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The turbulent development of agricultural policies post-Brexit

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Abstract

Brexit poses numerous challenges and opportunities, not least being the design of domestic agricultural policies to replace the role of the EU's Common Agricultural Policy (CAP). This encompasses financial support schemes, as well as regulatory standards. As a devolved matter that overlaps with reserved matters (including trade, international obligations and financing of the devolved administrations), it risks being highly contentious to address. Trade is essential to agriculture, yet agriculture is only a minor component of trade. External issues such as Covid-19 and climate change add to the complexity of the matter. All-in-all, the area is being pulled in numerous directions simultaneously, with the ground shifting underfoot and yet with time pressure to design and implement long-term policies – turbulence abounds. This paper analyses the core developments across the UK with respect to agricultural policy, in light of Ansell and Trondal's turbulent governance theory. It identifies the various sources of turbulence that exist, before considering the key responses by policy-makers at the UK and devolved levels – including the design of agricultural financial support policies and measures affecting the development or continuation of regulatory standards. It concludes that the UK Government prioritized “getting Brexit done” over delivering a “Green Brexit”, to the detriment of both the quality of agricultural policy and internal relations with the devolved administrations.

1. Introduction

Every form of Brexit meant leaving the Common Agricultural Policy (CAP), one of the oldest and most contested of the EU's common policies (Gravey, 2019). But while the CAP was criticized by most farming unions, environmental groups and political parties in the UK, building its replacement – or replacements – is far from simple (Petetin, Gravey and Moore, 2019).

Firstly, while the CAP faced heavy criticisms, these criticisms come from different, often irreconcilable perspectives: that too much or too little money is devoted to agriculture, that its focus is too narrow (does not include food and nutrition), or too broad (includes rural development, not just farming), that it does too little to address the negative environmental impacts of farming, or that its rules and standards are stifling farmers in red tape. Replacing the CAP means the UK will now have to make decisions about each of these issues (and more). In particular, this means deciding how to balance potentially contradictory Brexit objectives: a “Green Brexit” which would see the UK become a global environmental leader, with an agriculture policy in line with these environmental ambitions (Gove, 2018), a will to simplify agriculture policy and make it more farmer-friendly (Leadsom, 2017) and finally a “Global Britain” which would see the UK open its markets to more agricultural food imports through a flurry of new trade agreements.

¹ Authors are listed alphabetically. A revised version (developed and written in French) of this working paper is under review with Politique Européenne.

Secondly, the devolved nature of agriculture means that these decisions are not simply a matter for Westminster but for the four administrations, which have historically followed different priorities under the umbrella of the CAP framework. This raises challenges for intergovernmental relations in the UK: will the four administrations agree a common approach to farming support or will they diverge (and how far?). Thirdly, farming policy is not decided in a vacuum. Farmers are impacted by environmental rules, migration regimes (critical for availability of seasonal workers) and trading arrangements. Agriculture and environmental policy are devolved, while immigration and trade are reserved competence. This makes policy coherence particularly difficult and raises questions as to the extent of central government steering of devolved policies – and whether devolved voices can be heard in areas of reserved competences (Engel and Petetin, 2018). This creates a perfect storm for agricultural policy change: not only are the objectives uncertain, but who will decide, and what will be the overall context in which the policy will be implemented is also uncertain.

Five years after the referendum, UK farmers still face deep uncertainties about what support and rules to expect in the coming years. England has adopted its first Agriculture Act in fifty years; but much of the Act is yet to be operationalized, with pilot schemes starting in 2021, and some of the impacts of the Act, such as the gradual phasing out of income support, will not be fully felt for a few years. The devolved administrations have each chosen their own paths – more or less divergent from the model adopted in England – and are taking their time to specify plans for post-Brexit farming. Beyond support schemes, a major issue for farming in the UK post-Brexit are rules: what environmental, phytosanitary and animal welfare standards will they have to comply with? And will UK producers and producers exporting to the UK have to comply with these same standards?

This working paper takes stock of agriculture policy development across the four UK administrations over the last five years, comprising both agricultural policy narrowly understood (including supports for the sector) and changes to the overall regulatory and trading context within which farmers are operating. It builds on our extensive work with, and alongside, stakeholders (both environment and farming groups), governmental departments and parliaments across the UK on future environmental and agricultural policies. Adopting Ansell and Trondal's (2018) turbulent governance framework (outlined below), it investigates how policy-makers in the UK have responded to the surrounding turbulence when designing post-Brexit agriculture policy – bearing in mind in particular not only the potential policy gaps or divergence arising from Brexit, but also the (often-fraught) relations between the four parts of the UK, and the conflicting overlaps between devolved and reserved competences.

