



**BRIEFING PAPER**

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# The Agriculture Act 2020

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### Royal Assent: update published 3 December 2020

This paper has been updated following the *Agriculture Bill 2019-21* receiving Royal Assent on 11 November 2020, and consequently becoming the *Agriculture Act 2020*.

The paper was originally published on 30 January 2020, and was updated several times during the passage of the Bill, including:

- 10 February to include a summary of the Second Reading debate;
- 11 May 2020 to include information on the Committee Stage, and new information, in section 15.1, about the impact of the Covid-19 pandemic, as well as additional background information on the Bill provisions;
- 21 July 2020 to include a summary of the Bill's Report Stage and Third Reading;
- 10 October 2020 to include a summary of the Bill's passage through the House of Lords;
- 2 November to include a summary of "ping pong" stages to that point; and
- 10 November following the agreement of the Lords to further Commons amendments (and therefore on the entire text of the Bill).

**Note:** Clause numbers below have not been changed to reflect any renumbering that followed amendments to the Bill. Most numbering therefore refers to the Bill as first introduced, and will not necessarily correspond to section numbers in the Act as passed.

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## Summary

The [Agriculture Bill 2019-21](#) (originally HC Bill 7) was published on 16 January 2020. It received Royal Assent on 11 November 2020, becoming the [Agriculture Act 2020](#).

Leaving the EU means the UK is leaving the [EU's Common Agricultural Policy \(CAP\)](#). The Bill provides the legislative framework for replacement agricultural support schemes. It provides a range of powers to implement new approaches to farm payments and land management. In England, farmers will be paid to produce 'public goods' such as environmental or animal welfare improvements. The Bill also includes wider measures, including on improving fairness in the agricultural supply chain and on the operation of agricultural markets.

### How are farmers currently supported?

Farmers in the UK currently receive around £3.5 billion support annually under the CAP. More than 80% of the CAP payments that UK farmers receive are 'direct payments' based on how much land they farm. The remainder pays mainly for rural and environmental farm management schemes. The [Government has guaranteed the current annual budget to farmers in every year of this Parliament](#).

The new farm support framework proposed by this Bill does not apply to schemes immediately on exit day. Direct farm payments in 2020 across the UK are covered by the provisions in the [Direct Payments to Farmers \(Legislative Continuity\) Bill](#). Payments in 2020 will continue much the same as under CAP schemes in previous years. The [Commons Library Briefing](#) on the Bill contains details.

### What does this Bill do?

The Government introduced an [Agriculture Bill 2017-19](#) in the last Parliament which fell at dissolution in October 2019. [[Commons Library Briefing on the Agriculture Bill](#) has full information on the contents and progress of that Bill.]

This Bill does several key things that the 2017-19 Bill did:

**First:** it provides enabling powers for Ministers to develop new farm support approaches in England. Direct payments to farmers are currently based on how much land is farmed. These will be phased out starting in 2021 over a seven year period. New schemes to pay farmers for producing 'public goods' such as environmental or animal welfare improvements will be introduced. New items have been added to the list of purposes in the previous Bill that can be given financial support, notably soil protection and improvement;

**Second:** it gives Ministers powers to intervene in agricultural markets in exceptional conditions, such as to provide farmers with financial support or operate public intervention and private storage aid schemes;

**Third:** it sets out measures to increase transparency and fairness in the supply chain for farmers and food producers. It does this by: introducing new requirements on collection and sharing of data; by placing fair

dealing obligations on business purchasers of agricultural products; and by introducing new measures on Producer Organisations. However, this Bill has increased the reach of the fair dealing measures so that any business purchaser must comply and a wider range of people selling products can benefit from the provisions;

**Fourth:** the Bill includes measures on marketing standards and carcass classification. For example, to amend or revoke EU and domestic legislation or to set new standards tailored to suit UK agricultural sectors. New clauses are included in this Bill on certification of organic products. These are important for imports and exports as well as domestic sales;

**Fifth:** the Bill sets out provisions to enable the UK to meet its obligations under the World Trade Organisation Agreement on Agriculture. The WTO Agreement sets limits on how support that is considered trade-distorting a country may provide.

## What's new?

There are several additions to this Bill compared to the previous Bill. New measures include:

- A requirement for Ministers to consider the need to encourage the production of food in England, in an environmentally sustainable way;
- A requirement for Ministers to set out multi-annual plans about how they will use their financial assistance powers. The first plan will start in 2021 for seven years. Beyond that plans must be of at least five years' duration;
- A requirement to report on food security at least once every five years; and
- Several varied measures in a new Part 4 on matters relating to farming and the countryside. Measures relating to agricultural tenancies, fertiliser regulation, identification and traceability of animals, and the Red Meat Levy are included.

## How does this Bill apply to the UK nations?

The provisions on new farm support schemes mainly apply to England. Powers are included in a Schedule for Northern Ireland to enable preparation of replacement schemes. Some provisions in the Bill apply to Wales (for example to amend Direct Payments rules) but these are intended to be temporary. Notably provisions mirroring English provisions on new support schemes that were in the previous Bill have not been included in this Bill. Welsh Ministers intend to introduce this Assembly term a Wales (Agriculture) Bill. The [Scottish Government introduced legislation in November 2019](#) which proposes to keep farm support approaches largely the same until 2024.

Aside from farm support, some measures such as those on food security and fair dealing in the supply chain apply to the four nations, while the various measures in the new Part 4 have different applications. Measures on meeting WTO obligations also apply across the UK. It is

reported that the Scottish Government considers these matters to be devolved so intends to withhold legislative consent.

## Stakeholder views

[Farming organisations](#) and [environmental groups](#) both broadly support the new ‘public money for public goods’ approach to future farm support schemes. Farmers had however called for the previous Bill to have a greater focus on food production. The new Bill requires Ministers to have regard to the need to encourage the production of food in England, in an environmentally sustainable way. The [NFU has welcomed recognition in this Bill that “food production and caring for the environment go hand-in-hand”](#).

Farmers and environmental groups also expressed concern that there were no commitments in the Bill to maintaining food and animal welfare standards for imports under new trade deals. Some [62 farm and environment organisations wrote to the Prime Minister on 27 January](#) calling for legislation to underpin Government commitments not to reduce such standards in future trade deals. Several amendments were proposed during the Bill’s passage dealing with such issues, and Government amendments now require reports to Parliament on the standards implications of future trade deals.

Farmers also wanted long-term assurances on funding. The National Farmers’ Union [called for](#) a “multi-annual budgetary framework that provides certainty for farmers and allows them to plan and invest for the future”. It [has welcomed measures](#) in the 2019-21 Agriculture Bill requiring the Government to publish longer-term plans.

Farmers and landowners were keen for the previous Agriculture Bill to make faster progress. Delays in progressing the legislation underpinning the new policy led, at various times, the [NFU](#) and the [Country Land and Business Association](#) to call for a delay to the agricultural transition.

## Political party views

Opposition Parties broadly support the principle of paying farmers to provide public goods that underpins the Bill. [Opposition Members have also criticised the failure of the previous Bill to reach the statute books](#). However, Labour called for commitments that food and animal welfare standards will not be reduced in future trade deals.

## Progress of the Bill

The Bill completed its Commons stages on 13 May 2020, and its Lords stages on 1 September 2020.

Amendments were tabled at various stages of the Bill’s progress. Several of these concerned the issue of agri-food standards in future trade agreements, among other matters.

The Bill went through the [“ping-pong”](#) process between the two Houses during October and November, with the Lords agreeing the final Commons amendments on 9 November 2020.

# 1. A new approach to domestic agriculture policy

## 1.1 Leaving the CAP

Farmers in the UK currently receive around £3.5 billion support annually under the EU's [Common Agricultural Policy \(CAP\)](#). CAP subsidies aim to guarantee minimum levels of EU food production and give farmers a fair standard of living. More than 80% of the CAP payments that UK farmers receive are 'direct payments' based on how much land they farm. The remainder pays mainly for rural and environmental farm management schemes.

The UK will leave the CAP when it exits the EU on 31 January 2020. However, the Government has guaranteed the current annual budget to farmers in every year of this Parliament.<sup>1</sup> The previous Government has pledged that "any changes made to agricultural funding would reflect the Government's aim of securing a better future for UK agriculture and for the environment".<sup>2</sup>

### A historic change for farming?

This Bill provides the legislative framework for new agricultural support schemes after the UK leaves the EU's Common Agricultural Policy (CAP). As the UK has been a part of the CAP since 1973, the UK Government and stakeholders have described an Agriculture Bill as a historic opportunity to radically reshape domestic agricultural policy.<sup>3</sup> The scale of potential change has been compared to the [Agriculture Act 1947](#) which sought to increase food production after the Second World War and introduced higher farming standards

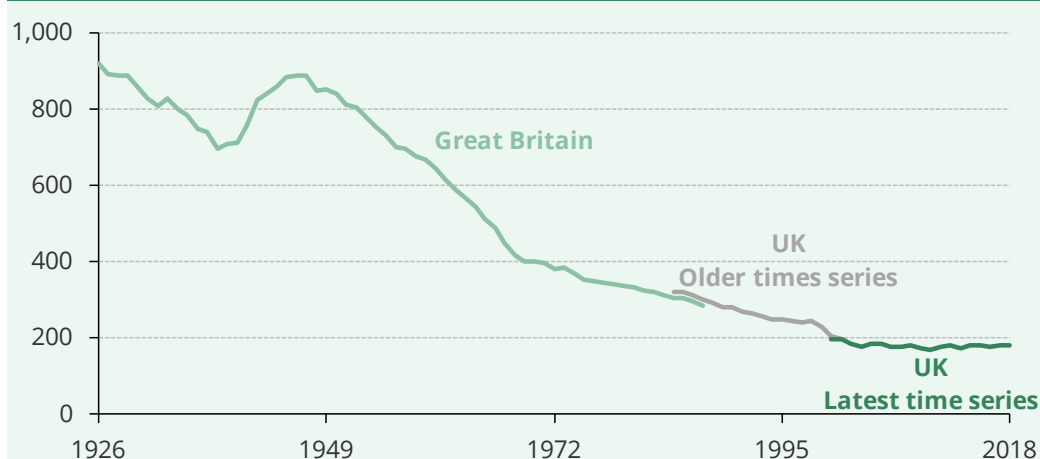
**Figures 1 and 2** below illustrate how domestic farming trends have changed since the time of the 1947 Act in terms of farm labour (down) and total factor productivity (up).

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<sup>1</sup> HM Treasury press release, [Farmers' £3 billion support confirmed in time for 2020](#), 30 December 2019

<sup>2</sup> Lords Written Question: Agriculture subsidies, HL Deb, 4 September 2018, [HL 1006](#)

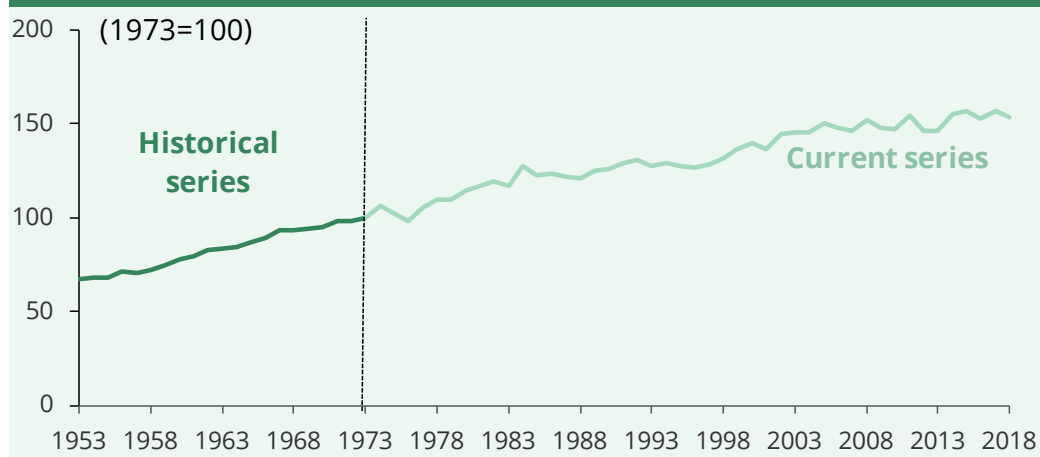
<sup>3</sup> See for example, Sustain, [We are to get a new Agriculture Act – so let's have a look at the old one – the 1947 Agriculture Act](#), 27 July 2017

**Figure 1: Agricultural workers in Great Britain / United Kingdom (000's)**

**Note:** Data for 1944-1950 include the Women's Land Army and prisoners of war.

**Sources:** Prior to 2000: H. F. Marks and D. K. Britton, A hundred years of British food & farming: A statistical survey 2000-2010: DEFRA, [Agriculture in the United Kingdom 2012](#), Chapter 3 (The Structure of the Industry), Table 3.6

2011 onwards: DEFRA, [Agriculture in the United Kingdom 2018](#), Chapter 2 - The Structure of the Industry, Table 2.5

**Figure 2: Index of total factor productivity of UK agriculture**

**Source:** Defra, [Agriculture in the United Kingdom: chapter 3 – farming income](#), table 3.2, September 2019 and earlier editions

Commons Library Briefing [Brexit: UK Agriculture](#) provides background on the proposals as well as the current working of the Common Agricultural Policy.

Defra published with the previous Bill supporting evidence and analysis on the rationale and impacts related to the proposed post-Brexit approach to agricultural policy and farm payments:

- Defra, [Defra Evidence and Analysis paper No.7. Agriculture Bill: Analysis and Economic Rationales for Government Intervention](#), September 2018
- Defra, [Moving away from direct payments: Agriculture Bill – Analysis of impacts of removing direct payments](#), September 2018

Together, these policy documents provide additional context to the powers set out in the Bill. Defra is expected to publish a new policy document with further details of the proposed Environmental Land Management (ELM) schemes .

## What does the CAP currently provide?

The CAP runs for a seven-year period in line with the EU budget cycle. Farmers in the UK have been supported up to the end of 2019 by the CAP scheme for 2014-20. Farm payments after the UK leaves the EU will be funded from UK budgets. Payments for the 2020 scheme year will be funded by the UK.

2020 payments will not be affected by this Bill. The [Direct Payments to Farmers \(Legislative Continuity\) Bill 2019-20](#) makes provision for direct payments (Basic Payment Scheme payments) to be paid in the scheme year 2020. The [Commons Library Briefing on the Bill](#) contains further details. That [Bill completed its passage through the Commons on 28 January 2020](#).<sup>4</sup>

Agriculture and implementation of the CAP is devolved so each devolved administration has had to comply with meeting the legislative framework of the CAP and manage the direct payments to farmers.

The CAP is made up of two 'pillars'. CAP funding to the UK is made up of the following:

### Pillar I

- **Direct payments**, mainly based on the area farmed.  
This mainly comprises the Basic Payment Scheme (BPS) and a 'greening' component which is 30% of the Direct Payment total, as well as the Young Farmers Scheme.
- **Market support measures** as part of the Common Market Organisation regulation (CMO).  
This is the set of rules used to organise the single market for agricultural products. The rules cover a wide range of provisions from market safety nets such as public intervention, exceptional measures in case of market disturbances such as animal disease outbreaks, marketing standards, trade provisions and various operational programmes for particular sectors e.g. fruit and vegetables, wine and hops.

### Pillar II

- **Rural development funding** which includes support for agri-environment schemes and the wider rural economy.

**Table 1** below show the breakdown of the UK's CAP funding across payments and across the UK. Around 80% is spent on Direct Payments to farmers under Pillar 1. The remaining 20% is spent under Pillar 2.<sup>5</sup>

<sup>4</sup> HC Deb 28 January 2020 [c671-708](#)

<sup>5</sup> Defra, Evidence and Analysis Paper 7, Agriculture Bill: [Analysis and Economic Rationales for Government Intervention](#), September 2018, p.2

**Table 1: Total CAP payments by country and UK CAP payments by pillar**Euros million, EU financial years <sup>a</sup>

|                                     | 2010         | 2011         | 2012         | 2013         | 2014         | 2015         | 2016         | 2017         | 2018 provisional |                     |
|-------------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|------------------|---------------------|
|                                     |              |              |              |              |              |              |              |              | Euros            | Pounds <sup>b</sup> |
| Total England CAP payments          | 2,761        | 2,696        | 2,777        | 2,792        | 2,714        | 2,533        | 2,626        | 2,525        | 2,474            | 2,210               |
| Total Wales CAP payments            | 413          | 417          | 426          | 406          | 413          | 367          | 338          | 356          | 397              | 355                 |
| Total Scotland CAP payments         | 779          | 826          | 840          | 819          | 757          | 799          | 584          | 732          | 698              | 623                 |
| Total Northern Ireland CAP payments | 384          | 388          | 390          | 400          | 415          | 410          | 379          | 361          | 365              | 326                 |
| <b>Total UK CAP payments</b>        | <b>4,337</b> | <b>4,327</b> | <b>4,433</b> | <b>4,417</b> | <b>4,299</b> | <b>4,109</b> | <b>3,927</b> | <b>3,974</b> | <b>3,934</b>     | <b>3,514</b>        |
| Of which:                           |              |              |              |              |              |              |              |              |                  |                     |
| <b>Pillar 1</b>                     | <b>3,424</b> | <b>3,309</b> | <b>3,348</b> | <b>3,326</b> | <b>3,234</b> | <b>3,150</b> | <b>3,121</b> | <b>3,171</b> | <b>3,174</b>     | <b>2,835</b>        |
| of which:                           |              |              |              |              |              |              |              |              |                  |                     |
| Direct Aids                         | 3,325        | 3,304        | 3,290        | 3,285        | 3,195        | 3,112        | 3,035        | 3,080        | 3,126            | 2,792               |
| Market price support <sup>c</sup>   | 99           | 5            | 58           | 41           | 39           | 38           | 86           | 91           | 48               | 43                  |
| <b>Pillar 2 <sup>d</sup></b>        | <b>913</b>   | <b>1,018</b> | <b>1,085</b> | <b>1,091</b> | <b>1,065</b> | <b>959</b>   | <b>806</b>   | <b>803</b>   | <b>760</b>       | <b>679</b>          |
| of which:                           |              |              |              |              |              |              |              |              |                  |                     |
| EAFRD <sup>e</sup>                  | 512          | 653          | 742          | 752          | 798          | 709          | 641          | 542          | 581              | 519                 |
| Co-financing                        | 401          | 365          | 343          | 339          | 267          | 250          | 165          | 261          | 179              | 160                 |

Notes:

a. Information based on EU financial year 16th October – 15th October. Figures exclude financial corrections/penalties.

b. Estimates based on average Sterling to Euro exchange rate for September 2018 (see ONS, Average Sterling exchange rate: Euro)

c. Market price support covers interventions in agricultural markets, e.g. public intervention and private storage aid. Payments are made by RPA in England on behalf of the UK.

d. Pillar 2 funds rural development, e.g. for agri-environment schemes, competitiveness of agriculture and economic diversification and quality of life in rural areas.

e. EAFRD is the European Agricultural Fund for Rural Development. Member states are required to co-finance these receipts with a contribution from their exchequer. Figures are based on in-year quarterly returns, rather than the annual account (in order to provide the split between EAFRD and co-financing)

Source: [Agriculture in the UK datasets: Chapter ten - public payments](#), Table 10.7, 23 September 2019

Data shows many UK farms would not have made a profit without CAP support. Defra estimated in 2018 that without direct payments some 42% of farms had costs exceeding their revenue (19% if depreciation is excluded).<sup>6</sup>

On average, direct payments made up 9% of UK farm gross revenue for the 2014/15 - 2016/17 period. UK farm income. However, there is a concentration of direct payments to some farmers with larger farms. Some 10% of claimants received half of the funding in England in 2016, and 33% of farms received less than £5,000 each.<sup>7</sup>

The relative importance of support payments varies by sector. For example, the payments make up a large part of farm income for hill farmers, but not for poultry farmers.<sup>8</sup> CAP support is also of varying importance across the UK nations, with farmers in Wales most reliant,

<sup>6</sup> Defra/Government Statistical Service, [Moving away from Direct Payments, Agriculture Bill: Analysis of the impacts of removing Direct Payments](#), September 2018. [Data refers to 2014-15 to 2016-17 period]

<sup>7</sup> Ibid.

<sup>8</sup> Defra, [Agriculture Bill: Analysis and Economic Rationales for Government intervention](#), Figure 12

and farmers in England least reliant on CAP payments. **Table 2** below shows national CAP payments and their proportion of the Total Income from Farming (TIFF) in the four nations. The TIFF represents the net income from farming combining gross earnings from outputs and subsidies, but excluding taxes, interest, production and staff costs.

| Table 2: CAP payments and the Total Income from Farming, 2018 (£ million) |                           |                                               |                                                  |
|---------------------------------------------------------------------------|---------------------------|-----------------------------------------------|--------------------------------------------------|
| Country                                                                   | Total direct CAP payments | Total Income from Farming (TIFF) <sup>a</sup> | % of total income from CAP payments <sup>b</sup> |
| United Kingdom                                                            | 3,331                     | 4,697                                         | 71%                                              |
| England                                                                   | 2,177                     | 3,358                                         | 65%                                              |
| Wales                                                                     | 298                       | 308                                           | 97%                                              |
| Scotland                                                                  | 549                       | 672                                           | 82%                                              |
| Northern Ireland                                                          | 307                       | 360                                           | 85%                                              |

Notes:

a. Figures for the Total Income From Farming (TIFF) in 2018 are provisional. TIFF equals to:

- Gross output at basic prices *plus*
- Other subsidies *less* taxes *less*
- Total intermediate consumption, rent, paid labour *less*
- Total consumption of fixed capital (depreciation) *less* interest

b. Payments made in the 2018 EU financial year as proportion of income in the 2018 calendar year

Sources: Data sets accompanying [Agriculture in the United Kingdom 2018](#):

- [Chapter 3 - farming income \(ODS 73.3KB\)](#), Table 3.2 and
- [Chapter 10 - public payments \(ODS, 56.2KB\)](#), Table 10.3 Total Direct Payments to farmers

## 1.2 How will funding be allocated across the UK outside the CAP?

Allocation of agricultural budgets between the devolved administrations is reserved. The UK received EU funding at Member State level which the UK Government then allocated to the devolved administrations. The basis for this was set out at the beginning of each seven-year CAP 'round'. In the last CAP round, the UK Government used the same allocation split of funding across the UK as it had in the previous round. This was in agreement with all the devolved legislatures except the Scottish Government which wanted a higher share.<sup>9</sup>

The [Government announced in December 2019](#) that nearly £3 billion of funding was being provided for the UK for 2020. The Government has also guaranteed the overall annual farm budget for each year of this Parliament.<sup>10</sup> However, the amount of future funding that each part of the UK receives in future will depend on the outcomes of negotiations between the devolved administrations and the UK Government. This will form part of the UK Government's future Spending Review. Treasury

<sup>9</sup> Session 5, [Oral evidence from The Rt. Hon Michael Gove, Secretary of State for Environment, Food and Rural Affairs to the Scottish Parliament's Rural Economy and Connectivity Committee](#), 26 June 2018, c4

<sup>10</sup> HM Treasury press release, [Farmers' £3 billion support confirmed in time for 2020](#), 30 December 2019

Minister Liz Truss said in July 2019 that the Government would not apply the Barnett formula to farm funding in England and that funding “will not just be allocated according to the population of each nation”.<sup>11</sup>

### Bew Review

The distribution of EU CAP funding between the UK nations has been contentious. In the [Spending Round 2019](#), the Chancellor of the Exchequer confirmed a one-off uplift of £160 million for Scotland in relation to historic allocations of convergence funding, which had for some years been disputed.<sup>12</sup> In October 2018 the Government [announced](#) an independent review to “deliver fair funding for farmers in all four parts of the UK when we leave the EU”. This Review was chaired by the cross-bench peer Lord Bew. The Bew Review [reported in September 2019](#) and the [Government response](#) was also published.<sup>13</sup> The Government accepted the recommendations that in 2020-22 a greater allocation of convergence funding should be allocated to Scotland. The [Prime Minister announced](#) that an extra £51.4 million would be allocated to Scottish farmers for 2020-22 (on top of the one-off historic convergence uplift). The Government also said that to implement Lord Bew’s recommendations while making sure farmers in England and Northern Ireland are not penalised and their funding allocations are unchanged, the UK Government would commit over £56 million of new money. This included over £5 million for farmers in Wales.<sup>14</sup> The [Direct Payments to Farmers \(Legislative Continuity\) Bill 2019-20](#) completed its Commons scrutiny on 28 January 2020. This Bill covers payments for 2020 only. It will enable the Government to implement the Bew Recommendation by providing for Ministers to increase the overall budget for direct payments for 2020.

Further information is included in the [Commons Library Briefing on the Direct Payments to Farmers \(Legislative Continuity\) Bill 2019-20](#).

The Scottish Cabinet Secretary for Rural Economy, Fergus Ewing, said prior to the decisions on the Bew Review that there had been a “lack of clarity on key funding questions from the UK Government”.<sup>15</sup> Welsh Minister for Environment, Energy and Rural Affairs, Lesley Griffiths was reported to have said then that she would “fight for a fair funding allocation for Wales”.<sup>16</sup>

<sup>11</sup> Agricultural subsidies, Written Question [27032](#), 5 July 2019

<sup>12</sup> Convergence funding is an uplift of the financial ceiling for Direct Payments given by the EU to the UK reflecting adjustments made for the 2014-20 CAP scheme. For more information see briefing by Scottish Parliament Information Centre (SPICe) [A review of convergence funding for agriculture in Scotland](#), June 2019

<sup>13</sup> Defra, HM Treasury, Northern Ireland Office, Office of the Secretary of State for Scotland, Office of the Secretary of State for Wales, [Domestic farm support funding \(Bew Review\): Government response](#), 6 September 2019

<sup>14</sup> GOV.UK Prime Minister’s Office/Scottish Office press release, [Multi-million pound boost for Scottish farmers](#), 6 September 2020

<sup>15</sup> Scottish Parliament Official Report, [Common Agricultural Policy](#), 26 September 2018

<sup>16</sup> BBC, [Unions cautiously welcome post-Brexit farm funding budget](#), 9 May 2018

## 2. About the Bill

### 2.1 A UK-wide Bill?

The Agriculture Bill covers both reserved (trade) and devolved policy (agriculture) matters.

The UK Government has said:

As agriculture is a devolved area, each administration of the UK will have the opportunity to develop policy to suit their own unique circumstances once the UK has left the EU.<sup>17</sup>

The Bill mainly contains provisions setting a future agricultural policy framework for **England**. However, in some areas it also extends powers **Northern Ireland (Clause 45, Schedule 6)**.

Some measures apply across the UK, for example in relation to the World Trade Organisation (WTO) Agreement on Agriculture. The duty to report on food security relates to the UK as a whole. Areas where powers apply to England, Scotland, Wales and Northern Ireland include: fair dealing obligations of business purchasers of agricultural products, identification and traceability of animals, fertiliser regulation, and organic products marketing.

Clause 52 sets out the territorial extent of the Bill. [Paragraphs 14-16 and Annex A](#) of the Explanatory Notes to the Bill provide further information and a table of clauses showing territorial extent and application in the UK.<sup>18</sup>

### Legislative Consent

The Government has said that it will seek legislative consent for provisions relating to Scotland, Wales and Northern Ireland. The Explanatory Notes itemise the provisions for which legislative consent will be sought.<sup>19</sup>

### Coverage for Scotland

There are no Scottish-specific provisions in the Bill. The Scottish Government introduced the [Agriculture \(Retained EU Law and Data\) \(Scotland\) Bill](#) in November 2019. This will apply to approaches from 2021 and proposes to [keep farm support largely the same until 2024](#).<sup>20</sup>

On publication of the previous Agriculture Bill, the Scottish Government Cabinet Secretary for Rural Economy, Fergus Ewing, was reported as commenting on the UK Agriculture Bill as follows:

...it completely fails to meet the key tests of delivering on promises made to Scotland, respecting the devolved settlements and righting longstanding issues...

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<sup>17</sup> Policy paper. [Agricultural framework progress update: September 2018](#), A joint statement by the UK Government and the Welsh Government, 12 September 2018

<sup>18</sup> Defra, [Agriculture Bill: Explanatory Notes](#), January 2020. This is hereafter cited as "Bill 7 – EN (2019-20)".

<sup>19</sup> Bill 7 – EN (2019-20) para 15

<sup>20</sup> Anna Brand, Scottish Parliament Information Centre (SPICe) briefing, [Agriculture \(Retained EU Law and Data\) \(Scotland\) Bill](#), 18 November 2019

This bill rides roughshod over the devolved settlement. For example, on compliance with World Trade Organisation rules, the bill could create sweeping unilateral powers that could constrain policy choices in Scotland.

It is therefore of serious concern that the UK government could impose unwanted policies and rules on Scottish farmers in areas of devolved competency.<sup>21</sup>

It is reported that the Scottish Government has said it will withhold legislative consent because it matters in the Bill such as this to be devolved matters.<sup>22</sup>

## Coverage for Wales

**Schedule 5** includes provisions relating to Wales. Significantly, the key provisions mirroring provisions for England on replacement schemes that were in the *Agriculture Bill 2017-19* have not been included in this Bill. The Welsh Government considers it no longer appropriate and plans to set out a White Paper towards the end of 2020 to pave the way for an Agriculture (Wales) Bill.<sup>23</sup>

The Scottish Government's concerns around the UK Government's position that management of the UK's Agreement on Agriculture at the WTO is reserved were shared by Lesley Griffiths Welsh Minister for Environment, Energy and Rural Affairs. In a September 2018 Written Statement to the Welsh Assembly she said that the Welsh Government does not accept that all aspects of the clause relating to the WTO Agreement on Agriculture are reserved and that there is a strong relationship between WTO powers and devolved responsibilities on agriculture support.<sup>24</sup>

## 2.2 When does the Bill come into effect?

**Clause 53** of the Bill sets out the commencement provisions to apply if the Bill receives Royal Assent.

The Secretary of State and devolved administrations will make regulations appointing when a number of provisions come into force, for example on intervention in agricultural markets, on Producer Organisations and on identification and traceability of animals.

The rest of the provisions of the Bill will come into force **two months** after the Bill is granted Royal Assent and becomes an Act (apart from most of Part 8 dealing with general provisions, which comes into effect on the day the Act is passed).

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<sup>21</sup> See for example, [Scotland and Westminster clash over Agriculture Bill](#), Farmers Weekly, 14 September 2018 and BBC News, [Agriculture Bill "a missed opportunity" Scots Ministers say](#), 13 September 2018

<sup>22</sup> Abi Kaye, Farmers Guardian, [The New Agriculture Bill: an in-depth analysis of the key changes](#), 22 January 2020

<sup>23</sup> Welsh Government, Written Statement, [UK Agriculture Bill](#), 16 January 2020

<sup>24</sup> Welsh Government, [Written Statement: Introduction of the Agriculture Bill](#), 12 September 2018

## 2.3 Does the Bill contain delegated powers?

Yes. These are explained in the [Delegated Powers Memorandum](#) which accompanies the Bill.<sup>25</sup> The memorandum identifies the provisions of the Bill which confer powers to make delegated legislation. For each case it explains why the power has been taken and explains the nature of, and the reason for, the approval procedure selected.

The Bill contains 54 individual provisions containing delegated powers. Five of these include a [Henry VIII power](#). The latter relate to matters such as: extending the agricultural transition period and setting out additional conditions that businesses have to meet to apply to become a Producer Organisation. The Delegated Powers Memorandum notes that Defra has changed the provisions, following scrutiny of the 2017-19 Bill, such that all the Henry VIII powers are now subject to the affirmative resolution procedure (with the exception of a power relating to the arbitrators in tenancy disputes; see section 11.4 below).<sup>26</sup>

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<sup>25</sup> Agriculture Bill, [Memorandum concerning the Delegated Powers for the Delegated Powers and Regulatory Reform Committee](#), January 2020 [Referred to in further footnotes as “Delegated Powers Memorandum”]

<sup>26</sup> Ibid. para 16

### 3. Part 1 Chapter 1: Financial Assistance

This Part of the Bill includes a range of provisions to allow the Secretary of State to establish a new agricultural system based on the principle of public money for public goods after the UK leaves the EU. The central clauses provide enabling powers for Ministers to pay farmers for this and to phase out the current system of direct payments. This means a shift from the majority of farm support funds paying farmers for how much land they farm to paying for public goods such as environmental improvements. Environmental Land Management (ELM) schemes will be a mainstay of future farm support. It is the section of the Bill that has attracted most public comment since it could have wide-ranging and long-term implications for farmers and the environment.

Defra has highlighted that upland farmers will be “well placed to benefit” from the new system. The policy statement accompanying the previous Agriculture Bill 2017-19 notes that:

Upland farmers play a vital role as stewards of the countryside and upland farms are an iconic part of our heritage. They produce food, environmental benefits such as clean air and water, resilience to climate change, abundant and diverse wildlife and attractive landscapes. We recognise that upland farmers are often more dependent than most on Direct Payments. Upland farmers will be well placed to benefit from our new environmental land management system which will reward farmers for the public goods they provide.<sup>27</sup>

Part 1 of the Bill provides for the overall outcomes which the new system is aiming for and the administrative and enforcement framework. Defra is expected to publish a policy statement setting out further information on ELM schemes. The Bill itself does not contain further details on the specific schemes that might be set up under these powers, however it does include measures providing powers over how future schemes can be administered. For example, the Bill includes provisions for Regulations to be made on the conditions that can be attached to payments.

Farmers have called for long-term farming commitments. This Bill, unlike the 2017-19 Bill, includes requirements on the Secretary of State to prepare multi-annual financial assistance plans. These will give information about the expected use of powers to give financial assistance to farmers over a ‘plan period’ of several years. The first plan is to run for seven years from 2021. Subsequent plan periods must not be shorter than five years.

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<sup>27</sup> GOV.UK, [Health and Harmony: the future for food, farming and the environment in a Green Brexit – policy statement](#), 12 September 2018

### 3.1 New financial assistance powers (Clauses 1-6)

#### Public payments for public goods

**Part 1 (Chapter 1, Clauses 1-6)** gives the Secretary of State new powers to provide financial assistance to those managing the land and delivering public benefits such as air and water quality, public access and productivity. (Note: *The Schedule for Wales, Schedule 5, does not provide the same for Wales. This is a change from the 2017-19 Bill which replicated for Wales most of these provisions as set out for England.*)

**Clause 1** lists purposes for which the Secretary of State may provide financial assistance. The list has been expanded from the 2017-19 Agriculture Bill by the addition of measures to support the conservation and maintenance of UK native Genetic Resources for livestock or equines. It also adds conserving plants grown or used agriculture, horticulture or forestry, including conserving their wild relatives. A further addition which has received much stakeholder support is subsection (j) which enables financial support to be provided explicitly for protecting or improving soil.<sup>28</sup>

**Table 1** below set out the purposes eligible for financial support and benefits envisaged, as set out in the Explanatory Notes. It is not a legislative duty to take specific actions, but a power for the Secretary of State to make financial payments to farmers and others to carry out work to deliver 'public goods' outcomes.

These purposes are those that would otherwise be undersupplied by the market. The clause also enables the Secretary of State to give financial assistance to support schemes made and operated by other persons (e.g. National Parks or Local Authorities) providing that those schemes give financial assistance for one of the specified purposes.

**Table 1: 'Public Goods' eligible for financial assistance [England only]**

| Clause 1: Areas of Financial Assistance 'Public Goods'                                | Extra Information given in the Explanatory Notes                | Specific examples and benefits given in the Explanatory Notes                                                              |
|---------------------------------------------------------------------------------------|-----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|
| (a) <i>managing land or water in a way that protects or improves the environment;</i> | Delivery of Environmental outcomes such as clean air and water. | Incentivising tree planting to capture ammonia emissions and protect sensitive habitats from damaging nitrogen deposition. |

<sup>28</sup> Soil Association, [Commitment to soil in Agriculture Bill](#), 16 January 2020

|                                                                                                                                            |                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                            |
|--------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>(b) supporting public access to and enjoyment of the countryside, farmland or woodland and better understanding of the environment;</i> | Will also include assistance to support understanding about the environmental benefits that land can provide.                                                                                                                                                            | Incentivise foresters to provide facilities for educational visits for schools and contributing to their learning and engagement with the environment. Financial assistance to farmers to share information about agroecology.                                                                             |
| <i>(c) managing land or water in a way that maintains, restores or enhances cultural heritage or natural heritage;</i>                     | Can include building a monument, site, place, area or landscape identified as having a degree of significance, due to its archaeological, architectural, artistic, historic or traditional interest. Includes geological assets and designated cultural heritage assets. | Can include the maintenance of historic farm buildings, dry stone walls and conservation of limestone pavement. Contributing to research, education, recreation and tourism with societal benefits of: beauty, heritage and engagement with the environment.                                               |
| <i>(d) managing land, water or livestock to mitigate or adapt to climate change;</i>                                                       |                                                                                                                                                                                                                                                                          | Incentivise peatland restoration, in order to protect the existing carbon store and reduce emissions of carbon dioxide to the atmosphere.                                                                                                                                                                  |
| <i>e) managing land or water to prevent, reduce or protect from environmental hazards;</i>                                                 | This includes hazards to, or caused by, the environment.                                                                                                                                                                                                                 | Could be used to reduce flood risk by improving soil porosity.                                                                                                                                                                                                                                             |
| <i>(f) protecting or improving the health or welfare of livestock;</i>                                                                     | Can support action by farmers, vets and other organisations to improve animal health and welfare, reduce endemic disease and keep livestock well maintained and healthy.                                                                                                 | Could include measures to incentivise participation on health or disease control schemes, supporting the financing of testing for a particular disease or strengthening animal welfare outcomes, such as reducing the impact of health conditions and ensuring animals have access to materials that allow |

|                                                                                                                                                                                                                           |                                                                                                                                               |                                                                                                                                                                                                                                                                                        |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                           |                                                                                                                                               | them to express their natural behaviours.                                                                                                                                                                                                                                              |
| <p><i>(g) conserving native livestock, native equines or genetic resources relating to any such animal;</i></p> <ul style="list-style-type: none"> <li>• ADDITION FOR 2019-21 BILL</li> </ul>                             |                                                                                                                                               | <p>This could be used to incentivise farmers to invest in rearing rare and native breeds or species because these genetic resources could sustainably increase food production or improve capacity to adapt to climate change or new diseases.</p>                                     |
| <p><i>(h) protecting or improving the health of plants;</i></p>                                                                                                                                                           | <p>This includes: wild plants, agricultural &amp; horticultural crops, trees, and bushes.</p>                                                 | <p>This can include support for measures across the forestry and horticulture sectors which reduce the risk of introduction and spread of harmful plant pests and disease.</p>                                                                                                         |
| <p><i>(i) conserving plants grown or used in carrying on agricultural, horticultural or forestry activity, their wild relatives or genetic resources relating to any such plant;</i></p> <p>ADDITION FOR 2019-21 BILL</p> |                                                                                                                                               | <p>Could include support for measures to conserve and utilise crop wild relatives to improve capacity to adapt to new plant diseases thereby increasing resilience and biosecurity.</p>                                                                                                |
| <p><i>(j) protecting or improving the quality of soil.</i></p> <p>ADDITION FOR 2019-21 BILL</p>                                                                                                                           |                                                                                                                                               | <p>This could include measures which support farmers with decision making and soil management to improve soil health, such as assistance for soil monitoring and research. Could also be used to incentivise farmers to invest in practices which protect and enhance soil health.</p> |
| <p><i>(2) (a)...for or in connection with the purpose of starting, or improving the productivity of, an agricultural, horticultural or forestry activity;</i></p>                                                         | <p>This could be used to enable a farmer to invest in equipment that would both increase productivity and deliver environmental benefits.</p> | <p>This could include giving a farmer a grant or loan to enable the purchase of precision application equipment for slurry. This would allow the farmer to reduce the</p>                                                                                                              |

|                                                                                                     |                                                                                                                                                                                                 |                                                                                                             |
|-----------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|
|                                                                                                     |                                                                                                                                                                                                 | quantity of fertilisers used, reducing costs as well as reducing ammonia emissions.                         |
| <i>2 (b) supporting ancillary activities carried on, or to be carried on, by or for a producer.</i> | Financial assistance can be given to support the ancillary activities of selling, marketing, preparing, packaging, processing or distributing agricultural, horticultural or forestry products. | Funding is for activities carried on by a producer (as defined in subsection 5) or someone acting for them. |
| ADDITION FOR 2019-21 BILL                                                                           |                                                                                                                                                                                                 |                                                                                                             |

Source: Explanatory Notes to the Bill p7-10 (Bill 7-EN)

This approach was set out in Defra's February 2018 consultation [Health and Harmony: The Future for Food, Farming and the Environment in a Green Brexit](#) and the White Paper, [A Green Future: Our 25 Year Plan to Improve the Environment](#) (January 2018).

