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FOOD SOVEREIGNTY AND FOOD SECURITY: CONCEPTS AND LEGAL FRAMEWORK

1. Introduction

The United Kingdom has traditionally experienced low levels of food self-sufficiency. For example, provisional figures for 2018 reveal that national production provided only 61 per cent of all food, with the percentage rising to only 75 per cent in the case of indigenous foods.¹ Imports have therefore long remained vital to ensuring adequate supplies: by way of illustration, during the same year there was a trade deficit in the food, feed and drink sector of some £24.3 billion.² Notwithstanding that instinctively this state of affairs might prompt legitimate questions in relation to both food sovereignty and food security, the United Kingdom government has as a general rule adopted a fairly sanguine approach. Thus, an assessment conducted immediately after the 2008 food crisis could conclude that the current picture for availability and access was ‘favourable’, it also being projected that such a positive outlook would continue for up to a decade; and, in this context, much importance was attached to ‘openness to trade’, which would ensure that the United Kingdom was ‘very resilient in terms of disruptions from one or a few sources of supply’.³ More recently, however, the prospect of Brexit without any agreement with the European Union (no-deal Brexit) has generated

¹ Department for Environment, Food and Rural Affairs (DEFRA) *et al*, *Agriculture in the United Kingdom 2018* (DEFRA *et al*, London, 2019) Table 14.1.

² *Ibid*, at 101.

³ DEFRA, *UK Food Security Assessment: Our Approach* (DEFRA, London, August 2009) 3. See also, e.g., DEFRA *et al*, *Agriculture in the United Kingdom 2018* (above n 1): ‘[t]he UK sources food from diverse stable countries and imports can make up for domestic supply shortages’ (at Chart 14.2).

significant concerns for the agri-food sector, issues relating to both food sovereignty and food security moving fast up the policy agenda. Indeed, a letter signed by the Chairmen and Chief Executive of the British Retail Consortium, together with, *inter alios*, the chief executives of a number of supermarkets and McDonald's, warned that: '[w]e anticipate significant risks to maintaining the choice, quality and durability of food that our customers have come to expect in our stores, and there will be inevitable pressure on food prices from higher transport costs, currency devaluation and tariffs'.⁴

2. Legal Commitments

2.1. International Level

At international level, a range of instruments have relevance to food security, although it may be highlighted that these are generally couched in terms of a 'right to food'.⁵ An important example would be Article 25(1) of the Universal Declaration of Human Rights, providing that '[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food...'. And, while recognising that this may be declaratory as opposed to legally binding, it may also be highlighted that the United Kingdom has ratified the International Covenant on Economic, Social and Cultural Rights, Article 11(1) providing that '[t]he States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food...'.⁶

⁴ Letter to Members of Parliament (28 January 2019) (available at: <https://brc.org.uk/media/378130/no-deal-brex-it-letter.pdf>).

⁵ See, e.g., K. Mechlem, 'Food security and the right to food in the discourse of the United Nations', (2004) 10 *European Law Journal* 631; and see also, generally, H. Johnson, *International Agricultural Law and Policy: A Rights-based Approach to Food Security* (Edward Elgar, Cheltenham, 2018).

⁶ By contrast, the United Kingdom is not bound by the 2013 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (which, *inter alia*, bolsters enforcement).

Moreover, Article 11(1) also imposes a requirement to ‘take appropriate steps to ensure the realization of this right’,⁷ with General Comment 12 elaborating more fully as to what the right to adequate food entails, it being understood to be ‘indivisibly linked to the inherent dignity of the human person’.⁸ In terms of implementation at national level, General Comment 12 does accept that States should enjoy a margin of discretion, but still sees the development of a national strategy concerning the right to food as integral to ensuring food and nutrition security for all; and States are encouraged to adopt a framework law as a major instrument for implementation of this strategy. A persistent difficulty may have been determining the extent to which these instruments create enforceable obligations both within States and as between States,⁹ yet the continuing relevance of international initiatives (including for the United Kingdom) has been reinforced by the introduction of the Sustainable Development Goals (SDGs), with particular reference to SDG 2, to ‘[e]nd hunger, achieve food security and improved nutrition and promote sustainable agriculture’.¹⁰

⁷ See also Article 11(2):

The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

⁸ CESCR General Comment No. 12: The Right to Adequate Food (Art. 11) (adopted at the Twentieth Session of the Committee on Economic, Social and Cultural Rights, on 12 May 1999) (available at <https://www.refworld.org/pdfid/4538838c11.pdf>), para.4.

⁹ S. Narula, ‘The right to food: holding global actors accountable under international law’, (2006) 44 *Columbia Journal of Transnational Law* 691.

