

Dr Alan Greer (ABR0014)

Introduction

The starting point for any consideration of the implications of Brexit for devolution in relation to agriculture is that there are important differences between the territories (but also within them) in relation to farm structures and production, such as size of holdings, the balance between sectors such as livestock and cereals, and the proportion of marginal land/less favoured area. In general terms, Wales and Northern Ireland have the smallest number of holdings above 100ha, and the largest under 50ha, with the reverse true for England and Scotland. Agriculture in Northern Ireland and Wales is predominantly grazing grassland and livestock based (especially dairy and sheep), with a high share of upland Less Favoured Areas (LFA). Scotland is more balanced with important crops and cereals production, and also intensive specialist pigs and poultry. Agriculture in the devolved territories tends to have a higher political salience, which is partly a function of its economic importance but cultural considerations also come into play. The agri-food sector in each of the territories is regarded as a crucial element of the 'regional economy' in terms of annual turnover, contribution to gross value added, and to employment (indeed agricultural employment is relatively higher as a proportion of the total in Wales/Northern Ireland than in England/Scotland). It also has been identified in strategy documents published by the devolved governments as a key driver in future economic development. High value added food processing is important both to Scotland's self-image and to the economy, e.g., 'Scotch beef'. There also are important socio-cultural aspects, for example in maintaining rural areas, and helping to sustain Welsh culture and language.

Migrant labour in the agri-food sector is important in all of the territories and the approaches to Brexit of the devolved institutions (reflected in stakeholder positions) tends to highlight the importance of continued access to labour from the EU and other countries (perhaps for example involving a new version of the Seasonal Agricultural Workers Scheme, SAWS).

1. What are the implications of leaving the Common Agricultural Policy for the UK, UK farmers and the rural economy?

As well as the structural and economic differences between the territories, there are important variations in the relative importance of subsidies. While EU funding from the CAP has been of crucial importance to UK farmers generally, it is even more so to those in the territories. In 2015, nearly 40 per cent of CAP payments in the UK went to Scotland, Wales and Northern Ireland combined. Direct payments in particular are crucial because of the predominance of livestock-based enterprises, especially in upland less favoured areas. Overall there is a much higher degree of dependence on CAP payments in Scotland, Wales and NI, than in England (and for the UK as a whole). It has been estimated that EU subsidies make up between 50 and 60 per cent of farm income in the UK as a whole. However it is estimated that 87 per cent of total farming income in Northern Ireland, 80 per cent in Wales, and three quarters of total income from farming in Scotland is contributed by CAP payments, indicating that EU funding is crucial to the viability of most farms and represents the difference between making at a profit and running at a loss.

In the Brexit referendum most of the elite political actors in relation to agriculture in the devolved territories were strong advocates for remaining in the EU (although not the Democratic Unionist Party in Northern Ireland and farmers themselves were divided). This reflected a conviction that the effects of Brexit for the economy in general, and for the agri-food sector in particular, are likely to be substantially adverse, if not a disaster. This position remains dominant, although there is now an emerging cautious optimism that the farming and rural sector can thrive post-Brexit, but only if the appropriate policy and regulatory framework is put in place, both in terms of finance and flexibility.

2. Are there particular challenges regarding the repatriation of agricultural policy from the EU in the light of the devolution settlement?

There is unlikely to be much friction across the UK on the broad vision for agricultural policy post-Brexit, which will focus on competitiveness and market orientation whilst providing public goods such as the protection of the environment through 'proportionate' regulation. Five main challenges can be identified.

(a) The main political challenge in relation to Brexit is to repatriate agricultural policy in a way that retains some sort

of overarching UK framework yet at the same time allows the devolved territories substantial scope to adapt policy to their needs and priorities.

In relation to devolution, agricultural policy – as a transferred (devolved) matter - reflects fundamental tensions between pressures for uniformity across the UK as a whole, and a desire for variation to reflect the different structures, economies, and political pressures of the territories. Within the EU the scope for divergence in the UK has been set by the overall framework of the CAP and its presumption in favour of level playing fields which, despite increasing scope for flexibility within the CAP, constrains the room for manoeuvre of the territories. With the removal of the CAP umbrella, the main danger for some lies in increasing divergence across the UK, while for others it relates to a re-centralisation in Westminster and Whitehall of vital powers over agriculture.

