

# AGRICULTURE BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Agriculture Bill as introduced on in the House of Commons on 16 January 2020 (Bill 7).

- These Explanatory Notes have been prepared by the Department for Environment, Food and Rural Affairs (Defra) in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 The Agriculture Bill (the Bill) will establish a new agricultural system based on the principle of public money for public goods for the next generation of farmers and land managers.
- 2 The Agriculture Bill includes the following:
  - a. Powers to give financial assistance under a new system based on paying public money for public goods. Payments may encompass (but are not limited to) environmental protection, public access to the countryside and measures to safeguard livestock and plants.
  - b. Powers to give financial assistance to support productivity outcomes for agriculture, horticulture and forestry activities.
  - c. The ability to establish an enforcement and inspection regime for the new financial assistance payments including powers to set out terms and conditions of future financial assistance.
  - d. Provisions relating to the setting of multi-annual assistance plans and reporting mechanisms relating to the giving of financial assistance.
  - e. Measures to continue making payments to farmers during a transition period with powers to simplify and phase out Direct Payments and to delink these payments from the land. This includes setting the agricultural transition period for England.
  - f. The ability to modify elements of the retained CAP Regulations that set out the finance, control and reporting regime that applies across the CAP. These powers could, for example, allow the government to change elements of the cross compliance regime or administrative arrangements for the schemes that could continue for a time after we leave the European Union (EU). These powers also enable the repeal of EU aid schemes for fruit and vegetable producer organisations and additional powers to simplify the rules, while honouring existing rural development payment schemes entered into prior to EU Exit which extend beyond Exit day.
  - g. A provision on reporting to Parliament on UK food security.
  - h. Provisions to intervene in exceptional market conditions. These powers allow the Secretary of State to declare a period of exceptional market conditions and to give financial assistance to support farmers who have been affected. They also would enable the Secretary of State to use the additional public intervention and private storage aid powers in retained EU legislation.
  - i. Powers to collect and share data from those within or closely connected to the agri-food supply chain. The data collected and shared under these provisions will help farmers and producers increase productivity, help producers to manage risk and market volatility, and support animal and plant health and traceability.
  - j. Provisions for the Secretary of State to make regulations imposing obligations on first purchasers of agricultural products in relation to contracts with producers. This is aimed at protecting producers and consumers from unfair trading practices.
  - k. Provisions to create a domestic system of recognition of Producer Organisations to

encourage collaboration among growers. These provisions will provide for exemptions from competition law for recognised organisations.

- l. Provisions to modernise both the definition and enforcement of fertilisers, make amendments to agricultural tenancy legislation and make livestock traceability more effective.
- m. Provisions relating to the distribution of the Red Meat Levy in Great Britain.
- n. Powers to make regulations setting and amending marketing standards for agricultural products and to make provision about organic products and the classification of carcasses by slaughterhouses.
- o. Powers for the Secretary of State to legislate for the UK to comply with the World Trade Organisation (WTO) Agreement on Agriculture (AoA).
- p. Provision for the Secretary of State and Scottish and/or Welsh ministers to set up a scheme allowing levy bodies to redistribute red meat levy among themselves, in some circumstances.
- q. Provisions for Wales and Northern Ireland, where this Bill will legislate for similar powers (in particular areas) adapted for the Welsh Government and Department of Agriculture, Environment and Rural Affairs in Northern Ireland (DAERA) to be exercised by Ministers in those territories.

## Policy background

### Common Agricultural Policy (CAP)

- 3 The declared objectives of the CAP are as follows:
  - to increase agricultural productivity through technological progress, optimising factors of production, especially labour;
  - to ensure a fair standard of living for the agricultural community;
  - to stabilise markets;
  - to assure the availability of supplies; and
  - to ensure supplies reach consumers at a reasonable price.
- 4 UK agriculture receives around €4.0 billion in support from the EU every year via the CAP, which the UK Government also funds as part of its membership of the EU. The CAP is comprised of two “pillars”. Pillar 1 provides Direct Payments, accounting for about 88% of total payments (€3.2 billion in the UK in 2016). It also funds payments under the Common Market Organisation Regulation (CMO); the entire CMO funding received from the EU was €86m in 2016. Pillar 2 accounts for the remaining 12%, supporting environmental outcomes, farming productivity, socio-economic outcomes and rural growth (€0.8 billion in 2016).
- 5 There are three Direct Payment schemes in England: the basic payment scheme (BPS), greening, and the young farmer payment. The three schemes combine to give each farmer applying a

single Direct Payment for the scheme year, which runs from 1 January to 31 December.

- 6 BPS is an area-based annual payment, made to farmers. BPS accounts for almost 70% of the Direct Payments budget.
- 7 The CMO and market measures are also part of Pillar 1. These include private storage aid, intervention purchasing and other market measures that are product-specific.
- 8 Pillar 2 measures are delivered through multiannual Rural Development Programmes in England and in each of the Devolved Administrations. The current programme period runs from 2014 to 2020. Most of the Pillar 2 expenditure is on environmental schemes which bring public benefit and would not always be considered by the market, for example environmental land management through agri-environment and forestry schemes.

## Health and Harmony: the future of food, farming and the environment in a green Brexit

- 9 On 27 February 2018, the Secretary of State for Environment, Food and Rural Affairs, the Rt Hon Michael Gove MP, published a Command Paper for consultation. “Health and Harmony” sought views on a new system of paying farmers “public money for public goods” – principally their work to enhance and protect the environment – and how to phase out Direct Payments under the rules of the CAP.
- 10 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.

## Legal background

- 11 The legal basis of the CAP is set out in Articles 38 to 44 of the Treaty on the Functioning of the European Union (“the TFEU”). Following the entry into force of the Treaty of Rome, Member States’ agricultural policies were replaced by intervention mechanisms at a European Community level.
- 12 The CAP regulations can be broadly divided into four subject areas, each of which is governed primarily by one or two directly applicable EU regulations (also referred to as basic acts). There are five key basic acts in the latest CAP regime, two of which cover rural development, whilst the rest cover Direct Payments, the Common Market Organisation (CMO) and cross cutting provisions that apply to all CAP payments:
  - rules that are cross-cutting and apply to all areas of the CAP: Regulation 1306/2013 on the financing, management and monitoring of the common agricultural policy (“the horizontal basic act”);
  - rules that relate only to Direct Payments: Regulation 1307/2013 establishing rules for Direct Payments to farmers under support schemes within the framework of the common agricultural policy (“the Direct Payments basic act”);
  - rules that relate only to Rural Development measures: Regulation 1305/2013 on support for Rural Development by the European Agricultural Fund for Rural Development (“the Rural Development basic act”); and Regulation 1303/2013 laying down common provisions on

the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund (“the common provisions basic act”); and

- rules relating to the Common Market Organisation: Regulation 1308/2013 establishing a common organisation of the markets in agricultural products “CMO”); and Regulation 1370/2013 determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products.

- 13 There are also several delegated and implementing acts made under powers in the above basic acts setting out further detailed provisions. It is anticipated that the above EU regulations will be incorporated into domestic law under the European Union (Withdrawal) Act 2018.

## Territorial extent and application

- 14 Clause 52 sets out the territorial extent of the clauses in the Bill. The extent of a Bill is the legal jurisdiction of which it forms part of the law; application refers to where it has practical effect. For example, a clause may extend to the UK where it relates to retained EU legislation but apply only in the jurisdictions where the amended EU legislation will have practical effect.
- 15 The UK Parliament will not normally legislate for areas within the competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned. The government will therefore seek legislative consent for provisions in clauses 34, 43-44 and Schedules 3 and 5 that would be within the competence of the National Assembly for Wales. The government will also seek legislative consent for provisions in clause 45 and Schedule 6 that would be within the competence of the Northern Ireland Assembly. Legislative Consent will also be sought from the National Assembly for Wales, Scottish Parliament and Northern Ireland Assembly for provisions in clauses 17, 31-32 and 36-37; and from the National Assembly for Wales and the Scottish Parliament for provisions in clause 33.
- 16 See the table in Annex A for a summary of the position regarding territorial extent and application in the UK. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

## Commentary on provisions of Bill

### Part 1: Financial Assistance

#### Chapter 1: New Financial Assistance Powers

##### Clause 1: Secretary of State’s powers to give financial assistance

- 17 Clause 1 provides the Secretary of State with the power to give financial assistance. Financial

assistance may be given to beneficiaries including, but not limited to, farmers, foresters, or those responsible for the management of the land. Clause 1 sets out a list of purposes for which, and in connection with which, the Secretary of State could provide such assistance in England.

- 18 Subsection (1)(a) will enable the Secretary of State to provide financial assistance for the delivery of environmental outcomes such as cleaner air, clean and plentiful water and thriving plants and wildlife by carrying out environmentally beneficial land and water management activities. It is intended to apply to land and to bodies of water such as ponds, lakes and rivers (excluding the sea) being managed to deliver environmental benefits. One example of how this subsection may be used is to improve air quality by creating financial incentives for the targeted planting of trees to help capture ammonia emissions and protect nearby sensitive habitats from damaging nitrogen deposition. This land management activity would contribute to the delivery of cleaner air and the protection of biodiversity.
- 19 Subsection (1)(b) will enable the Secretary of State to provide financial assistance to support public access to and enjoyment of the countryside, farmland and woodland. This subsection will also enable the provision of financial assistance to support understanding about the environmental benefits that land can provide. This subsection may be used, for example, to incentivise foresters to provide facilities for educational visits for schools, supporting pupils to visit natural environments and learn about the environment. This would contribute to the delivery of societal benefits including that of engagement with the environment. It may also be used to give financial assistance to farmers and land managers to share information about agroecology.
- 20 Subsection (1)(c) will enable the Secretary of State to provide financial assistance for managing land or water in a way that maintains, restores or enhances cultural or natural heritage. This may include a building, monument, site, place, area or landscape identified as having a degree of significance due to its archaeological, architectural, artistic, historic or traditional interest. This subsection may be used to incentivise activities which conserve our cultural or natural heritage, which includes uplands and other landscapes. Funding could be used to support, for example, the maintenance of historic farm buildings, dry stone walls and conservation of limestone pavements. These all have intrinsic value as well as being resources for research, education, recreation and tourism. Funding under this subsection would contribute to the provision of societal benefits such as beauty, heritage and engagement with the environment.
- 21 Subsection (1)(d) will enable the Secretary of State to provide financial assistance for or in connection with managing land, water or livestock in such a way as to mitigate or adapt to the effects of climate change. This subsection may, for example, be used to mitigate the causes of climate change by incentivising peatland restoration to protect the existing carbon store and reduce emissions of carbon dioxide to the atmosphere.
- 22 Subsection (1)(e) will enable the Secretary of State to provide financial assistance for or in connection with managing land or water in such a way as to prevent, reduce or protect from hazards to, or caused by, the environment. This subsection, could, for example, be used to support actions that improve soil water infiltration and porosity to help mitigate against flooding.
- 23 Subsection (1)(f) will enable the Secretary of State to support action by farmers, vets and other organisations to improve animal health and welfare, reduce endemic disease and keep livestock well maintained and healthy. This subsection could, for example, be used to fund measures to encourage participation in animal health or disease control schemes or support the financing of

testing for a particular disease. It could also be used to strengthen animal welfare outcomes, such as ensuring animals have access to materials that allow them to express their natural behaviours.

- 24 Subsection (1)(g) will enable the Secretary of State to provide financial assistance for measures to support the conservation and maintenance of UK native Genetic Resources relating to livestock or equines. These measures could, for example, be used to incentivise farmers to invest in rearing rare and native breeds or species, because these genetic resources may offer a way to sustainably increase food production and/or improve our capacity to adapt to climate change or the emergence of new animal or plant diseases by providing a breadth of genetic traits. These powers could also be used to incentivise existing gene banks to safeguard UK native and rare breed genetics or to provide on farm measures to manage disease risks amongst populations of rare breed livestock.
- 25 Subsection (1)(h) will enable the Secretary of State to provide financial assistance for measures which protect or improve the health of plants, including wild plants, agricultural and horticultural crops, trees and bushes. This could, for example, include support for measures across the forestry, horticultural and other sectors, which reduce the risk of the introduction and spread of harmful plant pests and disease.
- 26 Subsection (1)(i) will enable the Secretary of State to provide financial assistance for conserving plants grown or used in agricultural, horticultural or forestry activity. This includes conserving their wild relatives, or the genetic resources relating to any such plant. This could, for example, include support for measures to conserve and utilise crop wild relatives to improve our capacity to adapt to the emergence of new plant diseases, thereby increasing resilience and biosecurity across the agricultural, horticultural or forestry sectors.
- 27 Subsection(1)(j) will enable the Secretary of State to provide financial assistance for protecting or improving the quality of soil. This could include measures which support farmers with decision making and soil management to improve soil health, such as assistance for soil monitoring programmes and funding of necessary soil health research to provide baseline site-specific understanding of soil properties. This power could also be used to incentivise farmers to invest in practices which protect and enhance soil health.
- 28 Subsection (2)(a) will enable the Secretary of State to give financial assistance for starting, or improving the productivity of, agricultural, forestry, or horticultural activities (including the growing of flowers and non-food crops). This could be used, for instance, to enable a farmer to invest in equipment that would both increase productivity and deliver environmental benefits. For example, this could include giving a farmer a grant or loan to enable the purchase of precision application equipment for slurry. This equipment would allow the farmer to use slurry more effectively, reducing costs as well as reducing ammonia emissions.
- 29 Subsection 2(b) will enable the Secretary of State to give financial assistance to support the ancillary activities of selling, marketing, preparing, packaging, processing or distributing agricultural, horticultural or forestry products. These activities can be funded if they are, or will be, carried on by a producer (which is defined in subsection (5)) or by someone acting for the producer.
- 30 Subsection (3) specifies that financial assistance under subsections (1) and (2) may only be given in relation to England.
- 31 Subsection (4) places a duty on the Secretary of State, when framing any schemes under clause 1,

to have regard to the need to encourage the production of food by producers in England, and its production by them in an environmentally sustainable way. This duty applies when the Secretary of State is making relevant decisions about the design of schemes under which financial assistance may be obtained under clause 1.

- 32 Subsection (5) provides definitions for clause 1.
- 33 Subsection (6) provides definitions for the Chapter.
- 34 Provisions relating to the form in which assistance may be given, conditions that may be imposed, delegation of functions, and publication of information about financial assistance that has been given are set out in clause 2. Provisions in relation to checking, enforcing and monitoring financial assistance are set out in clause 3.

## Clause 2: Financial assistance: forms, conditions, delegation and publication of information

- 35 Subsection (1) provides that financial assistance may be given in any form. The form may depend on any number of factors, including the framework for giving assistance and the purpose for which it is provided. The examples included in the subsection are grants, loans and guarantees but financial assistance may be given in any other form. This enables the flexibility to make one-off payments for assistance such as a loan for capital items or ongoing payments as part of a longer-term agreement such as grants for the delivery of environmental benefits or other public goods.
- 36 Subsection (2) allows the Secretary of State to attach conditions to which the financial assistance will be subject.
- 37 Subsection (3) clarifies that a condition of receipt of financial assistance may include provision under which it is to be recovered.
- 38 Subsection (4) confers power on the Secretary of State to give financial assistance to another person or organisation who has designed or operates a scheme that provides financial assistance for one of the purposes specified in clause 1. For example, this would enable the Secretary of State to fund local partnerships or other organisations or bodies (such as National Parks) to deliver a project that supports public access to and enjoyment of the countryside, farmland or woodland.
- 39 Subsection (5) provides a definition for “third party scheme” in subsection (4). This definition clarifies that a third-party scheme is one that is made and operated by a third party (not the Secretary of State) and that funding for such a third-party scheme must be used to support the delivery of one or more of the purposes described in section 1(1) and 1(2).
- 40 Subsections (6) and (7) enable the Secretary of State to delegate functions in relation to giving financial assistance including giving guidance or exercising a discretion. Subsections (8), (9) and (10) allow the Secretary of State to make regulations requiring the publication of information about payments under clause 1. Such information may include information about the recipient of financial assistance, the amount of financial assistance received and the purpose for which the financial assistance was given.

## Clause 3: Financial assistance: checking, enforcing and monitoring

- 41 Clause 3 provides the Secretary of State with the power, to make regulations to check, enforce and monitor the conditions of financial assistance provided under Section 1 in this Bill.

- 42 Subsection (1) sets out that regulations made under this clause should be in connection with the provisions of subsections (1)(a), (1)(b), (1)(c) and (1)(d).
- 43 Subsection (1)(a) sets out that regulations made under this clause make provision for checking eligibility criteria as provided for by clause 2, and the consequences, where financial assistance has already been given, if not. These checks can be before or after receipt of financial assistance. For example, it might be necessary to check that an applicant for financial assistance for a scheme to protect a particular natural habitat has control of land that includes that particular habitat.
- 44 Subsection (1)(b) sets out that regulations made under this clause may make provision for enforcing compliance with conditions as provided for by clause 2.
- 45 Subsection (1)(c) sets out that regulations made under this clause may make provision for monitoring to what extent the purposes as provided in subsections 1 and 2 of clause 1 are met.
- 46 Subsection (1)(d) sets out that regulations under this clause may make provision for the Secretary of State to investigate cases of suspected offences in connection with financial assistance. For example, where checks made under the provisions in subsections (1)(a), (1)(b) and (1)(c) reveal possible fraud offences concerning use of financial assistance given, the Secretary of State may investigate suspected fraud in relation to a potential prosecution under the Fraud Act 2006.
- 47 Section (2) sets out a list of enforcement options that regulations made under subsection (1) of this clause may provide. This list is not exhaustive, and the regulations may be made for any of the purposes set out in subsection (1).
- 48 Subsections (2)(a) to (j) list some of the types of enforcement option that may be included within the regulations. These include provisions about the information that must be provided to assist with enforcement, powers of entry, inspection, search and seizure, record keeping requirements, and how eligibility criteria and conditions of financial assistance will be checked. It also includes provisions concerning the consequences if conditions of financial assistance are not met, including recovery of money that has been paid, suspending someone from a scheme and imposing monetary penalties. There is also the power to make regulations conferring functions to others and to establish a mechanism for appealing against decisions.
- 49 Subsection (3) specifies that powers included in regulations created under subsection (1) may not authorise entry to premises used wholly or mainly as private dwellings without a warrant issued by a justice of the peace. Private dwellings are defined in section 48 as to include any gardens, yards, garages and outhouses enjoyed with such a structure.
- 50 Subsection (4) expands on provisions made under subsection (2)(f) to include provision for interest on any recoverable amount to be payable from such a day (whether the day on which financial assistance was given or a later day) as may be provided for in, or determined under, the regulations. The words ‘determined under’ allow for the regulations to set out a mechanism for a decision to be made on a case by case basis.
- 51 Subsection (5) specifies that regulations made under this clause be subject to the affirmative resolution procedure.
- 52 Subsection (6) provides a definition for the use of the word “specified” for use in this clause.