¹⁰ United Nations, *Transforming Our World: the 2030 Agenda for Sustainable Development*, A/RES/70/1 (21 October 2015). See also, generally, e.g., M.G. Desta, ‘The European Union Common Agricultural Policy: Contributing towards the Millennium Development Goal on

2.2. National Level

At national level, there is in the United Kingdom at present no framework law of the kind envisaged by General Comment 12. And definitely there is no parallel to the National Food Security Act 2013, as found in India. The importance of maintaining a vibrant agricultural sector in the national interest has, nonetheless, been expressly franked by the highest court in the land. In *Johnson v Moreton* the House of Lords justified the provision of security of tenure for farmers on the ground that they would cultivate the land with a view to the long term: indeed, such security was considered to be ‘not only for their own protection as an important section of the public, nor only for the protection of the weak against the strong; it was for the protection of the nation itself’.¹¹

In addition, even though there may not yet be a framework law, the United Kingdom Government has carried out a number of policy initiatives on aspects of food security and food sovereignty, with a degree of urgency being injected by the 2008-2009 food crisis. Notably, a United Kingdom food security assessment was conducted in 2009 and, in this context, a national definition of food security was proposed by DEFRA, namely ‘*ensuring the availability of, and access to, affordable, safe and nutritious food sufficient for an active lifestyle, for all, at all times*’.¹² The similarities with that contained in the 2009 Declaration of the World Summit on Food Security are palpable, it reading ‘[f]ood security exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food to meet

the reduction of hunger?’ , in J.A. McMahon and M.N. Cardwell (eds.), *Research Handbook on EU Agriculture Law* (Edward Elgar, Cheltenham, 2015) 463.

¹¹ [1980] A.C. 37, at 52G.

¹² DEFRA, *UK Food Security Assessment: Our Approach* (above n 3) at 6 (italics in original).

their dietary needs and food preferences for an active and healthy life',¹³ but there would also seem to be some divergence, in that there is no express reference to *physical, social and economic* access and no express reference to dietary needs, food preferences or a healthy life.

Three aspects of these policy initiatives may be highlighted. First, as indicated, there has over recent years been greater focus on matters of food security and food sovereignty. Thus, in 2006, DEFRA produced *Food Security and the UK: An Evidence and Analysis Paper*, which explored, *inter alia*, the interaction between self-sufficiency and food security.¹⁴ Not least, it concluded that the extent of United Kingdom self-sufficiency was likely to be reduced by the demands of consumers for greater variety and more exotic foods, but that this would not compromise the ability of the United Kingdom to meet its nutritional needs.¹⁵ As also indicated, momentum in terms of policy development was generated by the 2008-2009 food crisis, when it became very evident that global food prices were rising and that the poor were being affected most materially.¹⁶ In 2008 alone, there was publication of *Ensuring the UK's Food Security in a Changing World: A Defra Discussion Paper*,¹⁷ a Cabinet Office Report entitled *Food Matters: Towards a Strategy for the 21st Century*¹⁸ and a Report from the House of Commons Environment, Food and Rural Affairs Committee entitled *Securing Food Supplies up to 2050:*

¹³ Available at <http://www.fao.org/tempref/docrep/fao/Meeting/018/k6050e.pdf>.

¹⁴ DEFRA, *Food Security and the UK: An Evidence and Analysis Paper* (DEFRA, London, December 2006) (available at <https://webarchive.nationalarchives.gov.uk/20130404001020/http://archive.defra.gov.uk/evidence/economics/foodfarm/reports/documents/foodsecurity.pdf>).

¹⁵ *Ibid.*, at 49.

¹⁶ See, e.g., DEFRA, *Ensuring the UK's Food Security in a Changing World: A Defra Discussion Paper* (DEFRA, London, July 2008) 18 (available at <http://data.parliament.uk/DepositedPapers/Files/DEP2008-2037/DEP2008-2037.pdf>).

¹⁷ *Ibid.*

¹⁸ Cabinet Office Strategy Unit, *Food Matters: Towards a Strategy for the 21st Century* (Cabinet Office, London, July 2008) (Executive Summary available at https://webarchive.nationalarchives.gov.uk/+http://www.cabinetoffice.gov.uk/media/cabinetoffice/strategy/assets/food/food_matters_es.pdf).

*The Challenges Faced by the UK.*¹⁹ And a matter of some significance is that the last mentioned document unequivocally affirmed that ‘[t]he world had already changed quite a lot between 2006 and 2008’, including increased focus on domestic production.²⁰ Subsequently, in 2009, DEFRA issued *UK Food Security Assessment: Our Approach*;²¹ and this work has continued unabated until the present day: for example, in 2014 the House of Commons Environment, Food and Rural Affairs Committee published its Report entitled *Food Security*,²² where the challenges presented by climate change were more fully articulated. Indeed, the climate change dimension has moved swiftly up the agenda of agricultural policy-making more generally, with the National Farmers Union setting the ambitious goal of reaching net zero greenhouse gas emissions across the whole of agriculture in England and Wales by 2040.²³ The prospect of Brexit has, however, intensified discussion on issues relating to both food sovereignty and food security within the United Kingdom and this aspect will be considered further below.

