

AGRICULTURE BILL

Memorandum concerning the Delegated Powers in the Agriculture Bill for the Delegated Powers and Regulatory Reform Committee

Contents

A. Introduction	4
B. Purpose and Effect of the Bill	4
C. General Commentary on the Delegated Powers in the Bill	5
D. Summary of Delegated Powers in the Bill.....	8
E. Analysis of Delegated Powers in the Bill by Clause	18
<i>Part 1: Financial Assistance</i>	18
Clause 2(8): Powers to impose a legal duty on the Secretary of State or another person to publish information about financial assistance.....	18
Clause 3(1): Powers to make provision for checking, enforcing and monitoring in connection with new financial assistance schemes	20
Clause 8(3): Power to extend the agricultural transition period	24
Clause 9(1): Power to modify legislation governing the basic payment scheme	26
Clause 10(1): Power to provide for the continuation of the basic payment scheme beyond 2020	29
Clause 11(1): Power to provide for the phasing out of direct payments	31
Clause 12(1): Power to provide for making delinked payments	33
Clause 13(1): Power to provide for the payment of lump sums to eligible persons.....	36
Clause 14(1): Power to modify retained direct EU legislation relating to the Common Agricultural Policy	37
Clause 15(1): Power to modify retained direct EU legislation relating to fruit and vegetable producer organisations	41
Clause 16(1), (3) and (5): Powers to modify retained direct EU legislation relating to support for rural development in relation to England.....	43
Clause 20(1): Power to modify retained direct EU legislation relating to public market intervention or aid for private storage in connection with exceptional market conditions	46

Clause 20(2): Power to modify retained direct EU legislation relating to public market intervention or aid for private storage – general purposes.....	49
<i>Part 3: Transparency and Fairness in the Agri-Food Supply Chain</i>	<i>52</i>
Clause 21(2): Power to require a person in, or closely connected with the agri-food supply chain to provide information	52
Clause 26(1): Power to make provision for enforcement of data collection and sharing requirements.....	55
Clause 27(1): Power to impose obligations on business purchasers and enforcement of those obligations.....	57
Clause 28(9): Power to set out additional conditions that an organisation must meet to make an application to be considered as a recognised producer organisation	59
Clause 28(10): Power to specify the time period within which an application to become a recognised producer organisation must be determined.....	62
Clause 28(12): Power to make further provision about recognised producer organisation applications.....	63
Clause 28(14): Power to amend Schedule 1.....	65
Clause 29(2): Power to make provision about recognised organisations in relation to competition exemptions.....	67
<i>Part 4: Matters Relating to Farming and the Countryside.....</i>	<i>69</i>
Clause 31(3): amends an existing delegated power in section 74A of the Agriculture Act 1970 to regulate fertilisers	69
Clause 31(4): Amendments to section 74A of the Agriculture Act 1970 to set out additional matters for which provision may be made in exercising delegated powers relating to the regulation of fertilisers	72
Clause 32(1): Amendment of the Natural Environment and Rural Communities Act 2006	77
Clause 32(2): Amendment of the Animal Health Act 1981	80
Clause 34, Schedule 3, Paragraph 7: Agricultural Tenancies - Power to make regulations governing requests for landlord’s consent or variation of terms.....	82
<i>Part 5: Marketing Standards, Organic Products and Carcass Classification.....</i>	<i>89</i>
Clause 35(1): Power to make provision relating to product marketing standards	89
Clause 35(5): Power to amend clause 35 and Schedule 3	95
Clause 36(5): Power to make provision relating to the import of organic products into the United Kingdom	98

Clause 36(7): Power to make provision relating to the export of organic products from the United Kingdom	99
Clause 36(8)(c): Power to make provision relating to the enforcement of organics regulation	100
Clause 38(1): Power to make provision relating to carcass classification.....	101
Clause 39(1): Power to reproduce modifications under clause 35(1) for the wine sector	105
<i>Part 6: WTO Agreement on Agriculture</i>	<i>107</i>
Clause 40(1): Power to secure compliance with the Agreement on Agriculture	107
<i>Part 7: Wales and Northern Ireland</i>	<i>110</i>
Schedule 6(4): Power to modify legislation governing the coupled support scheme	110
<i>Part 8: Final Provisions</i>	<i>111</i>
Clause 50(1): Power to make supplementary, incidental or consequential provision.....	111
Clause 50(5): Power to make transitional, transitory or saving provision	113
Clause 53(2): Commencement.....	114

DELEGATED POWERS MEMORANDUM

A. Introduction

1. This memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“the Department”) for the Delegated Powers and Regulatory Reform Committee (“the Committee”) to assist with its scrutiny of the Agriculture Bill 2020 (“the Bill”).
2. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken, and explains the nature of, and the reason for, the procedure selected.
3. The Bill contains 54 provisions conferring delegated legislative powers on the Secretary of State. Five of these, clauses 8(3), 28(12), 35(5) and 50 and Schedule 3, Paragraph 6(7) include a power to amend primary legislation. By virtue of clause 50 other provisions in this Act may include a provision to modify primary legislation for the purposes of consequential etc. amendments. The Department has considered the use of powers in the Bill and is satisfied that they are necessary and justified.
4. The Bill also confers powers on the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs (DAERA) of Northern Ireland: these devolved powers are contained in schedules (Schedules 5 and 6) to the Bill but for the purposes of this note, they are referred to here by reference to their equivalent powers conferred on the Secretary of State for England.

B. Purpose and Effect of the Bill

Background

5. On 1 January 1973, the United Kingdom (UK) joined the European Economic Community, which has since evolved to become today’s European Union (EU). As part of its membership, the UK joined the Common Agricultural Policy (CAP), which has underpinned UK agricultural policy for the 45 years since.

6. Leaving the EU means, the UK will also cease to participate in the CAP. The Agriculture Bill will take advantage of this opportunity to provide powers to implement a new domestic system of agricultural and environmental policy.
7. On 27 February 2018, the Government published a consultation document: *Health and harmony: the future for food, farming and the environment in a Green Brexit*. It sought views on a new system of paying farmers “public money for public goods” – principally their work to enhance and protect the environment – and on how to phase out CAP Direct Payments.
8. The consultation closed on 8 May 2018. Over forty thousand individual responses were received from a wide range of stakeholders including farmers and environmental, food and farming organisations as well as the general public

Purpose and Effect of the Bill

9. The Agriculture Bill will provide the legal framework required to transition out of the EU, replace the CAP and deliver a range of reforms and create a new dynamic domestic agriculture system based on the principle of paying public money for the delivery of public goods. It will support farmers to continue to produce world-class food and enable the farming, horticulture and forestry sectors to become more profitable while enhancing England’s precious natural environment.

C. General Commentary on the Delegated Powers in the Bill

10. The Bill contains delegated powers which the Department considers necessary for creating a new agricultural system, some of which may amend primary legislation. The Department has considered the scope of these powers very carefully and has sought to balance the need for powers broad enough to ensure that agricultural sectors are able to successfully transition to a gradually developing new system, against the need for effective Parliamentary oversight and scrutiny.
11. The use of delegated powers is also necessary considering the unique circumstances of Agriculture. Agriculture is a uniquely changing sector that is affected by long-term planning cycles. Nature is difficult to predict, let alone control. Weather can be both beneficial and detrimental. In sunny periods, weather can encourage plant growth, but it can also lead to

drought. Agriculture like any sector providing a product, is subject to changing consumer behaviours. Recently for example, consumers have diversified away from cow's milk to goat, nut and plant-based alternatives. Considering its reliance and dependence on nature and consumers, agriculture is therefore a difficult sector to plan long-term.

12. The Department has carefully considered whether the delegated powers taken in the Bill should be subject to a sunset provision. In some instances, the Department has taken the view that the powers are justifiable without the need for a sunset clause. For example, clauses 7, 8, 9, 10, 11, 12 and 13 all contain powers to be used in the agricultural transition period as set out in clause 8. Clauses 9, 10, 11, 12 and 13 and any subordinate legislation made under the Bill in relation to the agricultural transition will necessarily and inevitably sunset at the end of the Agricultural Transition which is finite. Clause 8 does not have a sunset clause as it enables the transition period to be extended to allow for unseen events. It will necessarily and inevitably sunset at the end of the transitionary period which would be seven years starting with 2021 without extension.
13. The delegated powers in the Bill are different from the powers in section 8 of the EU (Withdrawal) Act 2018 (which can be used for two years to make retained EU law operate effectively in UK law). The powers in the Bill will need to be exercisable indefinitely for several reasons: so that the Government can continue to update retained EU law within the parameters set out in the Bill, and in order to introduce and make amendments to the new schemes for funding and charging contemplated in the Bill. The details of such schemes are set out in detail in the Bill and we have included what are, in the Department's view, appropriate safeguards before such powers can be exercised.
14. In some instances, delegated powers are sought where the Department considers the subordinate legislation to be technical in nature and where the scrutiny of which would not in its estimation constitute the best use of Parliamentary time. For example, in clause 28(12), the Secretary of State can add or remove agricultural sectors relevant to producer organisation provisions. In the future it may be the case that some sectors are no longer relevant or new sectors should be added. In the Department's view, it is more appropriate for technical measures such as these to be introduced as secondary legislation which will allow for more focused debates on the more substantive measures where necessary.

15. Overall, the Department believes that the Bill represents a significant increase in the scrutiny that Parliament will have over agricultural policy. For the last 45 years, while the UK has been a member of the CAP, Parliament has had little choice but to accept EU-derived rules. By conferring powers on the Secretary of State - subject to appropriate Parliamentary scrutiny - Members of both Houses will be able to debate measures that would have previously been imposed on the UK by EU regulations.

16. The Committee will note that the Department has carefully considered their publication “34th Report of Session 2017-19: Agriculture Bill”.¹ Following the scrutiny of the Agriculture Bill 2018 by the Committee, the Department has made the following changes to the Bill:
 - a. The Department has ensured that all Henry VIII powers are subject to the affirmative resolution procedure to increase the scope of Parliamentary scrutiny in accordance with the Committee’s recommendation. This includes ensuring the affirmative procedure is used when exercising powers under clause 28(12). There is one exception, in Schedule 3, Paragraph 6(7) introduced since the Committee’s report. This provision contains a power to make regulations, conferred on the Secretary of State in relation to England and the Welsh Ministers in relation to Wales, to amend the list of persons who may appoint arbitrators under the Agricultural Holdings Act 1986 (the 1986 Act) and, by cross reference to the 1986 Act, the Agricultural Tenancies Act 1995. It is necessary to support the change to the 1986 Act in Schedule 3, Paragraphs 4 to 6 which extends the list of persons who may appoint arbitrators under these Acts from one (the President of the RICS) to three. This power will enable the list to be updated from time to time to keep it up to date with any changes or additions that may be needed. It is narrow in scope in that it will apply specifically to agricultural tenancy disputes and amount to amending the definition of “professional authority” in the 1986 Act for administrative purposes if required, such as to change the name of an existing named person, to remove a person from the list, or add a person whose qualification for inclusion will be the subject of consultation with stakeholders to ensure additional scrutiny. Given the narrow scope of the power, it is considered that negative procedure remains an appropriate level of scrutiny.

¹ <https://publications.parliament.uk/pa/ld201719/ldselect/lddelreg/194/194.pdf>

- b. The Department has placed new duties on the Secretary of State. The first applies when designing schemes under clause 1; it is a duty to have regard to the need to encourage environmentally sustainable food production. The second is placing a duty to report to Parliament on spending made under clause 1, allowing for greater parliamentary scrutiny. A further duty has been placed to specify the purposes for which information may be processed under clause 23.
- c. The Committee raised specific concerns about clause 27 (fair dealing obligations for first purchasers), recommending that regulations should be made under the affirmative procedure. The Department considers this an important area for parliamentary scrutiny and has therefore accepted this recommendation.
- d. The Department has removed the ability to impose custodial sentences under the Bill and to remove the power in clause 3 to create offences in relation to financial assistance. Furthermore, the Department has clarified the powers in relation to monetary penalties on what monies can be collected. The Department has also limited the powers of entry to make a distinction between the property that is occupied as a home (“dwelling”) and the property as a whole.

D. Summary of Delegated Powers in the Bill

Clause: Power conferred	Justification	Parliamentary procedure
Part 1: Financial Assistance		
Clause 2(8): Powers to impose a legal duty on the Secretary of State or another person to publish information about financial assistance	Future schemes are still being co-designed with stakeholders. The Government wants to continue to be transparent in how public funds are being used but will engage on the details of how it approaches this with stakeholders.	Affirmative Resolution
Clause 3(1): Powers to make provision for checking, enforcing and monitoring in connection with new financial assistance schemes, and for the investigation of suspected offences in connection with	This will be needed to enable the Secretary of State to effectively implement financial assistance schemes and ensure proper control of public funds. The Department wants to design a proportionate enforcement regime to reflect the arrangements between farmers and land managers and government.	Affirmative Resolution

applications for, or receipt of financial assistance.		
Clause 8(3): Power to extend the agricultural transition period	A delegated power is needed to extend the transition period in regulations if required. This is a Henry VIII power.	Affirmative Resolution
Clause 9(1): Power to modify legislation governing the basic payment scheme	This power will allow the Secretary of State to adapt the schemes in the light of continued experience of operating them and feedback from stakeholders. It also enables further consultation with stakeholders.	Negative Resolution (unless section 47(5) applies)
Clause 10(1): Power to provide for the continuation of the basic payment scheme beyond 2020	A delegated power enables the Secretary of State to continue the basic payment scheme beyond 2020, prior to the introduction of delinked payments (under clause 12) which is planned to occur at some point later in the agricultural transition.	Affirmative Resolution
Clause 11(1): Power to provide for the phasing out of direct payments	A delegated power is needed so that the Secretary of State is able to take account of our detailed plans for future schemes and wider decisions about government spending before setting the reduction percentages to phase out Direct Payments.	Affirmative Resolution
Clause 12(1): Power to provide for making delinked payments in England	A delegated power is needed so that the Secretary of State may conduct further, in-depth consultation with recipients and stakeholders before deciding upon the detailed scheme design for delinked payments.	Affirmative Resolution
Clause 13(1): Power to provide for the payment of lump sums to eligible persons	A delegated power will enable the Secretary of State to carry out a consultation with farmers and stakeholders, and consider affordability, before deciding upon the detailed scheme design for lump sum payments.	Affirmative Resolution
Clause 14(1): Power to modify retained direct EU legislation relating to the Common Agricultural Policy	This power is justified because it allows the Secretary of State to rescind and amend the overly technical and onerous EU rules governing the monitoring and financing of CAP schemes while they remain in operation. Modifications can be made so that scheme rules suit our own domestic circumstances. Once the CAP schemes fall away, so effectively do the powers. We aim to make modifications in light of continued experience of operating the schemes and in response to feedback from stakeholders.	Negative Resolution (unless section 47(5) applies)
Clause 15(1): Power to modify retained direct EU legislation relating to fruit and vegetable	This power will allow the Secretary of State to close the EU fruit and vegetable aid scheme down in England. The current intention is that operational programmes already implemented by POs will be allowed to run through to	Negative Resolution (unless section 47(5) applies)

producer organisations	completion. This will enable the Government to work with industry to design a bespoke scheme which fully supports the needs of the domestic fruit and vegetable sector, allowing it to grow and become more productive, improving both the quality and quantity of our fresh produce.	
Clause 16(1), (3) and (5): Powers to modify retained direct EU legislation relating to support for rural development in England	These powers would enable provision for achieving the cessation of the application of and modification of the regulations governing existing rural development payment schemes.	Negative Resolution (unless section 47(5) applies)
Part 2: Food and Agricultural Markets		
Clause 20(1): Power to modify retained direct EU legislation relating to public market intervention or aid for private storage in connection with exceptional market conditions	This delegated power will allow the Secretary of State to use public intervention and private storage aid powers more effectively in exceptional circumstances, for instance opening intervention for a product not currently eligible under the general rules. The nature of exceptional market conditions is that they cannot be forecast, so we cannot know what products might require intervention. This clause allows the Secretary of State to tailor these types of aid to specific exceptional conditions.	Negative Resolution (unless section 47(5) applies)
Clause 20(2): Power to modify retained direct EU legislation relating to public market intervention or aid for private storage – general purposes	The CAP currently provides powers to remove surplus products from the market and stabilise market prices. These domestic powers will enable the Secretary of State to alter the operation of these provisions in ways not currently allowed. This could include adding products which are not currently eligible for specific aid schemes, to tailor them to domestic market conditions. There is also a specific power to phase out these schemes as the sector becomes self-reliant.	Negative Resolution (unless section 47(5) applies)
Part 3: Transparency and Fairness in the Agri-Food Supply Chain		
Clause 21(2): Power to require a person in, or closely connected with the agri-food supply chain to provide information	This is required where information needs to be collected from a class of persons that is not readily identifiable (such as keepers of camelids including llamas and alpacas). If there is no requirement to identify camelids or record their movements, then a statutory instrument will be needed to require information from that class of person.	Affirmative Resolution
Clause 26(1): Power to make provision for enforcement of data	A power to enforce requirements to provide data is needed to tailor penalties for failing to provide information so they are proportionate, and to	Affirmative Resolution

collection and sharing requirements	allow for evolving technology and policy objectives.	
Clause 27(1): Power to impose obligations on business purchasers and enforcement of those obligations	These regulations will define principles of fair trading in agricultural products and enable the Secretary of State to publish, maintain and enforce statutory obligations on fair contractual relations in agriculture contracts. The power will allow sector specific codes to be developed through detailed consultation with relevant sectors. It is also needed to keep up with changing circumstances in a wide range of sectors and to tailor codes to each sector.	Affirmative Resolution
Clause 28(9): Power to set out additional conditions that an organisation must meet to make an application to be considered as a recognised producer organisation	This power enables the Secretary of State to add to the conditions for recognition which are set out in the Bill and to change those conditions for specified sectors.	Negative Resolution (unless section 47(5) applies) or Affirmative procedure if the regulations contain new sector-specific provisions
Clause 28(10): Power to specify the time period within which an application to become a recognised producer organisation must be determined	This power will be used to make a purely administrative provision for the application process; such provision may need to change considering changing practicalities.	Negative Resolution (unless section 47(5) applies) or Affirmative procedure if the regulations contain new sector-specific provisions
Clause 28(12): Power to make further provision about recognised producer organisation applications	This power enables the introduction of further provisions about the administration of the applications process and the procedural elements of recognition. This is important given the potential need to respond to the practicalities of a (predicted) increase in volume of applications.	Negative Resolution (unless section 47(5) applies) or Affirmative procedure if the regulations contain new sector-specific provisions
Clause 28(14): Power to amend Schedule 1	This power enables changes to be made to the Schedule that lists agricultural sectors to account for future changes in the structure of UK agriculture. This is a Henry VIII power.	Affirmative Resolution