The paper is structured around two research questions. First, have the policy-makers in the UK adequately addressed the turbulence arising in the context of agriculture? Second, what have been the consequences of the responses to the turbulence? After mapping the different forms of turbulence facing the four administrations, we use this framework to evaluate the political choices made by the four administrations in response to these turbulences. We study both their own policy developments and reactions to the decisions of the other three, in the legislative work to deliver Brexit. We develop two complementary legislative case studies: first, one focused on agricultural support, considering the adoption of the Agriculture Act 2020 and devolved responses to it.

Second, we focus on standards relevant to agriculture, considering both the failure to create a UK-wide non-regression clause (Agriculture Act, Trade Act 2021, Environment Bill) in contrast with the Scottish Continuity Act (UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021) and the limitations to internal UK divergence (UK Internal Market Act 2020).

We find that general UK government promises (“Get Brexit Done”, “Global Britain”) have been prioritized through the UK’s Brexit legislation drive, over sector-specific governmental promises of a “Green Brexit”, and delivered in a way which constrains, not fosters, devolved competences. The result has been to weaken the quality of the agricultural policies across the UK (and not just in England), threaten the regulatory standards and ambitions of the devolveds, and undermine the relations between the four nations. Despite the Agriculture Act 2020 and the development of agricultural policies across the devolved administrations, agricultural politics and policies look to be turbulent and unsettled for years to come. The paper also provides further insight into turbulence theory, indicating the potential need to adapt this framework for future use.

2. Mapping turbulence

Ansell and Trondal’s framework (2018) includes three forms of turbulence: organisational, scalar and environmental. Organisational turbulence deals with turbulence within institutions and organisations – e.g. major administrative reform, staff conflict or turnover. Environmental turbulence concerns external, contextual forms of turbulence, from the Covid19 pandemic to the ongoing climate and biodiversity emergencies. Scalar turbulence is critical for polities, such as the UK, which are built across multiple levels of governance. Scalar turbulence focuses on how decisions at one level can negatively impact another level. This turbulence covers both intended and unintended consequences, exposing the interdependence and interplay of the different decision centres (Oberthür & Stokke, 2011).

By leaving the EU, the UK is no longer part of the EU internal market, bound by the *acquis communautaire* or subject to the jurisprudence of the European Court of Justice. As noted above and of particular importance for the discussion here, it also is no longer part of the CAP with the effect that the financing structures and objectives found within that policy no longer apply. Furthermore, related areas such as environmental protection, food standards and market access are also affected by Brexit. Brexit therefore entails a fundamental reconfiguration of the underpinnings of agricultural policy across the UK, e.g. regarding the role of the UK and devolved administrations and the workings of any policy or practices, but without any clarity or certainty as to how this reconfiguration will evolve.

Brexit, therefore, is a major source of turbulence, generally within the UK (e.g. regarding devolution, the UK internal market and burdens on, and turnover of, departmental staff) and more specifically regarding agriculture (Table 1). Further, whilst the UK sought to patch-up law and policy affected by Brexit in the short-term via the European Union (Withdrawal) Act 2018, this does not suffice for agriculture where policy is revised or reformed on a cyclical basis – it does not stand still and the nature of farming needs long term certainty. However, whilst it is essential that the CAP be replaced across the UK

with appropriately designed policies (multiple, as agriculture is a devolved matter), designing agricultural policy in a normal situation is challenging and the context of Brexit only accentuates these challenges – even if simultaneously creating opportunities for fundamental overhauls.