#### Clause 4: Multi-annual financial assistance plans

- 53 This clause places a duty on the Secretary of State to prepare, and then once prepared have regard to, multi-annual financial assistance plans, setting out the Government's plans for giving financial assistance using the powers in Section 1. The periods that these plans must cover is set out in subsections 3 and 4.
- 54 Subsection (1) places a duty on the Secretary of State to prepare a document giving information on the expected use of the financial assistance powers under Section 1.
- 55 Subsection (2) specifies the minimum information which must be included in a multi-annual financial assistance plan. This includes the plan period, the Government's strategic priorities for giving financial assistance during the plan period and appropriate details of financial assistance schemes under section 1 which are either in operation at the time that the plan is published or are expected to come into operation during the plan period.
- 56 Subsection (3) sets the period for the first multi-annual financial assistance plan as seven years, beginning with 1 January 2021. This covers the Agricultural Transition period.
- 57 Subsection (4) specifies that subsequent multi-annual financial assistance plans must cover a period of at least five years.
- 58 Subsection (5) specifies that the Secretary of State may not allow a plan to expire without a new plan being in place for the following period, ensuring that there is no gap between plans.
- 59 Subsection (6) places a duty on the Secretary of State to publish the multi-annual financial assistance plan and lay it before Parliament, before the start of the plan period to which it relates.
- 60 Subsection (7) places a duty on the Secretary of State to amend the multi-annual financial assistance plan, as soon as is practicable, if the Government's strategic priorities change, or if it appears to the Secretary of State that any information given in the plan has ceased to be accurate. For example, information may cease to be accurate in the light of updates and improvements to financial assistance schemes.
- 61 Subsection (8) places a duty on the Secretary of State, where a multi-annual financial assistance plan has been amended, to publish and lay before parliament a document setting out these amendments. This must be done as soon as is practicable.
- 62 Subsection (9) places a duty on the Secretary of State to have regard to priorities set out in the multi-annual financial assistance plan when determining what financial assistance to give, or the budget for any financial assistance schemes.
- 63 Subsection (10) provides a definition for "the Government" as used in this clause.

#### Clause 5: Annual and other reports on amount of financial assistance given

- 64 This clause places a duty on the Secretary of State to prepare a report each financial year, detailing the financial assistance given under Section 1 of the Bill.
- 65 Subsection (1) places a duty on the Secretary of State to prepare an annual report about the financial assistance given under Section 1 of the Bill during the preceding year.
- 66 Subsection (2) specifies that the first year for which this duty will apply is 2021-22. This is the first year of the Agricultural Transition period.
- 67 Subsection (3) specifies information which the annual report must include, in addition to any other information which the Secretary of State considers appropriate. This includes the total

amount of financial assistance given, the total amount of financial assistance given under financial assistance schemes in operation during the year and required information about those schemes as specified in subsection (4).

- 68 Subsection (4) specifies required information about financial assistance schemes to be included in annual reports. This includes the total amount of financial assistance given under a scheme and the extent to which this financial assistance met any obligations or commitments under the terms of the scheme, which may include, for example, the extent to which any financial assistance was given on time.
- 69 Subsection (5) enables the Secretary of State to include information in an annual report about amounts of financial assistance given by means other than by way of financial grants and to do so in a way that they consider to be most appropriate. For example, this could include information on financial assistance given by way of loans, guarantees or in any other form.
- 70 Subsection (6) enables the Secretary of State to prepare interim or other reports about the amounts of financial assistance given, in addition to the annual reports. For example, it may be necessary to produce interim reports covering financial assistance given during a set period of time within a financial year. There may also be occasions where it is appropriate for the Secretary of State to publish an additional report covering the financial assistance given over a period of several years. For example, the Secretary of State may publish a report covering three years' worth of expenditure on a particular scheme, to make it more convenient for the public to interrogate expenditure on that scheme.
- 71 Subsection (7) requires the Secretary of State to publish and lay before Parliament any report published under this section. This includes both annual reports, and any additional interim or other reports.
- 72 Subsection (8) sets a deadline for the laying of annual reports. Reports must be laid on or before 1 October in the year following the financial year to which they relate.

#### Clause 6: Monitoring impact of financial assistance etc

- 73 This clause places a duty on the Secretary of State to monitor the impact of financial assistance schemes under clause 1 and requires these reports to be published and laid before Parliament.
- 74 Subsection (1) requires the Secretary of State to monitor the impact of financial assistance schemes. This could include, for example, monitoring the level of uptake of the schemes, the extent to which the actions required under these schemes have been taken, and an assessment of the extent to which public goods have been delivered. The Secretary of State must then make reports on the impact and effectiveness of the financial assistance schemes.
- 75 Subsection (2) enables the Secretary of State to monitor the impact of financial assistance given other than through financial assistance schemes made or operated on behalf of the Secretary of State, and to make reports on the impact and effectiveness of the financial assistance given. This would enable the Secretary of State to monitor the impact and make a report on the impact and effectiveness on, for example, a scheme made or operated by a third party.
- 76 Subsection (3) allows that monitoring under subsections (1) and (2) must be carried out in such a manner and for such period or periods as the Secretary of State feels appropriate for the scheme or financial assistance in question. This allows the mechanisms and length of monitoring to be adapted to reflect the scheme or type of financial assistance in question, and to reflect the period over which any effects would be expected to become apparent.

- 77 Subsection (4) allows that the number and frequency of reports made under subsections (1) and (2) to be as the Secretary of State considers appropriate for the scheme or type of financial assistance in question. This allows reporting periods to be matched to the schemes in question, and to reflect the period over which any effects would be expected to become apparent.
- 78 Subsection (5) requires that reports prepared under this clause must be published and laid before parliament.

## Chapter 2: Direct Payments after EU Exit

### Clause 7: Meaning of “basic payment scheme” and other expressions in Chapter 2

- 79 This clause sets out definitions for terms used in chapter 2, in relation to the continuation and phasing out of Direct Payments during an agricultural transition period in England.
- 80 Subsection (2) defines the term “basic payment scheme” as covering the basic payment, which accounts for almost 70% of the overall payment; the greening component, which accounts for around 30% of the total payment and is made if certain agricultural practices that are beneficial to the environment and climate are upheld; and the young farmers payment, a top-up for eligible farmers aged 40 and under.
- 81 Subsection (3) defines the term “legislation governing the basic payment scheme”. This includes the EU “basic act” (the “Direct Payments Regulation” (Regulation 1307/2013)), which sets out the framework for CAP Direct Payments and will be incorporated into UK law from 11pm on 31 January 2020 for the remainder of the 2020 scheme year under the Direct Payments to Farmers (Legislative Continuity) Act 2020. It also includes retained subordinate legislation relating to the “basic act”.
- 82 Subsection (4) defines the term “agricultural transition period for England” as that set out under clause 8(1). The agricultural transition period is the period during which reductions will be applied to Direct Payments to phase them out in England.
- 83 Subsection (5) sets out that a direct payment under the basic payment scheme may be defined as such whether or not the greening and young farmer payment elements are included.
- 84 Subsection (6) defines a “Delinked payment” as that set out in clause 12(2)(a). A delinked payment means that the Direct Payment would be delinked from land, so that there would no requirement for a recipient to farm land in order to receive the payment during the agricultural transition period.
- 85 Subsection (7) defines a “Relevant payment” as either a direct payment made under the basic payment scheme or a delinked payment.
- 86 Subsection (8) explains that the “Direct Payments Regulation” referred to in subsection (3) is Regulation (EU) No 1307/2013. This is the “basic act”.

### Clause 8: The agricultural transition period for England and the termination of relevant payments

- 87 Clause 8 sets out the starting year and duration of the agricultural transition period, during which Direct Payments will be phased out in England.
- 88 Subsection (1) sets the agricultural transition period as being seven years beginning in 2021. This means the last year in which Direct Payments will be made is 2027 unless the agricultural

transition period is extended under subsection (3).

- 89 Subsection (2) sets out that once the agricultural transition period has ended in England, no more relevant payments will be made in England unless they are made in relation to the final year of the agricultural transition or earlier.
- 90 Subsection (3) provides powers to the Secretary of State to extend the agricultural transition period. This allows the Secretary of State to respond to unforeseen circumstances, which may warrant such an extension.
- 91 Subsection (4) qualifies the use of the power in subsection (3). The Secretary of State may extend the agricultural transition period more than once but, in doing so, any regulations must be made before the agricultural transition period, as it stands, runs out.
- 92 Subsection (5) specifies that regulations made under clause 8 be subject to the affirmative resolution procedure.

### Clause 9: Power to modify legislation governing the basic payment scheme

- 93 Clause 9 provides the Secretary of State with powers to modify retained EU legislation governing the basic payment scheme (including the greening and young farmer payment), as defined in clause 7(3).
- 94 Subsection (1) provides the power to modify the legislation where the Secretary of State considers this would serve one or more of five specific purposes. The first purpose is the simplification of the administration of the basic payment scheme or making its operation more efficient or effective. The second purpose is the removal of provisions in the legislation which are either spent or of no practical use. The third purpose is the removal or reduction of burdens (as defined in subsection (3)) to people applying to or entitled under the basic payment scheme or making other improvements to the way the scheme operates in relation to those people. The fourth purpose is to secure that any sanction or penalty imposed is appropriate and proportionate. The fifth purpose is to limit the application of the basic payment scheme to land in England. This latter purpose will allow the government to simplify the administrative arrangements for farmers who have land both in England and in one or more other part of the UK (i.e. Scotland, Northern Ireland and / or Wales). The Secretary of State would look to make amendments to achieve the purposes set out in subsection (1) at the earliest opportunity, in advance of using the powers to delink payments from land in clause 12(1).
- 95 Subsection (2) expressly provides that the power in subsection (1) includes the power to end greening payments before the end of the agricultural transition period. The greening requirements include the so-called “three crop rule” which determines the number of crops a farmer must grow. The power can only be exercised so long as the 30% portion of the overall budget currently allocated to greening remains available to recipients, providing they observe remaining basic payment scheme requirements. Subsection (2) is required to enable the ending of greening payments, otherwise this would be a change which would be beyond the scope of the power in subsection (1).
- 96 Subsection (3) states that ‘burden’, which the power in subsection (1)(c) is designed to remove or reduce, includes: a financial cost; an administrative inconvenience; and an obstacle to efficiency, productivity or profitability.
- 97 Subsection (4) specifies that regulations made under clause 9 are to be subject to the negative resolution procedure, unless section 47(5) applies, under which the procedure is affirmative.

## Clause 10: Power to provide for the continuation of the basic payment scheme beyond 2020

- 98 This clause provides the Secretary of State with a power to make provision for the continuation of the basic payment scheme in England beyond 2020. The power in this clause can only be exercised until the Department replaces the current basic payment scheme with delinked payments (which can occur, at the earliest, in 2022) or until Direct Payments are phased out completely at the end of the agricultural transition period.
- 99 The Direct Payments Regulation, which governs the basic payment scheme and will become retained EU law for the 2020 scheme year after 11pm on 31 January 2020, does not contain a financial allocation after the 2020 scheme year. That Regulation only specifies annual financial ceilings in Annexes II and III up to, and including, the 2020 scheme year. The financial ceilings are used as the basis for calculating Direct Payments. There are no ceilings specified for 2021 or later years. Without a power to specify the Direct Payments ceiling, the Department could not make payments under the basic payment scheme after 2020.
- 100 This clause is only concerned with payments under the basic payment scheme and is not concerned whatsoever with delinked payments. The power to make delinked payments is contained in clause 12.
- 101 Subsection (1) provides the power for the Secretary of State to make regulations that modify the legislation governing the basic payment scheme, with the express purpose of ensuring that the basic payment scheme in England can continue for one or more years beyond 2020. The scheme cannot be extended if payments under the scheme have ceased by virtue of clause 8(2) (the end of the agricultural transition period) or 12(7)(a) (the introduction of delinked payments). The power in subsection (1) is beyond the scope of clause 9 which is concerned with modifications that, in the opinion of the Secretary of State, serve the purposes defined in that clause.
- 102 Subsection (2) specifies that the power under subsection (1) includes a power to determine the Direct Payments ceiling in a specified manner, instead of, for example, specifying the amount in the Direct Payments Regulation. There is an important restriction in subsection (3)(a), namely, the Direct Payments ceiling for the relevant year, once determined, must be published as soon as practicable after it is made. Subsection (3)(b) allows the Secretary of State to delegate the determination of the Direct Payments ceiling to any person.
- 103 Subsection (4) provides definitions for certain terms used in this clause.
- 104 Subsection (5) means that this clause does not affect any power in the rest of Chapter 2 or any other enactment from being able to amend or revoke legislation applicable to the basic payment scheme after 2020.
- 105 Subsection (6) specifies that regulations made under this clause be subject to the affirmative resolution procedure.

## Clause 11: Power to provide for phasing out direct payments

- 106 This clause provides the power for the Secretary of State, during the agricultural transition period, to make reductions to Direct Payments under the basic payment scheme to phase the payments out.
- 107 Subsection (1) empowers the Secretary of State to make regulations that apply reductions to

payments made under the legislation governing the basic payment scheme (as defined in clause 7(3)). This power is beyond the scope of clause 9 which is concerned with modifications that, in the opinion of the Secretary of State, serve the purposes defined in that clause.

- 108 Subsection (2) refers to clause 12(7) for the circumstances under which the power (and provisions made under it) in clause 11(1) will cease to have effect. The power, and related provisions, to phase out the basic payment scheme will cease to have effect once delinked payments are introduced, as the introduction of delinked payments will automatically lead to the termination of the basic payment scheme.
- 109 Subsection (3) defines the term “phasing out” as meaning the application of reductions to Direct Payments (under the power in clause 11(1)). These reductions will be applied during the agricultural transition period (set out in clause 8).
- 110 Subsection (4) provides that where the greening payment has ended under the power in clause 9(2), during the modification of the basic payment scheme, references to Direct Payments under the basic payment scheme exclude greening payments. This would not affect the overall money available, as the greening element of the budget would still form part of the overall basic payment scheme budget.
- 111 Subsection (5) specifies that any regulations made under this section are subject to the affirmative resolution procedure.

## Clause 12: Power to make delinked payments

- 112 This clause provides the power to the Secretary of State to delink Direct Payments from land. With delinked payments, there would be no obligation for the recipient of the payments, during the agricultural transition period, to remain a farmer. This will be called “delinking” payments because the current connection between the value of the payment and the area of land for which it is claimed will be broken. The amount of Direct Payments received by applicants during the agricultural transition, whether that be under the basic payment scheme (see clauses 10 and 11) or delinked payments, will be less than received now and will be reduced further during the agricultural transition period as the payments are phased out.
- 113 Subsection (1) allows the Secretary of State to make provision, in regulations, to make delinked payments in relation to England. Delinked payments will be in place of Direct Payments under the basic payment scheme.
- 114 Subsection (2) defines the term “delinked payment” and specifies the conditions which satisfy the delinking period. The delinking period cannot begin, and therefore delinked payments cannot be introduced, before 2022. The delinking period ends at the end of the agricultural transition period (set out in clause 8).
- 115 Subsection (3) lists the things that must be included in regulations for delinked payments. Paragraph (a) requires the Secretary of State to define who will be entitled to a delinked payment. The Secretary of State intends to set qualifying criteria based on a reference period (see subsection (5)). Paragraph (b) requires the Secretary of State to set out the method to calculate the value of delinked payments. The Secretary of State intends to calculate delinked payments based on a reference period (see subsection (5)) and then apply reductions during the remaining lifetime of the agricultural transition period for England as the payments are phased out.
- 116 Subsection (4) allows the Secretary of State to make further regulations concerning delinked payments as follows:

- paragraph (a) allows for recipients to opt out of receiving delinked payments. This avoids the perverse scenario of the government making a payment that the recipient does not wish to receive;
- paragraph (b) allows for the Secretary of State to determine any circumstances under which a recipient is no longer regarded as entitled to delinked payments. Potential circumstances could include a business which has ceased to operate; and
- paragraph (c) allows the Secretary of State to introduce regulations so that it can pursue recovery of delinked payments to which the recipient was not, in fact, entitled.

117 Subsection (5) provides that entitlement to delinked payments may be defined by whether an individual was entitled to payment under the basic payment scheme during a reference period, of one or more years, prior to the introduction of delinking. Other definitions are not ruled out, which allows for further consultation.

118 Subsection (6) provides that the method for calculating the value of the delinked payment to any recipient may be based on the value of the “basic payment scheme” payment they were entitled to receive. This could, for example, be based on a single previous scheme year or an average over a number of previous scheme years. Other definitions are not ruled out, which allows for further consultation.