In *Health and Harmony*, the UK Government described that a new environmental land management system would:

- take a natural capital approach which "properly values the natural environment";<sup>29</sup>
- pay for the delivery of public goods which the market does not naturally provide for; and
- move towards a more effective application of the 'polluter pays' principle".<sup>30</sup>

The 25 Year Plan set out how "a new environmental land management scheme" would "help us deliver more for the environment (including mitigation of and adaptation to the effects of climate change) and provide flexibility, putting more management decisions in the hands of farmers".<sup>31</sup> Commons Library Briefing [25 Year Environment Plan](#) (January 2018) provides more details on the plan.

### **Are farmers currently paid to support 'public goods'?**

Farmers are used to the type of approach where support is given in return for environmental benefits. Under CAP, direct payments and rural development grants across the UK have already been linked to incentivising or requiring farm management/activities which enhance or protect the environment as well as promoting the rural economy. For example, 30% of the direct payment can only be secured through

<sup>29</sup> See GOV.UK, [CAP greening criteria announced](#), 10 June 2014 and House of Commons Library briefing, [Brexit impact across policy areas](#), 26 August 2016

<sup>30</sup> Defra, [Health and Harmony: the future for food, farming and the environment in a Green Brexit](#), 27 February 2018, Cm 9577, Executive Summary, para 13

<sup>31</sup> HM Government, [A Green Future: Our 25 Year Plan to Improve the Environment](#), 11 January 2018 p37

meeting ‘greening’ requirements. To comply, farmers are required to implement greening rules which cover three areas – crop diversification, Ecological Focus Areas, and measures to maintain permanent grassland. Further, each part of the UK operates agri-environment schemes as part of their Rural Development Programmes. [Countryside Stewardship](#) is the programme that operates in England (accounting for 88% of Pillar II spend in England).

In [Health and Harmony](#), Defra outlined the benefits of such schemes:

There is evidence that land in publicly funded agri-environment schemes can deliver benefits which outweigh the payments made.<sup>32</sup> In England, over the last five years, agri-environment schemes have delivered successes such as:

- 80,000 km maintenance, management and restoration of hedgerows, ditches and stonewalls.
- estimated annual greenhouse gas savings of 1.5 MtCO<sub>2</sub>e
- creating nesting and food resources to increase breeding populations of nationally scarce farmland birds and pollinators such as cirl buntings, stone curlews and the marsh fritillary butterfly
- 9,000 hectares of planted areas providing pollen and nectar sources for pollinators. Higher Level Scheme management for pollinators can significantly increase the size of wild bumblebee populations.<sup>32</sup>

Successive UK Governments have highlighted in various CAP reforms that farm support, without requiring public goods in return, is not the best use of tax-payers money.<sup>33</sup> In the last CAP reform process (2013), the UK Government at the time argued that “rewarding farmers for the environmental goods they provide is much better use of taxpayers’ money than providing direct subsidy.”<sup>34</sup> However, current farm support up to now has still largely been based on the area of land farmed.

The current CAP system allows Member States to move (modulate) some of their direct payment funding to their rural development funding and vice-versa. However, the amounts ‘modulated’ from direct payments to rural development programme funding differ across the UK reflecting different approaches and priorities. Wales modulates the full 15% which is allowed compared to 12% in England and 9.5% in Scotland and no Pillar 1 to Pillar 2 transfer in Northern Ireland.<sup>35</sup> These include some of the higher transfers among Member States with

<sup>32</sup> HM Government, [A Green Future: Our 25 Year Plan to Improve the Environment](#), 11 January 2018, p37

<sup>33</sup> See GOV.UK, [CAP greening criteria announced](#), 10 June 2014 and House of Commons Library briefing, [Brexit impact across policy areas](#), 26 August 2016

<sup>34</sup> See for example, Defra, [Implementation of CAP reform in England: Consultation Document, October 2013](#), para 6.2

<sup>35</sup> Northern Ireland’s 0% modulation was initially due to lack of political consensus and legal intervention. There was an opportunity to review this for 2017 but Northern Ireland Executive has maintained the position after consultation. See DAERA, [McIlveen announces no reductions to Pillar I funding](#), 22 June 2016

transfers of 3% for France and 4.5% for Germany in the same direction.<sup>36</sup>

### What will public goods schemes look like?

Defra has been running tests and trials in order to involve land managers in the “co-design” of ELM, ahead of the national pilot launch in late 2021. Defra said in February 2020 that “from the 100+ proposals we received for phase 1 [of the ELM tests and trials], we have agreed to fund 44, of which 42 are active”. A further 25 were being progressed from the remaining phase 1 proposals, and the 200+ proposals received under phase 2.<sup>37</sup>

The National Audit Office (NAO) published a report on [Early review of the new farming programme](#) (June 2019). This noted that Defra’s plans for take-up of ELM (up to 82,500 enrolled by 2028) are more ambitious than the existing Countryside Stewardship agri-environment scheme (just under 20,000 agreements in place after four years), although it noted that Defra’s view is that direct payments under CAP currently reduce incentives for such schemes.<sup>38</sup> The NAO recommended that Defra should extend participation in the tests and trials to include a wider range of farmers and other land managers, to provide more confidence that a reasonable level of take-up will be achieved. It also recommended that Defra make decisions on “which outcomes the government wishes to prioritise, and the associated payment mechanisms” in “good time” for the pilot starting in 2021.<sup>39</sup>

The previous Parliament’s Environment, Food and Rural Affairs (EFRA) Committee subsequently held a [hearing with Defra officials](#) (July 2019) in which they provided an update. Defra Permanent Secretary Tamara Finkelstein said the Department had “taken a lot already” from the NAO report, and refocussed on communications with a “detailed design” for the ELM pilot due to be consulted on after summer 2019.<sup>40</sup>

In February 2020, Defra published an updated policy statement and discussion document outlining its current thinking and approach to the new agricultural policy. This set out that public goods would be supported through ELM, as well as an Animal Health and Welfare Pathway, plant health schemes, and a productivity and research and development offer.

A proposed three-tier structure for ELM was set out as follows:

- **Tier 1** could encourage environmentally sustainable agriculture and forestry, supporting actions that Defra says the majority of farmers would be able to deliver (such as using cover crops or planting wildflower margins).

<sup>36</sup> IEEP: CAP 2020, [Member State implementation of the CAP for 2015-2020 - a first round-up of what is being discussed](#), 16 April 2014

<sup>37</sup> Defra, [Farming for the future: Policy and progress update](#), February 2020, p. 9

<sup>38</sup> National Audit Office, [Early review of the new farming programme](#), 5 June 2019, p. 8

<sup>39</sup> Ibid., p. 11

<sup>40</sup> Environment, Food and Rural Affairs Committee, [Oral evidence: The new farming programme](#), HC 2542, 17 July 2019, Qq3-5, 11

- **Tier 2** could support the delivery of locally targeted environmental outcomes, possibly involving collaboration and joint working between land managers.
- **Tier 3** could focus on delivering land use change at a landscape scale, co-ordinating projects that help meet environmental objectives such as net zero.<sup>41</sup>

A consultation was opened on the discussion document, with an original deadline of 5 May 2020, but on 8 April the consultation was paused due to the Covid-19 pandemic.<sup>42</sup>

## Administration and Enforcement

**Clauses 2 and 3** set out how the financial assistance for public goods and productivity might be administered and any associated conditions monitored, checked and enforced.

In England, the Rural Payments Agency (RPA) currently administers CAP payments on behalf of Defra and has recently taken on the administration of Agri-environment scheme (Pillar 2) funding.

**Clause 2** allows the Secretary of State to make regulations requiring the publication of information about the public goods payments made under Clause 1. This can include information about the recipient, the amount and the purpose for which the financial assistance was given. This kind of information is already published relating to CAP payments. The regulations would be subject to the [affirmative resolution procedure](#).

## Enforcing the conditions of new schemes

**Clause 3 (1)** provides the Secretary of State with the power to make regulations (subject to the affirmative resolution procedure) to check, enforce and monitor the conditions of financial assistance provided under Part 1 (Clauses 1-3) of the Bill.

This includes checking whether eligibility criteria for receiving financial assistance has been met, complying with any related conditions and “monitoring the extent to which the purpose of the financial assistance has been achieved”.

The UK Government has indicated that it will look to make greater use of risk-based targeting of inspections and provide the opportunity for those who have not met the conditions of financial assistance to rectify the situation before imposing sanctions.<sup>43</sup>

The UK Government also expects that the power will be used to enable the Secretary of State to adapt the enforcement regime to changing priorities or the use of technology. For example, remote sensing may reduce the need for inspections.<sup>44</sup>

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<sup>41</sup> Defra, [Environmental Land Management: Policy discussion document](#), February 2020, p. 11

<sup>42</sup> Ibid.

<sup>43</sup> Delegated Powers Memorandum, para 27

<sup>44</sup> Defra, Health and Harmony: [The Future for Food, Farming and the Environment in a Green Brexit](#), February 2018, Cm 9577, p. 13

The Commons EFRA Committee noted in the Report of its inquiry into the previous Bill that Defra has a “huge task” to ensure a lead agency and national framework are in place to start delivering its policy based on public goods with adequate funding to police an independent inspection regime. It has suggested that civil sanctions and fines could be hypothecated to provide the Environment Agency or equivalent public body with the necessary extra resources.<sup>45</sup>

Farmers have long criticised the administration of CAP schemes.<sup>46</sup> Dame Glenys Stacey’s interim report on Farm Inspection and Regulation Review (July 2018) found that current enforcement “is nowhere near effective”. The report states:

...Farmers are frustrated by a lack of enforcement on the one hand, and disproportionate penalties on the other. Defra’s arms-length bodies tell us they are not resourced to check compliance sufficiently or do not have the range of powers they need. There is no doubt that a good deal of non-compliance remains unchecked.

Enforcement is skewed by CAP scheme requirements. A farmers’ most common experience of enforcement will be CAP scheme inspections and deductions made to payments for failure to comply in one way or another with requirements that can themselves be exact and inflexible.<sup>47</sup>

Glenys Stacey’s final report made recommendations aimed at making enforcement proportionate and reducing burdens on farmers:

We discuss enforcement. We propose that best practice approaches should apply, with the aim of bringing individuals into compliance. Swingeing sanctions will be appropriate on rare occasions, but enforcement should much more often start with advice and an opportunity to comply. It is important that the regulator applies the right combination of approaches to the situation.

We go on to propose a variety of ways in which the regulatory burden could be reduced for farmers. Many farmers press for fewer inspections if they are a member of a farm assurance scheme, and we show how a strong farm assurance record could make a difference. Equally, there are other ways in which farmers can demonstrate they farm responsibly, and can be given due credit.<sup>48</sup>

### **What happens to Countryside Stewardship schemes after Brexit?**

Retained EU regulations will allow for new agri-environment agreements to be commenced up to the end of the 2020 scheme year.<sup>49</sup> The February 2020 discussion document on the new agriculture policy set out the Government’s plans for Countryside Stewardship:

<sup>45</sup> Environment, Food and Rural Affairs Committee, [The future for food, farming and the environment, Sixth Report of Session 2017–19](#), HC 870, para 89

<sup>46</sup> See for example National Farmers’ Union press release, [RPA must act on Public Accounts Committee criticism](#), 2 March 2016

<sup>47</sup> [Farm Inspection and Regulation Review](#), July 2018 Interim Report, July 2018, p. 6

<sup>48</sup> Dame Glenys Stacey, [Independent report Farm Inspection and Regulation Review: summary and recommendations](#), Updated 13 December 2018

<sup>49</sup> Defra, [Defra Evidence and Analysis Paper No.7: Agriculture Bill – Analysis and Economic Rationales for Government Intervention](#), September 2018 p20

Under current plans, new Countryside Stewardship (CS) agreements will continue to be available in the first few years of the agricultural transition period. We will ensure there is a stable transition from Environmental Stewardship (ES) agreements and the CS scheme to the ELM scheme. Under the transition plans, there will be a period of time in which both the old and new systems will operate. This will allow time to plan and prepare for the future. No one with a CS or ES agreement will be unfairly disadvantaged when we transition to new arrangements under ELM. Those entering CS agreements from 2021 will be able to end their agreement early where they have secured an ELM agreement. Until then, signing a CS agreement gives a viable, longterm source of income for providing environmental benefits.<sup>50</sup>

The [Government announcement in December 2019](#) of funding for 2020 stated that:

Remaining EU funding under CAP Pillar 2 (for rural development and environmental projects) will continue until the current EU funding is used up or 2023, whichever is earliest.<sup>51</sup>

**Clause 16** (see below) provides powers for the Secretary of State to modify regulations governing Countryside Stewardship schemes to give more flexibility over existing schemes (for example to change the length of agreements or allow them to be adjusted into new agreements set up under Clause 1 of this Bill – payments for public goods ELM schemes).

## 3.2 Stakeholder reaction to public goods measures

[Farming organisations](#)<sup>52</sup> and [environmental groups](#) both broadly support the new ‘public money for public goods’ approach to future farm support schemes but there are different views on how it should be balanced with other considerations.

Notably, in response to the previous *Agriculture Bill*, [farmers wanted food production itself to be considered a public good](#) and for food production to be central to the Bill.<sup>53</sup> The [NFU has welcomed recognition in the 2019-21 Bill that “food production and caring for the environment go hand-in-hand”](#). This position is not supported by some environmental commentators such as George Monbiot who considers that food does not meet the definition of a public good.<sup>54</sup> Mr Monbiot also considers that support schemes should not be used where regulation should ensure the environment is protected.<sup>55</sup> The Tenant Farmers Association (TFA) has said that focussing almost exclusively on public money for public goods is “short-sighted and flawed”. The TFA

<sup>50</sup> Defra, [Environmental Land Management: Policy discussion document](#), February 2020, p. 19

<sup>51</sup> HM Treasury press release, [Farmers’ £3 billion support confirmed in time for 2020](#), 30 December 2019

<sup>52</sup> Environment, Food and Rural Affairs Committee, [Written evidence submitted by the National Farmers Union \(SAB0068\)](#), October 2018

<sup>53</sup> NFU Online, [Food production must be at centre of Agriculture Bill urges NFU](#), 10 October 2018

<sup>54</sup> @GeorgeMonbiot tweet 16 January 2020

<sup>55</sup> George Monbiot blog, [Farmed Out](#), 12 October 2018

has also called for the new Bill to include legal measures for tenant farmers to participate in ELM schemes where landlords' objections are unreasonable. Further, the Association wants funding to be targeted at "active farmers".<sup>56</sup> Measures to enable tenant farmers to engage in ELM schemes where a landlord objects are included in the new Bill (**Schedule 3**) (See section 11 on Part 4 of the Bill below).

Many environmental organisations have welcomed the reintroduction of the approach in the new Bill. Greener UK congratulated the Government for "resetting farm policy [...] enabling farmers to tackle the environment crisis while producing the food we need".<sup>57</sup> The Woodland Trust said in connection with the previous Bill that future payments focussed on the "delivery and care of public goods" has been "a long time coming". The Trust has welcomed the "unprecedented opportunity to break down the barriers that have artificially divided farming and forestry for so long".<sup>58</sup>

A number of organisations including the Soil Association have welcomed the inclusion in the new Bill of protecting or improving soil in the list of purposes eligible for financial support.<sup>59</sup> Although Ministers considered that support could be provided for this under provisions in the previous Bill, the need to explicitly list soil in Clause 1 was raised by many Members and stakeholders.<sup>60</sup>

The British Veterinary Association (BVA) has welcomed the inclusion of animal health and welfare as a public good eligible for support. It had previously argued that this recognition was needed to help guarantee that standards in this area are maintained or improved post Brexit. The BVA has said that vets must be involved in designing any interventions under the new system to improve animal health and welfare.<sup>61</sup>

### Public Access

[The Ramblers](#) have welcomed the inclusion of public access as one of the 'public goods' in the Bill as "a welcome step in the right direction". However, it also wants to see an Agriculture Bill include measures to improve the maintenance of the existing path network and to incentivise farmers to enhance the path network.<sup>62</sup>

Detailed views on the previous Agriculture Bill are set out in stakeholder [written and oral evidence to the Public Bill Committee](#) provided in September – November 2018.

Defra's Summary of Responses to the *Health and Harmony consultation* summarises the reaction to the 'public goods' provisions:

Many respondents thought all environmental outcomes proposed as public goods were linked, with soil and biodiversity forming the

<sup>56</sup> Tenant Farmers Association Press Release, [New Agriculture Bill must not leave tenant farmers out in the cold](#), 13 January 2020

<sup>57</sup> @GreenerUK tweet 16 January 2020

<sup>58</sup> Woodland Trust, [Response to Agriculture Bill](#), 12 September 2018

<sup>59</sup> Soil Association, [Commitment to soil in Agriculture Bill](#), 16 January 2020

<sup>60</sup> See [Public Bill Committee on the Agriculture Bill 2017-19 document webpages](#)

<sup>61</sup> BVA, [Vets welcome recognition of animal health and welfare as public goods in new Agriculture Bill](#), 12 September 2018

<sup>62</sup> Ibid. Ramblers, [MP Briefing](#) [Accessed 23 January 2020]

foundations. Important non-environmental public goods included: high animal welfare standards; protection of crops, tree, plant and bee health; and preserving rural resilience, traditional farming and landscapes in the uplands.

Public access was a popular topic of discussion. Many supported the benefits of access, such as improved public health and engagement, however farmers frequently raised concerns about potential damage to their businesses and property.

It was felt by many that food and public health should have been included in the list of public goods proposed by the government.<sup>63</sup>

### 3.3 Financial assistance plans: monitoring and reporting and multi-annual plans

**Part 1, Chapter 1 (Clauses 4,5 & 6)** includes provisions new for this Bill. **Clause 4** requires the Secretary of State to prepare and have regard to multi-annual financial assistance plans. These must set out Government plans to support farmers under the Clause 1 powers (these powers include those on paying farmers to deliver public goods). The plans must set out the Government's strategic priorities for giving financial assistance, and describe "in such manner and giving such detail as the Secretary of State considers appropriate" each scheme in operation or expected to come into operation during the plan period. 4(3) states that the first such plan must cover a period of seven years from 2021, covering the Agricultural Transition Period. 4(4) states that subsequent plans must cover a period of at least five years.

**Clause 5** requires the Secretary of State to report annually on financial assistance given under Clause 1 of the Bill. The first year that the duty will apply is 2021-22. The report must be published before 1 October in the financial year following the year to which the report relates.

**Clause 6** requires the Secretary of State to monitor and report on the impact of "each financial assistance scheme" delivered under Clause 1 powers. The Clause gives the Secretary of State discretion in many respects such as over how monitoring is carried out and the number and frequency of reports for the scheme or other financial assistance. The Explanatory Notes state that reports could include, for example, the uptake of schemes and an assessment of the extent to which public goods have been delivered.<sup>64</sup>

#### Stakeholder views on multi-annual funding

Farmers have long called for certainty over future funding. The called for a "multi-annual budgetary framework that provides certainty for farmers and allows them to plan and invest for the future".<sup>65</sup> The NFU has welcomed the measures in the 2019-21 Agriculture Bill requiring the Government to publish longer-term plans. However, the NFU notes that:

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<sup>63</sup> Defra, Health and Harmony: [The future for environment, food and farming in a Green Brexit – Summary of Responses](#), September 2018 paras 15-17

<sup>64</sup> Bill 7-EN (2019-20) para 74

<sup>65</sup> NFU Online, [Food production must be at the heart of Agriculture Bill, NFU urges government](#), 10 October 2018

This is not the same as a fixed multi-annual financial budget like we see under the CAP – but taken alongside the government’s commitment to maintain the farm support budget for the life of the Parliament (expected to be until 2024) this approach is very much welcomed.<sup>66</sup>

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<sup>66</sup> NFU Expert Insight, [The Agriculture Bill 2020](#), 20 January 2020

## 4. Part 1 Chapter 2: Direct Payments after EU exit

To make way for the new Environmental Land Management Scheme (ELM), **Part 1, Chapter 2 (Clauses 7-13)** allows for the **phasing out of direct payments** (as currently provided for under the Common Agricultural Policy). *Schedule 6 introduces some of the same provisions for Northern Ireland, notably excluding the measures relating to the phasing out of direct payments and to a transition period.*

These clauses are a key element of the Bill as they include provisions to deliver one of the central themes in the UK Government's agricultural policy after Brexit – a move away from direct farm support to payment for public goods (see section 3 above).

Direct Payments are the income support payments which UK farmers currently receive under the CAP paid out of the EU budget.<sup>67</sup> They are mainly regulated under the [EU Direct Payments Regulation](#).<sup>68</sup> This regulation sets out the [Basic Payment Scheme \(BPS\)](#) that operates under the CAP. Member States tailor the operation of this scheme to their own circumstances within certain permitted parameters. In the UK, the implementation of CAP is devolved and funds are administered by national governments.

Payments are based mainly on the amount of land a farmer owns, rather than on how much they produce to avoid incentivising overproduction. Farmers must currently meet certain standards on environmental management, animal welfare standards and traceability (known as 'cross-compliance') in order to qualify for payments.

EU Regulations on Direct Payments will be carried over into UK law as EU retained law under the *EU Withdrawal Act 2018*. These clauses give the Secretary of State various powers to amend this law. EU retained law applies from the end of the Implementation Period (scheduled to end at the end of 2020). Provisions on Direct Payments for 2020 are covered by the *Direct Payments to Farmers (Legislative Continuity) 2019-20 Bill*. The Agriculture Bill's provisions enable amendment of EU retained law from 2021. As an exception to continued application of current EU rules during the Implementation Period, direct payments to farmers were carved out from applying during 2020. The Direct Payments Bill brings these laws back into force as domestic UK law for 2020.

### 4.1 Agricultural transition period (Clause 8)

**Clause 8** determines that, for farmers in England direct payments will be phased out over a **7-year agricultural transition period** from 2021 and that the last year that direct payments will be made is 2027.

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<sup>67</sup> Five hectares or more must be farmed to enable BPS to be claimed. For full details of current BPS rules and operation see [GOV.UK Basic Payment Scheme webpages](#). Update 30 December 2019 (Accessed 23 January 2020)

<sup>68</sup> [Reg \(EU\) No.1307/2013](#)

Regulations will set out how the phasing out will take place. (**Clause 11**). The affirmative resolution procedure applies.

The Government says the transition period will “avoid a cliff-edge for businesses” and help them become “increasingly resilient, internationally competitive and better equipped to protect our environment.”<sup>69</sup> It considers that:

A longer transition would have delayed the benefits of moving away from Direct Payments, which are poor value for money, untargeted and can inhibit productivity improvements. It could also have delayed farmers beginning to adapt for the future.<sup>70</sup>

The Government also states that support will be provided during the transition to invest in equipment, technology, and infrastructure. Support could be in the form of grants, loans, loan-guarantees, or capital allowances and would be compliant with international agreements.<sup>71</sup> (See WTO section below).

### What happens during the agricultural transition period?

Defra published alongside the previous Bill information on the plans for reductions in Basic Scheme Payments in the first year (2021). The setting out of a timescale for the transition period also provides an end date for phasing out these payments (2027). There is no trajectory yet set out for further reductions in future years beyond 2021, other than the fact that “reduction percentages will be increased over the transition until the final payments are made for the 2027 scheme year”.<sup>72</sup>

As well as the provisions for phasing out direct payments, the Bill includes measures to allow the ‘delinking’ of payments. The ‘delinking’ refers to the removal of the link between the value of the claim and the area of farm land. The Government has not said when it might introduce delinking but the Bill states (**Clause 12(2)(b)(i)**) that the earliest this can be is 2022. Direct payments can only continue until delinking is brought in (or alternatively until the end of the transition period).<sup>73</sup> This part of the Bill also provides powers for payments to be made in a lump sum. (**Clause 12**).

**Box 1** below sets out key milestones as published with the previous Bill’s [timeline for changes to Direct Payments](#) and other support schemes.<sup>74</sup>

**Figure 3** below shows an indicative high-level timeline for the agricultural transition, as set out in Defra’s February 2020 discussion document.

<sup>69</sup> GOV.UK, [Health and Harmony: the future for food, farming and the environment in a Green Brexit – policy statement](#), 12 September 2018

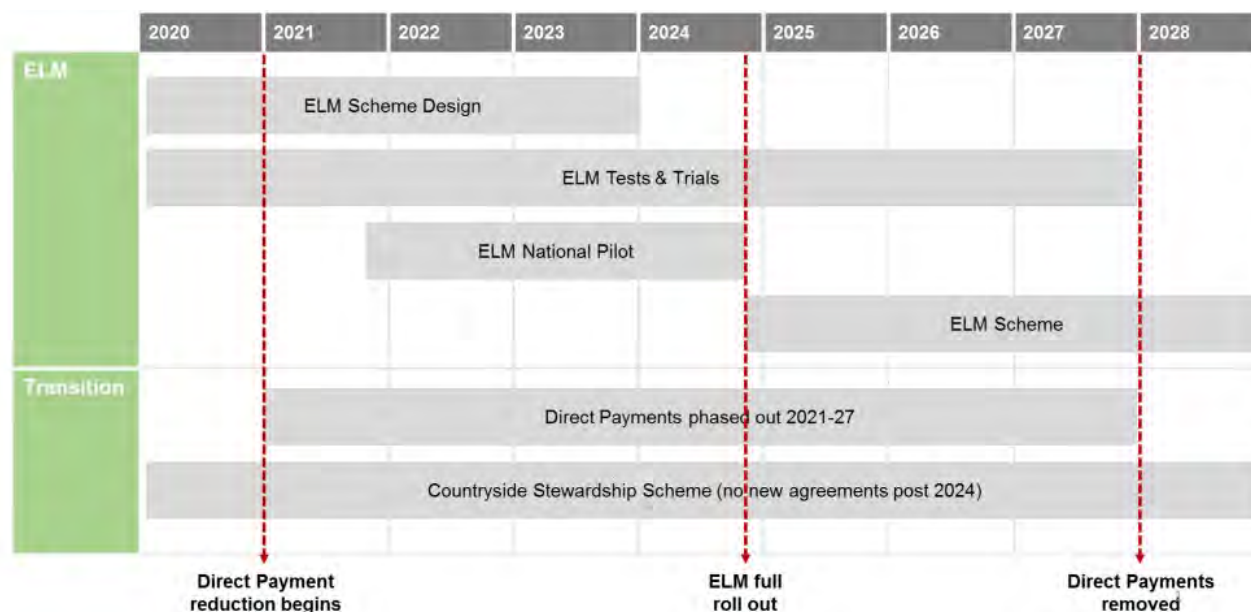
<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> GOV.UK, [Health and Harmony: the future for food, farming and the environment in a Green Brexit – policy statement](#), 12 September 2018

<sup>73</sup> Bill 7-EN (2019-20) para 98

<sup>74</sup> GOV.UK, [Health and Harmony: policy statement. Timeline](#), 12 September 2018

**Figure 3: High level delivery timeline**

Source: Defra, [Environmental Land Management: Policy discussion document](#), February 2020, p. 38

### How will reductions be phased in?

The Government has said that payment reductions will be applied in a “fair way”, with higher reductions initially applied to amounts in higher payment bands.<sup>75</sup> Other options were considered in the [Health and Harmony](#) consultation.<sup>76</sup> These were:

- progressive reductions with a £25,000 threshold,
- capped reductions (ie no payments above a certain band threshold starting at £100,000),
- flat rate reductions for all farms from year one of transition.<sup>77</sup>

These were all assessed to be less optimal at meeting the Government’s three aims of:

- 1) signalling clearly that direct payments are ending,
- 2) targeting payments appropriately, and
- 3) reducing the risks of businesses having to exit or restructure.

It concluded that progressive reduction with no threshold achieves these three aims best.

<sup>75</sup> Ibid.

<sup>76</sup> Defra, [Health and Harmony: the future for food, farming and the environment in a Green Brexit](#), 27 February 2018, Cm 9577

<sup>77</sup> Defra/Government Statistical Service, [Moving away from Direct Payments. Agriculture Bill: Analysis of the impacts of removing Direct Payments](#), September 2018, pp 42,43

The Government acknowledges that during the consultation on proposals there were mixed views about the way in which reductions should be applied. It states that:

...This method of progressive reductions balances the views of those who feel recipients of the highest payments should initially face higher reductions, with the strong calls for the reductions to be shared amongst all farmers from the start of the transition. It reflects the views of many farmers that the whole industry needs to prepare for the changes and that applying reductions to all farmers sends an important signal that change is on its way. It also gives all farmers the same transition period.<sup>78</sup>

Table 3 below sets out the proposed maximum percentage reductions and an illustrative profile of impact by claim size for the first year of the transition (2021).

| <b>Table 3: Illustrative profile of reductions to reduce Direct Payments in year 1 of the transition</b> |                         |                               |                                    |
|----------------------------------------------------------------------------------------------------------|-------------------------|-------------------------------|------------------------------------|
| Figures in the table are illustrative based on 2016 payment data                                         |                         |                               |                                    |
| Payments reductions (staggered between bands**)                                                          | 2016 Direct Payment (£) | Number of farms in each group | Average reduction per business (£) |
| <b>5% rate</b> applied to all farms up to <b>£30k</b> of payments                                        | 0 to 5k                 | 30,300                        | 100                                |
|                                                                                                          | 5 to 10k                | 15,300                        | 400                                |
|                                                                                                          | 10 to 15k               | 9,500                         | 600                                |
|                                                                                                          | 15 to 20k               | 6,800                         | 900                                |
|                                                                                                          | 20 to 25k               | 4,900                         | 1,100                              |
|                                                                                                          | 25 to 30k               | 3,600                         | 1,400                              |
| <b>10% rate</b> applied to subsidy amount <b>between £30-50k</b>                                         | 30 to 40k               | 4,800                         | 2,000                              |
|                                                                                                          | 40 to 50k               | 3,000                         | 2,900                              |
| <b>20% rate</b> applied to subsidy amount <b>between £50-150k</b>                                        | 50 to 75k               | 3,700                         | 5,600                              |
|                                                                                                          | 75 to 100k              | 1,600                         | 10,700                             |
|                                                                                                          | 100 to 125k             | 800                           | 15,800                             |
|                                                                                                          | 125 to 150k             | 400                           | 20,800                             |
| <b>25% rate</b> applied to subsidy amount above <b>£150k</b>                                             | 150 to 200k             | 500                           | 28,500                             |
|                                                                                                          | 200 to 250k             | 200                           | 41,300                             |
|                                                                                                          | 250 to 300k             | 100                           | 54,200                             |
|                                                                                                          | Over 300k               | 100                           | 108,800                            |

Note: a. A 5% reduction is applied to all farms up to £30,000 of payments, rising incrementally by payment band up to 25%. For example, for a claim worth £40,000, a 5% reduction would be applied to the first £30,000 and a 10% reduction would be applied to the next £10,000.

Source: Defra/Government Statistical Service, Moving away from Direct Payments, Agriculture Bill: Analysis of the impacts of removing Direct Payments, September 2018, p44. Illustrative figures based on 2016 Direct Payment data.

<sup>78</sup> GOV.UK, [Health and Harmony: the future for food, farming and the environment in a Green Brexit – policy statement](#), 12 September 2018

## Stakeholder comment on the agricultural transition

The transition period is at the longer end of a range from three to seven years suggested by witnesses to the Commons Environment, Food and Rural Affairs (EFRA) in 2018.<sup>79</sup> Also, the Scottish Government's consultation [Stability and Simplicity](#) proposed a five-year transition period for farming and rural support. Those from the agricultural sector e.g. NFU and Dairy UK wanted the period to be long enough to ensure that farmers in England have time to adapt to change and invest to improve their productivity. However, environmental organisations such as Wildlife and Countryside Link and the Chartered Institution of Water and Environmental Management were concerned that any delay could result in inaction by farmers.<sup>80</sup>

The CLA wanted to see transition offered as a managed process allowing farming businesses to adapt to the new trading environment, new labour arrangements and the new, food, farming and environmental policy rather than just the removal of Direct Payments.<sup>81</sup> Following the introduction of the new Bill, the CLA called for, "ideally", a postponement in the start of the transition period to 2022.<sup>82</sup>

Professor of Rural Policy and Director of the Countryside and Community Research Institute, Janet Dwyer, has suggested a longer transition period to avoid potential environmental risk arising from too quick a policy change.<sup>83</sup> She has drawn parallels with the approach taken when 2005 CAP reforms meant that Member States had to start moving payments from being based on historic payments to being area based and subsidies were decoupled from production. She has cautioned that Defra phased that change over 10 years to ensure that farmers knew what was happening and had time to adjust and make plans.<sup>84</sup>

There were renewed calls for the transition to be delayed as a result of the Covid-19 pandemic; see section 15.1 below.

## 4.2 Making modifications (Clause 9)

The current BPS (including the greening payment and young farmer payment) will be incorporated into domestic law under the [European Union \(Withdrawal\) Act 2018](#).

This retained EU law will apply at the end of the Implementation Period (IP) expected to be at the end of 2020. For most economic sectors, EU rules continue to apply during the IP. However, CAP Direct Payments

<sup>79</sup> Environment, Food and Rural Affairs Committee inquiry, [The work of Defra: Health and Harmony](#), HC 870, written submission by Soil Association (HAH0019), para 31; British Ecological Society (HAH0032), para 16

<sup>80</sup> Ibid., Chartered Institution of Water and Environmental Management ([HAH0009](#)), paras 5-5.5; Wildlife and Countryside Link ([HAH0012](#)), para 5.4

<sup>81</sup> CLA, [Consultation response: Health and Harmony – The future for Food, Farming and the Environment in a Green Brexit](#), 20 April 2018

<sup>82</sup> Country Land and Business Association, [CLA President calls for more clarity on transition following release of Agriculture Bill](#), 16 January 2020

<sup>83</sup> Environment, Food and Rural Affairs Committee inquiry, [The work of Defra: Health and Harmony](#), HC 870, [Q212](#) [Professor Dwyer]

<sup>84</sup> Ibid., [Q206](#)

rules were disapplied for 2020 under the terms of the UK EU Withdrawal Agreement. Despite this carve out, EU rules are being domesticated under the [Direct Payments to Farmers \(Legislative Continuity\) Bill 2019-20](#) for claim year 2020. This will enable continued payment of direct farm payments as now in 2020, and provisions of the Agriculture Bill are intended to apply to payments from 2021. See [Commons Library Briefing on the Direct Payments to Farmers Bill](#).

**Clause 9** provides the Secretary of State with a power to modify the legislation governing the BPS. However, these powers can only be used to make modification for five purposes, including to simplify or improve the scheme or reduce burdens on claimants.

The negative resolution procedure applies.

Simplification of schemes has long been an aim of the Government, reflecting the industry's key criticisms of the current CAP as being bureaucratic and inflexible. The [Health and Harmony consultation](#) proposed that cross-compliance could be simplified during the agricultural transition period whilst the current "ineffective" greening requirements currently set under CAP could be reduced or removed before moving to the new regulatory regime.

*Health and Harmony* said that after the Brexit implementation period, payments could be made without adhering to cross-compliance rules. Instead, risk-based inspections would be made, and payments guaranteed as long as domestic animal welfare, environmental and other laws were observed.<sup>85</sup> Defra's February 2020 policy update also looked toward possible simplifications for the 2021 scheme year:

We will look to make further simplifications for the 2021 Basic Payment Scheme. This could include removing some or all of the burdensome greening rules which have failed to deliver for the environment, as well as improving the arrangements for cross-border holdings to help speed up payments to these farmers. It could also include removing the rule that requires farmers to use all their payment entitlements at least once every two years in order to prevent some of them being taken away.<sup>86</sup>

## Greening Payments

**Clause 9 (2)** provides a specific provision to end 'greening' payments during the agricultural transition period.

Under the current BPS, around 30% of farmers' Direct Payments are linked to 'greening' requirements which they must meet by following certain practices. The greening requirements included the unpopular 'three crop rule' which requires a certain number of crops to be planted through the year to increase diversity. These have been found to have had limited impact compared to being part of an agri-environment scheme.<sup>87</sup>

<sup>85</sup> Defra, [Health and Harmony: the future for food, farming and the environment in a Green Brexit](#), 27 February 2018, Cm 9577, Executive Summary, para 13

<sup>86</sup> Defra, [Farming for the future: Policy and progress update](#), February 2020, p. 37

<sup>87</sup> Alliance Environment, [Evaluation of the CAP greening measures](#), November 2017

If the power is used, the 30% of funding currently allocated to greening requirements must remain available to recipients (provided they meet remaining Basic Payment Scheme requirements).

### 4.3 Powers to continue making Direct Payments (Clause 10)

As CAP rules which become retained EU law only contain financial ceilings up until and including the 2020 scheme year, new powers are needed if Direct Payments are to be made in 2021 or beyond. Government policy is that Direct Payments will continue for at least part of the agricultural transition period, at proportions of current levels, even though the Government intends to phase them out completely by the end of the period in 2027 and replace them with the new public goods payments schemes. This Clause gives Ministers powers to continue to make the payments for one or more years beyond 2020.

**Clause 10** can be exercised only until delinked payments replace the current BPS (2022 at the earliest) or until Direct Payments are phased out completely at the end of the transition period in 2027. This will avoid having two systems (direct payments and delinked payments) in operation at the same time. As noted below, **Clause 12** includes a power for separating or ‘delinking’ Direct Payments from land (ie there would be no obligation for the recipient to remain a farmer).<sup>88</sup>

### 4.4 Phasing out Direct Payments (Clause 11)

Although Clause 10 effectively specifies the end date for Direct Payments and this helps farmers to know what to expect after 2027, there is as yet no clarity on the phasing out beyond the first year (2021). Farmers are likely to want certainty on timing of phase-out in payments. However the speed at which new public goods schemes are introduced may affect the timescale. Furthermore, total annual support levels are guaranteed until the end of this Parliament (expected in 2024) but guarantees on spend cannot be set out to bind a future Parliament.

### Views on phasing out Direct Payments

#### Government position

The Government considers that direct payments are a “poor tool for income support and can introduce distortionary incentives that inhibit productivity”.<sup>89</sup> In January 2018, the former Environment Secretary Michael Gove set out in a [speech](#) to the 2017 Oxford Farming Conference his views on some of the drawbacks with direct payments:

Paying landowners for the amount of agricultural land they have is unjust, inefficient and drives perverse outcomes...It gives the most from the public purse to those who have the most private wealth....It bids up the price of land, distorting the market,

<sup>88</sup> Bill 7- EN (2019-20) para 112

<sup>89</sup> Defra/Government Statistical Service, [Moving away from Direct Payments. Agriculture Bill: Analysis of the impacts of removing Direct Payments](#), September 2018

creating a barrier to entry for innovative new farmers and entrenching lower productivity.<sup>90</sup>

The Government's [Agriculture Bill: Economic Rationale for Government Intervention](#) published with the previous Bill sets out further analysis as to why the Government considers that direct payments are an inefficient and ineffective means of income support for households.<sup>91</sup>

### Stakeholder views

Stakeholders too have for many years highlighted the drawbacks to direct payments (e.g. in response to simplification exercises) but also point to the importance of the income stream.