Organisational turbulence abounds, as departments already under-resourced are stretched anew due to Brexit, with re-structuring, re-deployments and enhanced workloads, and without clearly delineated roles as to the decision-makers for replacement policies (e.g. which level of governance and/or which department will play the central policy-making role?). This interrelates with scalar turbulence, where UK-level decisions on external (e.g. the EU Withdrawal Agreement with the NI Protocol, the Trade and Cooperation Agreement with the EU and third party free trade agreements) and domestic (e.g. the creation of the EU Withdrawal Act, the Internal Market Act and the Agriculture Act) matters impact on and potentially constrain the devolved administrations in exercising their own powers. However, the reasoning underpinning the Internal Market Act along with the common frameworks process also highlight the potential for the devolved administrations to impact on both the UK as a whole (*vertical* scalar turbulence) and on each other (*horizontal* scalar turbulence), e.g. through transboundary environmental effects or regulatory competition

Finally, there are numerous elements of environmental (contextual) turbulence, arising from Brexit and otherwise. For instance, there is considerably political and constitutional uncertainty within the UK that has been exacerbated by Brexit (e.g. the Supreme Court cases regarding Brexit; the UK snap general elections; the repeated scandals and/or resignations of key politicians; the support for independence within Scotland; and the state of play in NI and political upheavals within the DUP), alongside the political upheavals within the EU and the USA, the impacts of Covid-19 (including on supply chains), climate change and the latest CAP reform. From the perspective of agriculture, there is also simply the loss of the CAP as noted – which in part falls within organisational turbulence, but not entirely, thereby raising the prospect of a fourth category of turbulence related more directly to policy.

Overall, there is an abundance of turbulence facing the UK and devolved administrations in seeking to replace the CAP (see Table 1). The powers have returned from the EU, but considerable challenges arise as to their use.

Elements of significance to agricultural policy	
Environmental turbulence	<ul style="list-style-type: none"> - Judicial uncertainty: <i>Miller</i> case in front of the UK Supreme Court on who can trigger formally withdrawal negotiations, <i>Wightman</i> case in front of Court of Justice of the EU on reversibility of notification of intent to withdraw. - Electoral uncertainty: two snap general elections in June 2017 and December 2019. - Covid pandemic hitting as the four administrations prepare for the end of the transition period.

Organisational turbulence	<ul style="list-style-type: none"> - Lack of preparation for Leave vote by civil service (under direct order from David Cameron). - Reduced capacity in government after 6 years of austerity which left the UK civil service at its smallest since WW2. - Creation of a new Department on Exiting the EU (DEXEU) effectively sidelining policy experts in the Department for Environment, Food and Rural Affairs (DEFRA). - Hiring spree at junior level and high turnaround in both DEXEU and DEFRA makes it difficult for the different administrations, but also civil society and farming organisations to sustain meaningful contacts. - Barnett consequential: rise in funding for Whitehall leads to more funding available for devolved administration departments. - Loss of, or reduced access to EU-wide networks for both governmental, civil society and business actors in the UK.
Scalar turbulence	<ul style="list-style-type: none"> - Uncertainty on how agriculture policy will be funded – through the Barnett formula (pro rata of English expenditures) or through a method tailored to farming (different needs in different parts of UK). - Contestation of boundaries of devolved competences – test of Sewel Convention in Westminster. - Need to establish a UK Internal Market and decide rules notably on how much internal divergence is allowed. - Instability and contestation of Brexit calendar with two versions of the Withdrawal Agreement, and delayed agreement on the Trade and Cooperation Agreement in December 2020. - Negotiation of new UK trade deals – rolled-over agreements, new agreements and membership of pre-existing agreements such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

Table 1. Brexit turbulences, within and outwith the farming sector (authors).

To successfully create agricultural policies across the UK, cooperation and collaboration will be necessary – in particular between the UK Government and the devolved administrations (due to the division between reserved and devolved matters, as well as the relationship between agriculture with trade, the environment and food/health), but also with stakeholders across the supply chains. Our two case studies (agricultural support and standards) highlight the challenges posed by turbulence, the relationships between the different forms of turbulence, the potential to take demonstrably differing approaches to turbulence and the potential for responses to one source to enhance another source of turbulence. On the last point, a significant concern is that by the UK Government deciding to prioritise ‘getting Brexit done’ and protecting the UK internal market, it has exacerbated the turbulence related to the constitutional and political relationships within the UK.

2.1. One or four agricultural policies for the UK?

As an area of shared competence, the CAP was not intended as a fully harmonised approach. Instead, in line with the principle of subsidiarity and recognising the variations of land, environment, culture, practices etc across the EU, it facilitated flexibility in its

implementation. In light also of devolution, there have been four agricultural policies within the UK since the 1990s, as the four nations have developed and applied the CAP in their own way, e.g. with variations regarding agri-environmental schemes, eligibility criteria and caps on payments (Gravey, 2019). However, the CAP still provided the overarching objectives and frameworks, with the strengths and weaknesses reflected across all Member State policies – including within the UK (Hart and Baldock, 2019). The UK, including the devolved administrations, now have the opportunity to breakaway further from the CAP if they so desire.