119 Subsection (7)(a) specifies that no payments under the basic payment scheme are to be made after the introduction of delinked payments (save for basic payment scheme payments related to prior years).

120 Subsection (7)(b) sets out that the power in clause 11(1), and any regulations made under it, providing for the phasing out of Direct Payments under the basic payment scheme, will no longer have any effect once delinked payments are introduced.

121 Subsection (8) provides that regulations made under this clause are to be subject to affirmative resolution procedure.

## **Clause 13: Power to provide for lump sum payments in lieu of relevant payments**

122 Clause 13 provides a power to the Secretary of State to offer farmers the opportunity of taking a lump sum payment in place of the relevant payments they would otherwise have been entitled to receive during the agricultural transition period.

123 Subsection (1) empowers the Secretary of State to make provision in regulations to offer a lump sum payment to eligible persons.

124 Subsection (2) sets out conditions for eligibility for the lump sum payment. Eligible persons must apply for it; must be entitled to a relevant payment (which clause 7(7) defines as either a Direct Payment under the basic payment scheme or a delinked payment) in respect of a year within the agricultural transition period (except for the last year of that period); and must meet any other eligible criteria set out in regulations.

125 Subsection (3) sets out that those persons choosing the lump sum would do so in forfeiture of continued relevant payments (which clause 7(7) defines as either a Direct Payment under the basic payment scheme or a delinked payment) during the agricultural transition period.

126 Subsection (4) provides the Secretary of State with the power to set the circumstances in which a lump sum payment is to be paid.

127 Subsection (5) provides that regulations made under this clause are to be subject to affirmative resolution procedure.

## Chapter 3: Other Financial Support: After EU Exit

### Clause 14: General provision connected with payments to farmers and other beneficiaries

128 This clause empowers the Secretary of State to make regulations that modify, in relation to England, the “horizontal basic act”, retained direct EU legislation made under it, and related domestic subordinate legislation (as incorporated into domestic law and modified under the EU (Withdrawal) Act 2018).

129 The horizontal legislation concerns the financing, management and monitoring of the CAP. It is known as the horizontal legislation because it applies to CAP Pillar 1 Direct Payments, Pillar 2 Rural Development programmes and measures within the Pillar 1 Common Market Organisation, such as the fruit and vegetable Producer Organisations (see clause 15). For a fuller explanation of the scope and purpose of the horizontal legislation, please see Boxes 1 & 2.

#### Box 1: The horizontal legislation

Regulation 1306/2013 (the “horizontal basic act”) has a fundamental role in making the CAP work. It works together with Implementing and Delegated Acts to create an overarching horizontal legislative framework for the financing, management and monitoring of the CAP. Regulation 1306/2013 contains crosscutting provisions that apply to payments made under both pillars of the CAP (Direct Payment schemes, Rural Development measures, and Common Market Organisation measures).

It should be noted that 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 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.

The horizontal legislation is designed to ensure the proper management of CAP funds. The regulations include rules governing paying agencies and other bodies involved in the administration of the CAP. Under the regulations, the UK Government has set up a “UK Coordinating Body”, whose main task is currently to collect and send information on implementation of the CAP to the Commission on behalf of the four UK paying agencies.

The horizontal regulations also include rules on application procedures, calculation of aid and penalties, payment windows and payment recovery. They include rules on

checks to be carried out, including databases used to check compliance, audits and farm checks and administrative checks. They also include rules for the implementation of the farm advisory system, calculating the funds for public intervention purchase and the establishment of a single beneficiary website, which contains information relating to CAP beneficiaries. They also establish the system of “cross compliance” (see Box 2). They do not contain financial ceilings for schemes.

### Box 2: Cross compliance

The horizontal legislation includes a cross compliance regime. CAP expenditure is primarily controlled through inspection programmes that check whether beneficiaries meet the eligibility rules of the scheme in question. In addition to meeting the eligibility rules, beneficiaries that receive payments (either as a Direct Payment under Pillar 1 of the CAP or as part of area-based Rural Development schemes under Pillar 2, e.g. agri-environment scheme) must also comply with a series of standards on the environment, animal and plant health and animal welfare collectively known as cross compliance.

Under cross compliance there is an obligation on beneficiaries to comply with statutory management requirements (known as SMRs) which are existing requirements already set out in separate EU legislation, and standards for good agricultural and environmental condition of land (known as GAECs) which are established at national level. In the event of a breach being detected (through inspection or otherwise) the CAP rules enable reductions to be made to the beneficiary’s CAP payments.

130 Subsection (1) outlines the overall scope of the power. It empowers the Secretary of State to modify, in relation to England, the retained horizontal legislation, including any related domestic subordinate legislation.

131 Subsection (2) qualifies the use of the power and lists a number of purposes for which it may be exercised. These are to secure that any provision of legislation referred to subsection (1) ceases to have effect; the simplification of the operation of such provision or to make its operation more efficient or effective; the removal or reduction of burdens (defined in subsection (3)) on people governed by the legislation, or making other improvements to the way the legislation applies in relation to these people; and securing that any sanction or penalty imposed is appropriate and proportionate.

132 Subsection (3) states that ‘burden’, which the power in subsection (2)(c) is designed to remove or reduce, includes: a financial cost; an administrative inconvenience; or an obstacle to efficiency, productivity or profitability. Subsection (3) also sets out a non-exhaustive list of the retained direct EU legislation that may be modified under this power and is intended to encompass any direct EU legislation made under the horizontal basic act, as well as certain ‘legacy regulations’, relating to Rural Development schemes established before 2014, which are listed in subsection (4).

133 Subsection 4 provides a non-exhaustive list of the ‘legacy regulations’ referred to in subsection

(4).

134 Subsection (5) provides that regulations made under this clause are to be subject to negative resolution procedure, unless section 47(5) applies, in which case the procedure is affirmative.

### Clause 15: Aid for fruit and vegetable producer organisations

135 Clause 15 provides the Secretary of State with the powers to modify retained EU legislation on the EU Fruit and Vegetable Aid Scheme in England. This scheme provides financial aid to Producer Organisations recognised in the fruit and vegetable sector, with the aim of helping them to increase their competitiveness, improve their planning of production and quality of produce, and help reduce their environmental impact by carrying out a range of environmental actions. The EU regulations underpinning the scheme will be converted into direct retained EU legislation through the European Union (Withdrawal) Act 2018. Our intention is to introduce transitional provisions under clause 47(3)(d) to allow approved operational programmes to run through to completion.

136 Subsection (1) will enable the Secretary of State to make regulations to ensure that the retained EU legislation (both the CMO and the related Delegated and Implementing Acts that sit underneath the CMO) which underpin the Fruit and Vegetable Aid Scheme, no longer applies in England.

137 Subsection (2) confirms that regulations made under this clause are subject to the negative resolution procedure, unless section 47(5) applies, in which case the procedure is affirmative.

### Clause 16: Support for rural development

138 Clause 16 provides the Secretary of State with the power to modify or repeal retained EU legislation relating to Rural Development in England. The power allows some existing rural development agreements to be extended with fewer restrictions, to be shortened and for agreements to be converted or adjusted into new agreements set up under section 1 of this Bill. It also allows the duration of the current Rural Development programme to be extended and its budget to be increased and expressed in a currency other than Euros in the retained EU legislation. This clause will not be used to introduce any new schemes, as they will be covered under clause 1.

#### Box 3: Pillar 2

Pillar 2 of the CAP is implemented through Rural Development programmes in each devolved administration.

Rural development programmes provide rules and financing for grants and other forms of financial assistance and procured services for the farming, forestry and food sectors and to rural businesses and communities.

The objectives of Rural Development programmes include improving economic performance, promoting economic development and improving the competitiveness of primary producers (through socio-economic schemes) and protecting and enhancing ecosystems relating to agriculture and forestry (through agri-environment schemes).

The European Commission formally adopted the Rural Development Programme for England covering the 2014-2020 CAP round (“the RDPE”) on 13 February 2015.

- 139 Subsection (1) enables the Secretary of State to modify the Rural Development basic act and retained direct EU legislation made under it for the purposes specified in relation to England.
- 140 Subsection (2) defines the “core contribution,” which is referred to in subsection (1). It should be noted that there is currently no reference in the Rural Development basic act to the “core contribution”. This will be inserted by the Rural Development (Amendment) (EU Exit) Regulations 2019, which are currently due to come into force on the Implementation Period completion day pursuant to paragraph 1 of Schedule 5 to the EU (Withdrawal Agreement) Bill.
- 141 Subsection (3) enables the Secretary of State to modify any retained direct EU legislation relating to support for rural development in England so that: the initial period for a commitment can be less than 5 years; restrictions on extending commitment periods can be removed; commitments can be converted or adjusted into new commitments under section 1 of the Bill and; legislation can cease to have effect. Subsection (4) gives a non-exhaustive list of the restrictions that may be removed in subsection (3)(b) in relation to extending commitments.
- 142 Subsection (5) enables the Secretary of State to modify the Common Provisions Regulation and retained direct EU legislation made under it to allow the payment deadline to be extended so that commitments can continue to be eligible for rural development support.
- 143 Subsections (6) provides definitions for terms used in subsections (1) to (5) in this clause whilst subsection (7) provides a non-exhaustive definition for “the legacy regulations” which is referred to in subsection (6).
- 144 Subsection (8) states that regulations made under this clause are subject to the negative resolution procedure, unless section 47(5) applies, under which the procedure is affirmative.

## **Part 2: Food and Agricultural Markets**

### **Chapter 1: Food Security**

#### **Clause 17: Duty to report to Parliament on UK food security**

- 145 Clause 17 places a duty on the Secretary of State to produce a report to lay before Parliament on UK Food Security. This report will provide a broad understanding of what food security is, the challenges and risks to UK food security in a global context, and our current assessment of the state of our food security to inform our policy thinking on the resilience and security of food supply.
- 146 The report will cover a number of themes drawn from the UK Food Security Assessment, as described below.
- 147 Subsection (1) will require the Secretary of State to prepare and lay before Parliament, at least every five years, a report containing an analysis of statistical data relating to UK food security.
- 148 Subsection (2) sets out the themes that might be covered in the report, in so far as they relate to food security in the United Kingdom. The themes (paragraphs (a) to (e)), may include global food availability, supply sources for food, resilience of the supply chain for food, household food security and expenditure on food, food safety and consumer confidence in food.

### **Chapter 2: Intervention in Agricultural Markets**

## Clause 18: Declaration relating to exceptional market conditions

- 149 Clause 18 provides for the Secretary of State under subsection (1) to make a declaration stating that exceptional market conditions exist which warrant the use of the financial assistance or intervention powers under clause 19.
- 150 The declaration of exceptional market conditions triggers the Secretary of State's power at clause 19 to make or agree to make payments, loans, guarantees and other forms of financial assistance available to affected farmers; or to operate the public intervention and private storage aid schemes.
- 151 Exceptional market conditions may exist where there is a severe disturbance, or the threat of such a disturbance, in the agricultural markets that has or could have a significant adverse effect on farmers in England, judged by the prices they can receive for the sale of agricultural products. This does not extend to impacts on farmers caused by other exceptional events, such as extreme weather events or animal disease unless they result in an actual or threatened market disturbance which results in reduced prices.
- 152 The critical factor determining whether a situation is considered to create exceptional market conditions under this clause is the actual or threatened severe market disturbance that results in a fall in price of one or more agricultural products, regardless of the nature of the circumstances that gave rise to that disturbance.
- 153 Subsection (2) sets out a two-part test to identify where exceptional market conditions may exist. There must be a severe disturbance to agricultural markets, or the serious threat of one, and it must have, or threaten to have a significant adverse effect on producers to constitute exceptional market conditions.
- 154 Subsection (3) sets out what must be included in the declaration.
- 155 Subsection (3)(d) provides that the powers provided for in clause 19 are available for use until the declaration is no longer in effect.
- 156 Subsection (4) states that the declaration has effect until the specified end-date, which must be no more than three months from the date when it is published.
- 157 Subsection (5) allows the Secretary of State to revoke the declaration made under subsection (1) by making and publishing a further declaration to that effect.
- 158 Subsection (6) provides a power to extend the declaration made under subsection (1) by a further three months, by making, and publishing a declaration to that effect at any time in the 7 days ending with the day of the original declaration's end date.
- 159 Subsection (7) allows the Secretary of State to make a new declaration of exceptional market conditions relating to the same events if the exceptional market conditions continue.
- 160 Subsection (8) states that declarations made under subsections (1), (5), and (6) must be published and then laid before Parliament as soon as practicable.
- 161 Subsection (9) explains that "agriculture" in clauses 18 and 19 includes "horticulture".

## Clause 19: Exceptional market conditions: powers available to Secretary of State

- 162 Clause 19 makes new powers available to the Secretary of State to intervene in agricultural markets in the event of a severe market disturbance, or the threat of such a disturbance, by providing financial assistance to farmers in England whose incomes are being affected by those

exceptional market conditions or by operating public intervention and private storage aid schemes.

- 163 Under this provision, during a period of exceptional market conditions, the Secretary of State may: give or agree to give financial assistance by way of grants, loans, guarantees or in any other form, under any conditions he considers appropriate, including targeting payments to particular sectors and geographical areas; and exercise the public intervention and private storage aid powers which are available to him as he considers appropriate. The intention is that the Secretary of State will be able to apply the appropriate measures at short notice to resolve the exceptional situation at hand.
- 164 New powers are created so that any financial assistance or intervention scheme can be tailored to the domestic market, rather than relying on those which would exist in retained EU legislation that is designed to apply to the wider European agricultural market.
- 165 Subsection (1) states that this provision applies during the period for which the declaration of exceptional market conditions made under clause 18 is in effect.
- 166 Subsection (2) provides that the Secretary of State may give or agree to give financial assistance to farmers whose incomes are or could be negatively affected by the exceptional market conditions detailed in the declaration made under clause 18.
- 167 Subsection (3) allows the Secretary of State to use the public intervention and private storage aid schemes in response to the exceptional market conditions if he considers it appropriate.
- 168 Subsection (4) states that financial assistance given to farmers under subsection (2) may take the form of payments, loans, guarantees, or any other form the Secretary of State considers appropriate.
- 169 Subsections (5) and (6) explain that financial assistance may be given subject to any conditions which the Secretary of State considers appropriate, including how such assistance is to be repaid or otherwise made good.
- 170 Subsection (7) states that the Secretary of State may give or agree to give financial assistance after the declaration under clause 18 has ceased to have effect, as long as the application for this assistance was submitted while the declaration was in force.

## Clause 20: Modification in connection with exceptional market conditions and for general purposes

- 171 Clause 20 gives the Secretary of State the power to amend the retained direct EU legislation for England relating to public intervention and private storage aid. 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).
- 172 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.

- 173 The power at subsection (1) allows the Secretary of State to modify the legislation so that the operation of such schemes may be tailored to prevailing domestic circumstances when they are used in a period of exceptional market conditions established in clause 18.
- 174 The power at subsection (2) allows the Secretary of State to modify the legislation for either or both of the following purposes:
- 175 Subsection (2)(a) is to amend either scheme in such a way as it ceases to have effect in England (with savings made for the operation of the schemes in exceptional market conditions under clause 19)
- 176 Subsection (2)(b) is to amend the general operation of either scheme.
- 177 Subsection (3) states that the power in subsection (1) includes the power to make specific amendments to the public intervention and private storage aid schemes that apply only in relation to a particular exceptional market condition declared under clause 18.
- 178 Subsection (4) states that the powers conferred under subsections (1) and (2) include the ability to change what agricultural products are eligible for public intervention and private storage aid.
- 179 Subsection (5) sets out regulations made under this power are subject to the negative resolution procedure, unless section 47(5) applies, under which the procedure is affirmative.
- 180 Subsection (6) sets out the retained direct EU legislation that concerns public intervention and private storage aid, and which is referred to in clauses 18 and 19.
- 181 Subsection (7) explains that until paragraph 1 of Schedule 7 of the Bill, which revokes the existing crisis measures powers in the CMO (articles 219, 220, 221 and 222 of EU Regulation 1308/2013), is in force; references in this section to exceptional market conditions subject to a declaration under section 18 also includes reference to actions being undertaken under the existing crisis powers.
- 182 If the Secretary of State deems public intervention or private storage aid as the most appropriate means of addressing the exceptional market conditions, any amendments necessary to the retained EU legislation would need to be made urgently, as an intervention scheme could not be implemented until those changes had been made.

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

### **Chapter 1: Collection and Sharing of Data**

#### **Clause 21: Agri-food supply chains: requirements to provide information**

- 183 Subsection (1) provides the Secretary of State with the power to collect data, by requirement, from persons in, or closely connected with, the agri-food supply chain. The information that may be collected under this power must relate to that person's activities that relate to the agri-food supply chain (colloquially known as "farm to fork"). Clause 22 defines a person in or closely connected with an agri-food supply chain. A primary power is appropriate where the class of persons from whom information is to be required is a "known" class; for example, if they are

readily identifiable and contactable.

184 Subsection (2) mirrors the power in subsection (1), except it is a power to make secondary legislation to collect information from persons in, or closely connected with, the agri-food supply chain. A power to make regulations is needed where the class of persons from whom information is required is not readily identifiable or quantifiable, or where it may be difficult to ascertain and contact them.

185 Subsections (1) and (2) clarify the territorial extent of the powers in this clause as only applying to those activities taking place in England. Where a supply chain spans more than one of the constituent nations of the UK, unless an arrangement (formal or otherwise) is reached with the devolved administration/s in question, the intended information will not be able to be collected by the Secretary of State.

186 Subsection (3) refers to definitions.

187 Subsection (4) exempts the ultimate consumer (anyone who is only in the food chain because they consume the ultimate products) from the scope of the data collection powers.