<p>Clause 29(2): Power to make provision about recognised organisations in relation to competition exemptions</p>	<p>This clause allows the Government to introduce new provisions concerning the ongoing requirements for POs, distinct from the previous powers concerning the nature of their initial recognition. The purpose of ongoing requirements is to ensure that a Producer Organisation continues to operate in a way that justifies the ability of its members to coordinate their activities, which would otherwise be prohibited as anti-competitive. Ongoing requirements also enable the Government to alter the conditions of its continued activity, in line with changes in the relevant sector and wider UK agriculture industry.</p>	<p>Negative Resolution (unless section 47(5) applies) or Affirmative if the regulations contain new sector-specific provisions</p>
<p>Part 4: Matters Relating to Farming and the Countryside</p>		
<p>Clause 31(3) and 31(4): Amendments to an existing delegated power in section 74A of the Agriculture Act 1970 to regulate fertilisers on the basis of their function and to specify additional matters for which provision may be made relating to the regulation of fertilisers.</p>	<p>A delegated power already exists in the Agriculture Act 1970 to regulate fertilisers based on their content and composition. Amendments to this delegated power are required to regulate the range of materials which will fall within the amended definition of “fertiliser” based on their function. The functions to be regulated will be consulted on and may be subject to a staged roll out. The functions regulated will need to change to keep pace with scientific developments.</p> <p>Amendments are also required to enable regulations made pursuant to this clause to set out the conformity assessment procedures to be carried out on fertilisers according to their content, composition or function to assess their compliance with statutory requirements. They will provide for functions to be conferred on a public authority relating to monitoring or enforcing compliance with regulations or mitigating risks to the health and safety of humans, plants, animals or the environment presented by fertilisers. Regulations may require the retention of information relating to the compliance of fertilisers with statutory requirements. The clause will also enable the amendment or repeal of retained EU law relating to fertilisers.</p>	<p>Clause 31(3) – affirmative procedure for first exercise of the power. Negative procedure for subsequent exercises.</p> <p>Clause 31(4) - affirmative procedure for first exercise of the power and in respect of any regulations made under section 74A(1) of the Agriculture Act 1970 which contain provision under new section 74A(1A)(b) or (1E)(a)(i) or (ii). Negative procedure for all other exercises of the power.</p>

<p>Clause 32(1): Amendment of the Natural Environment and Rural Communities Act 2006</p>	<p>This clause will amend NERC Act 2006 to allow new data functions to be assigned to a board established under that Act, including running a new multi species database, which will provide livestock traceability and identification services to both Defra and industry, and which will share data with devolved administrations.</p> <p>The new service is necessary to remove the current need to rely on multiple systems which are expensive, outdated and inflexible. They are also designed to collect data rather than share it. The new service will allow more accurate, efficient and cost-effective livestock traceability and identification, benefiting disease control and trade, and provide livestock keepers with a single portal to meet their reporting responsibilities. A multi-species service will also enable Defra and APHA to monitor animal movement standstill arrangements for disease control purposes through a single platform.</p>	<p>Affirmative Resolution</p>
<p>Clause 32(2): Amendment of the Animal Health Act 1981</p>	<p>This power amends the out-of-date terminology used in the Animal Health Act 1981 that refers to ‘marking’ an animal for identification and updates it to refer to ‘the means of identifying animals’. This amendment is necessary to acknowledge and provide for newer developments in the technology and methodology of identifying animals, such as the use of electronic identification.</p> <p>This power also amends the AHA 1981 such that provision made under subsection (1) of the AHA 1981 may bind the Crown. The amendment will allow secondary legislation that will be made under powers of the AHA 1981 to be made for Crown animals, such as military and police horses. This is necessary as Crown animals can carry diseases, like any other animals of the species, and this change is needed to ensure that all animals across the relevant species are brought into scope. Previously legislation for these animals was made under the European Communities Act 1972.</p>	<p>No parliamentary procedure</p>
<p>Part 5: Marketing Standards and Carcass Classification</p>		
<p>Clause 35(1): Power to make provision</p>	<p>A delegated power will enable the tailoring and modernisation of the existing marketing standards in retained EU law for agricultural</p>	<p>Affirmative Resolution</p>

relating to product marketing standards	products marketed in England. Marketing standards are technical in nature, and this power will enable their modification to keep in line with modernisation and to reflect the domestic agricultural market.	
Clause 35(5): Power to amend Schedule 4	Schedule 4 largely reflects the products covered by current marketing standards law. This is subject to change as new sectors develop and become increasingly important. Therefore, a delegated power is needed to enable amendments to this schedule so that the list of products and their description may be updated over time, and any necessary amendments may be made to clause 35 itself consequential on those amendments to Schedule 4.	Affirmative Resolution
Clause 36(1): Power to make provision relating to organic certification	This power gives us the ability to make new organics regulations or amend or repeal the retained EU organics legislation after EU exit. This will allow us both to achieve domestic policy objectives and make changes negotiated with major trading partners to improve organic trade agreements. It will therefore allow us to ensure that the UK organics sector can continue to operate to world-leading standards of organic production, to remain competitive, to adapt with the latest science, and to access global markets after EU Exit.	Affirmative resolution on first use and negative thereafter, unless the provision relates to the objectives, principles and standards of organic production. Where this is the case, the affirmative procedure will apply at all times
Clause 36(5): Power to make provision relating to import of organic products into the United Kingdom	This power gives us the ability to make regulations with respect to the import of organic products, including the ability to amend or repeal the relevant retained EU law. This will allow us to adapt our rules to the fast-moving needs of global trade.	Affirmative resolution on first use and then negative thereafter
Clause 36(7): Power to make provision relating to export of organic products from the United Kingdom	This power gives us the ability to make regulations with respect to the export of organic products, including the ability to amend or repeal the relevant retained EU law. This will allow us to assist transparency in the global trade flows of organic products.	Affirmative resolution on first use and then negative thereafter
Clause 36(8)(c): Power to make provision relating to the enforcement of organics regulation	This power gives us the ability to amend the domestic enforcement regime for organics to reflect new and amended organics regulation.	Affirmative resolution on first use and then negative thereafter

Clause 38(1): Power to make provision relating to carcass classification	This power is justified because it will enable the updating of carcass classification provisions for slaughterhouses in England. It will allow carcass classification rules to be tailored to suit the domestic sector, to ensure that these rules do not place an excessive burden on farmers and other players in the food supply chain and to continue to match the modification made to the rules at international level to ensure domestic farmers and slaughterhouses are not disadvantaged.	Affirmative Resolution
Clause 39(1): Power to reproduce modifications under section 35 for wine sector	This power is justified because it ensures that any changes made to Annex 7 of the CMO regulation using the power in clause 35(1) will subsequently flow through to the references to Annex 7 which appear in Section 2 of Chapter 1 of Title 2 of CMO Regulation. This makes the cross references work and ensures clarity as to which products are being referred to. The clause will only affect the part of Annex 7 which relates to wine. No other products will be affected.	Negative Resolution
Part 6: WTO Agreement on Agriculture		
Clause 40(1): Power to secure compliance with the Agreement on Agriculture	The powers under this section of the Bill are reserved to Westminster, however given devolved interests in these matters we are consulting with the devolved administrations on the process for making and operating the regulations. These discussions are ongoing, and we are therefore not yet able to make the regulations. Furthermore, the regulations may need to be updated periodically to reflect changes in WTO agreements; use of secondary legislation allows this to be done without the need for changes to primary legislation and delegation of powers allows for routine changes to be made if necessary with an appropriate level of Parliamentary scrutiny through use of the affirmative procedure.	Affirmative Resolution
Part 8: Final Provisions		
Clause 50(1): Power to make consequential provision	It is not possible to establish in advance all consequential, supplemental, transitional, transitory and savings provisions that may be required, particularly given that we do not yet know the outcome of EU exit negotiations; a power is needed to avoid any legal uncertainty or legal lacunas after the Bill comes into force. This is a Henry VIII power. Clause 50(2) extend this power to the modification of retained EU legislation.	Negative Resolution; Affirmative Resolution if regulations modify primary legislation.

Clause 53: Commencement	This clause contains powers to bring provisions of the Bill into force by commencement regulations. By virtue of subsection (5), regulations may appoint different days for different purposes.	N/A
Schedules		
Schedule 3, Para 7 (clause 34) Agricultural Tenancies: Power to make regulations relating to requests for landlord's consent or variation of terms under the Agricultural Holdings Act 1986 (the 1986 Act)	These powers, conferred on the Secretary of State in relation to England and on the Welsh Ministers in relation to Wales to make regulations, are needed to ensure that tenants under the 1986 Act are not unfairly restricted from accessing financial assistance that may be provided under the Agriculture Bill (in sections 1, 2(4) and 19 or paragraph 7 of Schedule 5) or from meeting a statutory obligation by the terms of their tenancy agreement. In the absence of agreement between the parties, regulations are needed so that the details of a dispute resolution process can be designed and implemented, in consultation with industry, including representatives of both tenants and landlords, to ensure a balanced approach between the interests of both parties is taken. In addition, regulations are considered necessary so that updates to the process can be made regularly to address any changes that are needed based on experiences of tenants accessing financial assistance schemes over time as these schemes are developed and rolled out. Regulations will be developed swiftly for early consultation with industry.	Negative
Schedule 3, Paragraphs 4, 5 and 6 and Paragraphs 23 to 29 (Clause 34) Agricultural Tenancies: Power to amend the list of persons who may appoint arbitrators to resolve disputes under the Agricultural Holdings Act 1986 (the 1986 Act) and the Agricultural Tenancies Act 1995 (the 1995 Act).	Under the 1986 Act and the 1995 Act an arbitrator may be appointed by agreement between the parties to resolve a dispute, or if the parties cannot agree they can apply to the President of the Royal Institution of Chartered Surveyors ("RICS") to appoint an arbitrator. Industry feedback has highlighted a lack of arbitrators in the sector to resolve tenancy disputes. Therefore, following a positive response to the recent consultation on this issue we are amending the 1986 Act and the 1995 Act to widen the list of professional organisations able to appoint so that the President of the Central Association of Agricultural Valuers (CAAV) and the Chair of Agricultural Law Association (ALA) can also make appointments alongside RICS. This will widen the pool of arbitrators, provide more choice and make the service more accessible for tenants and landlords. A power to make regulations, conferred on the Secretary of State in relation to England and the Welsh Ministers in	Negative

	relation to Wales, to amend the list of persons who may appoint arbitrators under the 1986 Act and the 1995 Act is necessary to support this change. This will enable the list to be updated from time to time to keep it up to date with any changes or additions that may be needed (e.g. if the listed organisations change their name or new organisations need to be added).	
Schedule 3, Paragraphs 17 and 18 (clause 34) Agricultural Tenancies: Power to make regulations updating the criteria governing the suitability of a new tenant to succeed to an Agricultural Holdings Act Tenancy	This power to make regulations to update the criteria governing the suitability of a tenant to succeed to an Agricultural Holdings Act agreement is necessary because the current provisions are viewed as out of date by industry and recent consultations in England and Wales on this issue show widespread support for the provisions to be updated. The making of regulations is necessary so that they can be developed in further consultation with industry ensuring representatives of both tenants and landlords are able to contribute their views on the most appropriate criteria to include. In addition, it is important that the regulations can be reviewed and updated regularly to ensure they remain up to date with continued professional development in farming and business skills.	Negative
Schedule 5: Wales.	The powers conferred on the Welsh Ministers in this Schedule are of a similar nature to those in the main body of the Bill.	The scrutiny procedures mirror those in the main body of the text.
Schedule 6: Northern Ireland.	The powers conferred on DAERA in this Schedule are of a similar nature to those in the main body of the Bill. Differences include, adapting procedures to suit the context of Northern Ireland and slightly adapted purposes for which certain powers can be used.	The scrutiny procedures mirror those in the main body of the text, except the powers under paragraphs 2, 6 and 8, which are to be exercised using the Affirmative Resolution procedure to cater for the unique circumstances in Northern Ireland.

E. Analysis of Delegated Powers in the Bill by Clause

Part 1: Financial Assistance

Clause 2(8): Powers to impose a legal duty on the Secretary of State or another person to publish information about financial assistance

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Affirmative Resolution

Context and purpose

17. Clause 2(8) confers a power on the Secretary of State to impose a duty on the Secretary of State or another person to publish information about financial assistance which has been given under clause 1.
18. Information about beneficiaries of CAP schemes is currently published on a single website covering the whole of the UK. This is required by CAP transparency rules intended to support public control and scrutiny of how money is spent (Article 111 of EU Regulation 1306/2013). The website currently publishes, amongst other things, the names of beneficiaries (where they are natural persons), the municipality where they are resident (including the relevant part of their postcode) and the amount of payment received for each CAP measure.
19. The power in clause 2(8) will enable the Secretary of State to provide for the publication of information in relation to future financial assistance, which may include the information that is currently published on the single beneficiary website. Publication of such information, even though this will include the disclosure of some personal data relating to the recipients of such payments, will enable proper scrutiny of the expenditure of public funds. Having this information publicly available would ensure transparency of spending and enables the public to assess the public goods and services that have been paid for.
20. The GDPR override provision incorporated in clause 46 works to ensure that the power in Clause 2(8) cannot operate to authorise any disclosures that are contrary to the Data Protection legislation (as defined in the Data Protection Act 2019). These powers are nonetheless to be taken into account when determining whether a proposed disclosure would contravene the Data Protection Legislation.

Justification for the power

21. The Department is unable to set out in the Bill exactly what information should be published, and by whom, until payment schemes have been fully developed and types of information that will be collected, and the operational capabilities required for processing it, are established. The Department will work with stakeholders to consider proportionate approaches to publication of beneficiary information. Clause 2(8) will also allow changes to be made to any publication requirements, where these are necessary to keep pace with any changes to how schemes are administered or to cover new schemes.

Justification for the procedure

22. These regulations can require publication to the wider public of the personal data of recipients of financial assistance under clause 1. The affirmative resolution procedure is sought to ensure that adequate parliamentary scrutiny is afforded to any such proposals to achieve a suitable balance between the protection of personal data and the transparency of public expenditure.

Clause 3(1): Powers to make provision for checking, enforcing and monitoring in connection with new financial assistance schemes

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Affirmative Resolution

Context and purpose

23. This power is needed so the Secretary of State can establish a regime to effectively control the provision of financial support and ensure that public funds are properly given, suitably protected against fraud and are value for money. Regulations may provide for details of:
- a. information required from those who apply for and receive financial assistance. It may be that a scheme is set up for a certain category of eligible person and the Government requires regular information from the recipient to demonstrate that they continue to fall within that category. For example, it may be necessary for a recipient to show they were conducting activities on the land by providing copies of a tenancy agreement at each renewal date to show that they could still legally conduct those activities;
 - b. powers of entry for authorities to effectively inspect those that apply for and receive financial assistance and to enforce financial assistance conditions. For example, if a recipient of funding refuses an inspector entrance to his land, the provision would set out what procedures would need to be followed in order for the inspector to obtain that access, for example by applying to a justice of the peace to obtain an entry warrant;
 - c. the approach to inspection such as, what could be examined, sampled or recorded to aid an investigation. For example, an inspector may require taking water samples to test quality or examine the health of livestock to confirm scheme conditions or outcomes have been met. Additional powers might include a) the powers of search for authorities to seek evidence that is not in plain sight, for example, within cupboards or drawers, to search through documents or computer files, and b) the powers of seizure to allow authorities to gather evidence, for example, an investigator may remove any item which they believe to be evidence of fraud. This may include computers, computer equipment, documents and taking photographs of evidence.

- d. the process for checking eligibility or conditions subject to which financial assistance is given, are met. For example, this may provide for time limits to submit evidence to enable payments to begin;
- e. record keeping requirements for those who receive financial assistance. For example, we may require someone in receipt of a payment to enhance the health or welfare of livestock to keep a record of the specific improvements they have made to the conditions in which livestock are kept;
- f. the process to recover or make good all, or any part of, financial assistance (with or without interest) or the withholding of all, or any part of, financial assistance. For example, we may require repayment (with or without interest) or withhold future payments if someone had not implemented the agreed actions required as a condition of receiving payment.
- g. monetary penalties to be imposed, and under what circumstances. For example, the relevant authority may wish to include an additional penalty (including one based on a percentage of the financial assistance received) on a person who does not comply with the terms of their agreement or submits a late claim to encourage prompt submission of receipts or required information;
- h. the approach to suspension of financial assistance and the requirements to remove a suspension. For example, the Department may suspend an individual from receiving specified payments if it is believed they are in breach of conditions and an investigation is ongoing. The Department may prohibit someone from a scheme for a specified period or until they can demonstrate they are able to meet specified criteria. Once the time has elapsed or the conditions are met the prohibition will end and they may then enter a scheme and receive funds;
- i. the process for appealing against enforcement decisions. For example, the process to enable a person to make an appeal to the Secretary of State against a decision made by an authority in connection with their financial assistance application, and;

- j. functions are placed on a person to exercise checking, eligibility, monitoring or enforcing compliance. For example, we may place functions onto another body to conduct inspections and exercise limited decision making powers on behalf of the Secretary of State.

- 24. The regulations made under the powers detailed above may make provision for or in connection with a) checking whether eligibility criteria for receipt of financial assistance are met and the consequences, where financial assistance has already been given if not, b) enforcing compliance with conditions subject to which financial assistance is given, c) monitoring the extent to which the purpose of financial assistance has been achieved, and d) the investigation of suspected offences in connection with applications for, or receipt of, financial assistance.

- 25. Regulations made under clause 3(1) will include a safeguard to limit the use of powers of entry so that premises used wholly or mainly as private dwellings and their associated property, for example gardens, yards, private garages or outhouses, can only be accessed after the issue of a warrant by a justice of the peace. This will safeguard a citizen's right to live privately without undue government interference. Powers to apply for a warrant will be available through regulations to allow authorities to enter private dwellings, and also commercial premises where, for example, entry has previously been refused, where the occupants are believed to be hostile, or where the authorities need to carry out an unannounced inspection, for example, if there is a risk of evidence being hidden or destroyed.

- 26. The primary obligations on recipients of funding given under clause 1 will be set out in agreements between recipients of financial assistance and the Secretary of State. These will detail the conditions that must be met throughout the agreement period, such as the need of the agreement holder to retain records. Any regulations made under 3(1) will set out monitoring and enforcement procedures and will complement the obligations set out in the funding agreements. Setting monitoring and enforcement procedures in regulation will ensure that they are clear, transparent and provide a consistent approach across different funding arrangements.

- 27. The approach to enforcement will be proportionate to the support provided. For example, the Department will look to make greater use of risk-based targeting of inspections, such as placing a greater focus on those recipients that have been non-compliant with funding agreements in the past. The Department will also look to provide the opportunity for those who have not met the conditions for financial assistance to rectify the situation before imposing sanctions. However,

those who do not meet conditions and do not rectify an error can expect to face appropriate sanctions, such as the recovery of payment, suspension, or penalty.

Justification for taking the power

28. The approach to the checking, enforcement and monitoring powers for financial assistance schemes will be developed working alongside stakeholders. This will enable the Department to design an inspection and enforcement regime which is appropriate and proportionate to the financial assistance scheme in question. For example, it is envisaged that the sanctioning approach (e.g. payment recovery, suspension or penalty) will be taken according to the type of financial assistance provided (grant, loan, guarantee or in any other form) and may be scaled according to the type of obligation that has been breached.
29. A delegated power will also enable the Secretary of State to adapt any regime should schemes change due to changing priorities or the use of technology in the sector and to ensure that it is suitably tailored to any new payment scheme. For example, increased use of remote sensing may reduce the need for inspections therefore the enforcement regime may need to adapt. This power will not be used to create any retrospective sanctions.

Justification for the procedure

30. The affirmative resolution procedure is sought as this power contains enforcement provisions, such as powers of entry, inspection, search, seizure and penalty, to be set out in delegated legislation.

Clause 8(3): Power to extend the agricultural transition period

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Henry VIII power

Parliamentary Procedure: Affirmative Resolution

Context and purpose

31. The Government has committed to implementing an agricultural transition during which Direct Payments to farmers will be phased out. That agricultural transition period will start in 2021 and will be for seven years as specified in clause 8(1). It is important that the farming sector has certainty about that period. While the power in 8(3) will enable the Secretary of State to extend that period, it cannot be reduced. This power may be exercised more than once but, in doing so, it must be exercised before the end of the period. This is a Henry VIII power as it will enable the Secretary of State to amend a provision in primary legislation. This power sunsets at the end of the agricultural transition period.

Justification for taking the power

32. A degree of certainty is required about the timing of the agricultural transition period to help farmers plan, and this is provided by the fact the transition cannot be less than seven years. There does, however, need to be some flexibility in case circumstances demand a longer period. The power will enable the Secretary of State to respond swiftly to unforeseen circumstances which may demand the extension of the transition period. This will enable payments to farmers to continue beyond the seven-year transition period currently set in this clause. These unforeseen circumstances could, for example, relate to unexpected exceptional trading conditions during the period in which farmers are adjusting to the phasing out of Direct Payments.