But diverging is not straightforward – in many ways the CAP, decried though it may be, has been shaped by UK actors, both inside government and within civil society (Ansaloni, 2011; Lataste *et al.*, 2015). As such post-Brexit agriculture policy discourse in the UK bears strong resemblance to EU discourses in recent years, notably in its focus on ‘public money for public goods’, a rallying cry of agri-economists and environmentalists in the CAP 2013 reform, and a concept embraced anew by DEFRA secretaries since 2016. Whilst the concept of public goods has a specific economic meaning (non-rivable and non-exclusive), it was adapted in the context of the CAP to cover beneficial goods to the public that are not remunerated by the market (Gravey, 2011). Thus, it distinguishes between food production (excluded) and habitat protection or nature conservation (encompassed). The focus of the CAP reforms steered away from this concept, but the public goods for public money was of British origin (Lataste *et al.*, 2015) and, with Brexit, we now see a return to this approach (Petetin, 2021; Gravey, 2021).

The CAP, financial subsidies and, in particular, direct payments have been highly contested in the UK – despite or perhaps due to the heavy dependence on them and the perception of being paid for simply owning farmland. They proved an early target in the lead up and subsequent to the Brexit referendum. In August 2016, the National Trust (a key beneficiary of CAP payments) cast the gauntlet down – they proposed the end of direct payments and a shift towards agreements based on the delivery of (environmental) public goods via renewed agri-environmental schemes (Vidal, 2016).

However, it is important to note that the focus on public goods and agri-environmental schemes has mainly been in England, rather than across the devolved administrations (Gravey, 2019). Nonetheless, the rhetoric has proven influential across the UK in the context of Brexit, where Westminster determines the funding for the devolved administrations (now, including agricultural funding), where England is a major competitor and market for farmers in the devolved administrations, and where England has the greatest resources available to develop and test agricultural policies and schemes. The uncertainty regarding funding has been particularly heightened by political declarations on occasion regarding guaranteeing levels of funding for the duration of current UK Governments, whilst simultaneously stating that existing approaches to funding (under the Barnett formula) are not appropriate for agriculture but without identifying a suitable replacement to this approach. With the devolved administrations under-resourced and both them and their farmers on tenterhooks as to whether there will be sufficient funding available to continue providing financial support for agricultural policies, falling in line with English approaches that are not in outright conflict with devolved needs is understandable – why bite the hand that feeds you?

With the extra resources in Westminster relative to the devolved administrations (along with the lack of any operational assembly for Northern Ireland for three years), the uncertainty as to the level and nature of funding for devolved administrations from the UK Government, and uncertainty as to how surrounding policies and issues would develop (e.g. environment, UK internal market and trade), it is hardly surprising that the UK Government has paved the way for England ahead of the devolved administrations – starting with the publication of the Health and Harmony consultation in February 2018 (without prior consultation with the devolved administrations) and ending with the Agriculture Act 2020, along with further documents on the implementation of the financial schemes provided for therein (e.g. the Path to Sustainable Farming Transition Plan). The Agriculture Act created a new agricultural policy for England, but also created enabling powers in Schedules for Northern Ireland and Wales and provided for components that applied across all of Great Britain and/or the UK – including regarding compliance of financing schemes across the UK with the WTO's Agreement on Agriculture.

Despite the governmental rhetoric of taking back control, a Green Brexit and being world-leading, the policy laid out in the Agriculture Act is devoid of a clear, principled foundation – what are the objectives or values that underpin the policy? It is rudderless and does not respond to the need now or in the future for a clear direction or a basis to ensure sustainability or resilience (Petetin, 2021). What it does do is outline the two prongs for financing agriculture: public money for public (environmental) goods and increasing productivity (with the end of direct payments in the medium term). These are not especially innovative – they largely reflect the approaches within the two pillars of CAP, but simply switch the pillars. It is not the radical overhaul of the CAP that the rhetoric might have indicated.

