

COMMON FRAMEWORKS – NFU SCOTLAND EVIDENCE

- Upon leaving the EU, the UK will also depart from the Common Agricultural Policy (CAP). It is generally accepted by governments across the United Kingdom that a successor policy of some sort is needed to effectively support the agricultural industry given its pivotal role in the rural economy and the food and drinks sector in the wider economy. Agricultural policy also has a unique role in promoting thriving rural communities and a flourishing environment. The key question is how this policy will be delivered and funded.
- Comments relevant to the questions under examination in the Committee's inquiry are set out at the start of this submission and are to be considered as addendum to previous evidence submitted to the Finance and Constitution Committee in April 2018 concerning the funding of EU competences after EU exit. Within the April 2018 submission NFUS made comment on future governance and the operation of the Joint Ministerial Committee as vehicle for finding common consensus on frameworks, which NFUS wishes to be considered within the scope of the current inquiry. The April 2018 submission is included as an Annex to this paper.
- NFU Scotland (NFUS) remains of the view that the governance of common frameworks is an extremely complex constitutional issue which is also increasingly political. As an apolitical membership organisation representing the interests of our 9,000 crofting and farming members NFUS is not equipped to comment extensively on how such governance might or could operate.

- However, as an industry which holds significant stakes in the 24 policy areas that are subject to more detailed discussion on legislative common framework arrangements, it is important that NFUS reiterates its view on where common frameworks would be needed in the post-Brexit policy landscape.
- In its consideration of this important issue, NFUS has engaged with the authors of, and subsequently has drawn heavily from, academic and independent analysis published by the Centre on Constitutional Change¹ and the Institute for Government² on the operation of devolution and EU competences after Brexit.
- NFUS strongly recognises the challenges that have been identified by the Institute for Government in its report, *Devolution after Brexit: Managing the environment, agriculture and fisheries*, and lends its support to the conclusions and recommendations of that report.

Context - future agricultural policy frameworks

1. NFUS is of the view that Brexit provides an opportunity to move out of the shadow of the CAP. But given the four CAP settlements of the current CAP across the UK, it is vital that new agricultural policy must be developed and implemented for the delivery of differing policy outcomes across the UK. NFUS has recently published its own proposals to develop those goals further in *Steps To Change: A New Agricultural Policy For Scotland Post-Brexit*³.
2. However, while there is clear common purpose and mutual objectives, it is also just as clear that the trajectories and speed towards these outcomes must be distinctly different. Change, over an implementation period and an agricultural transition, must be managed not chaotic. It is critical that the post-CAP policy instruments and their implementation for Scotland are distinct from those to be deployed in England or any other quarter of the United Kingdom.

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<https://www.centreonconstitutionalchange.ac.uk/sites/default/files/papers/Keating%20Agriculture%20Report.pdf>

2 <https://www.instituteforgovernment.org.uk/sites/default/files/publications/IFGJ6070-Devolution-After-Brexit-180406-FINAL-WEB-FINAL.pdf>

3

<https://www.nfus.org.uk/userfiles/images/Policy/Brexit/STEPS%20FOR%20CHANGE%20March%20018%20-%20for%20email.pdf>

3. NFUS has, and continues, to make it very clear that the interests of Scottish agriculture will be best served by future agricultural policy that respects and underpins the agricultural profile of Scotland, and how it differs from the rest of the United Kingdom, and England in particular. It is vital that the unique needs of the Scottish agriculture industry are not overlooked in the development of a new regulatory framework governing agriculture.
4. It is vitally important that the current devolution settlement of policy and regulation to the constituent parts of the United Kingdom should be respected and maintained. The UK's various Governments, Parliaments and regulators should take every step to retain and protect a single market access for food, agricultural commodities, live animals and plant and plant products throughout the UK.
5. Farming Ministers across the UK and agricultural departments must establish and maintain regular, formal and cooperative arrangements to manage policy, legislation and delivery of regulation across the UK economic area. A guiding principle should be that no single country determines or curtail UK policy in the rest of the UK.

Frameworks – NFU Scotland position

6. As per previous evidence to the Committee, NFUS has always maintained that *commonly agreed* frameworks are required in order to avoid regulatory divergence, preserve the integrity of UK internal market and to enable trade deals with the EU27 and third countries to be negotiated and secured. NFUS has also acknowledged the potential risks to intra-UK trade by unconstrained policy divergence. Measures cannot be so perpendicular across the UK as to cause internal market distortions.
7. NFUS therefore supports common frameworks, commonly agreed, in the policy areas necessary to enable internal UK markets to function effectively, via minimum common standards that also ensure that the UK is best placed to enter into and implement new trade deals that are to the benefit of the agricultural industry. The examples of policy areas which to NFUS would be sensibly governed by a common framework would be pesticides, organic farming, fertilisers, animal health and traceability, food and feed safety, and food labelling.