Secondly, at the broadest level, food sovereignty is not regarded as realistically attainable in the United Kingdom, while food security is framed very much in terms of the need to ensure a supportive environment where trade will not only supply non-indigenous products, but also make up for shortfalls in indigenous products. As has been noted, if consumers are to enjoy wide choice, extending to foods which cannot be produced domestically (such as bananas, tea and coffee), then imports will be required; and, more broadly, emphasis is continually

¹⁹ House of Commons Environment Food and Rural Affairs Committee, *Securing Food Supplies up to 2050: The Challenges Faced by the UK* - Fourth Report of Session 2008–09, HC 213.

²⁰ *Ibid*, at para. 80.

²¹ Above n 3.

²² House of Commons Environment Food and Rural Affairs Committee, *Food Security* - Second Report of Session 2014–15, HC 243.

²³ National Farmers Union, *Achieving Net Zero: Farming's 2040 Goal* (National Farmers Union, Stoneleigh, September 2019) (available at <https://www.nfuonline.com/nfu-online/business/regulation/achieving-net-zero-farmings-2040-goal/>).

placed upon securing supplies of foodstuffs from a range of different sources so as to reduce risk.²⁴ In this context, an important factor is that there is no heavy dependence upon a single country: rather, some 70 per cent of imports come from across the Member States of the European Union,²⁵ understood to be ‘low risk, stable trading partners’.²⁶ That having been said, in certain sectors trade does see considerable concentration of total consumption: in the fruit and vegetable sector, Spain and the Netherlands alone account for 69 per cent of imports of fresh vegetables.²⁷ And an enlightening feature of the priority accorded by Government to the international dimension is the focus on efficiently operating infrastructure as a key to the delivery of food security: even before the 2008-2009 food crisis, a policy recommendation was ‘identifying and strengthening resilience and capacity of strategic infrastructure e.g. ports’.²⁸

At the same time, nonetheless, there have also been calls to increase levels of self-sufficiency, although as a general rule such calls have not been made under the banner of ‘food sovereignty’. Thus, in 2009, the Secretary of State for Environment, Hillary Benn, foresaw domestic production sitting alongside trade as one of the twin pillars of food security, asserting:²⁹

The best way for the UK to ensure its food security in the 21st century will be through strong, productive and sustainable British agriculture, and trading freely with other

²⁴ See, e.g., DEFRA, *Food Security and the UK: An Evidence and Analysis Paper* (above n 14) at 39-41; and DEFRA, *Ensuring the UK’s Food Security in a Changing World: A Defra Discussion Paper* (above n 16) at 15-16.

²⁵ See, e.g., House of Commons Environment, Food and Rural Affairs Committee, *Brexit: Trade in Food - Third Report of Session 2017–19*, HC 348, paras. 1 and 2 and Graph 1.

²⁶ DEFRA, *Ensuring the UK’s Food Security in a Changing World: A Defra Discussion Paper* (above n 16) at 15.

²⁷ Houses of Parliament Parliamentary Office of Science & Technology, *Security of Food Supply* (POSTNOTE Number 556, June 2017) 2.

²⁸ DEFRA, *Food Security and the UK: An Evidence and Analysis Paper* (above n 14) at vi.

²⁹ *Speech by Hilary Benn to the Oxford Farming Conference - "Challenges and Opportunities: Farming for the Future"* (6 January 2009) (available at <https://webarchive.nationalarchives.gov.uk/20090731131735/http://www.defra.gov.uk/corporate/ministers/speeches/hilary-benn/hb090106.htm>).

nations. And just so there is no doubt about this at all, let me say the following. I want British agriculture to produce as much food as possible. No ifs. No buts.

And, more recently, the merits of domestic production have been advanced in terms of consumer preferences for local products, together with both the reduced levels of risk and environmental benefits which may flow from shorter supply chains.³⁰ Indeed, in 2017, the major supermarket Morrisons committed itself to selling only British fresh meat.³¹ On the other hand, it has also been recognised that simply to use ‘food miles’ as an indicator of sustainability may generate unreliable results:³² for example, during the winter season the carbon footprint of tomatoes flown in from Africa may be less than the carbon footprint of tomatoes grown locally in a heated greenhouse.

Thirdly, for some time the nutritional aspects of food security have received emphasis in United Kingdom policy-making, an early illustration being the Cabinet Office Report entitled *Food Matters: Towards a Strategy for the 21st Century*.³³ These aspects have now acquired heightened currency following issue of the EAT-Lancet Report, ‘Food in the Anthropocene’,³⁴ advocating an integrated agricultural and food policy to deliver a ‘healthy reference diet’. More precisely, the Report foresees that this ‘healthy reference diet’ would involve greater consumption of plant-based foodstuffs and less reliance on livestock production, which would at the same time bring in train environmental benefits through reduced generation of greenhouse gases (and, in particular, methane). Such a policy would also chime well with

³⁰ See, e.g., House of Commons Environment Food and Rural Affairs Committee, *Brand Britain: Promoting British Food and Drink* - Fifteenth Report of Session 2017–19, HC 1039.

