WALES AND THE EU

AGRICULTURE AND FOOD

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This report is one of a series examining the implications of EU membership for Wales, and the legal and policy considerations presented by the EU referendum vote. The full set can be found at http://sites.cardiff.ac.uk/wgc/eu/

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AGRICULTURE AND FOOD

The referendum on 23rd June 2016 sees the UK electorate vote on whether the UK remains a member of the European Union (EU). This is one of a series of briefs which outline the current division of power between the EU, UK and Wales, and the possible implications of a vote to leave or to remain, across a range of policy areas. This brief looks at agriculture, an area which has been devolved to Wales. It complements the brief on Environmental Law and Policy.

IN BRIEF

- Whilst the foundations of the Common Agricultural Policy (CAP) have remained unchanged since the 1957 Treaty of Rome, the focus of the policy has increasingly moved from production support to the sustainability of the wider rural economy.

- The share of the EU budget devoted to CAP has fallen in the last 30 years from 73 % in 1985 to 37.8 % for the period 2014-2020. The CAP has two pillars – Pillar 1 funds direct payments to farmers and is 100% EU-financed. Pillar 2 finances rural development more broadly and requires national resources to match EU funding.

- Under the 2014-2020 programming period Wales has been allocated more than 2.2 billion euros, with on average more than 80% of farming income in Wales originating from EU funding. In the event of Brexit, if Wales is to continue to receive similar levels of funding for agriculture, this would have to come from domestic sources. Whether or not such funding is made available will have implications for agricultural policy in Wales.

- Responsibility for implementation of the CAP is delegated to the Member States in line with their different institutional frameworks. In the UK, agricultural policy is a devolved matter. Regulation of agricultural activity and the administration of CAP funds in Wales fall under the responsibility of Welsh Ministers. In policy terms, there is an increasing divergence between Wales (and Scotland) and the non-devolved UK position on a wide range of agricultural issues.

- There is a very substantial body of regulatory requirements on farmers, affecting all aspects of farming life, including environmental considerations, such as rules on the permitted use of pesticides; animal welfare; plant protection; food safety, and traceability of products in the food chain.

- Compliance with regulatory standards gives access to the single market for agricultural products. Implementation at national (and regional) level sometimes goes further than is necessary (‘goldplating’).

- Receipt of funding under the CAP is now tied to farmers’ compliance with a range of regulatory requirements, relating to, for example, environmental concerns, and animal welfare (‘cross compliance’).

- Welsh food and drink exports to the EU were worth £274.2 million in 2014, 90.7% of total exports, with only 9.3% going to non-EU countries. Exports from the sector increased 132% between 1999 and 2013 with 1 in 10 businesses in the sector now exporting.

- Welsh products benefit from the EU system of quality marks such as Protected Designated Origin (Anglesey Sea Salt) and Protected Geographical Indication (Pembrokeshire Earlies, Welsh Lamb and Welsh Beef), though such protection could continue if the UK leaves the EU.

- Alternative models for UK-EU relationships would involve domestic funding of agricultural policy and require the negotiation of free trade agreements or trading under WTO rules. Neither EEA nor EFTA arrangements cover CAP or trade in agricultural products, however under the EEA option, areas of EU legislation impacting on agriculture would still apply.

WHAT DOES THE EU DO IN THIS AREA?

The foundations of the Common Agricultural Policy (CAP) have remained unchanged since the 1957 Treaty of Rome. The rationale behind the establishment of the CAP was to enable the single market principle of the free movement of goods to apply to agricultural produce, and involved the creation of separate common market organizations for agricultural products. An EU level intervention mechanism was created to support agriculture and to create a level playing field across the EU for agricultural trade.

Article 39 of the Treaty on the Functioning of the EU (TFEU) provides that the EU must define and implement a CAP to extend the Internal Market to agriculture and trade in agricultural products. It aims to:

- increase agricultural productivity by promoting technical progress and ensuring the optimum use of the factors of production, in particular labour;
- ensure a fair standard of living for farmers;
- stabilise markets;
- assure the availability of supplies;
- ensure reasonable prices for consumers.

