Maintaining public health, food security and food quality;*
- *Improving sustainable, greener practices and resource conservation;*
- *Promoting environmental and landscape resilience;*
- *Encouraging diversification of crops/animals; and*
- *Increasing animal welfare.*

It is worth highlighting a significant difference in the Agriculture Bill. As outlined in our EFRA submission, Schedule 3, Part 1, clause 1, subsection 2 states that Wales can provide financial assistance to businesses or communities in rural areas under new schemes, whilst such provision is not included for England. This is a much welcome addition for Welsh farming/rural development but the WG fails to seize the opportunity and carry it through in *Brexit and Our Land*.

However, potential problems of competition between English and Welsh products could arise if Welsh products would be advantaged by support unavailable to English producers – see below for further.

Again, from the WG submission: “*Financially supporting farmers for outcomes above regulatory compliance (Parameter 5, Public Goods scheme) is also a welcome improvement and reflects the application of the polluter pays principle. However, to prevent a race to the bottom the current obligations set under cross-compliance should be maintained and improved to ensure the existence of a regulatory floor.*”

Implementation will be crucial to ensuring the scheme’s effectiveness, including collaboration and co-design whilst avoiding regulatory capture; ensuring that goods are valued appropriately (Petetin and Dobbs 2018a); focusing on outcomes, but also “*it may be appropriate to provide staggered financial (and other) support for procedural steps, agreed milestone and specific tasks completed.*”

Overall, and in light of the above critique of *Brexit and Our Land*, it is important that the Agriculture Bill similarly be expanded to facilitate the support of public goods beyond those cited. It is the opportunity for both documents to embrace forward-looking, ‘outside the box’ policies that reflect current and future needs.

6) Reducing Red Tape?

A key objective of both the Agriculture Bill and *Brexit and Our Land* is cutting red tape for land users/farmers, i.e. simplifying matters for farmers. In the Agriculture Bill, there is a move away from greening criteria, cross-compliance and inspections. Whilst there have been some considerable flaws in their implementation, these tools nonetheless can play a very important tool in maintaining standards and should not be discarded lightly.

From our EFRA submission: *“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.”* *Brexit and Our Land* does not expressly address this, but does indicate that base standards are important and indicates that compliance will play some role.

Further, from our EFRA submission: *“Schedule 3 Part 3 of the Agriculture Bill provides quite broad-ranging obligations for the collection and sharing of data. These additional requirements on farmers will not ease their day-to-day work and create a different kind of red tape – again more crippling for small farms.”* Also, depending on the development and implementation of *Brexit and Our Land* and how the individual farm schemes are created, extra burdens may be imposed upon farmers – collaboration and co-design are essential to making the schemes manageable.

Overall, some form of cross-compliance and minimal standards are important to ensure environmental protection as noted below. Similarly, **having independent, effective monitoring and enforcement mechanisms – whether regarding external standards or the schemes – is essential for an effective programme. Replacing one kind of red tape by another (data collection and sharing) does not improve the daily work life of farmers.**

7) Environmental and Health Protection & Common frameworks

The value of environmental and health protection is reflected throughout the WG document and to a lesser extent the Agriculture Bill, but the public goods are limited in scope and role – beyond trying to improve the standards and outputs, it is also essential that there is no reduction in the existing standards. This is noted in the idea above that nothing promoting economic resilience should undermine other objectives. However, there is no regulatory floor in either the Agriculture Bill or *Brexit and Our Land*.

This requires consideration of the broader surrounding regimes. As noted in our WG submission, *“[c]urrently, there is extensive legislation on environmental protection, as well as*

human health and consumer protection – including swathes of standards, procedures and information requirements. Large quantities of these derive from EU law, although with significant elements developed by Wales. These must be complied with independently (or potentially lead to committing an offence) and also in order to gain some of the benefits under CAP. The concern is that standards may be dropped post Brexit, despite the declared intention to have a Green Brexit. Even if Wales maintains or increases its standards, what if England does not? What if the approach just over the border is not as environmentally friendly and environmental damage occurs in Wales? Or what if Welsh farmers feel the competitive pressure to drop their standards to challenge non-Welsh farmers or to gain a competitive advantage? The effects on cross-border issues and farms should also be considered. The schemes outlined in the Welsh Agricultural Consultation document and suitable green/healthy/local marketing campaigns may assist, but they need to be underpinned by suitable legislation setting a minimum standard for the environment, for food quality and for the information available to consumers.

The answer in part is a need for common frameworks as exemplified in relation to environmental protection (Brennan et al, 2018; Burns et al, 2018) and agriculture more specifically (NIAC, 2018; Gravey & Dobbs, 2018) – essentially matching the approach created by the EU currently, where overarching objectives and frameworks are created that apply across all of the UK, thereby ensuring a universal minimum standard across the UK and less likelihood of a slide in future or indeed a race to the bottom. This would thereby go beyond the proposal for ‘Basic Measures’ in Chapter 7, by extending beyond Wales. A further possibility would be to integrate the non-regression principle, whereby the entirety of the UK would agree to ensure that current standards are not dropped. Further, the governance gaps created by Brexit (e.g. the loss of the role of the Commission and the ECJ) need to be countered to ensure effective compliance. Adequate resources, monitoring and enforcement would be essential to this.”

In considering this, we should reflect on the aim of a Green Brexit and also that the UK White Paper on the Future Relationship Between the United Kingdom and the European Union commits to the non-regression of environmental standards.

Consequently, avoiding a race to the bottom for environmental and agricultural standards should become central tenets of future Welsh, English and UK policies. Establishing common frameworks (similarly to what the EU currently does) would ensure smooth trading with the UK internal market, fair competition for UK products and ultimately lead to a race to the top.

8) The Agriculture Bill: A Missed Opportunity to Create a Fair System of Financial Support

The provisions of the Agriculture Bill enable the four administrations to be treated differently when it comes to financial support. As noted in our EFRA submission, “*Part 1 outlines the potential bases for financial assistance for England; Schedule 3, Part 1 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.

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 2018.⁸ 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 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).”

However, there are two important risks to consider when legally enabling such differences in treatment. As indicated in our EFRA submission, “[f]irstly, 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.⁹ Hence, there is, thirdly, the increased risk of a race to the bottom in order to (re)gain competitive advantages.”

Overall such dangers and their consequences ought to be carefully considered. As highlighted in our EFRA submission: (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.

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⁸ 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.

⁹ See <https://www.brexitenvironment.co.uk/2018/03/12/common-environmental-frameworks/>.

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