The NFU's response to the Health and Harmony consultation in 2018 noted:

Measures to help farmers manage their exposure to risk are essential to deal with a variety of external factors that contribute to income volatility such as global commodity market fluctuations, changing trade relations and weather, pest and disease threats. Direct payments are currently the most substantial and effective tool that farmers have to mitigate this volatility. While farmers in the UK share the aspiration of reducing their reliance on these payments, it should not be arbitrarily pursued without sufficient and robust policy replacements.<sup>92</sup>

Environmental groups have often criticised the fact that the payments are area based. The RSPB has said that Pillar I is "entitlement-based, untargeted, inefficient, and there is no link between outcomes and payments".<sup>93</sup>

Academic commentator Prof. Dieter Helm has focussed on issues including: poor targeting of income support to those most in need of it, poor delivery of wider policy objectives such as environmental improvements, and inflation of land prices. He has noted that:

...the bulk of Pillar I payments do not go to poorer and marginal farmers. On the contrary Pillar I goes to those who own the land, dominated by larger more intensive farms. Quite why a farmer with, say, 2,000 hectares of intensive arable land should benefit is far from obvious. It is also unclear why a number of activities with little connection to the self-sufficiency and food security to which the lobbyists for this option refer, should receive Pillar I payments.

The really pernicious aspect of Pillar I is the inflation of land prices. This has a number of undesirable consequences. It makes entry into the industry harder, acting as a barrier to entry.<sup>94</sup>

## 4.5 Delinking Payments (Clauses 12 & 13)

**Clause 12** sets out powers to phase out Basic Payment Scheme (BPS) payments and/or terminate them and instead 'de-link' them the

<sup>90</sup> GOV.UK, [Farming for the Next Generation](#), 5 January 2017

<sup>91</sup> Defra, Evidence and Analysis Paper No. 7: [Agriculture Bill: Analysis and Economic Rationale for Government Intervention](#), September 2018

<sup>92</sup> NFU, [Consultation response: Health and Harmony: Environment. Food and Farming in a Green Brexit](#), 8 May 2018

<sup>93</sup> House of Lords European Union Committee, [Brexit: Agriculture](#), 20<sup>th</sup> Report of Session 2016-17, May 2016 HL Paper 169, para 220

<sup>94</sup> Dieter Helm, [Agriculture After Brexit](#), March 2017

requirement to farm during the transition. **Clause 13** allows for these 'de-linked' payments to be made in a lump sum allowing farmers to invest in their business, diversify or retire from farming.

The Government has said that this approach will "send a clear signal to farmers that we are leaving behind the Common Agricultural Policy and Direct Payments are coming to an end".<sup>95</sup>

Delinked payments would only start after the termination of the basic payment scheme but the Government has not said at which point during the agricultural transition period this might occur. It previously said in relation to the last Bill that it will consult with stakeholders before setting the detailed rules.<sup>96</sup>

The Government has explained that the connection between the value of the payment and the areas of land for which it is claimed will be removed. Instead, payments will be made based on a reference period. For example, they could be based on the value of the payment under the Basic Payment Scheme received by the individual recipient during a certain reference period.<sup>97</sup>

The Government has stated that:

Some farmers could use the money to invest in their business without having to worry about the bureaucratic paperwork that accompanies the Basic Payment Scheme. Others may choose to use the money to diversify their activities or decide to stop farming altogether and use the payment to contribute to their retirement. It should increase the ease with which new entrants, and those existing farmers wishing to expand, could acquire land. [...]

We consider this approach best meets the widespread desire for simplification, while at the same time increasing the range of options available to farm businesses to adjust for the future. It gives farmers the greatest flexibility on how they use the money received. To provide further flexibility, and in response to ideas put forward in response to our consultation, we will look to give farmers the option of taking a one-off lump sum payment in place of all their annual Direct Payments.<sup>98</sup>

The policy statement published with the previous Agriculture Bill explains that delinking removes the requirement to follow existing rules although:

...all farmers must continue to comply with good land management and husbandry standards. We are committed to maintaining a strong regulatory baseline, with enforcement mechanisms that are proportionate and effective. Alternative enforcement mechanisms will be introduced before Direct

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<sup>95</sup> GOV.UK, [Health and Harmony: the future for food, farming and the environment in a Green Brexit – policy statement](#), 12 September 2018

<sup>96</sup> Agriculture Bill, [Delegated Powers Memorandum from the Department for Environment, Food and Rural Affairs to the Delegated Powers and Regulatory Reform Committee](#), September 2018, para 36

<sup>97</sup> Ibid.

<sup>98</sup> GOV.UK, [Health and Harmony: the future for food, farming and the environment in a Green Brexit - policy statement](#), 14 September 2018

Payments are delinked so that we can maintain agricultural and environmental best practice.<sup>99</sup>

### A novel approach

Delinking is a novel approach which has not been used widely internationally in a pre-planned manner to support farmers to move out of farming.

Countries have, however, paid farmers reactively during crisis periods: for example the sudden abolition in New Zealand in 1985 of extensive farm subsidies led to 1% of the 80,000 farmers leaving the industry and the Government had provided one-off funds to help with the transition.<sup>100</sup>

The UK approach on delinking also diverges from EU approaches. The current EU CAP has a requirement for subsidy claimants to be 'active farmers' and post 2020 CAP schemes are likely to require Member States to define an active farmer more rigorously.<sup>101</sup>

Defra's summary of responses to the *Health and Harmony consultation* noted that the 'delinking' of direct payments from land "was less popular amongst respondents than retaining and simplifying the existing schemes. Many also wanted to see the continuation of protections which maintain agricultural and environmental best practice".<sup>102</sup>

### Impact of proposed changes

Defra's paper [Agriculture Bill: Analysis and Economic Rationales for Government Intervention](#) suggests that "most farm businesses will be able to make modest cost reductions in order to improve efficiency, which will be required when Direct Payments come to an end".<sup>103</sup>

Defra published an [analysis](#) to accompany the previous Bill setting out the impact of moving away from Direct Payments. The analysis notes that the impact of the removal of Direct Payments on overall profit margins is likely to be "non-negligible".<sup>104</sup>

However, the impact varies by farm type and sector. For example, the pigs, poultry and horticulture sectors are least reliant on Direct Payments whilst Least Favoured Area and Lowland Grazing Livestock are the most dependent. **Figure 4** below shows Defra's analysis of how important Direct Payments are for different sectors in England.

<sup>99</sup> Ibid.

<sup>100</sup> House of Lords European Communities Committee, [Responding to price volatility: creating a more resilient agricultural sector](#), May 2016, HL Paper 146

<sup>101</sup> European Commission Press Release, [EU Budget: the Common Agricultural Policy after 2020](#), 1 June 2018

<sup>102</sup> Defra, [Health and Harmony: the future for food, farming and the environment in a Green Brexit Summary of responses](#), September 2018, p. 4

<sup>103</sup> Defra, [Defra Evidence and Analysis Paper No.7, Agriculture Bill: Analysis and Economic Rationales for Government Intervention](#), September 2018, Executive Summary, p.4

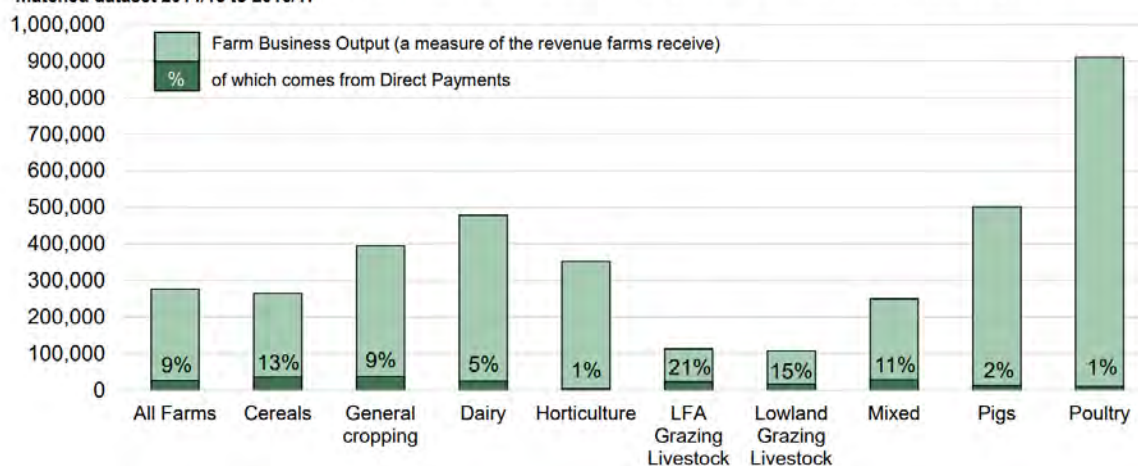
<sup>104</sup> Defra/Government Statistical Service, [Moving away from Direct Payments. Agriculture Bill: Analysis of the impacts of removing Direct Payments](#), September 2018, p34 and fig 11

**Figure 3: Direct Payments: Sector proportion**

Revenue (Farm Business Output) is the total sales generated by a farm business.

The importance of Direct Payments varies across sectors: Direct Payments made up the largest proportion of revenue for Less Favoured Area Grazing Livestock farms (21%) and Lowland Grazing Livestock farms (15%), Cereals (13%) and Mixed Farms (11%).

Average Farm Business Output and the proportion that comes from Direct Payments by 2016 farm type (based on 3 year matched dataset 2014/15 to 2016/17)



Source: Defra/Government Statistical Service, [Moving away from Direct Payments](#).

[Agriculture Bill: Analysis of the impacts of removing Direct Payments](#), September 2018.

Research by the Centre for Rural Economy at Newcastle University (not accounting for the provisions of the Agricultural Bill) has found that:

Removal of agricultural subsidies will affect most farm businesses but effects will vary by sector, region and devolved governments:

- Arable and dairy farms may be relatively unaffected.
- Sheep and beef producers in more remote locations such as the Scottish uplands are most likely to be affected and many may struggle to survive.<sup>105</sup>

[Section 1 above sets out further data on the contribution of farm support to farm incomes.]

## 4.6 Devolved administration approaches to direct payments

The Devolved Administrations have consulted on varying policies on how support will be targeted in future.

### Scotland

The Scottish Government has introduced the [Agriculture \(Retained EU law and data\) \(Scotland\) Bill](#) and proposes to [keep farm support largely the same until 2024](#).<sup>106</sup> This makes provision from 2021 and goes wider than the Direct Payments to Farmers Bill as it would allow amendment of any part of CAP legislation, not just direct payment rules.<sup>107</sup>

<sup>105</sup> Rural Economy and Land Use (Relu), [Practice Note No.7 Brexit: How will UK agriculture fare when we leave the EU?](#) August 2018

<sup>106</sup> Scottish Government, [Stability and simplicity: proposals for a rural funding transition period](#), 20 June 2018

<sup>107</sup> Anna Brand, Scottish Parliament Information Centre (SPICe) briefing, [UK Direct Payments to Farmers \(Legislative Continuity\) Bill 2020](#), 15 January 2020

## Wales

Measures in Schedule 3 of the *Agriculture Bill 2017-19* broadly replicated the proposed approach for England of phasing out direct payments and bringing in payments for public goods. It also included provisions to allow payments for rural community support. These have not been included in the *Agriculture Bill 2019-21*. The Welsh Assembly considers an Assembly Bill would be more appropriate.<sup>108</sup> The Welsh Minister for Environment, Energy and Rural Affairs Lesley Griffiths said that powers in the UK Agriculture Bill would no longer be appropriate given the time since the introduction of the previous Bill.<sup>109</sup> She would be publishing a White Paper in 2020 to pave the way for a new Welsh Agriculture Bill. The Welsh Government has consulted on its approach in two main consultations. Firstly, its 2018 [Brexit and our land consultation](#),<sup>110</sup> and then in a further consultation on [Sustainable Farming and our Land in 2019](#).<sup>111</sup> The Welsh Government is intending to publish a White Paper before the end of the 2016-21 term of the Welsh Parliament, and an *Agriculture (Wales) Bill* in the subsequent term.<sup>112</sup> Lesley Griffiths has however said she wanted Basic Payment Scheme to stay in place in 2020 and 2021 (subject to sufficient UK Government funding) to give assurances to Welsh farmers and to allow them to plan ahead.<sup>113</sup>

## Northern Ireland

The Northern Irish Department for Agriculture, Environment and Rural Affairs (DAERA), consulted in its [document Northern Ireland Future Agriculture Policy Framework: Stakeholder Engagement](#), in August 2018.<sup>114</sup> The *Agriculture Bill 2017-19* provisions were intended to enable DAERA to continue to make payments to farmers and land managers after the UK leaves the EU and to “ensure that future Executive Ministers have the flexibility to develop policy once an Assembly is returned”.<sup>115</sup>

This Bill includes provisions on direct payments specifically for Northern Ireland (**Schedule 6**). These are mostly identical to those proposed for England with exceptions on Clauses related to the transition period, phasing out, termination and delinking of direct payments. Some additional powers are given to the Department for Agriculture, Environment and Rural Affairs (DAERA) powers in respect to

<sup>108</sup> National Assembly for Wales, In brief blog, [Assembly to debate giving consent to the UK Direct Payments to Farmers Bill](#), 15 January 2020

<sup>109</sup> Welsh Government, Written Statement, [UK Agriculture Bill](#), 16 January 2020

<sup>110</sup> Welsh Government, [Brexit and Our Land: Securing the future of Welsh Farming](#), July 2018

<sup>111</sup> Welsh Government, [Sustainable Farming and Our Land](#), 30 October 2019

<sup>112</sup> Welsh Government, [Sustainable Farming to remain at heart of future Welsh agriculture support](#), 8 July 2020

<sup>113</sup> Further details on Welsh farm policy are included in the Welsh Assembly Research Paper, [Diversification and resilience of Welsh farming: prospects after Brexit](#), December 2019

<sup>114</sup> DAERA, [Northern Ireland Future Agriculture Policy Framework: Stakeholder Engagement](#),

<sup>115</sup> [Agriculture Bill 2017-19](#), 266-EN para 254 -255

reintroducing and modifying Direct Payment Regulation articles in relation to making payments for areas of natural constraint.

The [Ulster Farmers Union](#) (UFU) has said that it is “essential that the local share of farm support remains the same as now, but farmers recognise the delivery model is going to change.” The UFU wants a model that is targeted at “those who take the risks in primary food production”.<sup>116</sup>

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<sup>116</sup> Ulster Farmers Union, [DAERA document a welcome start](#), 1 August 2018

## 5. Part 1 Chapter 3: Other financial support after EU exit

### 5.1 General provisions on payments to farmers and other beneficiaries (Clause 14)

This provision relates to regulations governing operation of the CAP including financing and monitoring. The powers in **Clause 14** give Ministers scope to simplify and amend a wide range of legislation related to the 'Horizontal Regulation'. That Regulation (Regulation 1306/2013) has a fundamental role in making the CAP work. It includes rules on how farmers must comply with other EU rules on environmental and animal welfare standards (so-called 'cross-compliance'). Amendments to make these EU laws operable in the UK during the Implementation Period in 2020 have been included in the [Direct Payments to Farmers \(Legislative Continuity\) Bill 2019-20](#). The Explanatory Notes to the Agriculture Bill state that amendments are likely to be needed beyond the Implementation Period (ie after the end of 2020) to make laws work domestically.<sup>117</sup>

### 5.2 Aid for Fruit and Vegetable Producer Organisations (Clause 15)

The EU Common Market Organisation (CMO) regulation provides for growers in the fruit and vegetable sectors to form Producer Organisations (POs). Once recognised, the growers can claim EU aid which is match-funded by the POs themselves under the EU Fruit and Vegetable Aid Scheme. This Clause provides the Secretary of State with the powers to modify retained EU legislation on the Scheme in England which is administered by the Rural Payments Agency. The [Explanatory Notes explain further](#).<sup>118</sup> It is intended to allow Schemes to run to their conclusion but this Clause enables the scheme to be closed down.

The fruit and vegetable sector would instead be able to benefit from the wider Producer Organisation measures provided for in **Part 3 (Chapter 3)** of the Bill and those relating to fairness in the supply chain (see section 10 below).

In its response to the *Health and Harmony* consultation the NFU highlighted how POs underpin the UK berry industry and how this scheme had helped to increase the UK production of strawberries e.g. with investment in protective tunnels extending the season and new varieties achieving 100% UK soft-fruit supply to retailers during the British season.<sup>119</sup>

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<sup>117</sup> Bill 7-EN para 128&129

<sup>118</sup> Bill 7-EN paras 135-137

<sup>119</sup> NFU, [Consultation response to Health and Harmony: Environment, Food and Farming in a Green Brexit](#), 8 May 2018

## 5.3 Support for rural development (Clause 16)

**Clause 16** provides powers for the Secretary of State to modify regulations governing Countryside Stewardship schemes to give more flexibility over existing schemes (for example to change the length of agreements or allow them to be adjusted into new agreements set up under Clause 1 of this Bill – payments for public goods ELM schemes).

Powers here are exercised under the negative resolution procedure.

**Clause 16 (6)** and **(7)** lists the main retained direct EU legislation/legacy regulations that the clause is referring to. This includes [Regulation \(EU\) No 1305/2013](#) on support for rural development.

The Explanatory notes confirm the intention that **Clause 16** will not be used to introduce any new schemes, as they will be covered by Clause 1 which sets out the areas where the Secretary of State can offer financial assistance to deliver ‘public goods’ and productivity.<sup>120</sup>

Section 1 above outlines the Government’s current and future policies on rural support.

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<sup>120</sup> Bill 7 – EN (2019-20) para 138

## 6. Part 2: Food and agricultural markets

### 6.1 Food security (Clause 17)

#### Provisions

**Clause 17** introduces a new requirement on the Secretary of State to report to Parliament on UK food security at least once every five years. The report is to contain “an analysis of statistical data”. The clause sets out five areas that the report “may” include, “among other things”:

- global food availability;
- supply sources for food;
- the resilience of the supply chain;
- household expenditure on food; and
- food safety and consumer confidence in food.

The explanatory notes state that this report:

will provide a broad understanding of what food security is, the challenges and risks to UK food security in a global context, and our current assessment of the state of our food security to inform our policy thinking on the resilience and security of food supply.<sup>121</sup>

#### Background

Food security was an issue discussed at length during Parliamentary scrutiny of the previous Bill, linked to wider criticisms that the Bill did not sufficiently support food production. The then Shadow Defra Secretary Sue Hayman said during the Second Reading debate:

This is the first time in more than 40 years that a Secretary of State has been directly responsible for the nation’s food security, yet food security has drifted off the Government’s agenda, and they are not offering any clear vision for the future of our nation’s food supply. The Bill is worryingly silent when it comes to food poverty. It says nothing about the balance between the production of healthy and sustainable British food and reliance on imports, the jobs and health and safety of agricultural workers, and preventing trade deals involving lower standards, undercutting British producers.<sup>122</sup>

SNP environment spokesperson Deirdre Brock also considered the “lack of focus on food production a fundamental flaw of the Bill” and a “serious omission at a time when food security has become a major concern”.<sup>123</sup> The NFU called on the Bill to “promote the nation’s strategic priorities by supporting domestic agriculture to ensure food security”.<sup>124</sup>

<sup>121</sup> Bill 7 – EN (2019-20) para 145

<sup>122</sup> HC Deb 10 Oct 2018, [c164](#)

<sup>123</sup> Agriculture Bill: First Sitting, 13 November 2018, [c359](#)

<sup>124</sup> NFU, [Food production must be at the heart of Agriculture Bill, NFU urges government](#), 10 October 2018

In response to the new Bill, the NFU has said that the commitment to report on food security is “reassuring” but “must be more than simply a box-ticking exercise”.<sup>125</sup>

As well as the food security provision in the new Bill, measures in Clause 1(4) require Ministers to have regard to the need to encourage the production of food in England in using their financial assistance powers (see section 1 above).

### Other assessments of food security

The themes which may be addressed in food security reports under the new Bill are broadly similar to those of the [UK Food Security Assessment](#), originally published in August 2009. This was produced by Defra under the Brown Government and set out the challenges and risks facing UK food security.<sup>129</sup>

The Government’s [National Adaptation Programme](#) (July 2018, in response to the second *Climate Change Risk Assessment*) stated that Defra was reviewing the Food Security Assessment “with a view to publication in 2019”.

The *National Adaptation Programme* expressed a similar view of UK food security to the previous assessment, in the new context of EU exit:

Although the assessment has not yet been completed, the UK’s openness to trade combined with a robust domestic production sector has brought a very impressive diversity to UK food supply, and this will continue after we leave the EU. The UK imports food from over 180 countries and this openness ensures that UK food supply is very resilient to supply interruptions from specific countries and also from disruption to domestic UK production.

#### Box 1: Food security and self-sufficiency

Food security has many dimensions but is often discussed in relation to the resilience of a country’s food supply. This is linked to the concepts of self-sufficiency and dependence upon imports, but should not be considered as covering all aspects of food security.<sup>126</sup> The UK is approximately 61% self-sufficient in all foods and 75% sufficient in indigenous foods.<sup>127</sup>

The NFU has tried to demonstrate the UK’s level of self-sufficiency by calculating when in the year food would run out if only UK food was consumed. According to the NFU, at the current rate of production, if the UK tried to survive solely on food produced in the UK from 1 January, it would run out in the second week of August.<sup>128</sup>

Defra Minister Zac Goldsmith indicated in response to a Parliamentary Question on 8 October 2019 that the review was ongoing, but no updated assessment appears to have been published before the new Agriculture Bill was introduced.<sup>130</sup>

The new Bill also comes as Defra has progressed work on developing a [National Food Strategy](#). This will be informed by an independent review led by Henry Dimbleby, and is intended to cover “the entire food chain, from field to fork”. The terms of reference for the strategy state that

<sup>125</sup> NFU, [Agriculture Bill reintroduced - hear from the President](#), 17 January 2020

<sup>126</sup> Defra’s [UK Food Security Assessment](#) (2009) stated that “self sufficiency is not the same as food security” and the debate had shifted to a broader discussion of the complex factors that affect food security (p. 8).

<sup>127</sup> Defra and Devolved Administrations, [Agriculture in the UK 2018](#), June 2019, table 14.1 p98. Food Production to Supply Ratio is calculated as the farm-gate value of raw food production (including for export) divided by the value of raw food for human consumption.

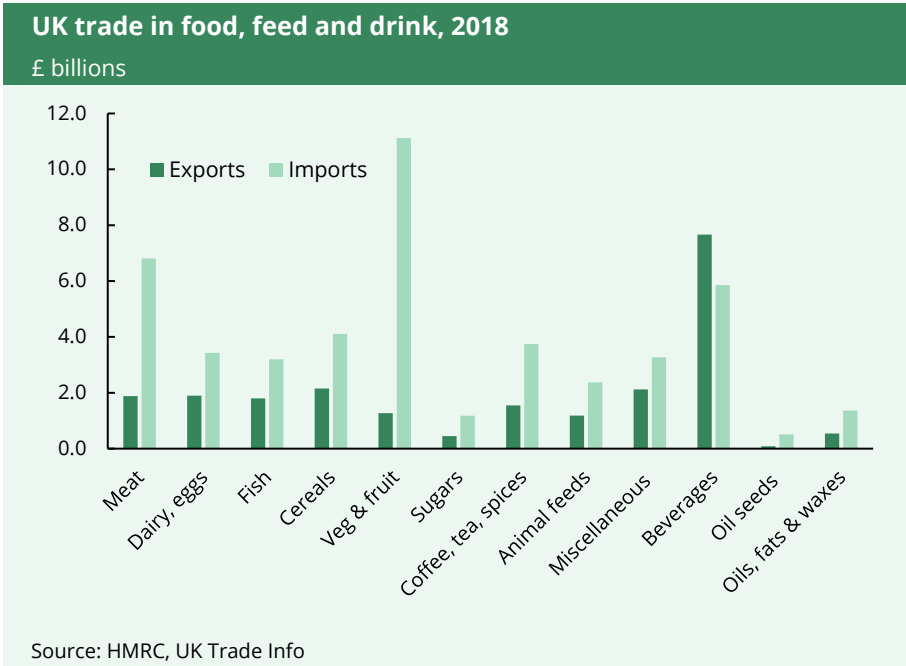
<sup>128</sup> NFU, [NFU calls for government commitment on British food self-sufficiency](#), 11 August 2019

<sup>129</sup> Defra, [UK Food Security Assessment](#), 2009

<sup>130</sup> Written Answer [Food Supply: Climate Change](#) 292213, 8 October 2019

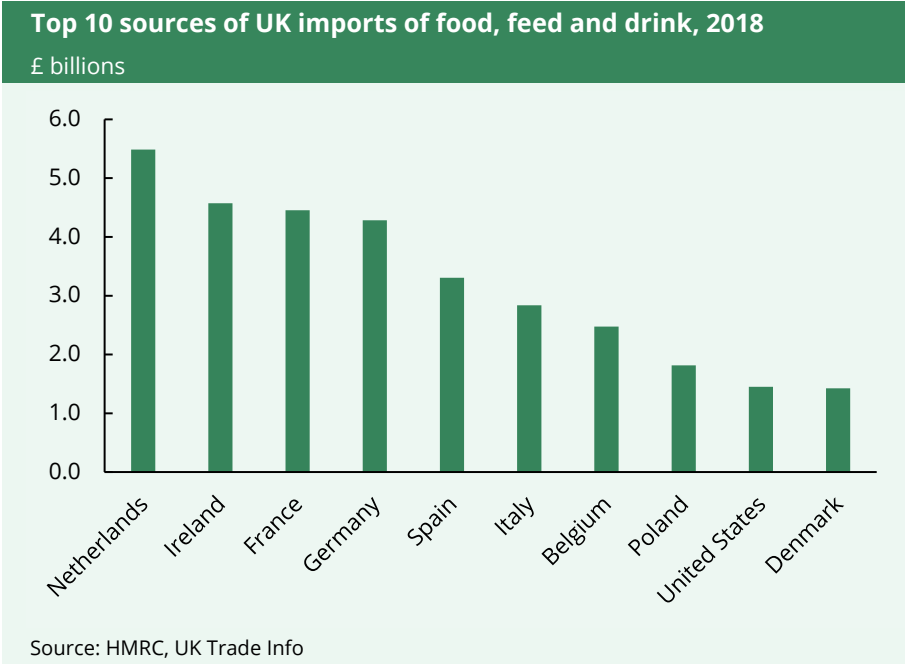
“we cannot afford to ignore new challenges to food security”.<sup>131</sup> Henry Dimbleby said in May 2020 that the initial findings of the review would not be published until Christmas 2020 at the earliest as staff had been redeployed to work on Covid-19. He also said that the strategy would have a renewed focus on food security as a result of the pandemic (see also section 15.1 below).<sup>132</sup>

Food security includes, but is not synonymous with, self-sufficiency in food. Box 2 provides further information on self-sufficiency. The charts below set out levels of trade in food, feed and drink for the UK, highlighting the food types that rely on imports, and the countries from where the largest amount of food is imported.



<sup>131</sup> Defra, [Developing a national food strategy: independent review 2019 – terms of reference](#), 17 August 2019

<sup>132</sup> *Farmers Guardian*, [Food Strategy will have renewed focus on food security after pandemic, plan chief says](#), 4 May 2020



## 7. Part 2 Chapter 2: Intervention in agricultural markets

### 7.1 Exceptional market conditions (Clauses 18-20)

The CAP currently includes a range of agricultural market support measures under the Common Market Organisation (CMO) Regulation (see below).<sup>133</sup>

The CMO includes measures on **public intervention** and the payment of aid for the storage of products by private operators (**private storage**). Intervention involves the competent authority in the Member State buying and storing the products until they are disposed of. Putting products into storage helps to stabilise the market for a product if there's a surplus and prices become weak.<sup>134</sup>

In addition, there are broad powers for the EU to stabilise markets at times of crisis. Those powers were used recently for UK producers to provide packages of support for dairy farmers in 2015 and 2016.<sup>135</sup>

The UK Government said in 2018 that it would make domestic provision for some of the support currently provided by the CMO:

As well as helping to manage their short-term volatility, farmers may also in highly exceptional circumstances need support in the event of a significant crisis such as a disease outbreak or catastrophic weather. We propose domestic provision for safety net mechanisms currently provided by the EU Common Market Organisation regulations, which will allow the government to intervene in such crises. We will consider how best to define and respond to these crises in future.<sup>136</sup>

Defra has reported that the majority of respondents to the [Health and Harmony consultation](#) suggested that government intervention was essential in a crisis. Respondents did not limit the need for this to a disease outbreak or adverse weather but also “referenced market intervention in times of extreme price volatility”. Consultation responses also highlighted a lack of awareness about current crisis support mechanisms and when they would be used.<sup>137</sup>

**Clause 18** allows for the Secretary of State to make a declaration stating that “exceptional market conditions” exist which warrant the use of **Clause 19’s** financial assistance or intervention powers.

<sup>133</sup> The EU’s Common Market Organisation (CMO) is part of the Common Agricultural Policy. It is a complex legal framework provided by [Regulation \(EU\) No 1308/2013](#) which consists of 232 articles “to stabilise the markets and to ensure a fair standard of living for the agricultural community”.

<sup>134</sup> GOV.UK, [Private Storage Aid](#) [as viewed on 29 September 2019]

<sup>135</sup> Defra, [Health and Harmony: The Future for Food, Farming and the Environment in a Green Brexit](#), February 2018

<sup>136</sup> Defra, [Health and Harmony: The future for food, farming and the environment in a Green Brexit: Summary of Responses](#), September 2018, p. 93

<sup>137</sup> Ibid.

The declaration can only be made if the disturbance/threatened disturbance “has, or is likely to have, a significant adverse effect on the agricultural/horticultural producers in England in terms of the prices achievable for one or more agricultural products”. The declaration can only have effect for 3 months at the most.

**Clause 19** allows the Secretary of State to give financial assistance to agricultural/horticultural producers in England whose incomes “are being, or are likely to be” adversely effected by the exceptional market conditions described in the declaration. This assistance can be of any form including a grant, loan or guarantee.

The Secretary of State can also make use of any available powers under retained direct EU legislation which provides for the operation of public intervention and aid for private storage mechanisms. **Clause 20** gives the Secretary of State the power (under the negative resolution process) to amend the retained direct EU legislation for England, including parts of the Common Market Organisation Regulation (CMO). This could include stopping or amending how the public intervention and/or private storage aid schemes operate in England.<sup>138</sup>

The Explanatory Memorandum hints that public intervention and private storage aid are not options the Government supports for the future:

Analysis suggests that public intervention and private storage aid are not required to enable farmers to manage their risks. They can have negative effects, encouraging more risky farming practices and crowding out the development of futures markets, innovative contracts and private sector insurance products. Such market intervention schemes run counter to the image of a dynamic start and self-reliant agriculture industry.<sup>139</sup>

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<sup>138</sup> Bill 7 EN (2019-20), para 175

<sup>139</sup> Bill 7 EN (2019-20), para 172

## 8. Part 3: Transparency and fairness in the agri-food supply chain. Chapter 1: Collection and sharing of data

**Part 3, Clauses 21-26** introduce new requirements for those in the agri-food supply chain to supply information in relation to that supply chain. They set out who is covered, the purposes for which information may be processed, and the enforcement requirements.

The Regulations are subject to the Affirmative Resolution procedure.

This clause is intended to make data collection throughout the agri-food supply chain more transparent and to improve the dissemination of this information. It will enable the Secretary of State to make secondary legislation to collect and share data relevant to the agri-food supply chain to serve a specified number of purposes. These are largely related to: productivity, supply chain fairness, animal and plant disease and risk management.<sup>140</sup>

**Clause 24** requires the publication of a requirement for data provision in draft before it is finalised. This is a new requirement compared to the previous Bill.

### Why are these provisions needed?

There have been calls for a number of years for farmers' and food producers' position in relation to the supply chain to be strengthened. This part of the Bill introduces powers to require persons to provide data in order to strengthen transparency in the supply chain.

The NFU has said that there is a "black hole" in market data in parts of the supply chain, particularly the processor-buyer end, which "stifles trust, collaboration and the development of market risk management tools".<sup>141</sup>

The Government states that such provisions will help farmers since:

With more transparent data, food producers will be able to respond more effectively to market signals, strengthen their negotiating position at the farm gate and seek a fairer return. Better data will also enable farmers to benchmark their performance and to track and manage risks to their business. It will also improve disease control, and consequently productivity, through greater sharing of traceability and animal health data.<sup>142</sup>

Data would normally be published in anonymised form if publishing it in any other form is commercially prejudicial.

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<sup>140</sup> Delegated Powers Memorandum, para 127

<sup>141</sup> NFU online, [Improve Supply Chain Fairness says NFU](#), 25 November 2016 (Accessed 28 January 2020)

<sup>142</sup> GOV.UK, [Health and Harmony: the future for food, farming and the environment in a Green Brexit – policy statement](#), 12 September 2018

The clauses as drafted do not appear to replicate any previous legislative approaches for other industries although regulated entities, such as banks, are required to provide data for a range of purposes. These provisions are however widely drawn to apply to persons from food production to final consumer (excluding household consumers). The activities covered are also widely defined so as to include people involved directly in the supply chain and those providing services as well as those carrying on activities capable of influencing these matters. This potentially brings a wide range of persons within the requirement to provide information.

There are provisions for penalties for non-compliance including monetary penalties, warnings and prohibitions on activities for example.

## 9. Part 3 Chapter 2: Fair dealing with agricultural producers and others in the supply chain

### 9.1 Fair dealing obligations of business purchasers of agricultural products (Clause 27)

The Government aims to strengthen fairness in the supply chain.

The Groceries Code Adjudicator (GCA) was established in 2013 to enforce the Groceries Supply Code of Practice between grocery retailers and their direct suppliers. However, the majority of farmers do not supply supermarkets directly. They are therefore not covered by the GCA and since it has been established there have been calls from farming unions to address fairness in this part of the supply chain in some way.

**Clause 27** gives the Secretary of State powers to make regulations to impose obligations on “business purchasers of agricultural products in relation to contracts they make for the purchase of agricultural products from qualifying sellers” (27(1)). Obligations might include a requirement to use a written contract or to include specific terms in a contract, for example on premiums or deductions. This is for the purpose of “promoting fair contractual dealing by the business purchasers of agricultural products from qualifying sellers”. These powers “will not be exercised in respect of any commercial arrangements” within the Grocery Code Adjudicator’s (GCA) remit (see section below on the GCA).<sup>143</sup>

The provision is aimed at addressing the unfair trading practices in agri-food supply chains which arise because of the disparity between primary agricultural producers who “tend to be small, individual businesses operating without strong links between them” compared to other actors further up the supply chain, who are “typically highly consolidated businesses that command substantial shares of the relevant market”.<sup>144</sup>

Notably, the new Bill has widened the scope for the application of these powers. Formerly, the “qualifying seller” was limited to “the producer” and only “first purchasers” were covered by the requirement, as opposed to “business purchasers” in the current Bill wording. This has been welcomed by groups such as Sustain who had advocated such a change.<sup>145</sup>

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<sup>143</sup> Bill 7- EN (2019-20) para 238

<sup>144</sup> Bill 7-EN (2019-20) para 234

<sup>145</sup> Sustain press release, [New Agriculture Bill launched, Sustain comments on the changes](#), 16 January 2020

Fairness issues have been long debated with farmers expressing concern that they are at disadvantage in the marketplace.<sup>146</sup> Discussions have focussed particularly on the contractual regime and enforcement of codes of practice.

### **Mandatory Written Contracts in the Dairy Sector**

A potential use of this clause is to require a written contract between a producer and purchaser. Dairy UK has noted in connection with the previous Bill that it allows the Secretary of State to regulate contracts in agriculture and that this has “the potential of providing greater flexibility than is currently allowed” under the EU’s Common Market Organisation CMO rules”.<sup>147</sup>

Currently EU rules give Member States discretion to make written contracts between milk producers and processors mandatory or not. Voluntary approaches have been in place for several years in the UK dairy sector. Volatility in prices led to establishment of the Voluntary Code of Practice (VCOP) for dairy contracts in 2012.<sup>148</sup> A review of the operation of the code in 2012 by Alex Fergusson MSP recommended that the code remain voluntary in nature.<sup>149</sup>

Prior to publication of the previous Bill, the Government had said in 2018 that it planned to consult on mandatory dairy written contracts after public consultation.<sup>150</sup> Dairy UK said then that it wanted Defra to delay the regulation of contracts in the dairy sector until the powers of the Agriculture Bill were in place.<sup>151</sup>

The NFU wants a stronger approach and has said that it is clear that the VCOP:

...has not created significant lasting change. And so now we have no choice but to call for the regulation of dairy contracts. We can’t go on with farmers shouldering all of the risk and buyers chopping and changing contract terms whenever it suits them.<sup>152</sup>

Defra Minister George Eustice said in October 2019 that the Government intended to introduce mandatory written contracts in the dairy sector and would consult on proposals after the UK leaves the EU.<sup>153</sup>

### **Groceries Code Adjudicator**

Some commentators have called for the remit of the Groceries Code Adjudicator to be extended to cover more of the supply chain. However

<sup>146</sup> See for example NFU online blog, [NFU members press concerns of unfair trading](#), 9 March 2017 (Accessed 23 January 2020)

<sup>147</sup> Dairy UK, [Dairy UK responds to the publication of the Agriculture Bill](#), 13 September 2018

<sup>148</sup> [The Dairy Industry Code of Best Practice for Contractual Relationships](#) available via NFU online (Accessed 25 September 2018)

<sup>149</sup> AHDB archive, [Voluntary Code can benefit both producer and processor, according to review](#), (Accessed 23 January 2020)

<sup>150</sup> HC Deb, 25 June 2018, [Dairy farming written question 154580](#)

<sup>151</sup> Dairy UK, [Dairy UK responds to the publication of the Agriculture Bill](#), 13 September 2018

<sup>152</sup> NFU online, [Regulation of dairy contracts](#), updated May 2018 (Accessed 25 September 2018)

<sup>153</sup> [PO 292403](#) [on Milk: Contracts], 4 October 2019

this Bill does not do that. Rather it includes other measures on transparency and contracts, as outlined above.

The [Groceries Code Adjudicator Act 2013](#) established the Groceries Code Adjudicator (GCA) to regulate the operation of the Grocery Supply Code of Practice.<sup>154</sup> The role of the GCA is to act as “the independent regulator ensuring that regulated retailers treat their direct suppliers lawfully and fairly”.<sup>155</sup> The [Explanatory notes to the Bill](#) note that:

it is widely recognised that the GCA has improved the relationship between large grocery retailers and their direct suppliers and the first statutory review of the GCA found that it is an exemplary modern regulator.

However the majority of farmers do not supply supermarkets directly. They are therefore not covered by the GCA and can be exposed to unfair trading practices”.<sup>156</sup>

The remit of the GCA has been extensively debated in response to calls for it to be extended. Currently it covers the relationships between certain large retailers and their direct suppliers. It does not cover third party relationships such as that between a farmer who sells their produce to a supermarket via an intermediary or through a processor.

The EFRA Committee has inquired into the remit of the GCA on several occasions in recent years and has argued that the remit of the GCA should be extended to cover indirect suppliers and so cover the whole food supply chain.<sup>157</sup>

The Government said in 2018 that it expected that obligations will be set out in statutory, sector-specific codes “which will initially be introduced in the sectors where voluntary codes have been unable to significantly improve contractual relationships (for example dairy)”.<sup>158</sup>

The Delegated Powers Memorandum accompanying the Bill provides more detail. It states that statutory codes will be developed through consultation with industry.<sup>159</sup> This may take some time to do as each sector-specific code will go through the consultation process.

<sup>154</sup> Commons Library Briefing Paper, [Supermarkets: the Groceries Code Adjudicator](#), 12 November 2015, CBP 6124

<sup>155</sup> GOV.UK [Groceries Code Adjudicator](#) webpages (Accessed 28 January 2020)

<sup>156</sup> Bill 7-EN (2019-20), paras 235& 236

<sup>157</sup> [Letter from Neil Parish](#), Chair of Environment, Food and Rural Affairs Committee to Rt Hon Michael Gove MP, 11 January 2018

<sup>158</sup> Bill 7-EN (2019-20), para 239

<sup>159</sup> [Delegated Powers Memorandum](#), para 146

## 10. Part 3 Chapter 3: Producer Organisations

### Background

**Part 3, Chapter 3, Clauses 28-30** and **Schedules 1 and 2** aim to “support farmers in getting the right price for the food they produce, clamping down on unfair trading practices along the supply chain”.<sup>160</sup>

This part of the Bill replaces the existing EU-derived regime for the recognition of Producer Organisations (POs). It recreates existing types of recognition criteria to minimise disruption for existing POs, and because the current model is familiar and remains suitable for a domestic regime.<sup>163</sup>

A Producer Organisation (PO) is a body through which groups of primary producers in the agriculture sector can co-ordinate their activities to improve their competitiveness.