8. However, NFUS is equally clear that beyond these minimum common standards there must be clear flexibility to develop and implement appropriate agricultural and rural policy measures within each devolved administration.
9. NFUS is conscious of the UK Government's *Frameworks analysis*⁴ which identifies 24 policy areas that are subject to more detailed discussion to explore whether legislative common frameworks arrangements might be needed in whole or in part and is very aware that the majority of these areas are of direct significance to the agriculture and food sectors.
10. Included within the 24 areas are pesticides, organic farming, fertilisers, animal health and traceability, food and feed safety, and food labelling. NFUS is comfortable with the prospect of these policies being subject to discussion on a common framework, with the important caveat that agreement is found commonly between the four parts of the UK.
11. However, decisions on Scotland's allocation of agricultural funding and absolute recognition that Scotland can decide on agricultural policy priorities to suit our unique farming and crofting landscape continues to be a contested issue. The frameworks analysis identifies 'agricultural support' as a possible area where a legislative common framework arrangement might be needed in whole or in part.
12. NFUS argues strongly that this is an area where a framework should be established in part, as follows:

"Policies and Regulations under the EU Common Agricultural Policy covering Pillar 1 (income and market support); Pillar 2 (rural growth, agri-environment, agricultural productivity grants or services and organic conversion and maintenance grants) [...]" – these areas must be managed on a devolved basis

"[...] and cross-cutting issues, including cross-compliance, finance and controls." – these areas should be agreed upon a common regulatory framework.

⁴ <https://www.gov.uk/government/publications/frameworks-analysis>

ANNEX: FUNDING OF EU COMPETENCES POST-BREXIT: NFU

SCOTLAND SUBMISSION (APRIL 2018)

- NFU Scotland (NFUS) welcomes the opportunity to give evidence to this pertinent inquiry on the funding of EU competences after the UK and Scotland leave the EU.
- With the Common Agricultural Policy (CAP) budget forming almost 40 per cent of the overall EU budget, agriculture has rightfully become a sector of focus as the terms of the Brexit negotiation become clearer. From 2014 to 2020, Scotland would have received around €4.6 billion (£3.5 billion) under the CAP from the EU. The Scottish agriculture sector and the wider rural economy is heavily reliant on CAP funding, with support payments accounting for around two-thirds of total net farm income in Scotland.
- As per previous evidence to the Finance and Constitution Committee⁵, NFUS understands that all CAP schemes will be funded through the Brexit transition period and to the end of the UK Parliament in 2022.
- However, leaving the European Union presents the first opportunity in over 40 years to overhaul and rebalance Scottish agricultural policy and NFUS has recently published its proposals for a new, funded Scottish agricultural policy which it would wish to see implemented in Scotland through a transition away from the current CAP system and to a new Scottish agricultural policy which has a strong focus on support for productivity and environmental benefits, and a baseline of financial stability.
- This submission outlines the debate around how such a policy might be funded after EU exit and the expiry of current HM Treasury commitments on agricultural spending.

⁵ August 2017, NFU Scotland submission to Finance and Constitution Committee inquiry 'Impact of Brexit on the Scottish Budget':

www.parliament.scot/S5_Finance/General%20Documents/I_NFU_Scotland_Brexit.pdf

NFUS Priorities

Post-2022, the amount of money the UK decides to spend on farming and farming-related matters will have major consequences for Scotland. NFUS is clear that agriculture must continue to receive at least the same quantum of funding as it currently does under the CAP post-2022. This budget must be ringfenced to agriculture and rural development support.

The NFUS position is that HM Treasury should finance the new agricultural policy on a UK-wide funding framework, but with the devolved administrations given the policy tools and levers to ensure the agricultural policy works for all four parts of the UK. Any approach that drops a 'Defra-centric', one-size-fits-all policy on to the devolved nations would not be acceptable.

Under NFUS' proposals for a new agricultural policy in Scotland, three components of 'Financial Stability', 'Productivity Measures' and 'Environmental Measures' would work together to enable Scottish agriculture to be more competitive, resilient and profitable – forming the essential first link of a dynamic and fair supply chain while also providing essential public benefits.

All sectors of Scottish agriculture have experienced very real challenges over a number of years – often through a combination of poor and volatile market returns, rising costs, and shifting policy demands. Lack of confidence in the sector has been undermined further by the uncertainties cast up in the wake of the UK's decision to leave the EU, and the chaotic political process that has since taken over.