³¹ J. Cox, ‘Morrisons commits to selling only British fresh meat’, *Independent* (13 July 2017) (available at <https://www.independent.co.uk/news/business/news/morrisons-british-fresh-meat-only-sell-supermarket-uk-farmers-a7839441.html>).

³² See, e.g., A. Smith *et al*, *The Validity of Food Miles as an Indicator of Sustainable Development: Final Report* (AEA Technology, Didcot, July 2005).

³³ Above n 18.

³⁴ W. Willett *et al*, ‘Food in the Anthropocene: the EAT–Lancet Commission on Healthy Diets from Sustainable Food Systems’, (2019) 393(10170) *The Lancet* 447.

the thinking of the Intergovernmental Panel on Climate Change (IPCC), which in August 2019 concluded with high confidence that there is significant potential to mitigate climate change ‘arising from the adoption of diets in line with dietary recommendations made on the basis of health’.³⁵ And, at national level, similar views have been expressed in *Our Future in the Land*, recently issued by the Royal Society of Arts, in which it was stated:³⁶

Healthier and life-enhancing diets mean more and better fresh fruit, vegetables, nuts and wholegrain food, less and better meat and dairy, with livestock products coming from climate and nature-friendly production, and zero food waste.

On the other hand, United Kingdom policy development has not always been consistent in this regard. Notably, when scoping out the future of the agri-food sector post-Brexit, the DEFRA consultation document, *Health and Harmony: The Future for Food, Farming and the Environment in a Green Brexit*, directed relatively slight focus to matters of nutrition or, moreover, health more broadly,³⁷ even though there is background evidence of high levels of household food insecurity within the United Kingdom. By way of illustration, according to a 2018 Food and Agricultural Organization (FAO) Report, the United Kingdom fared poorly against comparable nations in terms of the proportion of severely food insecure people

³⁵ IPCC, *Climate Change and Land: An IPCC Special Report on Climate Change, Desertification, Land Degradation, Sustainable Land Management, Food security, and Greenhouse Gas Fluxes in Terrestrial Ecosystems* (IPCC, August 2019) 5.6.3.1 (which sees a healthy diet as comprising a higher proportion of plant-based foods and a lower proportion of animal-sourced foods, fats and sugar). See also, e.g., M. Springmann *et al.*, ‘Health and nutritional aspects of sustainable diet strategies and their association with environmental impacts: a global modelling analysis with country-level detail’, (2018) 2(10) *Lancet Planetary Health* e451.

³⁶ Royal Society of Arts: Food Farming and Countryside Commission, *Our Future in the Land* (Royal Society of Arts, London, July 2019) 21.

³⁷ DEFRA, *Health and Harmony: The Future for Food, Farming and the Environment in a Green Brexit*, Cm 9577 (DEFRA, London, 2018). See also, e.g., M. Cardwell and F. Smith, ‘Charting a new course for the United Kingdom agri-food sector—*Health and Harmony: The Future for Food, Farming and the Environment in a Green Brexit*’, (2018) 89 *Political Quarterly* 497.

(estimated to be 2.2 million by reference to the period 2015-2017),³⁸ while in the same year the United Nations Special Rapporteur on Extreme Poverty and Human Rights drew attention to the growing use of foodbanks, these now numbering around 2,000 by comparison with just 29 at the height of the financial crisis.³⁹

More positively, food strategies have been developed, with devolved administrations playing a substantial role. Thus, in 2009, the Scottish Government issued *Recipe for Success: Scotland's National Food and Drink Policy*;⁴⁰ and the Welsh Assembly Government a year later issued *Food for Wales, Food from Wales 2010 /2020 - Food Strategy for Wales*.⁴¹ Further, building on the Cabinet Office Report entitled *Food Matters: Towards a Strategy for the 21st Century*,⁴² the Government set out a broad vision for food up to 2030.⁴³ More recently, on 27 June 2019, the Secretary of State for Environment commissioned Henry Dimbleby to conduct an independent review so as to assist the Government in creating its first 'National Food Strategy' for 75 years (albeit with scope limited to England); and, in this context, food security

³⁸ FAO *et al*, 2018 *The State of Food Security and Nutrition in the World: Building Climate Resilience for Food Security and Nutrition* (FAO, Rome, 2018) Table A1.2. See also, e.g., House of Commons Environmental Audit Committee, *Sustainable Development Goals in the UK Follow Up: Hunger, Malnutrition and Food Insecurity in the UK - Thirteenth Report of Session 2017–19*, HC 1491, paras. 17-21 (calculating from the FAO Report that one-fifth of all severely food insecure people in Europe live in the United Kingdom).