There are likely to be important political challenges. Debates about Brexit in Scotland, Wales and Northern Ireland are framed by broader political perspectives, for example whether it will spark another referendum on independence in Scotland, and its impacts on the political settlement in Northern Ireland. Variation in the complexion of party political responsibility for agriculture and rural affairs can be important. In Northern Ireland and Scotland, ministers in recent years have been drawn from nationalist parties (in Northern Ireland the agriculture ministry had been held by a Sinn Féin MLA for several years, until taken by the DUP after the 2016 election), contrasting with the conservative government in England and the Labour administration in Wales. The lessons of devolution in agriculture in Northern Ireland between 1921 and 1972 indicate, unsurprisingly, that 'unionist' parties are more likely to cleave to an integrationist position, where political imperatives about "Britishness" limit the scope for variation; conversely nationalist parties that emphasise difference see devolved policy flexibility as a way of enhancing this. Sinn Féin in Northern Ireland complains, for example, that agriculture policy is an example of a policy area where the UK government puts British needs first and ignores the specific needs of Northern Ireland, especially the interdependence of the economies north and south.

(b) A second challenge is to strike an appropriate balance and division of responsibilities between UK frameworks and devolved flexibility.

Collectively the devolved territories are united on three main principles: (i) that there should be no attempt to use Brexit to re-centralise powers in agricultural policy at Westminster; (ii) they should have substantial input into, and influence over, any new UK wide policy framework, that will need to be collectively agreed rather than imposed, with appropriate independent dispute settlement procedures; and (iii) that within this there should be substantial scope for flexibility and variation in agricultural policy. In this context the devolved governments are vocal in their insistence that post-Brexit agricultural policy should remain fully devolved and not lead to a re-centralisation of control and functions at Westminster.

There is an assumption in the devolved territories that there will need to be an overarching policy framework. However some are concerned, for example in the farmers unions' that flexibility for the devolved institutions without an adequate UK framework could lead to unfair competition between farmers within the UK. There is thus support for some sort of common UK-wide policy that minimises unfair competition and protects free trade and level playing fields, while allowing some room for flexibility and differentiation to permit the devolved administrations to make decisions that are appropriate for their conditions and circumstances.

Politically there is the possibility of friction between the devolved governments and stakeholders over which functions should be covered in the UK framework and which are exercised at the territorial level, thus opening up potentially substantial room for variation. This may be especially problematic in relation to variation in subsidy payments and in regulation. There has for example been talk in Welsh government circles about taking the opportunity provided by Brexit to forge a new distinct approach, and the development of a 'made-in-Wales' approach to farming in which policies and regulations can be 'tailor-made' for Wales' unique needs. It may be that governments put more emphasis on political independence and flexibility and the expense of developing UK-wide frameworks, especially if they regard these as unsuited to their own requirements.

(c) A third challenge will relate to funding.

A central aim in negotiations on the shape of post-Brexit agricultural policy, which is shared by all of the devolved institutions and by the farmers unions, is to try to ensure that the level of funding for the sector

will not be lower than that prevailing under EU membership. This is viewed as especially important not only because of the relative importance to farm incomes but also because farmers in EU member states will continue to receive substantial subsidies, even if these might be somewhat lower after the next revision of the CAP for the period after 2020.

Of course there are also big questions about what any continuing funding will be used for. The UK Treasury is a long-standing critic of CAP subsidies, especially direct payments. On this basis, it is unlikely that a general subsidy will be maintained in the longer term. On the other hand the devolved governments and farmers organisations like direct payments and advocate their retention. Critics of agricultural policy under the CAP argue that funding should support public goods provision in areas such as the environment, climate change and rural development, and some movement in this direction is likely, and certainly towards a more 'integrated' approach. Some sort of payments for both marginal farms and ecosystem services (agreed environmental and land management objectives such as supporting valued habitats and afforestation) are likely to be adopted, and are especially valuable for upland farmers.