Justification for the procedure

33. The affirmative resolution procedure is sought as it would be important for Parliament to debate the need for, and consider the implications of, any extension of the agricultural transition period. The exercise of this power will have important budgetary implications, given the size of the current budget for Direct Payments; the extension of Direct Payments could also impact on the

investment of money in new schemes. It is also important that the consideration of the effect on farmers is fully debated, given the current significance of Direct Payments to the industry.

Clause 9(1): Power to modify legislation governing the basic payment scheme

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Negative Resolution (unless section 47(5) applies, under which the procedure is affirmative).

Context and purpose

34. The current basic payment scheme (including the greening payment and young farmer payment) will be incorporated into UK law for claim year 2020 under the Direct Payments to Farmers (Legislative Continuity) Act 2020. This clause provides the Secretary of State with a power to modify that retained EU law governing that scheme in England.
35. The Secretary of State, however, may only make modifications which he or she considers will simplify the administration of the scheme or otherwise make its operation more efficient or effective; remove provisions which are spent or of no practical use; remove or reduce burdens on people, applying for, or entitled to, direct payments under the scheme or otherwise improve the way that the scheme operates in relation to them; secure that any sanction or penalty imposed is appropriate and proportionate, or limit the application of the scheme to land in England only.
36. More specifically, the power could be exercised to reduce the bureaucracy and any needless paperwork, which has been widely criticised. Simplifying the schemes in this and other ways will allow farmers to focus on preparing their businesses for the move away from the basic payment scheme to the new approach of public money for public goods. For example, this power allows us to improve the arrangements for farmers with land both in England and in one or more other part of the UK (i.e. Scotland, Northern Ireland and/or Wales), with the aim of minimising the payment delays such farmers sometimes currently experience. The Government intends to use the powers to remove complexity and reduce burdens where possible, which should benefit both farmers and the Department.
37. Clause 9(2) is required in order to terminate 'greening' payments during the agricultural transition period. Greening payments make up around 30% of the basic payment scheme and are made conditional on the farmer performing agricultural practices ostensibly of benefit to the environment. The greening requirements include the so-called 'three crop rule' which determines the number of crops a farmer must grow, regardless of the demands of the market. The requirements are onerous for the farmer to comply with and for the Rural Payments Agency

to administer and check. Removing them would represent a real simplification to Direct Payments. Removing the greening payment cannot reduce the overall payment received by the farmer; the budget for the greening payment would be subsumed into the basic payment scheme budget.

38. The European Court of Auditors concluded that greening is unlikely to significantly enhance environmental performance. Removing the ineffective greening rules, with all the associated red tape, is therefore unlikely to have adverse effects on the environment. The Government's new environmental land management system, which is to be rolled out nationally during the agricultural transition using the powers in clause 1, will deliver meaningful environmental outcomes.
39. The Department has already consulted formally with stakeholders with respect to some potential amendments that could be made using the powers contained within clause 9 to ensure the impact on farmers is properly considered.
40. The power is replicated for the Welsh Ministers and DAERA in Schedules 5 and 6.

Justification for taking the power

41. In 2018 the Government conducted an extensive consultation ('Health and Harmony') with farmers, stakeholders and other interested parties, during which most respondents expressed a desire for simplification. The Department has already consulted further with stakeholders on some potential amendments to the basic payment scheme. This means the Department can take into account their specialist input before laying statutory instruments making any amendments.
42. The amendments made under the power in this clause will be temporary measures. They will only apply for years before the Government has introduced delinked payments (see clause 12) or up to the end of the agricultural transition period (see clause 8(2)), whichever is sooner. The simplifications introduced will be largely minor and technical measures to improve the experience of farmers, such as by reducing burdens on them, and to make simplifications to the schemes. For example, the Department may remove the rule that specifies how often farmers must use their basic payment scheme entitlements to claim payment, which was a simplification supported by key industry stakeholders during the Department's consultation last year.

43. The Department intends to introduce amendments to simplify the scheme and reduce burdens as soon as possible, taking account of further detailed delivery assessments to ensure smooth implementation and in line with the terms of the implementation period.

Justification for the procedure

44. The intention is to exercise the power only to remove some or all the greening requirements or make other minor or technical changes, such as those listed above, to the basic payment scheme. Such changes can only be made if the Secretary of State considers they meet one of the purposes specified in subsection 9(2), such as removing or reducing burdens, and the Department has committed to consult with stakeholders ahead of making such changes. Where we intend to do something more significant it is made clear in the Bill. For example, clause 9(2) refers to terminating greening payments, clause 10 to the power to determine the Direct Payments ceiling (the annual financial amount) beyond 2020 and clause 11(1) to the power to phase out Direct Payments (reduce payments).
45. It is proposed that the negative resolution procedure applies (unless section 47(5) applies) because the amendments being made will largely be minor or technical simplification measures to ease the transition away from Direct Payments and are time limited.

Clause 10(1): Power to provide for the continuation of the basic payment scheme beyond 2020

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Affirmative Resolution

Context and purpose

46. The Direct Payments Regulation, which governs the current basic payment scheme, does not enable payments to be made after the 2020 scheme year. While the Regulation includes annual financial ceilings for years up to and including 2020, there are no ceilings for later years. Without this clause, the current basic payment scheme would end after the 2020 scheme year, which would mean a financial cliff-edge for farmers.
47. In its *'The Future for Food, Farming and the Environment'*² Policy Statement published in September 2018, the Government set out its intention to delink Direct Payments during the agricultural transition. This is provided for in clause 12. When the Government introduces delinked payments (in 2022 at the earliest), clause 12(7)(a) specifies that payments under the current basic payment scheme will end. Clause 10 allows the Government to continue making payments under the basic payment scheme after 2020 and until it introduces delinked payments. It therefore bridges the gap between payments to farmers under the current scheme and the introduction of delinked payments. This is important given the reliance many farmers currently have on these payments and the Government's intention to provide a smooth transition to its new schemes.
48. The clause includes a power for the Secretary of State to provide for the Direct Payments ceilings for England for years beyond 2020 to be determined in a specified manner. The power is limited to providing for ceilings for years during the agricultural transition period for which payments continue to be made under the current basic payment scheme.
49. The power will determine the ceiling in line with normal inter-governmental budgetary processes. The power requires the Secretary of State to publish the ceiling as soon as practicable after the decision has been made.

² <https://www.gov.uk/government/publications/the-future-for-food-farming-and-the-environment-policy-statement-2018/health-and-harmony-the-future-for-food-farming-and-the-environment-in-a-green-brex-it-policy-statement>

50. The power is replicated for the Welsh Ministers and DAERA in Schedules 5 and 6.

Justification for taking the power

51. The power is necessary to enable the Secretary of State to provide for the continuation of the basic payment scheme for one or more years during the agricultural transition, dependent on when delinked payments are introduced. The Government will consult further with farmers and stakeholders on the detail of delinking before deciding when delinking will be introduced.

Justification for the procedure

52. This clause would provide the Secretary of State with the power to continue with the basic payment scheme beyond 2020 and therefore to continue to pay farmers under this scheme. Given the size of the current Direct Payments budget a decision to use this power will have a substantial impact on the agricultural sector so it is imperative that opportunity be given to fully debate it in parliament. Therefore, it is appropriate to seek an affirmative procedure in this instance.

Clause 11(1): Power to provide for the phasing out of direct payments

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Affirmative Resolution

Context and purpose

53. The power in clause 11(1) enables the Secretary of State to phase out Direct Payments under the existing basic payment scheme, during the agricultural transition period specified in clause 8. This will enable a smooth transition to, and provide funds for, future schemes that offer better value for money (see clause 1). Direct Payments under the basic payment scheme will be phased out in a fair way by applying progressive reductions to the payments, with higher reductions initially applied to amounts in higher payment bands, until either the end of the agricultural transition period in 2027 or, if earlier, until delinked payments are introduced (see clause 12). The Government's approach to reductions was laid out in its *The Future for Food, Farming and the Environment* September 2018 Policy Statement³. This will involve reductions to existing payments under the basic payment scheme before introducing a more significant change in the form of delinked payments.

Justification for taking the power

54. This power will enable the Department to phase out Direct Payments in a manner which enables a smooth transition from the current schemes to the introduction of new schemes. Precise reduction levels need to be set in light of the requirement for funding through other support measures, and the ongoing economic condition of the agricultural sector. It would be unwise to set out the levels of reduction until 2027 in primary legislation and to deprive government of the necessary degree of flexibility in this matter.

Justification for the procedure

55. It is appropriate that there is parliamentary scrutiny of the rates of reductions to be applied to farmers' basic scheme payments to phase them out. Given the current significance of Direct

³ <https://www.gov.uk/government/publications/the-future-for-food-farming-and-the-environment-policy-statement-2018/health-and-harmony-the-future-for-food-farming-and-the-environment-in-a-green-brex-it-policy-statement>

Payments for the farming industry and budgetary considerations, it is suggested that the affirmative resolution procedure is used.

Clause 12(1): Power to provide for making delinked payments

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Affirmative Resolution

Context and purpose

56. The power in clause 12(1) enables the Secretary of State to make regulations to delink Direct Payments from land during the agricultural transition period, but not before 2022. Delinked payments will replace Direct Payments under the basic payment scheme (see clause 10(1)), so the retained EU law will fall away.
57. Under delinking the current connection between the value of the payment and the area of land for which it is claimed will be removed. There will be no need for the recipient to have land to receive a delinked payment. Instead, payments will be made based on a reference period. For example, it could be based on the value of the payment under the basic payment scheme received by the individual recipient during a particular scheme year or average across a number of years. The Government will consult with farmers and stakeholders before setting the detailed rules, including the reference period. This will help the Department get the approach right for farmers.
58. As is the case with payments made under the basic payment scheme, the Department does not intend to place any restrictions on how recipients may spend their delinked payments. This will allow each recipient to make decisions which are right for their business. Some farmers may choose to use the money to invest in their business to boost their productivity and others may use the money to diversify. Some may decide to stop farming altogether and use the payment to contribute to their retirement, creating opportunities for existing businesses to expand and new entrants to join the industry.
59. Where the Secretary of State makes provision to replace payments under the basic payment scheme with delinked payments, he or she is required to:
- a. prescribe who shall be entitled to delinked payments; and
 - b. establish the method of calculation of the delinked payment to any entitled recipient.

60. The Department will apply progressive reductions, with higher reductions initially applied to amounts in higher payment bands, to Direct Payments during the agricultural transition period to phase them out. In 2021 the reductions will be applied to payments under the basic payment scheme (see clause 11(1)) and, once delinked payments have been introduced, the reductions will be applied to those payments as they are phased out. The payments will stop at the end of the agricultural transition period.
61. This power also gives the Secretary of State the ability to establish the conditions under which recipients no longer become eligible for delinked payments. This could include, for example, circumstances in which the business which has been in receipt of payments ceases to exist. The Department will consult with the industry before setting any such conditions.
62. The clause also provides the power to pursue the recovery of delinked payments to which the recipient was not entitled. This reflects similar powers in existing EU regulations governing the basic payment scheme and is designed to protect public money.

Justification for taking the power

63. The power to delink payments allows the Government to create maximum flexibility and opportunity for farmers. The Government does not want to be bound at this stage to implement delinked payments in a particular year by stating a date in primary legislation. The Department will develop further detail about how delinking will work, after formal consultation with the industry, before deciding at what point during the agricultural transition to introduce delinked payments. This will help to provide for a smooth transition for farmers. The Department will also want to ensure that alternative enforcement mechanisms are in place before payments are delinked so that we can maintain agricultural and environmental best practice. Therefore, the power to implement delinked payments through secondary legislation is provided in the Bill.
64. Before setting the exact reference period by which delinked payments are calculated, and deciding whether any exemptions should be considered, it would be prudent to conduct further consultation with farmers and stakeholders. Therefore, the Department needs the power to make secondary legislation setting out the finer details of the scheme design which it would be premature to set out in the Bill.
65. Further consultation with the industry is also required before setting out the conditions under which recipients no longer become eligible for delinked payments. Other technical provisions

may be required, such as making provision for the Secretary of State to pursue the recovery of delinked payments to which the recipient was not entitled. Primary legislation is not considered a suitable vehicle for such detailed design specifications.

Justification for the procedure

66. This power will enable introduction of a new form of payment (delinked payments). Given the current significance of Direct Payments for the farming industry, it is suggested that the affirmative resolution procedure is used. Since the clause provides the Secretary of State with powers to set up and specify the eligibility criteria for delinked payments, the Department is of the view that scrutiny by both Houses is appropriate.

Clause 13(1): Power to provide for the payment of lump sums to eligible persons

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Affirmative Resolution

Context and purpose

67. This clause provides the power for the Secretary of State to make regulations setting out when, how and for whom a lump sum payment can be made. Lump sum payments would be in lieu of the Direct Payments the recipients would otherwise be entitled to receive during the agricultural transition, whether that be payments under the basic payment scheme or delinked payments. By offering the option of taking such a lump sum, we would be giving farmers further flexibility to invest in their business or help those that wish to leave farming to do so more easily.

Justification for taking the power

68. This power enables the Secretary of State to make regulations setting the detail on lump sum payments. Prior to making regulations using this power we will consult with farmers and stakeholders and consider affordability. This further consultation will help the Department to design the lump sum payment in a way that works for farmers and provides them with the intended flexibility. The regulations could include the rules to determine the value of a lump sum, the eligibility criteria and whether a maximum payment amount applies. The Department does not want to be bound to offer a lump sum in any particular year but wishes to be able to make the offer in a way which takes account of affordability and its aim of facilitating a smooth transition and effective restructuring of the industry.

Justification for the procedure

69. Given the current significance of Direct Payments for the farming industry and budgetary considerations, it is suggested that the affirmative resolution procedure is appropriate.

Clause 14(1): Power to modify retained direct EU legislation relating to the Common Agricultural Policy

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Negative Resolution (unless section 47(5) applies, under which the procedure is affirmative).

Context and purpose

70. Clause 14(1) empowers the Secretary of State to make regulations which modify Regulation (EU) No 1306/2013 on the financing, management and monitoring of the Common Agricultural Policy, tertiary EU legislation made under that Regulation, and related domestic subordinate legislation, so far as they have effect in England, as well as a number of ‘legacy regulations’ relating to the financing, management and monitoring of certain Rural Development schemes which were established before 2014 and so preceded Regulation (EU) No 1306/2013. This body of legislation, referred to in this document as “the Horizontal legislation” for ease of reference, applies to all payments currently made under the CAP and therefore covers Direct Payments and Common Market Organisation (CMO) aid schemes (which fall under Pillar 1 of the CAP) and Rural Development Programmes (which fall under Pillar 2).
71. The Horizontal legislation sets out detailed arrangements for the financing, management and monitoring of the CAP, including rules governing how the schemes are financed from EU funds, the accreditation and internal controls for the paying agencies of Member States, audits undertaken by the European Commission and other bodies, farm inspections, administrative checks, application procedures and financial penalties which may be applied when beneficiaries breach the rules.
72. The Horizontal legislation also includes rules on ‘cross compliance’, which point to requirements and standards on the environment, animal and plant health and animal welfare (‘cross compliance rules’), with which recipients of CAP payments must comply. It establishes a system of reductions which must be applied to CAP payments if there are breaches of cross compliance rules. Most of the cross compliance rules themselves are contained in separate domestic and EU legislation and so cannot be amended by this power.
73. The Horizontal legislation does not set out financial ceilings for any of the CAP aid schemes. The Horizontal regulations will become retained direct EU legislation and will continue to

govern any ongoing schemes until those schemes come to an end. Some of the horizontal regulations are due to be amended at EU Exit using the powers in the Direct Payments to Farmers (Legislative Continuity) Act 2020 to ensure the overarching CAP framework, as far as it applies to 2020 Direct Payments (which will be domestically funded), operates in a UK setting. Further operability amendments will be made to the horizontal regulations at the end of the implementation period to ensure the remaining provisions in those regulations, which will continue to be EU law during the implementation period, work domestically. This means that some of the provisions in the Horizontal legislation will not be retained in domestic law as they cannot operate in a domestic context; for example, most of the rules around Commission audits will be omitted.

74. Until the Department has phased out or ended the existing CAP schemes, it wants to modify the way they are administered, for the benefit of both the recipients of the payments and government. The power to modify the Horizontal legislation will help us achieve this. The Horizontal legislation is often highly prescriptive, containing complex and detailed rules that in many cases are ill-suited to a UK context. The Department will look to modify this legislation so that the requirements and rules they contain are more proportionate and minimise bureaucracy.
75. The power to modify the Horizontal legislation is limited to making changes which meet a certain number of set purposes. These are to secure that any provision of Horizontal legislation: ceases to have effect; simplifies the operation of such provision or makes it more efficient or effective; removes or reduces burdens (defined in the clause as including a financial cost, an administrative inconvenience, or an obstacle to efficiency, productivity or profitability); or secures that any sanction or penalty imposed is appropriate and proportionate.
76. For example, the power would enable the Secretary of State to make changes to the administrative inspection regime applying to Rural Development schemes, so that it is more proportionate and risk-based, and more focussed on environmental outcomes. We could also revise current cross compliance inspection requirements, which focus on numbers of inspections rather than the severity of the breaches, leading to ineffective risk-targeting.
77. The powers in this Clause will enable the Department to modify the current inflexible regulatory approach which can lead to the application of penalties which are disproportionate to the severity of the breach where cross compliance breaches are found. Similarly, we may

want to introduce modifications to the penalty regime applying to non-compliance with the eligibility criteria of Rural Development schemes, to make it fairer and more proportionate.

78. The Government intends to use the power to minimise burdens wherever possible and taking account of the views of stakeholders.

79. Secondly, the Horizontal legislation will not apply to future financial assistance payments made under clause 1. Part 1 of the Bill contains provisions for the checking, enforcing and monitoring of the new financial assistance schemes. The power in clause 14 does not, therefore, enable the Horizontal legislation to be modified to extend its provisions to payments under clause 1. Also, we do not intend to use this power to add new requirements or standards to existing cross compliance rules.

80. Thirdly, the powers under this clause will become redundant at the point when all payments to which they apply have ended or been phased out. There is specific provision in clause 11 for Direct Payments to be phased out; and rural development payments, as well as aid under the CMO, are made under time-limited programmes.

81. The power is replicated for the Welsh Ministers and DAERA in Schedules 5 and 6.

Justification for taking the power

82. The level of technical detail involved in amendments to the Horizontal legislation is considered too high for inclusion in primary legislation. For example, changes may be made to the operational requirements for the Department's databases that are currently used to administer the schemes.

83. We will not make significant changes to the Horizontal legislation without taking into account the views of stakeholders.

Justification for the procedure

84. This clause is subject to the negative resolution procedure (unless section 47(5) applies). The negative resolution procedure would afford an appropriate level of scrutiny in the case of regulations made under this clause. Given the limitations on this power and the technical nature of amendments, there are unlikely to be policy issues that would require in-depth Parliamentary debate and consideration. The Department has committed to consult with

stakeholders on proposed simplifications and improvements ahead of laying statutory instruments under this clause.

Clause 15(1): Power to modify retained direct EU legislation relating to fruit and vegetable producer organisations

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Negative Resolution (unless section 47(5) applies, under which the procedure is affirmative).