These aims are recognized as being contradictory at times.[1] Over the ensuing decades, the CAP has been redirected towards a more 'multifunctional' role for agriculture[2], which includes delivery of a variety of public goods, recognising agriculture's central place in rural societies. The original emphasis of the CAP on quantity or production has evolved to include a focus on quality, food safety and traceability, respecting animal welfare, broader environmental concerns / sustainability (known as the 'greening' of CAP) alongside the role of the agricultural sector in rural economies, communities and landscape. The link between funding and production has been substantially 'decoupled'. The CAP operates within a broader international framework for agriculture, established under the auspices of the WTO.

The CAP is an area in which competence is shared between the EU and Member States. The European Commission consults with stakeholders before drawing up proposals that are negotiated amongst and decided upon by the Council of agriculture ministers of the 28 EU countries, together with the European Parliament. A set of basic Regulations underpin each round of the CAP[3] – which is renegotiated roughly every six years. The most recent round (2014-2020) was the first that the European Parliament was given a full co-legislative role as a decision maker under the 'ordinary legislative procedure'. The day-to-day running or implementation of the CAP is the responsibility of the Member States (in the UK's case this is devolved to the Wales, Scotland and Northern Ireland). The supervision of expenditure is overseen by the European Court of Auditors.

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[1] Case 5/67, Beus v Hauptzollamt München [1968] ECR 83.

[2] See on the development of EU agricultural policy, M. Cardwell (2004) *The European Model of Agriculture,* OUP.

[3] The current Regulations, covering the period 2014-2020 are Regulation 1305/2013 on Rural Development; Regulation 1306/2013 on financing, management and monitoring; Regulation 1307/2013 on Direct Payments and Regulation 1308/2013 on market measures.

The share of the EU budget devoted to CAP has fallen in the last 30 years from 73 % in 1985 to 40.5 % for the period 2014-2020.[4] EU agricultural funding is allocated at Member State level and then internally by the Member State. The CAP's budget is spent in 3 different ways:

- Income support or direct payments for farmers and assistance for complying with sustainable agricultural practices: farmers receive direct payments, provided they adhere to strict standards relating to food safety, environmental protection and animal health and welfare. These payments account for 70% of the CAP budget.
- Market-support measures: used, for example, when adverse weather conditions destabilise markets. This accounts for less than 10% of the CAP budget.
- Rural development measures to help farmers modernise their farms and become more competitive, while protecting the environment, contributing to the diversification of activities and the vitality of rural communities. These payments are part-financed by the Member States and account for some 20% of the CAP's budget.

The CAP consists of two funds or pillars:

- **Pillar One - the European Agricultural Guarantee Fund (EAGF)** funds direct payments to farmers and measures to regulate agricultural markets. This occurs through the Basic Payment Scheme - 100% funded by the EU but managed by Welsh Government in Wales.

- **Pillar Two - the European Agricultural Fund for Rural Development (EAFRD)** finances EU countries' Rural Development Programmes (RDP) – programmes that support farm businesses, environmental improvements and rural communities more widely.[5] In the UK these are developed and managed at the level of the constituent parts. The 2014-2020 RDP for Wales aims to improve the competiveness of Welsh agriculture, support the sustainable management of natural resources and support the economic development of rural communities.[6]

The EU has taken action to support the industry additionally through a derogation from competition policy principles for agricultural products and trade in such products, as

[4] http://www.europarl.europa.eu/aboutparliament/en/displayFtu.html?ftuId=FTU_5.2.10.html
[5] Regulation 1305/2013 establishes the European Agricultural Fund for Rural Development's (EAFRD) objective as the sustainable development of rural areas. https://assemblyinbrief.wordpress.com/2016/05/19/the-common-agricultural-policy/
[6] http://gov.wales/topics/environmentcountryside/farmingandcountryside/cap/ruraldevelopment/wales-rural-development-programme-2014-2020/?lang=en

well as through the introduction of emergency measures to protect against the market volatility and the downward trend in prices. Between 2014 and 2016 the Commission mobilized more than €1 billion additional funding for the agricultural sector and is currently considering the use of financial instruments alongside grant funding to ease pressure on the industry. Longer term reforms were identified through the Commission's 'CAP Health Check' in 2009 such as complete decoupling; further emphasis on rural development (biodiversity, bioenergy, water and climate change); reduced market intervention and simplification.

