

Agriculture Transition News

May – August 2020

May

No grounds for optimism



How are farmers to make their plans? To add to the uncertainty about the weather, which they have learned to mitigate, they have unprecedented commercial uncertainty, not knowing to which markets they will have access and on what terms, or with whom they will be competing and on what terms.

Covid-19 and lockdown, and the disappearance of the catering trade as a customer, have skewed domestic demand for meat and dairy products, giving such a boost to some farmers and farm shops selling direct that they have not always been able to cope and crippling businesses which could not adapt to supply different customers. Demand from caterers may pick up slowly if lockdown is eased, but what if there is a long term decline in commuting? Will customers who have taken to buying direct stay loyal or go back to the supermarket for their meat and milk?

Export contracts for delivery to EU customers will require more than an invoice from 1 January. They have a lead time of three to four months, so come the autumn EU buyers will be wary of committing themselves if the procedures for obtaining export health certificates etc are not settled and an EU tariff may possibly be applied. And that is still very possible. The French Secretary of State for Foreign Affairs, Amelie de Montchalin, has been particularly critical of the Prime Minister's call for the EU to agree a treaty by 31 July, saying that 'A swift negotiation could be impacted by a degrade in implementation of the former agreement which we just reached – the Withdrawal Agreement. Ensuring that our citizens are protected and are never bargaining chips in the future and that the Northern Ireland protocol is fully implemented is for us an absolute priority'. She had also said that

31 December is an 'artificial deadline' and the transition period could be extended for six months because 'substance is more important than deadlines'.

The threat of competition from imports permitted by trade deals remains. No one should be surprised that the Government has not taken kindly to efforts to curb its freedom to negotiate by legislation to protect standards. After the Prime Minister's experience last autumn with the 'Benn Act' and other Parliamentary stratagems permitted by a conniving Speaker, he will use his commanding majority to kill attempts to repeat the trick by amending the Agriculture Bill. The risk for UK farmers from producers in the US, Canada, Australia and New Zealand with lower production costs and economies of scale will not go away. The Government may consider sugaring the pill with additional financial support, but with burgeoning calls to the Chancellor for all kinds of help for business, employment and the self-employed, farmers could find themselves a long way down his list.

To add to the uncertainty, the Agriculture Bill does not tell them how much they will each receive of the support already promised to replace their EU Basic Payments. It provides the framework; the details remain in gestation.

June

What should farmers expect from Boris?

Might there be light at the end of the tunnel? Or continuing lack of clarity? And disappointment?

UK farmers cannot have been enthused by recent news that the Government intended to conclude trade negotiations with the USA, Japan, Australia and New Zealand by end of the year, but perhaps not with the EU. They will, however, have been pleasantly surprised by the news that, three weeks after the Agriculture Minister, Victoria Prentis again rejected the idea, the Trade Secretary, Liz Truss, had agreed that a Trade and Agriculture Commission should be set up to protect food standards. Whether it will get going in time to have, or indeed whether the Government will allow it to have, any influence on the ongoing trade negotiations is unclear.

No sooner had the news about the Commission been announced than the newly appointed Under Secretary of State for Scotland, David Duguid, was quoted as saying that 'it is always good to have a voice from the sideline'. That is certainly not what farmers wanted, but it suggests that the Government intends the Commission to be just an advisory

body with a limited life. It is hard to see how it could be otherwise, or what more farmers can do to make their case. Lobbying does not carry the same clout with a Government with a plan and an 80-seat majority as it did when the previous one was eking out its parlous existence.

The Government is intent on trade deals. The countries with which it is negotiating are determined to obtain access to the UK market for their agricultural products. As a minimum, Australia and New Zealand will want the same exclusive access to the UK market as they presently have to those of the EU member states including the UK, but both would really like the same freedom to sell in the UK that they had before the UK joined the EU. The USA is equally determined to obtain access and regards EU standards as a phoney excuse for restricting it. The Trade Secretary continues to make soothing noises about ensuring deals benefit UK farmers, but they can be forgiven for being sceptical.

There is no certainty of a successful outcome to the negotiations with the EU. While M. Barnier has shown some flexibility recently, he has not come up with anything acceptable to the UK as regards continuing adherence to EU standards, state aid and fishing rights. Progress may depend on whether the EU member states change his negotiating mandate. They have been locked into their biggest and most fundamental wrangle ever about how to help the Southern European members, and what their budget should be for the next five years to settle, both of which required unanimous rather than qualified majority approval. After a European Council meeting lasting four nights, they succeeded. Whether they have any wish, after such a marathon, to help M Barnier remains to be seen.