³⁹ *Statement on Visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on Extreme Poverty and Human Rights* (London, 16 November 2018) (available at https://www.ohchr.org/Documents/Issues/Poverty/EOM_GB_16Nov2018.pdf).

⁴⁰ The Scottish Government, *Recipe for Success: Scotland's National Food and Drink Policy* (The Scottish Government, Edinburgh, 2009) (available at <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2009/06/recipe-success-scotlands-national-food-drink-policy/documents/0083283-pdf/0083283-pdf/govscot%3Adocument/0083283.pdf>).

⁴¹ Welsh Assembly Government, *Food for Wales, Food from Wales 2010 /2020 - Food Strategy for Wales* (Welsh Assembly Government, Cardiff, December 2010) (available at <https://gweddill.gov.wales/docs/drah/publications/101207-food-for-wales-food-from-wales-en.pdf>). For current developments, see Welsh Government, *Consultation Paper: Our Ambition to Further Develop Wales' Food and Drink Sector* (Welsh Government, Cardiff, 23 July 2019) (available at <https://gov.wales/sites/default/files/consultations/2019-07/food-and-drink-consultation-document.pdf>).

⁴² Above n 18.

⁴³ HM Government, *Food 2030* (DEFRA, London, January 2010).

again received express mention, together with environmental and health concerns, it being stated:⁴⁴

The purpose of the review is to address the environmental and health problems caused by our food system, to ensure the security of our food supply, and to maximise the benefits of the coming revolution in agricultural technology.

Accordingly, while momentum is being generated to implement a holistic agricultural and food policy which takes account of the multidimensional nature of the task involved and is embedded in notions of food security, for the present the realisation of such a policy remains work in progress in England, with Brexit likely to be a significant contributing factor.

3. Brexit

As indicated, issues relating to both food sovereignty and food security have been thrown sharply into focus by the prospect of Brexit, with concerns being exacerbated should this be a no-deal Brexit. In this context, four aspects may be examined.⁴⁵ First, complex questions would arise with regard to World Trade Organization (WTO) tariffs, in that they would as a general rule become applicable to trade between the United Kingdom and the European Union. And tariffs on agricultural products have traditionally been high: for example, the average European Union tariff on dairy products is over 30 per cent, with the percentage rising up to potentially 87 per cent for frozen beef.⁴⁶ There would therefore be the prospect of significant

⁴⁴ DEFRA, *Developing a National Food Strategy – Call for Evidence* (DEFRA, London August 2019) 1 (available at https://consult.defra.gov.uk/agri-food-chain-directorate/national-food-strategy-call-for-evidence/supporting_documents/nationalfoodstrategycallforevidence.pdf).

⁴⁵ See generally, e.g., House of Lords European Union Committee, *Brexit: Food Prices and Availability* - 14th Report of Session 2017–19, HL 129.

⁴⁶ House of Commons Environment, Food and Rural Affairs Committee, *Brexit: Trade in Food* - Third Report of Session 2017–19, HC 348, para. 15; and, for the full range of tariffs,

increases in food prices for consumers in sectors relying heavily on imports from the European Union, such as dairy and fruit and vegetables. Cognisant of this, in the event of a no-deal Brexit, the Government has elected unilaterally to remove tariffs on a temporary basis for a wide range of agricultural products, retaining ‘only a mixture of tariffs and quotas on beef, lamb, pork, poultry and some dairy to support farmers and producers who have historically been protected through high EU tariffs’.⁴⁷ Accordingly, although sensitive sectors (for example, sheepmeat) would continue to receive the same level of protection as they had prior to Brexit, the imperative of preventing higher food prices would see other sectors (for example, cereals) facing no tariffs on imports, yet tariffs on exports. Such a state of affairs has generated widespread concern, including from the House of Commons Environment, Food and Rural Affairs Committee, which cautioned as follows:⁴⁸

When establishing its own tariffs at the WTO, the Government must give careful consideration to the impact on the UK’s agricultural industry. High tariffs on imports would raise the cost for consumers while removing tariffs could lower the cost for consumers but have a devastating effect on the long-term future of the UK’s agricultural industry. Such a move could put many UK farmers out of business, which would be detrimental to the rural economy, and render the UK dependent on imported food.

Accordingly, despite the fact that household food security in the short and medium term might be enhanced in the sense that prices may be lower in the shops, in the long term the extent of national self-sufficiency and, indeed, food security may prove to be lower. On the other hand,

see WTO *et al*, *World Tariff Profiles 2019* (WTO, Geneva, 2019) (available at https://www.wto.org/english/res_e/booksp_e/tariff_profiles19_e.pdf).