In addition to creating the framework for support provided under the CAP, the EU also **legislates in a range of areas which impact on farming and the broader agricultural community**. Competence here is shared with the Member States. Such measures include the environment,[7] animal welfare[8], food safety[9] and plant and animal health measures[10], as well as occupational health and safety. These standards are often higher than those operating outside the EU, with an impact on competitiveness, however, they can assist in establishing the EU's reputation for high quality and reliable products.[11] This is taken further with protections for products under the Protected Geographical Indication and Protected Designation of Origin schemes. Since 2005, EU rules have made receipt of farm payments conditional on compliance with a set of statutory measures,[12] and with a general obligation to maintain land in good agricultural and environmental condition – this is known as **'cross compliance'**.

Finally, **international trade policy is an area of exclusive EU competence** and agriculture forms part of a number of international agreements. EU agricultural policy must be consistent with all obligations of both the EU and its Member States under international law. The CAP has been subject to WTO discipline since 1995, to agricultural concessions granted under multilateral and bilateral agreements,[13] and by unilateral waivers under the Generalised System of Preferences (GSP).[14] Over time requirements under WTO and the General Agreement on Tariffs and Trade (GATT) have led to significant modifications to the CAP. Within the context of WTO rules, and

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[7] Such as biodiversity measures, Directive 2009/147/EC Wild Birds Directive and 92/43/EEC Habitats Directive; and nitrate pollution, Directive 91/676/EEC.

[8] Eg Directives 2008/119/EC on minimum standards for calves and 2008/120/EC on minimum standards for pigs.

[9] Eg Regulation 178/2002/EC Food Law and European Food Safety Authority; Directive 96/22/EC prohibiting the use of hormones in livestock.

[10] Regulation 1107/2009 on plant protection.

[11] Mengi et al (2011) Assessing farmers' cost of compliance with EU legislation in the fields of environment, animal welfare and food safety, Final Report, AGRI-2001-EVAL-08.

[12] Listed in Annex II to Regulation 1306/2013. See also: http://gov.wales/topics/environmentcountryside/farmingandcountryside/farming/crosscompliance/?lang=en

[13] e.g. with the African, Caribbean and Pacific countries (ACP), Mercosur (the Southern Common Market).

[14] http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_5.2.7.html; The EU's GSP allows developing countries to pay less or no duties on their exports to the EU, giving them vital access to EU markets and contributing to their economic growth; it explains also the high level of agricultural imports into the EU.

with significant impact on agricultural trade, the EU is currently entering into Economic Partnership Agreements with regional groupings of over 70 developing African, Caribbean and Pacific (ACP) states in order to give their products preferential access to EU markets.[15] The negotiations under the Transnational Trade and Investment Partnership (TTIP) agreement with the US also provide an opportunity and challenge for the CAP and trade in agricultural products.

WHAT POWERS DO THE UK AND WALES HAVE IN THIS AREA?

Agriculture is devolved to Wales under the Government of Wales Act, and the Assembly has legislative competence in this area.[16] Welsh Ministers have long held a range of executive powers in this area.[17] With an increasing emphasis on subsidiarity under the CAP, giving greater leeway to the Member States to define locally appropriate solutions, there are opportunities for Wales and the other devolved administrations in the UK to determine a distinctive approach to agricultural matters.

Member State governments and EU institutions together agree the regulatory framework for the CAP. As with the other devolved administrations, Wales is able to feed into this process through national channels, but formally has no role in negotiations at this level. The Welsh Government has however made representations to the UK government to be able to speak on behalf of the UK where it would be appropriate[18] The Welsh Government deals directly with the European Commission in the development and negotiation of its Rural Development Programme.

The implementation of the funds in Wales falls under the responsibility of the Welsh Ministers, who are empowered in line with section 2(2) of the European Communities Act 1972. The basic payment to farmers in Wales, the Pillar 1 Basic Farm Payment, is administered under *CAP Basic Payment and Support Scheme (Wales) Regulations 2015.*[19] Funding is also administered through the *Rural Development Programmes*

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[15] http://ec.europa.eu/trade/policy/countries-and-regions/development/economic-partnerships/index_en.htm

[16] Government of Wales Act 2006 Section 108, Schedule 7 pt 1.

[17] As foreseen in Government of Wales Act 2006 Section 58.

[18] In its evidence to the Balance of Competences Review on Agriculture, the Scottish Government went further and requested direct engagement with the EU institutions for Scotland. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/335251/agriculture-evidence-all.pdf

[19] SI 2015/1252. A successful legal challenge was brought to the original 2014 versions of the Regulations due to a flawed definition of 'moorland' regions which would receive a much reduced area payment.