Producer organisations may help to concentrate supply, improve the marketing of products, optimise production costs and carry out research. The establishment of POs is encouraged by EU rules.

Those POs specifically recognised by their Member State benefit from a number of exemptions from competition rules with specific rules for certain sectors, in particular the fruit and vegetable sector.<sup>164</sup> This can strengthen the position of farmers and producers in the supply chain as they can join forces, for example for joint production planning and processing.<sup>165</sup>

UK Government [guidance on POs](#) sets out the current position on recognition of a PO for growers.<sup>166</sup> POs have not tended to have been as widely adopted in the UK as elsewhere in the EU. However, the

### Box 2: Dairy Crest Direct Ltd – First UK dairy producer organisation

In February 2015, the Rural Payments Agency (RPA) formally recognised [Dairy Crest Direct Ltd](#) as a Dairy Producer Organisation (PDO). DCD had received a £110,000 grant from Defra’s Dairy Fund under the Rural Development Programme for England 2007-2013

When it was set up DCD represented 1,050 dairy farmers in England and Wales supplying 1.5bn litres of milk.<sup>161</sup>

DCD now represents 360 farmers in Devon and Cornwall after Direct Milk DPO Ltd was established to represent DCD members transferring from Dairy Crest to Müller when Dairy Crest sold its dairy business in December 2015.<sup>162</sup>

<sup>160</sup> GOV.UK, [Health and Harmony: the future for food, farming and the environment in a Green Brexit – policy statement](#), 12 September 2018

<sup>161</sup> NFU online, [Dairy Crest Direct launches UK’s first DPO](#), 28 May 2015

<sup>162</sup> AHDB, [Dairy Crest Direct split into two](#), 24 December 2015

<sup>163</sup> Bill 7-EN (2019-20), para 153

<sup>164</sup> NFU, [A guide to Producer Organisations in the Dairy Sector](#) (Accessed 28 January 2020)

<sup>165</sup> European Commission, [Producer Organisations and Associations of Producer Organisations](#) (accessed 28 January 2020)

<sup>166</sup> GOV.UK, [Introduction to Producer Organisations for Growers](#) webpages (Accessed 28 January 2020)

ending of EU milk quotas in March 2015 led to an EU-wide push for dairy POs which increased interest in the UK. Dairy Crest Direct Ltd was the first dairy PO in the UK (see Box 3).

### Provisions

**Clause 28** sets out the conditions that need to be met for groups of operators to be recognised as one of three types of Producer Organisation (PO). Once recognised, a PO's members can collaborate in carrying out certain activities in ways which would normally be prohibited by competition law. These exemptions are set out in Schedule 2 by way of amendment to the [Competition Act 1998](#).

### (Clause 29)

Provisions for recognition of an association of recognised producer organisations and for recognition of 'inter-branch' organisations which represent businesses operating in one or more agricultural sectors, are also included. The Secretary of State will also be able to make regulations providing for the evidence to be supplied with applications and the factors to be taken into account in deciding an application.

**Clause 30(2)** allows Regulations made under clauses 28 and 29 to make additional or different provision on a sector-specific basis, including an exemption from a condition. This provision can be used if there is a need for sector-specific provision "due to market conditions or other circumstances creating adverse effects on agricultural producers in that sector" and "sector-specific provision is appropriate to remedy or mitigate the adverse effects".

The Affirmative Resolution procedure applies to powers set out in **Clauses 28 and 29** where these contain new sector-specific provision or certain other circumstances apply.

### Stakeholder comment

The Government's [summary of responses](#) to the *Health and Harmony* consultation states that the majority of respondents supported the promotion of POs by the government.

The Environment, Food and Rural Affairs (EFRA) Committee's 2016 inquiry into Farmgate prices, addressed the potential for Producer Organisations to strengthen farmers' position. The Committee's report recommended that:

Farmers can give themselves greater power to negotiate the price of their produce and more power in the market place by coming together in Producer Organisations. Collective decision-making has not been the traditional model for UK farmers, but the modern supply chain means that attitudes have to change. Farmers must recognise the strength they can achieve through being part of a Producer Organisation.<sup>167</sup>

<sup>167</sup> [HC 474](#), Third report of the House of Commons Environment, Food and Rural Affairs Committee, Farmgate Prices, Session 2015-16

## 11. Part 4: Matters relating to farming and the countryside

Part 4 contains a number of measures which were not in the previous Agriculture Bill, under the heading “matters relating to farming and the countryside”. This includes policy areas which have been consulted on separately (such as reform to agricultural tenancies) and proposals which were the subject of amendments to the previous Bill (such as around the red meat levy), as well as regulatory and administrative changes relevant to fertilisers and animal traceability.

### 11.1 Fertilisers

**Clause 31** amends the [Agriculture Act 1970](#) to reflect changes in the fertiliser industry. The amendments deal with the regulation of fertilisers by the Secretary of State and the devolved administrations in Scotland, Wales and Northern Ireland.

Under the 1970 Act a fertiliser is defined as something “used for the cultivation of crops or plants of any description, including trees”.<sup>168</sup> This has led to a focus on mineral fertilisers and the new provisions aim to reflect the emergence of innovative products (such as bio-stimulants and soil conditioners/improvers). Inclusion of these measures in the Bill aims to support a reduced reliance on non-renewable materials, and highlight negative consequences of fertiliser use, including emissions and contamination of soils and watercourses.<sup>169</sup> Charlotte Morton, Chief Executive of the Anaerobic Digestion and Bioresources Association (ADBA), said that the Bill “sheds a welcome focus on fertilisers”.<sup>170</sup>

**Clause 31(2)** of the Bill broadens what is defined as a fertiliser to allow for the “appropriate regulation of this new innovative market”.<sup>171</sup>

**Clause 31(3)** allows the regulation of fertilisers on the basis of their “function”, in addition to regulation based on “composition or content” as under the 1970 Act, allowing allow different requirements to be set for different types (e.g. soil conditioner/improver, plant bio-stimulant, fertiliser inhibitor/additive, growing medium and blended fertiliser).<sup>172</sup> Regarding the regulatory regime, the Delegated Powers Memorandum also states:

These will be consulted on and might be subject to a staged “roll-out”, to allow the industry to adjust to the changes. A staged “roll-out” would also allow regulators to gain experience running the system with lower risk functionalities and components before increasing the ambition to regulate for higher risk level materials. This approach would be supported by delegated powers.<sup>173</sup>

<sup>168</sup> [Agriculture Act 1970](#), section 66(1)

<sup>169</sup> Delegated Powers Memorandum para 188

<sup>170</sup> Resource.co, [Soil quality at heart of Agriculture Bill](#), 17 January 2020

<sup>171</sup> Delegated Powers Memorandum para 190

<sup>172</sup> Ibid. para 195

<sup>173</sup> Ibid.

**Clause 31(4)** inserts new subsections into this part of the 1970 Act setting out that regulations may provide for:

- procedures to assess composition, content or function of fertilisers (including registration of materials, the person or organisation who will carry out assessments, and provision for fees and appeals);
- market surveillance and regulation functions to be conferred on a public authority (and enforcement powers which it may be given including the power to require products to be withdrawn from sale); and
- the keeping and provision of information by manufacturers and others involved in the supply of fertilisers.

The Delegated Powers Memorandum provides more information on the envisaged assessment and enforcement regime based on product function and content (such as the use of composts or digestates as fertilisers). Conformity assessment/notified bodies will provide assessment services, often laboratory services, and it will be a requirement that a conformity assessed mark is affixed to compliant fertilisers before they are placed on the market. The market surveillance authority will, where possible, make use of current industry expectations, such as using notices and fines aligned to Environment Agency policies.<sup>174</sup>

**Clause 31(4)** also allows these regulations to amend and repeal [EU Regulation 2003/2003](#) relating to fertilisers, and other retained direct EU legislation. The Delegated Powers Memorandum explains that this regulation is already to be repealed by the new *EU Regulation 2019/1009*, which has a staggered application. Clause 31(4) will therefore allow those elements of the new regulation which become retained EU law to be amended or repealed if inconsistent with the new domestic regime.<sup>175</sup>

The first regulations made relating to fertilisers under these clauses will be subject to the affirmative procedure in the UK Parliament, or its equivalent in the devolved legislatures, as set out in **Clause 31(5)**. Any other regulations conferring market surveillance functions on a public authority would also be subject to this procedure, as would any regulations amending retained EU law.

## 11.2 Identification and traceability of animals

Accurate and accessible information about livestock can help facilitate trade through traceability and manage outbreaks of disease. The Agriculture and Horticulture Development Board (AHDB) is leading on the development of a new multi-species livestock information, identification and tracking service. This will be known as the Livestock Information System (LIS) and its programme vision states:

Working in partnership, Defra and industry will develop world-leading standards of livestock traceability in the UK. This will

<sup>174</sup> Ibid., paras 199-203

<sup>175</sup> Ibid., para 206

deliver a competitive trade advantage, make us more resilient and responsive to animal disease and will drive innovation, interoperability and productivity improvements throughout the meat and livestock sectors.<sup>176</sup>

The AHDB has said that the LIS is expected to be delivered “by late 2020”.<sup>177</sup> NFU President Minette Batters said in January 2019 that the LIS could “help build productivity, drive a progressive UK livestock industry after we leave the EU and underpin the quality of Brand Britain”.<sup>178</sup>

**Clause 32** amends the *Natural Environment and Rural Communities Act 2006* (“the 2006 Act”) to enable the AHDB (established by powers under the Act) to manage the new system. The explanatory notes state that these amendments will enable the Agriculture and Horticulture Development Board (AHDB) to manage the LIS.<sup>179</sup>

**Clause 32(1)** adds a new section to the 2006 Act which allows “a board established under that Act” to be given functions relating to the collection, management and availability of information regarding animal health, movement and identification. The Delegated Powers Memorandum states that “the AHDB is ideally placed to be able to deliver the programme and the new service”, but also notes that assigning the functions in this way also means that they could be assigned to any new board in future established under the Act without the need for further primary legislation.<sup>180</sup>

Functions may also be given relating to the means of identifying animals (i.e. the format of identification tags, and the issuing of individual identification numbers). Section 8 of the *Animal Health Act 1981* provides a power to make orders “for prescribing and regulating the marking of animals”. This is amended by **Clause 32(2)** to replace reference to “the marking of animals” with “the means of identifying animals” (in relation to England), which the explanatory notes state will allow associated secondary legislation to reflect new technologies.<sup>181</sup> This Clause also establishes that orders under this section may bind the Crown (the explanatory notes states that this means Crown animals such as police horses will be covered).<sup>182</sup>

**Clauses 32(3) and 32(4)** amend two EU regulations, ([\*Regulation 1760/2000\*](#) on cattle identification, and [\*Regulation 21/2004\*](#) on sheep and goat identification) to disapply them in relation to England (subject to commencement). The explanatory notes state that this will allow the named EU regulations, once they have become retained EU law, to be disapplied and replaced with a new order without the need for further primary legislation.<sup>183</sup>

<sup>176</sup> AHDB, [Livestock Information Programme](#) [accessed 28 January 2020]

<sup>177</sup> Ibid.

<sup>178</sup> NFU, [Livestock Information Service can transform livestock sector - NFU President](#), 22 January 2019

<sup>179</sup> Bill 7-EN (2019-20), para 286

<sup>180</sup> Delegated Powers Memorandum para 218

<sup>181</sup> Bill 7-EN (2019-20), para 287

<sup>182</sup> Ibid.

<sup>183</sup> Ibid., para 288

## 11.3 Red Meat Levy

### Background

The Red Meat Levy is collected at slaughterhouses in the UK in part to support promotion of the meat industry. Levy monies go to the national body performing this function in the country where the animal is slaughtered, not where the animal was reared or where the producer is based.

This red meat levy is a devolved matter so there are equivalent collection systems across the UK. The English body is the Agriculture and Horticulture Development Board (AHDB). In Wales, the levy is payable to Hybu Cig Cymru (HCC). In Scotland levies are paid to Quality Meat Scotland (QMS) and in Northern Ireland they are paid to the Meat Commission for Northern Ireland.

The requirement that red meat levy be paid to the body in the country of slaughter has been the subject of calls for reform. A decline in UK abattoir numbers has meant that farm animals are being transported longer distances within the UK, with Welsh and Scottish animals increasingly finding that an English abattoir is their nearest. This has led to reductions in funding for QMS and HCC as animals reared in those countries are slaughtered in England.

For example, the levy boards calculated in 2015 that:

- 66% of sheep slaughterings occur in England but only 47% of the breeding sheep are based there; and
- 96% of pig slaughterings occur in England, but only 91% of breeding pigs are based there.<sup>184</sup>

In December 2015 HCC, QMS and ADHB suggested a new approach to apportion levies across nations where animals were reared in a different country from that in which they were slaughtered.<sup>185</sup> The Environment, Food and Rural Affairs Committee also considered the issue in its 2016 [Farmgate Prices report](#), and recommended:

that Defra amend current legislation to ensure that red meat levy funds raised are fed back to the regions in which the livestock were reared, not, as at present, those in which they are slaughtered. (Paragraph 59).<sup>186</sup>

In February 2018, the levy boards announced progress on joining up work to promote GB red meat, using levy funding. They stated that this interim arrangement was in place while a long-term solution was sought, which HCC chief executive Glynn Howells said would require legislation.<sup>187</sup>

There were no provisions on the red meat levy in the *Agriculture Bill 2017-19* as originally introduced, but the UK Government said in

<sup>184</sup> AHDB Pork, [Levy boards submit possible new mechanism for red meat levy](#), December 2015

<sup>185</sup> Ibid.

<sup>186</sup> Environment, Food and Rural Affairs Committee, [Farmgate Prices](#), HC 474, 2 March 2016, paras 58-9

<sup>187</sup> QMS, [Levy Bodies Announce £2 million Programme of Joint Activity](#), 6 February 2018

September 2018 that discussions with the Welsh and Scottish Governments were ongoing.<sup>188</sup> Scottish Government Rural Economy Secretary Fergus Ewing was quoted in the press as saying the UK Government needed to “stop pledging and start acting” on the issue.<sup>189</sup>

Amendments similar to the provisions in the current Bill were put down at Committee Stage, and after discussion with the Member concerned, the Government supported a new amendment on the issue. Scottish National Party environment and rural affairs spokesperson Deidre Brock MP also said she would support the Government-backed clause subject to receiving assurances that the scheme would be regularly reviewed to ensure it is “operating properly” and that timescales for the scheme would be specified to give certainty to levy boards.<sup>190</sup>

During the Committee Stage debate in November 2018, Defra Minister George Eustice also highlighted an ongoing consultation and review of the AHDB which was considering whether there could be a different methodology for collecting the levy, potentially as an ear tag or registration levy at the point when animals are born, as a “long-term solution”.<sup>191</sup> A [request for views on the future of the AHDB](#) was held between August and November 2018, but the summary of responses was delayed due to Defra resources being focussed on EU exit preparations.<sup>192</sup>

## Provisions

**Clause 33** deals with payments between red meat levy bodies in Great Britain. The Northern Ireland levy body is not covered by this clause.

The Bill allows the establishment of a “scheme” under which amounts of red meat levy collected by one levy body may be paid to another. Such a scheme is to be established by the Secretary of State, Scottish Ministers and/or Welsh Ministers, acting jointly as relevant to the countries covered, and a new scheme may amend, suspend or revoke a previous one.

Factors in calculating the amount to be paid may be specified in the scheme, including the number of animals in respect of which the levy was imposed that have a “given connection” to the recipient levy board’s country (for example having gained some economic value in that country, as the explanatory notes state).<sup>193</sup>

NFU Cymru welcomed the reform of levy distribution, which it said had resulted in a “significant annual loss” of funds to HCC, and looked forward to working with the relevant bodies “to ensure that a mutually

<sup>188</sup> GOV.UK, [UK Government Agriculture Bill - Scotland myth-buster](#), 13 September 2018

<sup>189</sup> *The Press and Journal*, [Call to find ‘fair solution’ to red meat levy issue](#), 10 September 2018

<sup>190</sup> Agriculture Bill Committee, [Fourteenth Sitting](#), 15 November 2018 c435

<sup>191</sup> *Ibid.*, c434

<sup>192</sup> GOV.UK, [Agriculture and Horticulture Development Board \(AHDB\): Request for views](#) [accessed 28 January 2020]

<sup>193</sup> Bill 7-EN (2019-20), para 297

agreed, equitable and fit for purpose scheme is up and running as soon as possible".<sup>194</sup>

## 11.4 Agricultural tenancies

**Clause 34** and **Schedule 3** make provision in relation to agricultural tenancies. [Note: References to Parts and Paragraphs in this section of the paper are references to Schedule 3].

Agricultural tenancies were not dealt with in the *Agriculture Bill 2017-19* but they were the subject of a [Defra consultation between April and July 2019](#). This followed from the work of the Tenancy Reform Industry Group (TRIG), an industry advisory group to Defra, which identified several areas of agricultural tenancy legislation presenting potential barriers to productivity and structural change. These included succession procedures which may prevent skilled farmers from taking over holdings, and restrictive clauses in tenancy agreements which could prevent tenants from accessing future agricultural and land management schemes.<sup>195</sup> The Government response to the consultation was published in March 2020 (after the Bill had been introduced).<sup>196</sup>

Then Defra Secretary of State Michael Gove had said in October 2018 that reforms around tenant farmers would be brought forward "in parallel" to the previous Agriculture Bill, but no such legislation was introduced in the 2017-19 Parliament.<sup>197</sup> The 2019 consultation proposed legislative changes in several of the areas raised by TRIG, as well as considering non-legislative actions, such as disseminating industry best practice, guidance, training, and model agreements.<sup>198</sup>

Some of the issues raised in the consultation are the subject of provision in the new Agriculture Bill, notably around restrictive clauses in tenancy agreements. The Tenant Farmers Association (TFA) welcomed the inclusions but said the tenancy provisions need to be "bolstered with further measures to assist older tenants into retirement, encourage landlords to let for longer periods of time and protect tenants from spurious notices to quit".<sup>199</sup> The Central Association of Agricultural Valuers, which is given a role in the new provisions around appointment of arbitrators, said "letting land out to the right people should be a key part of the changes we see under the Agriculture Bill, but we wait to see what the modernisation of tenancies will entail".<sup>200</sup> It was reported

<sup>194</sup> NFU Cymru, [NFU Cymru responds to the publication of the UK Government's Agriculture Bill](#), 17 January 2020

<sup>195</sup> Defra, [Agricultural tenancy consultation and call for evidence on mortgage restrictions and repossession protections for agricultural land in England](#), April 2019, pp 8-10

<sup>196</sup> Defra, [Agricultural tenancy consultation and call for evidence on mortgage restrictions and repossession protections for agricultural land in England: Government response and summary analysis of responses](#), 17 March 2020

<sup>197</sup> Farmers Guardian, [Gove promises tenancy reform 'in parallel' to Agriculture Bill](#), 3 October 2018 [paywall]

<sup>198</sup> Defra, [Agricultural tenancy consultation and call for evidence on mortgage restrictions and repossession protections for agricultural land in England](#), April 2019, pp 8-10

<sup>199</sup> TFA, [TFA Media Release – MR20/03 – New Agriculture Bill in Better Shape Than Its Predecessor](#), 20 January 2020

<sup>200</sup> CAAV, [Agriculture Bill is a monumental step](#), 16 January 2020

in January 2020 that Defra intends to put further, more “controversial”, changes on hold with a view to introducing another piece of legislation in due course.<sup>201</sup>

## Background to tenancies

There are two main types of agricultural tenancy:

- **1986 Act Tenancies** governed by the *Agricultural Holdings Act 1986* (those agreed before 1 September 1995); and
- **Farm Business Tenancies** governed by the *Agricultural Tenancies Act 1995* (those agreed after 1 September 1995).

The [Agricultural Holdings Act 1986](#) was introduced to provide more security to tenant farmers. Generally, tenancies granted under the 1986 Act have lifetime security of tenure and those granted before 12 July 1984 also carry statutory succession rights, on death or retirement. In 2017, approximately 20,500 farms in England had a 1986 Act tenancy, covering 1.4 million hectares.<sup>202</sup>

The [Agricultural Tenancies Act 1995](#) was introduced to provide a simpler, more flexible framework to encourage more agricultural lettings. Farm Business Tenancies provide a flexible framework, can vary in length and do not have statutory succession rights. In 2017, approximately 18,200 farms in England had a Farm Business Tenancy, and such tenancies with a term of a year or longer covered £1.2 million hectares.<sup>203</sup>

Most of the tenancy provisions in the *Agriculture Bill* relate to the 1986 Act.

## Arbitration and third party determination

### Background

The 1986 Act currently allows landlords or tenants, by notice, to demand that a rent review or other dispute be referred for arbitration. If the parties cannot agree on an arbitrator, the tenant or landlord can apply to the President of the Royal Institution of Chartered Surveyors (RICS) to appoint one. The *Deregulation Act 2015* added an alternative mechanism through which the landlord and tenant could refer a rent review to third party determination. The Foot Anstey law firm notes that in practice, the third party will be an expert in the area, most likely an experienced land agent.<sup>204</sup>

The Bill makes amendments to the 1986 Act dealing with the process for referring a rent review dispute to arbitration/determination, as well as the bodies that may appoint arbitrators in various disputes.

<sup>201</sup> Farmers Guardian, [The new Agriculture Bill – an in-depth analysis of the key changes](#), 22 January 2020 [paywall]

<sup>202</sup> Defra, [Agricultural tenancy consultation and call for evidence on mortgage restrictions and repossession protections for agricultural land in England](#), April 2019, p. 5

<sup>203</sup> Ibid., pp 5-6

<sup>204</sup> Foot Anstey, [Reform of the Agricultural Holdings Act](#), 20 July 2015

### Provisions (in Schedule 3)

**Paragraphs 2 and 3** makes various amendments to the 1986 Act to replace the demand for arbitration with a “**notice of determination**” that can precede either of the two mechanisms. The explanatory notes state that this will allow the parties to agree to the appointment of a third party to resolve a dispute at any time before the rent review date, as an alternative to arbitration.<sup>205</sup>

**Paragraphs 4, 5 and 6** amend the 1986 Act so that other “professional authorities” can also appoint arbitrators, namely the President of the Central Association of Agricultural Valuers (CAAV) and the Chair of the Agricultural Law Association (ALA), in addition to the President of the Royal Institute of Chartered Surveyors (RICS) as at present. The explanatory notes state that this will give tenants and landlords more choice.<sup>206</sup> The Secretary of State or Welsh Ministers are given the power to make regulations further amending the list of professional authorities. This is a Henry VIII power as it involves the amendment of primary legislation, but the Delegated Powers Memorandum states that the negative procedure (the default for regulations under the 1986 Act) is appropriate “given the narrow scope of the power”. It further states that any changes introduced through regulations will be developed in consultation with industry.<sup>207</sup>

**Paragraphs 23 to 29** also amend the *Agricultural Tenancies Act 1995* (“the 1995 Act”) to make similar changes regarding professional authorities who may appoint arbitrators in disputes under that Act. The explanatory notes state that any changes to this definition in the 1986 Act (by regulations, as described above) will also apply to the 1995 Act.<sup>208</sup>

## Requests for the landlord’s consent

### Background

Tenant farmers have raised the question of restrictive clauses in tenancy agreements potentially making it difficult to access support under the new “public goods” scheme. The Tenant Farmers Association’s (TFA) response to Defra’s tenancy reform consultation stated that many tenants are restricted to using their holdings for agricultural purposes only, and would be “disenfranchised” if landlords did not give consent for them to access new schemes providing public money for public goods. Even if consent is given, the TFA expressed concern that landlords could use this leverage to “secure unreasonable demands from tenants”.<sup>209</sup>

The Opposition put down an amendment to the *Agriculture Bill 2017-19* at Committee Stage, which would have allowed tenants to refer refusals of consent to arbitration or third party determination. Defra

<sup>205</sup> Bill 7-EN (2019-20), para 404

<sup>206</sup> Ibid., para 405

<sup>207</sup> Delegated Powers Memorandum para 243

<sup>208</sup> Bill 7-EN (2019-20), para 415

<sup>209</sup> TFA, [Tenant Farmers Association Response to Agricultural Tenancy Consultation and Call for Evidence on Mortgage Restrictions and Repossession Protections for Agricultural Land in England](#), July 2019, paras 6.1-6.2

Minister George Eustice indicated that agricultural tenancy law was outside the scope of that Bill, but he referred to the upcoming consultation.<sup>210</sup> The new Bill now includes provisions dealing with this issue.

## Provisions

**Paragraph 7** inserts Section 19A into the 1986 Act dealing with disputes relating to requests for the landlord's consent or a variation of the terms of the tenancy. This paragraph relates to requests that are made for the purpose of enabling a tenant to receive "relevant financial assistance" or complying with statutory duties (including under retained EU law). The Secretary of State and Welsh Ministers are given a power to make regulations specifying types of financial assistance or statutory duties to which the request may relate, as well as any other conditions.

"Relevant financial assistance" is defined in **Paragraph 7(7)** as assistance under:

- Clause 1 of the Bill (i.e. public money for public goods);
- Clause 19 of the Bill (i.e. financial assistance in exceptional market conditions); or
- A third party scheme under Clause 2(4) of the Bill (i.e. where public money is given to a body which itself provides financial assistance).

These relate to England, but financial assistance in exceptional market conditions under the Wales Schedule is also included in the definition.

The regulations may provide that the tenant can refer such a request for arbitration if no agreement has been reached, and that the landlord and tenant can refer the request for third party determination. The Delegated Powers Memorandum states that the dispute process will be designed in consultation with tenants and landlords, and that regulations under this paragraph can be reviewed and adjusted as the new financial assistance schemes are rolled out.<sup>211</sup>

Tenant Farmers Association chief executive George Dunn responded positively to these provisions, saying they would "give tenant farmers the confidence they need to make plans and participate as they desire in whatever new schemes are brought forward".<sup>212</sup> However, the TFA was also quoted as saying that "these provisions must be extended to tenancies regulated by the 1995 [Act]", and that not doing so would be a "significant failure".<sup>213</sup>

## The Suitability Test

**Paragraphs 10 to 18** make amendments to succession procedures under the 1986 Act, to remove certain restrictions and amend the provisions around determining suitability of applicants.

<sup>210</sup> Agriculture Bill: Fourteenth Sitting, 20 November 2018 [c 532](#)

<sup>211</sup> Delegated Powers Memorandum, para 236

<sup>212</sup> TFA, [TFA Media Release – MR20/03 – New Agriculture Bill in Better Shape Than Its Predecessor](#), 20 January 2020

<sup>213</sup> *Farmers Weekly*, [Tenancy law reforms to give farmers more control](#), 18 March 2020

1986 Act tenancies granted before 12 July 1984 carry statutory succession rights, on death or retirement, for close relatives provided the potential successor meets certain eligibility criteria. A 1986 Act tenant can also name a successor to take over the holding when they retire, with similar conditions for succession to those that apply on succession on death. A close relative of the deceased or retired tenant can apply to the relevant Tribunal in order to succeed to the tenancy.<sup>214</sup>

The Tribunal must be satisfied that the applicant is both eligible and suitable. Eligibility currently includes the “Commercial Unit Test”, meaning that an applicant is not eligible if they are “the occupier of a commercial unit of agricultural land”. The tenancy reform consultation stated that the “Commercial Unit Test” is now out of step with policy aims of improving farming productivity by encouraging the transfer of land into the hands of skilled commercial farmers.<sup>215</sup>

In determining suitability, the relevant Tribunal is currently required to have regard to “all relevant matters” including experience of agriculture, age, physical health, financial standing and the views of the landlord. Defra’s consultation stated that industry found this test to be out of date and setting “a low standard of suitability”, due in part to the absence of a requirement for business management skills.<sup>216</sup>

**Paragraphs 10 to 16** repeals all provisions relating to the “Commercial Unit Test”. **Paragraphs 17 and 18** remove the current “Suitability Test” provision from the face of the Act so that new criteria can be set out in regulations by the Secretary of State and Welsh Ministers. The criteria set out in regulations “must relate to the person’s likely capacity to farm the holding commercially to high standards of efficient production and care for the environment”.

Criteria which may be included are listed, and are similar to the existing test, but include criteria relating to experience/skills in agriculture “or business management”. The Tribunal is still to have regard to any views stated by the landlord in determining the applicant’s suitability. The Delegated Powers Memorandum explains that the details of the new “Suitability Test” will be developed in consultation with tenants and landlords, and regularly reviewed to keep up with developments in industry-led work on continuing professional development and farming skills.<sup>217</sup>

Alongside these provisions for the “Suitability Test”, **Paragraph 13** also qualifies the existing requirement that a successor must have worked on the holding for five of the last seven years. The new text sets out that any time which the applicant spent in full-time higher or further education during this seven-year period would be treated as if they had been working on the holding, up to a maximum of three years.

<sup>214</sup> In England, this is the [First-tier Tribunal \(Property Chamber\)](#), and in Wales, the [Agricultural Land Tribunal](#).

<sup>215</sup> Defra, [Agricultural tenancy consultation and call for evidence on mortgage restrictions and repossession protections for agricultural land in England](#), April 2019, p. 21

<sup>216</sup> Ibid.

<sup>217</sup> Delegated Powers Memorandum, para 245-7

## Other provisions

**Paragraph 8** amends Schedule 2 of the 1986 Act to make clear that payments by a tenant to a landlord for productivity improvements should be disregarded by any arbitrator or third party in a rent review dispute. The tenancy reform consultation explained that this “may help unlock landlord investment” and productivity improvements. Without the change, Defra stated, any such payments agreed between the landlord and the tenant can currently be viewed as an obligation of the tenancy and may be deemed relevant in a rent review.<sup>218</sup>

**Paragraph 9** deals with changes to pensionable age by amending a part of Schedule 3 of the 1986 Act which deals with notices to quit local authority smallholdings under the *Agriculture Act 1970* (sometimes referred to as “county farms”).<sup>219</sup> The amendment establishes that the Tribunal’s consent is not required for such notices when a tenant has reached pensionable age, rather than the age of 65 as currently set.

**Paragraphs 19 and 20** repeal provisions of the 1986 Act requiring that, in order for a person named in the retirement notice to be able to apply to succeed to the tenancy, the retiring tenant must not be under 65. The explanatory notes state that this will mean applications for succession on retirement may be made at any age in future. Defra’s tenancy reform consultation had highlighted that the removing the minimum age of 65 would allow holdings to be passed on sooner, unlocking potential productivity improvements.<sup>220</sup>

**Paragraph 21** makes amendments to Section 94 of the 1986 Act to add references to the National Assembly for Wales in setting out the parliamentary procedures to be followed when making regulations and orders.

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<sup>218</sup> Defra, [Agricultural tenancy consultation and call for evidence on mortgage restrictions and repossession protections for agricultural land in England](#), April 2019, p. 29

<sup>219</sup> Defra, [Sixty-eighth Annual Report to Parliament on Local Authority Smallholdings in England](#), 27 February 2019, p. 3

<sup>220</sup> Defra, [Agricultural tenancy consultation and call for evidence on mortgage restrictions and repossession protections for agricultural land in England](#), April 2019, p. 17

## 12. Part 5: Marketing standards, organic products and carcass classification

### 12.1 Marketing Standards

The UK currently works to a range of EU marketing standards for agricultural products which are designed to guarantee quality. They are set out in [the CMO regulation](#). The requirements vary by products and this variation takes into account aspects such as: freshness, size and presentation.<sup>221</sup>

Defra's [policy statement](#) accompanying the previous Bill states that the Bill will:

...set common marketing standards. These powers will make sure that marketing standards (for example, the grading of eggs) will protect farmers and consumers, are proportionate and will support the agriculture sector and take account of other objectives such as animal welfare.<sup>222</sup>

**Part 5 (Clauses 35-39)** provides powers to tailor and modernise existing marketing standards regarding the quality of agricultural products and product information to customers in England.

**Clause 36** gives Ministers powers to make new provisions or amend existing provisions regarding organic certification, the import and export of organic products and the enforcement of organic regulation. This is a new section added for the 2019-21 Bill. **Clause 37** extends this power to Ministers in Scotland, Wales and Northern Ireland where it is within legislative competence.

The Delegated Powers Memorandum explains that current organic product regulations become retained EU law at the end of the implementation period on 31 December 2020. However there are only limited powers to amend them. This could restrict the ability to amend rules, for example to reflect UK environmental standards or any future trade agreements. The new power is therefore needed to enable wider changes to the law after the end of the Implementation Period.<sup>223</sup>

### 12.2 Carcass classification

**Clause 38** provides a delegated power (subject to affirmative resolution) to make provision about the classification, identification and presentation of bovine, pig and sheep carcasses at slaughterhouses in England. This will enable the technical updating of these classifications. The classifications seek to ensure market transparency and efficiency by

<sup>221</sup> European Commission, [Trade Desk: Marketing Standards](#) (as viewed on 4 October 2018)

<sup>222</sup> Defra, [Health and Harmony: The future for food, farming and the environment in a Green Brexit](#), 14 September 2018

<sup>223</sup> [Delegated Powers Memorandum](#), Paras 277 & 278

establishing mandatory standards for carcass specification and grading.<sup>224</sup>

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<sup>224</sup> DAERA, [Northern Ireland Future Agriculture Policy and Framework](#), 1 August 2016

## 13. Part 6: WTO Agreement on Agriculture

### What kind of WTO rules apply to agriculture?

The WTO Agreement on Agriculture (AoA) is an international treaty that sets out a number of general rules and commitments on agricultural trade practices as agreed by WTO members.

These measures fall under three pillars:

- disciplines on domestic support
- market access; and
- export subsidies.

The EU is a WTO member and the UK is also a member of the WTO in its own right. As such they are both signatories to the AoA and after EU Exit the UK will continue to be subject to any constraints and obligations under the AoA. The UK Government will be responsible for ensuring that all UK policies on domestic support (subsidies) in relation to agriculture are WTO compliant.

In WTO terminology, subsidies are identified by '[boxes](#)' given the colours of traffic lights (see Box 4).<sup>225</sup> Amber is used for subsidies that distort trade and production and should be limited, green box subsidies broadly cannot distort trade or involve price support. UK Ministers have already acknowledged that the UK might need to use its Amber Box allowances, not just Green Box allowances, in paying for a wider range of public goods than environmental enhancement.<sup>226</sup>

**Clauses 40-42** contains provisions to allow the UK to comply with World Trade Organisation (WTO) limits on farming subsidies as required by the [Agreement on Agriculture](#) (AoA).

**Clause 40** gives the Secretary of State powers to make regulations on setting farm subsidy limits and processes for classification of domestic support under the affirmative procedure. This refers to the provisions in Clauses 41 and 42.

**Clause 41** makes provision for farm subsidy limits under the WTO AoA to be set for England, Wales, Scotland and Northern Ireland. Different limits may be set for different countries within the UK.

**Clause 42** sets out how regulations under clause 40 may be used with regard to classification of domestic support, including to set out a process for authorities to decide how to classify this support and a process for resolution of disputes between authorities (Secretary of State or devolved administrations).

<sup>225</sup> See WTO, [Domestic support in agriculture](#) (accessed 11 September 2018)

<sup>226</sup> House of Lords European Union Committee, [Brexit: Agriculture](#) inquiry, oral evidence 8 March 2017, [Q86](#)

### Box 3: About WTO “box” classifications

**Green Box** contains measures of support that have “no, or at most minimal, effects on production”, and which do not distort trade. Such measures must be government-funded and cannot take the form of price support.

Examples of Green Box measures are subsidies which are de-coupled from production levels or prices, some environmental protection programmes and rural development programmes. Any domestic agricultural support measure that falls under the Green Box is permissible.

Annex 2 to the Agreement on Agriculture sets out the details of when a support measure falls under the Green Box.

**Amber Box** contains domestic support measures which are considered to distort production and trade. After subsequent rounds of domestic support reduction, some 30 WTO members have declared a level of maximum Amber Box support in their schedules. This is a commitment to capping and reducing their levels of trade-distorting domestic support. This commitment is known as the ‘aggregate measurement of support’ (AMS) and represents the maximum allowable level of Amber Box domestic support the Member can give. Any trade-distorting support beyond the level of the AMS is a breach of the rules and can be disputed by other WTO members. The EU has a single AMS on behalf of all Member States.

**De Minimis:** Under the Agreement on Agriculture, there is no requirement for developed countries to reduce their trade-distorting domestic support in a given year provided that the aggregate value of any product specific support does not exceed 5% of the total value of production of the agricultural product

in question. In addition, non-product specific support which is less than 5% of the value of total agricultural production is also exempt. This is known as the de minimis provisions. Even WTO members without an Amber Box allowance may provide trade distorting domestic support up to the de minimis levels.

**Blue Box** measures include direct payments made under a production-limiting programme. This means the aim should be to limit production by imposing production quotas requiring farmers to set aside part of their land. Only a handful of WTO members use Blue Box measures.

**Source:** House of Lords European Union Committee, [Brexit: Agriculture](#) report. HL paper 169, May 2016, p23

## Why are these provisions needed?

After EU Exit, the UK government will be responsible for ensuring that all UK policies on domestic support in relation to agriculture and rural development are compliant with World Trade Organisation (WTO rules).<sup>227</sup>

The UK is a founding member of the WTO but as an EU Member State it is in practice represented in the WTO by the European Commission. After Brexit, the UK will no longer be represented by the EU and will be a fully independent member of the WTO. The UK will need to update the terms of its WTO membership, for example by establishing its own

<sup>227</sup> [Delegated Powers Memorandum](#), para 320

'schedule' of trade commitments at the WTO. This process is not expected to be straightforward.<sup>228</sup>

Defra expects the UK to receive a share of the EU's current allowance after EU Exit. AMS is the annual level of agricultural support given to agricultural producers exempting any green or blue box support (i.e. least trade distorting - see Box 3). However, the Delegated Powers Memorandum states that this is still subject to agreement with other WTO members and therefore cannot be set out on the face of the Bill.<sup>229</sup>

This overall UK ceiling needs to be set before individual limits for each appropriate authority across the UK can be set. The Memoranda states that while the devolved administrations will be able to implement their own agricultural support policies, compliance with WTO obligations is a reserved matter. It states that Defra is therefore responsible for notifying support schemes under the WTO AoA requirements.<sup>230</sup>

### Scottish and Welsh Concerns

The Scottish and Welsh Governments have already expressed concern about these parts in the previous version of the Bill.

A Scottish Government spokesman said in 2018:

The Agriculture Bill gives the Secretary of State wide powers to decide how farm support payments everywhere in the UK will be classified in relation to international trade rules and to set limits on how much can be paid out by each administration.

"These are unilateral powers for the UK Government, despite agriculture being a devolved area. This is unacceptable."<sup>231</sup>

However, the UK Government's view is that the Scottish Parliament does not have the legal competence to act in this area.<sup>232</sup>

Welsh Cabinet Secretary for Energy, Planning and Rural Affairs, Lesley Griffiths highlighted that the WTO provisions are one of the outstanding areas of the Bill which "could have a significant effect on devolved competence". In 2018 she called for agreement on "a better process for managing this important part of agricultural support".<sup>233</sup>

The Delegated Powers Memorandum notes that:

This clause has been subject to scrutiny by the devolved administrations and [Defra] has undertaken to work closely with those administrations on the making of Regulations under these delegated powers. Use of these delegated powers will therefore be subject to a high degree of scrutiny, with the balances and checks that go along with this.<sup>234</sup>

<sup>228</sup> House of Commons Library Briefing CBP 08397, [What if there's no Brexit deal](#), 10 September 2018 para 6.1

<sup>229</sup> [Delegated Powers Memorandum](#), para 323

<sup>230</sup> *Ibid.*, para 321

<sup>231</sup> [Scottish Government rejects suggestion it "misunderstood" Agriculture Bill](#), *Farmers Guardian*, 20 September 2018

<sup>232</sup> Defra, [UK Government Agriculture Bill: Scotland Myth Buster](#), 13 September 2018

<sup>233</sup> Welsh Government, [Agriculture Bill is an important step in supporting Welsh farmers post-Brexit – Lesley Griffiths](#), 11 September 2018

<sup>234</sup> [Delegated Powers Memorandum](#), para 328

## 14. Part 7: Wales and Northern Ireland (Schedules 5 and 6)

### 14.1 Wales

**Clause 43** states that Schedule 5 makes provisions in relation to Wales.

**Schedule 5** has significant differences to the previous Bill's provisions. The previous Bill included in Schedule 3 similar provisions to those in England relating to the replacement of direct payments with payments for public goods. These are not in the new Bill's schedules, but some other measures applicable to Wales are included. For example, measures on marketing classifications and agricultural tenancies.