Context and purpose

85. The EU Common Market Organisation (CMO) regulation provides for growers in the fruit and vegetable sector to form Producer Organisations ('POs'). These are formally 'recognised' under the EU regulations, with the aim of concentrating supply, planning production and making individual growers within a PO stronger in the market place. Once recognised as a PO, the growers can claim EU aid, which is match-funded by the POs themselves, under the fruit and vegetable PO aid scheme ('the Aid Scheme'). The aid is capped, based on the PO's turnover.
86. Clause 15(1) will allow the Secretary of State to make regulations to switch off the Aid Scheme as it has effect in England. The current intention is that this power will be used to close the Aid Scheme to new entrants in England, while approved operational programmes implemented by POs are allowed to run through to completion. Operational programmes set out the actions that POs will take to achieve the aims of the scheme and form the basis on which aid to POs is paid.
87. The Government will work with the industry to consider how best to support the sector going forward, ensuring that future support is tailored to the specific needs of the domestic fruit and vegetable sector rather than continuing to tie growers to a scheme which has been designed for the needs of farmers in 28 Member States, many of whom have vastly different growing conditions to UK farmers.

Justification for taking the power

88. This power will be used to close the Aid Scheme in retained EU law, with the intention of ensuring that any operational programmes covered under the Aid Scheme can continue until their scheduled completion. It may also be used to provide for the transition from the existing Aid Scheme to a successor scheme implemented under this Bill. It is only a power to close the Aid Scheme, and not a general power to modify it in other ways.

Justification for the procedure

89. The power will be used only for minor and technical matters flowing from the UK's departure from the EU, and should therefore be subject to the negative procedure, unless section 47(5) applies.

Clause 16(1), (3) and (5): Powers to modify retained direct EU legislation relating to support for rural development in relation to England

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Negative Resolution (unless section 42(5) applies, under which the procedure is affirmative).

Context and purpose

90. Rural development schemes providing financial support for farmers, foresters, land managers and others have been a part of the CAP for approximately three decades. This support helps farming, forestry, food production, rural businesses and communities to improve productivity, promote economic growth (socio-economic schemes) and protect and enhance the environment (agri-environment schemes). In England, all the schemes are governed by the requirements of the Rural Development Programme for England (RDPE). The current version of the RDPE covers the 2014 to 2020 CAP period and is aiming, amongst other things, to protect the natural environment on 2.5 million ha of farmed land, create about 6,750 jobs and fund planting of 14,000 ha of trees.
91. Many of these schemes are multiannual and will continue to operate after EU-Exit and the end of the current 2014 to 2020 RDPE while new arrangements can be implemented. Otherwise there would be a hiatus in environmental protection and enhancement, with valuable opportunities being postponed or lost. However, the existing EU regulations for rural development are restrictive and overly bureaucratic, with detailed rules on implementation needing to be followed. For example, many responses to the Health and Harmony consultation complained about the excessive complexity of Countryside Stewardship, one of the major agri-environment schemes offering support under the current RDPE. Once the UK leaves the EU, bureaucracy can be less restrictive, for example, simplifying the requirements for extending, converting and adjusting agreements so that existing agri-environment or organic agreement holders can transition into a domestic scheme more easily once their agreement expires.
92. Clause 16 will provide for the modification of the retained EU legislation relating to the RDPE which will cease to have effect for new commitments in England after the closure of the 2014-2020 RDPE. It provides for some existing commitments under the RDPE to be extended, converted and adjusted with fewer restrictions and shortened to facilitate the transition of

current agreement holders into domestic schemes and reduce the burden on beneficiaries and delivery bodies. For example, currently Countryside Stewardship agreements can only be extended on an annual basis and being able to offer 2-year extensions would offer beneficiaries greater flexibility and certainty in managing their business. It will also provide for the extension of the RDPE and the increase of part of its budget so that the Secretary of State can continue to make payments for existing agreements which extend beyond the current 2014 to 2020 RDPE, for example this will enable continued funding for a 5-year Countryside Stewardship agreement entered into in 2018 for the full duration of the agreement.

93. Powers relating to existing rural development schemes for the Welsh Ministers and DAERA are in Schedules 5 and 6.

Justification for taking the power

94. The powers are to amend retained EU law, which has been amended by a number of Statutory Instruments made under the European Union (Withdrawal) Act 2018 so that it is operable in a UK context. These Statutory Instruments do not come into force until Implementation Period completion day, meaning that the further changes the Department wishes to make to the retained EU law cannot be made until after this time and cannot be included on the face of this Bill. The powers allow the changes to be made at a later date following EU exit.
95. The purpose of the powers in subsections (3)(a), (b) and (c) is to facilitate the transition of current agri-environment-climate, organic, animal welfare, woodland and forest environment/conservation agreement holders into domestic schemes so that there is no hiatus in protection and current agreement holders are not disadvantaged compared to new scheme entrants. Many of these agreements have a duration of 5, 10 or 20 years and will not end until the mid to late 2020s, meaning that the schemes they will transition into are currently at development or pilot stage. The powers enable the Secretary of State to facilitate the transition of agreements when they expire in a way that is least disruptive to beneficiaries and ensures that, for example, any environmental benefits being delivered are maintained.
96. The powers in subsections (1) and (5) will enable the Secretary of State to continue making payments for multiannual agreements entered into before and extending beyond the end of 2020 and currently delivered as part of the 2014 to 2020 RDPE. Under previous rounds of the CAP the tail end of multiannual agreements was transferred into the following round of the CAP to allow payments to continue to be made. For example, a 5-year agreement entered into in 2012 as

part of the 2007 to 2013 RDPE would be transferred into the 2014 to 2020 programme. The UK will not be a part of the next CAP and the Department will not know the exact value of these commitments until the end of 2020 when the final agreements will have been signed, which is why a delegated power is necessary. The Department may also need to set the budget ceiling on an annual basis to reflect the change in the value of RDPE commitments if beneficiaries transfer into a domestic scheme before the end of their initial agreement period.

97. The powers will only benefit agreements entered into before 31 December 2020. The powers in this clause effectively sunset when the agreements they pertain to cease.

Justification for the procedure

98. The changes will be technical in nature, as described above, and will be made based on feedback from stakeholders and delivery bodies. The level of technical detail involved in these amendments is high for inclusion in primary legislation, for example changes may be made to allow the length of agreements to be shortened, so that beneficiaries can take advantage of any new domestic environmental offers that are developed.
99. The power to make regulation will be exercised by Statutory Instruments made following the negative resolution procedure (unless section 42(5) applies, under which the procedure is affirmative), as the changes being introduced under this clause will either be to repeal retained EU legislation or, in the interim, technical simplification measures such as varying the length of agreements. This clause will not be used to introduce any additional burden on stakeholders or involve the transfer of any powers.

Part 2: Food and Agricultural Markets

Clause 20(1): Power to modify retained direct EU legislation relating to public market intervention or aid for private storage in connection with exceptional market conditions

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Negative Resolution (unless section 47(5) applies, under which the procedure is affirmative).

Context and purpose

100. In Article 219 of Regulation (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products ('the CMO Regulation'), the Commission is given wide powers to address market disturbances.
101. This includes the power to modify the rules regarding the general use of public intervention and private storage aid to use those schemes in cases of actual or threatened market disturbance.
102. This provision in the Bill allows the Secretary of State to modify the retained EU legislation relating to public intervention and private storage aid for England so that it may be used more effectively in exceptional market conditions. Any modifications would be linked to exceptional market conditions declared under clause 18 and would only apply in association with a declaration of exceptional market conditions made under clause 18. They would not have any effect on the general use of either scheme.
103. Regulations made under this delegated power could, for example, do the following:
 - c. open a public intervention scheme for a product not currently eligible under the general rules;
 - d. extend an intervention window past the dates laid out in the retained legislation; or
 - e. make exceptions to the rules for the schemes' general operation to make them more accessible in exceptional market conditions.
104. Outside of the articles relating to crisis measures in the CMO Regulation (which will be revoked for England under Schedule 7) the power to amend both schemes elsewhere in the retained

legislation for any other purpose, is limited. For example, the retained legislation does not enable products to be added to or omitted from the eligible products list; it does not provide for the switching off of mandatory public intervention of certain products; nor does it allow for the revocation of either scheme.

105. The power is replicated for the Welsh Ministers and DAERA in Schedules 5 and 6.

Justification for taking the power

106. The aim of this power is to make existing provisions on public intervention and private storage aid more effective in exceptional market conditions, by enabling the Secretary of State to amend the retained EU legislation so that those types of intervention can be tailored to the exceptional circumstances.

107. There may be circumstances in which public intervention or private storage aid are the most effective way to mitigate an extreme market disturbance. This may be the case if the price of one specific commodity drops unexpectedly and removing goods from the market temporarily is the most cost-effective way to increase farmers' incomes without unduly affecting consumers. To ensure the schemes can be used effectively in this situation it may be necessary to make changes to the retained legislation.

108. The agricultural market can at times be erratic, and the nature of exceptional market conditions is that they cannot be foreseen. The best way to operate either scheme will depend on the nature of the exceptional market conditions, which are themselves unpredictable. For example, we cannot know now what products might require the Secretary of State to open an intervention scheme or whether and to what extent an intervention window might need to be extended. For these reasons it would not be possible to make any such amendments on the face of the Bill.

Justification for the procedure

109. The negative resolution procedure is laid down for statutory instruments laid under this power, unless clause 47(5) applies.

110. The power is intended for use only in exceptional circumstances where threats of severe market disturbance occur so swiftly or unexpectedly that immediate action is necessary to mitigate the significant adverse effects on farmers' incomes. A delay in taking action could aggravate the situation and lead to the exceptional market conditions turning into a more severe or prolonged

disturbance, or the need to take more robust action at a later date. The power could only be used in the case of exceptional market conditions as defined in clause 18 and after a declaration of exceptional market conditions as set out in the same clause has been made.

111. Modifications to retained EU legislation made under this power would be linked to exceptional market conditions and would not have any permanent effect on the general operation of either scheme.
112. Due to the urgency with which measures to address the exceptional market conditions would need to be implemented, the limited nature of amendments under this power, and the requirement for the Secretary of State to lay the declaration before parliament as soon as practicable, provided for in clause 18; the negative resolution procedure is considered the most appropriate.

Clause 20(2): Power to modify retained direct EU legislation relating to public market intervention or aid for private storage – general purposes

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Negative Resolution (unless section 47(5) applies, under which the procedure is affirmative).

Context and purpose

113. The aim of EU public intervention and private storage aid is to provide a safety net to farmers by removing surplus products from the market and thereby stabilising market prices. The market price of certain goods is monitored, so that when the market situation so requires, eligible goods may be bought in, stored and resold once prices have risen (public intervention buying) or producers may be paid to store products for an agreed period to remove them from the market (private storage aid).
114. 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, if available routinely rather than in genuinely exceptional circumstances, run counter to the image of a dynamic and self-reliant agriculture industry.
115. The proposed power gives the Secretary of State the ability to modify retained EU legislation which relates to public intervention and private storage aid (as set out and defined in clause 20), for either or both of the following purposes:
- f. to amend either scheme in such a way as it ceases to have effect in England;
 - g. to amend the general operation of either scheme in England.
116. Examples of modifications which could be made under clause 20(2)(b) are:
- h. omitting from the eligibility list products which are not produced in England. For example, paddy rice or durum wheat, which are both eligible for intervention but are not produced in England.

- i. temporarily suspending mandatory intervention if there is a surplus of product already in store or the market does not require intervention.
 - j. amending the maximum quantities for buying in under mandatory public intervention
 - k. revoking mandatory public intervention schemes to make them completely discretionary.
117. To ensure these schemes can be tailored to the domestic agriculture market, they may need to be altered in ways not currently provided for under the existing legislation. For example, the types of modifications outlined above, which could not be done under the retained EU law.
118. Modifications made to public intervention and private storage aid under this power will only apply in relation to the general use of these schemes. It will not affect the power in clause 20(1) allowing the Secretary of State to amend either scheme in relation to exceptional market conditions declared under clause 18. Modifications made to the schemes under the power in clause 20(1) will not affect the general operation of the schemes.
119. The power is replicated for the Welsh Ministers and DAERA in Schedules 5 and 6.

Justification for taking the power

120. The power to amend the public intervention and private storage aid schemes in the retained EU legislation is limited. For example, the retained legislation does not enable products to be added to or omitted from the eligible products list; it does not provide for the switching off of mandatory public intervention of certain products; nor does it allow for the revocation of either scheme.
121. To ensure these schemes can be tailored to the domestic agriculture market, they may need to be altered in ways not currently provided for under the existing legislation, for example, those modifications listed in the previous section.
122. One power which is not provided for in the retained EU legislation is the ability to repeal these market intervention schemes. The power under this clause will enable the Secretary of State to phase out these market intervention schemes for England. Such a decision would require further discussions with the devolved administrations.

123. The policy intention is to move away from these schemes which were created with the European market in mind. However, it is difficult to predict what the future domestic agricultural market may look like or what the UK's future trading arrangements will be. Therefore, it is appropriate for there to be a power that is broad enough to allow the phasing out to occur but to allow flexibility as to the timing and detail of changes. Examples of modifications that could be made are listed in the previous section; they include modifications to revoke mandatory intervention schemes, or omit products not produced in England from the eligibility list.

Justification for the procedure

124. This clause uses the negative resolution procedure, unless section 47(5) applies, under which the procedure is affirmative.
125. Amendments to intervention schemes with the aim to make them more suited to the domestic market would not be made in a vacuum. Before any instrument is laid, the Department would examine the agricultural sector as a whole and its individual product markets, taking into consideration market prices both at home and globally; we may discuss with relevant stakeholders and the devolved administrations before decisions are taken.
126. Similarly, amendments made to the retained EU legislation with the intent of phasing out public intervention and private storage aid would be made subject to the terms of a withdrawal agreement with the EU; and may require consultation with devolved administrations; and discussion with other relevant stakeholders. Other amendments are likely to be technical changes to scheme design; for example, changing mandatory buying-in quotas.

Part 3: Transparency and Fairness in the Agri-Food Supply Chain

Clause 21(2): Power to require a person in, or closely connected with the agri-food supply chain to provide information

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Affirmative Resolution

Context and Purpose

127. This clause is intended to make data collection throughout the agri-food supply chain more transparent and to improve 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 (from farm to fork) to serve a specified number of purposes listed in section 23, largely relating to productivity, supply-chain fairness, animal health and welfare, and risk management.
128. Safeguards have been included to ensure that data is only collected where necessary for specific policy purposes which are listed in clause 23, and it will not be possible for collected data to be used for any purposes other than those which are stated in the requirement. These purposes include promoting transparency or fairness in agri-food supply chains; promoting the health of animals and plants; and minimising waste arising from activities connected with agri-food supply chains. Where information provided in response to a requirement might prejudice the commercial interests of any person, that information may only be disclosed in an anonymised form, unless the Secretary of State considers it is in the public interest to disclose it in some other form.
129. For example, in the future the Government may aim to do national disease eradication programmes, such as for Infectious Bovine Rhinotracheitis (IBR). IBR is a highly important disease for trade purposes. Not controlling IBR runs a risk of the spread of this potentially devastating disease to valuable animals with significant consequences. The Department may, to that extent, collect data to identify which farms have had positive IBR findings in the past year, and use that data to help producers make informed decisions. An example of this is below:
130. An illustrative example of how this may be used: Farm A is looking to buy a bull from Farm B, a pedigree breeder. Under this clause the Government can hold data that indicates that Farm B has had a number of positive IBR findings recently. Farm B may consider this information to be

commercially sensitive. However, if Farm A is informed of the IBR findings on Farm B prior to purchase, they can make an informed decision on whether to buy the bull, and if so, what measures will need to be taken to reduce the risk of IBR spreading. Reducing the spread and burden of animal disease is in the public interest so in this instance it may be appropriate to share that information with certain persons who have a legitimate business need for it (such as onward purchasers) for example, through a system such as the proposed Livestock Information Service.

131. However, sharing such data on an individual farm in a non-anonymised form is a serious decision, and should be considered only as part of a graduated approach arrived through discussion with industry to avoid unintended adverse consequences. Furthermore, Parliamentarians themselves will be able to debate this through the affirmative procedure. The powers in the Bill cover both a general power exercisable by the Secretary of State, and a delegated power to make regulations. This is because a general power will only be useful where the class of persons from whom information is to be collected is readily identifiable. For example, abattoirs in England are an identifiable class, in that the Government can use business records to contact them directly. Conversely, where information needs to be collected from a class of persons that is not readily identifiable then a Statutory Instrument will be required to reach that class of person. For example, there is no requirement to register the keeping of camelids (such as llamas or alpacas). The Department therefore may not know the location of such keepers, or how to communicate with them. These animals, even if not entering the food chain themselves, can contract and transmit a number of diseases to animals that may form part of the food chain such as sheep and cattle. It may therefore be important in some instances to be able to collect data from these keepers in efforts to better understand and control endemic diseases.

132. The power is replicated for the Welsh Ministers and DAERA in Schedules 5 and 6.

Justification for taking the power

133. Technological change, in particular the rapid development of precision farming and increasing automation in food processing, is likely to give rise to novel sources of data which could be used to improve agricultural performance – such as that gathered by satellites, or mobile phone applications. Technological change in how data can be securely disseminated is also likely to increase opportunities to efficiently exploit data to drive productivity and support farmers and growers to manage volatility. A power is necessary to allow the Secretary of State to request information required to reflect these technological advances, and to gather and share novel data by means not currently known, both to strengthen evidence-based policy making and to enable

monitoring of intervention success. Irrespective of the means of data collection and sharing, it will be subject to the requirements in section 25. This section sets out limitations on data collection, and how it can be processed (including with respect to disclosure and commercial interest protections). The clauses are also subject to data protection legislation, including the General Data Protection Regulations (“GDPR”).

134. Delegation of these powers is important to ensure sufficient agility to accommodate future changes to the agri-business landscape. The Government considers it of great importance to have time to consult widely on the policies which will deliver the public commitment to “explore how the collection and dissemination of market data can be improved in the longer-term to drive greater transparency”.
135. Due to EU-Exit, the Department may also need to collect data that is not currently gathered. For example, there may be a greater future need to demonstrate the UK’s animal health status and the robustness of the UK’s animal disease surveillance systems to facilitate international trade once the UK leaves the EU. This power would enable the Government to remain responsive to any trade deals and other international negotiations contingent on EU-Exit.

Justification for the procedure

136. It is proposed that the affirmative resolution procedure will be used for future data collection and sharing regulations. Market management measures warrant a high degree of parliamentary scrutiny, as do any provisions which may bring into question privacy and competition concerns. Data collection from supply chains which operate across internal borders is also likely to attract interest from the devolved administrations.
137. The greater degree of scrutiny afforded by the affirmative resolution procedure is sought to strike the right balance between achieving policy objectives and allaying concerns around data security. All policy will be devised in accordance with data protection laws, the Government Framework on Data Processing when this is published, and in line with the Information Commissioner’s Office Guidance. For example, systems will be put in place to ensure all information is only retained for the necessary timeframe and then securely destroyed. Additionally, the intention is to use voluntary methods of data collection and sharing where appropriate, using mandatory measures only where voluntary ones have been exhausted or are inappropriate. The Department will engage widely and seek industry input on draft Statutory Instruments made under these powers.

Clause 26(1): Power to make provision for enforcement of data collection and sharing requirements

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Affirmative Resolution

Context and Purpose

138. The powers to collect and share data on the agri-food supply chain underpin several significant policy objectives, but without an enforcement mechanism, there is the risk that data collected will be incomplete or not fit for purpose. With respect to objectives such as supply chain transparency, and better animal health and traceability, it is important to have a holistic data picture, while recognising the importance of not burdening industry with unnecessary requirements to provide data and protecting personal data. Therefore, the Department has put in place the protections in section 25, discussed above in the justification for clause 21(2). A delegated power is needed for the Government to implement a proportionate and adaptable regulatory enforcement regime for data collection, which reflects the nature of the data that may be collected and who from, and effectively encourages compliance.
139. Non-compliance with data collection requirements distributed for the Annual Business Survey are supported by fine-issuing powers under the Statistics of Trade Act 1947. The Government aims to recreate similar fine-issuing powers for data collection using these powers.
140. Safeguards on the exercise of this power will be consulted on with stakeholders. For example, it may be considered appropriate to include:
- a. A graduated approach to enforcement, which may include mandatory warning notices before fines are issued to first offenders, mandatory advice sessions, and larger penalties for repeat offenders;
 - b. defences such as an inability to provide data on time due to exceptional circumstances (on-farm emergencies such as flooding or fire, for example), and/or;
 - c. allowances for correction of inaccurate data provided, where it can be demonstrated that the inaccuracy is not deliberate or a failure to take reasonable care.