(Wales) Regulations 2014.[20] Projects under Pillar 2 are co-financed with public or private funding sources. Some examples of EU-funded projects under Pillar 2 include Glastir (sustainable land management scheme), Hybu Cig Cymru-Meat Promotion Wales and PROSOIL.[21] Wales additionally receives specific allocations from the EU under Cohesion Policy and through other financial programmes (e.g. Horizon 2020) which Welsh organisations can apply for directly to the European Commission. In line with the Memorandum of Understanding between central government and the Devolved Administrations responsibility for the compliance of the Welsh programmes with EU regulatory requirements and for any financial penalties imposed falls directly to the Welsh Ministers.[22]

Some variation in respect to the cross compliance obligations is possible at national, and devolved level,[23] which has been endorsed by the Court of Justice of the European Union.[24] More generally, the Welsh Government can have a role in the implementation of EU legislation impacting on farming (including environmental measures and animal health measures), though this may also be introduced on behalf of Wales by the UK Government. On certain matters, and to the extent permissible under EU law, Wales may decide to adopt a different approach to that adopted by the UK authorities for England. Particular points of controversy surround issues such as the cultivation of crops containing genetically modified organisms (GMOs), which has seen greater support from the UK government than from the devolved nations.[25]

WHERE WOULD POWER AND RESPONSIBILITY FOR AGRICULTURAL POLICY RETURN TO IN THE EVENT OF BREXIT?

[20] SI 2014/3222. Wales immediately imposed the maximum 15% transfer of funding from Pillar 1 to Pillar 2, and adopted a transitional approach calculated on the basis of historic receipts – Welsh Government Direct Payments to Farmers Decisions, January 2014.

[21] http://gov.wales/topics/environmentcountryside/farmingandcountryside/cap/wales-rural-network/casestudies/?lang=en

[22] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/316157/MoU_between_the_UK_and_the_Devolved_Administrations.pdf

[23] This relates to the definition of ‘Good Agricultural and Environmental Condition’. The Welsh cross compliance framework is set out in The CAP (Integrated Administration and Control System and Enforcement and Cross Compliance (Wales) Regulations SI 2014/3223.

[24] Case C-428/07 Horvath [2009] ECR I-6355, and M Cardwell and J Hunt (2010) Public Rights of Way And Level Playing Fields 12 *Environmental Law Review* 291-300.

[25] See J Hunt (2012) Ploughing their own furrow: subnational regions and the regulation of GM crop cultivation’ 13 Cambridge Yearbook of European Legal Studies 135-159. The science based approach in the original regime is now supplemented by socio-economic grounds for bans - see now Directive 2015/412/EU amending Directive 2001/18/EC as regards the possibility for the Member States to restrict or prohibit the cultivation of GMOs in their territory.

The current devolution settlement devolves a wide area of agricultural policy to Wales.[26] The legislative powers of the Assembly cover agriculture, horticulture, forestry, fisheries and fishing, animal health and welfare, plant varieties and seeds and plant health, and rural development. Measures may include the regulation of the movement of agricultural products in and out of Wales for the purpose of protecting human, animal or plant health and the environment – though import and export controls otherwise are excluded from competence. Devolved legislative powers in relation to the environment also intersect with agriculture, such as those on pollution, nuisances and hazardous substances, and genetically modified organisms,[27] as well as those on food.[28] An expansive interpretation of competence[29] has additionally seen the Welsh Assembly empowered to adopt legislation on agricultural wages and employment conditions,[30] through its powers in the area of agriculture, and despite the exclusion of employment from devolved matters.

Therefore if the UK leaves the EU, responsibility for these areas would return to Wales, subject to the subsisting power of the UK Parliament to legislate for Wales. This power, according to convention is not normally exercised without the agreement of the devolved administration.[31] Regulation of welfare standards, and environmental concerns may then diverge within the UK should the different legislative bodies differ in their assessment of the value in maintaining current or prospective EU levels of protections. The legitimate scope for divergence in the UK has to date been set by the limits of EU legislation. Without this in place, there may be a case to revisit the current distribution of devolved competences in the case of a Brexit and that could result in some powers returning to Westminster, or more restrictive rules on when they can be exercised.