The Explanatory Notes Annex A set out in full the provisions that apply.

The Welsh Government is planning to introduce an Agriculture Bill (Wales) in the Welsh Assembly during this Assembly term. (See Chapter 2 above).

### 14.2 Northern Ireland

**Schedule 6** sets out powers DAERA are seeking in relation to Northern Ireland. These are broadly similar to many of the powers in the Bill which the Secretary of State may exercise in England.

[The powers conferred are those in Parts 1 (chapter 2), 2 (chapter 2), 3 (chapter 1) and 5 of the Bill. These relate respectively to: Direct Payments after EU exit; intervention in agricultural markets; collection and sharing of data; and marketing standards, organic products and carcass classification.]

Powers for DAERA include the ability to reintroduce and modify the Direct Payments Regulation in relation to making payments for [areas of natural constraint](#) due to the specific environment in Northern Ireland.<sup>235</sup>

### Ensuring Continuity

The approach taken to extending the powers in the Bill to Northern Ireland has been to ensure:

- the continuation of a legal basis for the current suite of agricultural support payments after EU exit,
- to provide a future Executive with the flexibility to develop future agriculture policy in Northern Ireland, and
- ensure that no constraints are placed on a future Executive's ability to continue the current schemes and options available under the Rural Development Programme and the Common Market Organisation for as long as that is considered necessary.<sup>236</sup>

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<sup>235</sup> [Delegated Powers Memorandum](#), para 448

<sup>236</sup> Farming News, [Gove package is simply not for us](#), 15 September 2018

## DAERA Consultation on Future Plans

DAERA published a [stakeholder engagement document](#) in August 2018 setting out the key desired outcomes and long-term vision for the NI agricultural industry.<sup>237</sup> This is discussed in relation to sections above and also in Commons Library Briefing [Brexit: UK Agriculture Policy](#).

## Stakeholder reaction to the Bill

The [Ulster Farmers Union](#) said in relation to the previous Bill that it was “pleased to see provisions in place that take into consideration the political situation in Northern Ireland”. The Union particularly welcomed that the Bill allows for a “continued legal basis to ensure, as far as possible, that the status quo in terms of agricultural support can be continued until a new policy direction can be established”.<sup>238</sup>

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<sup>237</sup> DAERA, [Northern Ireland Future Agriculture Policy Framework: Stakeholder Engagement](#), 1 August 2018

<sup>238</sup> Ulster Farmers’ Union, [UFU comment on UK agriculture Bill](#), 14 September 2018

## 15. Stakeholders' overall views

Publication of this and the 2017-19 Bill has generated considerable comment from a range of stakeholders. Much of this is from those involved in food production as well as from environmental bodies. There is notably little comment directly from consumers about the impact of the Bill on their interests.

Both farming organisations,<sup>239</sup> and environmental groups broadly support the new 'public money for public goods' approach to future farm support schemes.<sup>240</sup> Notably, in response to the previous Bill, called for food production itself to be considered a public good and for food production to be central to the Bill.<sup>241</sup> A key addition in the current Bill is a requirement that Ministers in devising financial support schemes have regard to "the need to encourage the production of food by producers in England and its production by them in an environmentally sustainable way". The Secretary of State must also report to Parliament at least once every five years on food security. This is something the NFU has long called for. The NFU has also welcomed recognition in this Bill that "food production and caring for the environment go hand-in-hand".<sup>242</sup> However, [Chair of the Environment, Food and Rural Affairs Committee, Neil Parish](#), said in a recent debate that the revised Bill goes some way to address this but it does not have enough about farming and food production.

Stakeholders are also [concerned that there are no commitments to maintaining food and animal welfare standards for imports under new trade deals](#). The NFU and 61 other organisations across farming and environmental sectors wrote to Prime Minister on 27 January 2020 calling for the Agriculture Bill to enshrine in law "some key standards" to meet the Government's policy commitments to maintain food standards in trade deals:

You have pledged "not to in any way prejudice or jeopardise our standards of animal welfare or food hygiene", and the Secretary of State for Defra recently promised to "defend our national interests and our values, including our high standards of animal welfare." Along with your party's manifesto commitment that, "in all of our trade negotiations, we will not compromise on our high environmental protection, animal welfare and food standards," we are increasingly reassured that you are as committed as us to making the UK a world leader in food, farming and environmental standards.

The letter added that:

We would be pleased to work with the government to draft legislative provisions that meet the government's commitment to

<sup>239</sup> NFU, [Written Evidence to the Environment, Food and Rural Affairs Committee inquiry into the Agriculture Bill 2017-19](#), October 2019

<sup>240</sup> Wildlife and Countryside Link, [Agriculture Bill 2020: Do good things come to those who wait?](#) January 2020

<sup>241</sup> NFU Online, [Food production must be at the heart of the agriculture bill, NFU urges Government](#), 10 October 2018

<sup>242</sup> NFU online, [Agriculture Bill: Hear from the President](#), 17 January 2020

safeguard standards while allowing sufficient flexibility to conduct meaningful trade negotiations.<sup>243</sup>

Signatories also reiterated support for the establishment of a trade and standards commission. This would bring together a wide variety of stakeholders to “engage on the UK’s trade policy and how it affects our standards”.<sup>244</sup>

In July 2020, the Government announced the formation of a [Trade and Food Standards Commission](#). With members representing retailers, farming unions, consumer, hospitality and environmental bodies from across the UK it is Chaired by Tim Smith, a former Chief Executive of the Food Standards Agency and Tesco Group Technical Director. It will report to International Trade Secretary Liz Truss, advising on:

- Trade policies the Government should adopt to secure opportunities for UK farmers, while ensuring the sector remains competitive and that animal welfare and environmental standards in food production are not undermined.
- Advancing and protecting British consumer interests and those of developing countries.
- How the UK engages the WTO to build a coalition that helps advance higher animal welfare standards across the world.
- Developing trade policy that identifies and opens up new export opportunities for the UK agricultural industry – in particular for SMEs – and that benefits the UK economy as a whole.

It was set up for six months and will submit an advisory report at the end of its work which will be presented to Parliament by the Department for International Trade.<sup>245</sup>

Farmers have also called for longer-term assurances on funding. The [National Farmers’ Union welcomed the £3 billion commitment to 2020 farm funding](#) and the certainty for 2020 payments in [provisions of the Direct Payments to Farmers’ Bill](#). But the NFU had previously [called for](#) a “multi-annual budgetary framework that provides certainty for farmers and allows them to plan and invest for the future”, in response to the previous Bill. The [NFU has welcomed measures](#) in the 2019-21 Agriculture Bill requiring the Government to publish longer-term plans.

Some stakeholders regretted the [lack of provisions on other issues such as public health as an objective of farming or protection of farm workers](#).

Stakeholders were also keen for the previous Agriculture Bill to make faster progress. Delays in progressing that Bill led to the [National Farmers’ Union](#) calling for a delay in introducing the new farm support

<sup>243</sup> NFU online, [Letter to Prime Minister: NFU leads charge on trade and standards asks ahead of Brexit](#), 27 January 2020

<sup>244</sup> Ibid.

<sup>245</sup> .GOV.UK press release, [Trade and Agriculture Commission membership announced](#), 10 July 2020

approaches for at least a year (to 2022). [Opposition Members](#) have also criticised the failure of the previous Bill to reach the statute books.

## 15.1 Impact of Covid-19

The Bill completed its Committee Stage on 5 March 2020. Six days later, on 11 March, the Director-General of the World Health Organisation announced that the disease caused by the novel coronavirus – Covid-19 – could be characterised as a pandemic.<sup>246</sup> On 12 March, the WHO said that Europe was at the centre of this pandemic.<sup>247</sup> On 23 March, Prime Minister Boris Johnson announced strict social distancing measures, and on 25 March the [Coronavirus Bill](#) received Royal Assent.<sup>248</sup>

For further information on Covid-19 and the *Coronavirus Act 2020*, see the [House of Commons Library web page on coronavirus research](#).

The widespread disruption as a result of the Covid-19 pandemic has led to renewed calls for the transition to a new agricultural support policy to be slowed. For example, Country Land and Business Association (CLA) President Mark Bridgeman called for the transition away from direct payments to be delayed for at least 12 months, highlighting “the huge uncertainty of how Covid-19 will impact the industry”.<sup>249</sup> *Farmers Guardian* on 25 March quoted a Defra spokesperson as saying the “general position” was that the phase out of direct payments would go ahead as planned, but that the possibility of delay was being discussed in the light of the pandemic.<sup>250</sup>

The effects of the pandemic, including concerns about food supply, also led some to reiterate calls for the Bill to have a greater focus on food production. NFU President Minette Batters told the Environment, Food and Rural Affairs Committee on 5 May that “it would be failure on all our parts not to have legacy from Covid-19 of what we have learnt from it”, and said that the reporting on food security (which would be required at least every five years under Clause 17 of the Bill) “should be looked at on a yearly basis”.<sup>251</sup> Tim Lang, professor of food policy at City, University of London, called for the Bill to be “stopped in its tracks” and replaced with a “Food Security and Resilience Act”.<sup>252</sup>

Henry Dimbleby, who had been leading an independent review to inform the development of a National Food Strategy, also told *Farmers*

<sup>246</sup> WHO, [WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020](#), 11 March 2020

<sup>247</sup> WHO, [WHO announces COVID-19 outbreak a pandemic](#), 12 March 2020

<sup>248</sup> GOV.UK, [PM address to the nation on coronavirus: 23 March 2020](#), 23 March 2020; Parliament.uk, [Coronavirus Act 2020](#) [accessed 8 May 2020]

<sup>249</sup> *Farmers Weekly*, [Coronavirus: NFU demands payment cuts put back to 2022](#), 21 April 2020; *Farmers Guardian*, [Defra 'discussing' delay to BPS phase out as Ag Bill faces further hold up](#), 25 March 2020

<sup>250</sup> Ibid.

<sup>251</sup> Environment, Food and Rural Affairs Committee, *Oral evidence: Covid-19 and food supply*, HC 263, [Q38](#)

<sup>252</sup> *Farmers Guardian*, [Why the Agriculture Bill should be stopped 'right now'](#), 12 April 2020

*Guardian* that the strategy would have a renewed focus on food security in the light of the pandemic (see also section 6.1 above).<sup>253</sup>

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<sup>253</sup> *Farmers Guardian*, [Food Strategy will have renewed focus on food security after pandemic, plan chief says](#), 4 May 2020

## 16. Political party views

### 16.1 Labour Party

The **Labour Party** broadly supports the use of public funds to support farmers and land managers in the provision of public goods. This is included in the Party's September 2018 [Environment Policy](#). Its commitments relating to farming include to:

Reconfigure funds for farming and fishing to support sustainable practices, smaller traders, local economies and community benefits;

Embed and enhance in policy the responsibility for farmers to conserve, enhance and create safe habitats for birds, insects and other wild animals, and encourage the growth of wild flowers.<sup>254</sup>

The 2019 [Labour Manifesto](#) pledged to maintain agricultural and rural structural funds, repurposed to support environmental land management and sustainable food production.

Shadow Secretary of State for Environment, Food and Rural Affairs, Luke Pollard, has said he supported a public money for public goods approach as in the previous Agriculture Bill - with the addition of food as a public good.<sup>255</sup> Mr Pollard however has raised concerns about lowering of food standards in future trade deals.<sup>256</sup>

### Criticism of delays

Opposition Members have criticised the delay in progressing the *Agriculture Bill 2017-19* in the last Parliament. Labour Shadow Secretary of State Luke Pollard said during the debate on the *Direct Payments to Farmers (Legislative Continuity) Bill* should be unnecessary.<sup>257</sup> He also asserted that the Government was legislating for another "cliff edge" since the complexity of new farm support funding under the Agriculture Bill could require the 2020 provisions in the *Direct Payments to Farmers Bill* to be extended.<sup>258</sup>

Responding to the second reading debate on the *Direct Payments to Farmers Bill*, Defra Minister George Eustice said that the Agriculture Bill had been delayed during protracted debate on the Withdrawal Agreement but that it was "back on track" for the agricultural transition period to begin from 2021 as always envisaged.<sup>259</sup>

### 16.2 SNP

The position of the Scottish Government about concerns over powers the UK Government is seeking in relation to Scotland under this Bill is set out in Chapter 2 above. Spokesperson Deirdre Brock has also

<sup>254</sup> The Labour Party, [The Green Transformation: Labour's Environment Policy](#), 4 October 2018

<sup>255</sup> *Direct Payments to Farmers (Legislative Continuity) Bill 2019-20*, HC Deb, 21 January 2020, [c178](#)

<sup>256</sup> *Ibid.*, [c180](#)

<sup>257</sup> *Ibid.*, [c178](#)

<sup>258</sup> *Ibid.*, [c179](#)

<sup>259</sup> *Ibid.*, [c217 & c218](#)

expressed concerns over food standards in trade deals. In relation to the Bew review recommendation for an uplift in Scottish farm funds, she also argued that Scottish farmers had not received enough compensation.<sup>260</sup>

### 16.3 Plaid Cymru

Plaid Cymru Spokesman Ben Lake supported the *Direct Payments to Farmers Bill* which offered “some certainty to farmers in Wales”. He argued that co-decision making was needed between the four UK nations on future regulation and finances to prevent excessive market distortion within the UK.<sup>261</sup>

Former Chair of the Environment, Food and Rural Affairs Committee, Neil Parish, welcomed the Bill. He raised concerns that the new Agriculture Bill, whilst being “better than it was” did not have enough in it on farming and food production. Additionally, he said that farming should not be undermined by lower environmental or animal welfare standards in future trade deals.<sup>262</sup>

### 16.4 Liberal Democrat

The 2019 [Liberal Democrat](#) manifesto said public goods and “effective land management” would be supported by reducing payments to larger farmers. [Tim Farron](#), Liberal Democrat Rural Affairs spokesperson outlined his views on the previous *Agriculture Bill* at his Party’s conference in September 2018. He has said that the Bill “amounts to a seven-year notice for many producers to quit the industry and will significantly damage the rural environment”.<sup>263</sup> In relation to the new Bill Tim Farron noted that there were questions over farmers’ ability to plan for the medium and long term if delays in the new Environmental Land Management Scheme meant there was a need to “bodge together extensions of one year at a time”.<sup>264</sup>

[Note: The previous Bill reached Committee Stage in November 2018. The Public Bill Committee records therefore included detailed debate on many of the measures brought forward in this Bill [See [Agriculture Bill 2017-19 Parliamentary webpages](#)].

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<sup>260</sup> Ibid., [c178 and c180](#)

<sup>261</sup> Ibid., [c201-203](#)

<sup>262</sup> Ibid., [c183](#)

<sup>263</sup> [UK Agriculture Bill: ‘a seven-year notice to quit the industry’](#), New Food, 18 September 2018

<sup>264</sup> Direct Payments to Farmers (Legislative Continuity) Bill, HC Deb 21 January 2020 [c191](#)

## 17. Second Reading

[Second Reading](#) of the Agriculture Bill 2019-21 took place on 3 February 2020. An [Agriculture Bill: Money resolution was also passed, along with a Programme Motion](#) committing the Bill to a Public Bill Committee to be concluded by Tuesday 10 March 2020.

The Opposition [tabled a Reasoned Amendment](#) to deny the Bill a Second Reading:

That this House, whilst recognising that on leaving the EU the UK needs to shift agricultural support from land-based payments to the delivery of environmental and other public benefits, declines to give a Second Reading to the Agriculture Bill because it fails to provide controls on imported agricultural goods, such as chlorinated chicken or hormone treated beef, and does not guarantee the environmental, animal welfare and food safety standards which will apply.

The amendment was defeated on division by 320 votes to 206.

### 17.1 Government position

The Secretary of State Theresa Villiers introduced the Bill by stating that it would introduce the first major reform of agriculture policy for half a century. She said that successive Governments had tried to reform the CAP with “very little to show for their efforts”,<sup>265</sup> and that “we are determined to do things differently” after having left the EU. She highlighted the contribution farmers made:

by putting food on our plates and conserving the natural landscapes that we all value so much. This Bill will provide our farmers and land managers with a chance to play a fundamental role in tackling the greatest environmental challenges of our time: protecting nature and tackling catastrophic climate change.<sup>266</sup>

She said the Bill would be “positive for farmers and the environment” but that “changes of this magnitude will also have far-reaching impacts and adjustment to the new approach will not always be easy”.<sup>267</sup>

Ms Villiers noted that overall funding would match 2019 levels for every year of the current Parliament, with £2.852 billion of direct payment support for the 2020 scheme year.<sup>268</sup>

The Secretary of State said that the Bill had changed as a “direct response” to views expressed in the House about the previous version of the Bill. Soil had been added to the list of purposes that can be paid for, as had the conservation of native breeds and plants.<sup>269</sup> Clause 17 was a new measure introduced in response to concerns “expressed in this House and beyond” about food production and food security. The

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<sup>265</sup> HC Deb 3 February 2020, vol 671, [c72](#)

<sup>266</sup> Ibid. [c70](#)

<sup>267</sup> Ibid. [c75](#)

<sup>268</sup> Ibid. [c72](#)

<sup>269</sup> Ibid. [c74](#)

clause places a duty on Ministers to report regularly on food security to Parliament.<sup>270</sup>

The Secretary of State noted that the Bill included new powers for Wales and Northern Ireland which:

they requested to enable them to bring forward new agricultural policy. We fully respect the fact that agriculture is a devolved matter and we have worked closely with the devolved administrations on this Bill.<sup>271</sup>

## 17.2 Opposition views

**Shadow Secretary of State** Luke Pollard said that the Opposition had tabled an amendment to deny the Bill a Second Reading because the Bill failed “comprehensively to guarantee environmental protections and animal welfare standards in any post-Brexit trade deals”.<sup>272</sup> Mr Pollard did not want “the legacy of high standards to be ripped apart by the introduction of cheap, low-quality foods” following Brexit.<sup>273</sup>

Summing up for the Opposition, Labour Agriculture Spokesman Daniel Zeichner, said that the Bill was:

not really about food or public good; without public voice; an open door for our food producers to be sold out in a trade deal with Trump; and English farmers put at a disadvantage compared with other nations in the UK, while doing too little to tackle the climate emergency.<sup>274</sup>

**The SNP** tabled a Reasoned Amendment (not selected for debate) to deny the Bill a Second Reading citing Government failure to guarantee it would respect devolved administration views on legislative consent. The amendment also stated that the Bill failed to guarantee that food, welfare and environmental standards would be maintained and enhanced.<sup>275</sup>

SNP Spokesperson (Deidre Brock MP) criticised the Government for failing to answer a number of questions including on whether there would be a multi-annual funding framework, and on details of the shared prosperity fund and how this would be distributed among the UK nations. She also expressed concerns about the ability of trade to continue to flow freely after Brexit and the lack of protections for food quality and protected geographical indications.<sup>276</sup>

**Plaid Cymru** (Ben Lake MP) said that two areas had not been addressed in the Bill: firstly “a pan-UK intergovernmental structure to agree, establish and monitor common frameworks on agricultural policy and funding”; and secondly “the need to uphold UK farming production standards in the context of international trade negotiations”.<sup>277</sup>

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<sup>270</sup> HC Deb 3 February 2020, vol 671, [c77](#)

<sup>271</sup> Ibid.

<sup>272</sup> Ibid. [c78](#)

<sup>273</sup> Ibid. [c79](#)

<sup>274</sup> Ibid. [c132](#)

<sup>275</sup> House of Commons [Order Paper 3 February 2020](#)

<sup>276</sup> HC Deb 3 February 2020, vol 671, [c86 & c87](#)

<sup>277</sup> HC Deb 3 February 2020, vol 671, [c109](#)

**Liberal Democrat** MP Tim Farron expressed concerns about the timing of the phasing out of direct payments.<sup>278</sup> He also said that the remit of the Groceries Code Adjudicator should be extended to allow the Adjudicator to take referrals from farmers to ensure they got a fair price.<sup>279</sup>

Ian Paisley for the **DUP** said that although agriculture was devolved and a flexible approach was needed to meet the needs of different regions, a joined up UK approach was needed as food produced in Northern Ireland was consumed in Great Britain. He referred to farmers' fears of tariffs on the movement of foods from the GB to Northern Ireland creating a "volatility in prices" and driving down farm incomes.<sup>280</sup>

**Green Party** MP Caroline Lucas called for a legal commitment that imports would not undermine UK standards.<sup>281</sup>

## 17.3 Key themes

### 'Public goods' and food production

Members from all Parties supported the Bill's central aim to shift agricultural support from subsidies based on land area farmed to paying for the provision of public goods. However, the extent to which food production could be supported as a 'public good' was an issue of concern for some Members. Many Members welcomed new provisions on encouraging food production in England that had been added since the previous version of the Bill.<sup>282</sup> However some, including Anne-Marie Morris (Con), expressed concern that food production itself was excluded by definition from financial support as a 'public good'.<sup>283</sup> Liberal Democrat Tim Farron said that food production was the "ultimate public good" and should be supported.<sup>284</sup>

### New farm funding arrangements

Members welcomed the new provision to require Ministers to publish multi-annual plans setting out how financial support powers were to be used. The Secretary of State said that this had been included in direct response to Members' concerns about the previous Bill.<sup>285</sup> Chair of the Environment, Food and Rural Affairs (EFRA) Committee Neil Parish (Con) said he was pleased with this addition as farmers wanted certainty over funding. However, he was concerned about the lack of detail about how new schemes were to be brought in:

while the Government lay out clearly how they are to phase out direct payments, which is wonderful, they are not so clear about how the [Environmental Land Management schemes] ELMS and other payments will kick in. I look forward to some proper pilots. I know that some have been done, but they were started and then

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<sup>278</sup> Ibid. [c76](#)

<sup>279</sup> Ibid. [c113](#)

<sup>280</sup> Ibid. [c98](#)

<sup>281</sup> HC Deb 3 February 2020 vol 671 [c70](#)

<sup>282</sup> See for example HC Deb 3 February 2020, vol 671, [c127](#) (Rob Roberts) and [c130](#) (Derek Thomas)

<sup>283</sup> Ibid. [c129](#)

<sup>284</sup> Ibid. [c113](#)

<sup>285</sup> Ibid. [c75](#)

stopped and delayed by the problems in the last Parliament. We must have practical schemes in place as we replace the basic farm payment, and if we have trouble rolling out the ELMS quickly enough, we should reconsider the level of basic farm payment paid in the interim, because we must make sure that the money gets to farmers and the agriculture community.<sup>286</sup>

Liberal Democrat MP Tim Farron said that 85% of funding for livestock farming came from the Basic Payment Scheme (BPS) which was being phased out over a seven year period. However, the new Environmental Land Management Scheme would not be fully available to all farmers until 2028. He called for the start of phasing out of BPS not to start until 2028.<sup>287</sup> Closing the debate, Defra Minister George Eustice noted that there were already 30 different trials in place and a full pilot would be deployed in 2021.<sup>288</sup>

### Support scheme simplification

Farmers have long criticised the complexity of the CAP and called for a simpler approach to monitoring and compliance in the new British agriculture policy. The Secretary of State said that, subject to constraints in the Withdrawal Agreement, the existing BPS would be simplified. She added that she was determined to have a “far more rational and proportionate” approach to compliance than the CAP.<sup>289</sup>

### Environmental provisions

A number of Members including Caroline Lucas (Green) welcomed the inclusion of soil as a specific purpose for which Ministers could provide financial support.<sup>290</sup>

Kerry McCarthy (Lab) criticised the Bill for lack of a commitment (beyond sharing information) on the type of whole farm, ecological approach to food production (known as agroecology). The Bill made only “small scale tweaks” to the current system so that environmental stewardship would be “located very much on the margins”. She also criticised the Bill’s silence on environmental standards for all farmers, whether in receipt of financial assistance or not, and the lack of a commitment to zero net carbon emissions by 2040. The NFU had set out its ambition to achieve net zero by 2040.<sup>291</sup>

### Standards for imported food

A number of Members raised concerns about the impact on farmers and consumers of a lowering of animal welfare, environmental and food standards in imported products under future trade deals. This was the central concern of many Labour Members’ speeches.<sup>292</sup> Opposition Members including Shadow Secretary of State, Luke Pollard, called for

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<sup>286</sup> HC Deb 3 February 2020, vol 671, [c84](#)

<sup>287</sup> Ibid. [c76](#)

<sup>288</sup> Ibid. [c136](#)

<sup>289</sup> Ibid.

<sup>290</sup> See for example Ibid. Ruth Edwards (Con) ([c93](#)), Janet Daby (Lab) ([c102](#)) and Caroline Lucas (Green) ([c105](#))

<sup>291</sup> Ibid. [c90](#)

<sup>292</sup> See for example HC Deb 3 February 2020 col 671, Gerald Jones ([c118](#)) Nadia Whittome ([c122](#))

legal guarantees to be included in this Bill.<sup>293</sup> Members from other Parties also called for standards to be maintained in imports, including Simon Hoare (Con). He did not support the Opposition amendment but called for an “equivalence clause” to be introduced prior to Report and Third Reading.<sup>294</sup> Chair of the EFRA Committee Neil Parish (Con) took a similar approach and said that:

we produce some of the best—if not the best—food in the world to high environmental and animal welfare standards. We cannot allow in food that does not meet those high standards, so I look forward to things coming forward in Committee and on Report.<sup>295</sup>

Luke Pollard said there would be support for Mr Parish’s amendment tabled during consideration of the previous Bill to only allow imports of agricultural goods if “the standards to which those goods were produced are as high as, or higher than, current UK standards”.<sup>296</sup>

The Secretary of State had previously repeated Conservative Party Manifesto commitments not to lower standards.<sup>297</sup> In closing the debate, farm Minister George Eustice noted that:

The hon. Gentleman [Luke Pollard] asked why a prohibition on the sale of chlorine-washed chicken or hormone-treated beef was not included in the Bill. The answer is that it is already on the statute book as retained EU law, so it already exists.<sup>298</sup>

## Fairness in the supply chain

The Secretary of State noted that Clause 27 would protect producers from unfair trading practices.<sup>299</sup> This aspect of the Bill was discussed less than other aspects of the Bill.

Caroline Lucas (Green) welcomed the stronger protections from unfair practices in the current Bill as a “step in the right direction”. She had tabled an amendment to the 2017-19 Bill to bring the whole supply chain within the remit of the Groceries Code Adjudicator (GCA).<sup>300</sup> Other Members also welcomed the greater transparency measures in the supply chain.<sup>301</sup>

## Tenant farmers

Tenant farmer organisations have campaigned for changes to farm tenancy law to increase security and give them greater access to agri-environment schemes. The Secretary of State said that the Bill had been strengthened since the version considered in the last Parliament and now contained provisions to introduce greater fairness for agricultural tenants.<sup>302</sup>

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<sup>293</sup> Ibid. [c70](#)

<sup>294</sup> Ibid. [c131](#)

<sup>295</sup> Ibid. [c85](#)

<sup>296</sup> Ibid. [c81](#)

<sup>297</sup> Ibid. [c70](#)

<sup>298</sup> Ibid. [c133](#)

<sup>299</sup> Ibid. [c77](#)

<sup>300</sup> Ibid. [c105](#)

<sup>301</sup> See for example Ibid. Richard Holden (Con) ([c122](#)) and Fay Jones (Con) ([c125](#))

<sup>302</sup> Ibid. [c71](#)

## 18. Commons Committee Stage

### 18.1 Overview

There were [12 sittings of the House of Commons Public Bill Committee on the Agriculture Bill](#) running from Tuesday 11 February to Thursday 5 March 2020.

The Committee took evidence from farming groups, charities and other stakeholders or commentators in the first four sittings (11<sup>th</sup> and 13<sup>th</sup> February) and issued a [call for written evidence](#) from interested parties.

Of the 71 amendments moved relating to the Bill itself (rather than programming), 34 were agreed (Government amendments), 28 were negatived on division, and 9 were withdrawn after debate. 19 New Clauses were moved, with 5 withdrawn after debate and 14 negatived on division. No non-Government amendments were successful.

The changes made to the Bill are generally non-controversial, technical amendments. Debate on many clauses (eg Clauses 9-12) was brief and no amendments were moved in relation to many sections of the Bill. The Bill as amended in Committee is therefore in many parts the same as that introduced to the House.

Some Government amendments clarified wording, while several modified references to the National Assembly for Wales to reflect the change of its name to Senedd Cymru / Welsh Parliament. Government amendments 65-73 amend the powers of the Welsh Ministers to modify legislation around payments, to take account of changes made to the Secretary of State's similar powers in the revised version of the Bill. Amendments 89-94 modify Clause 32 of the Bill (dealing with traceability of animals) to treat Wales the same way as England in disapplying certain EU regulations, and amendments 96-98 make the Welsh Ministers responsible for commencing these provisions.<sup>303</sup>

Debate focused on the future support schemes for farmers which will replace the Common Agricultural Policy (CAP). On 26 February 2020, whilst the Committee stage was in progress, the Government published a policy statement and discussion document on the proposed approach and on the future Environmental Land Management (ELM) support scheme (see also section 3.1 above). A consultation on the discussion document was opened, due to close on 5 May 2020; however, on 8 April the consultation was paused amidst the Covid-19 pandemic.<sup>304</sup>

A number of Opposition amendments were unsuccessfully proposed to **Clauses 1 and 2** on the future financial assistance scheme, for example to add promotion of public health to the list of purposes for which financial assistance can be given. Opposition amendments also sought

The Bill as amended in Committee is in many parts the same as that introduced to the House.

<sup>303</sup> PBC (Bill 7) 2019 -2021, [Public Bill Committee: Agriculture Bill, Compilation of sittings so far 5 March 2020](#), pp 355-6

<sup>304</sup> Defra, [Environmental Land Management Policy Discussion Document](#), February 2020; Defra, [Environmental land management: policy discussion](#), February 2020; Defra, [The Future for Food, Farming and the Environment](#), Policy Document, February 2020

to set a regulatory baseline to underpin new schemes and ensure public money was being used to fund improvements beyond a regulatory minimum.

A key focus of debate throughout the Committee stage was the standards of food imported under future trade deals, such as that with the United States. Members from all Parties wanted to see provisions written into the Bill to prevent food being imported that had been produced to lower standards than those applying in the UK. To this end, **New Clauses 1, 4 and 7** were proposed by respectively: the Opposition; by Labour Member Kerry McCarthy for Simon Hoare and other Conservative Members; and by the SNP. The Parliamentary Under Secretary of State for Environment, Food and Rural Affairs, Victoria Prentis, reiterated the Government's commitment to "the highest possible standards of food production". She said that "we want reasonably priced food but produced to a standard of high ecological and animal welfare".<sup>305</sup> This issue is likely to be returned to as the Bill progresses with amendments tabled for Report Stage, including from the Chair, Neil Parish and Members of the Environment, Food and Rural Affairs Committee.<sup>306</sup>

Members from all parties highlighted continued concerns that the Bill did not sufficiently address food production. The Minister said that an improvement in the current Bill (compared to the 2017-19 Bill) was that it made "clear that encouraging the production of food in an environmentally sustainable way is necessary".<sup>307</sup>

Opposition members also sought to change some of the wide range of powers given to Government into duties, as well as giving further attention to issues such as climate change and the monitoring of pesticide use and alternatives. SNP amendments sought to require Scottish Ministers consent would be required to provisions relating to Scotland.

## 18.2 Overall Opposition View

In his opening comments on **Clause 1** of the Bill, Shadow Minister for Environment, Food and Rural Affairs, Daniel Zeichner set out the Opposition's overall approach to the Bill:

The Opposition support many of the principles underlying the Bill...we have already said that the shift to incentivising farmers to provide greater support for the environment and deliver public goods, and to providing finance for that, is welcome.<sup>308</sup>

Mr Zeichner welcomed improvements since the previous 2017-19 Agriculture Bill.<sup>309</sup> However, he indicated that the Opposition intended to move amendments to bring into the Bill areas that are not included in the future agricultural framework. He said the amendments were

<sup>305</sup> PBC (Bill 7) 2019 -2021, [Public Bill Committee: Agriculture Bill, Compilation of sittings so far 5 March 2020](#), p167

<sup>306</sup> See [Parliament.UK webpages on Agriculture Bill](#) for amendment lists.

<sup>307</sup> PBC (Bill 7) 2019-2021, [Public Bill Committee: Agriculture Bill, Compilation of sittings so far 5 March 2020](#), p167

<sup>308</sup> Ibid. p163

<sup>309</sup> Ibid.

intended to “deliver greater certainty to farmers, to tackle the health and climate crisis and to fill in some of the gaps and missed opportunities”.<sup>310</sup>

In particular, Mr Zeichner argued that there needed to be more of a focus on food production and on putting into law standards to apply to imported food. He said that an “underlying contradiction” in the Bill was that it proposed “a framework system for agriculture that does not see food production as a key part of its role”. Mr Zeichner said that it was crucial that in any future trade deals, imported agricultural goods met UK animal welfare, environmental and food safety standards to protect consumers, and prevent UK farmers being undercut by lower-standard imports. If there was no “coherency between our agricultural and trade policies, the Government might as well make the entire Bill null and void”.<sup>311</sup>

### 18.3 Powers and Duties

The Opposition tabled an unsuccessful amendment (1) seeking to change requirements for the Secretary of State to provide financial assistance for the purposes listed in **Clause 1** from “may” to “must”.<sup>312</sup> It also moved unsuccessful amendments proposing the same change in relation to other aspects of the Bill, such as on marketing standards, to require Ministers to take actions rather than give them the powers to do so.<sup>313</sup>

Mr Zeichner acknowledged that the existing budget had been guaranteed to farmers for every year of this Parliament (see section 1.2 above), but questioned what guarantees could be given for future funding for public goods if it was not a “strong requirement” in the Bill.<sup>314</sup> He said that:

farmers think they are going to get the same kind of money, minus the 10%, in the years ahead. They may not. There is no guarantee that they are going to get the same amount for doing something slightly different. The money may be allocated in very different ways, which is part of the concern that people feel.<sup>315</sup>

However, the Parliamentary Under Secretary of State for Environment, Food and Rural Affairs, Victoria Prentis, argued that it was usual for the term “may” to be used in the context of legislation on financial assistance. She cited as precedents the Natural Environment and Rural Communities Act 2006 and the Science and Technology Act 1965. She also noted that this version of the Bill included a commitment to the production of multi-annual financial assistance plans under **Clause 4**.

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<sup>310</sup> Ibid. p165

<sup>311</sup> PBC (Bill 7) 2019 -2021, [Public Bill Committee: Agriculture Bill, Compilation of sittings so far 5 March 2020, p 132](#)

<sup>312</sup> Amendment 1 was negated on division by 10 votes to 6.

<sup>313</sup> Clause 35 refers

<sup>314</sup> PBC (Bill 7) 2019 -2021, [Public Bill Committee: Agriculture Bill, Compilation of sittings so far 5 March 2020](#), p165

<sup>315</sup> Ibid. p166

She considered that overall **Clauses 4, 5 and 6** gave ample opportunity for scrutiny of financial assistance.<sup>316</sup>

The issue of funding commitments was also raised by Kerry McCarthy (Labour) in connection with her unsuccessful amendment (12) to **Clause 1**. The amendment would have required that financial assistance for productivity did not undermine the purposes of providing public goods. The Minister said that the two need not be mutually exclusive.<sup>317</sup>

## 18.4 Financial assistance scheme

In February 2020, the Government published a policy statement and discussion document setting out the current approach and thinking on the design of the Environmental Land Management (ELM) scheme:

- Defra, [Environmental Land Management Policy Discussion Document](#), February 2020;
- Defra, [Consultation on the ELM policy discussion document](#), February 2020;
- Defra, [The Future for Food, Farming and the Environment](#), Policy Document, February 2020.

A consultation was launched, to close on 5 May 2020, asking broad questions about design of the Environmental Land Management (ELM) scheme, but this was paused on 8 April amid the Covid-19 pandemic. For more information about these documents, see section 3.1 above.

The Committee discussed elements of ELM scheme design set out in the Defra documents. Opposition Spokesman Daniel Zeichner said that the suggestion of a three-tiered approach was “remarkably similar to the scheme we already have”, particularly in reference to tier 1 which he considered to be similar to the basic payment system. He also noted that the Government was considering whether to place cross-compliance type requirements on tier 1 applicants, similar to current CAP approaches. He said that there needed to be more detail on aspects including payment mechanisms, such as the market-based price-setting mechanisms floated in the Government’s discussion document.<sup>318</sup>

The Minister, Victoria Prentis, said that the Government was at the beginning of the scheme’s development. Trials and tests were underway and would be the building blocks of a national pilot starting at the end of 2021 and concluding in 2024. She did not think it right to answer detailed questions at that point because doing so could “fetter the development of policy”.<sup>319</sup> Ms Prentis said that the Government was considering a range of options for delivering advice, such as one-to-one support direct to land managers, group training, telephone and online support and peer-to-peer learning.<sup>320</sup>

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<sup>316</sup> Ibid. p168

<sup>317</sup> Ibid. p202-204

<sup>318</sup> PBC (Bill 7) 2019 -2021, [Public Bill Committee: Agriculture Bill, Compilation of sittings so far 5 March 2020](#), p225

<sup>319</sup> Ibid. p227

<sup>320</sup> Ibid. p266

The Minister rejected an amendment (9) from Mr Goodwill (Con) which would have allowed the agricultural transition period to be paused (as well as extended as already in the Bill).<sup>321</sup> She said that the Government had been clear about the length of the transition period to give farmers certainty.<sup>322</sup> Mr Zeichner cited concerns from the NFU that time was “rapidly running out” to have the necessary legislation and processes in place. However, he did not support a delay, rather he wanted the Government to “move more quickly”.<sup>323</sup>

## Parliamentary scrutiny

The Opposition moved an amendment (63) to add a requirement under **Clause 2** for financial assistance scheme regulations to be scrutinised by a Committee of either House before they were laid. Allied to this, Mr Zeichner said that amendment 64 would ensure there was proper debate on regulations under the affirmative procedure. However the Minister said that the approach would:

limit our ability to respond to what is effective and to what farmers and land managers tell us is working. It would put us back into CAP-type inefficiencies, where there was no opportunity to review or change things if they were not working.<sup>324</sup>

Ms Prentis gave examples of the types of changes that might be considered:

Our current thinking is that for tier 2 of ELMs, payments could initially be based on actions, potentially offering top-up payments when results are delivered. However over time we might well want to move away from payments for actions and start giving results-based payments. We would want the scheme to be able to adapt to that as we see whether it is really achievable.<sup>325</sup>

Noting that the probing amendment had established that there was no clarity on the support schemes, Mr Zeichner withdrew the amendment.<sup>326</sup>

## Regulatory baseline

The Opposition moved amendment 36 to **Clause 2** and **New Clause 9**. These were aimed at requiring farmer compliance with regulatory standards, not only for land eligible for financial support, but for all farmed land. Mr Zeichner said that leaving the CAP could create a gap leaving “much more of our countryside unprotected”.<sup>327</sup> As part of CAP, farmers had to meet cross-compliance standards on environmental management, animal welfare and traceability. He referred to **Clause 14** of the Bill which gave Ministers powers to move away from this EU regime:

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<sup>321</sup> Ibid. p279

<sup>322</sup> Ibid. p281

<sup>323</sup> Ibid.

