

## Introduction

1. With less than 400 days until we leave the European Union, clarity seems to be increasing numbers of issues and decreasing clarity as to how this will affect landowners in Wales
2. The relationship between Welsh and UK government is adding an additional level of complexity to the debate. Unfortunately, there is little clarity in Ministerial announcements as to whether their announcements apply in Wales or England and Wales, and even where there may be clarity, it is not always obvious what the funding to support the policy lies.
3. The Brexit discussion is once again shining a light on the constitutional makeup of the United Kingdom. Since the UK joined the European Union in 1972, the structure of 'domestic politics' has changed radically and withdrawal from Europe raises a number of challenging questions as to the role and competence of the Devolved Administrations in Wales, Scotland, and despite current situation Northern Ireland. Devolution has always been considered in the context of the UK being a member of the EU. This is written into the Government of Wales Act and Government of Scotland Act.
4. Most land use, farming and economic development policies of interest to CLA members have been devolved from Westminster to the control of the Senedd in Cardiff. Many of these are policies are also directly and indirectly influenced through EU Regulation and Directives. One may argue while these areas have been devolved to Wales, the oversight and control through the membership of the EU meant that the opportunity to deviate radically from a common position was limited. Whilst the UK was the member state of the EU, it was up to the governments of Scotland, Wales, England and Northern Ireland to interpret and implement EU policy as they saw fit. The EU was the reporting authority and auditor.

## The European Union (Withdrawal) Bill

5. When looking at the recent announcement in relation to how agricultural policy will be applied and the impact it will have on businesses post Brexit, it is necessary first to consider the constitutional context that will shape the domestic legal system when the UK leaves the European Unions. At the root of the issue is the fundamental question of how EU derived law is translated into domestic (English and Welsh) law. This is subject of intense debate and political disagreement.
6. In the autumn of 2017, the UK Government introduced the **European Union (Withdrawal) Bill** to Parliament with the intention of repealing the European Communities Act 1972 and making other provision in connection with the withdrawal from the EU. For the purposes of regulatory consistency and to ease the process of negotiating a transition agreement and longer term, a trade deal with the EU, the UK Government recognised the necessity of adopting much of the regulation and legislation that derived from the EU into domestic law. This draft Bill will essentially convert EU law into UK Law.
7. The EU (Withdrawal) Bill seeks to save the provisions of EU law and describes them as being a body of "retained" EU law within the UK. Essentially, the "UK Government" will replace the "EU" in all regulation where the EU used to be the overriding authority. For example, through the provision of the EU (Withdrawal) Bill, all the provisions of the CAP, including the rules and regulations will continue to be the law in the UK after 28 March 2019. Those rules will be fixed in time, and any changes to those laws will have to be made by Parliament in Westminster until such point that the powers can be passed on to the devolved administrations through frameworks.
8. UK Ministers continue to reiterate their intention that in the long term, that Brexit is an opportunity to enhance the powers of the Devolved Administrations. However, the Devolved Administrations have a differing view as to the constitutional merits of the approach proposed in the draft Bill:

UK Government Interpretation	Welsh Government Interpretation
<p>UK Ministers argue that there is a need to ensure a smooth exit from the EU and the proposals as set out in the draft Bill as the simplest and most effective way of returning the sovereignty of Parliament. For that reason, the UK Government will retain all relevant EU legislation until such as time in the future as it can be unpicked and competency given back to the relevant devolved governments in line with the devolution settlements.</p>	<p>Agriculture and Environment are devolved matters and Welsh Ministers are accountable for delivering against these policy areas in Wales. Currently, when a EU regulation requires to be adopted into UK law, the government with the relevant competency passes the legislation in the way it sees fit. As such, as the UK exits the EU and “brings back” legislation and regulation, Welsh Government believe that these rules should come back directly to Cardiff , and that there is no requirement for these to be ‘retained’ at Westminster for a period of time.</p>

9. Alongside, the EU (Withdrawal) Bill, the Secretary of State for Wales established an **Expert Implementation Group**, which CLA Cymru is represented on, to support the smooth and orderly exit from the EU for Wales. The Panel has been providing two way communication from Wales into the heart of UK Government, and specifically inform UK Government on where UK frameworks may be needed alongside the Withdrawal Bill and how they might operate in practice.
10. All involved agree that there is a need for co-operation through ‘frameworks’ and there has been some progress by politicians. Negotiations between respective Ministers at the Joint Ministerial Committee (EU Negotiations) have agreed that common frameworks will be established where they are necessary in order to:
- Enable the functioning of the EU internal market, while acknowledging policy divergence
  - Ensure compliance with international obligation
  - Ensure that the UK can negotiate, enter into and implement new trade agreements and international treaties
  - Enable the management of common resources
  - Administer and provide access to justice in cases with a cross border element
  - Safeguard the security of the UK
11. However, the term ‘framework’ has been overused and over simplified. It has come to refer to all arrangements in all circumstances where European Union derived law is intended to return to Westminster control through the provisions of the European Union (Withdrawal) Bill in areas which have been devolved but takes no account of the sensitivities of how they are created and where the balance of power lies.
12. As the EU (Withdrawal) Bill has progressed through Parliament, the intensity of the debate has intensified. While the draft Bill made it through the House of Commons, the House of Lords continues to consider the constitutional merits of the approach. For a number of weeks, Cabinet Office Minister and Duchy of Lancaster, David Lidington has made clear his intention to bring forward amendments to **clause 11** to recognise the concerns of the Devolved Administrations and these were outlined in a speech by the Minister in Flintshire on 26 February but did not go far enough to satisfy the Devolved Administrations.
13. On 27 February 2018, Welsh Ministers asked the Assembly to consider the introduction of the Continuity Bill as an emergency measure in the event it was unable to offer its consent to the Withdrawal Bill. **The Law Derived from the European Union (Wales) Bill** seeks to transfer EU law in areas already devolved to Wales into Welsh law on the day the UK leaves the EU. This will provide Welsh businesses with the legal certainty and stability they have long called for. This emergency measure, introduced in parallel to similar measures in Scotland.
14. The Welsh Government’s preference remains for the UK government to amend the EU (Withdrawal) Bill in a way that satisfies their concerns. But, as so much time has passed without any agreement between

the Governments on the amendments required, they felt the need to proceed with the Continuity Bill as a fall-back option to protect Welsh devolution.