188 Subsection (5) exempts any information which is subject to legal privilege from the scope of the data collection powers.

189 Subsection (6) states that a requirement to provide information under subsection (1) must be in writing i.e. that the Secretary of State must publish a requirement (on [www.gov.uk](http://www.gov.uk) for example) or write to the relevant person to require them to provide information. This subsection does not apply to regulations made under the power in subsection (2).

190 Subsection (7) states that the requirements to provide information either under subsection (1) or (2) may apply to the Crown.

191 Subsection (8) specifies that regulations made under Clause 21 are subject to the affirmative procedure.

## Clause 22: Meaning of “agri-food supply chain”

192 Subsection (1) explains that the definitions apply to the whole Chapter.

193 Subsections (2) and (3) define the “agri-food supply chain”, and the persons in it. The agri-food supply chain may be colloquially known as “farm to fork” – from primary producers, through intermediary food processors to retailers such as supermarkets and ultimately individual consumers. The products in the agri-food supply chain include any plant products grown (cereals, fruit and vegetables) as well as animal products for consumption (meat, dairy, eggs) including plant and animal products taken from the wild (for example, truffles and venison).

194 Subsection (4) defines which actors are considered to be “closely connected” to an agri-food supply chain. This will include those persons (individuals and companies) providing either goods or services for use in the agri-food supply chain. In relation to animal products, this will include (but is not limited to) veterinarians (and any other persons providing animal health or welfare services), abattoirs and cattle markets. This category will also include those who supply inputs to the practice of agriculture, such as feed and fertiliser merchants, machinery merchants and those who supply general equipment.

195 Subsection (4)(c) sets out that information may also be collected from any person performing activities capable of affecting activities in the supply chain. This may include, for example, persons keeping animals (such as those in petting zoos, or hobby chickens) where those animals

could be a risk to, or at risk from, animals in the food chain in the event of a disease incursion or outbreak. This is just one example of how a person could be “closely connected” to the agri-food supply chain.

196 Subsection (5) clarifies that the list of persons connected to the agri-food supply chain is not closed.

197 Subsection (6) contains definitions.

## Clause 23: Requirements must specify purposes for which information may be processed

198 This clause provides the details that must be provided in a requirement to provide information.

199 Subsections (1) sets out that the provisions in the rest of the clause apply whether the requirement is made under the general power or through secondary legislation.

200 Subsection (2) ensures that every request for information must set out the purposes behind the request for collecting the data.

201 Subsection (3) has the effect that the purposes for which information may be required must be in, or be included within, at least one of the purposes stated in subsection (4). The information cannot be used for purposes that fall outside those stated in the requirement to provide information.

202 Subsection (4) defines the broad categories of purposes for which requirements may be made.

203 Subsection (4)(a) enables data to be collected to support persons in the agri-food supply chain to increase productivity and manage risks and market volatility. This clause aims at assisting primary producers, for example by collecting data that enables benchmarking of farm performance.

204 Subsection (4)(b) enables data to be collected for the purpose of promoting transparency or fairness in the agri-food supply chain. This may include information that will be used to establish price or profit monitoring tools for a supply chain, or information required to combat unfair trading practices, which occur in agri-food supply chains.

205 Subsections (4)(c) and (4)(d) enables data to be collected for improving animal health, welfare and traceability, and plant, fungi and soil health and quality. This could include collecting data that enables improvements in the ability to detect disease incursions, monitor disease levels and animal welfare standards, and target actions to tackle disease, whether this action be taken by industry or government.

206 Subsection (4)(e) enables data to be collected for minimising adverse environmental effects (such as runoff from fertiliser or greenhouse gas emissions) which could also include assessing baseline levels of effects, and monitoring improvements or deteriorations.

207 Subsection (4)(f) allows data to be collected for minimising waste from agri-food supply chains, which may include food waste (products going out of date or unused off cuts) which could also include assessing baseline levels of waste, and monitoring improvements or deteriorations.

208 Subsection (4)(g) enables data to be collected for monitoring or analysing markets connected to agri-food supply chains. This may include general commodity price levels or sectoral output statistics, which can be used to inform the use of crisis management measures.

209 Subsection (5) references the definitions outlined in Clause 22.

#### Clause 24: Requirements under section 21(1): duty to publish draft requirements

210 Subsection (1) states that the Secretary of State must publish a draft requirement before such a requirement is finalised. Subsections (1) (a) (ii) and (iii) stipulate the information to be included in the draft, including the deadline for comments. Subsection (1) (b) states that the final requirement may be imposed in either its draft or a revised form, based on the comments received in the published timeframe.

211 Subsection (2) states that the requirement may be imposed on a person at any time once the final drafting has been agreed.

#### Clause 25: Provision of required information and limitations on its processing

212 Subsection (1) states that the provisions apply to requirements whether they are made under the general power or the power to set out requirements in secondary legislation.

213 Subsection (2) provides that information given in response to a requirement can only be used for the purpose that was set out in that requirement.

214 Subsection (3) stipulates that the requirement to only use information for the purpose for which it is provided apply to the first recipient of the information, and to anyone who subsequently receives the information. For example, a requirement for data may be issued for the purpose of “establishing demand level information” for a certain cut of meat. The authority may collect information about slaughterhouse throughput, which is then subsequently passed on to a different authority that collate the information to produce useable datasets. Both authorities would be obliged to only use the information for the specific stated purpose.

215 Subsection (4) notes that the purposes for which information can be used are subject to the restrictions on how information can be used, and in what forms it can be disclosed, which are stated in subsections (7) to (9).

216 Subsection (5) sets out that the requirement may detail matters including how, when, and to whom information is to be provided.

217 Subsection (6) establishes that the requirement, must set out the types of processing to which the information supplied may be subjected and the forms in which information supplied may be disclosed.

218 Subsection (7) sets out that information provided in response to a requirement may not be subjected to types of processing or disclosed in any form other than those specified in the requirement (unless the requirement specifies circumstances in which other forms of processing or disclosure may occur).

219 Subsection (8) sets out that, where there is a proposal for information provided under a requirement to be disclosed, that disclosure is subject to the conditions set out in subsection (9).

220 Subsection (9) sets out that when there is a proposal to disclose information in a non-anonymised form, the person proposing the disclosure must consider whether the disclosure can harm the commercial interests of any person (meaning the person providing the information, or anyone else who may be affected by the disclosure of the information). Subsection (b) sets out that, if the proposer considers that the disclosure may be commercially harmful, then non-anonymised disclosure is not permitted, unless the Secretary of State considers there to be a public interest in disclosure.

221 Subsection (10) defines what is meant by “processing” information and lists types of processing that information may be subject to. This could include, for example, aggregating price data, making certain information accessible (to the public or a class of persons), creating statistics, and benchmarking certain performance-related data.

## Clause 26: Enforcement of information requirements

222 Subsection (1) provides the power for the Secretary of State to make secondary legislation to enforce data requirements whether those requirements arise under the general power or in secondary legislation. This means that requirements can be issued that contain information about the sanctions that will be applied in the event of non-compliance (if someone fails to provide information or provides false information).

223 Subsection (2) sets out definitions.

224 Subsection (3) clarifies that the provisions for enforcement will include details of how compliance will be monitored, investigated and addressed.

225 Subsection (4) details the matters that may be included in the enforcement provisions.

226 Subsection (4)(a) provides for the imposition of monetary penalties, which can either be a specified amount or an amount arrived at using a specified manner or calculation, or can be made by way of suspending or withholding payment;

227 Subsection (4)(b) provides that regulations may include provisions for recovering money by setting off debts against payments to be made or by requiring a security and may also include provision regarding interest.

228 Subsection (4)(c) states that regulations can be about providing advice or warnings.

229 Subsection (4)(d) provides for the regulations to enable the acceptance of undertakings.

230 Subsection (4)(e) enables regulations to confer functions on those enforcing the regulations.

231 Subsection (4)(f) enables regulations to set up review and appeal mechanisms.

232 Subsection (5) sets out that the monetary fines listed in subsection (4) (a) can be calculated using information relating to income, turnover or profits. This is so that fines may be calculated which are appropriate, and suitably dissuasive, for a broad range of operators.

233 Subsection (6) specifies that regulations made under clause 26 are subject to the affirmative procedure.

## Chapter 2: Fair Dealing with Agricultural Producers and Others in the Supply Chain

### Clause 27: Fair dealing obligations of business purchasers of agricultural products

234 Primary agricultural producers in the UK tend to be small, individual businesses operating without strong links between them. By contrast, operators further up the supply chain – processors, distributors and retailers – tend to be highly consolidated businesses that command substantial shares of the relevant market. This disparity makes primary producers vulnerable to unfair trading practices. It often forces them into contractual relationships which impose on them commercially harmful terms, but to which they have no commercial alternative and in respect of which there is no legal protection.

- 235 The Groceries Code Adjudicator (GCA) was appointed in 2013 to enforce the Groceries Supply Code of Practice (the Code). It is widely recognised that the GCA has improved the relationship between large grocery retailers and their direct suppliers, and the first statutory review of the GCA found that it is an exemplary modern regulator.
- 236 However, the majority of primary producers do not supply supermarkets directly. They are therefore not covered by the GCA and can be exposed to unfair trading practices.
- 237 Clause 27 provides the Secretary of State with the power to make regulations to introduce obligations that promote fair contractual relationships between primary producers, producer organisations, associations of producer organisations, produce aggregators and the business purchasers of their products. As the issues faced by different farming sectors vary considerably, the clause will enable sector-specific as well as general regulations to be made, to improve principles of fair contractual practice across the whole industry.
- 238 Subsection (1) empowers the Secretary of State to make regulations, including enforcement, imposing obligations on operators who buy agricultural products in the course of a business (“business purchasers”) from “qualifying sellers” (defined in subsection (3)). This covers both written and unwritten contracts. However, these powers will not be exercised in respect of any commercial arrangements within the GCA’s remit.
- 239 Subsection (2) specifies that the powers under subsection (1) must be exercised to promote fair contractual dealing.
- 240 Subsections (3) – (5) set out definitions for the purposes of the section. A “business purchaser” is defined at subsection (3)(a) as set out above, as a person who purchases an agricultural product in the course of business which includes the purchase of products of that kind. A “qualifying seller” is defined at subsection (3)(b). This includes a person carrying on an agricultural activity for the production, or in connection with the production, of the product. This category of qualifying sellers is intended to capture farmers and other primary producers. The other categories of “qualifying seller” are producer organisations and associations of producer organisations, recognised under clause 28 of the Bill, and produce aggregators, insofar as they are not themselves producer organisations or associations of producer organisations. Produce aggregators are further defined at subsections (4) and (5) as purchasers from more than one qualifying seller which do not carry out any further processing of the product. “Processing” is defined at subsection (11) of the clause and helps determine whether a business is a ‘produce aggregator’. The definition of produce aggregators in this clause is intended to cover and protect smaller sellers who do not typically engage in thorough processing activities, rather than established purchasers who are more likely to hold a dominant market position.
- 241 Subsection (6) sets out examples of the kinds of obligations that may be imposed on business purchasers under the clause. This includes obligations to:
- use a written contract (subsection (6)(a)). This will aid transparency and certainty for those sectors, such as dairy, where it is appropriate;
  - include, or not include, a term in the contract dealing with a particular matter (subsection (6)(b)). This will ensure that key elements of the commercial arrangement are specifically agreed by producers, and is particularly useful in respect of pricing mechanisms that could otherwise result in hidden premiums and deductions;
  - include terms that make specific provision (subsection (6)(c)(i)). This means that the

Secretary of State can specify the content of the terms to be included in a contract – for example, that notice periods for varying the contract may not be less than three months;

- comply with a set of principles and practices that promote fair dealing (subsection (6)(c)(ii)). For example, if a contract includes an exclusivity clause, fair dealing principles could require that qualifying sellers is not be paid less for surplus product than if they sold the surplus to a third party.

242 The list in subsection (6) is non-exhaustive. In certain circumstances, regulations under the clause could also impose obligations which are not strictly connected to a term in the contract. These could be related to problematic behaviours which may typically occur before a contract is signed, or outside of the contractual agreement. As an example, a business purchaser may threaten a qualifying seller with commercial retaliation, such as threatening to remove the seller from their business's approved supplier list in response to a qualifying seller querying the contract with a lawyer before agreeing to sign.

243 Subsection (7) provides examples of the types of terms that could be regulated through the contractual obligations imposed under subsection (6)(b) and (c).

244 Subsection (8) outlines the enforcement provisions which may be made under subsection (1)(b), such as investigating complaints and creating a robust appeals process. It is intended that obligations will be set out in sector-specific statutory codes, which will initially be introduced in the sectors where voluntary codes have been unable to significantly improve contractual relationships (for example dairy).

245 Subsection (9) provides the Secretary of State with powers to delegate authority to another person. This will be used to enable an independent party to consider appeals provided for under subsection (8)(d).

246 Subsection (10) specifies that regulations made under this provision be subject to the affirmative resolution procedure.

247 Subsection (11) contains further definitions relevant to this section

## Chapter 3: Producer Organisations

### Box 4: Producer Organisations

POs are bodies through which groups of primary producers in the agricultural sector coordinate their activities to improve their competitiveness.

Through the EU regime, recognised POs benefit from several exemptions from competition rules which enable farmers to collaborate in ways that make markets work better in the interests of producers and consumers (for example through joint production planning and processing). The European Union (Withdrawal) Act 2018 will convert existing EU regulations into domestic law to minimise disruption for existing POs. A domestic PO regime will be created under which any new PO will be recognised and to which existing POs will transition.

Clauses 28 - 30 lay out the conditions for recognition that applies to groups of producers wishing to apply for recognition under the new domestic regime. These have been kept broadly consistent with the substance of the existing regime, and the Bill includes powers for the Secretary of State to specify the details of these

conditions. Clause 29 and Schedule 2 also provide, through amendments to the Competition Act 1998, for the exemptions from competition law that are available to recognised organisations.

Clause 47 allows for commencement by regulation because, if the provisions in the Bill are commenced two months after Royal Assent, this is likely to be while the UK is still bound by the PO regime contained in the CMO. This would present a potential cause for legal uncertainty, given so it will look like two parallel PO regimes are in operation concurrently. Furthermore, should commencement be two months after Royal Assent, this may result in face-of-the-Bill provisions being in force before the Department has made the secondary legislation which specifies the technical details of the scheme.

### Clause 28: Producer and interbranch organisations etc. application for recognition

248 Clause 28 sets out the conditions that need to be met for groups of operators to qualify for recognition as one of three types of organisations. Much of the detail of the conditions is to be “specified” pursuant to regulations to be made by the Secretary of State under this clause.

249 An organisation may apply for recognition as a PO under subsection (1) if it meets the conditions in subsection (2). The detail of these conditions to be specified will ensure that only organisations that meet the objectives of the PO structure will be eligible for recognition. For example, the conditions will ensure that the organisation is representative of the sector (or sectors) in which it operates, that it carries out activities that will improve the market position of its members, and that its members control it in a fair and democratic way. Once a PO is recognised, its members can collaborate in carrying out certain activities in ways that would normally be prohibited by competition law; these exemptions are set out in Schedule 2 by way of amendment to the Competition Act 1998.

250 Subsections (3) and (4) set out conditions which need to be met for a group of recognised POs to be eligible for recognition as an Association of Producer Organisations (APO). APOs are vehicles for even greater scale collaboration between producers in the same sector. An organisation may apply for recognition as an association of producer organisations (APO) under subsection (3) if it meets the conditions in subsection (4), namely that all the APO’s members are recognised POs, and that the industry itself drove the formation of the APO. APOs enjoy very similar exemptions from competition law to those that apply to POs.

251 An organisation may apply for recognition as an interbranch organisation (IBO) under subsection (5) if it meets the conditions in subsection (6). IBOs are vehicles to enable greater vertical collaboration within an agricultural supply chain. They differ from POs and APOs in that they can include members from different stages of the supply-chain (so long as they include at least one producer member). Their activities are not usually focused on production or marketing, but on wider market issues, including research and development to improve the way that products are placed on the market, or to explore potential export markets. Because of the potentially far-reaching nature of an IBO’s activities, the agreements between its members can have particularly distortive effects on competition. The provisions regulating their exemption are therefore stricter than for the other types of organisation.

252 Subsection (7) provides that unlawful activity includes a failure to comply with a duty, as well as breaching a prohibition.

- 253 Subsection (8) defines what it means for businesses within an Interbranch Organisation to meet the condition at subsection (6)(a)(ii), which requires the business to be carrying out activities linked to any one or more agricultural sectors.
- 254 Subsection (9) allows the Secretary of State to introduce further conditions, beyond those set out in subsections (2), (4) and (6), that prospective organisations would need to meet in order to qualify for recognition.
- 255 Subsection (10) requires the Secretary of State to specify in regulations the period within which an application for recognition under subsections (1), (3) or (5) must be determined.
- 256 Subsection (11) requires the Secretary of State to notify both the applicant and the Competition and Markets Authority when an application decision has been made. If an application is granted, this must be published online (on GOV.UK, for example).
- 257 Subsection (12) allows the Secretary of State to introduce further requirements concerning the actual application process. These will be purely administrative provisions such as introducing a new requirement for the submission of further supporting evidence or amending the deadlines involved in the applications process. It also allows the secretary of state to make provision about reviews and appeals.
- 258 Subsection (13) contains definitions.
- 259 Subsection (14) allows the Secretary of State to amend, by regulations, the list or descriptions of agricultural sectors listed under Schedule 1.