Examining the two prongs of the policy in more detail, some significant concerns arise. Whilst more expansive than earlier renditions, the first prong is restricted to a very narrow (and exhaustive) construction of environmental public goods. Omitted are considerations of food security (despite a mention elsewhere in the Act), quality and nutrition. Further, in developing the schemes, a noticeable rollback in approach is visible – intended initially as payments for outcomes, the schemes seem to be lapsing back to payments for actions. Alongside this, the productivity pillar is focused on increasing (rather than improving) productivity and profitability – in a manner that does not recognise the very limited financial viability or flexibility of some farms, especially for small farms in less favoured areas. Further, cross compliance is to be discarded. Some positive elements exist, e.g. flexibility for agricultural holdings and supporting landscape approaches, but generally the policy does not guarantee a greening of English agriculture – despite the good intentions and positive rhetoric. One particular concern is that the combined impact of the more restrictive schemes and the move away from rural development payments also will lead to land abandonment, with knock-on effects on rural communities and the environment (Petetin, 2021).

Similarities can be found across the approaches in the devolved administrations, but with some variations and they remain less developed to date. The Welsh regime is to be centred on sustainable land management (Welsh Government, 2020), with references to resilience also and links to the Well-being of Future Generations Act 2015 and the Environment Act 2016. Sustainable land management is to be achieved through two complementary forms of agricultural support, but based within a single scheme. This in-

cludes financial support for sustainable farming (equivalent to the English public goods) and business support. Numerous other similarities with the English approach can be seen, including the shift away from direct payments, potential for collaborative approaches, a return to payment for actions etc. However, there is a potential inherent conflict within the Welsh policy, as it states that one principle of the payments for sustainable agriculture is to provide a stable revenue for farmers (with payments going beyond costs or income foregone, as well as now also for actions), yet direct payments are in principle to be gradually eradicated.

In Northern Ireland, the Minister for Agriculture, Environment and Rural Affairs in November 2020 indicated that a 2018 draft strategy (DAERA, 2018), created by the Department in conjunction with stakeholders, would be developed and provide the springboard for future agricultural policy in Northern Ireland. Once again, similarities with the English policy arise, including an initial focus on payments for environmental outcomes to promote sustainability and increasing productivity (the Minister in November 2020 also suggested introducing coupled payments) (Dobbs, 2021). However, in contrast, Northern Ireland also addresses supply chain issues to some extent, supports (economic) resilience and seeks to conserve direct payments to some extent – the last recognizing the extent of the reliance by Northern Irish farmers on financial support simply to break even and survive economically (DAERA, 2016).

Scotland is more difficult to evaluate, as its main focus to date has been on the initial, long transition period, reflected in the Stability and Simplicity consultation, giving space to plan and design a future agricultural policy (Scottish Government, 2018). It recognises the multifunctionality of agriculture, the variations across the UK and leaves open the possibility of following the trajectory of the CAP (including maintaining direct payments) or undertaking a more radical overhaul. Further, the Agricultural Champions made reference to a public goods approach and the stakeholder group established to consider the future policy has indicated the need for some radical changes, as well as recognising the environmental and social contributions of agriculture. Consequently, the Scottish proposals, in taking additional time to develop a bespoke policy, may depart to a greater extent from the English approach laid out in the Agriculture Act.

Overall, the four policies are still at relatively early stages – even England's, as the schemes remain in need of further development and testing. Consequently, there is considerable uncertainty. Further, the policies to date seem far less radical than one might have expected in light of the rhetoric and the return of powers under Brexit – they mirror elements of the CAP to a large extent, with further elements of similarity between the English policy and the developments to date in the devolved administrations. Whilst Scotland seems to be taking its time (which creates its own issues) in order to develop a more tailored and potentially more ambitious policy, the other three nations seem to have reigned in their ambitions and fallen into well-worn paths instead. However, much greater contention arises when we turn to our second case study.