141. Such safeguards will need to reflect the nature of the requirement to provide information, the actor from whom it is required and their ability to respond. For example, if an individual operator fails to meet a requirement to provide baseline endemic disease data on time because they first needed to be taught how to operate the system, it may not be appropriate to impose a fine in the first instance. However, in the instance of a large organisation which fails to provide price information in response to a request, when it has sufficient capability to do so, it may be more appropriate to issue a warning notice or fine.
142. The power to enforce information requirements does not provide for the creation of any criminal offences and only allows for civil penalties. Any civil penalties would not be retrospective, and it is commonplace to set out civil penalty regimes in secondary legislation.
143. The power is replicated for the Welsh Ministers and DAERA in Schedules 5 and 6.

Justification for taking the power

144. The enforcement regime will need to reflect and complement what is set out in regulations made under clause 21(2) or in any requirement to supply information under clause 21(1).

Justification for the procedure

145. The affirmative resolution procedure is sought for the exercise of this power. This would provide more scrutiny for the enforcement regime proposed, which is likely to cover a range of types of enforcement, tailored to each group of actors in the agri-food supply chain, and considering the nature and importance of the data required. For example, if a supermarket chain was to fail to provide any information required they would face a commensurately larger penalty than a small farm owner who complies with the requirement but forgets to include one piece of information. This procedure will also take account of industry feedback on the level and type of enforcement required to appropriately dissuade non-compliance. The affirmative resolution procedure will also ensure that more parliamentary scrutiny is afforded to achieve a suitable balance between the protection of personal data and commercial data and the objectives which these powers seek to achieve.

Clause 27(1): Power to impose obligations on business purchasers and enforcement of those obligations

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Affirmative Resolution

Context and Purpose

146. This power allows the Secretary of State to define, for the United Kingdom, principles of fair trading in agricultural products, and to publish, maintain and enforce statutory codes of practice on fair contractual relations in the sale of agricultural products. It is the intention to introduce these codes on a sector-specific basis, in order to reflect the unique issues of each agricultural-sector. Agri-food supply chains can feature unfair trading practices that arise because of the relatively weak market position of primary producers compared to other actors further downstream in the supply chain, who are typically highly consolidated and possess considerable market power. The provisions are intended to counteract the ability of processors and other actors in the supply chain to abuse their dominant market position by introducing sector-specific codes of conduct, which will establish broad principles of fair business conduct and prohibit certain problematic behaviours.

Justification for taking the power

147. Statutory codes of contractual conduct will be developed through detailed consultation with industry. Experience (in setting up similar codes, such as the Groceries Supply Code of Practice) suggests that a considered design process reaps a dividend in final performance, and that targeted actions are more effective than broad-brush approaches, so the consultation process may take some time and will be repeated for every sector-specific code introduced. The Government is aware of long-standing complaints relating to contractual conduct between producers and intermediaries in certain domestic farming sectors (chiefly red meats and dairy). Creating new codes of contractual conduct, or placing existing voluntary codes on a statutory footing, will alleviate many of the complaints around unfair trading practices and encourage fairer business relationships. Taking a framework delegated power in the Bill will allow work to begin on addressing known issues in a timely fashion, in line with public commitments made in the Government Response to the Call for Evidence on the remit of the Groceries Code Adjudicator.

148. Agriculture is a complex and variable industry, where sectors can emerge as others fall in popularity. Going forwards, supply-chain structures are likely to evolve as UK agriculture adjusts to post-Brexit trading environments and new players enter the marketplace. If sector-specific codes are launched as intended, it is possible that these changes will alter which sectors require such codes. For example, while we initially expect to focus on dairy and red meat, we will continue to monitor the agricultural landscape to ensure that these remain the sectors with the most pressing contractual issues.

Justification for the procedure

149. Codes of contractual conduct will be introduced to establish parameters of acceptable behaviour for actors in agri-food supply chains. Such codes might require that the contracts between a qualifying seller and business purchaser of agricultural produce contain certain types of terms, for example terms that specify how the price for any produce sold under the contract will be calculated. Wide consultation with industry will inform the necessary content of the codes which, where appropriate, will be based on established best practice.

150. However, in addition to requiring contracts to contain certain *types* of terms, the powers are capable of being used to specify the actual *content* of the terms that will bind the parties in a commercial relationship – particularly under subsection (7). This power might be used, for example, to require that notice periods for contractual variations must not be less than a specified period. The Department considers that such intrusion into the commercial relationship warrants a higher degree of scrutiny and hence the affirmative procedure is appropriate.

Clause 28(9): Power to set out additional conditions that an organisation must meet to make an application to be considered as a recognised producer organisation

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Negative Resolution (unless concerning new sector-specific provisions, or unless section 42(5) applies, under which the procedure is affirmative).

Context and Purpose

151. The Bill replaces the existing European regime for the recognition of Producer Organisations, Associations of recognised Producer Organisations and Interbranch Organisations (referred to in this memorandum as “POs”, “APOs” and “IBOs” respectively) with a bespoke domestic version.
152. The primary purpose of PO recognition is to bestow upon legally recognised groups of primary producers’ exemptions from competition law which allow them to engage in certain co-ordinated activities which would otherwise be prohibited (such as managing production and collectively negotiating supply contracts). The unique structure of agriculture, with large numbers of small, atomised producers conducting business with highly consolidated processors and retailers has led to significant power imbalances in the supply chain, which greater levels of collaboration could serve to address. Producer Organisations allow that collaboration.
153. The current regulations which allow recognition as a PO (contained in the CMO) are EU-wide. The Government are recreating the existing types of recognition criteria in primary legislation (although some specific elements of the criteria will be defined in secondary legislation). This is necessary to minimise the degree of disruption for existing POs and to account for the fact that the current PO model is familiar to domestic producers and remains a suitable overarching system for a domestic regime.
154. This power enables the Secretary of State to add to the conditions for recognition which are currently set out in clause 28 i.e. those which apply to POs, APOs and IBOs, in all agricultural sectors. This power is also capable of being exercised by virtue of clause 30(2) in relation to specific sectors.
155. By way of example, sector-specific regulations made under this power may be used to remove the discretionary element of recognition (so an applicant, on fulfilling the criteria, is

automatically granted legal recognition as a PO, without being subject to the decision-making process that lay with the Commission but will henceforth lie with the Secretary of State). Similar provision was made in the so called “Milk Package”, introduced by the EU in 2012, which was a series of measures to improve the position of the European dairy sector, made available exclusively to European dairy farmers.

156. By virtue of clause 47(3)(d), the power in clauses 28 and 29 can be used to make supplementary, incidental, consequential, transitional, or saving provision, which may include applying, amending or revoking retained direct EU legislation on POs and treating organisations recognised under retained direct EU law as recognised under clause 28. The Department expects to exercise this power solely for the purposes of revoking elements of the EU PO scheme which will be redundant once the domestic scheme has replaced them, and for making transitional provision securing continuity of treatment for POs recognised under the EU legislation.
157. This includes the power to delegate functions. The Secretary of State is required to consult representatives of the sector, or persons who may be affected, before making new sector-specific provisions under these powers.

Justification for taking the power

158. It is not possible to predict exactly what additional conditions may be required in future to the entirety of the PO regime, or which agricultural sectors will require specific changes in future and what those changes might be. The Department is hopeful that the industry embraces greater levels of collaboration, and the Producer Organisation regime is an effective model for addressing market imbalance. Depending on the nature of this collaborative evolution, and how far the market imbalances are corrected, other remedies or conditions may prove necessary. A power is therefore sought to make these changes in response to changes in market conditions.

Justification for the procedure

159. The exercise of this power is subject to the negative resolution procedure where delegated provisions apply to all POs; the affirmative resolution procedure will apply where provisions are made which apply only to specific sectors.
160. Negative resolution procedure: Provisions that apply to all POs will be of a technical or administrative nature. The power only allows for the Secretary of State to impose additional

conditions for recognition that will apply to all agricultural sectors. The core recognition criteria cannot be relaxed through amendment in these circumstances.

161. When these powers are initially exercised the Government will also repeal the relevant existing EU regime, these anticipated consequential and transitional provision will be particularly uncontroversial. The Government will be revoking legislation that is being replaced with provision that is in many respects identical in purpose and effect, and which Parliament has had the opportunity to approve in a well-developed state because it is set out in detail on the face of the Bill. The repeal of redundant EU legislation should not be controversial in these circumstances, and a debate in each House about such provisions would be disproportionate.
162. Affirmative resolution procedure: In contrast to the above, regulations under this power that make sector-specific provision can potentially modify elements of the recognition regime set out in primary legislation. Sector-specific provisions could give rise to controversy as they can create an advantage for one or more sectors over others and any special treatment should be duly justified. For these reasons it is considered that any such amendments should receive a higher level of Parliamentary scrutiny.

Clause 28(10): Power to specify the time period within which an application to become a recognised producer organisation must be determined

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Negative Resolution (unless concerning new sector-specific provisions, or unless section 42(5) applies, under which the procedure is affirmative).

Context and Purpose

163. This provision requires the Secretary of State to make regulations specifying the time from receiving an application to notifying the applicant of the decision whether to grant recognition to POs, APOs and IBOs. Stating the timescale will increase the transparency of the application process and enable a producer to best plan their business activities around the decision-making process.

Justification for taking the power

164. This power will be used to make a purely administrative provision for the recognition process; such provision may need to change considering changing practicalities. As mentioned above, we expect UK agriculture to adopt a more collaborative structure; if this entailed a significant increase in PO applications then the originally specified time period may be rendered inappropriate. This power also allows for the possibility that a different regulator is appointed to oversee the PO regime in the future, and we would need the ability to account for the internal processes any new regulator had adopted.

Justification for the procedure

165. Provisions made under these powers will be of an administrative nature. For the same reasons set out in relation to clause 28(7), the negative resolution procedure will provide sufficient parliamentary scrutiny for such provision.

166. However, where regulations concern new sector-specific provisions, the affirmative resolution procedure will be used.

Clause 28(12): Power to make further provision about recognised producer organisation applications

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Negative Resolution (unless concerning new sector-specific provisions, or unless section 42(5) applies, under which the procedure is affirmative).

Context and Purpose

167. As explained in relation to clause 28(7), the Government anticipates that wider changes to the agricultural landscape and government initiatives will lead to the emergence of a far more collaborative agricultural sector; which historically has been lacking in the UK. Given this, it is likely that there will be increased interest in the PO model and, subsequently, a greater volume of applications which require processing. Clause 28(10) enables the Secretary of State to introduce further provisions relating to the PO scheme applications process, should further information prove necessary to confirm the status of members. A more popular PO regime, with a greater number of applicants, may also entail greater analysis of market position and related competition analysis. This power allows the Secretary of State to introduce requirements to provide the necessary data during the application process.
168. Clause 30(1) allows the Secretary of State to delegate functions, including the function of deciding applications for recognition under clause 28(1). The Secretary of State is required to consult representatives of the sector, or persons who may be affected, before making new sector-specific provisions under these powers. This requirement is set out in clause 30(5).

Justification for taking the power

169. This power allows us to make further provisions about the administration of the applications process and the procedural elements of recognition. This is important given the potential need to respond to the practicalities of a (predicted) increase in the volume of applications. For instance, it may be that time periods and deadlines need to be reviewed because of greater workloads. It is also conceivable that the scheme reaches a level of participation which warrants a review of the factors to be considered during the decision process. For instance, if a certain market sector is over-represented, to better regulate that specific market (which is defined geographically), the Secretary of State may introduce the geographical location of the producers as a consideration in making a decision on recognition.

170. Clause 47(3)(d) allows the power to be used to make consequential or transitional provisions amending or revoking retained direct EU legislation. Such provision will be made only for the purposes of revoking redundant EU legislation that has been replaced by broadly analogous domestic provisions, and to secure continuity for existing POs.

Justification for the procedure

171. Provisions made under these powers will be of an administrative nature. Provision about applications will be made in response to the practicalities of the recognition process and will be aimed at facilitating a more efficient process for applicants and the recognising authority, and at creating a procedure for appealing recognition decisions. Any consequential or transitional provisions applying or revoking retained EU legislation will be limited and uncontroversial. Therefore, for the same reasons set out in relation to clause 28(7), the negative resolution procedure is proposed.
172. However, where regulations concern new sector-specific provisions, the affirmative resolution procedure will be used. As sector-specific provisions are potentially more controversial, greater Parliamentary scrutiny is warranted.

Clause 28(14): Power to amend Schedule 1

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Henry VIII power

Parliamentary Procedure: Affirmative Resolution

Context and Purpose

173. Schedule 1 lists the agricultural sectors relevant to producer organisations.

Justification for taking the power

174. The Schedule reflects the sectors represented in domestic agricultural production at present. This is subject to change as new sectors develop and become increasingly important. Therefore, a retained power is needed to enable amendments to this schedule so that the list may be updated over time. Additionally, there is also the power to set out in secondary legislation the details of which products these market sectors are composed of. Taking a delegated power to define the parameters of each sector allows the Government to elaborate complex details which would be difficult to achieve on the face of the Bill. For example, the Government would consider it inappropriate to list out the complex details of all the agricultural products that would be contained within the “Fruit and Vegetable” sector on the face of the Bill.

175. It is likely that technological progress and environmental change in the future may see new sectors of production rise to prominence, as novel crop varieties or species become viable to produce. Should agricultural sectors change, a power is needed to amend the sectors listed in this Schedule, or the constituent products contained therein. The nature of these developments is uncertain. Therefore, it is necessary for the Department to have powers to revisit the relevant sectors and give further detail to a sector if necessary.

Justification for the procedure

176. Provisions made under the power to add or remove eligible sectors are subject to the affirmative resolution procedure. This is a Henry VIII power and, as such, should be subject to a higher level of parliamentary scrutiny.

177. The power to set out which products belong to each sector is technical in nature, and future changes will be in response to economic evolution and will be uncontroversial, therefore the negative resolution procedure is sought.

Clause 29(2): Power to make provision about recognised organisations in relation to competition exemptions

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Negative Resolution (unless concerning new sector-specific provisions, or unless section 42(5) applies, under which the procedure is affirmative).

Context and Purpose

178. As explained in relation to clause 28(7), the Government anticipates increased interest in agricultural collaboration in the future, which is likely to mean greater take up of the Producer Organisation model. Clause 29(2) allows the Government to introduce new provisions concerning the ongoing requirements for Producer Organisations, distinct from the previous powers concerning the nature of their initial recognition. Clause 28 contains provisions which relate to the initial application and recognition process. This clause contains powers to ensure that, once recognised, a Producer Organisation continues to be the appropriate kind of operator. These provisions will allow for introducing requirements about keeping records and reporting information and reporting changes to the competent authority.
179. Regulations under this power may make provision for ongoing requirements, for the monitoring and enforcement of those requirements (including the imposition of financial penalties) and for the suspension or withdrawal of recognition (including about review and appeal of any suspension or withdrawal). Regulations may also make provision about the extent to which recognised POs may outsource certain functions.
180. A PO only needs to comply with the recognition criteria at the time that a recognition decision is made. The purpose of ongoing requirements is to ensure that a PO continues to operate in a way that justifies the ability of its members to coordinate their activities that would otherwise be prohibited as anti-competitive.
181. This power is capable of being exercised to make provisions that apply to all POs, or only in relation to specific sectors (by virtue of clause 30(2)). This power can also be used to make supplementary and incidental provision, pursuant to clause 47(3)(d).
182. Under clause 30(5), where this power is to be exercised to make sector-specific provisions, the Secretary of State will be required to consult with representatives of those sectors and with

persons who may otherwise be affected by the provisions. This requirement is contained in clause 30(5). This power to make regulations includes the power to delegate functions, as laid out in clause 30(1)

Justification for taking the power

183. Ongoing requirements enable the Government to alter the conditions of a POs continued activity, in line with changes in the relevant sector and wider UK agriculture industry. Given the UK has a history of low-level collaboration, the anticipated substantial increase in co-operative economic behaviour is likely to lead to large changes in the competitive environment, which are not easy to foresee, and to which the Government should be equipped to respond to ensure that fair competition is not inadvertently undermined.
184. Any changes made under these regulations would allow for an appropriate amount of time for Producer Organisations to prepare for any new requirements.

Justification for the procedure

185. Provisions made under these powers will largely be of a technical or administrative nature and therefore the negative resolution procedure is proposed.
186. However, where regulations concern new sector-specific provisions, which may be more controversial as they are likely to advantage or disadvantage particular agricultural sectors over others, the affirmative resolution procedure will be used.

Part 4: Matters Relating to Farming and the Countryside

Clause 31(3): amends an existing delegated power in section 74A of the Agriculture Act 1970 to regulate fertilisers

Power conferred on: Secretary of State, Welsh Ministers, Scottish Ministers and a Northern Ireland department

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure for first exercise of the power. Negative resolution procedure for subsequent exercises.

This is not a new delegated power that the Government is seeking from Parliament, it is an amendment to an existing delegated power in section 74A of the Agriculture Act 1970.

Context and purpose

187. Agriculture has relied on the use of natural fertilisers (manure, human waste, burnt ash etc.) for most of human history. Mineral fertilisers made an entrance at the end of the 19th century and paved the way for modern intensive agricultural production. Mineral fertilisers are now largely mined or made from energy intensive manufacturing. The existing regulatory regime for fertilisers in the UK is mainly focused on mineral fertilisers. Though farmers, of course, can use composts and digestates on their fields, the materials that can be marketed and labelled as “fertilisers” are limited.
188. The fertiliser industry is undergoing major change. Firstly, we are in a period of innovation driving products such as bio stimulants and soil conditioners/improvers (which do not fall within the existing definition of a fertiliser under the Agriculture Act 1970). Secondly, there are trends towards a recycling economy and a reduction of the reliance on mined, non-renewable materials. Thirdly, some of the negative consequences of fertiliser use - which include air quality reducing emissions, contamination of watercourses, greenhouse gases resulting from fertiliser manufacture and the contamination of soils, notably from heavy metals – are being highlighted and addressed.
189. The function of a traditional mineral fertiliser is simply to supply plants with essential nutrients. In contrast, bio-stimulants – which have recently emerged as a new type of fertilising product - aim to improve the vigor of the plant so that its ability to utilise available fertilising nutrients is improved, especially in the presence of stressors such as drought or flood damage. Other innovative products include soil conditioner/improvers - which are close to “natural” fertilisers – and are composed of, for example, compost, digestates or recycled waste. Soil

improvers/conditioners benefit the farmer by improving the physical, chemical or biological structure of the soil and reduce dependency on non-renewable, mined products.

190. Clause 31(2) amends and updates the definition of a “fertiliser” under the Agriculture Act 1970, with the effect that a broader range of materials may be imported, exported and marketed as fertilisers in the UK, such as those described in the paragraphs above. This will allow for the appropriate regulation of this new innovative market.
191. An existing delegated power in section 74A(1) of the Agriculture Act 1970 enables us to make provision with a view to controlling the composition or content of fertilisers. The amendment to the existing delegated power in clause 31(3) will enable regulations to be made setting out safety and quality requirements for fertilisers, such as the bio-stimulants and soil conditioners/improvers referred to above, on the basis of function.