⁴⁷ HM Treasury *et al*, *Temporary Tariff Regime for No Deal Brexit Published* (13 March 2019) (available at <https://www.gov.uk/government/news/temporary-tariff-regime-for-no-deal-brexite-published>).

⁴⁸ House of Commons Environment, Food and Rural Affairs Committee, *Brexit: Trade in Food* - Third Report of Session 2017–19, HC 348, 3.

there is recognition that in some sectors where tariffs remain there may be opportunities to increase production so as to displace imports, one instance being the dairy sector.⁴⁹ However, these opportunities may be more than offset in other sectors where farmers would not be operating on a level playing field with international competitors. Thus, an early impact assessment foresaw farm business income in the cereals sector falling by 81 per cent in the case of unilateral liberalisation;⁵⁰ and it is therefore no surprise that the National Farmers Union should be calling for a review of the proposed tariff regime.⁵¹

Secondly, it is not immediately clear as to the extent that future support schemes for farmers will be guided by food sovereignty and food security considerations. The focus of such schemes is to be public payment for public goods;⁵² and, while Clause 1(2) of the Agriculture Bill introduced in 2018 did provide that ‘[t]he Secretary of State may also give financial assistance for or in connection with the purpose of starting, or improving the productivity of, an agricultural, horticultural or forestry activity’,⁵³ there was a level of anxiety in the industry that the balance between protecting the environment and producing food had been tilted too far towards the former. For example, the NFU observed that ‘[a] disappointing omission from the bill is the importance of food production as a central pillar of future

⁴⁹ See, e.g., AHDB, *Brexit Prospects for UK Dairy Trade* (AHDB, February 2019) (available at https://projectblue.blob.core.windows.net/media/Default/Imported%20Publication%20Docs/Horizon/Horizon_Dairy_Bitesize_Brexit_20190417.pdf).

⁵⁰ AHDB, *Brexit Scenarios: An Impact Assessment* (AHDB, October 2017) 8 (available at https://projectblue.blob.core.windows.net/media/Default/Market%20Insight/Horizon_BrexitScenarios_Web_2017-10-16.pdf).

⁵¹ NFU, *Brexit: NFU Urges Government to Review No-deal Applied Tariffs* (30 August 2019) (available at <https://www.nfuonline.com/news/latest-news/brexit-nfu-urges-government-to-review-no-deal-applied-tariffs/>).

⁵² See, e.g., DEFRA, *Health and Harmony* (above n 37); and Agriculture Bill: Written Statement by Secretary of State for Environment, HCWS954 (12 September 2018): ‘[t]he Agriculture Bill sets out our new policy of paying public money for public goods’.

⁵³ For the text of the Agriculture Bill as amended, see <https://publications.parliament.uk/pa/bills/cbill/2017-2019/0292/18292.pdf>.

policy...'.⁵⁴ Likewise, the proposed categories of financial assistance were again relatively silent on nutritional aspects of food security and, moreover, health more broadly.⁵⁵

Thirdly, the agri-food industry in the United Kingdom continues to depend heavily on migrant labour, not just in the horticultural sector where this heavy dependence has long been widely recognised, but also across the whole food chain: again by way of illustration, according to the British Veterinary Association, almost half of all veterinarians registering to work in the United Kingdom each year come from the European Union and some 95 per cent of Official Veterinarians who work in abattoirs are from overseas, the majority coming from the European Union.⁵⁶ At present, the future position of migrant labour remains to be fully clarified. It is possible that many EU-27 nationals working in the agri-food sector may qualify under the EU Settlement Scheme which would allow them to continue living and working in the United Kingdom.⁵⁷ Two important criteria may, nevertheless, be emphasised. First, in the event of a no-deal Brexit, the applicant must have commenced living in the United Kingdom before the United Kingdom leaves the European Union; and it would now seem that, if this criterion is not satisfied, a relatively robust approach is to be adopted, following announcement that, on Brexit, freedom of movement in its current form will end, to be replaced by 'an Australian style

⁵⁴ R. Hesketh, *The Agriculture Bill – More than Meets the Eye* (2 October 2018) (available at <https://www.nfuonline.com/news/brexit-news/eu-referendum-news/the-agriculture-bill-more-than-meets-the-eye/>). See also, generally, S. Coe and E. Downing, *House of Commons Library Briefing Paper Number CBP 8405: The Agriculture Bill (2017-19)* (25 October 2019).

⁵⁵ With the prorogation of Parliament on 10 September 2019, the Agriculture Bill fell away, but the legal validity of this prorogation is to be decided by the Supreme Court.

⁵⁶ British Veterinary Association, *Vets Warn No-deal Brexit Could Leave Parts of the Workforce at Breaking Point* (24 September 2014) (available at <https://www.bva.co.uk/news-campaigns-and-policy/newsroom/news-releases/vets-warn-no-deal-brexit-could-leave-parts-of-the-workforce-at-breaking-point/>); and see also L. Petetin, *Cloud Nine or Down to Earth? The Implications of a No Deal Brexit on Agriculture* (15 August 2019) (available at <https://ukandeu.ac.uk/cloud-nine-or-down-to-earth-the-implications-of-a-no-deal-brexit-on-agriculture/>).