2.2. Fostering or limiting divergence on standards?

The story is more complicated when it comes to standards, as the approach has varied and been contested across the UK. Standards are a critical part of agricultural policy – they set the baseline all producers must meet (and under which polluter pays principle apply), and producers wanting to produce public goods and access public money must

go above (Matthews, 2013). Brexit poses the potential for major substantive gaps in legislative regimes across the UK, due to the intertwining of EU and domestic law. By leaving the EU, the legal foundation for domestic law transposing EU directives was nullified; EU Regulations would no longer be directly applicable; the EU Treaty provisions and *acquis communautaire* would no longer bind the UK; and the EU institutions would no longer have the same roles. Consequently, without actions to mitigate the situation, the immediate impact upon leaving the EU would be both major substantive gaps and governance gaps. Brexit therefore raises questions as to whether to preserve, abandon or replace EU standards, including ones directly relevant to agriculture, e.g. environmental and food standards. Along with market access, this is the most important form of environmental turbulence for the design of domestic agricultural policies – not only must every individual comply with standards as relevant, but farmers were also bound by a swathe of regulatory standards under cross-compliance conditions under the CAP. Despite being a devolved matter in principle, they also interact with reserved matters such as trade (Engel and Petetin, 2018), and both the UK Government and the devolved administrations have taken key steps on this front. The following discussion examines some of the key developments.

The UK's EU Withdrawal Act 2018 is the initial law of concern. The UK Government used this law as a patch-job to provide for the maintenance of the existing legal frameworks across the UK – EU laws were transposed and provided with fresh legal foundations, thereby providing legal certainty and coherency. Thus, Westminster took back control in order to address a range of uncertainties and the risk of internal divergences. However, they did so in a clear centralising manner that trespassed into devolved matters, notwithstanding some concessions gained by the Welsh Government in spring of 2018.

The Act (including its Henry VIII provisions) represents a clear choice by the UK Government to prioritise swift legal action to address sources of environmental turbulence over the political and constitutional relations with the devolved administrations and the associated scalar turbulence. Whilst Brexit had raised questions regarding those relationships and posed some initial scalar turbulence, the Act's content and approval process exacerbated it through its effective disregard at times for devolution. This is exemplified by Westminster using parliamentary sovereignty to create the Act, despite Scotland's refusal to grant legislative consent (Cowie, 2018) (supposedly 'ordinarily' required under the Sewel Convention). The Supreme Court later upheld this, bringing in to question whether devolution creates any real legal limits for parliamentary sovereignty. Whilst the Act is binding across the UK, fulfilling the purpose intended by the UK Government, it has highlighted and accentuated the scalar turbulence present – exemplified by Scotland's subsequent 'Sewel strike'. It also reflects the inequality between the four nations, with representation in the UK Government heavily weighted in England's favour (Swenden and McEwen, 2014).

However, the Act does not prevent changes indefinitely and should largely be seen as a stopgap measure for policy. This is exemplified in the context of environmental policy, which is directly relevant to agriculture and where some developments have arisen across the four nations. This was an area of shared competence with the EU and, whilst part of the EU, the UK (including the devolved administrations) had obligations to transpose and implement EU environmental, but could develop and improve it if it so wished (Reid, 2017). However, it could not reduce standards or conflict with the EU approaches.

Brexit raised the concern not merely of divergence but of a decline in standards and even potentially a race to the bottom. Despite these concerns being raised with the UK Government, no real guarantees were incorporated by the Government in the Agriculture Act, Trade Act, Environment Bill or otherwise. Nor does the Trade and Cooperation Agreement with the EU provide sufficient solace, despite the non-regression principle within the level playing field provisions (it remains vague, limited in scope and difficult to enforce) – the UK did not want to be bound by EU standards or ruled by the European Court of Justice any longer (Jordan et al. 2020).

The omission of a guarantee domestically seems perplexing and even self-harming at times, since the UK Government have repeatedly stated that they do not wish to lower standards and have promised (politically) that standards will not be reduced – including due to trade agreements. This is provided as the reason for no need for legislating for any guarantees – illustrating a fundamental shift through Brexit from standards resting on legal commitments to political promises (Burns *et al.*, 2019). The best that has been done is the creation of a Trade and Agriculture Committee under the Trade Act and Agriculture Act, providing that future trade agreements will be examined to determine potential impacts on domestic standards. Alongside this, the UK has been working on an Environment Bill – predominately for England, but with some broader applicability across the UK. However, it contains no such guarantees either. Further, for England, there will no longer be cross-compliance as noted above.

