



# UK Farm Policy after BREXIT- Legal Challenges, Legal Solutions?

Professor Fiona Smith

University of Leeds

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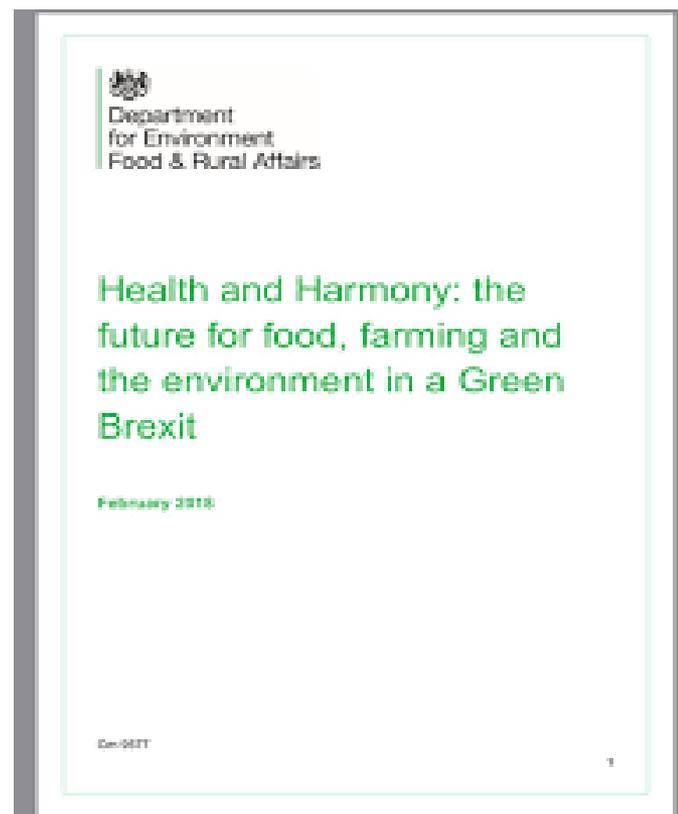


- A. UK agri-food policy after BREXIT.
  
- B. 2 key legal challenges:
  - 1. Phased reduction to Direct Payments during “transition period.”
  - 2. “Public money for public goods.”
  
- C. Legal solutions? Some conclusions.

# UK agri-food policy after BREXIT



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# UK agri-food policy after BREXIT



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## A Green Future: Our 25 Year Plan to Improve the Environment



### Preparing for our future UK trade policy

Presented to Parliament  
by the Secretary of State for International Trade and President of the Board of Trade  
by Command of Her Majesty

October 2017

Cm 9476

# 3 Legal Challenges: (1) Direct Payments



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**“We will pay the 2019 Basic Payment Scheme in England on the same basis we do now...We then plan to continue Direct Payments during an ‘agricultural transition’ period, which will last a number of years. During the ‘agricultural transition’, we plan to apply reductions to Direct Payments...”**

Source: DEFRA, *Health and Harmony: the future of food, farming and the environment in a Green Brexit*, February 2018, 20.

# 2 Legal Challenges: (1) Direct Payments



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## Current position:

- EU has exclusive competence for EU external trade policy, acting on behalf of all its member States, including the UK.
- EU is an original member of the World Trade Organization (WTO).
- The WTO Agreement on Agriculture regulates agricultural subsidies.
- WTO members agreed limits to subsidies that distort trade:
  - *De minimis* allowance.
  - Amber Box: EU Amber Box currently €72.4billion.
- There is no limit to subsidies that do not distort trade= “Green Box” (Annex 2 Agreement on Agriculture).
- EU’s Direct Payments notified to WTO as “Green Box”, but some doubts about this position.

# 2 Legal Challenges: (1) Direct Payments



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## After BREXIT:

UK leaves EU on 29/3/2019 (Article 50(3) TEU) & UK becomes an independent WTO member.

During the "implementation period" some EU laws apply to UK until 31/12/2020 (Articles 121, 124 & 126 Draft Withdrawal Agreement).

Direct Payments continue to be paid on same basis during "implementation period" & during some of the agricultural "transition period".

BUT on 29/3/2019, WTO law treats UK as no longer part of EU.