Justification for amending the existing power

192. Section 74A of the Agriculture Act 1970 currently provides for a power to make regulations with a view to controlling the composition or content of fertilisers. The types of fertilisers regulated under this existing power are limited to mainly mineral fertilisers. As set out above, clause 31(2) amends the definition of a “fertiliser”, provided for in section 66 of the Agriculture Act to enable a broader range of materials to be regulated as fertilisers.
193. Clause 31(3) will enable different requirements to be set for fertilisers with different functions as well as different component inputs. For example, different requirements may be set for materials which function as bio-stimulants compared to those that function as traditional mineral fertilisers. As noted above, a delegated power already exists to regulate fertilisers based on content and composition. Given the broader amended definition of a fertiliser it is also necessary and appropriate to have such a power to regulate based on fertiliser function.
194. The functions regulated will need to change to keep pace with scientific developments and the need for strict and accurate demarcations between them. It is inappropriate to include this level of detail in primary legislation.
195. The functionalities likely to be provided for in secondary legislation are soil conditioner/improver, plant bio-stimulant, fertiliser inhibitor/additive, growing medium and blended fertiliser. 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.

Justification for the procedure

196. The first exercise of this power is subject to the affirmative resolution procedure to ensure that adequate scrutiny is afforded to what represents a significant change to the way in which fertilisers are currently regulated. Subsequent amendments will be of a technical or administrative nature relating to the addition or removal of fertiliser function requirements in light of developments within the sector. Given these regulations will relate to the addition or removal of requirements in relation to fertiliser functions and will therefore be of a technical or administrative nature, we suggest that the negative procedure will provide the right level of scrutiny.

Clause 31(4): Amendments to section 74A of the Agriculture Act 1970 to set out additional matters for which provision may be made in exercising delegated powers relating to the regulation of fertilisers

Power conferred on: Secretary of State, Welsh Ministers, Scottish Ministers and a Northern Ireland department

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure for first exercise of power and in respect of any regulations made under section 74A(1) of the 1970 Act which contain provision under section 74A(1A)(b) or (1E)(a)(i) or (ii). Negative resolution procedure for other exercises of the power.

Context and purpose

197. The regulation of fertilisers in the UK is focused mainly on mineral fertilisers and largely as a trading standards/labelling issue. Enforcement is currently by council trading standards. As mentioned in the preceding section, though farmers can use composts and digestates on their fields, the materials that can be marketed and labelled as “fertilisers” are limited.
198. The fertilisers industry is moving in a direction that was not foreseen when powers for the regulation of fertilisers were originally provided in the Agriculture Act 1970. Important areas of fertilisers are currently unregulated.
199. The use of renewable materials such as industrial or food industry by products or composts/digestates as fertilisers offer opportunities but also require different safety oversight than required for mineral fertilisers. The two concepts of “function” and “content” offer a framework for regulation which will allow the minimisation of the regulatory burden for low risk products while allowing for strong oversight of higher risk products. One example of a product that could become legally marketable is organic-mineral fertiliser - where compost soil conditioner could be enhanced with mineral fertiliser - leading to a product which would improve the quality of the soil as well as add nutrients.
200. A conformity assessment system based on product function and input materials is envisaged. The powers inserted at subsection (1A) of section 74A of the 1970 Act will enable this conformity assessment system to be set up. Regulations will provide for the appointment of a public authority with functions which will include those relating to the appointment and registration of conformity assessment / notified bodies. Those functions of appointment and registration may

be delegated. Conformity assessment/notified bodies will provide assessment services, often laboratory services, connected with the conformity of products.

201. Due to the complex scientific nature of these conformity procedures, this level of detail is inappropriate to place on the face of the Bill. Scientific evidence is required for the conformity assessment regime to adapt to different types of fertiliser and future developments in the fertiliser industry.
202. Regulations made pursuant to this clause will set out the conformity assessment procedures to be carried out on fertilisers according to their content, composition or function to assess their compliance with statutory requirements. It will be a requirement that a conformity assessed mark is affixed to compliant fertilisers before they are placed on the market. Regulations about assessment procedures may provide, amongst other things, for:
 - a. how and when assessment procedures are to be carried out;
 - b. the persons by whom assessment procedures are to be carried out or verified and the functions of such persons;
 - c. conferring on a public authority functions relating to the appointment and registration of persons referred to in paragraph (b) and authorising delegation of those functions;
 - d. for appeals against decisions taken in relation to assessment procedures or appointments and registrations;
 - e. for charging of fees in respect of assessment procedures (such fees not to exceed the reasonable costs of carrying out the procedures);
 - f. conferring on a public authority functions relating to the registration of fertilisers which, based on assessment procedures carried out on them, meet the requirements of the regulations.

Enforcement

203. To ensure compliance with this system, a public authority will carry out market surveillance and enforcement and, where possible, make use of current industry expectations/norms in closely aligned areas. For example, in England, using compliance notices and monetary fines aligned to the environment / waste enforcement and sanctions policy at the Environment Agency.
204. The new powers inserted at subsection (1C) into section 74A of the 1970 Act set out functions which may be conferred on a public authority relating to monitoring or enforcing compliance with regulations or mitigating risks to the health and safety of humans, plants, animals or the

environment presented by fertilisers. These functions may include, for example, powers to require the carrying out of further assessment procedures, powers to prohibit or restrict activities in relation to fertilisers, powers to require the taking of action in relation fertilisers, powers to require their withdrawal from sale or to recall them, powers to impose monetary penalties in cases of failure to comply with regulations and powers of entry, inspection, taking samples and of seizing and destroying any material. The market surveillance and enforcement authority will be a public authority.

205. The new clause will also enable the Secretary of State, the Welsh Ministers, the Scottish Ministers and a Northern Ireland department to require manufacturers and others involved in the supply of fertilisers to retain information relating to the compliance of fertilisers with statutory requirements and to provide this information to the appointed market surveillance authority on request.
206. Fertilisers are partially harmonised within the EU and Regulation (EC) No 2003/2003 sets out the framework for the regulation of “EC fertilisers”, which operates alongside the domestic framework provided for under the Agriculture Act 1970. This clause will enable the amendment or repeal of Regulation (EC) No 2003/2003 which will become retained EU law. Regulation (EC) No 2003/2003 will be repealed by the new EU Regulation 2019/1009 on fertilising products in July 2022. EU Regulation 2019/1009 has a staggered application with some articles applying from July 2019, some from April 2020 and the remaining articles applying from July 2022. This clause will enable those articles of EU Regulation 2019/1009 which become retained EU law to be amended or repealed as required where they are inconsistent or inoperable alongside the implementation of the new domestic regime for the regulation of fertilisers under the proposed new powers.

Justification for setting out additional matters for which provision may be made in exercising delegated powers relating to the regulation of fertilisers

207. Particularly in light of the amendment to the definition of “fertiliser” in clause 31(2), a robust system is required to ensure that different fertilisers comply with appropriate composition, content and function requirements, and to monitor and enforce compliance. Such a system is necessary to ensure the safety and effectiveness of fertilisers and to minimise risks to animal, human or plant health or to the environment from fertiliser use.
208. A delegated power is required to enable the Secretary of State, the Welsh Ministers, the Scottish Ministers and a Northern Ireland department to put in place the necessary infrastructure for a

conformity assessment regime which is able to change as scientific discoveries are made. This is an inappropriate level of detail for the face of the Bill.

209. The type of information that may be required to be kept or provided by manufacturers and others involved in the supply of fertilisers may change over time, for example, considering changes to composition, content or function requirements set out in regulations. As such, a delegated power is required so that the regulations can change in line with these matters.
210. The functions conferred on a market surveillance authority may need to change over time to adapt to, for example, potential risks identified and associated with particular types of fertiliser and input materials. As such a delegated power is required so that the regulations can change in line with these matters. Amendments to existing delegated powers are required in respect of the amendment or repeal of retained EU law to ensure that an up to date regulatory framework is maintained under Regulation (EC) No 2003/2003 until such a time as the new domestic regime for the regulation of fertilisers under the proposed new powers is operable and that Regulation is repealed. EU Regulation 2019/1009 has a staggered application and will not apply in its entirety until July 2022. Delegated powers to amend or repeal those articles of EU Regulation 2019/1009 which will become retained EU law are required to ensure consistency and operability of that Regulation alongside the proposed new domestic regime.

Justification for the procedure

211. The first exercise of these powers is subject to the affirmative resolution procedure to ensure that adequate scrutiny is afforded to what represents a significant change to the way in which fertilisers are regulated. Subsequent exercises of the power which make provision under section 74A(1A)(b) and (1E)(a)(i) or (ii) will also be subject to the affirmative resolution procedure to ensure that the appropriate level of scrutiny is afforded to the application of the enforcement regime in respect of non-compliance with statutory requirements or in other circumstances where a fertiliser gives rise to a risk to human, animal or plant health or to the environment, and in respect of the amendment or repeal of retained EU law relating to fertilisers.
212. Subsequent exercises of the power which contain provision under section 74A(1A)(a) and (c) will relate to changes to the operation of conformity assessment procedures, the functions of the market surveillance authority and requirements in relation to the keeping and provision of information to market surveillance authorities. These are powers which facilitate the day to day

functioning of the market surveillance authorities and conformity assessment procedures and we suggest that the negative procedure will provide the appropriate level of scrutiny.

Clause 32(1): Amendment of the Natural Environment and Rural Communities Act 2006

Power conferred on: Secretary of State

Power exercised by: Order exercisable by statutory instrument

Parliamentary procedure: Affirmative Resolution

This is not a new delegated power that the Government is seeking from Parliament, it is an amendment to an existing delegated power in section 87(1)(a) of the Natural Environment and Rural Communities Act 2006.

Context and purpose

213. This subsection is needed to empower a board set up under the Natural Environment and Rural Communities Act 2006 (NERC 2006) to collect, manage and make available information. It enables the Secretary of State to assign those functions to a board established under section 87 of NERC 2006. The information is information about the identification, movement and health of animals within the definition of section 8 of the Animal Health Act 1981.
214. The subsection also enables the assignment of functions relating to the means of identifying animals. These will be used to approve the format of identification tags, and issue individual identification numbers to animals.
215. At present the board established under section 87 of NERC 2006 is the Agriculture and Horticulture Development Board. Defra has publicly stated its intention to develop a Livestock Information Service. At present there are several different databases which record information on animal identification and movements. The Livestock Information Service will consolidate this data into a single system.
216. There are existing legal requirements for keepers of animals to report animal identification and movements, which vary between species. This information will go onto this system, as well as data on animal health. The provision of animal health information will be required by powers under part 3 of the Bill, the clauses on the collection and sharing of data.
217. The database is likely to be run by the Agriculture and Horticulture Development Board, and the purpose of this subsection is to ensure a board set up under section 87 of NERC 2006 can collect, manage and make available the information above.

Justification for taking the power

218. We are taking a power to assign the functions in secondary legislation, rather than assigning them in this bill, because we are following the legislative structure that is already set out in NERC 2006. To include the assignment of the function in this bill would be inconsistent with the rest of NERC 2006. It would require specifying the name of the board, as well as the function, in primary legislation, but leave in place the structure whereby the establishment of the board, the naming of the board, and the assignment of all the other substantive functions of the board is carried out by secondary legislation. If the relevant functions were to be assigned to a new board in future, this would have to be done by a mixture of primary and secondary legislation, rather than by secondary legislation alone, as at present.
219. This clause will amend NERC Act 2006 to allow new data functions to be assigned to a board established under that Act, including running a new multi species database, which will provide livestock traceability and identification services to both Defra and industry, and which will share data with devolved administrations.
220. The new service is necessary to remove the current need to rely on multiple systems which are expensive, outdated and inflexible. They are also designed to collect data rather than share it. Not all movement transactions are currently recorded, and data rectifying checks are time-consuming.
221. The new service will allow more accurate, efficient and cost-effective livestock traceability and identification, benefiting disease control and trade, and provide livestock keepers with a single portal to meet their reporting responsibilities.
222. A multi-species service will also enable Defra and APHA to monitor animal movement standstill arrangements for disease control purposes through a single platform. Data to monitor standstills is currently uploaded from three different systems in order to consolidate it and to enable monitoring to take place.
223. Delegation of this power is important to ensure sufficient agility to accommodate future changes and to ensure that delivery responsibility lies with a single body with existing expertise and knowledge of the livestock sector.
224. The AHDB is ideally placed to be able to deliver the programme and the new service, leading collaboration between the Department and the meat and livestock sectors. It provides funding for agricultural research and development, develops markets through promotion campaigns,

builds peer networks and works with government to improve export markets. It is overseen by the Department but operates independently as a Non-Departmental Public Body.

225. As animals can and do move across borders, the clause provides for information and data to be shared between the devolved administrations to allow a complete picture of animal movement. There are two principal areas of operability with devolved administrations, to support day to day business operations such as cross border moves which require each territory's traceability systems to be able to communicate with each other; and to support a single "UK View" which looks across all systems, including other animal traceability and health databases in the UK, to allow Defra to demonstrate traceability to trade delegations and APHA to track disease outbreaks
226. AHDB will also run the Livestock Unique Identification Service (LUIS) on behalf of England and Wales, which controls the issuing of official individual identification numbers to animals and be responsible for the approval of livestock identification tags. Scotland and Northern Ireland have said that they will develop their own systems for allocating animal identifiers.
227. The Livestock Information Service will also allow AHDB to expand and improve the work they already carry out under Schedule 9 to NERC 2006 on inquiry, improvement and development of methods of production, and to enable them to provide a platform for management data which could be used to assist the sector in precision farming, using more targeted information to identify farm practices which could drive improvements such as increased yields, and reduced risks of disease and use of antibiotics, or reduced greenhouse gas emissions.

Justification for the procedure

228. The affirmative procedure is stipulated for existing orders relating to the functions of a board under section 87 of NERC 2006, and this procedure will apply to this clause, so that the same level of parliamentary scrutiny is afforded to all proposals in relation to functions assigned to such a board.

Clause 32(2): Amendment of the Animal Health Act 1981

Power conferred on: Secretary of State

Power exercised by: Order exercisable by statutory instrument

Parliamentary procedure: None

This is not a new delegated power that the Government is seeking from Parliament, it amends an existing power to make orders under section 8 of the Animal Health Act 1981 (AHA 1981).

Context and purpose

229. The existing power allows Ministers to make orders prescribing and regulating the marking of animals. The amendment substitutes ‘means of identifying animals’ for ‘marking of animals’. Since AHA 1981 came into force means of identifying animals have become more sophisticated. Some animals are identified by Electronic Identification Devices. These devices can be read from a distance with a hand-held device. The purpose of this amendment is to ensure that all means of identifying animals, not just marks on the animals, now and in the future, are within the scope of orders made under section 8 of AHA 1981. It also ensures that future orders made under section 8 will bind the Crown.

Justification for taking the power

230. Subsection (2) amends the out-of-date terminology used in the Animal Health Act 1981 that refers to ‘marking’ an animal for identification and updates it to refer to ‘the means of identifying animals’. This amendment is necessary to acknowledge and provide for newer developments in the technology and methodology of identifying animals, such as the use of electronic identification. The replacement terminology is broad enough to include traditional ear tags, marks, tattoos and electronic identification methods (e.g. injectable transponders or transponders contained in boluses or ear tags).

231. Subsection (2) amends the AHA 1981 such that provision made under subsection (1) of the AHA 1981 may bind the Crown. The amendment will allow secondary legislation that will be made under powers of the AHA 1981 to be made for Crown animals, such as military and police horses. This is necessary as Crown animals can carry diseases, like any other animals of the species, and this change is needed to ensure that all animals across the relevant species are brought into scope. Previously legislation for these animals was made under the European Communities Act 1972.

Justification for the procedure

232. The existing power has no parliamentary procedure. If we were to apply a parliamentary procedure to this amendment it would be inconsistent with the procedure that will continue to apply to other orders under AHA 1981.

Clause 34, Schedule 3, Paragraph 7: Agricultural Tenancies - Power to make regulations governing requests for landlord's consent or variation of terms

Power conferred on: Secretary of State in relation to England and Welsh Ministers in relation to Wales.

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Negative

Context and purpose

233. Tenancy agreements governed by the Agricultural Holdings Act 1986 (the 1986 Act) were written many years ago in a different policy and commercial environment and typically contain restrictions to prevent tenants from undertaking activities which will change the land use or fixed equipment of the holding without first gaining consent of their landlord. Examples of restrictive clauses include erecting or altering buildings, sub-letting, changing agricultural production e.g. from a dairy unit to a different form of agriculture, or diversifying into non-agricultural activities such as tourism, planting trees and delivering other environmental land management schemes and activities.
234. Chapter 1 of the Agriculture Bill changes the basis on which financial assistance can be given to farmers in England in future to a system of public money for public goods with a focus on activities that will improve the environment. This could create difficulties for some tenants in accessing such financial assistance in England if the qualifying activity (e.g. planting trees) conflicts with restrictive terms in their tenancy agreement and where their landlord refuses to provide consent to varying such restrictions. Industry has also raised concerns regarding restrictive clauses in Agricultural Holdings Act (AHA) tenancy agreements that may prevent some tenants in England and Wales from undertaking activities (if their landlord refuses consent) that are now necessary to meet new regulatory requirements for example, updating or putting in new slurry stores to meet water pollution prevention regulations. While it is acknowledged that many variations to restrictive clauses do take place by mutual consent, there may be circumstances in which a landlord refuses consent unreasonably leading to the tenant being unable to meet a statutory obligation or access financial assistance in England under Sections 1, 2(4) and 19 of the Agriculture Bill or in Wales to access financial assistance provided in exceptional market conditions under paragraph 7 of Schedule 5. Therefore, Schedule 3, paragraph 7 amends the 1986 Act to provide a new power for the Secretary of State in relation to England and the Welsh Ministers in relation to Wales, to make regulations that will give tenants the right to apply through arbitration or third-party determination to resolve a dispute

concerning a request to vary a restrictive clause in their tenancy agreement where that clause prevents the tenant from meeting a statutory obligation or applying for financial assistance in England (under Sections 1, 2(4) and 19 of the Agriculture Bill) or in Wales accessing financial assistance provided in exceptional market conditions (under paragraph 7 of Schedule 5 of the Agriculture Bill). The right for the tenant to apply to vary a restrictive clause (in the absence of landlord agreement) is to be balanced with the potential impact on the landlords' property rights, such as where land value is affected negatively or the proposed change in activity is at odds with the overall plans for the landlord's estate. Regulations will set out the details of the dispute process such as the content and timing of written notices and directions on the issues the arbitrator or third party must consider as part of their determination to ensure a balanced approach between the parties is taken.

235. This clause will amend the 1986 Act which extends to England and Wales, the power to make these regulations is conferred on the Secretary of State in relation to England and the Welsh Ministers in relation to Wales.

Justification for taking the power

236. The power to make these regulations is needed to ensure that tenants of AHA agreements have access to a dispute resolution process if they feel they are being unfairly restricted from accessing financial assistance under the Agriculture Bill or from meeting a statutory obligation due to restrictions in their tenancy agreement. Delivering this provision through secondary regulations is necessary so that the details of the dispute process can be designed in consultation with industry including representatives of both tenants and landlords to ensure a balanced approach between the interests of both parties is taken. Regulations are also necessary so that they can be regularly reviewed and adjusted if needed in line with industry feedback and developments as financial assistance schemes are rolled out over time. Evidence from Defra's Tenancy Reform Consultation (April – July 2019) shows that there is support for this provision and for the details to be developed through further consultation with industry.
237. The 1986 Act already sets a precedent enabling the minister to make regulations to set out detailed provisions through secondary legislation. For example, section 7 of the 1986 Act gives powers to the minister to make regulations to prescribe the detailed terms of the maintenance, repair and insurance of fixed equipment on the holding (the model clauses). The 1986 Act also includes a precedent for disputes to be resolved through arbitration or third-party determination according to a test of what is reasonable and just between the parties (s6(2)(b)).