⁵⁷ See <https://www.gov.uk/settled-status-eu-citizens-families>.

points-based immigration system',⁵⁸ which may not always favour those working in the agri-food sector. Secondly, in order to achieve fully settled status the EU Settlement Scheme requires that the applicant must also, as a general rule, have lived in the United Kingdom, the Channel Islands or the Isle of Man for at least six months in any 12 month period for five years in a row, a criterion ill-matched to the seasonal nature of much agricultural work, with particular reference to horticulture. That having been said, if the criteria for fully settled status cannot be met, pre-settled status may be granted. In the event of a no-deal Brexit, the applicant must still have commenced living in the United Kingdom before the United Kingdom leaves the European Union; and then fully settled status may be achieved after five years provided again that the applicant meets the six month requirement each year.

At the same time, the specific difficulties of the agri-food sector have, to a degree, been already recognised, in that a pilot scheme for seasonal migrant workers was opened in spring 2019.⁵⁹ Under this scheme, at least as originally constituted, fruit and vegetable farmers are able to employ up to 2,500 non-European Union migrant seasonal workers for up to six months; and parallels can be drawn with the earlier Seasonal Agricultural Workers Scheme which was initiated in 1945 and continued through to 2013, at which date restrictions on the free movement of both Bulgarian and Romanian workers had been lifted. It is notable, nonetheless, that this scheme would be of little assistance in the case of veterinarians working on a permanent basis; and that demand for seasonal migrant workers has historically been substantially higher than this 2,500 figure. Thus, while there is less than full clarity as to the

⁵⁸ Home Office, *Media Factsheet: EU Citizens and Freedom of Movement* (available at <https://homeofficemedia.blog.gov.uk/2019/08/19/media-factsheet-eu-citizens-and-freedom-of-movement/>). See also HM Government, *The UK's Future Skills-based Immigration System*, Cm 9722 (December 2018) (available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766465/The-UKs-future-skills-based-immigration-system-print-ready.pdf).

⁵⁹ DEFRA *et al*, *Seasonal Workers Pilot Opens* (6 March 2019) (available at <https://www.gov.uk/government/news/seasonal-workers-pilot-opens>).

exact number of migrant workers in the United Kingdom, evidence to the House of Lords European Union Committee indicated that migrants from elsewhere in the European Union accounted for 98 per cent of the 80,000 strong seasonal workforce in horticulture and for 40 per cent of staff on egg farms.⁶⁰ Consistent with these figures, the National Farmers Union has recently called for the pilot scheme to be replaced by a full scheme for 70,000 by 2020.⁶¹ At the same time, it may be noted that the Government sees at least part of the solution to such demands for labour as fostering heightened interest in the sector from United Kingdom nationals. As declared in *Health and Harmony*:⁶²

For the longer term we want to work with industry to encourage more domestic workers to enter the profession and attract the engineering, manufacturing, research and other STEM skills necessary for an increasingly sophisticated food and farming industry.

Fourthly, and finally, Brexit is liable to create challenges to food security by reason of non-tariff barriers and increased procedures as foodstuffs cross United Kingdom borders. As has been seen, imports account for a considerable proportion of overall United Kingdom food consumption and many of these imports centre around perishable products where customs formalities and inspections may create particular friction for ‘just-in-time’ deliveries, the position in this context being exacerbated by the fact that fresh fruit and vegetables are logistically not easy to store. Likewise, the movement of animal products and live animals would in all probability entail veterinary controls; and, more generally, there would at present appear to be potential gaps in the United Kingdom infrastructure for conducting the necessary

⁶⁰ House of Lords European Union Committee, *Brexit: Agriculture* - 20th Report of Session 2016–17, HL 169, para. 253. See also, generally, T. McGuinness *et al*, *House of Common Briefing Paper Number CBP 7987: Migrant Workers in Agriculture* (4 July 2017).

⁶¹ NFU, *NFU Acts to Secure Future Labour Access* (29 August 2019) (available at <https://www.nfuonline.com/news/eu-exit/eu-exit-news/nfu-acts-to-secure-future-labour-access/>).

⁶² DEFRA, *Health and Harmony* (above n 37) at 29.

customs formalities and inspections,⁶³ which may be contrasted to the level of preparation in France.⁶⁴ For all these reasons, as has also been seen, those involved in the food supply chain have real concerns as to the extent to which they will be able to maintain the same quality of stock at the same price on supermarket shelves.⁶⁵

Such concerns would seem to be shared by Government. In August 2019, there was a leak to the press of a dossier relating to ‘Operation Yellowhammer’ (a key plank in the official preparation for a no-deal Brexit);⁶⁶ and, following a recent vote in Parliament, details were published, these including as a key planning assumption the following:⁶⁷

Certain types of fresh food supply will decrease. Critical dependencies for the food supply chain (such as key input ingredients, chemicals and packaging) may be in shorter supply. In combination, these two factors will not cause an overall shortage of food in the UK but will reduce availability and choice of products and will increase price, which could impact vulnerable groups.