#### Clause 29: Recognised organisations: competition exemptions and further provision

- 260 This clause sets out the exemptions from general competition law, which are available to recognised organisations, and confers power on the Secretary of State to make further provision about recognised organisations.
- 261 Subsection (1) refers to Schedule 2, which amends the Competition Act 1998 to give domestic effect to competition exemptions framed in similar terms to those that currently exist in EU legislation. This is necessary because the exemptions are currently given effect by section 10 of the Competition Act 1998, which is going to be “turned off” when the Department introduce the new domestic PO regime and repeal the equivalent retained EU legislation. As such, the Department is taking this opportunity to provide a wholly domestic basis for the exemptions. The exemptions will allow the members of recognised organisations to collaborate in carrying out activities in ways that would normally be prohibited under general competition law, as long as the organisations comply with conditions intended to ensure that the benefit of their coordinated activities justifies any adverse effects on competition.
- 262 Subsection (2) allows the Secretary of State, by regulations, to make further provision about recognised organisations.
- 263 Subsection (3) provides examples of such further provision; including introducing further requirements or reporting obligations with which a recognised organisation needs to comply. These will ensure that a recognised organisation continues to operate in a way that justifies the freedom its members enjoy when operating outside of the normal competition rules and includes the power to make provisions about monitoring and enforcement.
- 264 Subsection (4) details the type of provisions that may be introduced under Subsection (3), to monitor and enforce compliance with ongoing recognition requirements.

265 Subsection (5) specifies that the provisions introduced under subsection (2) may also include provisions regarding the ability for POs, APOs and IBOs to delegate some of their functions. In the absence of such provision, it would not be clear that a third party carrying out a recognised organisation's functions benefitted from the competition exemption enjoyed by the recognised organisation in respect of those functions.

266 Subsection (6) contains definitions.

### Clause 30: Regulations under sections 28 and 29

267 This clause makes provision about the regulation-making powers in clauses 28 and 29.

268 Subsection (1) makes it clear that the Secretary of State can use the powers in clauses 28 and 29 to delegate functions to another body, in particular the function of deciding applications for recognition. This will allow the Secretary of State to ensure that the appropriate body carries out the administration of the recognition regime.

269 Subsection (2) confers power on the Secretary of State to make regulations introducing sector-specific PO, APO or IBO rules, which could introduce additional or different conditions for recognition, or make other additional or different provisions. This would allow the recognition criteria to be tailored to the needs of a sector if the producers in that sector were experiencing particularly adverse market conditions. For instance, this would allow for the limits placed on the size of a PO to be altered, if market conditions warranted such a change.

270 Subsection (3) specifies that regulations made under clauses 28 and 29 will be subject to the negative procedure, unless either section 47(5) applies, the regulations contain new sector-specific provision, or the regulations amend Schedule 1. Subsection (4) provides that in these cases, the affirmative procedure applies.

271 Subsection (5) requires the Secretary of State, before introducing any new sector-specific provisions, to consult with industry. Industry is defined as persons who are representative of a sector, or persons who will be affected by any new regulations. This reflects the fact that sector-specific provision could substantially advantage or disadvantage a sector so there is a particular need for transparency and engagement.

272 Subsection (6) contains definitions.

## Part 4: Matters Relating to Farming and the Countryside

### Clause 31: Fertilisers

273 Clause 31(2) amends the definition of a fertiliser under section 66 of the Agriculture Act 1970 to enable a broader range of materials to be regulated as a fertiliser in the UK.

274 Clause 31(3) amends section 74A of the Agriculture Act 1970 to enable the regulation of fertilisers on the basis of their function. This will allow different requirements to be set, for example, for biostimulants, soil improvers and traditional mineral fertilisers to ensure the safety and quality of the various types of products marketed as a fertiliser in the UK.

275 Clause 31(4) allows for regulations to set out an assessment, monitoring and enforcement regime for ensuring the compliance of fertilisers with composition, content and function requirements and for mitigating other risks to human, animal or plant health or the environment presented by fertilisers.

- 276 New subsection (1A) inserted into section 74A of the Agriculture Act 1970 will enable the Secretary of State, Welsh Ministers, Scottish Ministers and a Northern Ireland department to put in place the infrastructure for conformity assessment procedures to be carried out on fertilisers and to confer market surveillance functions on a public authority. It will also enable requirements to be placed on manufacturers and others involved in the supply of fertilisers to keep and, where required, provide information relating to fertilisers to the market surveillance authority for traceability purposes and to assist the authority in its role.
- 277 New subsection (1B) inserted into section 74A of the Agriculture Act 1970 sets out the matters relating to the conformity assessment process for fertilisers which may be provided for in regulations made by the Secretary of State, Welsh Ministers, Scottish Ministers and a Northern Ireland department. These matters relate to creating and mobilising the structures and processes required for an effective and workable assessment system, recognition of a person or organisations to undertake assessments, the creation of an appeals system, charging regime or framework, and recognition and registration processes.
- 278 New subsection (1C) inserted into section 74A of the Agriculture Act 1970 sets out enforcement powers which may be conferred on a public authority with market surveillance functions, including powers to undertake further assessment of fertilisers, to prohibit the sale of certain fertilisers, to impose fines on those who breach regulations, and conferring powers to enter and inspect, take samples or seize and destroy materials if necessary.
- 279 New subsection (1D) inserted into section 74A of the Agriculture Act 1970 provides that fertiliser regulations must not impose or confer a power or duty requiring or authorising the disclosure or use of information that would contravene data protection legislation.
- 280 New subsection (1E) inserted into section 74A of the Agriculture Act 1970 provides a power to make regulations that amend or repeal Regulation (EC) No. 2003/2003 relating to fertilisers and other retained direct EU legislation relating to fertilisers.
- 281 Clause 31(5) amends section 84 of the Agriculture Act 1970. It provides that the first regulations made by the Secretary of State, Welsh Ministers, Scottish Ministers and a Northern Ireland department under section 74A (1A) to (1E) of the Agriculture Act 1970 are subject to the affirmative procedure. Subsequent regulations made by the Secretary of State, Welsh Ministers, Scottish Ministers and a Northern Ireland department under section 74A (1A)(b) (conferring on a public authority functions relating to market surveillance and regulation) and (1D)(a)(i) and (ii) (amending and repealing retained EU law relating to fertilisers) are also subject to the affirmative procedure.
- 282 Clause 31(6) amends section 86 of the Agriculture Act 1970 to amend the modifications for Northern Ireland in section 84 of that Act to take account of the new subsection (2D) in clause 31(5).

## Clause 32: Identification and traceability of animals

- 283 Clause 32 amends the Natural Environment and Rural Communities Act 2006 (NERC Act 2006) to allow for new data collecting and sharing functions. This will include the running of a database to be assigned to a board established under that Act and to enable the assignment of functions relating to the means of identifying animals. It will amend section 8 of the Animal Health Act 1981 (AHA 1981) to reflect advancements in animal identification technology and to

provide that orders made under section 8 will bind the Crown. It will disapply in relation to England, at a later date, retained EU legislation on the identification and traceability of cattle, sheep and goats. The purpose of the clause is to prepare for the introduction of a new digital and multi-species traceability service, the Livestock Information Service (LIS), based on a database of animal identification, health and movement data.

- 284 Subsection (1) inserts a new section 89A into the NERC Act 2006. New subsection (1) of section 89A inserted into the NERC Act 2006 will allow the Secretary of State to assign to a board, established under the NERC Act 2006, functions related to collecting, managing and sharing certain information in England, Wales, Northern Ireland and Scotland. This information is identification, movement or health data of animals. It will also allow 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.
- 285 New subsection (2) of section 89A inserted into the NERC Act 2006 provides that an order made assigning functions to a board must not require or authorize the disclosure or use of information that would contravene data protection legislation.
- 286 New subsection (3) of section 89A inserted into the NERC Act 2006 ensures that “animals” has the same meaning as in section 8 of the AHA 1981, to ensure that the functions assigned under this act can be exercised in relation to animals that otherwise might not be covered, such as domestic pigs or equines. These amendments enable the Agriculture and Horticulture Development Board (AHDB) to be assigned the function of managing the new Livestock Identification Service. An example of how this power could be used is to facilitate risk-based trading by enabling the AHDB to make available to buyers’ information on the health risk involved in purchasing certain animals. This could be used as a tool to combat the spread of disease.
- 287 Subsection (2) amends the AHA 1981 such that in England the term “marking of animals” is replaced by “means of identifying animals”, and 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 encompass new developments in the technology for identifying animals. This amendment provides for new developments in the technology and methodology of identifying animals, such as the use of electronic identification. It will also enable legislation to be made covering Crown animals, such as military and police horses. Previously legislation for equines was made under the European Communities Act 1972, which will be revoked upon EU exit.
- 288 Subsections (3) and (4) will, at a date to be set by the Secretary of State, disapply in relation to England the identification, traceability, and inspection provisions in retained EU legislation for cattle (parts of Regulation (EC) No 1760/2000) and sheep and goats (Council Regulation (EC) No 21/2004) respectively. These regulations will be replaced with an order made under the AHA 1981. As a consequence of the European Union (Withdrawal) Act 2018, these regulations will become retained EU law, a category of domestic law, and will be treated as if they are primary legislation. This retained EU legislation will be disapplied by commencing subsections (3) and (4) at the time an order is made under AHA 1981 amending the identification, traceability and inspection regime. These subsections avoid the need to make further primary legislation at that point.

### Clause 33: Red Meat Levy: payments between levy bodies in Great Britain

- 289 For some years, Scotland and Wales have made the case that the red meat levy system in Great

Britain is unfair because significant amounts of producer levy collected at English slaughterhouses relate to animals that spent all or some of their lives gaining value in Scotland and Wales. Levy collected in England must be spent for the benefit of levy payers in England; it cannot be spent solely for the benefit of those Scottish and Welsh producers. Over recent years, this has been acknowledged as an inequity that should be remedied. This inequity could be resolved with a redistribution scheme.

- 290 Legislation is required to enable the Secretary of State and ministers to set up a scheme allowing levy bodies to redistribute red meat levy among themselves, in some circumstances. The Agriculture Bill provides an opportunity to allow for such a scheme. “Red meat” in this context refers to meat from pigs, cattle and sheep for human consumption.
- 291 The livestock industry operates on a Great Britain-wide basis with complex livestock movements. Some farmers keep their livestock through to slaughter whilst some sell animals to farmers in other locations who rear them for a period before slaughtering, so animals may gain economic value in more than one part of Great Britain. Producer levies are collected at slaughterhouses on a per head basis, regardless of where animals spend their lives or gain in value.
- 292 In each part of Great Britain, the relevant levy body collects red meat levy, under a common levy collection framework set out in the Natural Environment and Rural Communities Act 2006, the Red Meat Industry (Wales) Measure 2010, the Agriculture and Horticulture Development Order 2008 and the Quality Meat Scotland Order 2008.
- 293 Clause 33 enables a scheme to be made for some of the red meat levy collected by a levy body in one country within Great Britain to be paid to another levy body in Great Britain. This would reflect the fact that some cattle, sheep or pigs produced in one country may be slaughtered in another country. Without the ability to make payments under a scheme the producer levy paid in respect of those animals in the country of slaughter can only be spent on activities which benefit red meat producers in that country.
- 294 Subsection (1)(a) allows the establishment of a scheme so that agricultural levy boards in two or more countries in Great Britain can redistribute red meat levy between themselves.
- 295 Subsection (1)(b) allows for a scheme to amend, suspend or revoke an earlier scheme, enabling an existing scheme to be updated.
- 296 When the clause refers to a payment, it means a payment that is made under the scheme by a levy body. Subsection (2) suggests some details that the scheme may include about the calculation method, who determines the amount of a payment within the levy body, for example, finance directors, or their delegates, as well as details about when and how the payment is made. It allows the scheme itself to specify its duration.
- 297 Subsection (3) suggests that the scheme may give details about the method of calculating the payment amount and any matters relevant to that. This may include a number of relevant animals, such as those whose red meat levy has been collected by the levy body making the payment in a specific period. The animals that are relevant to the calculation may be required to have a ‘connection’ with country receiving the payment, for example, to have gained some economic value in that country.
- 298 Subsection (4) requires that any payment made under the scheme is to be treated by the recipient levy body as if it were red meat levy collected by that body, for example in respect of the activities and purposes for which it can be spent.

- 299 Subsection (5) allows the scheme to make further provisions beyond those in this clause, including provisions that confer new functions on the levy boards if required to facilitate the implementation of the scheme.
- 300 Subsection (6) imposes a new obligation on levy boards affected by such a scheme to comply with it.
- 301 Subsection (7) provides that any such scheme will be made jointly by agreement between the Secretary of State, and the Scottish and Welsh Ministers. It cannot be brought into being without agreement. The scheme will be published.
- 302 Subsection (8) names the red meat levy bodies for England and Scotland as the Agriculture and Horticulture Development Board (AHDB) and Quality Meat Scotland (QMS), respectively. For Wales, the same subsection names the Red Meat Industry (Wales) Measure 2010, which provides Welsh Ministers with the power to levy its red meat industry. Welsh Ministers have currently delegated their functions to Hybu Cig Cymru (HCC).
- 303 Subsection (9) defines the producer red meat levy in question by referring to the definitions in the relevant legislation that frames the activity of the levy body in each country.
- 304 Overall, Clause 33 provides the Secretary of State, Scottish, and Welsh Ministers with the power to agree and publish a scheme to redistribute part of the producer red meat levy. Duties on levy boards under the scheme are freestanding, to sit alongside their duties under existing legislation. This clause only affects the redistribution of levy; the collection of levy and the existing purposes and functions of levy boards remain subject to the existing legislation.

#### Clause 34: Agricultural tenancies

- 305 Clause 34 makes provision in relation to agricultural tenancies as specified in Schedule 3.

## Part 5: Marketing Standards, Organic Products and Carcass Classification

#### Clause 35: Marketing standards

##### Box 5: Marketing Standards

EU marketing standards establish detailed rules with regard to the quality of agricultural products and providing product information to consumers. Overall, they are beneficial to producers, traders and consumers. They encourage high-quality production, improve profitability and transparency and protect consumer interests. A number of EU marketing standards are based on international standards for example the United Nations Economic Commission for Europe, the International Organisation of Vine and Wine, and hence their adoption can also facilitate trade with third countries that adhere to the same standards.

At present certain agricultural products marketed in the EU have to conform to marketing standards at all marketing stages including at import and export stage. The current EU legislation pertaining to marketing standards will become retained EU

legislation in section 6 of the EU (Withdrawal) Act 2018. The relevant body of EU law is as follows:

**Council Regulations:**

- REGULATION (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007
- COUNCIL REGULATION (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)
- REGULATION (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008
- REGULATION (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animal and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97

**Commission Delegated and Implementing Acts:**

- COMMISSION REGULATION (EC) No 1825/2000 of 25 August 2000 laying down detailed rules for the application of Regulation (EC) No 1760/2000 of the European Parliament and of the Council as regards the labelling of beef and beef products
- COMMISSION REGULATION (EC) No 566/2008 of 18 June 2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing of the meat of bovine animals aged 12 months or less
- COMMISSION REGULATION (EC) No 589/2008 of 23 June 2008 laying down detailed rules for implementing Council Regulation (EC) No 1234/2007 as regards marketing standards for eggs
- COMMISSION REGULATION (EC) No 617/2008 of 27 June 2008 laying down the detailed rules for implementing Regulation (EC) No 1234/2007 as regards marketing standards for eggs for hatching and farmyard poultry chicks
- COMMISSION IMPLEMENTING REGULATION (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council

Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors

- COMMISSION IMPLEMENTING REGULATION (EU) NO 1333/2011 OF 19 December 2011 laying down marketing standards for bananas, rules on the verification of compliance with those marketing standards and requirements for notifications in the banana sector
- COMMISSION REGULATION (EC) No 1850/2006 of 14 December 2006 laying down detailed rules for the certification of hops and hop products
- COMMISSION REGULATION (EC) No 1295/2008 of 18 December 2008 on the importation of hops from third countries
- COMMISSION REGULATION (EC) No 445/2007 of 23 April 2007 laying down certain detailed rules for the application of Council Regulation (EC) No 2991/94 laying down standards for spreadable fats and of Council Regulation (EEC) No 1898/87 on the protection of designations used in the marketing of milk and milk products
- COMMISSION REGULATION (EEC) No 2568/91 of 11 July 1991 on the characteristics of olive oil and olive-residue oil and on the relevant methods of analysis
- COMMISSION IMPLEMENTING REGULATION (EU) No 29/2012 of 13 January 2012 on marketing standards for Olive Oil
- COMMISSION REGULATION (EC) No 543/2008 of 16 June 2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for Poultrymeat
- COMMISSION DELEGATED REGULATION (EU) 2018/273 of 11 December 2017 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the scheme of authorisations for vine plantings, the vineyard register, accompanying documents and certification, the inward and outward register, compulsory declarations, notifications and publication of notified information, and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards the relevant checks and penalties, amending Commission Regulations (EC) No 555/2008, (EC) No 606/2009 and (EC) No 607/2009 and repealing Commission Regulation (EC) No 436/2009 and Commission Delegated Regulation (EU) 2015/560
- COMMISSION IMPLEMENTING REGULATION (EU) 2018/274 of 11 December 2017 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the scheme of authorisations for vine plantings, certification, the inward and

outward register, compulsory declarations and notifications, and of Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards the relevant checks, and repealing Commission Implementing Regulation (EU) 2015/561

- COMMISSION DELEGATED REGULATION (EU) 2019/33 of 17 October 2018 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation
- COMMISSION IMPLEMENTING REGULATION (EU) 2019/34 of 17 October 2018 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, amendments to product specifications, the register of protected names, cancellation of protection and use of symbols, and of Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards an appropriate system of checks
- COMMISSION DELEGATED REGULATION (EU) 2019/934 of 12 March 2019 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards wine-growing areas where the alcoholic strength may be increased, authorised oenological practices and restrictions applicable to the production and conservation of grapevine products, the minimum percentage of alcohol for by-products and their disposal, and publication of OIV files.
- COMMISSION IMPLEMENTING REGULATION (EU) 2019/935 of 16 April 2019 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards analysis methods for determining the physical, chemical and organoleptic characteristics of grapevine products and notifications of Member States decisions concerning increases in natural alcoholic strength

**Commission Decision:**

- 2010/791/EU: COMMISSION DECISION of 20 December 2010 listing the products referred to in the second subparagraph of point III(1) of Annex XII to Council Regulation (EC) No 1234/2007 (notified under document C(2010) 8434)

Marketing standards apply differently to each product. For example, the dairy regulations covering milk, milk products and spreadable fats set out the required ingredients and composition standards for these products, whereas the beef and veal regulations cover traceability between the animal and the meat and the labelling of the meat.

