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CHARTING A NEW COURSE FOR THE UNITED KINGDOM AGRI-FOOD SECTOR - HEALTH AND HARMONY: THE FUTURE FOR FOOD, FARMING AND THE ENVIRONMENT IN A GREEN BREXIT

Introduction

On 27 February 2018, the Government issued its Consultation Document on Health and Harmony: the Future for Food, Farming and the Environment in a Green Brexit.¹ And this took its place in a growing constellation of publications with immediate relevance for the future of the agri-food sector, including the Industrial Strategy;² the Clean Growth Strategy;³ and the 25 Year Environment Plan.⁴ Importantly, in the Foreword, the Environment Secretary saw Brexit as ‘a once-in-a-generation opportunity to reform agriculture’, with the overall objective being to improve ‘health and harmony’.⁵ In this sense of opportunity, he echoed his previous pronouncements, not least his characterisation of Brexit as offering an ‘unfrozen moment’ to take back control of environmental policy.⁶ However, as will be explored, the more detailed aspects of the Consultation Document itself arguably reveal a ‘Green Brexit’ which is somewhat different in tone from those previous pronouncements, one which, while retaining an emphasis on agriculture as capable of delivering ‘public goods’ such as environmental protection and animal welfare, also harks back to clearly articulated economic and productivity imperatives as enunciated by, for example, A Vision for the Common Agricultural Policy, issued in 2005.⁷ In particular, productivity gains are expected to reduce the need for agriculture to have recourse to the public purse, with greater faith explicitly placed on markets as opposed to state intervention: by way of specific illustration, in both the 2005 and 2018 publications, market mechanisms were regarded as sufficient for

the management of agricultural risk, whereas earlier in the Brexit process the possibility of government-backed insurance schemes had been seriously entertained.⁸

The Consultation Document

The main body of the Consultation Document is divided into three parts. The first part, ‘Moving away from the Common Agricultural Policy in England’, proposes an ‘agricultural transition’ period to allow farmers to adapt to exit from the Common Agricultural Policy. During this period, the current direct payments system would in essence be retained, resulting in the majority of support still being delivered on an area basis. That said, reductions would be imposed, with strong indications that they would be targeted on those in receipt of the highest amounts, and funds so released would be employed in the development of pilot environmental land management schemes. By the end of the ‘agricultural transition’ period, direct payments would have been phased out completely, the length of the period being a matter for consultation, although there is an expectation that it would last for a number of years.

The second part, ‘Implementing our new agricultural policy in England’, looks forward beyond the ‘agricultural transition’ period to a bespoke regime paying public money for ‘public goods’. At its cornerstone would be a ‘new environmental land management system’, while other ‘public goods’ expressly identified are animal welfare, the promotion of agricultural productivity, public access and support for rural and upland resilience. Notably, the environmental land management system is to be underpinned by natural capital principles, an approach which would seem to draw materially on the work of the Natural Capital Committee.⁹ And a matter of some interest is that natural capital is interpreted not just in environmental terms, being regarded also as ‘an essential basis for economic growth and

productivity over the long-term'.¹⁰ The Consultation Document addresses separately matters relating to: enhancement of the environment; the fulfilment of responsibility to animals; support for rural communities and remote farming; risk management and resilience; the protection of crop, tree, plant and bee health; and fairness in the supply chain. In addition, as an overarching theme, it advocates a change in regulatory culture, with a move to an integrated inspection and enforcement regime which is both more targeted and more proportionate. Further, picking up on recent developments both in theory and practice,¹¹ focus is directed to more outcome-focused forms of implementation.

The third part, 'The framework for our new agricultural policy', looks to issues flowing from both devolution and international trade and concludes with a list of potential legislative powers for inclusion in the Agriculture Bill which is to carry the new agricultural policy into effect. This part is relatively brief, being six pages in total, with only one page on the Agriculture Bill itself (which is set out in skeleton form). Nonetheless, certain key elements emerge. Thus, in the case of devolution, the Consultation Document seeks views as to which areas of agricultural and land management policy require a common approach across the United Kingdom; and, in the case of international trade, priority is to be accorded to a policy which maximises trading opportunities globally. At the same time, however, there is unequivocal statement that '[t]he government is fully committed to ensuring the maintenance of high standards of consumer, worker and environmental protection in trade agreements'.¹²