<sup>324</sup> PBC (Bill 7) 2019–2021, [Public Bill Committee: Agriculture Bill, Compilation of sittings so far 5 March 2020](#), p228

<sup>325</sup> Ibid. p228

<sup>326</sup> Ibid. p229

<sup>327</sup> Ibid. p232

I do not think that we have yet seen any long-term plan from the Government to replace that system, flawed though it may be, with the robust regulatory baseline that we believe we will need to ensure that environmental and animal welfare standards are met across the board in land management.<sup>328</sup>

Mr Zeichner expressed concerns that farmers may not decide to participate in environmental schemes if they are asked to do more than under current CAP direct payment rules to get public money in future.<sup>329</sup> He called for “minimum standards across the board that [...] genuinely incentivises those that go above and beyond”.<sup>330</sup>

The Minister said in response that the amendments were unnecessary as there was already a regulatory framework that “manages agricultural and horticultural activity and protects the environment”. Restricting financial assistance could “deter those who are unsure of their regulatory compliance” but the “baseline is we expect everyone to comply with the law irrespective of environmental scheme access”.<sup>331</sup> Further, she contended that **New Clause 9** was unnecessary as the purposes, standards and enforcement mechanisms it lists were already contained in domestic legislation.<sup>332</sup> She said the regulatory framework was being reviewed, and the Government would work with farmers and land managers to consider where improvements could be made to deliver on environmental goals.<sup>333</sup>

The amendment was defeated by 11 votes to 5.<sup>334</sup> **New Clause 9** was negated on division by 10 votes to 5.<sup>335</sup>

## Delinking payments

The Bill provides powers (in **Clause 12**) for the Government to ‘delink’ payments from a requirement to farm and **Clause 13** allows these payments to be made in a lump sum. The Opposition moved an amendment (74) to **Clause 13** that would require someone receiving a lump sum to use it make changes to land management (or make land available to others) to deliver purposes in Clause 1(1) or 1(2) of the Bill.<sup>336</sup> Mr Zeichner said that he understood the Government’s aim of increasing opportunities for new entrants to farming, but the Bill’s provisions presented a risk that retiring farmers could simply take the lump sum and “sell the land to a larger holding or move out of farming altogether”.<sup>337</sup> The amendment would ensure the land was “genuinely available to new entrants, or that the money is used to improve farm holding within the purposes of the Bill”.<sup>338</sup>

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<sup>328</sup> Ibid.

<sup>329</sup> Ibid p233

<sup>330</sup> Ibid.

<sup>331</sup> PBC (Bill 7) 2019 -2021, [Public Bill Committee: Agriculture Bill, Compilation of sittings so far 5 March 2020](#), p235

<sup>332</sup> Ibid. p234

<sup>333</sup> Ibid. p235

<sup>334</sup> Ibid. p237

<sup>335</sup> Ibid. p 394

<sup>336</sup> Ibid. p290. Clauses 1 and 2 relate to the purposes for which Ministers may provide financial assistance, such as environmental or productivity improvements.

<sup>337</sup> Ibid. p291

<sup>338</sup> Ibid. p 293

The Minister said that the amendment, in tying lump sums to financial assistance, was counter to the purpose of lump sums. The payment would be “completely optional” for farmers. It would replace any other farm payments they were entitled to, allowing farmers to “access their payments easily” and “bring much simplification”.<sup>339</sup>

## 18.5 Standards in imported food

A key issue for debate during the Committee stage was the issue of animal welfare and environmental standard in food imported under future trade deals. New Clauses on this issue put down by the Labour Party, the SNP and Conservative Member Simon Hoare were all debated but each was negated on division:

- **New Clause 1** proposed by the Labour Party would require that agricultural goods may only be imported if “the standards to which those goods were produced was as high as, or higher than” UK legal standards on animal welfare, protection of the environment and food safety.<sup>340</sup>
- **New Clause 4** supported by Simon Hoare and a number of other Members who were not members of the Public Bill Committee, was moved by Kerry McCarthy (Lab).<sup>341</sup> It would require agricultural goods imported after the Implementation Period completion day to be produced at standards the same as or higher than UK standards on animal welfare, protection of the environment, food safety, hygiene and traceability, and plant health. Ministers would also have to prepare an annual register of UK production standards.
- **New Clause 7** proposed by the SNP would not permit Ministers to lay an international trade agreement under the Constitutional Reform and Governance Act 2010 unless it affirmed the UK’s rights and obligations under the (WTO) Sanitary and Phytosanitary (SPS) Agreement and prohibited the import of agri-food products “in relation to which the relevant standards are lower than the relevant standards” in the UK.<sup>342</sup>

## Labour Party views

Mr Zeichner said that the Agriculture Bill improved standards but that trade policies could void the Bill’s measures:

It is crucial that in any future trade deals, imported agricultural goods meet our animal welfare, environmental and food safety standards to protect our consumers, and prevent our farmers being undercut by lower-standard imports. The Bill improves the standards we set ourselves by reducing environmental impacts and incentivising public goods such as high welfare standards. If we do not have coherency between our agricultural and trade policies however, the Government might as well make the entire Bill null and void.<sup>343</sup>

<sup>339</sup> Ibid. p294

<sup>340</sup> PBC (Bill 7) 2019–2021, [Public Bill Committee: Agriculture Bill, Compilation of sittings so far 5 March 2020](#), p362. (Amendment defeated by 10 votes to 6)

<sup>341</sup> Ibid. p369 (Amendment defeated by 10 votes to 6)

<sup>342</sup> Ibid. p370–371 (Amendment defeated by 10 votes to 6)

<sup>343</sup> Ibid. p362

He said that he had not found “anyone who believed the Government’s commitment” not to allow trade deals to weaken food standards. The simple solution, he said, would be to put it in the Bill.<sup>344</sup> He asked for clarification of Minister’s comments that high environmental, animal welfare and food safety standards were already in law, including legislation to prevent the importation of chlorinated chicken and hormone-treated beef.<sup>345</sup> Kerry McCarthy noted that the Government had given Members in the previous Parliament “verbal reassurances” about the issue of standards for food imports. She considered that Members had been “fobbed off” however when the Trade Bill was introduced to the previous Parliament. She said that “everyone, from the NFU to environmental and consumer groups wants those things enshrined in law, as do the Conservative members who have signed the new clause”.<sup>346</sup>

Referring to a **potential UK-US trade deal**, Mr Zeichner said that US regulations were “by and large substantially lower” on animal welfare than those in the UK. He understood there to be no federal US regulations on issues covered in detailed UK regulations. For example, the US still used sow stalls and injected pigs with ractopamine, both illegal practices in the UK.<sup>347</sup> Mr Zeichner referred to Opposition **New Clauses 30-32** (not divided on) which replicated clauses tabled as amendments to the previous Agriculture Bill by Defra Secretary of State George Eustice when he was a backbencher in the last Parliament. These, Mr Zeichner said, aimed to put in primary legislation the existing requirements under retained EU law and domestic secondary legislation that safeguarded food safety and animal welfare. He added that the force of the proposals would be to ban the sale of animals or animal products treated with compounds that are currently illegal in the UK for most (farming) uses, as well prohibiting the sale of chickens washed with chlorine.<sup>348</sup>

## SNP views

For the SNP, Deirdre Brock said that she wanted the WTO SPS agreement to be written into UK law to assure the public on standards in imports.<sup>349</sup>

## Government position

The Minister reiterated the Government’s commitment to “not lowering our standards as we negotiate new trade deals”. Ms Prentis added that:

The Prime Minister has consistently stated that we will not compromise our high environmental, food safety or animal welfare standards now that we have left the EU. We made that commitment in our manifesto and my Right Hon. Friend the Secretary of State for International Trade reaffirmed that

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<sup>344</sup> Ibid.

<sup>345</sup> Ibid. p364

<sup>346</sup> PBC (Bill 7) 2019 -2021, [Public Bill Committee: Agriculture Bill. Compilation of sittings so far 5 March 2020](#), p369

<sup>347</sup> Ibid. p366

<sup>348</sup> Ibid. p368

<sup>349</sup> Ibid. p371

commitment to the House earlier this week in respect of a US trade deal.<sup>350</sup>

The Minister noted that EU law on these issues would convert to the UK statute book at the end of the transition period, under the *European Union (Withdrawal) Act 2018*. She cited EU rules on hormone-treated beef that had been transposed into UK law through national legislation, and controls on washing of poultry (for example by chlorine) that would become retained EU law.<sup>351</sup>

Ms Prentis added that banning imports unless all domestic standards are met was not “always appropriate” and that it could impact existing UK export markets. She said that:

For animal welfare some domestic legal requirements can be assessed and enforce as part of inspections considering the holistic welfare of animals on farms, but those standards would be unsuitable metrics for decisions on individual imports. Indeed we would have no way to enforce such restrictions or to check on the position of farms abroad.

Accepting New Clause 1 would create considerable uncertainty about whether current imports- on which we rely for food security, particularly at times of worry – including those from the EU, could continue. Our significant concern is that the new clause would put current trade agreements at risk and threaten our vital agri-food export trade. For example 23% of our whisky exports are covered under current trade agreements that we are seeking to transition at the end of the year and we would not want to put those at risk. The UK already ensures that, without exception, all imports of food meet the stringent food safety standards that are required of our domestic producers. The independent Food Standards Agency will continue to ensure that remains the case.<sup>352</sup>

In terms of **New Clause 7** (writing WTO SPS Agreement into UK law), Ms Prentis said that “we have to comply with WTO rules”. She was concerned that the new clause would possibly not comply.<sup>353</sup>

On **New Clause 30** and **new Schedule 1** (prohibition on sale of animals administered with certain substances), Ms Prentis said that George Eustice, now the Secretary of State, was happy with the Bill as drafted and had been reassured that the provisions were not needed in primary legislation.<sup>354</sup>

On **New Clause 31** (prohibition on sale of animals treated otherwise than with potable water), the Minister noted that there were instances already where substances other than drinking water were used for specific (food production) purposes, having been “subject to rigorous risk analysis purposes”. She noted that the EU had approved lactic acid for treating beef carcasses, recycled water for carcasses of certain species and clean (not drinking) water for fishery products. In her view,

<sup>350</sup> Ibid p371

<sup>351</sup> [The Specific Food Hygiene \(Regulation \(EC\) No 863/2004\) \(Amendment\) \(EU Exit\) Regulations 2019](#)

<sup>352</sup> PBC (Bill 7) 2019 -2021, [Public Bill Committee: Agriculture Bill, Compilation of sittings so far 5 March 2020](#), p373

<sup>353</sup> Ibid. p373

<sup>354</sup> Ibid. p374

the proposed clause as drafted could lead to “serious animal health and welfare implications”.<sup>355</sup>

## 18.6 Environmentally sustainable food production

The Opposition moved amendment 2 to **Clause 1** to add to a new item to the list of ‘public good’ purposes for which financial support can be provided:

Supporting agriculture and horticulture businesses in enabling public access to healthy food that is farmed in an environmentally sustainable way, including food produced through whole farm agroecology systems.<sup>356</sup>

Mr Zeichner said the amendment aimed to address a lack of proper emphasis on healthy food and a missed opportunity to support whole farm agroecological systems more explicitly. He referred to research which had found that one million people lived in so-called ‘food deserts’ with limited access to affordable fresh produce. He also noted rising levels of obesity and record numbers of people with type 2 diabetes. The amendment could facilitate community-supported agriculture and encourage local public food procurement.<sup>357</sup>

Mr Zeichner also said that the Bill recognised the importance of agroecological systems by enabling financial support for “better understanding” of its approaches. However, the provisions did not finance the adoption by farmers of agroecology principles which put the “maintenance of natural ecological processes at the heart of agricultural production”.<sup>358</sup>

Responding to amendment 2 (as well as amendment 11 from Kerry McCarthy, Lab, also dealing with agroecology) the Minister, Victoria Prentis, reaffirmed the Government’s commitment to support domestic food production and farmers who provide “high-quality, home-grown produce farmed in an environmentally sustainable way and produced, broadly at reasonable cost”.<sup>359</sup> She referred to initiatives beyond the Bill such as the independent review of the food system being led by Henry Dimbleby in order to develop a national food strategy covering the entire food chain “from field to fork” (see also section 6.1 above).<sup>360</sup>

The Minister also noted that **Clause 1(4)** (the need to have regard to environmentally sustainable food production in framing financial assistance schemes, a new measure added since the previous Bill) demonstrated that the Government recognised the importance of environmentally sustainable food production. She reassured the Committee that the Government recognised the environmental, animal health and welfare benefits of agroecological farming systems, including

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<sup>355</sup> Ibid. p 395

<sup>356</sup> Ibid. p169

<sup>357</sup> PBC (Bill 7) 2019–2021, [Public Bill Committee: Agriculture Bill, Compilation of sittings so far 5 March 2020](#), p170

<sup>358</sup> Ibid. p171

<sup>359</sup> Ibid.

<sup>360</sup> Ibid. p175

those on organic farms, and that an amendment was not required in order for support to be provided.<sup>361</sup>

## 18.7 Public health

The Opposition moved amendment 34 to include “public health” in the list of purposes for which the Secretary of State may give financial support under Clause 1. Mr Zeichner said that the food produced and the support provided for it affects the availability of healthy food. Amendment 35 identified key priorities for funding, such as reducing antibiotic use in farming and reducing harm from the use of chemicals and pesticides.<sup>362</sup>

Mr Zeichner argued that the public health issues stemming from or connected to agriculture should be considered in the Bill. Farm policy needed to ensure that it “promotes healthy food production and does not support the continued production of foods or the operation of systems that contribute to unhealthy or unsafe diets”.<sup>363</sup>

The Minister recognised that there were many connections between agriculture and public health. She referred to Government initiatives such as Henry Dimbleby’s independent review to develop a national food strategy and close working between Defra and the Department of Health and Social Care to put public health improvement “at the heart of everything we do”.<sup>364</sup>

## 18.8 Climate change

### Emissions reductions

Ruth Jones (Labour) moved amendment 6 to add to **Clause 1** a new purpose for which financial support may be provided:

Limiting greenhouse gas emissions from agriculture or horticulture or encouraging activities that reduce such emissions or remove greenhouse gas emissions.<sup>365</sup>

She said that the current wording in **Clause 1(1)(d)** referring to managing land, water or livestock to mitigate climate change was not strong enough: money should be targeted on emissions reductions. She added that agriculture in all parts of the UK was not on track to meet any of its (climate change) indicators and that direct payments did not currently give financial support to farmers to adapt their practices to focus on climate change.<sup>366</sup>

The Opposition proposed **New Clause 29** to require Ministers to publish greenhouse gas emissions targets within six months of the Bill receiving Royal Assent. These would cover, for example, agricultural soil, livestock, peatland and machinery for the year 2030. Daniel Zeichner

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<sup>361</sup> Ibid. p175-6

<sup>362</sup> Ibid. p180

<sup>363</sup> Ibid. p183

<sup>364</sup> PBC (Bill 7) 2019 -2021, [Public Bill Committee: Agriculture Bill, Compilation of sittings so far 5 March 2020](#), p184

<sup>365</sup> Ibid. p187

<sup>366</sup> Ibid. p188

said that these targets would be in line with “eliminating the substantial majority of the UK’s total greenhouse gas emissions by 2030”.<sup>367</sup>

The Minister responded that emissions reductions from agriculture had been set out under the [25-year Environment Plan](#) and the [Clean Growth Strategy](#).<sup>368</sup> She referred to the Government’s legislation introduced in 2019 for an overall net zero target for emissions. However the Government had not set sector specific targets so she would not accept the amendment.<sup>369</sup> The [NFU has set out a net zero ambition of 2040 for agricultural emissions](#).

## Peat

Kerry McCarthy unsuccessfully moved an amendment (13) to **Clause 1** to specify that the listing of protecting or improving the quality of soil as eligible for financial support includes “the restoration of blanket bog and other peatland habitats”. She said that UK peatland stores over three billion tonnes of carbon but some 80% is damaged, with 10 million tonnes of carbon dioxide being released a year, turning what should be a carbon sink into a carbon source.<sup>370</sup> The Minister said that the Government had committed some £10 million to peatland restoration. She did not accept that the amendment was necessary because the current drafting of **Clause 1(1)(j)** enabled financial assistance for all soil types, not just peatland.<sup>371</sup>

## 18.9 Food security

The Opposition moved amendments to **Clause 17** to reduce from five to one year the intervals for Government reports on food security. Opposition Spokesman, Daniel Zeichner welcomed the inclusion of a Clause which had been added by the Government in response to stakeholder and predecessor Committee concerns about inadequacies with the 2017-19 Bill.<sup>372</sup> He referred to a decline in UK food self-sufficiency, from 74% some thirty years ago to 61% now, stating that “a reasonable level of domestic production in a volatile world is a critical aspect of food security”. He criticised the fact that the current Bill would not require a first report until after the next General Election at a point when the UK would have been out of the EU for half a decade.<sup>373</sup>

The Minister said that domestic production was only one part of food security:

We supplement our produce with a range of other products from around the world that are difficult to grow and rear here. Our high degree of food security is built on access to a range of sources, including robust supply chains across a wide range of countries in addition to domestic production.<sup>374</sup>

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<sup>367</sup> Ibid. p421

<sup>368</sup> Ibid. p422

<sup>369</sup> Ibid. p188

<sup>370</sup> PBC (Bill 7) 2019 -2021, [Public Bill Committee: Agriculture Bill, Compilation of sittings so far 5 March 2020](#), p210

<sup>371</sup> Ibid. p211

<sup>372</sup> Ibid. p297

<sup>373</sup> Ibid. p298

<sup>374</sup> Ibid. p304

The Minister also said that there had been no food security report since 2010 and the proposed report was a “welcome step”. She emphasised that the reports would be required “at least” every five years and it may be appropriate to have a report before then. Five years was selected as an interval because it balanced the commitment to report regularly with sufficient time to observe key trends from the “vast variety of sources”.<sup>375</sup>

An Opposition amendment (76) was also defeated adding provisions to **Clause 17** requiring that reports cover the impact of food production on global resource sustainability.<sup>376</sup>

## Food insecurity

Kerry McCarthy (Lab) moved an amendment (62) to **Clause 17**, to require that food security reports include an assessment of trends in food insecurity, and a summary of actions to be taken, broken down by the nations of the UK. Nadia Whittome (Lab) said that the amendment would extend the definition of food insecurity “whether everyone in the UK can get access to or afford the food available”.<sup>377</sup>

The Minister said that the Government was planning a theme on household food security, set out clearly in **Clause 17 (2)(d)**. The planned report would set out the Government’s analysis of a wide range of statistics. A breakdown at national level might not be possible as many data sets were only produced at UK level but she said that this might be considered if appropriate and all available relevant data would be considered.<sup>378</sup>

## 18.10 Animal welfare

### Sow farrowing crates

The Opposition moved amendment 40 to **Clause 1** and **New Clause 12** aimed at ending the use of sow farrowing crates. The measure would come in at a time chosen by the Secretary of State. Mr Zeichner said that the measures would allow farmers to be supported with the capital costs of making changes and not to be disadvantaged by competition elsewhere. Some 60% of the 350,000 to 400,000 British sows are kept in crates to give birth which often leave them unable to turn around.<sup>379</sup> Robert Goodwill (Con) argued however that acting unilaterally would lead to an increase in EU imports, and he stated that a high proportion of pigs in other European countries were castrated (for example 94% in Sweden, 95% in Denmark and 80% in Germany) compared to only 2% in the UK.<sup>380</sup>

The Minister rejected the amendment as unnecessary as financial assistance could be provided under the Bill’s provisions already set out in

<sup>375</sup> Ibid. p300

<sup>376</sup> Ibid. p301

<sup>377</sup> PBC (Bill 7) 2019–2021, [Public Bill Committee: Agriculture Bill, Compilation of sittings so far 5 March 2020](#), p308

<sup>378</sup> Ibid. p309

<sup>379</sup> Ibid. p196

<sup>380</sup> Ibid. p198

**Clause 1(1)(f)** (animal health and welfare). She also said that the Government had produced a new [Welfare Code for Pigs](#) and its aim was for farrowing crates to no longer be necessary but that:

it would not be right to end the use of such crates without examining all the evidence around their use and considering all the options. It is important to recognise how they protect piglets, for example.<sup>381</sup>

## Health and welfare of farm animals

The Opposition amendments to **Clause 2** (amendments 4 and 42) which would make receipt of financial support under **Clause 1(1)(f)** (“protecting or improving the health of welfare of livestock”) conditional on a certain standard of welfare being met.

Mr Zeichner referred to conditions for several animals including laying hens:

we would like to see funding made available for farmers who use the best free range systems such as low stocking density, low flock size, mobile housing and provision of trees and bushes. Outcome measures that one could look at are not trimming hens’ beaks, achieving low mortality and good plumage scores.<sup>382</sup>

Amendment 4 would also prevent those exporting live animals for fattening or slaughter from receiving public funds (except for such movements from Northern Ireland to the Republic of Ireland).<sup>383</sup> For background information on this issue see the Library briefing paper on [Live animal exports](#) (CBP 8031, September 2019).

The Minister’s response referred to the Government’s manifesto commitment to end excessively long journeys for animals going for slaughter or fattening. A consultation was imminent for the spring “so we can take it further as quickly as possible”. She added that the Government had “no intention” of paying farmers for achieving “basic welfare standards”:

using the powers in this Bill we are developing a scheme that aims to improve welfare. As part of that, we are exploring a one-off grant system that will help farmers to improve welfare on farms.<sup>384</sup>

This could include payments to enhance buildings but the Bill was flexible on what could be paid for. She rejected the amendment because it would restrict in primary legislation what will be included in the scheme before stakeholders could input:

We are exploring a payment by results scheme, under which farmers could receive ongoing payments for delivering specific animal welfare enhancements that are valued by the public but [...] not yet sufficiently valued by the market”.<sup>385</sup>

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<sup>381</sup> Ibid. p 99

<sup>382</sup> Ibid. p245

<sup>383</sup> PBC (Bill 7) 2019 -2021, [Public Bill Committee: Agriculture Bill, Compilation of sittings so far 5 March 2020](#), p248

<sup>384</sup> Ibid. p250

<sup>385</sup> Ibid.

Amendment 4 was withdrawn. Amendment 42 limiting financial assistance to people where the “protection or improvement effects a standard which is significantly higher than that required by regulations” was negated on division.

## Other animal welfare issues

New Clauses were moved but negated on division or withdrawn on a number of other animal welfare issues:

- **New Clauses 15 and 16: grouse shooting management.** (Ruth Jones, Lab). The Minister responded that:

The Government considers that shooting activities can bring many benefits to the rural economy, and in many cases are beneficial for wildlife and habitat conservation. We recognise that it is vital that wildlife and habitats are respected and protected. We will continue to work to ensure a sustainable, mutually beneficial relationship between shooting and conservation. There is no need for a commitment to review driven grouse shooting as defined in the new clause because we are already considering these issues. If there were to be a review, it might be more efficient and effective to consider other forms of grouse shooting and wider moorland management where there are no grouse, alongside driven grouse shooting.<sup>386</sup>

- **New Clause 21: Licences to cull badgers for control of tuberculosis: repeal.** (Daniel Zeichner, Lab). The Minister responded that:

No single measure will achieve (TB) eradication by our target date of 2038, which is why we are committed to pursuing a wide range of interventions, including culling and vaccination, to deal with the risk from wildlife. Of course culling is a controversial policy but we have scientific evidence to show that, to a certain extent, it is working. The new review is clear that the evidence indicates that ... moving from lethal to non-lethal control of badgers is desirable.

[..]

We have reached a point where intensive culling will soon have been enabled in most of the areas where it has served the greatest impact. As announced in the Government response today [to the Godfray review, [response published 5 March 2020](#)], we will be able to develop measures to make badger vaccinations, combined with biosecurity, the focus of addressing risks from wildlife as an exit strategy from intensive culling. Our aim is to allow future badger culls only where the epidemiological evidence points to a reservoir of disease in badgers.<sup>387</sup>

## 18.11 Fair dealing in the supply chain

Ruth Jones (Lab) moved an amendment (77) aimed at clarifying provisions in **Clause 27** designed to secure a fairer price for farmers for

<sup>386</sup> Ibid. p402

<sup>387</sup> PBC (Bill 7) 2019 -2021, [Public Bill Committee: Agriculture Bill, Compilation of sittings so far 5 March 2020](#), p414

the food they produce. She said that the NFU believed that there should be an obligation on the Government to bring forward the regulations imposing obligations on business purchasers of agricultural products within 12 months of the Bill's enactment.<sup>388</sup> The fMinister rejected this proposal, stating that she was keen to take time to get the solution right:

We should have targeted solutions where they are needed, but we need to avoid burdensome new requirements where they are not. To ensure that, the specific detail of each code will be developed in consultation with the industry and set out in secondary legislation. Enforcing a time limit on the creation of fair-dealing obligations would prevent regulations accounting for the complex nature of our agricultural market.<sup>389</sup>

Ms Prentis noted that there was a change since the previous Bill. There was no longer a link to the list of sectors in Schedule 1 which made the clause more flexible for different sectors.<sup>390</sup>

Deirdre Brock, SNP Spokesperson on agriculture, moved amendments to **Clause 27** to require Scottish Ministers' consent to the provisions. She said the SNP was seeking to "protect the decision-making powers of the Scottish institutions in the Bill, to ensure that the policies applied can be the best fit for the farmers and crofters concerned".<sup>391</sup> The Minister said the SNP amendment would potentially prevent UK-wide codes from being developed. She added that it would not be "appropriate nor is it in line with the devolution settlement". Ms Prentis referred to the Competition and Markets Authority's advice that **Clause 27** covered a reserved matter since it related to the regulation of competition and legislative consent should not be sought. She also said that although consultations would take place prior to the design and introduction of the new statutory codes, placing a requirement in primary legislation would be "burdensome, especially for regulations that make only minor and technical changes".<sup>392</sup>

Deirdre Brock also unsuccessfully moved an amendment to **Clause 30** related to Producer Organisations which would require consent of Scottish Ministers before regulations could be made. The Minister said that recognition of a Producer Organisation exempted organisations automatically from competition law, and competition law was a matter reserved to the UK Parliament.<sup>393</sup>

## 18.12 Agricultural tenancies

Ruth Jones (Lab) moved amendments related to **Clause 34** and **Schedule 3** on agricultural tenancies. These aimed at strengthening the provisions for tenants. None of the amendments were agreed.<sup>394</sup> The Minister said that the Government would move quickly to make the

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<sup>388</sup> Ibid. p318

<sup>389</sup> Ibid. P319

<sup>390</sup> Ibid.

<sup>391</sup> Ibid. p321

<sup>392</sup> PBC (Bill 7) 2019 -2021, [Public Bill Committee: Agriculture Bill, Compilation of sittings so far 5 March 2020](#), p322

<sup>393</sup> Ibid. p326-327

<sup>394</sup> Ibid. p321-326

regulations under the Schedule. She said that the procedure for referring requests to dispute must remain clearly linked to the terms of the tenancy agreement. Broadening the scope of the provisions could lead to unintended consequences. She said the Schedule 3 provisions had received broad support in the public consultation.<sup>395</sup>

In response to a question from Daniel Zeichner regarding the agricultural transition and tenants on post-1995 holdings, Ms Prentis also said that, “once a decision has been made to de-link payments”, the person farming the land (i.e. the tenant) would apply for the lump sum.<sup>396</sup>

### 18.13 World Trade Organisation (WTO) compliance

Deirdre Brock unsuccessfully moved an SNP amendment (31) requiring that Scottish Ministers give consent before regulations under **Clause 40** on WTO compliance be made.<sup>397</sup>

The Minister said she did not dispute that agriculture was a devolved matter, but that the clause was about securing UK-wide compliance in an international sphere and this was a reserved matter.<sup>398</sup> Labour Member Thangam Debbonaire also moved an amendment (99) requiring Ministers to consult each devolved Authority on a draft of the regulations. These amendments were defeated.<sup>399</sup>

The SNP moved further amendments (33 and 33) to **Clause 42** on WTO compliance. These aimed at removing the Defra Secretary of State as the final arbiter in disputes and at removing the requirement for a devolved Authority to provide UK Government Ministers with information. These amendments were defeated on division.<sup>400</sup>

### 18.14 Other issues Hunting with dogs

Ruth Jones (Lab) moved amendment 49 to **Clause 2** that would prohibit financial assistance being given under **Clause 1** if the applicant uses the relevant land for “hunting of a wild mammal with a dog, whether or not that hunting is exempt under Section 2 of the [Hunting Act 2004](#)”. Section 2 of the 2004 Act links to Schedule 1 which lists various exemptions such as allowing the hunting of rats or rabbits on an owner’s land. Ms Jones said that there were 299 hunts active across Britain. She said that loopholes were widely exploited and that the Government needed to “crack down on illegal hunting”. Public money should not be used to support a “cruel sport” in her view.<sup>401</sup>

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<sup>395</sup> Ibid. p333

<sup>396</sup> Ibid. p336

<sup>397</sup> Ibid. p347

<sup>398</sup> Ibid. p348

<sup>399</sup> Ibid. p351-352

<sup>400</sup> PBC (Bill 7) 2019 -2021, [Public Bill Committee: Agriculture Bill, Compilation of sittings so far 5 March 2020](#), p352-354

<sup>401</sup> Ibid. p259

Mr Goodwill (Con) noted that the amendment could have unintended consequences since it did not permit activities that were exempted in the *Hunting Act*. He used the example of if a terrier were to kill a rat on a farm at any time since 2004, that farm would not qualify for agricultural support: “I would hazard a guess that that would cover at least 95% of farmland in this country. If not 100%”.<sup>402</sup>

The Minister said that the amendment might penalise legal activities and no one should be penalised for carrying on or allowing lawful activities on their land. Further, farmers could be penalised for actions carried out from 2005, when potentially they had no control over that land at that time.<sup>403</sup>

## Small farms

Kerry McCarthy’s amendment (14) to **Clause 1** included reference to smaller farms and horticultural units less than five hectares. Under the existing rules in England, Direct Payments can only be claimed by farmers with at least 5 hectares of eligible land. Ms McCarthy said that the Government’s increase in the limit from one to five hectares in 2014 had “excluded one in six English farmers during the transition from single to basic payments”.<sup>404</sup>

The Minister said that ELM schemes were still being designed and that she could not then provide an “absolute assurance” on eligibility and size of farms. Schemes would “vary enormously in their size and scope”.<sup>405</sup> Further, in determining whether there should be a minimum size for eligibility “we will need to weigh up the benefits that can be delivered by small land holdings – benefits that I recognise – against the administrative costs”.<sup>406</sup>

## Definition of livestock

An amendment (8) to **Clause 1(5)** by Robert Goodwill (Con) was debated and withdrawn. It would have added the words “and managed” to the definition of livestock as any creature “kept” for the production of food etc. Mr Goodwill said this was needed as some of the most environmentally beneficial land uses were where birds or mammals were wild and therefore not kept. He referred to confusion about whether game was covered by the Bill’s provisions.<sup>407</sup>

The Minister said that game such as wild pheasants and partridges while kept in captivity would come within the definition of the Bill and be eligible for support, where they were kept for one of the purposes listed in **Clause 1**. However, once released into the wild they are classified as game and it would not be appropriate to class them as farm poultry or livestock.<sup>408</sup>

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<sup>402</sup> Ibid. p260

<sup>403</sup> Ibid. p262

<sup>404</sup> Ibid. p204

<sup>405</sup> Ibid. p206

<sup>406</sup> Ibid p205

<sup>407</sup> PBC (Bill 7) 2019 -2021, [Public Bill Committee: Agriculture Bill, Compilation of sittings so far 5 March 2020](#), p206

<sup>408</sup> Ibid. p209

## Red Meat Levy

The SNP moved an amendment (supported by Labour members) to **Clause 33** which would set a deadline of 1 April 2021 for the coming into force of the Clause's scheme to enable the payment of levies collected in one nation of the UK to the levy body of another such country.

The Minister said that the levy bodies were working collaboratively using an interim fund and that time was needed to allow for due consideration and consultation in order to provide a workable solution.<sup>409</sup>

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<sup>409</sup> Ibid. p330

## 19. Report Stage and Third Reading

### 19.1 Overview

The [Report stage and Third Reading of the Agriculture Bill \(2019-21\)](#) took place on 13 May 2020. Labour, Lib Dem, SNP and one Conservative Member voted against giving the Bill a Third Reading. Shadow Secretary of State for Environment, Food and Rural Affairs, Luke Pollard noted that “it is unusual for any party to vote against Third Reading of a Bill, but we will vote against this Bill because the issue of farm standards for our food is not a technical one; it is fundamental to what kind of country we are”.<sup>410</sup> The Bill passed by 360 to 221 votes without amendment apart from minor and technical Government changes to Welsh Ministers’ powers.

The [House of Lords gave the Bill its Second Reading on Wednesday 10 June](#) and the Bill started its [Lords Committee Stage consideration on 7 July 2020](#).

Most of the Commons Report Stage debate focussed on standards for food imports under future trade deals. This gained considerable press coverage.<sup>411</sup> The House divided on and rejected **New Clause 2**, proposed by the Conservative Chair of the Environment, Food and Rural Affairs Select Committee. This would have required Ministers to confirm to Parliament before laying a Free Trade Agreement under the Constitutional Reform and Government Act (CRA) 2010 that the trade deal would not allow for lower standard products to be imported.

Divisions also took place on **Labour’s New Clause 7** to require Ministers to produce a Coronavirus emergency food plan and on an **SNP amendment (39)** to remove the Bill’s provisions to require Devolved Administrations to provide the Secretary of State information on domestic farm support for World Trade Organisation purposes. Neither were successful.

A number of other amendments were tabled, although not divided on. These included measures on farm tenancies, food poverty, and climate change. Amendments on labelling food to show method of production were also debated and the Government committed to consult on this, including on a mandatory approach.<sup>412</sup>

### 19.2 Food imports: environmental, animal welfare and food safety standards

Conservative Members as well as Labour and Liberal Democrat Members tabled amendments aimed at preventing future trade deals

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<sup>410</sup> Agriculture Bill (2019-21) Report Stage, [HC Deb 13 May 2021, c 352](#)

<sup>411</sup> See for example, Roger Harrabin, BBC online, [MPs urge UK ban on chlorinated chicken and hormone-fed beef](#), 13 May 2020

<sup>412</sup> Agriculture Bill (2019-21) Report Stage, [HC Deb 13 May 2021, c296](#)

allowing imports of food unless they meet current UK animal welfare, environmental and food safety standards.

## New Clause 1 and New Clause 2

Chair of the Environment, Food and Rural Affairs Committee, Neil Parish (Con) tabled **New Clause 2** which had the support of the Committee. This would have required Ministers to confirm to Parliament before laying a Free Trade Agreement under the Constitutional Reform and Government Act (CRA) 2010 that the trade deal would not allow for lower standard products to be imported. This would not be a blanket ban on imports as this could be non-compliant with World Trade Organisation (WTO) commitments. Rather it would place requirements on a trade deal being laid for ratification under the CRA Act and refers to “equivalence” in standards rather than adherence to a specific standard. Under the proposed Clause, a trade deal would not be able to be ratified in effect. without the statement on standards being made to the House

Speaking to his proposed New Clause, Mr Parish argued that other countries, such as the US, should adopt higher food production standards. He said that:

I want great trade deals. I am not a little Englander who will defend our agriculture against all imports—quite the reverse. I think competition is good, but on a level playing field that allows us to produce great food and allows our consumers to have great food, and makes sure that we deliver good agriculture and environment for the future.<sup>413</sup>

Simon Hoare tabled **New Clause 1**. This would more generally have banned imports of substandard imports under a trade deal. It related to specified standards (to be set out in a UK standards register) and to any imports, not just those in a specified trade treaty as proposed by New Clause 2. New Clause 1 provided that under a Free Trade Agreement food could be imported into the UK:

only if the standards to which those goods were produced were as high as, or higher than, standards which at the time of import applied under UK law relating to—

- (a) animal welfare,
- (b) protection of the environment,
- (c) food safety, hygiene and traceability, and
- (d) plant health.<sup>414</sup>

Introducing the New Clause, Mr Hoare said that neither it nor New Clause 2 were about “stymieing free trade agreements” as these could deliver “huge potential benefits”. However he said that:

There is no merit in deliberately setting out in Government policy the creation of an unlevel playing field. Food imports to this country would be cheap for no reason bar the fact that they were raised to lower standards. [...] Cheap food imports would remain cheap only while there was a viable scale of domestic production

<sup>413</sup> Agriculture Bill (2019-21) Report Stage, [HC Deb 13 May 2021, c 301](#)

<sup>414</sup> Agriculture Bill (2019-21) [Consideration of Bill Amendments \(Report Stage\)](#) 13 May 2020

to create some sort of viable competition. As soon as it was choked off or choked down—reduced to a scale no more than meeting the artisan market or a farmers’ market—those prices would start to rise, and we would have lost our agricultural sector.<sup>415</sup>

Several Conservative Members, including former Defra Secretary of State Owen Patterson,<sup>416</sup> and former International Trade Secretary Dr Liam Fox,<sup>417</sup> spoke against the proposed amendments. They argued that the New Clauses could be incompatible with WTO requirements and could fetter UK trade negotiations. However, a notable number of Conservative Members supported the New Clauses, alongside a number of Opposition Members.<sup>418</sup> Former Defra Secretary of State Theresa Villiers said that:

If we add in the complete liberalisation of trade with US producers, that would be a hit from which many livestock businesses would not survive. The aftershock would be felt in all four corners of our United Kingdom because of the centrality of livestock farming to communities in Scotland, Wales, Northern Ireland and of course the north of England too.

The Conservatives were elected on a manifesto with commitments on animal welfare and the environment which are more far-reaching than any before in the long history of our party, but allowing unrestricted imports from jurisdictions with far weaker rules would mean offshoring carbon emissions and animal cruelty, not reducing them. If we are to keep our promises on the environment and on the decent treatment of animals, they must be reflected in our trade policy and in the Bill this afternoon.<sup>419</sup>

Mr Hoare withdrew New Clause 1 after debate in favour of a vote on New Clause 2.<sup>420</sup>

The House divided and **New Clause 2** was defeated by 328 votes to 277. This was the first time the House of Commons had voted electronically on a Bill, and the vote took place under procedures adopted during the Coronavirus pandemic.

## Opposition views on import standards

Labour, SNP, Liberal Democrat and Plaid Cymru members supported the aims of the proposed New Clauses 1 and 2. [Labour and the Liberal Democrats also tabled amendments](#) on the issue of preserving food standards under future trade deals. Labour tabled New Clause 6 and the Liberal Democrats tabled New Clause 10 with similar provisions to New Clauses 1 and 2.

Shadow Secretary of State Luke Pollard argued that commitments to high environmental, animal welfare and food standards were “meaningless unless backed up in law”. He said that:

The amendments today reflect a cross-party concern that the promises of high standards will not be kept unless they appear in

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<sup>415</sup> Agriculture Bill (2019-21) Report Stage, [HC Deb 13 May 2021, c290](#)

<sup>416</sup> Ibid. [c303](#)

<sup>417</sup> Ibid. [c323](#)

<sup>418</sup> Ibid. [c290](#)

<sup>419</sup> Ibid. [c315](#)

<sup>420</sup> Ibid. [c337](#)

black and white in the Bill. The right place to deal with farm standards is a Bill about farming. Indeed, the Leader of the House has just said from the Dispatch Box that he is about delivering on the manifesto and that this is essential. I agree on this point: those standards are essential, and they must be delivered on in law.<sup>421</sup>

SNP Spokesperson, Deirdre Brock, said that the Party supported writing the need for high standards in imported food into legislation:

We would be doing the food producers, the end consumers and the retailers a disservice if we allowed those high-quality products to be squeezed out by any low-quality products that have to be, for example, dipped in bleach to kill pathogens before they are dumped on the shelves. It is also a massive concern for consumers, who do not want to see their choices shut down by low-grade products.<sup>422</sup>

Jonathan Edwards (Plaid Cymru) said that:

Unrestricted, cheap, poor-quality imports threaten to not only damage the immediate vitality and strength of our domestic food sector, but also pose wider challenges to our environment and our rural economy.<sup>423</sup>

Tim Farron (Lib Dem) said that:

Britain has the best standards in the world, and they will be completely irrelevant if we allow Ministers to strike trade deals that lead to imported goods with lower production, animal welfare, environmental and labour standards.<sup>424</sup>

## Government statements on food standards

Responding to the debate on trade standards amendments, Defra Minister Victoria Prentis said that the Agriculture Bill was not a trade bill. She reaffirmed the Government's commitment to high standards but cautioned that the amendments could have unintended consequences:

I reassure colleagues that all food coming into this country will be required to meet existing import requirements. At the end of the transition period, the European Union (Withdrawal) Act 2018 will convert all EU standards into domestic law. That will include a ban on using artificial growth hormones in beef. Nothing apart from potable water may be used to clean chicken carcasses, and any changes to those standards would have to come before this Parliament. We will be doing our own inspections to ensure that those import conditions are met.