ISSUES FOR WALES IN RELATION TO REMAINING OR LEAVING THE EU

Under the Coalition Government, a wholescale review was undertaken of the allocation of powers between the UK and the EU – the Balance of Competences Review. Whilst the Government itself drew no formal conclusions from the exercise, the report on Agriculture reported that 'In the main, respondents thought that EU-level

[26] Government of Wales Act 2006, Schedule 7, pt 1.
[27] Government of Wales Act 2006, Schedule 7, pt 6.
[28] Government of Wales Act 2006, Schedule 7, pt 7.
[29] Supreme Court [2014] UKSC 43. The Court held that the measure 'fairly and realistically' related to a devolved competence.
[30] Agricultural Sector (Wales) Act 2014.

[31] The Sewel Convention is now on a statutory footing for Scotland, though not (yet) for Wales.

action was appropriate for agriculture. They cited the benefits which the UK gets from harmonised Single Market rules, a broadly level playing field and avoidance of subsidy competition, from the EU having power as a global trading bloc, and the EU's role in helping to manage the risks to animal and plant health from the spread of disease'.[32]

If the decision is taken for the UK to leave the EU, this would by necessity also take Wales out, as membership is restricted to sovereign independent states. Additionally, in the UK, foreign policy is not devolved. The extent to which EU law would continue to apply to the UK and Wales would depend on the terms of any new agreement between the UK and the EU. The EFTA/EEA alternative, if available, requires free movement of goods, capital, people and services to be respected. CAP support does not feature under these agreements, and both the EEA/EFTA countries subsidize their agricultural sectors to a far greater degree than the EU.[33] However, the repeated position of UK government has been to aim for a reduction of agricultural spending so it is unlikely to increase to match EEA/EFTA levels, and indeed possibly drop below current levels, potentially putting UK agriculture at a competitive disadvantage.[34] This would particularly impact the devolved nations where farming is heavily reliant on direct subsidies. Very low or non-existent subsidies – a 'cold bath' approach[35] – would lead to significant restructuring and potential short-medium term hardship.

If part of the EEA, the UK however would still be required to comply with various EU legislative measures impacting on farming, including environment, food safety and veterinary legislation.[36] As a non-EU EEA member the UK would not have the same degree of involvement in any EU decision making. Outside the EEA, the UK would be seek to establish free trade agreements with EU Member States, and other trading parties, otherwise it would be required to trade under WTO rules.[37]

If the UK remains in the European Union, meanwhile, future regulatory activity will take place within a policy context which emphasizes competitiveness,[38] and would likely

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[32] HM Government, (2014) Review of the Balance of Competences between the UK Government and the United Kingdom: Agriculture, at p. 6. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/335026/agriculture-final-report.pdf

[33] EU support to agriculture was 19% Producer Support Estimate (PSE) in 2014. The equivalent figures for Norway and Switzerland were 60% and 55% respectively, see: https://www.cla.org.uk/sites/default/files/CLA_Leave_OR_Remain%20ReportFINAL.pdf

[34] See Balance of Competences Report: Agriculture; and Burns, C., A. Jordan, V. Gravey, N. Berny, S. Bulmer, N. Carter, R. Cowell, J. Dutton, B. Moore S. Oberthür, S. Owens, T. Rayner, J. Scott and B. Stewart (2016) The EU Referendum and the UK Environment: An Expert Review. How has EU membership affected the UK and what might change in the event of a vote to Remain or Leave? available at: http://ukandeu.ac.uk/wp-content/uploads/2016/04/Expert-Review_EU-referendum-UK-environment.pdf

[35] http://ca1-fml.edcdn.com/downloads/WCF-Brexit-18.01.16-pdf.pdf?mtime=20160207094708

[36] National Farmers Union (2016), EU Referendum: UK Farming's Relationship with the EU, p8-9. https://www.nfu-cymru.org.uk/nfu-cymru/news/uk-farmings-relationship-with-the-eu-report-cymru/

[37] These include the Agreement on Agriculture, and the Agreement on Sanitary and Phytosanitary Measures, covering food safety and animal and plant health.

[38] In line with the February 2016 agreement between Prime Minister David Cameron and other EU Leaders, see EU Council minutes, http://www.consilium.europa.eu/en/meetings/european-council/2016/02/18-19/

continue to place agriculture under greater exposure to market forces. Budget contributions may decrease in real terms, which may impact on the amount available for redistribution. The move away from a 'common' towards a more diverse and differentiated agricultural policy is likely to continue.