July

Agriculture Bill – Gene Editing

In July 2018 the European Court (ECJ) ruled that ‘organisms obtained by directed mutagenesis techniques’ are to be regarded as ‘genetically modified organisms’ within the meaning of European Directive 2001/18, ie, in layman’s language, that ‘gene editing’ was no different to the creation of GMO’s, thus the EU ‘precautionary principle’ should apply to their use and therefore they should not be used until it was proved there was no risk in doing so. Reactions to the ruling were polarised. Environmental campaigners hailed it as a victory. The biotech industry said it was harmful for innovation in agriculture.

EU politicians in influential positions at the time, such as Paolo De Castro, the co-ordinator of the Socialist group in the European Parliament’s Agriculture Committee, said that the ruling was ‘a legal drawback that it is crucial to solve’. The chairman of the Committee, Norbert Lins, said he was more interested ‘in working to find a way around the ruling than in working out ways to uphold it’. When the issue came before the European Council, ie the heads of government of the EU member states, it, true to form, requested a study ‘to clarify the situation’ and report in 2021.

The study will have to consider advocacy for ‘precaution’ (ie do not until you are sure there is no risk) and ‘postcaution’ (ie do until you are sure there is a risk), often forcibly expressed. Supporters of precaution claim they ‘are being dismissed, defamed and attacked’ and say that the same is happening to the judges of the ECJ ‘whose task is simply to interpret the applicable European Law, which in turn is based on the precautionary principle’. They say that ‘this behaviour not only reveals a dubious understanding of science and democracy (a founding principle of which is the independence of the



judiciary from private or partisan interests), but also a questionable notion of what the law can and should do in a civil society’. [Note: The ECJ’s partisan record was a Brexit issue and lies behind the UK’s insistence in the EU trade deal negotiations that it can have no role in policing whatever is eventually agreed.]

By the time the study is complete the UK will have left the EU and be free to permit gene editing if it wishes. An amendment permitting it was tabled to the Agriculture Bill now before Parliament but withdrawn

after a lengthy debate in the House of Lords, which highlighted the environmental concerns and also the ramifications for future trade with the EU. The Government pledged to conduct a public consultation, but gave no details. There were suggestions that it would in the end offer support, though it was careful to say that the EU Withdrawal Act, which transposed all EU Regulations into UK law from 1 January 2021, means that the present regulations, and their import as ‘clarified by the ECJ’, would remain in force. Will they be altered? Who can be sure?

August What lies ahead?

Farmers in England will remember the year of national 'transition' from UK membership of the EU more for the impact of Covid than for the consequences of Brexit. That is about to change. They are going to have their own 'agricultural transition period', which will see support from the Government move in stages from EU style Basic Payments in 2021 to payments for Public Goods under the Environmental Land Management Scheme (ELMS) in 2027.

The broad outline of ELMS is known but the details remain 'subject to consultation'. Enough is, however, in the public domain for it to be clear that the industry may have to come terms with new concepts, in particular 'delinking' and 'lump sum'. They are options in the Agriculture Bill though that is no guarantee that either will be introduced.

'Delinking' is shorthand for removing the link between the right to support and the need to occupy agricultural land. If it is introduced, it will be open to a farmer to alter the size of his holding, or give up farming, and still receive support payments based on its present size until 2027. The payments will be based on what he receives in 'the reference year' yet to be decided; it could be 2021.

'Lump sum' is shorthand for rolling up delinked payments into a single payment. If it is introduced, it will be open to a farmer to use it to fund his retirement or finance an investment.

Parties to contract and share farming agreements, and landlords and tenants, will need to consider their arrangements carefully if unpleasant surprises are to be avoided. The

latter will also need to agree on the level of the ELM agreement, on who should hold it (if the regulations allow landlords or tenants to do so) and what each should do to comply with it. And, if the tenant has opted for a low level, low income agreement, can his rent be reviewed on the basis that he should have chosen a higher level and increased his income?

There will be one immediate benefit of Brexit. 'Greening' will not apply to the Basic Payments Scheme in 2021. There will be no need for applications to take account of the Crop Diversification requirements for two or three crops or designate an Ecological Focus Area, neither of which has been found to be of much environmental value.

There will also be no deductions for Financial Discipline to establish an EU crisis fund. Those made from 2018 BPS payments are now being refunded to 2019 claimants.



One change next year will be obvious to all, the reduction if not total disappearance of the yellow fields of oil seed rape. The EU ban on the use of neonicotinoids to control cabbage stem flea beetle is leading to such falls in yield that other crops are better earners. The UK now imports OSR from non-EU countries such as Ukraine where there is no ban.

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