Another consideration is that attempts to ease the passage of foodstuffs across borders through a light-touch inspection regime may have long-term adverse effects on food security, jeopardising the regulatory standards which underpin not only food safety, but also consumer

⁶³ House of Lords European Union Committee, *Brexit: Food Prices and Availability* - 14th Report of Session 2017–19, HL 129, paras. 48-54.

⁶⁴ Alim’agri, *Brexit: le Poste de Contrôle Frontalier du Port de Calais est Prêt* (5 April 2019) (available at <https://agriculture.gouv.fr/brexit-le-poste-de-contrôle-frontalier-du-port-de-calais-est-pret>).

⁶⁵ See, e.g., Letter to Members of Parliament (above n 4).

⁶⁶ See, e.g., R. Unwin and C. Wheeler, ‘Operation Chaos: Whitehall’s secret no-deal Brexit preparations leaked’, *The Times* (18 August 2019) (available at <https://www.thetimes.co.uk/edition/news/operation-chaos-whitehalls-secret-no-deal-brexit-plan-leaked-j6ntwvhl1>).

⁶⁷ *Operation Yellowhammer: HMG Reasonable Worst Case Planning Assumptions as of 2 August 2019* (available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/831199/20190802_Latest_Yellowhammer_Planning_assumptions_CD.L.pdf).

confidence. Notably, before the House of Lords European Union Committee, it was adduced in expert evidence that such standards can have effects which ‘generally are much more important than the tariffs’, with their particular role in the agricultural sector being highlighted.⁶⁸ In this area, focus has frequently been directed to potential post-Brexit imports of chlorine-washed chicken and hormone-treated beef, buttressed by a trade deal with the United States, the Secretary of State for International Trade even going so far as to say that the media was obsessed with chlorine-washed chicken.⁶⁹ However, the possibility of such imports would seem to be real, in that the negotiating objectives of the United States for a United States-United Kingdom trade agreement specifically include the elimination of ‘practices that unfairly decrease U.S. market access opportunities or distort agricultural markets to the detriment of the United States’, among which were identified ‘[n]on-tariff barriers that discriminate against U.S. agricultural goods’.⁷⁰ Against this background, a matter of some interest is that surveys would suggest that the maintenance of high standards is a major priority for consumers. For example, a May 2018 survey by the consumer organisation, Which?, found that only 3 per cent of consumers did not think it important to maintain food standards post-Brexit.⁷¹ Furthermore, Michael Gove, when Secretary of State for Environment, repeatedly affirmed that Brexit would

⁶⁸ House of Lords European Union Committee, *Brexit: the Options for Trade* - 5th Report of Session 2016–17, HL 72, para. 201.

⁶⁹ R. Mason, ‘Media is “obsessed” with chlorine-washed chicken, says Liam Fox’, *Guardian* (24 July 2017) (available at <https://www.theguardian.com/politics/2017/jul/24/us-chlorinated-chicken-not-ruled-out-by-no-10-in-pursuit-of-trade-deals>).

⁷⁰ Office of the United States Trade Representative, *United States-United Kingdom Negotiations: Summary of Specific Negotiating Objectives* (February 2019) 1 (available at https://ustr.gov/sites/default/files/Summary_of_U.S.-UK_Negotiating_Objectives.pdf).

⁷¹ Which?, *Brexit Consumer Research - Topic of Focus: Food* (23 May 2018) 29 (available at https://production-which-dashboard.s3.amazonaws.com/system/articles/attachments/1/Brexit_and_Food_April_2018_FINAL.pdf).

not see any dilution of the regulatory framework for agricultural products, affirming at the 2019 National Farmers Union Conference that:⁷²

We have been clear - across Government, from the Prime Minister down - that we will not lower our standards in pursuit of trade deals, and that we will use all the tools at our disposal to make sure the standards are protected and you are not left at a competitive disadvantage.

During the same speech, he also expressed approval for the establishment of a Trade and Standards Commission to achieve this objective, but it may be noted that, as yet, this Commission remains to be constituted.⁷³

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⁷² *A World To Win: Michael Gove's Speech to National Farmers Union* (19 February 2019) (available at <https://www.gov.uk/government/speeches/a-world-to-win>).

⁷³ *NFU Calls for Trade and Standards Commission to Uphold Food Values Post-Brexit* (2 September 2019) (available at <https://www.nfuonline.com/news/latest-news/nfu-calls-for-trade-and-standards-commission-to-up/>).