Justification for the procedure

238. The negative procedure is stipulated as the default procedure for making regulations under the 1986 Act (see s94(2)), therefore these regulations will follow the negative procedure. Regulations will be developed for early consultation with industry to ensure robust scrutiny by representatives of landlords and tenants and professional advisors working in the sector.

Clause 34, Schedule 3 Paragraphs 4 to 6, and Paragraphs 22 to 29 Agricultural Tenancies: Power to amend the list of persons who may appoint arbitrators under the Agricultural Holdings Act 1986

Power conferred on: Secretary of State in relation to England and Welsh Ministers in relation to Wales.

Power exercised by: Regulations by Statutory Instrument

Henry VIII Power

Parliamentary Procedure: Negative

Context and purpose

239. Currently under the Agricultural Holdings Act (“the 1986 Act”) and the Agricultural Tenancies Act 1995 (“the 1995 Act”) an arbitrator may be appointed by agreement between the parties (the tenant and landlord) to resolve a dispute. If the parties cannot agree either party can apply to the President of the Royal Institution of Chartered Surveyors (“RICS”) to appoint an arbitrator to resolve the dispute. The RICS is currently the only organisation listed in the 1986 Act and the 1995 Act that can appoint arbitrators. Feedback from industry indicates that there is a shortage of arbitrators to help resolve tenancy disputes and therefore in Defra’s recent tenancy reform consultation we asked for views on whether the list of organisations who can appoint arbitrators to resolve disputes should be extended to include other qualified professional organisations. Responses to the consultation showed strong support for this with many respondents suggesting that it would be appropriate to allow the Central Association of Agricultural Valuers (CAAV) and the Agricultural Law Association (ALA) to provide an appointments service alongside RICS.
240. Extending the appointments service to CAAV and ALA alongside RICS will help to unlock a larger and more varied pool of professional arbitrators that can be appointed and bringing in a wider choice of appointments services for tenants and landlords to use will also help to drive improvements in the quality of the services offered. Therefore this measure will amend the relevant sections of the 1986 Act and, by cross reference to the 1986 Act, the 1995 Act to list the President of RICS, the President of the CAAV and the Chair of the ALA as persons to whom tenants and landlords can apply for the appointment of an arbitrator to resolve a dispute and also to confer a power on Ministers to amend the list of persons able to make appointments through secondary legislation should changes become necessary in future. This power to amend the list of persons should it become necessary is a Henry VIII power.

241. As this clause will amend the 1986 Act and the 1995 Act which extend to England and Wales, the power to make these regulations is conferred on the Secretary of State in relation to England and the Welsh Ministers in relation to Wales.

Justification for taking the power

242. The power to amend the list of persons able to make arbitration appointments under the 1986 Act and the 1995 Act is necessary because in future it is possible that changes to the listed persons and organisations may take place which will need to be updated. It also enables Ministers to add other suitably qualified persons and organisations to the list should that be deemed necessary in future.

Justification for the procedure

243. Although this is a Henry VIII power, it is submitted that negative procedure remains an appropriate procedure. It is narrow in scope in that it will apply specifically to agricultural tenancy disputes and amount to amending the definition of “professional authority” in the 1986 Act for administrative purposes if required, such as to change the name of an existing named person, to remove a person from the list, or add a person whose qualification for inclusion will be the subject of consultation with stakeholders to ensure additional scrutiny. Given the narrow scope of the power, in its application and in the circumstances, it is probably not necessary for parliamentary time to be spent considering the proposed change. If changes are needed through the regulations, we will develop them in consultation with industry to ensure they reflect the advice of industry experts on the appropriateness and the benefits and impact of any changes. The negative procedure is stipulated as the default procedure for making regulations under the 1986 Act (see s94(2)), therefore these regulations will follow the negative procedure.

Clause 34, Schedule 3 Paragraph 17-18, Agricultural Tenancies: Power to make regulations updating the criteria governing the suitability of a new tenant to succeed to an Agricultural Holdings Act Tenancy

Power conferred on: Secretary of State in relation to England and the Welsh Ministers in relation to Wales.

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Negative

Context and purpose

244. The Agricultural Holdings Act 1986 (the 1986 Act) sets out provisions to enable certain close relatives of the tenant to succeed to the tenancy on death or retirement of the tenant for up to two generations of close relatives of the original tenant. This is subject to them meeting specified eligibility tests including provisions for the Tribunal to determine if applicants are in the opinion of the Tribunal a suitable person (or suitable persons) to become the tenant of the holding. This is known as the ‘Suitability Test’. However, the current Suitability Test provisions are widely viewed by industry as out of date and setting too low a standard for the skills needed by incoming tenants to thrive in the modern competitive farming environment. Responses to recent consultations in England and in Wales on this issue showed support for reforms to modernise the Suitability Test to provide a focus on business skills as well as agricultural skills.
245. As industry led work on continued professional development (CPD) and skills in the farming sector will continue to evolve over the next few years the details of the new Suitability Test will be set out in regulations so that they can initially be developed in consultation with industry and then subsequently regularly reviewed and updated to keep up to date with farming CPD/skills developments. The regulations will focus on criteria that ensure the applicant tenant has the skills and capabilities needed to farm the holding commercially to a high standard of efficient production and care for the environment including their experience, training and skills in agriculture and business management, their health and financial standing and the views of the landlord on the applicant’s suitability.
246. As this clause will amend the 1986 Act which extends to England and Wales, the power to make these regulations is conferred on the Secretary of State in relation to England and the Welsh Ministers in relation to Wales.

Justification for taking the power

247. The power to make regulations to update the criteria governing the suitability of a tenant to succeed to an Agricultural Holdings Act agreement is necessary so that they can be developed in consultation with industry ensuring representatives of both tenants and landlords are able to feed in their views on the most appropriate criteria to include and also so that the regulations can be reviewed and updated regularly to ensure the regulations are up to date with continued professional development in farming and business skills.

Justification for the procedure

248. The negative procedure is stipulated as the default procedure for making regulations under the 1986 Act (see s94(2)), therefore these regulations will follow the negative procedure. The regulations will be developed in consultation with industry to ensure robust scrutiny by representatives of landlords and tenants and professional advisors working in the sector. The development of the regulations will include consulting on the appropriate time before which the regulations should come into force to allow prospective succession tenants to prepare for the changes.

Part 5: Marketing Standards, Organic Products and Carcass Classification

Clause 35(1): Power to make provision relating to product marketing standards

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Affirmative Resolution

Context and Purpose

249. At present many agricultural products, such as eggs, poultrymeat and wine, marketed in the EU must conform to marketing standards, which apply at all marketing stages, including at import and export stage, unless otherwise provided for by the Commission. The standards establish detailed rules with regard to the quality of agricultural products and providing product information to consumers. They are intended to make sure that products offered to consumers are of acceptable quality, and that unsatisfactory produce is kept off the market. They are overall in the interest of producers, traders and consumers and encourage high-quality production, improve profitability and transparency and protect consumer interests. The specific requirements vary by product to which the standards apply. This variation takes into account aspects like freshness, size, quality, presentation, tolerances, etc. Marketing standards include rules about labelling relevant to how the specific product is marketed. These rules do not cover other, more general, aspects of labelling i.e. nutrition and dietary information, sell by dates etc., which are dealt with elsewhere in EU and domestic legislation. The current EU legislation pertaining to marketing standards, Council Regulation 1308/2013 and the delegated and implementing regulations made under it and under its predecessor regulation 1234/2007 by the Commission, will become retained direct EU legislation under the European Union (Withdrawal) Act 2018. There is also a body of domestic secondary legislation in this area, mainly concerned with the enforcement of the EU rules, which will become EU-derived domestic legislation under the European Union (Withdrawal) Act 2018.

250. Clause 35(1) is a power to make provision in regulations for marketing standards for agricultural products which are listed in schedule 4, and which are marketed in England.

251. In relation to products for which EU marketing standards do not exist (including new products which may be added to schedule 4 using the power under clause 35(5)), the power in clause 35(1) gives the Secretary of State the flexibility to introduce new standards that will be tailored to suit the domestic agricultural sectors.

252. It also enables the Secretary of State to modify the existing law on marketing standards where appropriate. No further provision is needed in order for this power to be able to modify the domestic secondary legislation in this area. By virtue of clause 47(3)(a), regulations made under clause 35(1) are able to modify retained direct EU legislation.
253. The power in clause 35(1) will be used to make regulations concerning marketing standards tailored to suit the domestic sector, to ensure that the standards and rules do not place an excessive burden on farmers and other players in the food supply chain and to continue to match modifications made at EU level to ensure English farmers are not disadvantaged.

Enforcement

254. Regulations made under clause 35(1) may also provide for the enforcement of marketing standards, and clause 35(3) sets out the matters enforcement regulations may concern, for example, conferring powers of entry, imposing monetary penalties, creating offences punishable by a fine and providing for appeals.
255. The existing standards (a combination of EU and domestic legislation) currently provide for prosecution if an offence is committed; the penalty in all but one case is a criminal fine. This power will allow for the current enforcement requirements to be replicated for any standards which may be introduced for new products. This will provide consistency across the way the standards are enforced and provide for the potential to introduce a standard enforcement regime across all the marketing standards in the future. As marketing standards act to protect consumers and to ensure that agricultural products are marketed in a way which is fair and accurate, it is important that they are backed up by a strong and consistent enforcement regime.
256. The power has been replicated for the Welsh Ministers and DAERA in Schedules 5 and 6.

Justification for taking the power

257. The Commission powers to amend marketing standards are restrictive and do not easily allow for technical updating. They allow only for amendments to be made in prescribed circumstances. For example, the Commission currently only has the power to adopt delegated acts concerning marketing standards, if it is to take into account the expectations of consumers and to improve the economic conditions for the production and marketing as well as the quality of the agricultural products covered by the marketing standards.

258. If it was deemed necessary to amend or revoke the current standards, or set new ones, the Secretary of State would be unable to do so unless it was demonstrated that the above considerations had been taken into account for marketing standards.
259. EU exit will enable modernisation of the existing marketing standards, so that they deliver domestic standards for domestic farmers, retailers and consumers. Regulations under this power will:
- a) ensure that marketing standards do not place an excessive burden on farmers and other players in the food supply chain;
 - b) establish more efficient inspection regimes specific to England; and
 - c) amend overly bureaucratic rules (for example, by providing flexibility to consider changing standards which are purely visual and where other systems are in place ensuring the quality of products marketed).
260. Relying on the retained EU legislation would prevent the Secretary of State from taking action where the motivation was, for example, to:
- d) encourage the marketing of a more diverse range of produce and reduce food waste. For example, for fruit and vegetables there are 'specific' and 'general' marketing standards which apply. The 'general marketing standard' ensures that all fruit and vegetables are intact, clean and of a fair and sound quality for consumers. The 'specific' standards apply to the 10 most traded fruit and vegetables in the EU. This list includes tomatoes, citrus fruits and apples. The 'specific' marketing standards specify prescriptive visual elements that the fruit or vegetable must comply with. For example, apples must meet minimum surface colour characteristics to be classified as 'Extra Class'. These standards could be seen as encouraging retailers to only sell perfect looking fruit and vegetables. While supermarkets set their own standards for the fruit and vegetables they buy from producers, these are based on the marketing standards set out in law. The power in clause 35(1) could be used to remove the visual elements of the standards, which would strengthen arguments that retailers should do the same;
 - e) introduce more proportionate inspection regimes based on risk, which will create a consistent approach to how the marketing standards are enforced and reduce burdens on enforcement agencies. For example, the current hops marketing standards requires

that 5% of third country consignments are inspected. Once the EU becomes a third country, we will be required to inspect 5% of all hops consignments imported from the EU, which will create an administrative burden. Hops from the EU will continue to meet current standards and should not require increased inspections. The power in clause 35(1) will allow amendments to be made to the inspection frequency and follow a risk-based approach for all third countries (including the EU);

- f) introduce marketing standards for new categories of grapevine products such as de-alcoholised wine and partially de-alcoholised wine. Both are products which the Commission has proposed adding in its CAP 2020 proposals. This is partly due to market pressure and the growing popularity of low alcohol drinks presenting a new opportunity to the wine sector. Furthermore, partly due to health concerns here in the UK, the DHSC has been very keen to discuss ways of assisting low alcohol drinks in the market, one of which would be to create marketing standards for these products. This would give consumers confidence that low alcohol drinks marketed in England have been produced to a certain standard and provide legal sales descriptions for those products. Without the proposed power, there would be difficulties in tailoring marketing standards to fit the needs of the domestic farming sector.

261. Marketing standards are governed by extensive and technically detailed provisions, which vary considerably across different sectors. EU Regulation 1308/2013 (CMO Regulation) sets out the basis for the marketing standards. Commission implementing regulations and delegated acts for each marketing standards sector build on this further by providing detail on what is included. This law will become retained EU law under the European Union (Withdrawal) Act 2018, but it is important to see this area of law as dynamic and responsive to changes in the market, in production methods and in consumer demands and priorities. It would not be sufficient to rely on the power to correct deficiencies in that Act, as the changes which may be needed do not necessarily arise from the UK's withdrawal from the EU, but from wider considerations relating to the nature of the relevant markets.

262. It is appropriate for this to be a delegated power available to the Secretary of State because we will be retaining the same body of marketing standards law. Schedule 7 ensures that this law remains in force, and available to be amended using the new domestic power in clause 35(1), if necessary. Because we will be building on the existing and complex area of law, it would be unnecessary and impractical to set out the standards and rules themselves in primary legislation, in either the Agriculture Bill or in a bill in its own right.

263. Furthermore, before any substantive changes are made using the power in clause 35(1), a full policy review, stakeholder engagement and public consultation will take place. Marketing standards are a part of food law and therefore a duty to consult on any changes already exists under Article 9 of EU regulation 178/2002. This regulation lays down the general principles and requirements of food law and requires a consultation to take place where changes are made to food law, except in urgent cases (for example, if it were necessary to act quickly to protect human health). Using the powers in the EU (Withdrawal) Act 2018, this regulation will be rolled over into UK law and the duty to consult will apply to regulations made under clause 35(1), with the sensible and practical exception for cases of real urgency.

Enforcement

264. The Secretary of State is also able to make regulations on the enforcement of marketing standards, to ensure that marketing standards made for new products are enforced consistently with existing standards and to provide for any changes which might be necessary to the enforcement regime.

265. The existing rules (a combination of EU and domestic legislation) currently provide for prosecution if an offence is committed; the penalty (with one exception) is a criminal fine. The offences act as a deterrent to ensure compliance with the standards for those products placed on the market. The existing legislation will remain in place after EU exit. Compliance with marketing standards is important for consumers as they ensure that products offered to consumers are accurately and consistently labelled, of acceptable quality, and that unsatisfactory produce is kept off the market. As such, in the past the decision has been taken to impose criminal penalties for breaches of the standards.

266. Any new standards that are introduced using the powers in the Bill, will run in parallel with existing standards, and so there is a need to be consistent and fair in the approach to ensure non-compliance is handled in the same manner across this area of law. We would not want to create a situation where there are different penalties depending on whether it was non-compliance with a newly introduced standard, or an existing standard. It is therefore necessary for the Secretary of State to have the power to create new offences as and when marketing standards are made for new products. Any offences created under this power will not be retrospective. Any new offences related to the marketing standards will be limited to the penalty to that of a criminal fine so as to be consistent with existing powers.

267. Any enforcement provisions connected to new standards which are introduced using the power in clause 35(1), may not authorise entry to a private dwelling without a warrant issued by a justice of the peace. "Private dwelling" is defined at clause 48.

Justification for the procedure

268. This clause is subject to the affirmative resolution procedure. Changes to marketing standards can be wide ranging and as the power contains provision for the creation of criminal offences, it is appropriate to give Parliament due scrutiny of any future changes.

Clause 35(5): Power to amend clause 35 and Schedule 4

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Henry VIII power

Parliamentary Procedure: Affirmative Resolution

Context and purpose

269. Schedule 4 lists the products for which regulations on marketing standards may be made.
270. Clause 35(5) contains power for the Secretary of State to amend clause 35 and Schedule 4 for the purpose of adding or removing a product from the list in Schedule 4 or altering the description of a product in that list. This is a Henry VIII power as it allows the Secretary of State to change the text of clause 35 and Schedule 4 of the Agriculture Bill once it becomes an Act.
271. The power has been replicated for the Welsh Ministers and DAERA in Schedules 5 and 6.

Justification for taking the power

272. Schedule 4 largely reflects the products covered by current marketing standards law. This is subject to change as new sectors develop and become increasingly important. Therefore, a delegated power is needed to enable amendments to this schedule so that the list of products and their description may be updated over time, and any necessary amendments may be made to clause 35 itself consequential on those amendments to Schedule 4.
273. It is likely that technological progress and environmental change in the future may see new kinds of products rise to prominence, as novel crop varieties or species become viable to produce. Should agricultural sectors change, and new products become relevant, a power is needed to amend the list of products for which regulations on marketing standards may be made in Schedule 4. The nature of these developments is uncertain. Therefore, it is necessary for the Department to have powers to revisit the relevant products and their descriptions.

Justification for the procedure

274. Regulations made under the power in clause 35(5) are subject to the affirmative resolution procedure. This is a Henry VIII power and, as such, should be subject to a higher level of parliamentary scrutiny.

Clause 36(1): Power to make provision relating to organic certification

Power conferred on: Secretary of State, Scottish Ministers, Welsh Ministers, the Department of Agriculture, Environment and Rural Affairs in Northern Ireland

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Affirmative resolution on first use and negative thereafter, unless the provision relates to the objectives, principles and standards of organic production. Where this is the case, the affirmative procedure will apply at all times.

Context and Purpose

275. Under clause 36(1), the Secretary of State will have the power to make provisions relating to requirements for organic certification in the UK, through secondary legislation. This covers the ability to create new organics standards and amend or revoke the current organics standards, as set out in retained EU law. The organics powers in the Bill are also conferred on the devolved administrations to regulate organics for their areas, so far as they can exercise those powers within devolved competence.
276. At present, the organics sector is governed by Regulation (EC) No 834/2007, Regulation (EC) No 889/2008 and Regulation (EC) No 1235/2008 (“the current regulations”). However, from 1 January 2021, Regulation (EU) No 848/2018 will repeal Regulation (EC) No 834/2007 in the EU.
277. When the UK leaves the EU on 31 January 2020 and the subsequent Implementation Period (IP) ends on 31 December 2020, the current regulations will be retained, and we will only have limited powers to amend them. This will restrict our ability to tailor the retained law to UK circumstances, to pursue our own environmental ambitions and to adapt our organics regime to evolving science, innovation and best practice.
278. It will also restrict our ability to amend our rules to reflect any future trade agreements. This is particularly pressing, since from 1 January 2021 Regulation (EU) No 848/2018 will apply in the EU. The UK will therefore be operating to standards different from those of one of our major trading partners.
281. The purpose of this power is to ensure that the UK organics sector can continue to operate to world-leading standards of organic production, to remain competitive, to adapt to the latest science, and to access global markets by allowing us to establish regulatory equivalence with the EU and other trading partners.

Justification for taking the power

279. From 1 January 2021, the UK organics sector will be operating to older environmental, animal welfare and organics standards than our EU partners. This will hinder our Future Relationship and undermine our ambition to be a world-leader in the environment, animal welfare, and organic production.
280. For example, the new EU Regulations introduce a prohibition on cages for raising livestock which we also intend to introduce in the rules for organic production in order to improve animal welfare in organic produce. It may also be necessary to adopt such rules where it is required by trade agreements. The powers in the Bill will allow us to amend the retained law to reflect the needs of trade negotiations.
281. Beyond this, we also need the powers to adapt the regulations for our own purposes, for example to improve animal welfare, and implement actions under the 25 Year Environment Plan including sustainable management of soil by 2030 and ensuring that food is produced sustainably and profitably.
282. We will consult stakeholders before new rules are introduced.