While the Treasury has pledged to maintain the current level of CAP funding until 2020, how this will be disbursed is unclear, whether via the Barnett Formula or through some other arrangement involving 'topping-up'. There is concern that if funding after 2020 is calculated on a per capita basis (such as using the Barnett formula), then the level of subsidies to farmers would be substantially reduced (for example Scotland's population is about 8 per cent of the UK total, but Scottish farmers receive 18 per cent of the UK's CAP funding). If subsidies are to be continued, even at a lower level, then the arrangements for funding them will be crucial and likely to provide a source of tension. For example if agriculture was to be funded through the mechanisms of the Barnett formula, then this would result in a substantial reduction of funding in the territories, where receipts from the CAP are significantly above the 'Barnett share'. Consequently the devolved governments argue for the introduction of some sort of block grant that is determined on a UK basis and reflecting what otherwise would have been obtained from the CAP.

What will also be crucial is the relationship between funding and flexibility, which is likely to be uneasy. In the past (for example in relation to devolution in Northern Ireland between 1921-1972), a limiting factor on differentiation was that if 'national' funding was provided through the

UK Treasury, then it wanted relatively uniform policy and regulatory measures in return, limiting the scope for differentiation. So what is likely to be crucial are the financial and budgetary arrangements for any future subsidies paid to farmers. These might, as with deficiency payments in the period from the 1945 to EU entry, be funded on a UK-wide basis by the Treasury, with limited flexibility allowed to the territories. On the other hand if any funding for agriculture is controlled by the devolved administrations through a general block grant, then they can justify policy differences by saying this is how we choose to spend our money. The danger here relates to the maintenance of level playing fields under a 'UK' framework.

(d) A fourth issue concerns how much flexibility can the devolved territories have in relation to the regulatory framework, including issues such as agri-environment, animal welfare, plant protection, and protected product denominations

A likely area of controversy after Brexit will relate to the overall nature of the regulatory framework and, crucially, whether and to what extent the territories will be able to exploit self-government to vary regulatory arrangements. If there is no general UK-wide framework then this could work in two directions, reflecting different pressures: some sort of 'gold plating' - in relation to the environment and animal health for example - where some parts of the UK choose to have more stringent regulations - and 'a race to the bottom' where the territories try to gain competitive advantage. Indeed this is precisely why the farmers' organizations argue for a robust UK-wide policy framework.

At the UK level it seems likely that there will be some slackening of rules that apply under the CAP - a particular target is the 'three-crop rule' (a condition for receiving 'greening payments' introduced in the 2013 reform of the CAP). This is broadly shared by the devolved governments who see Brexit as providing an opportunity to re-visit the regulatory framework, and especially for the development of a 'voluntary' approach in which regulation is viewed as a last resort. However there are two limitations on variation. First, within the UK, the extent of variation in regulation is likely to be limited by concerns about fair competition, and therefore perhaps be contained generally within a UK framework. In the past - notably in Northern Ireland between 1921 and 1972 - a main limitation on variation in agricultural policy was that where 'national' subsidies were provided

from the UK exchequer (e.g. guaranteed prices after 1945) then a pressure for uniformity was the argument of the Treasury that relatively similar regulatory arrangements should also apply in order to protect free and fair competition. Second, because of the need to maintain valuable export markets there will be pressures to align regulations and standards closely to those in force in the EU, and/or there will be limitations imposed by WTO rules in cases where these apply directly.

(e) Are there particular challenges associated with the Great Repeal Bill and the devolution of agricultural policy?

It is particularly unclear how the 'great repeal bill' will work in relation to the repatriation of devolved responsibilities over agriculture. Whether such a bill would require the consent of the devolved authorities, or whether they will need to pass legislation of their own, is uncertain. The Scottish government is clear in its white paper that any decisions about devolved matters as a result of the Great Repeal Bill such as in agricultural policy (or if the effect of the Bill is to take powers back to Westminster) will require the consent of the Scottish parliament under the Sewel Convention. Apart from the legal complexities, the main problems are likely to be political, especially if the introduction of the Great Repeal Bill alters current understandings about the nature and extent of devolved powers in agriculture.