The Welsh Government has identified Food and Farming as a priority sector (primary production and food and drink manufacturing) recognizing its significance to the Welsh (rural) economy. Its turnover in 2013 was £5.7 billion and the Welsh Government wants to increase this to £7 billion by 2020. Wales has more approximately 9% of all agricultural land in the UK but nearly 19% of all UK holdings, reflecting the average smaller holding size in Wales.[39] In 2014, 59,600 individuals were employed on Welsh farms, the majority of which on a part-time, seasonal or casual basis.

FINANCIAL CONSIDERATIONS

In the event of a Brexit, the UK would cease to pay into the EU budget,[40] and UK agriculture and rural communities would cease to be eligible for funding under the CAP. Receipts vary considerably and so the impact would have different effects across the sector and different territories of the UK, with particularly significant consequences for Wales.

Under the 2014-2020 programming period the UK receives roughly €28 billion, of which €22.5 billion is for Pillar 1 direct payments and €5.2 billion for the Pillar 2 RDP programmes. Wales receives a Pillar 1 allocation of around €2.2 billion overall (9.8% of the UK total) or €320 million per annum and €355 million overall under pillar 2.[41] £260 million a year of single farm payments are paid to more than roughly 17,000 farm businesses in Wales through the CAP, with average subsidies to a Welsh dairy farmer £22,965 p.a. and £19,289 p.a. to a Welsh sheep farmer.[42] More than 80% of farming income in Wales derives from EU funding which is far in excess of the UK average figure of 35-56% of farming gross income and means that the CAP accounts for the largest amount of most farms' profitability.[43]

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[39] Wales has 35,252 holdings out of a total of 186,790 for the UK as a whole, see: http://ec.europa.eu/agriculture/statistics/factsheets/index_en.htm; http://gov.wales/statistics-and-research/farming-facts-figures/?lang=en

[40] Depending on any agreement subsequently reached, some membership fee for access to the internal market may be expected.

[41] https://www.gov.uk/government/news/uk-cap-allocations-announced [accessed 15.01.2016]

[42] Sunday Politics Wales, 21.02.2016, available at: http://www.bbc.co.uk/iplayer/episode/b070j73k/sunday-politics-wales-21022016

[43] Total Income from Farming is however highly dependent upon world commodity prices as well as the euro-sterling exchange rate (UK farmers receive their direct payments in euros). As a result of reductions in both, Total Income from Farming in the UK was estimated to have fallen by 29% between 2014 and 2015 (£1,526 million) in real terms. See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/519745/agriaccounts-tiffstatsnotice-28apr16.pdf; http://www.telegraph.co.uk/finance/economics/11967049/Brexit-is-a-life-or-death-matter-for-Britains-farmers.html National Assembly for Wales Research paper CAP Reform 2014-20: EU Agreement and Implementation in the UK and in Ireland November 2013;

Whilst the current allocation of funding is criticized for being irrational and disconnected from the policy aims, EU agricultural subsidies would be lost to Wales and Welsh farmers in the event of a Brexit. The financial implications would depend on the timing agreed within the process of withdrawal for budgetary allocations to the UK to cease. If the withdrawal process envisaged under Article 50 TEU is formally commenced in summer 2016, and is completed within a two-year deadline, the 2019 and 2020 allocations could be lost to Wales.[44] This would amount to at least €690 million of EU receipts, with no guarantee of its replacement through domestic sources. However, every one of the 34 OECD country subsidises its agriculture to some degree and it could therefore be assumed that subsidies to the agricultural sector would continue.[45] It is generally accepted however that domestic funding for agriculture would be at a reduced level compared to current receipts under CAP, with some estimates running as low as a third of current levels.[46] The scope of funding and coverage of the policy will have implications for agricultural policy and rural communities in Wales.

ECONOMIC CONSIDERATIONS

The Balance of Competence Review supported a Single Market for agricultural goods. The UK benefits from harmonized rules in this area and a broadly level playing field. The EU is a key market for UK farmers and food producers – as the largest economy in the world it represents 25.8% of the world's Gross Domestic Product (GDP) and access to the Single Market of more than 500 million consumers is a significant benefit for the UK economy.[47] Four of the top 5 destinations for UK agricultural produce were in the EU in 2014: Ireland, France, USA, Netherlands and Germany, and of £12.8bn worth of products exported roughly 73% were destined for EU countries.