Justification for the procedure

283. Exercise of power in relation to the objectives, principles and standards of organic production is subject to the affirmative procedure on every use since additional scrutiny will be required on such decisions. This is because such regulations are likely to impact on the environment, animal welfare, productivity and trading relationships.
284. Exercise of power in relation to other matters are subject to the affirmative procedure on first use to provide adequate Parliamentary scrutiny as it is anticipated that the first use of the powers will create any new organic framework. Subsequent exercises of power are subject to the negative procedure since they will relate to updating the regulations in accordance with the rules.

Clause 36(5): Power to make provision relating to the import of organic products into the United Kingdom

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure for first exercise of power, and negative resolution procedure for subsequent exercises.

Context and Purpose

285. Under clause 36(5), the Secretary of State will have the power to make provisions relating to the import of organic products into the UK. This covers the ability to set procedures for import and to set prohibitions and restrictions on import. It will allow us to adapt our procedures and rules to meet the needs of global trade.

286. The purpose of this power is to ensure that the UK organics sector can continue to import organic products both for use in UK organic production and for sale on the UK market.

Justification for taking the power

287. Currently, rules on import are set out in EU legislation. Once we have left the EU we will need to set rules on how applications for equivalence will be assessed and the documents required for import. This power will allow us to set such rules.

288. We will also need the ability to manage lists of recognised countries and control bodies currently set out in EU regulation. The power will allow us to ensure these lists can be updated to reflect the fast-moving needs of global trade.

Justification for the procedure

289. The first exercise of this power is subject to the affirmative resolution procedure to ensure that adequate parliamentary scrutiny is afforded to rules on import of organics products. Subsequent exercises of power are subject to the negative procedure since they will relate to updating the regulations in accordance with the rules.

Clause 36(7): Power to make provision relating to the export of organic products from the United Kingdom

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure for first exercise of power, and negative resolution procedure for subsequent exercises.

Context and Purpose

290. Under clause 36(7), the Secretary of State will have the power to make provisions relating to the export of organic products from the UK. This covers the ability to set requirements and procedures for notifying the relevant authorities of export.

291. The purpose of this power is to assist transparency in the global trade flows of organic products.

Justification for taking the power

292. This power would allow us to improve the export procedure for organics to create a more transparent system, for example by making more rigorous requirements for export documentation. This power would therefore allow us to develop a more robust system to assist traceability, provide reassurance to our trading partners, and lead the way in providing consumer confidence in organic products.

Justification for the procedure

293. The first exercise of this power is subject to the affirmative resolution procedure to ensure that adequate parliamentary scrutiny is afforded to matters relating to organic export. Subsequent exercises of power are subject to the negative procedure since they will relate to updating the regulations in accordance with the rules.

Clause 36(8)(c): Power to make provision relating to the enforcement of organics regulation

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure for first exercise of power, and negative resolution procedure for subsequent exercises.

Context and Purpose

294. Under clause 36(8)(c), the Secretary of State will have the power to make provisions for the enforcement regime for organics. The purpose of this power is to ensure that any changes made to organics regulation in the UK can be adequately enforced.

Justification for taking the power

295. This power will allow the Secretary of State to amend existing criminal offences and create new criminal offences within the existing domestic enforcement regulations in order to reflect new and amended organics standards. This includes the ability to create new offences punishable with a fine. This is consistent with the existing domestic enforcement regulations.

Justification for the procedure

296. The first exercise of this power is subject to the affirmative resolution procedure to ensure that adequate parliamentary scrutiny is afforded to enforcement provisions relating to organics regulation.

Clause 38(1): Power to make provision relating to carcass classification

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Affirmative Resolution

Context and Purpose

Background

281. Carcass classification, which takes place in slaughterhouses post slaughter, is used to calculate the payment due to producers from slaughterhouses based on the quality of the carcass. The carcass classification scales (the “Union scales”) define the characteristics and the quality of the carcass as presented. As such they can also be seen as equivalent to a marketing standard that makes the market in meat more transparent and helps both buyers and producers. The current EU legislation pertaining to carcass classification is set out in regulation 1308/2013 and in two regulations made under it, which will become retained direct EU legislation under the European Union (Withdrawal) Act 2018. There is also a domestic statutory instrument for England, which mainly relates to the enforcement of the EU rules. This will become EU-derived domestic legislation under the European Union (Withdrawal) Act 2018.
297. Clause 38(1) contains the new domestic power for the Secretary of State to make regulations relating to the classification, identification and presentation of bovine, pig and sheep carcasses by slaughterhouses in England. This will enable the Secretary of State to make new rules in this area. The power may also be used to amend the relevant retained direct EU legislation by virtue of clause 47(3)(a).
298. The power in clause 38(1) gives the Secretary of State the flexibility to introduce new rules that will be tailored to suit the domestic agricultural sectors.
299. In the retained direct EU legislation the delegated powers to amend carcass classification rules are restrictive, only allowing for amendments to be made in prescribed circumstances. For example, it would not be possible to adapt and update the Union scales for the classification of carcasses unless it was demonstrated that technical developments and the needs of the sectors had been taken into account, as well as the need to standardise the presentation of the different

products for the purposes of improving market transparency, price recording and the application of the market intervention measures.

300. The power in clause 38(1) will provide for regulations concerning carcass classification to be tailored to suit the domestic sector, to ensure that carcass classification rules do not place an excessive burden on farmers and other players in the food supply chain and to continue to match the modification made to the rules at EU level to ensure English farmers and slaughterhouses are not disadvantaged.

Enforcement

301. Regulations made under clause 38(1) may also provide for enforcement, and clause 38(2) sets out the matters enforcement regulations may concern, for example, conferring powers of entry, imposing penalties, creating offences and providing for appeals.
302. This power will allow for the current enforcement requirements to be replicated for any new carcass classification rules which may be introduced. This will provide consistency across the way the carcass classification rules are enforced. As the classification, identification and presentation of carcasses is important not only for tracking prices paid to farmers, but also for consumer protection, it is important that they are backed up by a strong and consistent enforcement regime.
303. The power has been replicated for the Welsh Ministers and DAERA in Schedules 5 and 6.

Justification for taking the power

304. A power is required in order for the Department to update carcass classification provisions should it be necessary to keep pace with changes made to the EU regime after EU exit. This could require fairly rapid amendments, the detail of which is not yet known. Changes made to carcass classification rules are likely to require technically detailed provisions which would not be appropriate for primary legislation.
305. The Department intends to take a considered, sector-specific approach to amending carcass classification rules. This power will allow the Department to undertake sector-specific consultations and make changes tailored for particular sectors. For example, following the public consultation launched in May 2018 on introducing a mandatory sheep carcass classification scheme, possible options include supplementing the Union scale provided for in the CMO regulation (1308/2013) as it relates to sheep to include factors such as the eating quality of the

meat, or introducing a metric to take into account the value of an animal's offal as well as its meat in order to give sheep farmers a fairer price for their produce. While no final decisions have been taken as yet in this area, these are examples of changes that could be made using this new power.

306. Before any substantive changes are made using the power in clause 38(1), a full policy review, stakeholder engagement and public consultation will take place. Carcass classification is covered under food law and a duty to consult already exists under Article 9 of EU regulation 178/2002. This regulation lays down the general principles and requirements of food law and requires a consultation to take place where changes are made to food law, except in urgent cases. Using the powers in the EU (Withdrawal) Act 2018, this regulation will be rolled over into UK law and the duty to consult will apply to regulations made under clause 38(1), with the sensible and practical exception for cases of real urgency (for example, if it were necessary to act quickly to protect human health).

Enforcement

307. The Secretary of State is also able to make provision for an enforcement regime in order to ensure that regulations made under this power are complied with, and appropriate penalties which are consistent with the existing law can be applied. As the classification, identification and presentation of carcasses is important not only for tracking prices paid to farmers, but also for consumer protection, it has in the past been enforced by the imposition of criminal penalties for breach of the rules.
308. Any new rules that are introduced using the powers in the Bill, will run in parallel with existing carcass classification rules, and so there is a need to be consistent and fair in the approach to ensure non-compliance is handled in the same manner across this area of law. We would not want to create a situation where there are different penalties depending on whether it was non-compliance with a newly introduced rule, or an existing rule. It is therefore necessary for the Secretary of State to have the power to create new offences as and when there is a change to the rules. Any offences created under this power will not be retrospective. Any new offences related to carcass classification will be limited to the penalty of a criminal fine so as to be consistent with existing powers.
309. Any new standards which are introduced using the power in clause 38(1), may not authorise entry to a private dwelling without a warrant issued by a justice of the peace. "Private dwelling" is defined in clause 48.

Justification for the procedure

310. This clause is subject to the affirmative resolution procedure. Changes to carcass classifications can be wide ranging and as the power contains provision for the creation of criminal offences, it is appropriate to give Parliament due scrutiny of any future changes.

Clause 39(1): Power to reproduce modifications under clause 35(1) for the wine sector

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Negative Resolution (unless concerning new sector-specific provisions, or unless section 47(5) applies, under which the procedure is affirmative).

Context and Purpose

311. Under clause 35(1), the Secretary of State will have the power to make provisions relating to marketing standards for products marketed in England, through regulations. This will also cover the ability to amend or revoke the current marketing standards for the sector, as set out in retained EU law, including Annex 7 of the CMO regulation (1308/2013).
312. Annex 7 of the CMO regulation outlines the definitions, designations, and sales descriptions for specific marketing standards products for the wine sector. Although its primary purpose relates to marketing standards, it is also used as a shorthand in other parts of the CMO regulation to refer to those products. Such cross references appear in Section 2 of Chapter 1 of Title 2 of the CMO regulation, which is a reserved area of law (designations of origin, geographical indications and traditional terms in the wine sector). For example, Article 92(1) in Section 2 details the scope of the section and states that the rules on designations of origin, geographical indications and traditional terms laid down in the Section shall apply to the products referred to in points 1, 3 to 6, 8, 9, 11, 15 and 16 of Part II of Annex VII, rather than referring to the products individually.
313. The purpose of this power is therefore to ensure that these cross references work. Amendments made to Annex 7 under clause 35(1) will only apply to England and will not therefore feed through to the reserved area of law in Section 2 of Chapter 1 of Title 2 of the CMO regulation. This power enables the Secretary of State to correct that by extending the amendments made to Annex 7 for England to the whole of the UK thereby ensuring that the references to Annex 7 align.

Justification for taking the power

314. This power is necessary to ensure that any changes made to Annex 7 of the CMO regulation using the power in clause 35(1) will subsequently flow through to the references to Annex 7 which appear in Section 2 of Chapter 1 of Title 2 of CMO Regulation. This makes the cross-

reference work and ensures clarity as to which products are being referred to. The clause will only affect the part of Annex 7 which relates to wine. No other products will be affected.

315. As a practical example, de-alcoholised wine could be added to the definition of “wine” in point 1 of Part II of Annex 7 of the CMO Regulation, in relation to products marketed in England, using the power in clause 35(1). Using the power in clause 39, the Secretary of State can reproduce that modification to Annex 7 of the CMO Regulation so that it applies across the UK for the purpose of designations of origin, geographical indications and traditional terms in the wine sector. De-alcoholised wine products would then be eligible to apply for protected status, as the modification to the definition of “wine” in Annex 7 would feed through to the Annex 7 references concerning the PDO and GI schemes.
316. The clause does not give the Secretary of State the power to amend the PDO or GI schemes. It is purely a technical power to ensure that cross references for Annex 7 work in the retained EU law.
317. Furthermore, the clause is only intended to have a temporary effect. When a new GI and PDO scheme specifically tailored to the UK is introduced, it is highly unlikely that it will make a cross reference to Annex 7 of the CMO regulation, and so it would not be necessary to use the power in clause 39.

Justification for the procedure

318. This clause is subject to the negative resolution procedure, unless section 47(5) applies, under which the procedure is affirmative. Changes to Annex 7 of the CMO Regulation will be technical in nature, to ensure alignment across different elements of the retained CMO regulations.

Part 6: WTO Agreement on Agriculture

Clause 40(1): Power to secure compliance with the Agreement on Agriculture

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Affirmative Resolution

Context and purpose

319. As the UK leaves the EU the Government's responsibilities at the WTO will increase and the UK Government will take control of functions that were previously carried out by the European Commission on the Government's behalf.
320. WTO rules on agriculture are set out in the Agreement on Agriculture ("AoA") which includes rules on domestic support and special safeguards as well as rules on market access and export competition. 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 WTO compliant.
321. Agriculture is a devolved matter and, outside of the EU's Common Agricultural Policy, the devolved administrations will be able to design and implement their own agricultural support policies. However, ensuring that the UK complies with WTO obligations on domestic support is a reserved matter. The Department is therefore responsible for ensuring that all support schemes designed and implemented by the devolved administrations are properly notified in accordance with the requirements of the WTO Agreement on Agriculture, and where limits on their use apply, that the UK does not exceed those limits.
322. The powers in this clause allow the Secretary of State to make Regulations for securing compliance by the UK with the AoA. The Regulations will set financial ceilings on the devolved administrations and England in relation to agricultural support that is subject to limits under the Agreement on Agriculture, establish a decision-making process to classify agricultural support in accordance with WTO criteria, and require devolved administrations to provide information in relation to any of their proposed or existing farming support.

Justification for taking the power

323. Setting financial ceilings on the devolved administrations and England in relation to agricultural support that is subject to limits under the Agreement on Agriculture: While the Department expects the UK to receive a share of the EU's current Aggregate Measurement of Support ("AMS") allowance after EU exit, this is still subject to agreement with other WTO members and therefore the exact amounts involved are subject to change and cannot be set out on the face of the Bill. AMS refers to the annual level of agricultural support given to agricultural producers, expressed in monetary terms, other than support that is exempt under Article 6 or Annex 2 of the AoA. The Department is currently consulting with the devolved administrations on the methodology for apportioning the UK AMS allowance between England, Scotland, Wales and Northern Ireland and we are therefore not yet able to set out in monetary terms, in percentage terms, or otherwise, intra-UK AMS limits on the face of the Bill.
324. Establishing a decision-making process to classify agricultural support in accordance with WTO criteria: The Department is also in consultation with the devolved administrations to discuss, and if possible agree, the processes for making and operating Regulations for classifying domestic support schemes in accordance with UK obligations under the AoA.
325. Provision of information in relation to proposed or existing farming support: The Department are also consulting with the devolved administrations on how other Regulations under Clause 40 will be made and operated, including the requirements to provide information on new or modified domestic support schemes to the Department to enable UK notifications of domestic support to the WTO as required under the AoA.
326. Furthermore, giving the SoS delegated powers to make Regulations means that if obligations under the AoA change (by agreement between all WTO members including the UK, or in the event of successful challenge of UK policy by other WTO members) there is scope to incorporate these changes by amending secondary rather than primary legislation, although these changes would still be subject to the affirmative resolution procedure. It is possible that the Regulations may need to be refined and 'fine-tuned' in the early years of their operation; setting out the Regulations in secondary legislation avoids the need to amend primary legislation in the event of this happening.

Justification for the procedure

327. The Regulations will determine limits on the amount of AMS support that may be given in England and by each of the devolved administrations; the department considers that these

matters are sufficiently significant to the agricultural sector, and to the ongoing relationship between UK administrations, that Parliament should be given the opportunity to scrutinise and debate them.

328. Furthermore, given their interests in these matters, this clause has been subject to scrutiny by the devolved administrations, and the Department has undertaken to work closely with those administrations on the making of the 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.

Part 7: Wales and Northern Ireland

Schedule 6(4): Power to modify legislation governing the coupled support scheme

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Affirmative Resolution

Context and purpose

329. Paragraph 4 gives DAERA the power to modify by regulations the legislation governing the coupled support scheme for or in connection with making provision for the continuation of the of the option to make payments under the scheme in Northern Ireland, after any time at which, without the provision, the option would terminate. The power also allows DAERA to make changes that it considers will simplify or improve the scheme so far as it operates or could be operated in relation to Northern Ireland.

Justification for the power

330. A coupled support scheme is not currently in operation by DAERA in Northern Ireland, however the power has been included should a future DAERA Minister choose to operate such a scheme.

Justification for the procedure

331. This will provide for an appropriate level of Parliamentary scrutiny through use of the affirmative procedure. This will provide appropriate NI Assembly scrutiny should a DAERA Minister seek to apply the power in the future.

Part 8: Final Provisions

Clause 50(1): Power to make supplementary, incidental or consequential provision

Power conferred on: Appropriate Authority

Power exercised by: Regulations by Statutory Instrument

Henry VIII power

Parliamentary Procedure: Negative Resolution (unless the power is exercised to modify primary legislation, then Affirmative Resolution)

Context and purpose

332. Clause 50(1) provides the appropriate authority (defined in clause 50(6) as the Welsh Ministers for provision in connection with Schedule 5, and Schedule 7 insofar as it applies to Wales; DAERA for provision in connection with Schedule 6, and Schedule 7 insofar as it applies to Northern Ireland; and the Secretary of State for provision in connection with any other provision of the Bill) with a standalone power to make supplementary, incidental or consequential provisions in connection with any provision of this Bill. Regulations made using this power may modify primary legislation, retained direct EU legislation or subordinate legislation. Insofar as such regulations can modify primary legislation, this is a Henry VIII power.

333. An example of how this power is likely to be used is to make savings provisions for the Agri-Promotion Scheme to ensure that existing programmes are able to continue, and be managed by the RPA, to their conclusion after the Regulations have been disapplied in respect of England. We are unable to put the savings provisions on the face of the Bill given that it is not currently possible to know which schemes will be ongoing at the point the disapplication in respect of England comes into force, and therefore which savings provisions would be required.

Justification for taking the power

334. This power may only be exercised in connection with a provision of the Bill, it is not to be used in isolation to make unwarranted supplementary, incidental or consequential provisions. It is not possible to establish in advance all supplementary, incidental and consequential provisions that may be required, this may include a future requirement to make consequential amendments to some primary legislation if required because of other provisions in this Bill. A power is needed to avoid any legal uncertainty or legal lacunas after the Bill comes into force.

Justification for the procedure

335. This power can only be exercised in consequence of existing Bill provisions and its purpose is to bring certainty to the statute book where a provision of the Bill might otherwise give rise to legal uncertainties or gaps. These are likely to be highly technical matters for which the negative resolution procedure is appropriate; except where this power is used to modify primary legislation, in which case the affirmative procedure would apply.

Clause 50(5): Power to make transitional, transitory or saving provision

Power conferred on: Appropriate Authority

Power exercised by: Regulations by Statutory Instrument

Henry VIII power

Parliamentary Procedure: No procedure

Context and purpose

336. Clause 50(5) provides the appropriate authority (defined in clause 50(6) as set out above) with a standalone power to make transitional, transitory or saving provision in connection with the coming into force of any provision of this Bill.

Justification for taking the power

337. When a new provision comes into force, it is often necessary to make transitional, transitory or savings provision to ensure a smooth transition between the old and the new law. It is not possible to establish in advance all transitional, transitory or saving provisions that may be required. A power is needed to avoid any legal uncertainty or legal lacunas after the Bill comes into force.

Justification for the procedure

338. This power can only be exercised in consequence of the coming into force of existing Bill provisions and its purpose is to bring certainty to the statute book where a provision of the Bill might otherwise give rise to legal uncertainties or gaps. These are likely to be highly technical matters. It is usual for such provisions to be made without a parliamentary procedure.

Clause 53(2): Commencement

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: No procedure

339. Consistent with common practice, commencement regulations under this clause are not subject to any parliamentary procedure. Parliament will have approved the principle of the provisions in the Bill by enacting them; commencement by regulation enables the provisions to be brought into force at the appropriate time.