The devolved administrations have taken diverging approaches regarding minimum standards. In Northern Ireland, the Northern Ireland Protocol provides for some EU law to continue to apply – including those on food standards, but largely omitting laws on environmental standards including for instance those regarding water pollution, nitrates and habitat protection (Gravey and Whitten, 2021). The Draft Agricultural Strategy leaves open the possibility of cross-compliance and notes the importance of environmental regulation, but does not contain any minimum standards or provide any guarantees. Further, whilst NI has likewise developed an environmental strategy and also given legislative consent to enabling powers under the Environment Bill, no such guarantees exist there either – indeed, the Environment Bill proposes enabling powers that would facilitate NI in diverging in governance approaches to for instance water protection, which would make cooperation with Ireland very challenging. Without active steps to ensure effective environmental governance, there is likely to be stagnation and an eventual decline in standards in NI (Brennan, Dobbs and Gravey, 2019).

Wales and Scotland paint a different picture. Wales already has in place its Well-being Act and Environment Acts, but has also proposed the establishment of National Minimum Standards within its agricultural policy (Welsh Government, 2020). The aim is to gather together existing standards and possibly then add to these, with some form of cross-compliance (if not by that name) then applying within the funding schemes. Scotland's agricultural policy remains undeveloped currently, but it created its Continuity Act – providing the legal basis for it to continue to align dynamically with the EU in a range of areas, including health, animal welfare, SPS matters and environmental protection more generally. Thus, if the EU continues to develop and improve its environmental regimes, so too will Scotland in principle – although without the advantage of EU governance mechanisms or resources (Reid, 2021).

The same potential for divergence exists regarding food and related matters (Engel and Petetin, 2018). Together the potential for divergence risks both a regulatory race to the bottom (as industry actors in one nation compete with their counterparts in another nation) and also fracturing the UK internal market. Nor does this entail one of the four nations being the best in the class and another being the laggard – each may strive to improve or lag behind on different matters, but this only adds to the complexity and incoherence for the market. This is already going to occur between NI and GB to some extent if there is no regulatory alignment between the UK and the EU, as, under the NI Protocol, NI must align with the EU. Not only does this make trade within the UK much more challenging and risk fracturing the Union itself, it also may impact on the desirability of the UK as a trading partner. Consequently, an array of turbulence arises – including horizontal scalar turbulence and a form of policy turbulence, with the potential to create further environmental turbulence.

To address this turbulence, the UK Government created the Internal Market Act – highly contentious domestically and internationally. This law was designed to protect the internal UK market, in particular that of GB – initially it addressed NI more also, but this element was stepped back due to international pressure and developments in negotiations with the EU, thereby eventually respecting the NI Protocol. The Act entails some considerable centralisation, through its two market access principles (mutual recognition and non-discrimination) and the provisions on state aid. This is amply demonstrated by considering one of these principles: that of mutual recognition. This principle requires that any product legally placed on the market or used in one part of the UK must similarly be authorised for sale or use elsewhere in GB. Exceptions include restrictions created prior to the promulgation of the Internal Market Act, restrictions in the case of plant or animal diseases and restrictions due to the existence of common frameworks. It is similar to the EU principle by the same name, but the exceptions are far more limited, e.g. a devolved administration can create new restrictions or conditions regarding food production, but even if the restrictions are necessary for legitimate reasons, the restrictions or conditions cannot apply to goods imported from the rest of the UK (including products coming from a third country via elsewhere in the UK). This curtails significantly the potential for the devolved administrations to develop, implement and enforce effective policies within their own competences. For instance, if Wales were to introduce minimum alcohol pricing for public health reasons, this cannot apply to goods coming from England if no such rule applies there (Dougan, 2020).

Unsurprisingly, these provisions were highly controversial and contested by the devolved administrations. Whilst some amendments were introduced, most were refused and the law was passed swiftly and largely with disregard to the feelings of the devolved administrations – indeed with little prior engagement. Not only was legislative consent lacking, but the Welsh Government (normally more supportive of centralised measures than perhaps Scotland or NI might be) commenced legal action to challenge this law (Welsh Government, 2021). Such is the controversy and irritation of the devolved administrations with both the process and the content of the Act, that the UK also risks that the devolved administrations may not implement the Act when the time comes – something that the UK is dependent upon on a day-to-day basis. Consequently, the UK Government again has responded to existing turbulence in a manner that has increased vertical scalar turbulence once more – and this time potentially leading to a breaking point.

The transversality of the turbulence becomes apparent, as the sources of turbulence interrelate closely and the response to one may increase the other.