The CMO Regulation grants powers to the Commission to amend marketing standards under certain constraints as set out in section 1 of chapter 1 of title 2.

- 306 Clause 35 will give the Secretary of State a domestic power to make provision relating to marketing standards for agricultural products marketed in England through regulations. This will include the ability to amend or revoke the current marketing standards as set out in retained EU legislation and in domestic legislation, as well as the flexibility to introduce new standards that will be tailored to suit the domestic agricultural sectors.
- 307 Subsection (1) gives the Secretary of State the power to make provision concerning marketing standards through regulations.
- 308 Subsection (1)(a) states that Schedule 4 contains the list of agricultural products for which marketing standards may be made.
- 309 Subsection (1)(b) states that this power applies to products which are marketed in England.
- 310 Subsection (2) outlines what matters the regulations made under the power in subsection (1) may concern, for example, the matter of restrictions as regards the use of certain substances and practices, or classification criteria such as grading into classes, weight, sizing and age. The list is non-exhaustive but currently covers the remits of all existing EU marketing standards that will be retained via the EU (Withdrawal) Act 2018.
- 311 Subsection (3) states that regulations made under subsection (1) may include provisions about enforcement. It also outlines what matters these enforcement regulations may concern, for example, conferring powers of entry, creating summary offences punishable with a fine and imposing monetary penalties. This list is non-exhaustive. This will allow for the current marketing standards enforcement requirements to be replicated for any new standards which may be introduced, and for existing enforcement requirements to be amended as necessary.
- 312 Subsection (4) states that regulations made under subsection (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.
- 313 Subsection (5) gives the Secretary of State the power to make regulations to amend clause 35 or schedule 4 for the reasons specified.
- 314 Subsection (5)(a) gives the Secretary of State the power to add or remove products from the list in schedule 4.
- 315 Subsection (5)(b) gives the Secretary of State the power to alter the description of a product listed in schedule 4.
- 316 Subsection (6) states that regulations made under this section are subject to the affirmative resolution procedure.

## Clause 36: Organic products

- 317 Clause 36 provides the Secretary of State, and where applicable, the Devolved Ministers, with the powers to make provision relating to organic certification, the import and export of organic products and the enforcement of organic regulation. It allows the Secretary of State to make new organics regulations and amend the existing regime.
- 318 Subsection (1) confers powers on the Secretary of State to make regulation in relation to organic certification, which is the principle means of regulating organics. Certification can be certification of organic products, of activities relating to organic production, including preparation, processing, distribution and marketing, and of persons carrying out activities relating to organic products.
- 319 Subsections (2), (3) and (4) expand on subsection (1). Subsection (2)(a) allows the Secretary of State to make provision relating to “certification authorities”. This allows certification activities to be delegated, for example by the Competent Authority to private Control Bodies, as in the current organics regime. Subsection (3) sets out a non-exhaustive list of purposes for which provisions may be made on the objectives, principles and standards of organic production in relation to organic certification. Subsection (4) expands on the provisions that may be made under subsection (1) in relation to labelling, marketing and sale of organic products.
- 320 Subsection (5) confers a power on the Secretary of State to make provision in relation to the import of organic products into the United Kingdom. Subsection (6) expands on subsection (5) to set out the circumstances within which restrictions or prohibitions on the import of organic products may be made. These circumstances include where imports are recognised as compliant or equivalent with organic standards applicable in the United Kingdom, or where a trade agreement is in place.
- 321 Subsection (7) confers power on the Secretary of State to make provision in relation to the export of organic products from the United Kingdom to overseas countries, including export procedures.
- 322 Subsection (8)(a) confers a general power to prohibit marketing, sales or other organic production activities in cases of non-compliance, and subsection (8)(b) confers a power to make provision for the charging of fees in respect to functions relating to organic certification.
- 323 Subsections (8)(c), (9) and (10) contain a provision about enforcement, which is consistent with other enforcement clauses in the Agriculture Bill.
- 324 Subsections (11) and (12) define the terms “marketing”, “organic production” and “organic product”. Subsection (13) specifies the types of products that qualify for organic certification.

## Clause 37: Organic products: supplementary

- 325 Clause 37 deals with who can make the regulations under clause 36 and other technical issues related to their making.
- 326 Under subsection (1) the Secretary of State can exercise the power across the UK, including in relation to devolved matters. Scottish Ministers, Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland can regulate organics in their areas as far as they can exercise powers within their devolved competences.
- 327 Subsection (2) and (3) relate to the parliamentary procedure to be used for making provisions. Regulations must follow the affirmative procedure on every use where the powers relate to the

objectives, principles and standards of organic production as referred to in clause 36(3). Other provisions must follow the affirmative procedure on first use and the negative procedure thereafter.

## Clause 38: Carcass classification

### Box 6: Carcass classification

Carcass classification, which takes place in slaughterhouses within a prescribed time after the point of slaughter, was originally introduced as a basis for market support, but is now mainly used to calculate the payment due to producers from slaughterhouses.

The carcass classification scales define the characteristics and the quality of the carcass as presented, and as such they can also be seen as equivalent to a marketing standard which makes the market in meat more transparent, helping both buyers and producers.

The current EU legislation pertaining to carcass classification will become retained EU legislation under section 6 of the EU (Withdrawal) Act 2018. The relevant legislation is:

#### **Council Regulations:**

- REGULATION (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007

#### **Commission Delegated and Implementing Acts:**

- COMMISSION DELEGATED REGULATION (EU) 2017/1182 of 20 April 2017 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the Union scales for the classification of beef, pig and sheep carcasses and as regards the reporting of market prices of certain categories of carcasses and live animals.
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/1184 of 20 April 2017 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the Union scales for the classification of beef, pig and sheep carcasses and as regards the reporting of market prices of certain categories of carcasses and live animals

The Commission's carcass classification powers are currently set out in section 1 (article 10) and section 4 (articles 19-21) of chapter 1 of title 1 of the CMO regulation.

328 Clause 38 will give the Secretary of State a domestic power to make provision relating to carcass classification by slaughterhouses in England, through regulations. This will include the ability to amend or revoke the current carcass classification rules as set out in retained EU legislation and in domestic legislation, as well as the flexibility to introduce new standards and rules that will be tailored to suit the domestic agricultural sectors.

329 Subsection (1) gives the Secretary of State the power to make regulations regarding the classification, identification and presentation of bovine, pig and sheep carcasses by slaughterhouses in England.

330 Subsection (2) states that regulations made under subsection (1) may include provision about enforcement. It also outlines what matters these enforcement regulations may concern, for example, conferring powers of entry, creating offences and imposing monetary penalties. This list is non-exhaustive. This will allow for the current carcass classification enforcement requirements to be replicated for any new standards which may be introduced, and for existing enforcement requirements to be amended as necessary.

331 Subsection (3) states that regulations made under subsection (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.

332 Subsection (4) states that regulations made under this section are subject to the affirmative resolution procedure.

### Clause 39: Power to reproduce modifications under section 35 for wine sector

333 Under clause 35, the Secretary of State will have the power to make provisions relating to marketing standards for products marketed in or exported from England through regulations. This will also cover the ability to amend or revoke the current marketing standards, as set out in retained EU legislation. This includes Annex 7 of the CMO Regulation, which outlines the definitions, designations, and sales descriptions of the marketing standards of specific products.

334 Annex 7 is referenced in various articles which appear in section 2 of chapter 1 of title 2 of the CMO Regulation. This area of law is reserved. This clause is required for technical reasons in order to ensure that changes made to Annex 7 using the power in clause 35 (to add new products for example) feed through to the relevant articles in section 2 of chapter 1 of title 2.

335 Clause 39 will give the Secretary of State a domestic power to make modifications, through regulations, to Annex 7 of the CMO Regulation. This power will only apply for the purposes of replicating any modifications made to Annex 7 under clause 35(1) so that these are reflected in section 2 of chapter 1 of title 2 of CMO Regulation.

336 Subsection (2) sets out regulations made under this power are subject to the negative resolution procedure, unless section 47(5) applies, under which the procedure is affirmative.

## Part 6: WTO Agreement on Agriculture

### Clauses 40-42: WTO Agreement on Agriculture: regulations

337 Clauses 40-42 provide the Secretary of State with the powers to ensure the UK's compliance with its obligations under the World Trade Organisation (WTO) Agreement on Agriculture (AoA).

338 The "Agreement on Agriculture" – as referred to in subsections 40(1), 40(5), 41(1), 41(4), 41(6), 41(8), 42(2) and 42(5) is an international treaty that sets out a number of general rules and

commitments on agricultural trade practices as agreed by WTO members. These measures fall under three pillars; disciplines on domestic support, market access and export subsidies. The EU is a WTO member and the UK is also a member of the WTO in its own right; as such they are both signatories to the AoA and after EU exit the UK will continue to be subject to any commitments and obligations under the AoA. The UK Government will be responsible for ensuring that all UK policies on domestic support in relation to agriculture are WTO compliant.

- 339 The domestic support provisions relate to various forms of (direct and indirect) government financial support given to producers of certain agricultural products (as defined in Part I of the Agreement on Agriculture). Payments made to agricultural producers during the agricultural transition and through any future domestic support schemes will need to comply with the Agreement on Agriculture.
- 340 This clause intends to ensure that all support schemes are properly classified (as amber, green or blue box), and if they fall into the amber box, that they do not cause the UK to breach its Aggregate Measurement of Support (AMS) commitment (See Boxes 7-10). This clause also intends to ensure that the UK is able to meet its obligations to make notifications required under the AoA and respond to any challenges from other WTO members.

#### Box 7: Green box

Green box: Measures that have no, or at most minimal, trade-distorting effects (such as effects on prices or production levels). There is currently no WTO requirement to limit these payments but to be green box compliant (and hence exempt from the 'reduction commitment') they must meet both the basic and the scheme-specific criteria set out in Annex 2 of the AoA.

The basic criteria (set out in Annex 2 (paragraph 1) of the AoA) require support to be provided through a publicly funded government programme rather than transfers from consumers; and that the support shall not have the effect of providing price support to producers.

Scheme-specific criteria vary according to the intended aims of the policy and are set out in paragraphs 2-13 of Annex 2 of the AoA. Some examples of the scheme-types listed include: **decoupled income support** (direct payments decoupled from (i.e. not linked to) levels of production) and **payments under environmental programmes**. To be green box compliant, programmes must comply with the relevant Annex 2 criteria including, for payments made under environmental programmes that they must be limited to the extra costs or loss of income involved in complying with the programme.

Other examples include **structural adjustment assistance provided through investment aids** (the relevant green box criteria include a condition that eligibility for such payments must be determined by reference to clearly defined criteria in government programmes designed to assist the financial or physical restructuring of a producer's operations in response to objectively demonstrated structural disadvantages) and **payments under regional assistance programmes** whereby the relevant green box criteria include a condition that the payments must be limited to the extra costs or loss of income involved in

undertaking agricultural production in the prescribed area.

#### Box 8: Blue box

Blue box schemes include direct payments coupled to limited levels of production. Such schemes do not meet the green box criteria for direct payments (because they are coupled (or linked to) levels of production) but it is considered that their negative effects are reduced by meeting the 'production-limiting' criteria set out in Article 6 paragraph 5(a) of the AoA. Hence, like green box schemes, blue box schemes are currently exempt from the reduction commitment (and are not included in the calculation of the Aggregate Measurement of Support) as long as one or more of the following conditions is met:

- payments are based on fixed area and yields; or
- payments are made on 85 per cent or less of the base level of production (according to a fixed reference period); or
- livestock payments are made on a fixed number of head.

#### Box 9: Amber box

Payments that do not meet either the green box or blue box criteria are by default classified as amber box. Amber box payments may have trade-distorting effects and are therefore limited under the AoA.

All WTO members are allowed to provide *de minimis* levels of amber box support. For developed countries, the *de minimis* allowance is up to 5% of the value of production (for that product) for product-specific support plus 5% of the total value of production for non-product-specific support.

Some WTO members, including the UK, have provision to provide additional levels of amber box domestic support (above *de minimis* levels) but there is an upper limit on this additional support referred to as the AMS (Aggregate Measurement of Support) commitment.

The EU notifies the Aggregate Measurement of Support to the WTO on behalf of all EU Member States combined. On leaving the European Union, the UK will be required to make its own annual AMS notification to the WTO.

#### Box 10: Aggregate Measurement of Support (AMS)

The Aggregate Measurement of Support (AMS) is the annual level of domestic support given to producers of the agricultural products listed in Annex 1 of the AoA not including support that is exempt under Article 6 of the AoA (blue box support), support that is exempt under Annex 2 of the AoA (green box support) or amber box support made within *de minimis* levels. Where amber box support exceeds *de minimis* levels all of that support must be included in the AMS calculation, not just the amount above *de minimis* levels.

341 Subsection 40(2) links the three sections (40, 41 and 42) which give the Secretary of State power to make regulations for securing compliance with obligations of the United Kingdom under the

Agreement on Agriculture (the “purpose” specified in subsection 40(1)).

- 342 Subsection 40(3) enables the Secretary of State to confer functions on another person; provide for the delegation of functions and enable any other person to exercise a discretion in relation to the functions outlined above. The difference between 40(3)(a) and 40(3)(b) is that (a) provides for the regulations themselves to confer functions on another person, whereas (b) enables the Secretary of State to delegate functions through regulations.
- 343 Subsection 40(4) specifies that any regulations introduced under this section are subject to the affirmative resolution procedure.
- 344 Subsection 40(5) contains definitions.
- 345 WTO agreements permit some forms of trade-distorting support (classified by the WTO as amber box support). Controls on amber box use provide for some WTO members, including the UK, to provide capped levels of (permitted) trade-distorting support. Clause 41 gives the Secretary of State powers to set limits on levels of domestic support (for the purpose of securing compliance with obligations of the United Kingdom under the Agreement on Agriculture).
- 346 Subsection 41(1) clarifies that this subsection applies to domestic support for which a limit applies to the United Kingdom under the AoA (domestic support of the “relevant kind”). Subsection 41(2) provides for the possibility that the limits on domestic support under the AoA may arise through exception for certain types of support, or by specific limits on certain types of support, or by a combination of these two mechanisms (note that amber box support is ‘identified’ in the AoA as support that is not exempted under either Annex 2 or Article 6 of the AoA (see Boxes 7-10 above)).
- 347 Subsection 41(3)(a) gives the Secretary of State powers to set a limit on domestic support of the relevant kind for the United Kingdom as a whole, which under power in subsection 41(4), may be lower than the total amount allowable to the United Kingdom under the Agreement on Agriculture to allow for a portion of that limit to be reserved for the purposes described in subsection 41(8); subsection 41(3)(b) provides power to divide the remainder of the limit between England, Wales, Scotland and Northern Ireland.
- 348 Subsection 41(8) sets out the matters that the Secretary of State may take into account when deciding the limits set in regulations made under subsection 41(3) including domestic support that may need to be given across the whole of the UK, including crisis measures, and domestic support of the relevant kind given by offshore territories where that spending counts towards the amount allowable to the United Kingdom under the AoA.
- 349 WTO members including the United Kingdom are obliged to classify domestic support in accordance with the definitions set out in the Agreement on Agriculture. Subsections 42(2) and 42(3) give the Secretary of State the power to set out in regulations a process designed to classify and to facilitate review of, the classification of domestic support in accordance with this obligation. Subsection 42(3)(b) gives the Secretary of State powers to set out in regulations a process for resolving disputes between authorities regarding classification. The Secretary of State will be responsible for defending the classification of UK domestic support measures at the WTO and therefore may reserve the right to make a final binding decision on classification.
- 350 WTO members are required to make notifications in support of their AoA obligations, including an annual notification on levels of domestic support to agricultural producers, and justification where support has been classified as green box or blue box. Subsections 42(4) and 42(5) give the Secretary of State the powers to set out in regulations provisions for collecting information for

the purposes of compliance with AoA obligations including domestic support notifications and responding to challenges from other WTO members, and may include placing obligations on devolved administrations.

## Part 7: Wales and Northern Ireland

### Clauses 43 and 44: Wales

351 Further provisions relating to Wales can be found in Schedule 5. This is at the request of the Welsh Government. These powers are intended to be time limited until a Welsh Agriculture Bill can be brought forward.

352 Clause 44 ensures that the following provisions expire at the end of 2024; section 43 and Schedule 5, section 49(b) and, in Schedule 7, Part 2, section 52(1)(g), and in section 53(3), paragraph (b) and, so far as relating to Part 2 of Schedule 7, paragraph (c). It also allows Welsh Ministers, by regulations, to make transitional, transitory or saving provisions in connection with this section.

### Clause 45: Northern Ireland

353 Further provisions relating to Northern Ireland can be found in Schedule 6. This is to enable DAERA to continue to make payments to farmers and land managers after the UK leaves the EU and to ensure that Executive Ministers have the flexibility to develop policy in Northern Ireland

## Part 8: General and Final Provisions

### Clause 46: Data protection

354 This clause seeks to preserve the status of existing data protection legislation including the General Data Protection Regulation.