If Direct Payments not Green Box, then UK will need share of EU's Amber Box from 29/3/2019, unless UK Direct Payments are *de minimis*.



## 2 Legal Challenges: (2) Public Money for Public Goods



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“We will replace the Common Agricultural Policy with a new scheme which pays public money for public goods.

**A new environmental land management system will be the cornerstone of our agricultural and land management policy. We will support farmers and land managers to deliver substantial environmental improvements, securing public and business benefits from the farmed environment. Other public goods we could support include animal welfare, promoting agricultural productivity, public access and supporting rural and upland resilience....**

The actions of farmers and land managers now can help to preserve our natural landscapes and capital for future generations.”

Source: DEFRA, *Health and Harmony: the future of food, farming and the environment in a Green Brexit*, February 2018, 31.

# 2 Legal Challenges: (2) Public Money for Public Goods



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## Public goods include:

- Environmental enhancement and protection.
- Better animal and plant health and animal welfare.
- Improved productivity.
- Preserving rural resilience and traditional farming and landscapes in the uplands.
- Public access to the countryside.

## Measuring policy effectiveness?

- “Natural capital” approach: see Natural Capital Committee.

## 2 Legal Challenges: (2) Public Money for Public Goods



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### Lawyers ask:

1. What are payments for?
2. Who will receive the payments?
3. On what basis will payments be made? i.e. the eligibility criteria.

### Why?

- Payments to farmers that distort trade are within the Amber Box or *de minimis*
- Payments to farmers that do not distort trade are within the Green Box.
- \*Not all agri-environmental subsidies are within the Green Box\*

## 2 Legal Challenges: (2) Public Money for Public Goods



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**For example:**

### **Annex 2:12 WTO Agreement on Agriculture:**

Payments under environmental programmes

- (a) Eligibility for such payments shall be determined as part of a clearly-defined government environmental or conservation programme and be dependent on the fulfilment of specific conditions under the government programme, including conditions related to production methods or inputs.**
  
- (b) The amount of payment shall be limited to the extra costs or loss of income involved in complying with the government programme**



### **Problematic subsidies?**

- High animal and plant health and animal welfare standards.
- Improved agricultural productivity.



### One solution for problematic subsidies?

- **Annex 2:5 WTO Agreement on Agriculture**

Direct payments to producers:

“...Where exemption from reduction is claimed for any existing or new type of direct payment other than those specified..., *it shall conform to criteria (b) through (e) in paragraph 6, in addition to the general criteria set out in paragraph 1.*”

## 2 Legal Challenges: (2) Public Money for Public Goods



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### Eligibility for Annex 2:5 exemption:

- “(b)The amount of such payments in any given year ***shall not be related to, or based on, the type or volume of production*** (including livestock units) undertaken by the producer in any year after the base period.
- (c) The amount of such payments in any given year ***shall not be related to, or based on, the prices, domestic or international***, applying to any production undertaken in any year after the base period.
- (d) The amount of such payments in any given year ***shall not be related to, or based on, the factors of production*** employed in any year after the base period.
- (e) ***No production shall be required in order to receive such payments.***”



### **AND all Green Box subsidies must conform to the “fundamental requirement” in Annex 2:1 Agreement on Agriculture:**

“Domestic support measures ... shall meet the fundamental requirement that ***they have no, or at most minimal, trade-distorting effects or effects on production...[and]***

(a) the support in question shall be provided through a publicly-funded government programme (including government revenue foregone) not involving transfers from consumers; and,

(b) the support in question shall not have the effect of providing price support to producers;”



- UK agri-food policy must conform to WTO rules after BREXIT.
- WTO rules may constrain policy creativity: rules focus on a subsidy's impact on trade, not the definition of public goods, or on policy outcomes/effectiveness.
- Some areas of UK farm policy still uncertain e.g. nothing on food; nothing on industrial uses of agricultural products.
- Relationship between UK agri-food policy and key policies on international trade and industrial strategy unclear: e.g. will the UK impose import restrictions on poor quality food/animal welfare grounds, whilst maintaining high quality food/farm animal welfare standards at home?



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Thank you!

[F.Smith1@Leeds.ac.uk](mailto:F.Smith1@Leeds.ac.uk)

School of Law, University of Leeds