Some Thoughts

The Consultation Document sets out cogently the scope which Brexit offers to implement an agricultural policy where greater importance is attached to environmental protection and enhancement and, indeed, on the delivery of other 'public goods'. Definitely, the repatriation

to the United Kingdom of competences in the agri-food sector provides a firm basis upon which to design a regime more closely tailored to national and regional needs. In addition, the Consultation Document taps constructively into recent advances in terms of policy design, a good example being the implementation of measures at landscape and/or catchment level, where greater ‘connectedness’ has the capacity to increase environmental dividends exponentially. And there is likewise a strong argument for the proposed rationalisation of the rules to be observed by farmers, the burden of which would seem to have been a major factor prompting many to vote in favour of Brexit.¹³ On the other hand, it may also be observed that within the United Kingdom, and even within England, geographical features, farming structures and local preferences remain remarkably diverse, with the result that the accommodation of such diversity would militate against any simple, ‘one-size-fits-all’ approach to regulation. Further, since simplification of the Common Agricultural Policy has long been a policy goal, both at European Union and national level,¹⁴ it may therefore be expected that much of the low-hanging fruit has already been harvested. In this regard, a matter of note is that a current initiative which has attracted a high level of criticism for its complexity, the Countryside Stewardship Scheme, is in large part a creature of national regulation, the detailed measures being carried into effect under the English Rural Development Programme and European Union law providing only a framework.

Attention may be also directed to four specific issues raised by the Consultation Document. First, as indicated, the goal of a Green Brexit for agriculture is seen firmly through a natural capital lens. This fits well with the work of the Natural Capital Committee, but a consequence is relatively brief consideration of concepts such as ‘sustainable intensification’, ‘agroecology’ or the ‘provision of ecosystems services’, notwithstanding that the provision of ecosystem services, in particular, had featured prominently in earlier policy discourse.¹⁵ At the same time, although the Evidence Compendium which accompanies the Consultation

Document places a figure of £4 billion on the value of environmental benefits from farmland, forestry, woodland and trees per year in the United Kingdom, there is recognition that several elements are not easy to monetise:¹⁶ indeed, the Natural Capital Committee has accepted that ‘there are many different interpretations of what valuation means and how to apply valuation’.¹⁷ And this would seem to be an inherent challenge for any ‘public goods’ approach which is looking to reward in financial terms the provision of ‘non-market’ benefits.¹⁸ At the same time, it may be re-iterated that the Consultation Document identifies the promotion of agricultural productivity as a ‘public good’ which arguably marks an extension to the traditional list of such goods as found in the agricultural context.¹⁹ Not least, there may be too close a tie to the act of commercial production and, even if the promotion of agricultural productivity were to be framed in terms of delivering national food security, there is yet to be universal agreement that this wider objective would qualify.²⁰

Secondly, looking beyond the ‘agricultural transition’ period, the scope of support would appear more restricted than had earlier been envisaged. As has been noted, it is proposed that the management of agricultural risk should be addressed by market mechanisms, as opposed to there being access to government-backed insurance schemes. And similarly, in the case of animal welfare payments, the Consultation Document foresees that, ‘[r]ather than significantly raising the UK legislative baseline’,²¹ there should instead be pilot schemes that offered targeted payments, an approach that appears less ambitious than the declaration in July 2017 by the Secretary of State that ‘I also want to see higher standards across the board of animal welfare’.²² The effect of such a shift in policy may not be trivial in that, in the absence of a ‘race to the top’, it may be less easy to deliver a ‘Brand Britain’ based on high-quality produce, with the position being exacerbated by the fact that in other jurisdictions concrete steps are already being taken to raise the bar, such as the 2016 Massachusetts Animal Law (which imposes strict conditions for housing farm animals). The longer-term

retrenchment of support may generate real financial impact in terms of competitiveness.

Initial indications are that, following the end of the present programming period in 2020, the European Union will maintain not only government financial support for risk management measures, but also more general income support for farmers (albeit in simplified and better targeted form): as a consequence, there is a strong probability that, by the end of the ‘agricultural transition’ period, United Kingdom farmers will be competing with farmers in the remaining EU-27 who continue to enjoy a basic level of direct payment. Indeed, when outlining its future vision for the Common Agricultural Policy, the European Commission unequivocally stated that ‘direct payments remain an essential part of the CAP in line with its EU Treaty obligations’.²³

Thirdly, as has again been noted, the design of innovative environmental land management schemes may generate enhanced environmental dividends, with innovation of this kind potentially extending beyond the implementation of measures at landscape and/or catchment level to include such initiatives as actions to encourage private investment in natural capital (as where water companies make payments to farmers and other land managers for the provision of hydrological ecosystems services). Without doubt, in this field there is an impressive bank of research upon which to draw,²⁴ while the Consultation Document itself lays great weight on the scope to develop pilot schemes over the ‘agricultural transition’ period. That having been said, the implementation of better targeted and outcome-focused environmental measures, with all the benefits which they imply, may not sit easily with the proposed simplification agenda and, in particular, the reduction of administrative burdens.²⁵

Scope for improvements in scheme design and monitoring can be identified, such as increased use of remote sensing and of blanket applications where farmers undertake collective actions: for example, procedural streamlining has recently introduced where farmers make joint applications for support under European Union agri-environment-climate

schemes. Yet there may also be wisdom in accepting that greater environmental benefits may need to be ‘purchased’ through greater administrative costs.