355 Subsection (1) sets out that this clause applies to duties or powers to disclose or use information, imposed or conferred by parts 1 to 6 of this Act.

356 Subsection (2) specifies that any duty or power in the Act that would disclose or use information must not contravene the data protection legislation.

357 Subsection (3) defines data protection legislation.

### Clause 47: Regulations

358 Subsection (1) specifies that any power to make regulations under this Act is exercisable by statutory instrument unless subsection (2) applies.

359 Subsection (2) specifies that any power conferred on the Department for Agriculture, Environment and Rural Affairs to make regulations under this act is exercisable by statutory rule.

360 Subsection (3) details the scope of powers to make regulations under this Act.

361 Subsection (4) specifies that by virtue of subsection (3)(d) powers to make regulations includes the power to modify primary legislation, retained direct EU legislation or subordinate legislation.

362 Subsection (5) details that regulations made under subsection (3)(d) which modify primary

legislation are subject to the affirmative resolution procedure.

363 Subsection (6) specifies the processes by which the appropriate authority may make regulations under the affirmative resolution procedure in this Act.

364 Subsection (7) specifies the processes by which the appropriate authority may make regulations under the negative resolution procedure in this Act.

365 Subsection (8) specifies that any regulations made under this Act under the negative resolution procedure, may by regulations be made under the affirmative resolution procedure instead.

366 Subsection (9) specifies that Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies in relation to the laying of a document before the Northern Ireland Assembly.

367 Subsection (10) specifies that this section does not apply to regulations made under section 53.

#### Clause 48: Interpretation

368 This section provides information on how terms should be interpreted in the Act.

#### Clause 49: Consequential amendments

369 This section makes consequential amendments in respect of Schedule 7 and the CMO Regulation.

#### Clause 50: Power to make consequential etc provision

370 Subsection (1) specifies that the appropriate authority may by regulations make further provision in relation to any provision of this Act.

371 Subsection (2) specifies that regulations made under subsection (1) may modify primary legislation, retained direct EU legislation or subordinate legislation in connection with any provision in this Act.

372 Subsection (3) specifies that regulations made under subsection (1) that would modify primary legislation are subject to the affirmative resolution procedure.

373 Subsection (4) specifies that other regulations under subsection (1) are subject to the negative resolution procedure.

374 Subsection (5) details that the appropriate authority may make regulations in connection with the commencement of any provision of this Act.

375 Subsection (6) specifies who the appropriate authority is in relation to relevant provisions.

#### Clause 51: Financial provision

376 This section details the purposes for which Parliament will be required to provide money.

#### Clause 52: Extent

377 Subsection (1) lists which parts of the Bill extend to England and Wales only.

378 Subsection (2) lists which parts of the Bill extend to Northern Ireland only.

379 Subsection (3) lists which parts of the Bill extend to England, Wales and Scotland only.

380 Subsection (4) specifies that all other areas of the Bill not listed in subsections (1) – (3) extend to England and Wales, Scotland and Northern Ireland.

## Clause 53: Commencement

381 Subsection (1) specifies that this Part of the Bill (apart from section 49 and Schedule 7) comes into force on the day that it becomes an Act.

382 Subsection (2) details which regulations come into force by regulations on a day appointed by the Secretary of State.

383 Subsection (3) details which regulations come into force by regulations on a day appointed by the Welsh Ministers.

384 Subsection (4) details which regulations come into force by regulations on a day appointed by the Department of Agriculture, Environment and Rural Affairs.

385 Subsection (5) specifies that different days may be appointed for different purposes.

386 Subsection (6) specifies that where regulations are not made to appoint a date for provisions to come into force, provisions will come into force two months after the day on which the Bill is passed to an Act.

## Clause 54: Short title

387 This section contains the short title that the Act may be sited as.

## Schedule 1: Agricultural sectors relevant to producer organisation provisions

388 Schedule 1 lists the agricultural sectors relevant to producer organisation provisions.

389 Further detail on what is covered by each of these sectors will be expounded in subsequent regulations; however, the intention is to apply these terms in line with their clearly understood meaning in common trade usage.

390 For example, in the 'beef sector', a producer would be understood as including an individual/business raising live animals intended for slaughter, and a processor would be understood as an individual/business involved in secondary activity (slaughtering, processing, butchering etc.). Producers of composite goods (such as meat pies or beef-based ready meals) would not be considered as active in the beef sector. Instead they would be understood as part of the 'food manufacturing sector' (not covered by these producer organisation provisions).

## Schedule 2: Recognised organisations: competition exclusions

391 The exclusions from Competition Law that are available to recognised POs currently reside in the CMO Regulation. Schedule 2 amends the Competition Act 1998, to domesticate these exclusions.

392 The amendments in Schedule 2 subsection (1) apply to paragraph 9 of Schedule 3 to the Competition Act, which deals with general exclusions for agricultural products.

393 Subsection (2) replaces paragraph 9 (1) of Schedule 3 to the Competition Act, which gives domestic effect to the EU exemptions with a subparagraph setting out the conditions of derogations under the new regime. That is, the chapter 1 prohibitions (the general prohibition of anti-competitive behaviour) is not applicable to agreements between the members of a recognised PO, or members of an APO, who collectively carry out planning production, optimisation of production costs, product placing on the market or negotiation of supply contracts (or any combination thereof). This exclusion is referred to as the "RPO exclusion". The paragraph introduces two conditions, upon which the application of the RPO exclusion is

dependent.

394 Condition A is that a PO must concentrate the supply of produce, and place said produce on the market. These actions must occur whether or not there is a transfer of ownership of the products to the PO. This is so that the PO can administer contracts and transactions on behalf of its members without the additional necessity of purchasing the actual products. Subsection (b) sets out that the same conditions apply to APOs. APOs must concentrate the supply of its PO members' products, and place those products on the market, whether or not a transfer of ownership occurs.

395 Condition B sets out that a member of a PO (representing a certain sector) cannot be a member of another PO that operates in the same sector. Subsection (b) sets out that the same conditions apply to the constituent PO members of an APO; they cannot be members of another APO from the same agricultural sector.

396 Subparagraph (1E) provides that the Secretary of State may decide that the RPO exclusion may still apply, even if condition B is not met, where a producer has production units located in different parts of the country. It further states that the Secretary of State is empowered to decide that the RPO exclusion applies in other circumstances, where Condition B is not met, but the application of the exclusion is appropriate.

397 Subparagraphs (3), (4) and (5) make operational changes to the Competition Act to account for the UK's withdrawal from the EU.

398 Subparagraph (3) establishes the competition law exemptions that are available to recognised IBOs. IBOs operate vertically along the supply-chain (i.e. are comprised of members involved in other activities beyond primary production, such as processing or manufacturing).

399 As such, subparagraph (2) establishes a further condition which sets out that the competition exclusion available for recognised IBOs ("the RIBO exclusion") is dependent on notifying the Competition and Markets Authority (CMA) of the agreement and receiving notice that the CMA is satisfied that application of the RIBO exclusion is appropriate. Subsection (3) sets out that the CMA must consider, in deciding the above, whether the benefit of the RIBO exclusion outweighs any potential impact on fair competition in the UK.

400 Subsection (4) empowers the CMA to decide, at any time, that a RIBO exclusion for a particular agreement is no longer in effect.

401 Subsection (5) sets out that the existing conditions in Schedule 3 Paragraph 9 Competition Act sub-paragraphs (4)-(8), which set out that further information, could be requested to inform a decision on a general agricultural exclusion, are replicated for the Secretary of State when deciding whether to grant a RIBO exclusion.

### **Schedule 3: Agricultural tenancies**

402 Schedule 3 Part 1 specifies amendments to the Agricultural Holdings Act 1986 ("the 1986 Act") and Part 2 specifies amendments to the Agricultural Tenancies Act 1995 ("the 1995 Act") as enabled by clause 34 of this Agriculture Bill.

#### **Part 1 Introductory**

403 Paragraph 1 provides that the 1986 Act is amended as set out below.

#### **Notices relating to third party determination of rent**

404 Paragraphs 2 and 3 amend section 12 and Schedule 2 of the 1986 Act to replace a demand for arbitration in the rent review process with a notice of determination which may be followed by either arbitration or third-party determination if the rent review is not agreed by the parties. This enables a third-party to be appointed to resolve a rent dispute at any time before the rent review date (where both parties agree to that appointment) as an alternative to arbitration.

#### **Appointment of arbitrators**

405 Paragraphs 4 to 6 make amendments to sections 12, 22, and 84 of the 1986 Act to provide that the President of the Royal Institution of Chartered Surveyors (RICS), the President of the Central Association of Agricultural Valuers (CAAV), and the Chair of the Agricultural Law Association (ALA) are listed as persons that tenants and landlords may apply to for the appointment of an arbitrator to resolve disputes arising under the 1986 Act. These amendments widen the list of persons able to make such appointments from the current provision of only the President of RICS so that a wider pool of arbitrators is made available and tenants and landlords have more choice. Paragraphs 6(7) and 6(8) enables the Secretary of State in relation to England and the Welsh Ministers in relation to Wales to make regulations to amend the list of persons able to appoint arbitrators so that the list can be updated as needed from time to time.

#### **Requests for landlord's consent or variation of terms**

406 Paragraph 7 amends the 1986 Act by adding a new section 19A providing powers for the Secretary of State in relation to England and the Welsh Ministers in relation to Wales, to make provision through regulations to enable tenants to refer to arbitration or third party determination requests for landlord's consent to activities that are restricted under the terms of their tenancy agreement or requests for a variation of terms, where that request:

- in relation to England relates to the tenant accessing financial assistance schemes under clauses 1, 2(4) and 19 of the Agriculture Bill, or so that the tenant can meet a statutory obligation; or
- in relation to Wales relates to the tenant accessing financial assistance in exceptional market conditions under paragraph 7 of Schedule 5 of the Agriculture Bill, or so that the tenant can meet a statutory obligation.

#### **Arbitration or third-party determination of rent: relevant factors**

407 Paragraph 8 amends Schedule 2 of the 1986 Act (which sets out the process for arbitration or third party determination of rent review disputes) to specify that if, by written agreement, the tenant has agreed to make payments to the landlord for improvements to the holding that are wholly or partly financed by the landlord, such payments are to be disregarded from considerations of changes to rent and also that any benefit from the improvement to the tenant is also to be disregarded from rent considerations whilst the tenant is still making payments for that improvement.

#### **Notices to quit: cases where consent of tribunal not required**

408 Paragraph 9 amends Part I of Schedule 3, Case A of the 1986 Act (which governs the procedure for notices to quit for some tenants of Local Authority Smallholdings) by removing sixty-five as the specified age when a retirement notice to quit can be issued by the landlord and replacing it with pensionable age (the age at which the tenant can claim their State Pension as defined by Part 1 of Schedule 4 of the Pensions Act 1995). This updates the Case A provisions so that they

are in line with State Pension legislation.

#### **Succession on death or retirement: condition relating to occupation of commercial unit (the Commercial Unit Test)**

409 Paragraphs 10 to 16 amend the 1986 Act to repeal all provisions relating to the Commercial Unit Test (which specifies that an applicant succession tenant who already occupies a commercial unit of land is not eligible to succeed to an Agricultural Holdings Act tenancy) so that these provisions will no longer apply when the provision is commenced. Clause 53 of the commencement provisions of this Agriculture Bill provides that the provisions in this Schedule 3 will come into force two months after Royal Assent, except for the provisions relating to the repeal of the Commercial Unit Test and the Suitability Test which will come into force by regulations made by the Secretary of State in relation to England and the Welsh Ministers in relation to Wales. This is so that the repeal of the Commercial Unit Test provisions will not take effect until the new Suitability Test regulations are made and commenced.

#### **Succession on death or retirement: condition relating to suitability (the Suitability Test)**

410 Paragraph 17 of this Schedule amends section 39(8) of the 1986 Act (applications for tenancy of holding) to confer a power on the Secretary of State in relation to England and the Welsh Ministers in relation to Wales, to make regulations specifying the criteria that must be considered when determining a person's suitability to become a tenant of the holding and also to have regard for any views stated by the landlord on the tenant's suitability. The provision specifies that the regulations must relate to the person's capacity to farm the holding commercially to a high standard of efficient production and care for the environment. The provisions also specify that the regulations may include criteria such as the person's experience, training or skills in agriculture and business management, the person's health, financial standing and character and criteria relating to the character and condition of the holding and the terms of the tenancy.

411 Paragraph 18 makes consequential amendments to other sections of the 1986 Act relating to this new provision.

#### **Succession on retirement: minimum age of retiring tenant**

412 Paragraphs 19 and 20 make amendments to sections 51 and 53 of the 1986 Act to repeal the minimum age of sixty-five before which applications to the First-tier Tribunal (Property Chamber) Agricultural Land and Drainage Tribunal for succession on retirement can be made, so that applications for succession on retirement may be made at any age in future.

#### **Regulations and orders**

413 Paragraph 21 amends section 94 (orders and regulations) of the 1986 Act to update the provisions relating to powers to make regulations and orders so that they reference either House of Parliament in the case of a statutory instrument made in England by the Secretary of State or Lord Chancellor, and the National Assembly for Wales in relation to a statutory instrument made by the Welsh Ministers in Wales.

#### **Part 2 Introductory**

414 Paragraph 22 provides that the 1995 Act is amended as set out below.

## **Appointment of arbitrators**

415 Paragraphs 23 to 29 make amendments to sections 12, 19, 22, 28, 30, 38 and 39 of the 1995 Act to extend the list of professional authorities that tenants and landlords may apply to for the appointment of an arbitrator to resolve disputes arising under the 1995 Act so that it is the same as those listed in section 84 of the 1986 Act. This extends the list of professional authorities able to appoint arbitrators under the 1995 Act from the current provision of only the President of the Royal Institution of Chartered Surveyors (RICS) to include the President of the Central Association of Agricultural Valuers (CAAV) and the Chair of the Agricultural Law Association (ALA) so that a wider pool of arbitrators is made available and tenants and landlords have more choice. Any changes made to that list by regulations made under the powers given to the Secretary of State in relation to England and the Welsh Ministers in relation to Wales (in Section 84 of the 1986 Act) will also apply to the 1995 Act.

## **Schedule 4: Agricultural products relevant to marketing standards provisions**

416 Schedule 4 lists the agricultural products to which marketing standards apply (clause 35).

## **Schedule 5: Provision relating to Wales**

417 Schedule 5 extends similar powers to the Welsh Ministers as those conferred on the Secretary of State in Parts 1-3 and 5 of the Bill. The powers are intended to be temporary and will be replaced by a Wales Agriculture Bill to be introduced in the National Assembly for Wales. The powers in this Bill are needed now to ensure continuity and ensure effective operation of the internal market in the UK.

## **Schedule 5, Part 1: Financial support after exiting the EU.**

418 Paragraphs 1-3 of Part 1 of Schedule 5 provide for the payment of Direct Payments in Wales under the basic payment scheme.

419 The principal difference is that paragraph 1 provides that the basic payment scheme includes redistributive payments. A redistributive payment is a payment for a limited number of first hectares in addition to the payment rate per hectare calculated for all of the land receiving a payment under the scheme. These payments are made in Wales and are not made in England.

420 Paragraph 2 provides powers for Welsh Ministers to modify, after exiting the EU, retained EU law relating to the basic payment scheme, and include powers to simplify or improve the basic payment scheme or to terminate greening payments. Regulations are subject to the negative procedure, unless section 47(5) applies (paragraph 2(3)).

421 Paragraph 3 provides for the Welsh Ministers to make regulations to continue the basic payments scheme after 2020. This will allow for the basic payment scheme to continue beyond 2020. The power to make regulations is subject to the affirmative procedure (paragraphs 3(6)). These provisions reflect the powers available to the Secretary of State in England under clause 10 of the Bill.

422 Paragraph 4 enables the Welsh Ministers to make regulations that modify, in relation to Wales, retained direct EU legislation relating to the financing, management and monitoring of the common agricultural policy. That includes Regulation 1306/2013, direct legislation made under

that Regulation and subordinate legislation relating to that legislation. The power to make regulations is subject to the negative resolution procedure unless section 47(5) applies (paragraph 4(4)).

423 Paragraph 5 provides the Welsh Ministers with power to make regulations that modify retained direct EU legislation relating to support for rural development and subordinate legislation relating to that legislation. The power can be used either to repeal that legislation or to simplify or improve the operation of such legislation. The power to make regulations is subject to the negative resolution procedure unless section 47(5) applies (paragraph 5(4)).

#### **Schedule 5, Part 2: Intervention in Agricultural Markets**

424 Part 2 of Schedule 5 requires the Welsh Ministers to make a declaration if the Welsh Ministers consider there are exceptional market conditions (paragraph 6). The Welsh Ministers may then exercise the powers conferred under paragraph 7, during the period specified in the declaration (unless revoked sooner). Under those powers the Welsh Ministers may give, or agree to give, financial assistance to support agricultural producers in Wales whose incomes are being or are likely to be adversely affected by the exceptional market conditions described in the declaration (paragraph 7(2)). The Welsh Ministers may also make such use as they consider appropriate of any available powers under retained direct EU legislation which provides for the operation of public intervention and aid for private storage mechanisms in response to the declaration (paragraph 7(3)).

425 The Welsh Ministers may also modify retained direct EU legislation relating to public market intervention or aid for private storage so that operation of such schemes may be tailored to prevailing domestic circumstances when they are used in a period of exceptional market conditions established under paragraph 6 (paragraph 8(1)).

426 The Welsh Ministers may also modify retained direct EU legislation relating to public market intervention or aid for private storage other than in connection with a declaration under paragraph 6, including altering the operation of that legislation and securing that it ceases to have effect in Wales (paragraph 8(2)).

