

LEGISLATIVE CONSENT MEMORANDUM

AGRICULTURE BILL

Draft Legislative Consent Motion

1. The draft motion, which will be tabled by the DAERA Minister, is:

“That this Assembly agrees that the provisions in the Agriculture Bill, as introduced into the House of Commons on 16 January 2020, should be considered by the UK Parliament”

Background

2. This memorandum has been laid before the Assembly by the DAERA Minister under Standing Order 42A(2). The Agriculture Bill was introduced into the House of Commons on 16 January 2020. The latest version of the Bill can be found at:

<https://services.parliament.uk/Bills/2019-20/agriculture.html>

Summary of the Bill and its policy objectives

3. The Bill provides the legal framework required to transition out of the EU; to replace the Common Agricultural Policy and provide financial support after exiting the EU; and, in England, delivers a range of reforms and creates a new domestic agriculture system based on the principle of paying public money for the delivery of public goods.
4. It extends a limited number of provisions to Northern Ireland, which are contained in Schedule 6 of the Bill. These relate to financial support after exiting the EU; intervention in agricultural markets; collection and sharing of data in relation to agri-food supply chains; marketing standards and carcass classification; and data protection. There are consequential amendments in Schedule 7 related to the marketing standards and carcass classification provision.
5. The rationale behind the inclusion of these Northern Ireland-specific provisions in the Bill has been to ensure the continuation of a legal basis that provides for the current suite of agricultural support payments having exited the EU; to provide the Executive with the maximum flexibility to develop future agricultural policy in Northern Ireland; and to ensure that no

constraint is placed on the Executive's ability to continue the current schemes and options available under the Rural Development Programme and Common Market Organisation.

6. The Bill also contains a number of UK-wide provisions in relation to: UK food security; fair dealing with agricultural producers, and producer organisations; fertilisers; identification and traceability of animals; organic products; the wine sector; the WTO agreement on agriculture; and general and final provisions in relation to Regulations and interpretation, and supplementary, incidental or consequential provision.

Provisions which deal with a devolution matter

7. Legislative consent is required for the following provisions as these relate to a devolved matter:

Duty to report to Parliament on UK food security (clause 17)

This places a duty on the Secretary of State to lay a report before Parliament on UK food security. It is a reserved matter in part as food is one of the UK's critical national infrastructure sectors, and so relates to national security. However, it is also a devolved matter in part in relation to food and drink supply.

Fertilisers (clause 31)

This allows the UK to continue to legislate in respect of the policies provided for in the new EU Regulation (2019/1009) on fertilising products. It provides for a continuation of the current regime, making good the loss of section 2(2) powers under the European Communities Act 1972.

Identification and traceability of animals (clause 32)

This inserts a new section 89A into the Natural Environment and Rural Communities Act 2006 to enable the Secretary of State to make secondary legislation allowing the Agriculture and Horticulture Development Board (AHDB) to undertake a new statutory role in managing a new Livestock Information Service in England.

The functions that may be assigned to the AHDB include the collecting, managing and making available information regarding the identification, movement and health of animals; or the means of identifying animals. These are functions which are devolved.

Organic products (clauses 36 and 37)

This is in relation to the certification of: organic products; activities relating to organic products; and persons or groups of persons carrying out activities relating to organic products. Those parts of the clause which relate to trade are reserved, whereas those parts which relate to organic products are devolved.

Northern Ireland (clause 45)

This provides for Schedule 6 to make provision in relation to Northern Ireland.

Schedule 6 – Provisions relating to Northern Ireland

Part 1 – Financial support after exiting the EU

This Part provides DAERA with powers to modify retained direct EU legislation governing direct payments and support for rural development following the UK's exit from the EU.

In this Part the regulation-making powers concerning the following are subject to the scrutiny of the Northern Ireland Assembly by way of affirmative resolution procedure:

- Power to modify legislation governing the basic payment scheme – paragraph 2.
- Power to provide for the continuation of the basic payment scheme beyond 2020 – paragraph 3.
- Power to modify legislation governing the coupled payment scheme – paragraph 4.
- Support for rural development: modification of legislation in relation to Northern Ireland – paragraph 6.

Part 2 – Intervention in agricultural markets

This Part provides DAERA with an ability to give, or agree to give, financial assistance to agricultural producers in Northern Ireland whose incomes are being, or are likely to be, adversely affected by exceptional market conditions.

DAERA would also be able to 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; and have a power to

modify retained direct EU legislation relating to public intervention and private storage aid.

In this Part the regulation-making power – power to modify retained EU legislation relating to public market intervention and private storage – is subject to the scrutiny of the Northern Ireland Assembly by way of affirmative resolution procedure (see paragraph 8).

Part 3 – Collection and sharing of data

This Part provides DAERA with the ability, and a power, to require a person in, or closely connected with, an agri-food supply chain to provide information about matters connected with that person's activities connected with the supply chain so far as those activities are in Northern Ireland.

DAERA is required to specify the purposes for which this information is being processed, and to publish a draft of the requirement before it is imposed.

This Part also provides DAERA with a power to enforce the information requirements.