Fourthly, while the Consultation Document expressly covers food as well as farming and the environment, discussion of future food policy is, by comparison, largely absent. No reference is made to protected designations of origin or protected geographical indications; and issues of food waste and nutrition do not feature prominently, although food waste and the creation of a Food and Drink Sector Council are addressed in the separately published Industrial Strategy.²⁶ This may be regarded as a significant lacuna at a time when the health costs which flow from poor nutrition are increasingly engaging policy-makers, as illustrated by the recent introduction of the ‘Sugar Tax’. Rather, where the Consultation Document does look beyond primary production, emphasis is placed on securing for farmers a fair return within the broader food chain; and the most effective mechanism for achieving this is understood to be closer collaboration between farmers, which would suggest a more positive approach towards producer organisations than at the time of the 2013 Common Agricultural Policy reforms.²⁷ On the other hand, in terms of concrete action, it may also be noted that earlier in 2018 the Government took the decision not to extend the role of the Groceries Code Adjudicator so as to cover indirect (as well as direct) suppliers to supermarkets, notwithstanding that indirect suppliers may often be farmers as primary producers.²⁸

Overall, the Consultation Document would seem to place much faith in the ability of markets to provide adequate remuneration for farmers. Thus, markets are expected to deliver insurance products without the need for government support; and, more broadly, there is an understanding that increased productivity, to a substantial degree generated by advances in technology, will place farmers in a position after the ‘agricultural transition’ period where they can compete on the world stage without recourse to the direct payments which they currently receive. Significantly, it would seem that, following the ‘agricultural transition’

period, the receipt of support will generally be dependent upon ‘additional effort’, whether in respect of environmental land management or animal welfare, with farmers being required under the ‘polluter pays’ principle to internalise the costs of meeting standards of good agricultural practice.²⁹ While a move away from direct payments made on an area basis has obvious attractions, it may be prudent also to recognise that it has the potential to see English farmers facing headwinds. Not least, there is every likelihood that farmers in the European Union will continue to enjoy a level of area-based payments (albeit on condition that they meet cross-compliance conditions founded on standards of good agricultural practice); and, even as technology may trigger a new ‘Green Revolution’, it is reasonable to assume that this technology will be employed beyond the United Kingdom amongst competitor agricultural nations.³⁰ Moreover, as has been highlighted, the Consultation Document is relatively silent on trade aspects. There is the firm commitment to maintain high standards of consumer, worker and environmental protection, but there are also intimations of a trade approach which promotes lower prices for consumers.³¹ Details of this latter approach would benefit from more extensive exposition: for example, would it encompass the importation of chlorine-washed chicken and hormone-treated beef or the unilateral reduction (or even removal) of tariffs on agricultural products? These issues have resonated strongly in public debate since the Referendum and, at the same time, they would seem pertinent in the determination of whether and, if so, by how much, farmers should receive government support. Accordingly, key pieces in the jigsaw remain to be completed, while interactions with other policies areas (and notably trade policy) are yet to be resolved. Further, while in the context of the protection of the environment and animal welfare the pieces are more fully in place, the emphasis on pilot schemes would suggest that the Consultation Document is but the first step in a longer process. And this renders challenging the provision of definitive responses at this stage.

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¹ Department for Environment, Food and Rural Affairs (DEFRA), Cm 9577 (2018).

² HM Government, Industrial Strategy: Building a Britain Fit for the Future (2017).

³ HM Government, The Clean Growth Strategy: Leading the Way to a Low Carbon Future (2017).

⁴ HM Government, A Green Future: Our 25 Year Plan to Improve the Environment (2018).

⁵ Consultation Document, page 5.

⁶ 'The Unfrozen Moment - Delivering a Green Brexit' (21 July 2017) available from <https://www.gov.uk/government/speeches/the-unfrozen-moment-delivering-a-green-brexite> (accessed 16 April 2018).

⁷ HM Treasury and DEFRA, A Vision for the Common Agricultural Policy (London, 2005).

⁸ See, for example, House of Lords European Union Committee, Brexit: Agriculture, HL Paper 169, 20th Report of Session 2016–17 (Evidence of George Eustice MP, Minister of State for Agriculture, Fisheries and Food, QQ 83-84).