3. What impact could the Devolved Administrations' policies on agriculture have on the UK's trading relations with the EU and the world

(a) International trade

There is agreement in the devolved territories that the most important implication of Brexit may be its impact on agricultural trade, especially if a 'hard Brexit' means withdrawal from the single market and the striking of bilateral trade deals (under WTO rules). In the Brexit documents published by the Scottish and Welsh governments for example, maintenance of the single market and customs union was identified as the core priority. This reflects the importance of export markets to the agri-food sector (for example around 90 per cent of Welsh food and drink production is exported to the EU, including over a third of Welsh lamb), and there are worries about the potential introduction of tariffs (and also

about labour shortages). Accordingly a widely agreed principle is that maintenance of access to the single EU market (including freedom of movement and employment) is vital. There is also a fear that agricultural interests might be sacrificed in the interests of broader free trade agreements, for example covering access to services. Agriculture could be seriously affected by the striking of bilateral trade deals with countries such as Australia (especially for the Welsh sheepmeat sector), New Zealand, Brazil and Argentina.

A crucial consideration in relation to Brexit is that international trade and competition policy are matters that are reserved to the 'UK' government, but which nonetheless have major implications for the exercise of devolved powers. Indeed this issue caused substantial difficulties for the Northern Ireland Parliament between 1921 and 1972, especially in areas such as marketing. In this respect Brexit is opening up debate about the devolution settlement in relation to the distribution of competences. The Scottish government for example argues that there should be a fundamental reconsideration of the powers of the Scottish parliament, which also should be given the power to enter into international agreements in areas of devolved responsibility, and also to assume responsibility for functions that are currently reserved to Westminster, including control over imports and exports and trade negotiations – all of which will have substantial relevance for the agri-food sector.

(b) The Irish border and relations with the Republic of Ireland

A particular concern is the implications of Brexit for the inter-relationships between the territories of the UK and the Republic of Ireland. This concerns, for example not just questions about customs union and the free movement of goods and people across the border, but also for existing cross-border arrangements such as the all-island strategy for animal health. There are worries about the potential adverse consequences of any re-introduction of a controlled 'hard' border between the UK and Ireland, which it is argued could destabilise the whole of the political settlement as well as have negative consequences for trade.

Significant in this picture is the potential negative impact of Brexit on the agri-food sector, where trade between the UK and Ireland as a whole is important. Already the post-Brexit fall in the value of sterling has caused

severe difficulties for the competitiveness of Irish agri-food exporters, with the mushroom sector – which is almost totally reliant on the UK market – particularly hard hit. In terms of overall trade, over half of all exports from Northern Ireland go to the EU, and the Republic of Ireland is the main destination for exports and the main source of imports. While Northern Ireland is a relatively unimportant market for the Republic, 14 per cent of Irish goods exports go to the UK as a whole, which also is the source of a quarter of Irish imports. In agricultural and processed agri-food products however, the trade relationships are even more important. The Republic of Ireland is the largest destination for UK farm exports, and also is the third largest importer of food into the UK. Forty per cent of Irish agri-food and drink exports go to the UK, and the Republic is also the UK's largest market for processed food and drink products. Compared to other sectors, cross-border trade in food and drinks is high, especially in milk and livestock products. A particular problem is that there are important integrated food supply chains and distribution patterns that criss-cross the frontier, for example in the dairy and meat processing industries.

Following the referendum result the Northern Ireland Executive indicated that its core concerns were to have trade agreements that are as free as possible and to retain the substantial EU funds for the peace process and the economy. The Irish government also has expressed concern about the implications of Brexit, including in the agri-food sector. While Taoiseach Enda Kenny was careful not to intervene directly in the Brexit referendum debate, he made it clear that it was impossible to remain silent on an issue which impinges so directly on Ireland's national interests. So the initial response of the Irish government after the vote was to describe the result as having 'very significant implications', especially in relation to the economy and trade, Northern Ireland and the peace process, the border and the Common Travel Area. Subsequently the Irish government has warned on several occasions about the very negative consequences of return of a 'hard border' that involves the reintroduction of customs posts. So for the Irish government the maintenance of an open border and the common travel area is a core political imperative in Brexit negotiations. The Scottish government also has expressed strong support for the maintenance of the 'invisible border' between the Republic of Ireland and the UK. However while the UK government and Theresa May have expressed a desire to take the 'special circumstances' of Northern Ireland into account, not to return to the 'borders of the past', and to keep the border as 'fluid as possible', there is considerable concern about the

potential economic and political consequences if free trade, the Common Travel Area and the customs union are not maintained.

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