Welsh food and drink exports to the EU were worth £274.2 million in 2014, 90.7% of the total, with only 9.3% going to non-EU countries. Exports from the sector increased 132% between 1999 and 2013 with 1 in 10 businesses in the sector now exporting.[48] Wales is the largest sheep meat exporting region in the EU, with the combined amount of Welsh lamb and beef exports worth £217 million in 2012.[49] However only 2% of total

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http://www.walesonline.co.uk/news/wales-news/dont-forget-wales-european-union-9496891; https://assemblyinbrief.wordpress.com/2015/07/06/a-way-forward-for-direct-payments-to-farmers-in-wales/; https://assemblyinbrief.wordpress.com/2016/05/19/the-common-agricultural-policy/

44 Many commentators assert that the UK would be unlikely to cease financial contributions to and receipts from the EU before the end of the current programming period and Multi-Annual Financial Framework in 2020 (see budget paper). However this is an unknown. http://ca1-fml.edcdn.com/downloads/WCF-Brexit-18.01.16-pdf.pdf?mtime=20160207094708

45 Centre for European Reform (2014), The economic consequences of leaving the EU, available at: http://www.cer.org.uk/sites/default/files/smc_final_report_june2014.pdf [accessed 07.02.2016]

46 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/335026/agriculture-final-report.pdf

47 Ibid.

48 http://businesswales.gov.wales/foodanddrink/value-welsh-food-and-drink

49 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/335026/agriculture-final-report.pdf

Welsh export value is derived from food, compared with 4% of GB, and 6% in Scotland.[50] Export prices benefit from EU protected food names, such as the Protected Geographical Indication (e.g. Welsh Lamb, Welsh beef) and Protected Designation of Origin designations (e.g. Traditional Welsh Caerphilly Cheese, Anglesey Sea Salt).[51] A UK withdrawal from the EU would subject the agri-food trade to the Common Customs Tariff i.e. import duties to the rest of the EU.[52]

The UK is however a net importer of food; the top 8 UK trade partners for imports in food, feed and drink are EU Member States. The single market prevents trade barriers being established and enables a food policy which benefits consumers in terms of choice, availability and standards, although not price. The CAP is accused of causing prices to be over-inflated on EU markets and protecting EU food products against cheaper imports from developing countries. In the absence of a continued trade agreement with the EU prices for imported food would increase. However, UK agriculture provides 62% of the food eaten in the UK and is the foundation for the UK's food industry which is the largest manufacturing industry in the country.[53]

The Balance of Competences Review was also supportive of an EU role in negotiating global trade deals for agricultural goods. EU Free Trade Agreements have meant that EU food exports globally have increased by more than 60% over the last decade from €5.6 billion in 2004 to almost €10 billion in 2014. A withdrawal from the EU could lead to lengthy negotiations to replace these trading agreements and uncertainties for the sector and the agri-food sector. Responses to the Review highlighted the advantage and economic benefits resulting from the EU operating as a block in WTO and other international negotiations, and its role as a major player in global agricultural trade. The UK could be expected to have reduced influence negotiating as an individual country. The Welsh Government commented: 'When considering the possibility of negotiating with each individual trading partner, and also with organisations such as the EU, EEU, EFTA, NAFTA, MERCOSUR, WTO, such a burden of negotiation is difficult to comprehend'.[54]

In addition, access to non-UK labour is crucial for British farmers and growers and the sector is reliant to some degree on migrant labour to meet demand – something that could reduce if the UK were to leave the EU. Research on EU migrants to Wales shows no associated increase in unemployment of UK nationals in the sector, with migrants entering hard-to-fill vacancies.[55] In 2014 there were more than 34,000 non UK-born

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[50] Ibid. If drinks are included, Scotland jumps to 30% reflecting the dominance of Scotch Whisky.
[51] PDO/PGI protection is available to non-EU products, though is dependent on a national certification system.
[52] http://www.nfuonline.com/news/eu-referendum/qa-the-eu/
[53] www.gov.uk/government/statistics/total-income-from-farming-in-the-uk
[54] Welsh Government response to the Balance of Competences Review on agriculture, available at: https://www.gov.uk/government/consultations/agriculture-report-review-of-the-balance-of-competences
[55] Wales Migration Partnership, 2013, Migration and Employment in Wales, Centre for Migration Policy Research (CMPR), Swansea University.

workers employed in the UK agriculture sector and this figure excludes significant numbers of seasonal workers.[56]

POLICY AND REGULATORY CONSIDERATIONS

Evidence on the Balance of Competence Review recognized that the CAP remains misdirected, cumbersome, costly and bureaucratic.[57] It is accused of subsidising inefficient agriculture, and preventing the development of a more modern competitive farming sector. Pillar 1 direct payments in particular are seen as demonstrating a lack of value for money and encouraging grant dependency. Nevertheless, it was also recognized that the policy had been significantly reformed with the more damaging and trade-distorting elements removed, and this in part due to UK who provided 'thought leadership' in the EU.[58] In addition, there has been a strong move towards simplification,[59] and a 'Better Regulation' emphasis, an agenda that is matched at national level by the Red Tape Challenge, a UK Government priority to cut unnecessary regulation.