⁹ See, for example, National Capital Committee, Advice to Government on the 25 Year Environment Plan (September 2017) available from:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/677872/ncc-advice-on-25-year-environment-plan-180131.pdf (accessed 16 April 2018); and see also, with more precise reference to agriculture, D. Helm, 'Agriculture after Brexit', (2017) 33 Oxford Review of Agricultural Economics S124-S133.

¹⁰ Consultation Document, page 34.

¹¹ Ongoing work of the Environment Agency in relation to water quality and soil health is highlighted in the Consultation Document itself, while Matthews has argued for a 'clear results orientation': A. Matthews, 'The Future of Direct Payments', in A. Matthews et al, Research for Agri-Committee – CAP Reform Post-2020 – Challenges in Agriculture: Workshop Documentation (European Parliament, Brussels, 2016), page 3, at page 65.

¹² Consultation Document, page 62. A matter of interest is that in this context no mention is made of animal welfare.

¹³ See, for example, W. Grant, 'How and Why Farmers Voted on Brexit' (26 December 2016) available at: <http://commonagpolicy.blogspot.co.uk/2016/12/how-and-why-did-farmers-vote-on-brexite.html> (accessed 16 April 2018).

¹⁴ See, for example, European Commission, Communication from the Commission on Simplification and Better Regulation for the Common Agricultural Policy COM(2005)509.

¹⁵ Oxford Farming Conference, 'Farm Subsidy System to be Overhauled Post-Brexit, Says Eustice' (4 January 2017) available from: <https://www.ofc.org.uk/blog/farm-subsidy-system-to-be-overhauled-post-brexite-says-eustice> (accessed 16 April 2018). In the Evidence Compendium accompanying the Consultation Document, there is also reference to 'agroecological approaches' (page 61) and 'sustainable intensification' (page 62) available from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/683972/future-farming-environment-evidence.pdf (accessed 16 April 2018).

¹⁶ Evidence Compendium (note 15), pages 33 and 56 (by reference to a 2015 valuation at 2017 prices).

¹⁷ Natural Capital Committee, Economic Valuation and its Applications in Natural Capital Management and the Government's 25 Year Environment Plan (April 2017), page 2, available from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/608850/ncc-natural-capital-valuation.pdf (accessed 16 April 2018).

¹⁸ In the agricultural context, see, for example, Organisation for Economic Co-operation and Development (OECD), Valuing Rural Amenities (OECD, Paris, 2000); and T. Cooper, K. Hart and D. Baldock, Provision of Public Goods Through Agriculture in the European Union (Institute for European Environmental Policy, London, 2009).

¹⁹ See, for example, Cooper, Hart and Baldock (note 18), pages 14-28.

²⁰ For discussion of this aspect, see, for example, A. Burrell, 'Evaluating Policies for Delivering Agri-environmental Public Goods', in OECD, Evaluation of Agri-environmental Policies: Selected Methodological Issues and Case Studies (OECD, 2012), page 49, at pages 51-53.

²¹ Consultation Document, pages 8-9.

²² Note 6.

²³ European Commission, The Future of Food and Farming COM(2017)713, pages 13-14. In addition, an advantage of a direct payment regime is that (as is currently the case in the European Union) it may be a force for generating good agricultural practice by laying down 'cross-compliance' standards to be met by farmers in order to unlock receipt.

²⁴ See, for example, Matthews (note 11); K. Prager, M. Reed and A. Scott, 'Encouraging collaboration for the provision of ecosystem services at a landscape scale - Rethinking agri-environmental payments', (2012) 29

Land Use Policy 244-249; and J. Leventon et al, 'Collaboration or fragmentation? Biodiversity management through the common agricultural policy', (2017) 64 Land Use Policy 1-12.

²⁵ For cogent discussion as to the trade-offs between the precision of environmental measures and their administrative burden, see K. Hart, A. Buckwell and D. Baldock, *Learning the Lessons of the Greening of the CAP* (Institute for European Environmental Policy, London, 2016), pages 34-56.

²⁶ *Industrial Strategy* (note 2), page 188.

²⁷ See, for example, DEFRA, *Consultation on the Implementation of CAP Reform in England, Summary of Responses and Government Response on Remaining Issues* (February 2014), paragraphs 4.8-4.11.

²⁸ HM Government, *Groceries Code Adjudicator Review: Part 2 - Government Response to the Call for Evidence on the Case for Extending the Groceries Code Adjudicator's Remit in the UK Groceries Supply Chain* (February 2018), page 5.

²⁹ Consultation Document, page 50.

³⁰ It may be observed that increases in productivity over recent years have been harder won: see, for example, Government Office for Science, *Foresight Report: The Future of Food and Farming: Challenges and Choices for Global Sustainability* (London, 2011), pages 68-69.

³¹ Consultation Document, pages 62-63.