

Written Evidence: Welsh Government's Supplementary Legislative Consent Memorandum Agriculture Bill

Climate Change, Environment and Rural Affairs Committee – National Assembly for Wales

Dr Ludivine Petetin – Cardiff University
Dr Mary Dobbs – Queen's University Belfast

This evidence is written by Dr Ludivine Petetin from Cardiff University and Dr Mary Dobbs from Queen's University Belfast. Ludivine and Mary are both Law Lecturers with expertise in agri-environmental issues and are currently writing a book on Brexit and Agriculture. Both engage with stakeholders across the UK on the impact of Brexit. They both are associates of the [Brexit & Environment network](#), which brings together academics analysing how Brexit is affecting the UK and EU environments.

A. Red meat levy: payments between levy bodies in Great Britain (new clause 29)

- (1) Clause 29 is a welcome addition to the Agriculture Bill to enable a fair redistribution of levies across Great Britain, based on the origin of the products as opposed to where the meat is slaughtered. This will reflect in a more accurate manner the interconnectedness of supply chains and lead to further investments in the areas where the meat originated. A more accurate reallocation of funds will result in innovation and market expansion.
- (2) It should be considered whether this clause should be extended to the entire four nations of the UK, rather than being limited to Great Britain. This would help strengthen the internal UK market through equivalent treatment across the four nations. However, a considerable difficulty for Northern Ireland is that much of the live exports go initially to the Republic of Ireland and therefore are beyond the remit of the UK's policies.

B. Power to reduce the direct payments ceilings for Wales in 2020 by up to 15% (Schedule 3, Part 2, new paragraph 7)

C. Power to provide for the continuation of the basic payment scheme beyond 2020 (Schedule 3, Part 2, new paragraph 8)

- (3) Together, new paragraphs 7 and 8 provide Wales with some greater flexibility than originally indicated under the Agricultural Bill and is to be welcomed. This recognises to a greater extent the more tenuous position of farmers in Wales, the nature of the landscape and the reliance upon basic payments – it supplements the approaches being introduced within the transitional period and provides for some greater security in particular for small and family farms where the public money for public goods approach or economic resilience approaches would be insufficient.

(4) However, our earlier concerns¹ remain regarding the impact of the proposed approaches on those farms that are struggling currently. The Bill requires that direct payments are to cease entirely at the end of the transitional period. However, the proposed financing systems for Wales under the Agriculture Bill and the WG Brexit and Our Land consultation document will not suffice for many farms, potentially leading to considerable land abandonment and the loss of livelihood and employment across Wales with subsequent knock-on effects on the economy and society.

D. UK and Welsh Government Bilateral Agreement on the World Trade Organisation provisions

(5) The UK and Welsh Government Bilateral Agreement on the World Trade Organization indicates a step in the right direction for Wales to keep the powers it currently has under the Common Agricultural Policy. It is also as noted a welcome sign of collaboration between the UK and Welsh Government.

(6) Positively, Wales will now be able to put forward its own classification of schemes and these will then be reviewed by the Secretary of State. If a dispute arises in relation to such classification, a dispute resolution system will be created where an ‘expert panel’ will provide independent advice. Panels will be set up on an ad hoc basis. Such a forum would provide an opportunity for Welsh requests to be heard and controls are in place to attempt to avoid this being a simple formality or dominated by centralised voices.

(7) However, a number of crucial points need to be noted in relation to the Agreement/Memorandum of Understanding:

- a) The UK and Welsh Government Bilateral Agreement on the World Trade Organization is not binding on the UK Government. It is only of soft-law nature. The dispute resolution system created by the Agreement is not enshrined in law. The terms of the Agreement could be modified by future governments.
- b) The Agreement does not amend the actual Bill. When the Bill becomes law, only the eventual act will be binding – not the Agreement. Whilst an Act can be amended, incorporating the Agreement (or its content), nonetheless would strengthen it and provide it with extra layers of protection.
- c) However, even if the Bill/Act were to be amended to encompass reference to the Agreement or simply incorporate the Agreement’s content, it is overall weakly phrased. The Secretary of State (SoS) ‘should have regard to the advice’ does not mean that they will have to follow the independent advice provided – ‘have regard to’ is generally a very weak formulation as recognised in the environmental context.²

¹ See our previous evidence for this inquiry, submitted in November 2019; and our evidence submitted along with Dr. Viviane Gravey of QUB to the ‘Brexit and our Land’ consultation in October 2018. Also, our oral evidence from 14th November 2018: <http://record.assembly.wales/Committee/5092>.

² See an earlier submission on the Environment (Principles and Governance) Bill <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/environment-food->

- d) Furthermore, it is not clear whether the approach proposed will apply to the setting of ceilings – either for the Amber Box or the Green or Blue Boxes. It appears that the powers will rest with Westminster and that the dispute resolution mechanism would not automatically apply to this issue.
- (8) The long-term consequences of financial support being decided by Westminster should be carefully considered. Westminster already plays a significant role in relation to the block grant and the review of the basis for any funding in this field is an important factor, but the Bill now facilitates further controls by Westminster.
- (9) Despite central government trying to engage with the devolved administrations and the positive signs of collaboration, many of the concerns highlighted in past evidence submissions to this Committee remain:³
- “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... – despite WTO law **not** imposing any limits on Green or Blue box spending”.
- (10) As the WTO Member, the UK is responsible for ensuring compliance. However, (i) Clause 28 still exceeds what is required; (ii) it effectively gives powers to the SoS that currently belong to the devolved administrations; and (iii) the Agreement does little to effectively ensure that Wales keeps the powers it currently has. To the contrary, Clause 28 indeed leads to a **recentralisation of powers as to the financial support for farmers and the design of support schemes across the UK**.
- (11) Overall, the agreement is too narrow in scope and ignores key concerns. It is a soft-law instrument by nature and could be modified (or even ignored) by future governments. A potential recentralisation cannot be overlooked. The challenge is less what this current UK government might do now, but what a future UK government might do in a new context.

Ludivine Petetin and Mary Dobbs
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[and-rural-affairs-committee/prelegislative-scrutiny-of-the-draft-environment-principles-and-governance-bill/written/95916.html](https://publications.parliament.uk/pa/cm201719/cmselect/cmenvaud/803/803.pdf), referring to the following sources: Environmental Audit Committee, *The Government's 25 Year Plan for the Environment*, HC 803, 24 July 2018, <https://publications.parliament.uk/pa/cm201719/cmselect/cmenvaud/803/803.pdf>; Select Committee on the Natural Environment and Rural Communities Act 2006, *The countryside at a crossroads: Is the Natural Environment and Rural Communities Act 2006 still fit for purpose?*, HL 99, 22 March 2018, <https://publications.parliament.uk/pa/ld201719/ldselect/ldnerc/99/99.pdf>; and <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/environmental-audit-committee/environmental-principles-and-governance-consultation/oral/85180.html>.

³ See our previous evidence for this inquiry, submitted in November 2019; and our evidence submitted along with Dr. Viviane Gravey of QUB to the ‘Brexit and our Land’ consultation in October 2018. Also, our oral evidence from 14th November 2018: <http://record.assembly.wales/Committee/5092>.