In the event of Brexit, a more appropriate and efficient agricultural policy could be developed for the UK and Wales. CAP now extends beyond its original objectives, and rural development expenditure for example, could potentially be better served as a national competence. However, it is questionable what an alternative agricultural policy for the UK and Wales could look like, with both the UK Government and the Devolved Administrations free to determine policy in this area. All the Devolved Administrations have the right to implement EU rules differently and to decide on the scope and weight of 'greening' or other instruments within the policy e.g. the agri-environment schemes have higher targets in Wales, Scotland and Northern Ireland than England. This flexibility in implementation allows sufficient recognition of the local and regional circumstances within the broader context of a level playing field. Policy fragmentation across the different parts of the UK has however been avoided due to the existence of the wider EU framework which has constrained the Devolved Administrations' legislative room for manoeuvre. With the removal of this wider framework there is a danger of increasing divergence across the various parts of the UK; UK Farming Minister George Eustice acknowledged in April 2016 that the

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[56] http://www.nfuonline.com/news/eu-referendum/qa-the-eu/; http://www.economist.com/news/britain/21652356-even-if-britain-votes-leave-eu-its-european-migrants-may-stick-around-what-will-become

[57] Open Europe report that the cost of implementing the Pillar One Single Payment Scheme is 4 billion euros a year or rather 10% of the total funding, quoted in: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/335026/agriculture-final-report.pdf

[58] Ibid

[59] http://ec.europa.eu/agriculture/simplification/index_en.htm

Devolved Administrations would have ‘unprecedented power to design their own policies’ should the UK vote to leave the EU.[60]

Negative environmental impact historically from the policy is now less likely due to the inclusion of agri-environment conservation schemes.[61] The EU approach has bought together agricultural and environmental approaches in a more integrated conservation regime that would be unlikely to exist otherwise.[62] Nevertheless the ‘greening’ of the CAP has also been criticized for being a poorly designed policy instrument. Improved environmental standards in the industry could be an unfortunate fatality in the event of Brexit – in the UK due to the loss of the financial incentive through direct payments and in the EU potentially through the loss of one of the strongest advocates of the ‘greening’ of CAP.[63]

Most respondents to the Balance of Competences saw harmonized EU standards as essential in order to avoid barriers to trade. In the event of a Brexit should the UK continue to export to the Single Market, there will be little opportunity to vary from EU standards and regulatory requirements in this sector. For example, Switzerland, as a non-EU country, adopts the same basic protocols on Plant Health and Plant Reproductive Material to allow them unfettered trade within the EU.[64] As aspects of agriculture and plant health are highly regulated in all developed countries for quality purposes, and there would be cost implications of establishing commensurate standards, it is unlikely that significant deregulation or divergence would occur. However, leaving the EU may give the UK more flexibility to develop and adopt new technologies, though some of these (e.g. GMO) may not have UK-wide support.

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[60] https://www.fginsight.com/news/brexit-briefing-what-would-replace-the-cap-if-the-uk-voted-to-leave-11636

[61] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/335026/agriculture-final-report.pdf

[62] Ibid

[63] Burns, C., A. Jordan, V. Gravey, N. Berny, S. Bulmer, N. Carter, R. Cowell, J. Dutton, B. Moore S. Oberthür, S. Owens, T. Rayner, J. Scott and B. Stewart (2016) The EU Referendum and the UK Environment: An Expert Review. How has EU membership affected the UK and what might change in the event of a vote to Remain or Leave? available at: http://ukandeu.ac.uk/wp-content/uploads/2016/04/Expert-Review_EU-referendum-UK-environment.pdf

[64] Welsh Government response to the Balance of Competences Review on agriculture, available at: https://www.gov.uk/government/consultations/agriculture-report-review-of-the-balance-of-competences