Not only is farming and crofting in Scotland inherently risky, due to a host of physical challenges, in an uncertain and unpredictable economic environment NFUS considers that there will be a role for direct payments ('financial stability') to provide a vital safety net – at least in the short-to-medium term.

In addition to financial stability within any future Scottish agricultural policy, funding to enable productivity gains, building more resilience, and delivering more environmental benefit is vital. NFUS is equally unequivocal that all future support to Scottish agriculture must be properly targeted at active farmers and crofters.

The Barnett Formula

A significant concern of NFUS is what budget will be committed to agricultural support after this time. With successive UK governments showing a preference away from direct (Pillar 1) support, there has also been no reassurance given to the sector as yet whether agricultural spending will be maintained and ring-fenced.

Should the existing Barnett formula be used rather than another means of farm support budget allocation, then NFUS considers that the implications for agricultural support in Scotland could be severe.

The Barnett formula has historically been used to calculate the block grant funding that each devolved administration receives from the UK government. It aims to give the Devolved Administrations (DAs) the same pounds per person change in funding as the change in funding for comparable government services in England.

The formula takes the change in a UK government department's budget (DEL) and applies two figures that take into account the relative population of the devolved administrations (population proportion) and the extent to which the UK government department's services are devolved (comparability percentage).

$$\begin{aligned}
 &\textit{Barnett formula} = \\
 &\Delta \textit{UK government department's budget} \\
 &\quad \times \textit{comparability percentage} \\
 &\quad \times \textit{appropriate population percentage}
 \end{aligned}$$

For Scotland these figures are 99.8 per cent (Defra comparability percentage) and 9.85 per cent (population percentage). The change to the block grant for Scotland after a change in Defra's budget would therefore be:

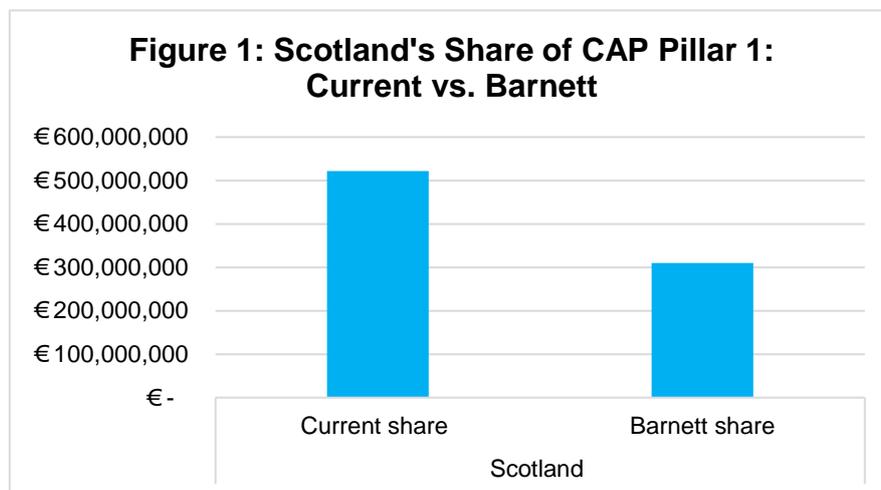
$$\Delta \textit{DEFRA budget} \times 0.998 \times 0.0985$$

The Barnett formula only affects the *change* in a UK government department's budget. It therefore requires a historic baseline value. The UK government currently has no baseline value for agricultural funding because in the past this funding has come directly from the EU in the form of the CAP.

As outlined, after the UK leaves the EU it is unclear whether the UK government will maintain the current CAP funding levels. If the UK government were to maintain these funding levels then Defra would receive a large increase in its budget.

For example, in 2016 the UK received €3.15bn in CAP direct payments. To maintain this level of funding post-2022, the budget of Defra would have to increase to the value of €3.15bn.

Figure 1 shows what would happen to Scotland's funding for Pillar 1 payments if the €3.15bn increase in Defra's budget was allocated under the Barnett formula (assuming the €3.15bn is considered a net increase to the Defra budget). Scotland currently receives around €522m for Pillar 1 payments. NFUS argues that the baseline should be at least set at this figure.



The Barnett formula would therefore only be an acceptable means to allocate CAP funding if a fair baseline level was previously agreed for each devolved administration.

Alternative mechanisms to distribute agricultural funding in the UK

The level of CAP funding that each devolved administration in the UK receives has previously been allocated on the basis of historic values that do not reflect the different agricultural conditions in each of the four nations.