3. Conclusions

This working paper asked whether policy-makers in the UK adequately addressed the turbulence arising in the context of agriculture, and what were the consequences of their responses to turbulence. The above discussion highlights considerable turbulence surrounding agricultural policy within the UK. On-going factors, including migration, climate change and biodiversity loss, necessitate re-thinking of agricultural policy worldwide. However, Brexit and the internal political instability of the UK government act as catalysts: they challenge the ability of the UK to act and threaten potential chaos.

Ansell and Trondal's framework (2018) enables us to identify how Brexit highlighted seemingly unexpected (or perhaps more accurately, misunderstood) complex relationships within the UK, with the EU and internationally; shifted the parameters within which the UK agricultural policy operates, e.g. through the potential imposition of tariffs between the UK and the EU; and imposed significant time sensitive challenges on the UK (due to the triggering of Article 50), even whilst each of the four devolved administrations acted at their own pace in developing devolved policies...all the while without knowing if, when and in what form Brexit would occur, or later, how the NI Protocol or TCA would develop or be implemented. Whilst not the sole factor, Brexit in particular is a main cause of the current turbulence and accentuates the other causes.

The result is not simply one form of turbulence but all three forms – environmental, organisational and scalar. Indeed, we would note that not only is there vertical turbulence posed in the context of scalar turbulence, as Ansell and Trondal outline, but also a form of *horizontal scalar turbulence*, as the actions of individual devolved administrations may impact quite significantly on each other (e.g. making Welsh farmers more competitive than Scottish ones) and not simply on the UK as a whole or vice-versa. Further, the loss of the CAP is not simply organisational turbulence, even though it is the closest fit; this indicates the need for a fourth category of turbulence, being *policy turbulence*, that encompasses major substantive policy gaps (as is the case here) or for instance where multiple related policies are in outright conflict or where there are radical overhauls of policy regimes.

Consequently, between horizontal turbulence and policy turbulence, it is apparent that the categorization of turbulence cannot be static. Further, categorization is not universal, but will depend on the perspective or focus of the study. For instance, issues over devolution may be simultaneously horizontal and vertical turbulence, while the loss of the CAP is policy turbulence from an agricultural perspective but arguably environmental turbulence for those in related fields. Finally, there is an interactive and cumulative effect – the variety and accumulation of turbulence makes addressing any one source more challenging and can lead to new or increased turbulence as a result. This is particularly apparent in the responses to turbulence. For instance, the UK in seeking to conclude the Brexit process (environmental turbulence) or replace the agricultural policy for England (policy turbulence) or protect the UK internal market (organisational and horizontal turbulence), undermined the constitutional and political relationships with the devolved administrations (creating additional scalar and organisational turbulence for the UK), created new hurdles and costs for industry exporting to the EU (organisa-

tional turbulence) and posed challenges for the devolved administrations in delivering their own policies (policy, scalar and environmental turbulence). Thus, not only do the categories need to be expanded, but their *transversal* nature must be recognised. These considerations are crucial for the UK and the devolved administrations if they are to address the surrounding turbulence when (re)designing and implementing policies.

In answering the two research questions, we showed through our two case studies that, while still in infancy, UK agriculture policy post-Brexit will be plural – with each of the devolved administration adopting a different (although not radically different) approach from England, and that divergence overall is being accepted. However, the influence of the CAP over the English approach and subsequently the English approach over the devolved approaches (with the exception so far of Scotland) is visible. The result is a relatively timid set of policies that do not match the ambitious rhetoric. Our second case study on standards revealed a much more fraught relationship between the four administrations, where the UK Government disregarded demands for guarantees of standards but then acted unilaterally to protect the UK internal market – with significant impacts on intergovernmental relationships within the UK (and also externally) and the potential for further breakdowns if the UK government continues in its approach to the Internal Market. Overall, it is apparent that the UK Government prioritized general goals (of ‘Getting Brexit done’ and ‘taking back control’) over others (sectoral coherency, Green Brexit, strengthening the Union etc), to the detriment of both the quality of agricultural policy and internal relations with the devolved administrations.

This working paper focused on governmental actions – avenues for future research include, amongst others, considering not only the voices of the devolved administrations, but re-centring the voices of environmental and farming groups, as well as considering the legitimacy of post-Brexit policy development. Critically, the turbulence mapped here, and the concerns we express about how the four UK administrations responded to them, have implications beyond the narrow agricultural case. “Getting Brexit done” understood as exercising regulatory divergence is putting major strains on the UK devolution settlements and will continue to do so for years to come.

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