427 Regulations under paragraph 8 are subject to the negative resolution procedure, unless section 47(5) applies (paragraph 8(5)).

428 The powers conferred on the Welsh Ministers in Part 2 of Schedule 5 are the same as the intervention powers conferred on the Secretary of State under Part 2 of the Bill in respect of England (clauses 18-20).

#### **Schedule 5, Part 3: Collection and sharing of data**

429 Part 3 of Schedule 5 provides the Welsh Ministers with powers to collect and share data from those within or closely connected to the agri-food supply chain. These include powers for the Welsh Ministers to make regulations to collect information (paragraph 9(2)) and to enforce a requirement to provide information (paragraph 14(1)). In both cases the powers to make those regulations are subject to the affirmative resolution procedure (paragraph 9(8) and 14(6)).

430 The data collected and shared under these provisions can be used for certain purposes specified in paragraph 11 including, for example, to help farmers and producers increase productivity, to

help producers to manage risk and market volatility and to support animal and plant health and traceability. The information must be processed in accordance with the requirements set out at paragraph 13.

431 A duty is placed on the Welsh Ministers to publish a draft requirement before a particular requirement for collection of data is imposed under section 12(1) Agri-food supply chains: requirement to provide information. These powers reflect those available to the Secretary of State for England under clause 24 of the Bill.

432 The powers conferred on the Welsh Ministers in Part 3 of Schedule 5 are the same as the collection and data sharing powers conferred on the Secretary of State under Part 3 Chapter 1 of the Bill in respect of England (clauses 21 to 26).

#### **Schedule 5, Part 4: Marketing standards and carcass classification**

433 Part 4 provides powers for Welsh Ministers to make provisions through regulations relating to marketing standards for products marketed in Wales and relating to carcass classification by slaughterhouses in Wales.

434 This power includes the ability to amend or revoke the current marketing standards and carcass classification rules as set out in retained EU legislation and in domestic legislation, as well as the flexibility to introduce new standards and rules that will be tailored to suit the domestic agricultural sectors. This power to make regulations is subject to the affirmative resolution procedure (paragraph 15(5)).

435 Paragraph 16 contains the list of agricultural sectors for which marketing standards may be made. The Welsh Ministers may make regulations to amend the list of products for which marketing standards may be set. That power is subject to the affirmative resolution procedure (paragraph 16(4)). The Welsh Ministers may also make regulations to set out products that fall within each sector, or otherwise give further details on the sectors. That power is subject to the affirmative resolution procedure (paragraph 16(4)).

436 The powers conferred on the Welsh Ministers in Part 4 of Schedule 5 are the same as the powers conferred on the Secretary of State under clauses 35 and 38 of, and Schedule 4 of, the Bill in respect of England.

#### **Schedule 5 Part 5: Data Protection**

437 The paragraph provides a statutory override to specify that any exercise of data by Welsh Ministers will be done in compliance with the GDPR. These powers reflect those available to the Secretary of State for England under clause 46 of the Bill.

#### **Schedule 6: Provision relating to Northern Ireland**

438 Schedule 6 extends similar powers to DAERA as those conferred on the Secretary of State in relation to part 1 chapter 2, part 2 chapter 2, part 3 chapter 1 and part 5 of the bill.

439 Part 1 gives similar powers to DAERA to those conferred on the Secretary of State in the articles outlined above with the exception of:

- a. Clause 8 which relates to the agricultural transition period for England

- b. Clause 10 which relates to the termination of Direct Payments
- c. Clause 15 which modifies aid schemes for fruit and vegetable POs

440 Paragraph 2(1)(b) confers additional powers on DAERA, which include powers to reintroduce and modify articles 48 and 49 of the Direct Payments Regulation in relation to making payments for areas of natural constraint.

441 Part 2 gives powers relating to intervention in agricultural markets to DAERA, similar to those conferred on the Secretary of State in Part 4 of the Bill with the exception of clause 18 relating to the declaration of exceptional market conditions.

442 Part 3 gives powers relating to the collection and sharing of data to DAERA, similar to those conferred on the Secretary of State in Part 3 of the Bill.

443 Part 4 gives DAERA powers to set marketing standards and make provision for the classification of carcasses.

### Schedule 7: The CMO Regulation: consequential amendments

444 Schedule 7 provides details of consequential amendments to the CMO Regulation. These amendments affect those powers in the CMO Regulation which will become redundant in light of the new powers in clauses 19, 20 (exceptional market conditions), 35 (marketing standards) and 38 (carcass classification). In relation to exceptional market conditions, Parts 1 and 2 of Schedule 7 disapply these articles for agricultural producers in England and Wales respectively. In relation to marketing standards and carcass classification, Parts 3 – 5 of Schedule 7 disapply the relevant articles for products marketed in or slaughterhouses situated in England, Wales and Northern Ireland respectively.

445 Schedule 7 also saves any EU regulations made by the Commission under article 19(6), article 20(p) – (u), and article 21 of the CMO Regulation (carcass classification) in relation to slaughterhouses in England, Wales and Northern Ireland; or under Section 1 or Section 3 of chapter 1 of Title 2 of the CMO Regulation (marketing standards and wine labelling) in relation to products marketed in England, Wales and Northern Ireland. This ensures that existing marketing standards made in tertiary legislation by the Commission will remain in force even though the powers under which they were made have been disapplied for England, Wales and Northern Ireland.

446 The relevant articles of the CMO Regulation are as follows:

- a. Articles 219, 220, 221 and 222 (exceptional measures). These articles are redundant in light of the powers in clauses 19 and 20 for the Secretary of State to act in periods of exceptional market conditions.
- b. Article 19(6) (the Commission's powers to amend carcass classification rules).
- c. Article 20(p) – (u) (the Commission's powers to make rules on the implementation of the carcass classification scales).
- d. Article 21 (the Commission's powers to make rules on the classification of light lamb carcasses).
- e. Article 73 (which sets out the scope of the EU marketing standards in section 1 of chapter

1 of title 2 to the CMO Regulation). This article is amended to ensure that references in section 1 of chapter 1 of title 2 to the CMO Regulation to marketing standards, as they apply in relation to products marketed in England, Wales and Northern Ireland, include standards set in regulations under the power in clause 35(1).

- f. Article 75 (which sets out the content of EU marketing standards rules and the Commission powers to set and amend marketing standards).
- g. Article 78(3) - (5) (the Commission's power to amend definitions, designations and sales descriptions).
- h. Article 80(3) - (5) (the Commission's powers relating to oenological practices).
- i. Articles 86, 87 and 88 (the Commission's powers relating to optional reserved terms).
- j. Article 91 (the Commission's powers to make rules relating to the implementation of marketing standards).
- k. Article 119(3)(b) (the Commission's power to make derogations from wine labelling rules).
- l. Article 122 (the Commission's powers relating to wine labelling).
- m. Article 123 (the Commission's power to make rules relating to the implantation of wine labelling rules).

## Commencement

447 The Secretary of State, the Welsh Ministers and DAERA as appropriate will lay regulations saying when the provisions set out in clause 53 (2), (3) and (4) will come into force. The regulations may say that they come into force at different times.

448 The rest of the provisions of the Bill will come into force two months after the Bill is granted Royal Assent and becomes an Act.

## Financial implications of the Bill

449 The following items of new expenditure are to be paid out of money provided by Parliament:

- giving financial assistance to any person by virtue of powers of the Secretary of State under the Act;
- continuing to make direct payments, under the basic payment scheme as it operates in relation to England, for one or more years after 2020 by virtue of the Act;
- making delinked payments in relation to England (in place of direct payments under the basic payment scheme) by virtue of the Act;
- providing support under the Rural Development Regulation (EU no 1305/2013) as it operates in England in consequence of amendments of that Regulation made by

virtue of the Act;

- operating the public market intervention or aid for private storage mechanisms under retained direct EU legislation as it operates in relation to England in response to exceptional conditions in agricultural markets;
- any administrative expenditure incurred by the Secretary of State by virtue of the Act; and
- any increase attributable to the Act in the sums payable out of money so provided by virtue of any other Act.

450 The Government have committed to keeping the same cash total in funds for farm support until the end of the parliament. Current annual spend in England is around £2bn-£2.5bn. Spend currently varies depending on the prevailing GBP/EUR exchange rate and other factors such as domestic spending on crisis support. The Department will set the reduction percentages for Direct Payments taking account of our detailed plans for future schemes and wider decisions about government spending. Departmental spending plans will be presented to Parliament through Main Estimates and Supplementary Estimates, which must be authorised by Parliament before they take effect.

## Parliamentary approval for financial costs or for charges imposed

451 The Bill will require a money resolution because it gives rise to charges on the public revenue. The money resolution will cover:

the sums required for-

- giving financial assistance by virtue of the Secretary of State's powers under the Bill;
- continuing to make direct payments under the basic payment scheme in England after 2020;
- making delinked payments in relation to England;
- providing support in relation to England under the Rural Development Regulation as modified by virtue of the Bill;
- operating the public market intervention or aid for private storage mechanisms under retained direct EU legislation in relation to England in response to exceptional conditions in agricultural markets;
- any administrative expenditure incurred by the Secretary of State by virtue of the Bill;
- increases in the sums payable by virtue of any other Act where the increase is

attributable to the Bill.

452 No ways and means resolution is required for the Bill, because the Bill does not authorise any new taxation or other similar charges on the people.

## Compatibility with the European Convention on Human Rights

453 The Government considers that the Agriculture Bill is compatible with the European Convention on Human Rights (“ECHR”). Accordingly, the Secretary of State for Environment, Food and Rural Affairs has made a statement under clause 19(1)(a) of the Human Rights Act 1998 to this effect.

454 The government’s ECHR analysis can be found in the memorandum to the Joint Committee on Human Rights.

## Related documents

455 The following documents are relevant to the Bill and can be read at the stated locations:

- Health and harmony: the future for food, farming and the environment in a Green Brexit, available here: <https://www.gov.uk/government/consultations/the-future-for-food-farming-and-the-environment>

## Annex A - Territorial extent and application in the United Kingdom

Parts 1 and clauses 18-26, 35, 38 and Schedule 4 extend to England and Wales and apply to England only. Provision corresponding to these clauses would be within the competence of the devolved legislatures.

Clause 33 extends and applies to England and Wales and Scotland.

Clause 34 and Schedule 3 extend and apply to England and Wales only.

Clauses 43-44 and Schedule 5 extend to England and Wales and apply to Wales only.

Clause 45 and Schedule 6 extends and applies to Northern Ireland only.

All other clauses and schedules extend to England and Wales, Scotland and Northern Ireland and apply as set out in the table below.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland ?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
Part 1 (Clauses 1-6)(New financial assistance power powers)	Yes	No	No	No	Yes	Yes	Yes	No
Part 1 (Clauses 7-16)(Direct Payments and other financial support after EU Exit)	Yes	No	No	No	Yes	Yes	Yes	No
Part 2 (Clause 17)(Food security)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (W, S, NI)
Part 2 (Clauses 18-20) (Intervention in Agricultural Markets)	Yes	No	No	No	Yes	Yes	Yes	No
Part 3 (Clauses 21-26)(Collection and sharing of data)	Yes	No	No	No	Yes	Yes	Yes	No
Part 3 (Clauses 27-30) (Fair dealing with Agricultural Producers and Producer Organisations)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 4 (Clauses 31-32) (Fertilisers and Identification)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (W, S, NI)

and Traceability of Animals)								
Part 4 (Clause 33) (Red Meat Levy)	Yes	Yes	Yes	No	N/A	N/A	N/A	Yes* (W, S)
Part 4 (Clause 34) (Agricultural tenancies)	Yes	Yes	No	No	N/A	N/A	N/A	Yes (W)
Part 5 (Clause 35) (Marketing Standards)	Yes	No	No	No	Yes	Yes	Yes	No
Part 5 (Clause 36-7) (Organic products)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (W, S, NI)
Part 5 (Clause 38) (Carcass classification)	Yes	No	No	No	Yes	Yes	Yes	No
Part 5 (Clause 39) Power to reproduce modifications under section 21 for wine sector	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 6 (Clauses 40-42) (WTO Agreement on Agriculture)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 7 (Clauses 43-44) (Provisions relating to Wales)	No	Yes	No	No	N/A	N/A	N/A	Yes (W)
Part 7 (Clause 45) (Provisions relating to Northern Ireland)	No	No	No	Yes	N/A	N/A	N/A	Yes (NI)
Part 8 (Clause 46) (Data protection)	Yes	No	No	No	Yes	Yes	Yes	No
Part 8 (Clauses 47-48) (Regulations and interpretation)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 8 (Clause 49) (consequential amendments in Schedule 5)	Yes	Yes	No	Yes	N/A	N/A	N/A	No
Part 8 (Clauses 50-54) (final provisions)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 1: Agricultural sectors relevant to Producer Organisation provisions	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 2: Competition exclusions	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 3- Agricultural tenancies	Yes	Yes	No	No	N/A	N/A	N/A	Yes (W)
Schedule 4- Agricultural sectors relevant to marketing standards provision	Yes	No	No	No	Yes	Yes	Yes	No

Schedule 5: Wales	No	Yes	No	No	N/A	N/A	N/A	Yes (W)
Schedule 6: Northern Ireland	No	No	No	Yes	N/A	N/A	N/A	Yes (NI)
Schedule 7: The CMO Regulation	Yes	Yes	No	Yes	N/A	N/A	N/A	No

\*Clause 33 (Red Meat Levy) relates to reserved matters but requires an LCM as it alters the executive competence of the Scottish and Welsh Ministers.

## Subject matter and legislative competence of devolved legislatures

Part 1 and clauses, 18-26, 35, 38 and Schedule 4 apply to England only and are within the legislative competence of the devolved legislatures because they relate to agriculture. Agriculture is within the competence of the Scottish Parliament because it is not a reserved matter under Schedule 5 of the Scotland Act 1998. It is within the competence of the National Assembly for Wales because it is not a reserved matter under Schedule 7A of the Government of Wales Act 2006. It is within the competence of the Northern Ireland Executive because it is neither reserved under Schedule 3 to the Northern Ireland Act 1998 nor excepted under Schedule 2 to that Act.

## Annex B - Glossary<sup>1</sup>

**Affirmative resolution procedure:** a type of parliamentary procedure that applies to statutory instruments (SIs) and describes the form of scrutiny that the SI receives from Parliament. Both Houses of Parliament must actively approve an SI laid under the affirmative procedure before it can become law.

**Chapter:** A grouping of clauses under a subheading within a Part of a bill.

**Clause:** The basic unit of a bill, divided into subsections, then paragraphs, then sub-paragraphs. Once the Bill becomes an Act, a clause becomes a section.

**Commencement:** The coming into effect of legislation. In the absence of a commencement provision, the Act comes into force from the beginning of the day on which Royal Assent was given (at midnight).

**Genetic Resources:** The Convention on Biological Diversity defines Genetic Resources as genetic material of actual or potential value. It further defines Genetic Material as any material of plant, animal, microbial or other origin containing functional units of heredity.<sup>2</sup>

**Long title:** The passage at the start of a bill that begins "A Bill to..." and then lists its purposes. This defines the scope of the Bill and as such, the content of the bill must be covered by the long title.

**Money resolution:** The House of Commons must agree a Money resolution if a new Government Bill proposes spending public money on something that has not previously been authorised by an Act of Parliament. Money resolutions, like Ways and Means resolutions, are normally put to the House for agreement immediately after the Bill has passed its Second reading in the Commons.

**Negative resolution procedure:** An SI laid under the negative procedure becomes law on the day the Minister signs it (when it is made) and remains law unless a motion, or 'prayer', to reject it is agreed by either House within 40 sitting days.

**Part:** A grouping of clauses under a heading in the body of a bill. Also, a subdivision of a schedule.

**Retained EU legislation:** As the UK leaves the EU, the EU (Withdrawal) Act 2018 will convert the body of existing EU law into domestic law and preserve the body of laws we have made in the UK to implement our EU obligations. "Retained EU legislation" refers to this these bodies of legislation.

**Retained direct EU legislation:** is defined in section 20 of the European Union (Withdrawal) Act 2018. Any direct EU legislation forms part of domestic law by virtue of section 3 of that Act, and includes directly applicable EU regulations, decisions or tertiary legislation. It does not include the body of domestic laws we have made in the UK to implement our EU obligations.

**Regulation:** secondary legislation made through SIs.

**Schedule:** Bills may have Schedules that appear after the main clauses in the text. They are often used to spell out in more detail how the provisions of the bill are to work in practice. Parliamentarians can still

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<sup>1</sup> Definitions are sourced from both [www.parliament.uk](http://www.parliament.uk) and the [Guide to making legislation on www.gov.uk](http://www.gov.uk).

<sup>2</sup> This definition is sourced from <https://www.cbd.int/convention/text/>.

amend schedules.

**Section:** When the bill becomes an Act, “clauses” become “sections” but the names of the other subdivisions stay the same.

**Short title:** The title by which a bill is known during its passage through Parliament; for example, “Agriculture Bill”, and when it becomes an Act the “Agriculture Act 2020”.

**Statutory instrument:** Statutory instruments are the most common form of secondary (or delegated) legislation.

**Territorial application:** Territorial application refers to the territory where a Bill (or provisions of a bill) has a practical effect.

**Territorial extent:** The extent of a Bill refers to the legal jurisdiction of which a bill, or provisions of a bill, will become a part. There are three legal jurisdictions in the UK: (1) England and Wales, (2) Scotland and (3) Northern Ireland. The extent of a Bill or provision can be different from its application.

# AGRICULTURE BILL

## EXPLANATORY NOTES

These Explanatory Notes relate to the Agriculture Bill as introduced in the House of Commons on 16 January 2020 (Bill 7)

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Ordered by the House of Commons to be printed, 16 January 2020

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