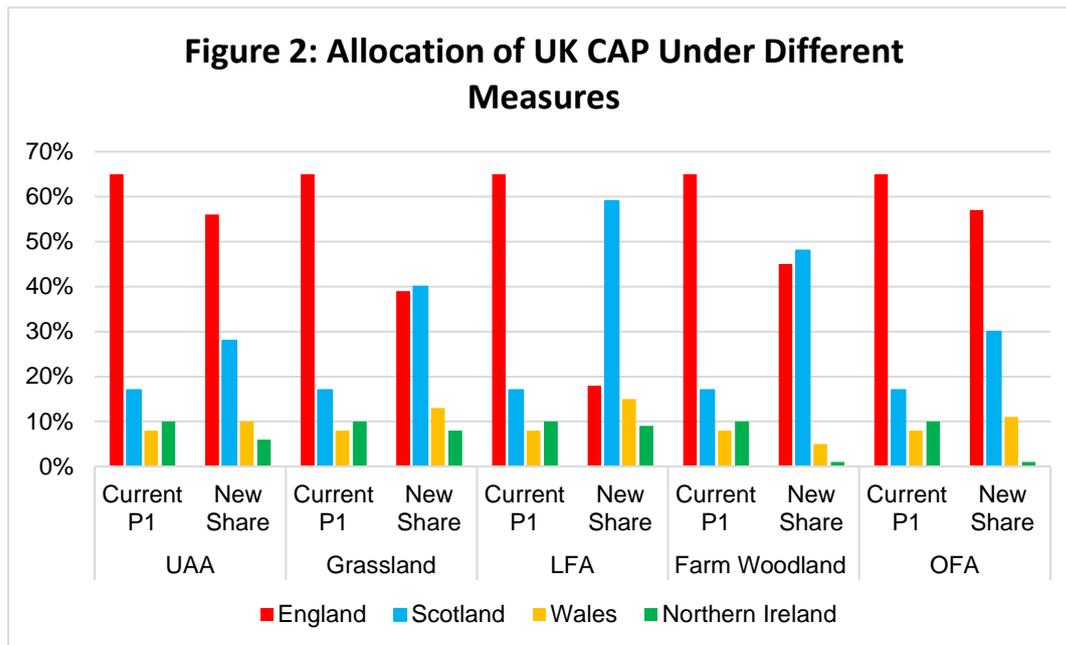
85 per cent of Scotland's landmass is deemed to be 'Less Favoured Area' (disadvantaged or severely disadvantaged) compared to only 15 per cent in England. For many years, NFUS has argued that the natural disadvantage of Scotland's landscape should be recognised within the funding envelope awarded via the CAP – indeed, it was due to Scotland's lower-than-average payment rate per hectare under the previous CAP reform that the UK was awarded a convergence uplift in 2013 in order to bring parity of payments across the UK.

Despite this, Scotland currently only receives 17 per cent of the UK's 'envelope' of CAP funding.

NFUS considers that Brexit provides the opportunity to evaluate how agricultural funding is distributed to the devolved administrations.

Figure 2⁶ compares how EU Pillar 1 funding would be distributed if it was based on 5 different indicators (utilisable agricultural area (UAA), grassland, less favoured area (LFA), farm woodland, organic farming area (OFA)) instead of historic shares. Compared with its current share of Pillar 1 payments, Scotland gains under every indicator.

⁶ Cao, Y., Elliott, J., Moxey, A. and Zahrnt V. (2010) Alternative Allocation Keys for EU CAP Funding. SNH.



Governing future distribution of funding

In a recent paper⁷, the Institute for Government has identified that the UK Government and the DAs will need to agree a new funding framework to ensure agricultural support is not just consistent with the constraints of international and EU obligations, but which also maintains the integrity of the UK internal market. It also outlines that such agreement must respect commitments that have been made to preserve the DAs current levels of flexibility.

NFUS agrees with the sentiment outlined in this paper. NFUS is concerned that, to date, it appears that the Joint Ministerial Committee framework has proven inadequate to reach appropriate agreement on key issues regarding EU exit and the administration of agricultural support. Funding will undoubtedly form a large part of future negotiations and it is vital that a mechanism is found which allows decisions on these important topics to be made in a manner palatable to all around the table.

NFUS is interested in the concept of a strengthened Joint Ministerial Committee, or an emulated Council of Ministers, which allows qualified majority voting and better dispute resolution procedures to minimise political infighting over these issues.

⁷ April 2018, Institute for Government, 'Devolution after Brexit: Managing the environment, agriculture and fisheries': <https://www.instituteforgovernment.org.uk/summary-devolution-after-brexit>

Once common agreement on a new financial framework has been found, and the UK has transitioned out of the EU, it will be for the UK to decide how agricultural spend is audited (i.e. which body will currently have oversight, governance and enforcement powers over how the agricultural framework operates). NFUS has not yet undertaken serious analysis of this, however is aware that the National Audit Office has been suggested as a possible, pre-existing body which could take on such a role.