15. Carwyn Jones: *"We remain constructive partners in talks with the UK government about changes to their EU Withdrawal Bill – and this remains our preferred outcome. However, we are running out of time and have developed our bill to prepare for a situation where the UK government does not adequately amend its bill to respect the devolution settlement. "It would be irresponsible to refuse to give legislative consent to the UK government's bill while also not being prepared to put in place our own measures to give clarity about EU-derived law in Wales relating to devolved matters".*

*Why is this constitutional debate important (or relevant) to CLA members?*

16. This is essentially a constitutional debate, but it is significant as it is distracting attention away from the substantive discussions on policy and funding. Farming and land use have become the topics through which the constitutional debate is discussed and described, but this has delayed the timeline for actual policy development until the last few weeks

## Future Agricultural Policy

### In Wales

17. In response to the Referendum result, the Cabinet Secretary, Lesley Griffiths took a proactive approach and quickly established a stakeholder Round Table for her portfolio. The Round Table has met regularly since then to inform and prepare for Brexit. This Round Table forms part of a wider Welsh Government response to Brexit which has led to the preparation and publication of a high level position paper called **Securing Wales' Future**.
18. The Rural Affairs Round Table established a number of subgroups that have developed thinking over the last year. The **Evidence and Scenarios group**, which has recently published its report, has assessed the evidence of their impact of Brexit in a number of scenarios. The **Land Use group** has considered the future shape of land use policy in Wales, including the delivery mechanisms for this that fit in with our unique Welsh legislation. The **Trade group** has looked at trading patterns and opportunities that may appear post Brexit. Importantly, all consideration of future Welsh land use policy is built upon the existing legislative framework that has been established in Wales over recent years.
19. **The Well-being of Future Generations (Wales) Act** requires public bodies in Wales to think about the long-term impact of decisions, to work better with people, communities and each other, and to prevent persistent problems such as poverty, health inequalities and climate change. The Act is unique to Wales and is considered an opportunity to make a long-lasting, positive change to current and future generations. The legislation also embeds the Sustainable Development principle into law. This is described as *"The process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the well-being goals."* It sets out five ways of working needed to achieve the seven well-being goals.
20. **The Environment (Wales) Act** puts in place the legislative foundation needed to plan and manage Wales' natural resources in a more proactive, sustainable and joined-up way. The Act will mean significant economic, social and environmental benefits for Wales. It has been designed to support and complement the work to help secure Wales' long-term well-being, so that current and future generations benefit from a prosperous economy, a healthy and resilient environment and vibrant, cohesive communities. The National Natural Resources Policy, developed under the Environment Act sets out the measures needed to enable Wales' resources to be managed in a more proactive, sustainable and joined-up way. It also helps to tackle the challenges and focuses on the opportunities. Importantly, farming and land use is

recognised as a major contributor to how we manage our natural resources, and it is in this context that post Brexit farming policy will be developed.

21. On 20 February, Cabinet Secretary for Energy, Planning and Rural Affairs Lesley Griffiths set out her vision for post Brexit Land use policy in Wales and kick-started a conversation with the industry on how this can be delivered.

- Must keep Farmers on the land – welsh land must be managed by those who know it – this is best for the rural economy, communities and environment
- Agriculture sector must be prosperous and resilient in the future. Status Quo is not an option. Basic Payment Scheme will not help withstand changes brought on by Brexit
- New policy should be based on land delivering public good for all the people of Wales. Public good is not just about environment: the welsh landscape underpins the welsh brand so vital for tourism and food.
- Support should be accessible to all – giving farmers and opportunity to make a living from the land. This may mean asking farmers to do different things in return for taxpayer money.
- Not turn our back on food production - where sustainable production is viable, must help farmers compete in a global market. This is also about supporting supply chains processors and manufacturers.

22. In addition to these principles setting out the vision for future policy, the Cabinet Secretary made a number of important statements in terms of the wider context:

- a. Farming in Wales is different and policy for Wales should be made in Wales
- b. Welsh Government's belief that there is need for greater clarity on what funding will return to Wales. However, for the first time the Cabinet Secretary has stated that she will fight to protect all the funding that is returned to Wales for agriculture to be used for agriculture
- c. Recognises the need for working across the UK – but states that this needs to be done on the basis of equal partners with fair decision making, fair governance and fair funding.

#### How does this compare to England.

23. When making comparison between England and Wales, it is important to remember that there is a different journey in terms of developing post Brexit policy, starting from a different place. Recent announcements by UK Ministers are focused on England such as the launch of the **DEFRA 25 year environment plan** in January and more recently the consultation **Health and Harmony: the future of food, farming and the environment in a Green Brexit**. However, while badged 'for England' we must be mindful that due to the ongoing disagreement as outlined above, that these policies will influence or possibly impose certain outcomes in Wales – be those budgetary or policy. Furthermore, the boundary between England and Wales is porous and complex supply and processing chains cross the border on a daily basis.

#### What Next?

24. The constitutional debate is ongoing, and CLA continues to put pressure on politicians to move beyond the constitutional debate and focus on developing appropriate policy and processes. CLA continues to make this arguments at Westminster and Cardiff.