In this Part the regulation-making powers concerning the following are subject to scrutiny by the Northern Ireland Assembly by way of affirmative resolution procedure:

- Agri-food supply chains: requirement to provide information – paragraph 9.
- Provision of required information and limitations on its processing – paragraph 14.

Part 4 – Marketing standards and carcass classification

This Part provides DAERA with a power to make provision about the marketing standards with which specified agricultural products marketed in Northern Ireland must conform; and to make provision about the classification, identification and presentation of bovine, pig and sheep carcasses by slaughterhouses in Northern Ireland.

In this Part the following regulation-making powers are subject to the scrutiny of the Northern Ireland Assembly by way of affirmative resolution procedure:

- Marketing standards – paragraph 15.
- Agricultural products – paragraph 16.
- Carcass classification – paragraph 17.

Part 5 – Data protection

This Part preserves the status of existing data protection legislation, including the General Data Protection Regulation, and specifies that any exercise of data will be compliant with it.

Schedule 7 – The CMO Regulations: consequential amendments

Part 5 – Marketing standards and carcass classification: Northern Ireland

This Part provides details of consequential amendments to the CMO Regulation in relation to marketing standards and carcass classification in Northern Ireland. It disapplies the relevant Articles for products marketed, or slaughterhouses situated, in Northern Ireland.

It also saves any Regulations made by the European Commission under Article 19(6), Article 20 points (p) to (t) and Article 21 of the CMO Regulation in relation to slaughterhouses in Northern Ireland; and any Regulations made by the European Commission under Section 1 or Section 3 of Chapter 1 of Title 2 of the CMO Regulation in relation to products marketed in Northern Ireland.

Position in the other devolved Administrations

8. The Welsh Government has asked the UK Government to include powers for Welsh Ministers in the Bill. Its Minister for Environment, Energy and Rural Affairs published a written statement on 16 January 2020 (<https://gov.wales/written-statement-uk-agriculture-bill>).

The Scottish Government has chosen not to take any powers in the Bill. It has, instead, introduced the Agriculture (Retained EU Law and Data) (Scotland) Bill into the Scottish Parliament in November 2019.

Reasons for making the provisions

9. The primary reason in extending a limited number of provisions to Northern Ireland in Schedule 6 to the Bill is to ensure that the status quo relating to the current Common Agricultural Policy regime can be maintained until such time as future agricultural policy in Northern Ireland is agreed by the Northern Ireland Executive.

Reasons for utilising the Bill rather than an Act of the Assembly

10. It would take some time to pass an Act of the Assembly during which period the DAERA Minister would be unable to: provide for a continuation of the basic payment scheme in Northern Ireland beyond 2020 (the Direct Payments for Farmers (Legislative Continuity) Act 2020 provides the legal basis for making direct payments in the 2020 scheme year only); implement simplifications or improvements to the basic payment scheme; and, subject to the outworkings of the Ireland/Northern Ireland Protocol, respond to changes elsewhere in the UK.

Consultation

11. DAERA's Trade and Agriculture Committee and Environmental Stakeholder Group, as key stakeholder groups representing a wide range of agricultural and environmental organisations in Northern Ireland, were briefed on the Agriculture Bill that eventually fell on the prorogation of Parliament late last year and was not re-introduced. It contained all of the same Northern Ireland-specific provisions, with the exception of the data protection provision, that are in the Agriculture Bill currently before Parliament.

Human Rights and Equality

12. The UK Government considers that the Bill is compatible with the European Convention on Human Rights; and the Secretary of State for Environment, Food and Rural Affairs has accordingly made a statement under clause 19(1)(a) of the Human Rights Act 1998 to this effect.
13. It is considered that the Bill is compliant with section 75 of the Northern Ireland Act 1998, having no differential impact because of an individual's religious belief, national identity, racial group, marital status, sexual orientation, gender, disability or whether or not he/she has dependants.

Financial Implications

14. The Bill contains a power to provide for a continuation of the basic payment scheme beyond 2020 or until such time as a new agricultural policy is in place for Northern Ireland. The UK Government's manifesto committed to guarantee the current annual budget to farmers in every year of the Parliament.

15. It also provides DAERA with the ability to give, or agree to give, financial assistance to agricultural producers in Northern Ireland where it considers there to be exceptional market conditions; but this provision, of itself, does not make any financial commitment.

Summary of Regulatory Impact

16. The Northern Ireland-specific provisions in Schedule 6 of the Bill do not make any policy changes to the Common Agricultural Policy, and so do not have any new regulatory implications.

Engagement to date with the Committee for Agriculture, Environment and Rural Affairs

17. The Committee for Agriculture, Environment and Rural Affairs was briefed on the Bill and its policy objectives on 20 February 2020.

Conclusion

18. It is the DAERA Minister's view that a limited number of Northern Ireland –specific provisions (together with some UK-wide provisions) should be included in the Bill (Schedule 6) to ensure that the status quo can be maintained until such time as future agricultural policy in Northern Ireland is agreed by the Northern Ireland Executive.

Department of Agriculture, Environment and Rural Affairs

[21 February 2020]