While we all want to support British farmers, if passed, the well-meaning amendments would have unintended consequences. The supply of food would be significantly disrupted if goods that meet our current import standards were blocked. New clauses 1 and 2 would affect UK exports to countries with whom, as part of the EU, we currently have trade agreements. I am concerned that the extra conditions in the two new clauses could result in countries refusing to enter into continuity agreements. For example, accepting new clause 2 would risk whisky exports worth £578 million. Another example is the impact on potato exporters. Some

<sup>421</sup> Agriculture Bill (2019-21) Report Stage, [HC Deb 13 May 2021, c292](#)

<sup>422</sup> Ibid. [c298](#)

<sup>423</sup> Ibid. [c319](#)

<sup>424</sup> Ibid. [c306](#)

22% of potato exports went to countries with whom a continuity agreement has not yet been signed.

If the amendments were passed, an assessment of our current UK production standards, followed by an assessment of all relevant standards in a third country, followed by an assessment of how those compared with UK legislation and UK production standards would be required to make sure that any FTA complied with them. That would all have to be done by the end of December.

I understand that Members want to ensure safeguards for our farmers. However, I have serious concerns about the unintended consequences of the amendments for our producers and exporters. Our manifesto commitment is clear that the Government will support farmers and protect our standards. All the rules, regulations and robust processes are already in place for that.<sup>425</sup>

At Third Reading, Secretary of State, George Eustice reiterated the Government position that it had “a manifesto commitment that in all trade deals, [it] will not compromise on our high environmental protection, animal welfare and food standards”.<sup>426</sup>

## 19.3 Food production

A number of amendments were tabled on security of food supply and measures to support UK food production. In addition, Labour put down amendments to require the Government to produce a food security strategy in response to the coronavirus threat.

Teresa Villiers (Con) said that:

To make a success of these reforms, we need, first, to give proper weight to food security. I was pleased to see this added to the Bill during my time as Secretary of State. Secondly, these reforms must be properly funded. I fought to secure a Conservative manifesto commitment that farm support would be maintained at current levels in every year of this Parliament. Bitter experience shows how hard it is to deliver change on this scale in the context of a shrinking budget.<sup>427</sup>

Plaid Cymru Spokesman, Jonathan Edwards, also wanted food production to be supported more strongly. He said that:

a complete U-turn is needed in agricultural policy to promote food production. Central to that should be the development of local processing capabilities, so that we can help to build a stronger local economy where people can buy local produce more directly.<sup>428</sup>

### Coronavirus emergency food plan

The Labour Party tabled **New Clause 7**. This would have required Ministers within six months of enactment of the Agriculture Bill to lay before Parliament a “coronavirus emergency food plan”. This would need to set out “measures to address the impact of coronavirus and

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<sup>425</sup> Agriculture Bill (2019-21) Report Stage, [HC Deb 13 May 2021, c295](#)

<sup>426</sup> Ibid. [c350](#)

<sup>427</sup> Ibid. [c315](#)

<sup>428</sup> Ibid. [c319](#)

coronavirus disease, and action taken in response, upon the supply of food". Matters to be addressed included:

- (i) the incidence of hunger, malnutrition and food poverty measured (a) nationally and (b) by local authority area;
- (ii) the level of demand for emergency food aid and the adequacy of services to meet that demand;
- (iii) the availability, distribution and affordability of nutritious and healthy food;
- (iv) the ease of access to nutritious and healthy food across different socio-economic groups and communities;
- (v) the functioning of the food supply chain, including stock levels of individual food items and any cross-border issues impacting upon the import and export of food; and
- (vi) the level of any financial assistance provided by a public authority to farmers, growers and the fishing and fish processing sectors as a result of coronavirus or coronavirus disease.

Labour Spokesman Daniel Ziechner said that the coronavirus crisis had "shone a light on pre-existing problems of hunger, poverty and food insecurity in our country. The new clause would give us a chance to tackle them as the country would expect".<sup>429</sup>

The House rejected the New Clause by 352 votes to 221.

## 19.4 Other issues raised

### Environmental issues

A number of issues were raised during debate, including on environmental matters. Caroline Lucas (Green) spoke to her amendments on climate change, pesticides and sustainable agriculture approaches.<sup>430</sup>

### Labelling

Tracey Crouch (Con) spoke to **New Clause 11 and amendment 37** tabled in her name. These would have required labelling of meat, milk and dairy products with their farming methods. She said that consumer demand was currently impeded by "lack of information at point of sale" and that "greatly improved labelling for farming methods can be the first step in improving the availability of more ethically sourced food for a changing consumer market".<sup>431</sup> Defra Minister, Victoria Prentis noted that a number of Members had asked the Government to explore whether labelling could be used to differentiate products that met domestic production standards from those that do not. She said this would include exploring mandatory labelling, however:

Any scheme could not be devised until we have completed the transition period and would of course need to recognise World Trade Organisation obligations, but I assure Members from across

<sup>429</sup> Agriculture Bill (2019-21) Report Stage, [HC Deb 13 May 2021, c334](#)

<sup>430</sup> See: [New Clauses 5 and 14 and amendment 42](#). Agriculture Bill (2019-21) Report Stage, [HC Deb 13 May 2021, c321](#)

<sup>431</sup> Agriculture Bill (2019-21) Report Stage, [HC Deb 13 May 2021, c318](#)

the House that this is something we will consider closely and on which we are prepared to consult.<sup>432</sup>

## Devolution and WTO reporting provisions

SNP Spokesperson, Deirdre Brock, addressed the Party's **amendment 39** which would have removed from the Bill the powers in Clause 42 (4) and (5) for Regulations to require Devolved Administrations to provide the Secretary of State with certain information on domestic farm support. She said that:

As the Bill currently stands, the power to determine how farming support is treated for the purposes of WTO reporting, and therefore the ceilings in each classification of support, are reserved to the UK Government rather than the devolved Administrations, which will still be tasked with providing the support to farmers. I must stress that this is a new reservation; it is a centralisation of function that does not currently exist, so I urge Members to support amendment 39 to remove that from the Bill.<sup>433</sup>

The amendment was defeated on division by 332 votes to 56.

## 19.5 Third Reading

[At Third Reading](#), the Secretary of State George Eustice noted that the Bill was introduced in the last Parliament and had been strengthened since then. He referred to Government commitments to guarantee the current annual budget for every year of this Parliament and to maintaining high standards in all trade deals:

This is the second outing of this Bill. I was involved in the last Parliament at Committee stage for the first. We have made a number of changes since then, including strengthening parliamentary scrutiny with the requirement for a multi-annual plan; a strengthened duty around food security, with five-yearly reviews of food security; and a new clause on the importance of food production. Finally, I am conscious that animal welfare has been a big feature of the debate. The Government have a manifesto commitment that in all trade deals, they will not compromise on our high environmental protection, animal welfare and food standards.<sup>434</sup>

The Shadow Secretary of State, Luke Pollard said that Labour would take the unusual step of voting against the Third Reading:

Labour will not allow farmers to go out of business to secure a trade deal with Donald Trump. It is unusual for any party to vote against Third Reading of a Bill, but we will vote against this Bill because the issue of farm standards for our food is not a technical one; it is fundamental to what kind of country we are. We support high standards for our British farmers, and we demand that all food imported into our country after our Brexit transition periods ends adheres to those same high standards that our British farmers have to adhere to.<sup>435</sup>

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<sup>432</sup> Agriculture Bill (2019-21) Report Stage, [HC Deb 13 May 2021. c296](#)

<sup>433</sup> Ibid. [c299](#)

<sup>434</sup> Ibid. [c350](#)

<sup>435</sup> Ibid. [c350](#)

The Bill passed its Third Reading by 360 votes to 211.

## 20. Lords Stages

### 20.1 Overview of stages

The Bill had its First Reading in the House of Lords on 18 May 2020, and the Second Reading debate was held on 10 June. It was then committed to a Committee of the Whole House, which considered the Bill over seven sittings between 7 and 28 July 2020.

Following the summer recess, the Bill subsequently had its Report Stage over three sittings between 15 and 22 September. The Third Reading debate was held on 1 October, and the Bill was then returned to the Commons, where consideration of Lords amendments took place on 12 October.

The Defra Minister in charge of the Bill was Lord Gardiner of Kimble, supported by the Government Whip Baroness Bloomfield of Hinton Waldrist. For the Opposition, Shadow Defra Spokespersons Lord Grantchester and Baroness Jones of Whitchurch, as well as Opposition Whip Baroness Wilcox of Newport, represented the front bench.

In total, 54 amendments were made to the Bill at various Lords stages. 47 of these originated from the Government (including one which was co-tabled with a non-Government Peer), and seven non-Government amendments were also agreed (six on division, plus another which was treated as consequential to one of these and not divided on). Two non-Government amendments were disagreed on division. All of the divisions took place at Report Stage.

Although 54 amendments were made to the Bill as it passed through the Lords, only 46 amendments were listed as coming back to the Commons, as some of the Lords amendments amended other Lords amendments. Clause numbers in the [Lords amendments as returned to the Commons](#) refer to the Bill as first printed for the Lords ([HL Bill 112](#), i.e. before the Lords amendments were made).

### 20.2 Background

Between the Bill leaving the House of Commons on 13 May, and returning on 12 October, some developments occurred outside the Chambers of the two Houses, both on the Bill itself and on wider relevant policy issues.

Two House of Lords Committees published reports on the Bill. These were:

- Delegated Powers and Regulatory Reform Committee, [13<sup>th</sup> Report of Session 2019-21](#), HL Paper 69, 3 June 2020
- Constitution Committee, [8<sup>th</sup> Report of Session 2019-21](#), HL Paper 80, 23 June 2020

The Delegated Powers and Regulatory Reform Committee concluded that the Bill was a “marked improvement” on its predecessor, but noted that it “still contains a significant transfer of power from the EU to Ministers of the Crown”.<sup>436</sup> The Constitution Committee also welcomed changes to the Bill but expressed some concerns, including on the various delegated powers in the Bill, and reiterated its conclusion from a previous report that “the UK Government must engage effectively with the devolved institutions on treaties that involve areas of devolved competence”.<sup>437</sup>

In addition, two other parliamentary committees published reports including recommendations on various aspects of UK food policy:

- House of Lords Select Committee on Food, Poverty, Health and the Environment, [\*Hungry for change: fixing the failures in food\*](#), HL Paper 85, 6 July 2020
- House of Commons Environment, Food and Rural Affairs Committee, [\*COVID-19 and food supply\*](#), HC 263, 30 July 2020

On 16 June, the Environment, Food and Rural Affairs Committee also held a public evidence session with Defra officials on progress in delivering the new Environmental Land Management (ELM) scheme.<sup>438</sup>

Finally, [\*Part One of the National Food Strategy\*](#) was published on 29 July. This is part of an independent review, commissioned by Defra and being led by Henry Dimbleby, into the food system in England (see also section 6.1 above). Part One was presented as containing “urgent recommendations” on two key themes (disadvantaged children, and trade standards) in the light of the Covid-19 pandemic and the end of the EU exit transition period on 31 December 2020. Part Two is expected in early 2021 and will include “a comprehensive plan for transforming the food system”.<sup>439</sup>

All of this occurred against the backdrop of the ongoing Covid-19 pandemic, which was referred to by many Peers during the passage of the Bill through the Lords. Section 15.1 above provides background information (as at May 2020) on the impact of Covid-19 on stakeholder views of the Bill.

## 20.3 Second Reading

The Second Reading debate on the Bill was opened by Defra Minister Lord Gardiner of Kimble. He called the Bill “the beginning of a journey that we acknowledge will take time” and said that the Government will “put farmers and land managers at the heart of that journey”.<sup>440</sup>

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<sup>436</sup> House of Lords Delegated Powers and Regulatory Reform Committee, [\*13<sup>th</sup> Report of Session 2019-21\*](#), HL Paper 69, 3 June 2020, para 21

<sup>437</sup> House of Lords Constitution Committee, [\*8<sup>th</sup> Report of Session 2019-21\*](#), HL Paper 80, 23 June 2020, paras 16, 26-36

<sup>438</sup> Environment, Food and Rural Affairs Committee, [\*Oral evidence: Environmental Land Management Schemes\*](#), HC 445, 16 June 2020

<sup>439</sup> National Food Strategy, [\*National Food Strategy: Part One\*](#), July 2020, p. 7

<sup>440</sup> HL Deb 10 Jun 2020, [c1753](#)

For the Opposition, Shadow Defra Spokesperson Lord Grantchester welcomed the “better balance” of food production and environmental sustainability compared with the previous *Agriculture Bill*, but raised the question of whether food should be considered a public good in the light of the Covid-19 pandemic. He set out “three key tests” for the Bill:

The three key tests of the Bill are that: first, it must secure a safe and traceable supply of nutritious food; secondly, it must ensure ELM schemes are effective, supporting jobs, investment and research for a sustainable environment and planet; and, thirdly, it must insist on high standards, clear equivalence and a level playing field to enhance the health of the nation.<sup>441</sup>

In closing the debate, the Minister set out the Government’s position that “all EU food safety, animal welfare and environmental standards will be retained and form part of our domestic law”, and also reiterated the commitment to work with land managers on the future agriculture policy:

Change can be testing, so the Government will work closely with farmers to ensure that schemes work for the farmer and the country. Farming is the backbone of the countryside; farming communities are at the heart of the wider community. The food and drinks industry is vital to this country; so is a resilient and healthy environment. They must go hand in hand.<sup>442</sup>

The issue of import standards was raised at length in subsequent stages of the Bill, as explained below. See Box 4 for background to this issue.

#### **Box 4: Standards for agri-food imports**

Much of the debate around the *Agriculture Bill* has centred around concerns that standards applicable to UK agri-food products will not be applied to imports under future international trade agreements, with some arguing that this would lead to undercutting of British producers. Some stakeholders have therefore called for amendments to the Bill aimed at preventing this from happening.

The Government’s position has consistently been that it will not compromise UK standards, and that all current legal standards deriving from the EU, such as prohibitions on chlorine-washed chicken and hormone-treated beef, will be converted into domestic law at the end of the transition period (i.e. 31 December 2020), under the terms of the *European Union (Withdrawal) Act 2018* (as amended). The Government has said that any change to these rules would require legislative change. This was reiterated in a joint letter to MPs from Defra Secretary George Eustice and International Trade Secretary Liz Truss, dated 5 June 2020.<sup>443</sup>

Existing law extends some applicable domestic standards to imports. However, some stakeholders have called for the Government to make a specific legal commitment that standards will be maintained in future trading relationships. For example, the National Farmers’ Union has collected signatures to a petition calling for the Government to “put into law rules that prevent food being imported to the UK which is produced in ways that would be illegal here”.<sup>444</sup>

For more information on these issues, see the Library briefing paper on [Brexit: trade issues for food and agriculture](#) (CBP 7974, 5 November 2019).

<sup>441</sup> HL Deb 10 Jun 2020, [c1754-7](#)

<sup>442</sup> HL Deb 10 Jun 2020, [c1830-34](#)

<sup>443</sup> Rt Hon Elizabeth Truss MP and Rt Hon George Eustice MP, [Dear Colleague letter](#), 5 June 2020, linked from *ENDS Report*, [Scepticism as Truss and Eustice pledge ‘no compromise’ on food standards](#), 8 June 2020 [paywall]

<sup>444</sup> NFU, [Food standards petition](#) [accessed 8 October 2020]

## 20.4 Committee Stage

### Overview

Debate in Committee Stage was structured around a range of amendments dealing with various aspects of the Bill. These included financial assistance under the Bill, as well as amendments dealing with agri-food supply chains, rural development, agricultural labour, gene editing, agricultural tenancies, smallholdings, common land and the relationship with the devolved administrations.

The only amendments that were agreed originated from the Government (see below), and there were no divisions held on any amendments. Many of the matters covered in the Committee Stage debate subsequently became the subject of amendments at Report Stage, and the substance of those amendments that were agreed or disagreed is dealt with in the next section of this paper.

At Committee, there was discussion of the financial assistance powers under the Bill, and the purposes for which financial assistance could be given. There was some discussion of whether food security should be included among these purposes. Baroness McIntosh of Pickering (a former Chair of the House of Commons EFRA Committee) argued that “issues around food security can be considered within the ambit of public goods, particularly as it contributes to the health and well-being of the nation’s citizens”.<sup>445</sup> Shadow Defra Spokesperson Baroness of Jones of Whitchurch also argued that “feeding our nation is a public good”, referring to the “precarious” nature of international supply chains highlighted by the Covid-19 pandemic.<sup>446</sup>

However, Lord Gardiner reiterated the Government’s view that the production of food is already rewarded by the market:

Growing healthy, nutritious food is, of course, the primary role of farmers. It is something that farmers in the United Kingdom do exceptionally well. Through the purposes in Clause 1, the Government want to support goods that benefit society but are not currently provided for by the market. The noble Baroness, Lady Jones of Whitchurch, is absolutely right: I said it at Second Reading and I say it again. The point about food, in contrast, is that it can be bought and traded: it is rewarded in the market and, indeed, those of us who farm receive income from our production.<sup>447</sup>

### Government amendments

17 amendments were agreed, all tabled by the Government.

**Lords Amendment 10** is to the section of the Bill allowing for a body (expected to be the Agriculture and Horticulture Development Board) to be assigned functions relating to animal traceability (see section 11.2 above). This relates to the introduction of a new Livestock Information System. The amendment provides that, if these functions are exercisable in relation to the devolved nations, the approval of the relevant

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<sup>445</sup> HL Deb 14 Jul 2020, [c1603](#)

<sup>446</sup> HL Deb 14 Jul 2020, [c1635-6](#)

<sup>447</sup> HL Deb 14 Jul 2020, [c1637](#)

devolved administration is required before the Secretary of State can assign them.

**Lords Amendments 13 and 14** likewise provide that the Secretary of State must obtain the consent of a devolved administration before exercising the power to make regulations relating to the certification of organic products (see section 12.1 above), if the regulations contain provisions that would otherwise be within their competence (such as regulations that would have cross-border effect).

In relation to these amendments, Lord Gardiner said in Committee that “the preference of colleagues in the devolved Administrations is for a consent requirement to be added”, and that the Government “remain[s] wholly committed to seeking legislative consent for all provisions that engage the [Sewel] convention”.<sup>448</sup>

**Lords Amendment 15** relates to the WTO Agreement on Agriculture, and a power for the Secretary of State to make regulations for the purpose of securing compliance with this (see section 13 above). The Bill as introduced to the Lords provided that these regulations could “make provision requiring a devolved authority to provide information to the Secretary of State”.

Amendment 15 removes this power. Lord Gardiner clarified that the Government considers Part 6 of the Bill (on the WTO Agreement) to deal with reserved matters, but that it had been assured that “these subsections are not required in law” and had “reached agreement with the devolved Administrations to remove them from the Bill”.

Lord Gardiner said that this amendment “now removes any Part 6 provisions in scope of the Sewel convention”. He also said that:

It is our intention to enshrine this commitment in a concordat to be developed between the UK Government and all the devolved Administrations, which will sit alongside the regulations made under Part 6.<sup>449</sup>

**Lords Amendments 32 to 44** deal with the commencement of certain provisions. They allow the powers under the Bill to make regulations to come into force from the day of Royal Assent, alongside various connected amendments to the commencement clauses of the Bill.

Lord Gardiner explained in Committee that the rationale for these amendments is due to delays in progressing the Bill:

The consequences of coronavirus have placed great pressure on parliamentary timetables. The Bill has therefore not progressed at the pace we originally anticipated, creating a need to act quickly after the Bill receives Royal Assent. These amendments will allow the Government to introduce the Bill’s provisions smoothly and, in particular, to ensure there is no gap in powers to continue to operate our existing schemes and provide financial assistance to farmers and land managers.<sup>450</sup>

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<sup>448</sup> HL Deb 21 Jul 2020, [c2193](#)

<sup>449</sup> HL Deb 21 Jul 2020, [c2193](#)

<sup>450</sup> HL Deb 28 Jul 2020, [c238](#)

He provided as an example the power in Clause 10 to make regulations providing for the Basic Payment Scheme to continue in 2021.<sup>451</sup> In the Bill as introduced to the Lords, this provision (along with all others that were not individually given a commencement date) would have come into force two months after Royal Assent.<sup>452</sup>

## 20.5 Report Stage

### Overview

Report Stage of the Bill lasted three days (15, 17 and 22 September 2020) and covered a wide range of subjects. This included amendments to delay or otherwise modify the agricultural transition period, around animal welfare (including live exports and animal sentience), marketing standards, geographical indications, and the supply chain / fair dealing provisions of the Bill (including amendments to expand the role of the Groceries Code Adjudicator).

Most of these amendments were either not moved, or were withdrawn. 31 amendments were made to the Bill at Report Stage, and seven of these were non-Government amendments (six were agreed on division, while another was treated as consequential to one of these and not divided upon). The following sections provide more information on those amendments which were agreed (and returned to the Commons), as well as two non-Government amendments which were defeated following a division.

### Import standards

At Report, as at previous stages of the Bill in the Commons and Lords, a number of amendments were tabled relating to the issue of standards for imports under future trade agreements. Some of these provided for Parliament to play a role in agreeing new trading relationships; see Box 5 for background information on this issue.

As it returns to the Commons, the Bill includes three amendments in particular dealing with this. They are **Lords Amendments 12 and 16** (originally tabled by Shadow Frontbencher Lord Grantchester and others), and **Lords Amendment 18** (tabled by Lord Curry of Kirkharle and others).

### Requirement for imports to meet UK standards

**Lords Amendments 12 and 16** are closely linked, as LA12 refers to a new clause inserted by LA16. The new clause is entitled **Requirement for agricultural and food imports to meet domestic standards**. It includes several provisions (this summary is non-exhaustive):

- Chapters of an international trade agreement relating to agri-food imports would be prevented from being “ratified” unless a number of conditions are met.
- These conditions include a statement being laid before Parliament confirming that any agri-food import will have been produced to standards equivalent to, or exceeding, the “relevant domestic

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<sup>451</sup> Ibid.

<sup>452</sup> [HL Bill 112](#), Clause 53(6)

standards and regulations” in areas including animal welfare, environmental protection, food safety and plant health.

- Another condition would be that the Secretary of State has specified, by regulations subject to the affirmative procedure, what the “relevant domestic standards and regulations” are, and how it will be determined that imports meet the previous requirement.
- The relevant chapters of the trade agreement would need to be approved by a resolution of the House of Commons, and a motion tabled in the House of Lords.

Connectedly, LA12 inserts a subsection into the section of the Bill dealing with marketing standards (Clause 35 in the Bill as it left the Commons, Clause 39 as it ultimately was in the Lords). This clause allows the Secretary of State to make regulations about the marketing standards to which agricultural products must conform, and includes a list of matters “such as” may be covered by these regulations (see section 12 above for more information). LA12 inserts a reference to “a statement of compliance with the relevant domestic standards and regulations” (under the new clause inserted by LA16) into this list.

In introducing these amendments, Lord Grantchester argued that “low-quality food cannot be allowed to jeopardise rural communities by undercutting UK farmers with product made using methods that would be illegal here”:

The strong theme running through your Lordships’ deliberations on the Bill is that of standards. This is not just a matter of food safety. Standards are important in husbandry methods—agricultural, horticultural and forestry—environmental and climate aspects, food nutrition and labelling, and imported foodstuffs marketed in this country. This group of amendments will determine how the UK’s standards will be set at the outset of our EU exit, and how they will be maintained.<sup>453</sup>

However, Lord Gardiner reiterated the Government’s position that existing standards will be retained as the legal default, and argued that the requirements set out in the amendments would create difficulties for future trade deals:

The EU (Withdrawal) Act 2018 retains in law our standards on environmental protections, animal welfare, animal and plant health and food safety at the end of the transition period. This provides a firm basis for maintaining the same high level of protection for both domestic and imported products. Any changes to legislation would require these to be brought to Parliament and the usual parliamentary scrutiny processes to apply. The noble Lord, Lord Grantchester, and my noble friend Lady Neville-Rolfe referred to beef and poultry. Notably, this includes the EU law banning the import and production of hormone-treated beef, which has been transposed into domestic law and will continue to operate in the UK after the end of the transition period, applying in all parts of the UK.

I also reiterate that existing food safety provisions relating to pathogen reduction treatments permitted on poultry carcasses will

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<sup>453</sup> HL Deb 22 Sep 2020, [c1727](#)

continue to operate independently in UK law after the transition period. It remains the case in the UK that no substances other than potable water are approved to wash poultry carcasses. [...]

The requirements set out in Amendment 89ZA [now Lords Amendment 12] and, more importantly perhaps, Amendment 93 [now Lords Amendment 16], would create a potentially vast set of conditions applicable to imports under trade agreements that do not apply under any agreement the UK, or indeed the EU, has today. This broad scope and application would create significant uncertainty about the terms of trade under any FTA and could lead to disruption under those that we are currently seeking to roll over but have not yet ratified. For future agreements, including those we currently have but will wish to update in future, the uncertainty inherent in this amendment would, in our view, cast doubt on the benefits any deal could secure for UK agri-food businesses.<sup>454</sup>

LA12 (Amendment 89ZA, as it was) was subject to a division at Report Stage in the Lords. The amendment was agreed 307-212.<sup>455</sup> LA16 (originally Amendment 93) was agreed without division; Lord Grantchester had previously indicated that “the Government agree that Amendment 93 is understood to be consequential to Amendment 89ZA”.<sup>456</sup>

The passage of the amendments was welcomed by some stakeholders including the British Veterinary Association and the Which? consumer group.<sup>457</sup>

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<sup>454</sup> HL Deb 22 Sep 2020, [c1756-7](#)

<sup>455</sup> HL Deb 22 Sep 2020, [c1761-3](#)

<sup>456</sup> HL Deb 22 Sep 2020, [c1726](#)

<sup>457</sup> BVA, [Government must listen as Agriculture Bill amendment on animal welfare standards voted through in the House of Lords, say vets](#), 23 September 2020; Which?, [As a crucial vote approaches, will MPs protect the UK's food standards?](#), 7 October 2020

### Box 5: Parliamentary scrutiny of trade agreements

Parliament's formal role in UK trade agreements is limited. Its role in the ratification of treaties is governed by the [Constitutional Reform and Governance Act 2010](#) (CRaG). Parliament has no formal role in the negotiations and does not have to debate, vote on or approve them. While Parliament can delay ratification (indefinitely, in theory), the Act's powers have been described by the Lords Constitution Committee as poorly designed to facilitate parliamentary scrutiny of treaties. The International Trade Committee (ITC), and the House of Lords International Agreements Sub-Committee (IAC), can scrutinise trade agreements, but also have no formal powers to veto or amend them.

There have been many calls for Parliament to have a greater role in, for example, setting the negotiating mandate for trade negotiations, debating trade agreements and approving their ratification. Many other countries' parliaments are more involved in treaty scrutiny, not least because treaties now cover a wide range of important policy areas. For more information, see the Library paper on the [Trade Bill 2019-21](#) (CBP 8854, 18 May 2020).

International Trade Secretary Liz Truss made a written statement on 12 October 2020 setting out "transparency and scrutiny arrangements for international trade deals", starting with the UK-Japan Comprehensive Economic Partnership Agreement. This stated that agreements will be shared with the ITC and IAC in advance of being laid Parliament through the CRaG process. The statement said that the Government "will always endeavour to make sure the committees have at least 10 sitting days to read through these on a confidential basis".<sup>458</sup>

The International Trade Secretary also wrote to ITC Chair Angus Brendan MacNeil on 12 October setting out some further detail on the Japan agreement, including that the Government will "endeavour to provide time for the text of the Japan agreement to be debated in the Commons and the Lords" during the CRaG process if recommended by the Committees, subject to Parliamentary time.<sup>459</sup>

## Trade and Agriculture Commission

**Lords Amendment 18**, along with other amendments at Report Stage which did not succeed, deals with the establishment of a Trade and Agriculture Commission. As explained in section 15 above, the formation of such a body to consider issues of trade and standards had been called for by external stakeholders, and the Government announced in July 2020 that a Commission would be set up for six months and submit an advisory report to the Department for International Trade.

Lords Amendment 18 would put the Trade and Agriculture Commission (TAC) on a statutory and permanent footing, and create parliamentary processes in relation to its reports. The TAC would be obliged, within three months of the Bill receiving Royal Assent (this period could be amended through regulations with the TAC's agreement), to produce a report making recommendations to "promote, maintain and safeguard current standards of food production through international trade policy", including standards relating to food safety, the environment and animal welfare.

Within three months of this report being published, the Government would be required to respond to it (through a document laid before

<sup>458</sup> [HCWS499](#) [on Transparency and Scrutiny Arrangements with the International Trade Committee and the International Agreements Sub-Committee for the UK-Japan Comprehensive Economic Partnership Agreement], 12 October 2020

<sup>459</sup> [Rt Hon Elizabeth Truss MP to Angus Brendan MacNeil MP](#), 12 October 2020

Parliament, and a statement), including “how the Secretary of State intends to maintain the United Kingdom’s standards”. The Government would also be required to “table motions for resolution regarding the response” in each House and, under subsection 13:

It shall be an objective of the Secretary of State to achieve outcomes consistent with the relevant resolutions passed under subsection (12).

Furthermore, the TAC would also produce a report relating to each international trade agreement “agreed, negotiated or concluded” by the Government, before such an agreement is signed. A parliamentary process is set out for such reports:

- The report must be laid before Parliament, and a motion must be moved in each House to consider any recommendations in the report.
- The relevant trade agreement could not be signed within 21 days of this motion being moved.

Lord Curry, in speaking to his amendment, argued that the expertise accrued by the time-limited TAC as established by the Government should be retained:

I compliment the Government for establishing the Trade and Agriculture Commission. It was a very welcome decision and I look forward to the report it has been commissioned to deliver by the end of the year. While we are debating this Bill, the commission are researching the fine print of WTO rules. I absolutely agree that those rules should be what determine our trade policy. They are researching what is possible and what is not and what good trade deals might look like. By the time they complete their investigations and research, we will have established a wealth of knowledge on the subject. My challenge is, why, having established that resource, would one send them all home for Christmas, never to be seen again? The logic of retaining that valuable knowledge—that talent—to scrutinise future trade deals to make sure that they comply with the standards and terms in their initial report is obvious. I am disappointed that the Government have resisted the pressure to give the commission an ongoing role.<sup>460</sup>

Shadow Defra Spokesperson Lord Grantchester supported Lord Curry’s amendment, although he also referred back to the passage of Amendments 89ZA and 93 in arguing that the establishment of the TAC should go alongside a legislative requirement to maintain standards for imports:

In Committee, I expressed anxiety about the approach of a Trade and Agriculture Commission, should this be the only way that UK food and production standards could be maintained as future trade deals are negotiated. From these Benches, we wanted to secure the enactment of the UK’s minimum level of food standards by enshrining it in legislation. That your Lordships’ House passed this measure earlier tonight has added to our confidence that the House of Commons is being asked to think again on this issue.

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<sup>460</sup> HL Deb 22 Sep 2020, [c1788-9](#)

This allows us to approach these amendments with confidence that the Trade and Agriculture Commission could provide valuable insights and independent analysis on all trade deals concerning food standards, which would encompass the equivalents of production methods, welfare standards and environmental conditions that apply in the UK.<sup>461</sup>

In opposing the amendments on the TAC, Defra Minister Lord Gardiner argued that existing bodies such as the Food Standards Agency would “ensure that the full range of standards and import requirements within their remits are upheld”. He also referred to the Department for International Trade’s existing Agri-food [Trade Advisory Group](#) (TAG), as well as supply chain advisory groups run by Defra, which he said “already provide valuable expert advice to help the Government develop trade policy and they will continue to do so”.<sup>462</sup> On Amendment 101 specifically, Lord Gardiner said:

With regard to Amendment 101, the established Trade and Agriculture Commission is fully free to consider and make recommendations on any of the issues laid out in the amendment, including on the need for other groups, trade policy measures or duties on government relating to the examination of trade agreements. Indeed, work is already under way considering these issues. The establishment of the Trade and Agriculture Commission and the wide inclusion of authoritative figures are testament to the fact that the Government recognise the need for advice on these matters and will listen.<sup>463</sup>

Amendment 101 (as it was) was subject to a division, and it was agreed 249-200.<sup>464</sup> Minette Batters, President of the National Farmers’ Union (which is represented on the TAC), welcomed the amendment’s passage:

It is fantastic that the House of Lords have voted for Lord Curry’s amendment to the Agriculture Bill, which would allow Parliament to be provided with independent advice about the impact every trade deal will have on our food and farming standards. We believe the role of the Trade and Agriculture Commission is crucial to providing proper parliamentary oversight of our future trade policy and it is encouraging to see Peers support this view.<sup>465</sup>

## Financial assistance plans

**Lords Amendments 1 and 2** are to the section of the Bill dealing with multi-annual financial assistance plans (see section 3.3 above).

**Lords Amendment 1** was originally tabled by Shadow Frontbencher Baroness Jones of Whitchurch, and others. It would require the Secretary of State to “have regard to the current environmental improvement plan” when setting out the strategic priorities for giving financial assistance” during a plan period.

Environmental improvement plans (EIPs) are provided for in the current *Environment Bill 2019-21*, and they would cover a period not shorter

<sup>461</sup> HL Deb 22 Sep 2020, [c1798](#)

<sup>462</sup> HL Deb 22 Sep 2020, [c1800](#)

<sup>463</sup> HL Deb 22 Sep 2020, [c1801](#)

<sup>464</sup> HL Deb 22 Sep 2020, [c1818-20](#)

<sup>465</sup> NFU, [Lords vote for Agriculture Bill amendment in favour of trade deal scrutiny](#), 29 September 2020

than 15 years. The Government's current *25 Year Environment Plan* (published in January 2018) would be taken as the first EIP under the *Environment Bill*. For further information, see section 3.3 of the Library paper on the [Environment Bill](#) (CBP 8824, 18 February 2020).

Baroness Jones said that the amendment would “forge a critical link between the Agriculture Bill, the Environment Bill and the 25-year environment plan”, arguing that without such a link, “it would be entirely possible for a future Secretary of State to set out strategic priorities for financial assistance under this Bill that bear no relationship to the key environmental strategy set out elsewhere”.<sup>466</sup>

Government Whip Baroness Bloomfield sought to reassure Baroness Jones that “the Government will fully take into account the proposed steps and goals of environmental improvement plans, including the 25-year environment plan, when they determine the strategic priorities”. She said that the Government would review the ELM scheme in the event of changes to the 25 Year Environment Plan or a future EIP, “to ensure that the public goods that it is funding remain in line with delivering the priority goals and commitments that the Government have set out in the plan”.<sup>467</sup> The amendment was agreed on division 258-208.

**Lords Amendment 2** is a Government amendment dealing with the timing of publication of the plans. As introduced to the Lords, the Bill provided that each plan would be published “before the beginning of the plan period”. The amendment provides a more specific timescale:

- in the case of the first plan (covering the 7-year period beginning with January 2021), it will be published “as soon as practicable before the beginning of the plan period”.
- in the case of a subsequent plan, it will be published “at least 12 months before the beginning of the plan period”.

Lord Gardiner explained that the Government had reflected on the matter following Committee Stage:

The Government recognise the need for certainty, which is why we have committed to the seven-year transition and pledged to guarantee the current annual budget to support farmers and land managers in every year of this Parliament. That is why we have committed always to have a multiannual financial assistance plan in place. It is also why the Government have added Amendment 35 to Clause 4, which will require the Secretary of State to publish subsequent plans 12 months before they come into effect. [...]

This period will allow our farmers and land managers time to prepare their business activities accordingly. We also think that a 12-month period should reduce the likelihood of a new plan becoming out of date before it comes into effect.<sup>468</sup>

## Food security

**Lords Amendments 5-8** amend the section of the Bill providing for food security reports to be laid before Parliament (see section 6.1

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<sup>466</sup> HL Deb 15 Sep 2020, [c1230](#)

<sup>467</sup> HL Deb 15 Sep 2020, [c1234-5](#)

<sup>468</sup> HL Deb 15 Sep 2020, [c1216-17](#)

above). As introduced to the Lords, the Bill would have required the Government to report to Parliament on data related to food security at least once every five years.

Some stakeholders had called for this reporting requirement to be more frequent. For example, the National Farmers' Union argued that "food security should be placed at the heart of wider government policies and there needs to be an annual reporting system".<sup>469</sup>

At Committee Stage, various amendments were tabled to increase the frequency of reporting, as well adding various other matters that the reports could cover. Lord Gardiner responded to these amendments by stressing that some of the datasets to be analysed in the reports are already published annually, and also clarified that:

The requirement to report within at least a five-year period allows time to observe key trends from a variety of sources. This would not be possible over a significantly shorter period. While we are committing to reporting within at least a five-year frequency, we consider this a maximum period. When we are able to publish the first report will depend upon a range of factors, including the availability of statistical data. Of course, we certainly will not wait for the end of the five-year period to publish the first report, which will include analysis of the impacts of the coronavirus pandemic.<sup>470</sup>

The Government subsequently tabled an amendment at Report Stage (alongside the Earl of Devon, who had tabled one of the Committee Stage amendments) to increase the minimum frequency to three years. Lord Gardiner explained that Government amendments would also require the first report to be published by the last parliamentary sitting day before 25 December 2021:

As I set out in Committee, the Government have no intention of waiting until the end of that five-year period to publish the first report. I and other Ministers have listened closely to the points made by your Lordships and have been persuaded that there is merit in changing the frequency of reporting in the Bill to require reports to be published at least every three years. We have also been persuaded to include a duty in the Bill that the first report be published on or before the last sitting day before 25 December 2021 for both Houses of Parliament. This first report will include an analysis of statistical data relating to the effects of coronavirus on food security in the UK. The amendments that I have tabled reflect the importance of this new duty while maintaining the great benefit of allowing reports to cover long-term trends.<sup>471</sup>

## National Food Strategy

**Lords Amendment 9** inserts a new clause dealing with a **National Food Strategy**. It would require the Government, within 12 months of the Bill receiving Royal Assent, to produce a strategy outlining steps to:

- increase sustainability of food production;
- support food production and consumption; and

<sup>469</sup> NFU, [NFU calls on government to prioritise food security and address UK self-sufficiency](#), 21 August 2020

<sup>470</sup> HL Deb 21 July 2020, [c2174](#)

<sup>471</sup> HL Deb 17 Sep 2020, [c1431](#)

- improve dietary health and reduce obesity,

The Government would also be required to develop a standardised set of reporting metrics on health and sustainability across the food system, to measure progress on implementation of the strategy. Furthermore, the strategy would need to “set out proposals for independent oversight of aspects of food policy covered”, and “consider whether responsibility for such oversight” should be given to an existing organisation or a new non-departmental public body.

Lords Amendment 9 began as Amendment 78 at Report Stage, tabled by Lord Krebs and others. He argued that any actions arising from the [National Food Strategy independent review](#) already commissioned by Defra “might not arise until some distant future”:

I anticipate that the Minister will say in his reply that the Government have commissioned Henry Dimbleby to prepare a report on the national food strategy and are committed to publishing a White Paper within six months of his final report, and that this amendment is therefore unnecessary. However, this process may well take us into mid-2022. Any actions that follow would not only be uncertain; they might not arise until some distant future.

Fixing the failures in our food system is too urgent for further delay. If the disagreement is about not whether but when, let us get on with it now. Neither the children whose lives will be blighted by ill-health from unhealthy foods nor the environment that is being damaged by food production can wait any longer.<sup>472</sup>

Shadow Frontbencher Baroness Jones of Whitchurch also supported the amendment. Lord Gardiner responded that “the Government are committed to developing a food strategy” and argued that it would be “unusual to put detailed commitments into this enabling legislation”. The Minister also raised concerns with the proposed timing and scope of a statutory strategy:

The Government have been very firm on their commitment to publish a food White Paper within six months of Henry Dimbleby’s final report—my noble friend Lady McIntosh of Pickering referred to that. It is only reasonable to say that we will need that time to reflect and secure agreement from all government departments ahead of Henry Dimbleby’s final recommendations.

We must also be careful not to pre-empt the contents of the final report, providing the independent team the opportunity to assess independently which measures would be most effective for our food system. Specifying what the White Paper must cover at this stage brings with it the risk that it directs thinking in a certain way, which could lead to new and innovative ideas being missed. It would therefore be premature to set out exactly what the Government’s food strategy must cover in the way that the amendment prescribes. The Government also have an issue with fixing a timetable without certainty on the publication date of the final report.<sup>473</sup>

The amendment was pressed to a vote, and passed 280-218.<sup>474</sup>

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<sup>472</sup> HL Deb 17 Sep 2020, [c1445](#)

<sup>473</sup> HL Deb 17 Sep 2020, [c1459-60](#)

<sup>474</sup> HL Deb 17 Sep 2020, [c1463-65](#)

## Climate change targets

**Lords Amendment 17** inserts a new clause entitled **Contribution of agriculture and associated land use to climate change targets**. It would create a duty on the Secretary of State, in performing functions under the Bill, to “have due regard” to the 2050 “net zero” target in the *Climate Change Act 2008* (as amended), as well as international climate change treaties such as the Paris Agreement.

The new clause would require an interim target to be set for 2030, to provide for “agriculture and associated land use to reduce and sequester climate change emissions in a manner commensurate with meeting the target for 2050”. For further information on the 2050 target and the *Climate Change Act 2008*, see the Library paper on [Net zero in the UK](#) (CBP 8590, 16 December 2019).

The amendment was originally tabled by Labour Frontbencher Baroness Jones and others. She quoted the Committee on Climate Change’s (CCC) 2020 report on progress in reducing emissions, which said that “the current voluntary approach has failed to cut agricultural emissions”.<sup>475</sup>

Lord Gardiner responded by saying that the absence of legally defined sector-specific targets “ensures that we can meet our climate change commitments in the most cost-effective way across the economy, maximising social and environmental benefits and mitigating damaging trade-offs”. He also pointed to the existing mention of adaptation and mitigation under Clause 1 of the Bill, and quoted the CCC’s 2019 *Net zero* report, which stated that “it is difficult to reduce agriculture emissions to near-zero given the inherent biological processes and chemical reactions arising from crops, soils and livestock”.<sup>476</sup>

The amendment was the subject of a division, and was agreed 249-200.<sup>477</sup>

## Pesticides

**Lords Amendment 11** deals with pesticides, and was originally tabled by Lord Whitty and others. It would require the Secretary of State to make regulations “prohibiting the application of any pesticide for the purposes of agriculture or horticulture” near:

- any building used for human habitation;
- any building or open space used for work or recreation; or
- any public or private building where members of the public may be present, including but not limited to—
  - schools and childcare nurseries;
  - hospitals.

<sup>475</sup> Committee on Climate Change, [Reducing UK emissions: Progress Report to Parliament](#), June 2020, p. 20

<sup>476</sup> HL Deb 22 Sep 2020, [c1813-5](#); Committee on Climate Change, [Net Zero: The UK’s contribution to stopping global warming](#), May 2019, p. 147

<sup>477</sup> HL Deb 22 Sep 2020, [c1818-20](#)

The regulations would need to specify a minimum distance to be maintained from any of these locations during the application of any pesticide. They would be subject to the affirmative procedure. Lord Whitty said that “this amendment would have the effect of protecting members of the public from hazardous health impacts near buildings”, and called it “a very small but vital part of the journey to protect our rural populations”.<sup>478</sup>

Shadow Frontbencher Baroness Jones said that the Opposition would support the amendment if the Minister could not provide assurances to Lord Whitty, and she also questioned the Government on wider aspects of pesticides policy:

In Committee, the Minister confirmed that once we have left the EU at the end of the year, we will take responsibility for our own decisions on pesticide use in the UK. She also confirmed that the Government will consult on a national action plan to reduce pesticide use later this year, so it would be helpful if the noble Lord could update your Lordships on the timetable for that consultation and the progress to date. Can he also confirm that any recommendations will continue to be based on the precautionary principle?<sup>479</sup>

Lord Gardiner referred to the existing [Code of Practice for Using Plant Protection Products](#), as well as the Government’s commitment in the [25 Year Environment Plan](#) to promote integrated pest management (IPM):

All users of pesticides are required to follow the statutory conditions of use for any pesticides they use. They should also follow the guidance contained in the *Code of Practice for Using Plant Protection Products*. The code requires that all users take reasonable precautions to protect the health of people, creatures and plants, to safeguard the environment, and, in particular, to avoid pollution of water. The code specifies that users must ensure that pesticides are only applied in the appropriate weather conditions with the correct, properly adjusted equipment, and that applications must be confined to the area intended to be treated. Collectively, these controls ensure that people are properly protected, based on appropriate risk assessments. They allow pesticides to be used where this is safe and will help UK farmers to provide a supply of high-quality affordable food. [...]

A number of points have been made by noble Lords, but I particularly want to pick up the matter raised by the noble Baroness, Lady Finlay, and the noble Lord, Lord Whitty, and deal with the precise issue of lacuna and gap. That is precisely why the upcoming consultation on the draft updated UK National Action Plan for the Sustainable Use of Pesticides will set out how the Government will deliver our 25-year environment plan commitment. I also say to the noble Baroness, Lady Jones of Whitchurch, and my noble friend the Duke of Wellington that as part of this, the Government are considering the extent to which targets may support the delivery of integrated pest management. The consultation on the national action plan will be launched later this year and will set out these plans in more detail.<sup>480</sup>

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<sup>478</sup> HL Deb 22 Sep 2020, [c1696](#)

<sup>479</sup> HL Deb 22 Sep 2020, [c1706](#)

<sup>480</sup> HL Deb 22 Sep 2020, [c1707-8](#)

Furthermore, the Minister argued that the amendment was “very sweeping and could well have undesirable and disproportionate effects”. For example, he said that he had received legal advice that the reference in the amendment to “any building or open space used for work” could in fact “prohibit the use of pesticides in agriculture entirely”.<sup>481</sup> The amendment passed by 276-228 on division.<sup>482</sup>

## Government technical amendments

**Lords Amendments 20-29** originated from the Government, and are technical in nature. They amend the list of provisions in the Bill for which the Secretary of State and the devolved administrations can make supplementary, incidental, consequential or transitional provisions, and Lord Gardiner said that they had been brought forward “at the recent request of the devolved administrations”:

The effect of these amendments is that the devolved Administration Ministers have the power to make supplementary and consequential provision to amend primary legislation, either UK or devolved, in all additional areas of the Bill where a legislative consent Motion is being sought.

This is not about filling any legislative gap or changing government policy. These are technical amendments which were needed to ensure that the devolved Administrations have the necessary powers to make such provisions, should it be required. The amendments reflect the slightly different powers each devolved Administration is taking in the Bill. For example, Clause 34, on agricultural tenancies, applies only to Wales.

Officials from the four Administrations have worked closely together on this issue to ensure that the scope of powers under Clause 50 provides all Ministers with the necessary powers, consistent with the devolution settlements. I am pleased the clause has been amended to satisfy Welsh, Scottish and DAERA Ministers.<sup>483</sup>

The Government also tabled technical amendments to various clauses in the Bill relating to EU law, as well as two new clauses on this subject (the latter of which appear as **Lords Amendments 3 and 4**). The new clauses are entitled **Continuing EU programmes: power to provide financial assistance** and **Retained direct EU legislation**.

Lord Gardiner explained that these amendments followed legal advice and are intended to resolve a “legal doubt” as to whether certain pieces of EU law, upon which provisions in the Bill (Clauses 14, 15 and 16) rely, would become “retained EU law”. This latter term refers to a body of EU law which will, at the end of the implementation period (i.e. after 31 December 2020), be “converted” into domestic UK law under the terms of the *European Union (Withdrawal) Act 2018* (as amended by the *European Union (Withdrawal Agreement) Act 2020*).

Clause 14, 15 and 16 relate to “other financial support after EU exit”, including for rural development and for fruit and vegetable producers. For more information on these clauses, see section 5 above.

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<sup>481</sup> HL Deb 22 Sep 2020, [c1709](#)

<sup>482</sup> HL Deb 22 Sep 2020, [c1712-14](#)

<sup>483</sup> HL Deb 22 Sep 2020, [c1827](#)

Lord Gardiner explained that certain provisions of the Withdrawal Agreement itself made it doubtful whether the required pieces of EU law would be retained:

Clauses 14, 15, 16 and their equivalents in the Welsh and Northern Irish schedules all rely on a body of retained EU law being created on implementation period completion day that can then be applied in domestic law and modified as required. Article 138 of the withdrawal agreement means that rural development programmes and some parts of the common market organisation will continue to operate under EU law after the end of the implementation period. However, Section 3(2)(a)(bi) of the European Union (Withdrawal) Act 2018 prevents EU legislation that is directly applicable in domestic law as a result of the withdrawal agreement under Section 7A of EWA also becoming retained EU law. I am sorry about this, but I want to go into some technical detail so that it is very clear to your Lordships.

This created a legal doubt as to whether the legislation governing the relevant rural development and CMO aid schemes would roll over to become retained EU law. These amendments therefore put that question beyond doubt by ensuring that a body of retained EU law relating to multi-annual agreements and programmes in rural development and CMO will be created at the end of the implementation period. They also provide a payment power to continue paying existing holders of agreements or programmes once the EU funding ends. This power to pay does not depend on modifying retained EU law. Such a power is necessary to ensure domestic funding can step in when existing EU budgets are exhausted in circumstances where these agreements and programmes continue to be regulated under the withdrawal agreement.

The amendments therefore ensure that legislation having effect in relation to existing programmes will become retained EU law, and allows the UK Government (and the Welsh and Northern Ireland administrations, but not Scotland – see below) to continue to make payments where agreements and programmes are currently supported under an EU programme.

Other amendments including **Lords Amendments 19, 30, 31, 45 and 46** amend Part 8 of the Bill (dealing with matters such as interpretation and territorial extent) in connection with the above provisions around retained EU law. They also amend the Wales and Northern Ireland schedules to allow those devolved administrations to amend retained EU law relating to apiculture.

## Amendments disagreed on division

Two non-Government amendments were disagreed upon division at Report Stage.

The first was Amendment 12 in the name of Lord Northbrook, which would have allowed financial assistance under Clause 1 of the Bill to be given for “supporting the domestic production of food and other agricultural products to the extent the Secretary of State considers necessary to ensure a sufficient level of food security”, having regard to the most recent food security report. This amendment was defeated 130-225.

The second was Amendment 88 in the name of Baroness McIntosh and others, dealing with the agricultural tenancies provisions in the Bill. As explained in section 11.4 above, Schedule 3 of the Bill provides an arbitration mechanism for farmers holding “1986 Act” tenancies, when no agreement has been reached with a landlord on requests that would enable the tenant to receive “relevant financial assistance” under the Bill.

Some stakeholders had called for corresponding provision to be made for the holders of “1995 Act” tenancies, and the amendment was intended to do this. However, Lord Gardiner said that “responses to our public consultation showed that there is not the same need for dispute provisions for farm business tenancies [under the 1995 Act] as there is for Agricultural Holdings Act tenancies”, arguing that the former are “modern commercial agreements negotiated more recently, and within the context of environmental schemes being available [...] They are reviewed more regularly, giving tenants the opportunity to renegotiate terms if they deem it necessary”. He also said that the Tenancy Reform Industry Group was “updating its guidance to support tenants and landowners in discussions about diversification and entering environmental schemes”.<sup>484</sup> The amendment was subsequently defeated 122-234.<sup>485</sup>

## 20.6 Third Reading

The Government moved six amendments at Third Reading. These now form part of **Lords Amendments 3, 4, 45 and 46** (the Third Reading amendment numbers do not all map directly onto Lords Amendments, as some of them amended previous amendments). These amendments are technical in nature, and are related to the technical amendments previously made at Report Stage.

One of the purposes of the amendments is to give Scottish Ministers the same power given to the other UK administrations under the new clause entitled “Continuing EU programmes: power to provide financial assistance”. Lord Gardiner said that this had been tabled at the request of the Scottish Government.<sup>486</sup>

The amendments also add EU legislation relating to promotion measures for agricultural products to the list of retained EU law under the new clause entitled “Retained direct EU legislation”. Lord Gardiner said that this had been tabled at the request of Northern Ireland’s Department of Agriculture, Environment and Rural Affairs (DAERA), which “wants to retain the ability to carry out agri-promotion legacy schemes in Northern Ireland under this legislation after the end of the transition period”.<sup>487</sup>

Finally, the amendments specify the resolution procedure to be followed when the devolved administrations in Wales and Northern Ireland

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<sup>484</sup> HL Deb 17 Sep 2020, [c1515](#)

<sup>485</sup> HL Deb 22 Sep 2020, [c1724-5](#)

<sup>486</sup> HL Deb 1 Oct 2020, [c306](#)

<sup>487</sup> Ibid.

exercise their powers to make regulations modifying retained EU law relating to apiculture, as previously inserted at Report Stage. Lord Gardiner explained that this detail had been omitted due to a “drafting oversight”.<sup>488</sup>

The Bill passed Third Reading on 1 October, and was returned to the Commons with amendments.

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<sup>488</sup> Ibid.

## 21. “Ping-pong”: Commons and Lords amendments

The Commons considered the Lords Amendments on 12 October 2020. The Government amendments were agreed. For the seven non-Government amendments:

- One was deemed to be disagreed to and was therefore not formally considered in the debate (**Lords Amendment 18**).
- Three were disagreed following divisions (**Lords Amendments 11, 16 and 17**).
- Three were disagreed without division (**Lords Amendments 1, 9 and 12**).

The Lords subsequently considered the Commons’ Reasons for disagreeing on 20 October 2020, and agreed two amendments in lieu (these are **Lords Amendments 16B and 18B**). The Commons considered these amendments on 4 November 2020, and the Lords subsequently agreed further Commons amendments on 9 November 2020, meaning the Lords and Commons agreed on the text of the Bill.

The following sections provide an overview of the “[ping-pong](#)” stages of the Bill.

### 21.1 Commons Consideration of Lords Amendments

The debate on the Lords Amendments was held on 12 October 2020. Defra Minister Victoria Prentis spoke for the Government, and shadow Defra Secretary Luke Pollard spoke on behalf of the Official Opposition.

The Commons agreed all of the Lords Amendments originating from the Government. The House disagreed with all the non-Government Lords Amendments; three on division, and four without division. This section provides an overview of the amendments that were disagreed. Note that the divisions were held on motions to [disagree](#) with the non-Government amendments (so the motion being agreed meant that the amendment was disagreed).

Following the debate, formal [Reasons](#) were drawn up for disagreeing to the amendments, and these were transmitted to the Lords.<sup>489</sup>

#### Trade standards

At the beginning of the debate, the Deputy Speaker Nigel Evans announced that **Lords Amendment 18**, concerning the Trade and Agriculture Commission, would “impose a charge on the public revenue that is not authorised by the money resolution passed by this House”. The amendment was therefore deemed to be disagreed to in line with paragraph 3 of [Standing Order No. 78](#), and was not formally considered

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<sup>489</sup> [HL Bill 141 Commons reasons](#), 12 October 2020

as part of the debate, although Members did raise the amendment and the Trade and Agriculture Commission during their contributions.<sup>490</sup>

For background information see the UK Parliament website glossary entry on [Money resolutions](#).

**Lords Amendments 12 and 16** both related to a requirement for agricultural and food imports to meet domestic standards. The Minister said that the amendments could “create a long list of new conditions that imports under trade agreements would have to meet”, including trade already taking place that the Government intends to be the subject of “roll-over” agreements:

We will drive a hard bargain for access to our market, and existing import conditions will need to be respected. However, trading partners would be extremely unlikely to agree to all the potential new requirements in the amendments. The amendments are also not totally clear on what we would be asking of our partners. For example, what is relevant to protect the environment in the UK will surely not be what is relevant to other countries with different climates or conditions. From rules on nitrates to rules on hedgerows, our standards are sometimes bound to differ from those abroad.

Given that uncertainty, I am concerned that the amendments could jeopardise the 19 currently unsigned agreements that we are seeking to roll over. Trade, of course, already takes place under those agreements, with existing import requirements met. Unpicking those and demanding the numerous extra conditions in the amendments could upset the current deals if partners refused and walked away.

The Minister also reiterated the position that existing mechanisms will maintain high standards, and said the Government would carry out “a serious examination of the role of labelling in promoting high standards and high welfare across the UK market” with a consultation before the end of 2020:

In summary, the tools we have to ensure high standards are, as I have tried to set out, many and varied. They are strong enough to protect standards, even under pressure. We have existing regulation under retained EU law, which is watched carefully and controlled by the Food Standards Agency. Parliament can scrutinise new trade deals, as indeed the Select Committee on International Trade is about to do for the Japan deal. Other experts, including those on the Trade and Agriculture Commission, can advise us on trade policy. Last, but by no means least, we have the buying power of the British consumer, who is increasingly committed to high standards of animal welfare.<sup>491</sup>

For the Opposition, Shadow Defra Secretary Luke Pollard said that “an extra label will not stop lower-quality food being sold in Britain”, and that the existing import restrictions in retained EU law were not adequate to cover the range of standards issues that could arise under future trade:

The Government claim that the amendment is unnecessary because standards are included in the withdrawal Act, as we have

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<sup>490</sup> HC Deb 12 Oct 2020, [c64](#)

<sup>491</sup> HC Deb 12 Oct 2020, [c73-4](#)

just heard. However, the EU's import restrictions apply only to products banned on the basis of safety and, as was mentioned earlier, they do not deal with animal welfare or environmental protections, which is what this amendment seeks to do.<sup>492</sup>

Lords Amendment 16 was the subject of a division, with the motion to disagree passing 332-279. Lords Amendment 12 was disagreed without division.<sup>493</sup>

## Other amendments

On **Lords Amendment 1** (linking financial assistance plans under this Bill to environmental improvement plans under the *Environment Bill*), the Minister said that EIPs would “definitely be taken into account”:

The purpose behind Lords amendment 1 is to demonstrate the connections between this Bill and the Environment Bill. I am pleased to say that these connections very much exist already. Environmental improvement plans will already definitely be taken into account when determining the strategic priorities that sit within the multi-annual financial assistance plans in clause 4.<sup>494</sup>

The amendment was disagreed without division.

On **Lords Amendment 9** (creating a duty to produce a National Food Strategy within 12 months of Royal Assent), the Minister said that “I think the report we have promised within six months of Henry Dimbleby's report will in fact come sooner than is set out in this amendment”. The Minister noted that Mr Dimbleby's “final report” is expected “next spring”.<sup>495</sup> The amendment was disagreed without division.

On **Lords Amendment 11** (regarding limitations on pesticide use), the Minister said that she “recognise[d] the positive intentions”, but “[took] issue with the drafting”:

The amendment, although undoubtedly well intentioned, is far too broad. It extends to any pesticide and any building, and would include pesticides that are important for productivity but pose no danger whatsoever to health. Even worse, it also extends to any open space used for work, which on my reading would prohibit the use of pesticides in fields entirely.<sup>496</sup>

Shadow Defra Secretary Luke Pollard said that Labour supported Lords Amendment 11, saying “that matters because of the impact not only on the environment but on human health”.<sup>497</sup> The amendment was the subject of a division, and the motion to disagree was passed 347-212.<sup>498</sup>

On **Lords Amendment 17** (regarding climate change targets), the Minister said that “not setting sector-specific targets allows us to meet our climate change commitments in the best and speediest way”:

<sup>492</sup> HC Deb 12 Oct 2020, c79

<sup>493</sup> HC Deb 12 Oct 2020, [c116-23](#)

<sup>494</sup> HC Deb 12 Oct 2020, [c65-6](#)

<sup>495</sup> HC Deb 12 Oct 2020, [c66](#)

<sup>496</sup> HC Deb 12 Oct 2020, [c68](#)

<sup>497</sup> HC Deb 12 Oct 2020, [c80](#)

<sup>498</sup> HC Deb 12 Oct 2020, [c116-9](#)

Amendment 17 is another well-intentioned amendment, but it would add an unnecessary layer of complication. The Secretary of State is already required to have regard to the Government's commitment to achieving net zero under the Climate Change Act 2008. The Government have also introduced carbon budgets, which cap emissions over successive five-year periods. If we are to achieve the UK's net zero target, emissions reductions will be needed in all sectors. Not setting sector-specific targets allows us to meet our climate change commitments in the best and speediest way. Agriculture has an important role to play in reducing emissions, but we must recognise that planting trees and restoring peatland will take a very long time—probably not my lifetime—to deliver the best results.<sup>499</sup>

For the Opposition, Luke Pollard said that “in the midst of a climate and ecological emergency, it is imperative that we have a clear road map for agriculture to reach net zero”, and that Labour therefore backed “efforts to have clear, sector-specific plans that farmers can follow”.<sup>500</sup>

The amendment was the subject of a division, and the motion to disagree was passed 344-206.<sup>501</sup>

## 21.2 Lords Amendments in lieu

The Commons' formal [Reasons](#) for disagreeing with the Lords Amendments were considered by the Lords on 20 October 2020. The Lords agreed not to insist on any of their amendments, but did agree to propose two amendments in lieu.

A motion to propose an amendment in lieu of **Lords Amendment 11** (on pesticides) was also divided upon, and was disagreed 158-260.<sup>502</sup>

An amendment in lieu of **Lords Amendment 9** (on a National Food Strategy) was withdrawn, and an amendment in lieu of **Lords Amendment 17** (on climate change targets) was not moved.<sup>503</sup>

### Lords Amendment 16B

**Lords Amendment 16B** was proposed by Shadow Frontbencher Lord Grantchester, in lieu of the disagreed Amendment 16 (concerning a requirement for agri-food imports to meet domestic standards). The new amendment would establish that the Government has “negotiating objective” in future trade agreements to “secure terms that provide for equivalence with standards applicable to domestic producers” in relevant areas. A Minister of the Crown would be required to lay before Parliament a statement confirming that this was fulfilled, and whether equivalence was achieved, before the trade agreement could be laid before Parliament.

These requirements would not apply in the case of an agreement that is “a continuation or revision of an agreement to which the United Kingdom was a party” prior to the end of the EU exit transition period, and would therefore not apply to the agreements that the Governments

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<sup>499</sup> HC Deb 12 Oct 2020, [c74](#)

<sup>500</sup> HC Deb 12 Oct 2020, [c80](#)

<sup>501</sup> HC Deb 12 Oct 2020, [c124-7](#)

<sup>502</sup> HL Deb 20 Oct 2020, [c1482-4](#)

<sup>503</sup> HL Deb 20 Oct 2020, [c1480](#), [c1510](#)

wishes to “roll over”. They would also not apply to agreements with least developed countries, where in the Secretary of State’s opinion “seeking equivalence on standards would present an unfair impediment to trade”.

As in the previous amendment, chapters of a relevant international trade agreement could not be ratified unless approved by the House of Commons and a motion has been tabled in the House of Lords.

Defra Minister Lord Gardiner said that the proposed amendment “still amounts to seeking additional, and potentially expansive, conditions from trading partners” and that agreeing equivalence is a “complex, technical and resource-intensive task”:

We have looked very carefully at Amendment 16B in lieu, proposed by the noble Lord, Lord Grantchester, which seeks that we ask trading partners to demonstrate equivalence across a range of policy areas. The intention here is well understood, but this amendment still amounts to seeking additional, and potentially expansive, conditions from trading partners. Conditions such as these are not a feature of any other country’s trade policy. I was very struck by this when I took further advice—because obviously this is not my specialist area. I repeat that conditions such as these are not a feature of any other country’s trade policy.

Demonstrating and agreeing equivalence of rules is a complex, technical and resource-intensive task. For example, agreeing equivalence of a range of animal health and food safety rules with New Zealand has taken years. So, in theory, it is possible. However, we believe that doing so in the manner set out here would be disproportionate and in practice would likely mean adding years of such processes ahead of any ratifications. So this amendment could result in pressure to pursue an unrealistic negotiating objective.<sup>504</sup>

Shadow Defra Spokesperson Lord Grantchester stated that “equivalence is the accepted process recognised by the WTO”, and that the new amendment also addressed concerns over rollover agreements and trade with developing countries:

The new amendment in lieu is also clear that it does not wish any interpretation to be used as a barrier to the Government rolling over more existing trade agreements. The UK has enjoyed being a member state of the EU and we look forward to more of those deals being completed. The same approach has been taken that the status quo must be maintained at the outset. It is also not the intention from the previous amendment to make the UK a barrier to trade with less-developed countries. This amendment also excludes any interpretation that will make development difficult. We have raised millions of people out of poverty already, and we believe in the sustainable development goals. [...]

This amendment in lieu listens to key concerns, yet it is still important for parliamentary scrutiny and approval of trade deals to address food standards. This amendment still places a duty to seek equivalence on agri-food standards. Equivalence is the accepted process recognised by the WTO. The amendment makes the promotion of UK standards central, as a rolling negotiating

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<sup>504</sup> HL Deb 20 Oct 2020, [c1484-5](#)

objective. It also requires a detailed parliamentary Statement to explain what is and is not included in a trade deal.<sup>505</sup>

The motion to propose Amendment 16B in lieu was divided upon, and agreed 282-244.<sup>506</sup>

## Lords Amendment 18B

**Lords Amendment 18B** was proposed by Lord Curry in lieu of Amendment 18 on the Trade and Agriculture Commission, which was deemed to be disagreed to as it would have entailed unauthorised expenditure. The new amendment would place a duty on the Secretary of State to produce a report on each future trade agreement, before it is ratified, considering its impact on agri-food trade. A motion would need to be moved in each of House of Parliament, and 21 sitting days then elapse, before the agreement could be ratified.

Instead of establishing the TAC on a statutory basis, the new amendment would require the Secretary of State to “consult on the merits of the establishment of a Trade and Agriculture Commission” to produce the aforementioned report on their behalf. The amendment lists stakeholders that must be consulted, including “the general public”, the devolved administrations, and sectoral representatives. The consultation outcome would need to be laid before Parliament within two months of the Act receiving Royal Assent.

The Minister said that “the approach envisaged in Amendment 18B is already under way”. He referred to a [written statement from the International Trade Secretary](#) (dated 12 October 2020) setting out “transparency and scrutiny arrangements for international trade deals”, including arrangements with the International Trade Committee and the Lords International Agreements Sub-Committee (see also Box 5 above on parliamentary scrutiny of trade agreements).<sup>507</sup>

Lord Gardiner also referred to consultation beyond Parliament:

I am also pleased to be able to say that the Government are already conducting extensive consultation beyond Parliament, with a range of groups in place to advise on trade policy. These include the Department for International Trade’s agri-food trade advisory group, which was renewed in July and which includes over 30 representatives from the food industry, and Defra’s supply chain advisory groups. Of course, this scrutiny is enhanced by the Trade and Agriculture Commission. Recently, the commission launched a call for evidence to 200 relevant parties, covering several questions, including how standards can best be upheld while securing the benefits of trade.

Finally, I should also mention the important role that the FSA [Food Standards Agency] and FSS [Food Standards Scotland] play in regulating imports. Indeed, I concentrated on some of this at a meeting last week with the chair and others in the FSA. The FSA draws on the expertise of 100 scientific experts and support staff and has recruited 35 additional members to its advisory committees. It also takes wider consumer interests into account, such as the impact on the environment, animal welfare and food

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<sup>505</sup> HL Deb 20 Oct 2020, [c1486-7](#)

<sup>506</sup> HL Deb 20 Oct 2020, [c1508-10](#)

<sup>507</sup> [HCWS499](#), 12 October 2020

security, drawing on appropriate expertise and stakeholders to do so.<sup>508</sup>

In speaking to his amendment in lieu, Lord Curry said he had been assured by officials that the new amendment “should be compliant” with the rules around financial privilege. He stated that he was “unconvinced” by the Government’s assurances about scrutiny of trade agreements, and that giving additional responsibilities to existing bodies in a “piecemeal fashion” is “no replacement” for a dedicated body:

I have listened carefully to the explanations from the Minister on why the previous amendment, Amendment 18, and this one are unnecessary. He has taken an enormous amount of time and has shown great patience, which I very much appreciate. I have also had conversations with the Secretary of State for International Trade who has tried to convince me that there is already enough rigour in the system; that is, that the existing bodies have been given an extended remit to scrutinise trade deals and report their findings, as the Minister has just reported. I remain unconvinced and I am not reassured. To bolt on additional responsibilities to a number of agencies in a piecemeal fashion is no replacement for a dedicated, independent body providing oversight with in-depth knowledge of the entire sector, a body that is able to measure up new trade deals against the principles and standards that will have been laid out in the report from the existing Trade and Agriculture Commission at the end of this year. What could be simpler?<sup>509</sup>

The motion to propose Amendment 18B in lieu was divided upon, and agreed 278-200.<sup>510</sup>

## Government response to Lords amendments

On 30 October 2020, the Government tabled an [amendment for Commons consideration](#), in lieu of **Lords Amendments 16B and 18B**. This amendment would create a duty on the Secretary of State to lay a report before Parliament, before a trade agreement containing “measures applicable to trade in agricultural products” could be laid before Parliament. A second amendment amends the Bill’s long title to bring this measure within its scope.

The report would need to explain “whether, or to what extent” relevant elements of the trade agreement are “consistent with the maintenance of UK levels of statutory protection” in relation to human, animal or plant life or health, animal welfare, and the environment. In the amendment, “UK levels of statutory protection” are defined as “levels of protection which, at the time the report is made, are provided for by or under any legislation” which has effect in the UK (or any part of the UK).

The Secretary of State “may” seek advice from “any person the Secretary of State considers to be independent and to have relevant expertise” in preparing the report.

The requirement to report would not apply to trade agreements where each other party is “a member State or the European Union”, or where

<sup>508</sup> HL Deb 20 Oct 2020, [c1485-6](#)

<sup>509</sup> HL Deb 20 Oct 2020, [c1488-9](#)

<sup>510</sup> HL Deb 20 Oct 2020, [c1513-15](#)

the agreement is with a country that had a trade agreement with the EU containing agri-food measures immediately prior to exit day (i.e. including “rollover” agreements), provided the new agreement is negotiated within two years of the end of the transition period (i.e. by 31 December 2022).<sup>511</sup>

Following the tabling of this amendment, on 1 November 2020, the Government announced that the Trade and Agriculture Commission (TAC) would be extended past its initial six-month term, and given “a more active role through a new legislative underpinning, to be reviewed every three years”. It was confirmed (see next section) that this would be done through an amendment to the [Trade Bill 2019-21](#).

The Government said that the TAC will produce a report on “the impact on animal welfare and agriculture” of “each free trade deal” signed after the end of the transition period. This report will be laid in Parliament before the start of the 21-day CRaG procedure (see Box 5 above). The Government press release stated that the move “will allow Parliamentarians access to independent and expert advice when reviewing the impact of each trade deal on farming”. On the TAC’s current work, it also noted that the TAC would “shortly” publish an interim report, with the full report to be published in February 2021.<sup>512</sup>

## 21.3 Further Commons consideration

The Commons considered **Lords Amendments 16B and 18B**, and the Government amendments in lieu, on Wednesday 4 November 2020.

Defra Minister Victoria Prentis said that “it has proved very difficult to find the right form of legislative words to protect our standards”. She expressed concern that Lords Amendment 16B would “cause problems for our negotiators and impose burdensome administrative measures on our trading partners”, and referenced the “complex and technical” requirements of demonstrating equivalence. Regarding the Government amendments in lieu, the Minister said:

[...] during the passage of the Bill it has made it clear that further parliamentary scrutiny of trade deals is desirable. That is why we have tabled an amendment requiring us to report to Parliament on the impact of new trade agreements on the maintenance of our food, animal welfare and environmental protection standards.<sup>513</sup>

The Minister also confirmed that the Trade and Agriculture Commission would be put on a statutory footing through an amendment to the [Trade Bill 2019-21](#) at Lords Report Stage.<sup>514</sup>

For the Opposition, Shadow Defra Secretary Luke Pollard said “the movement from the Government is welcome”, but that “there are further concessions that could help to undo the final concerns on this matter”. Mr Pollard said that the Government amendment requiring

<sup>511</sup> [Notices of CCLM Amendments as at 30 October 2020](#), 2 November 2020

<sup>512</sup> GOV.UK, [Trade and Agriculture Commission put on statutory footing](#), 1 November 2020

<sup>513</sup> HC Deb 4 Nov 2020, [c386](#)

<sup>514</sup> Ibid.

reports to Parliament provides “extra scrutiny; it is not a vote on this matter”, and called on the Government to guarantee that it would “not unreasonably refuse an Opposition day” for the purpose of debating a trade agreement, to “avoid any further ping-pong” on the Bill. He also raised concerns around the wording of the Government amendment:

I want to press the Minister on the wording in Government amendment (a). We have spoken about this and I hope she will be able to give some clarity. The wording “consistent with” is used in relation to our own standards. I would be grateful if the Minister could set out where that has the same legal meaning as “equivalent to”. Many Lords had a similar concern about that and I would be grateful if she could set out the difference around what that means.<sup>515</sup>

In response to this point, the Minister said:

“Consistent with” means exactly what it says. We would look at whether an FTA was consistent with the maintenance of UK levels of statutory protection. That is different from equivalence of standards.<sup>516</sup>

The House divided on Lords Amendment 16B (the Opposition amendment creating a duty to seek equivalence). The motion to disagree with the amendment passed 331-272. Lords Amendment 18B (on the Trade and Agriculture Commission) was disagreed without division. The Government amendments in lieu were agreed without division.<sup>517</sup>

## 21.4 Further Lords consideration

The Bill returned to the Lords on 9 November 2020, with the Government amendments agreed by the Commons (i.e. the amendments creating a duty to report to Parliament on trade agreements). In the Lords, two non-Government amendments were, in turn, tabled to these amendments.

Shadow Defra Spokesperson Lord Grantchester tabled an amendment that would create an additional requirement for a vote in the House of Commons before a relevant trade agreement could be laid under the CRaG procedure (see Box 5). As well as the requirement to lay a report, the House of Commons would also need to have “approved” the report “by a resolution on a motion moved by a Minister of the Crown”.

Lord Grantchester’s amendment would also amend the scope of the report. The Government amendment provides that the report must explain whether, or to what extent, the terms of the trade agreement are “consistent with the maintenance of UK levels of statutory protection” in relevant areas. Lord Grantchester’s amendment replaces this with explaining whether the terms “achieve equivalence to” the relevant UK standards. As mentioned above, Shadow Defra Secretary

<sup>515</sup> HC Deb 4 Nov 2020, [c389-90](#)

<sup>516</sup> HC Deb 4 Nov 2020, [c402](#)

<sup>517</sup> HC Deb 4 Nov 2020, [c403-407](#)

Luke Pollard had previously raised concern over the wording of “consistent”/“equivalent” in the Commons.<sup>518</sup>

A second non-Government amendment was tabled by Liberal Democrat Defra Spokesperson Baroness Bakewell of Hardington Mandeville. It would also change the scope of the report, so that it must “confirm that” (rather than “explain whether”) any agri-food import under the trade agreement will have been produced according to standards that “are equivalent to or exceed” (rather than “are consistent with the maintenance of”) the relevant UK standards.<sup>519</sup>

During consideration of the Commons amendments on 9 November, Defra Minister Lord Gardiner addressed the proposals around “equivalence”, arguing that the wording in the Government amendment allows equivalence to be considered, but that the requirement to report on “consistency” with UK standards would be “a much more pragmatic approach”:

Amendments 18E and 18H would narrow the scope of our reporting through requiring reporting on equivalence. Our new clause allows us to consider equivalence where relevant, but, importantly, it requires the Government to look at measures applicable to trade in agricultural products in the FTA in the round, along with their impact on our ability to maintain our standards. This means that reports under the new clause as drafted could consider further issues relevant to UK levels of statutory protection, such as the impact of the FTA on our right to regulate, which focusing only on equivalence would miss. We believe this matches our manifesto commitment not to compromise on standards, which was similarly wider in scope than just equivalence.<sup>520</sup>

The Minister also said that it may be “immensely challenging” for developing countries to demonstrate equivalence across all agri-food standards, and that this would “not automatically mean inconsistency with the maintenance of UK standards”.<sup>521</sup>

Shadow Defra Spokesperson Lord Grantchester said “it is now clear, from the Government’s position in their amendments, that there cannot be a regression of standards”, and that the Opposition would not be pressing their amendment to a division. He called on the Government to ensure that amendments to the Trade Bill address the issues raised by the Opposition:

Our amendment in lieu [to the Agriculture Bill] highlights three issues, among others, which will need to be included in the government amendments to the Trade Bill. First, if a future trade agreement is likely to contain measures that change primary or subordinate legislation relating to the current standards, Ministers must ensure that Parliament and the devolved Administrations are made aware of all these in a timely manner, and that all necessary changes to primary or secondary legislation are made before the treaty approval mechanisms under the CReG Act 2010 are

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<sup>518</sup> [HL Bill 148-I Marshalled list of Motions for Consideration of Commons disagreement and amendments in lieu](#), 6 November 2020

<sup>519</sup> Ibid.

<sup>520</sup> [HL Deb 9 Nov 2020](#) [uncorrected version]

<sup>521</sup> Ibid.

initiated. Secondly, regulations must ensure that the commitments made by the Government provide the appropriate Select Committees of both Houses, and the devolved Administrations, with draft objectives, progress reports and the final text of future trade agreements. Thirdly, sufficient time must be provided by the Government so that parliamentary committees and the devolved Administrations may consider all matters relevant to future trade agreements and that Parliament itself has time to debate and vote on all such treaties.<sup>522</sup>

In speaking to her amendment, Liberal Democrat Defra Spokesperson Baroness Bakewell welcomed the Government's moves, but said that the requirement to report "falls substantially short of the protection of British standards that animal welfare organisations, farming bodies and the British public expect the Government to guarantee". On equivalence, she said that "it may well be that imported agri-food products will be equivalent in quality to those produced in the UK, but they may have been produced under very different conditions".

Baroness Bakewell's amendment was the subject of a division, and was disagreed 130-290. The motion to agree with the Government's Commons amendment was agreed without division.<sup>523</sup>

At this point the Lords and Commons therefore agreed on the text of the Bill. Royal Assent was received on 11 November 2020, with the Bill becoming the [Agriculture Act 2020](#).<sup>524</sup>

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<sup>522</sup> Ibid.

<sup>523</sup> Ibid.

<sup>524</sup> UK Parliament, [Agriculture Act 2020](#) [accessed 2 December 2020]

## 22. Further information

The Library has published a series of related briefings on agriculture:

- House of Commons Library, [Migrant workers in agriculture](#), June 2017
- House of Commons Library, [Brexit: Future Agriculture Policy](#), 11 September 2018
- House of Commons Library, [The Agriculture Bill \(2017-19\)](#), 9 October 2018
- House of Commons Library, [The UK's EU Withdrawal Agreement](#), updated 8 July 2019 [This refers to the previous Withdrawal Agreement and includes provisions on agriculture during the Implementation Period. See also the paper on [the October 2019 Withdrawal Agreement](#), published 18 October 2019.]
- House of Commons Library, [What happens if the UK leaves the EU with no deal?](#) 28 December 2018 [This includes information on agri-food trade]
- House of Commons Library, [Brexit: Trade tariffs if there's no deal](#), 13 March 2019
- House of Commons Library Briefing, [EU preparations for a no deal Brexit](#), 30 July 2019
- House of Commons Library Briefing, [No deal Brexit: What happens to farm payments](#), 13 August 2019
- Commons Library Briefing, [Brexit: Trade issues for food and agriculture](#), November 2019
- Commons Library Briefing, [Direct Payments to Farmers \(Legislative Continuity\) Bill \(2019-20\)](#), January 2020
- Commons Library, [Insights for the new Parliament: Farm Futures](#), 24 January 2020
- Commons Library Insight, [Brexit next steps: Farm funding in 2020](#), 29 January 2020
- Key relevant environment briefings are:
  - Commons Library Briefing, [25 Year Environment Plan](#), January 2018
  - Commons Library Briefing, [Analysis of The Environment Bill](#), 6 March 2020

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