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The Agriculture Bill 2019-20

By Sarah Coe
Jonathan Finlay

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Contributing Authors: Lukas Audickas and Matthew Ward, Statistics

Summary

The Agriculture Bill 2019-20 (HC Bill 7) was published on 16 January 2020. Second Reading of the Bill in the House of Commons is scheduled for 3 February.

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

How are farmers currently supported?

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

The new farm support framework proposed by this Bill does not apply to schemes immediately on exit day. Direct farm payments in 2020 across the UK are covered by the provisions in the Direct Payments to Farmers (Legislative Continuity (2019-20) Bill. Payments in 2020 will continue much the same as under CAP schemes in previous years. The Commons Library Briefing on the Bill contains details.

What does this Bill do?

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

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

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

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

Third: it sets out measures to increase transparency and fairness in the supply chain for farmers and food producers. It does this by: introducing new requirements on collection and sharing of data; by placing fair dealing obligations on business purchasers of agricultural products; and by introducing new measures on Producer Organisations. However, this Bill has increased the reach of the fair dealing measures so that any business purchaser must comply and a wider range of people selling products can benefit from the provisions;

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

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

What's new?

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

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

How does this Bill apply to the UK nations?

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

Aside from farm support, some measures such as those on food security and fair dealing in the supply chain apply to the four nations, while the various measures in the new Part 4 have different applications. Measures on meeting WTO obligations also apply across the UK. It is reported that the Scottish Government considers these matters to be devolved so intends to withhold legislative consent.

Stakeholder views

Farming organisations and environmental groups both broadly support the new 'public money for public goods' approach to future farm support schemes. Farmers however want food production itself to be considered a public good and for food production to be central to the Bill. This Bill (unlike the previous Bill) requires Ministers to have regard to the need to encourage the production of food in England, in an environmentally sustainable way. The NFU has welcomed recognition in this Bill that "food production and caring for the environment go hand-in-hand".

Farmers and environmental groups are also concerned that there are no commitments to maintaining food and animal welfare standards for imports under new trade deals. Some 62 farm and environment organisations wrote to the Prime Minister on 27 January calling for legislation to underpin Government commitments not to reduce such standards in future trade deals.

Farmers also want longer-term assurances on funding. The National Farmers' Union has called for a "multi-annual budgetary framework that provides certainty for farmers and allows them to plan and invest for the future". It has welcomed measures in the 2019-20 Agriculture Bill requiring the Government to publish longer-term plans.

Farmers and landowners were keen for the previous Agriculture Bill to make faster progress. Delays in progressing that Bill led to the NFU and the Country Land and Business Association calling for a delay in introducing the new farm support approaches for at least a year (to 2022).

Political party views

Opposition Parties broadly support the principle of paying farmers to provide public goods that underpins the Bill. Opposition Members have also criticised the failure of the previous Bill to reach the statute books. However, Labour wants to see food included as a public good. It also wants commitments that food and animal welfare standards will not be reduced in future trade deals.

1. A new approach to domestic agriculture policy

1.1 Leaving the CAP

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

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

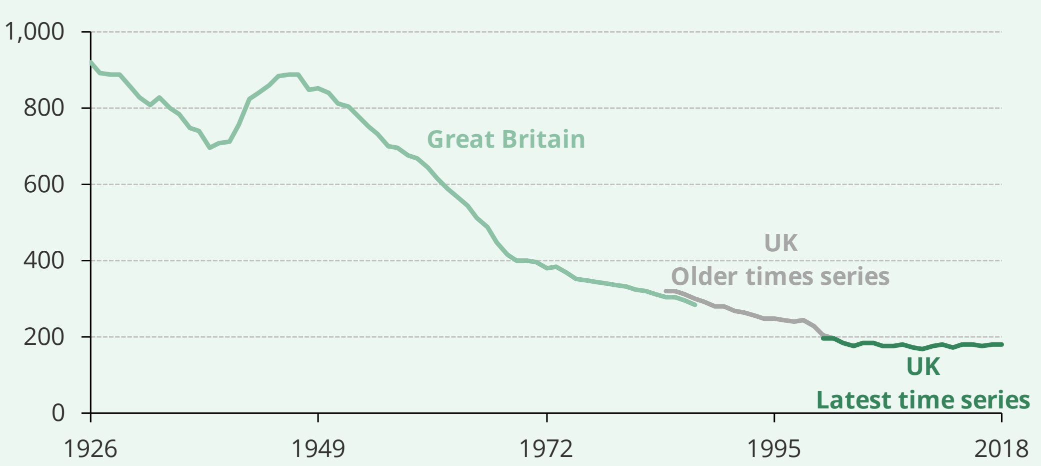
A historic change for farming?

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

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

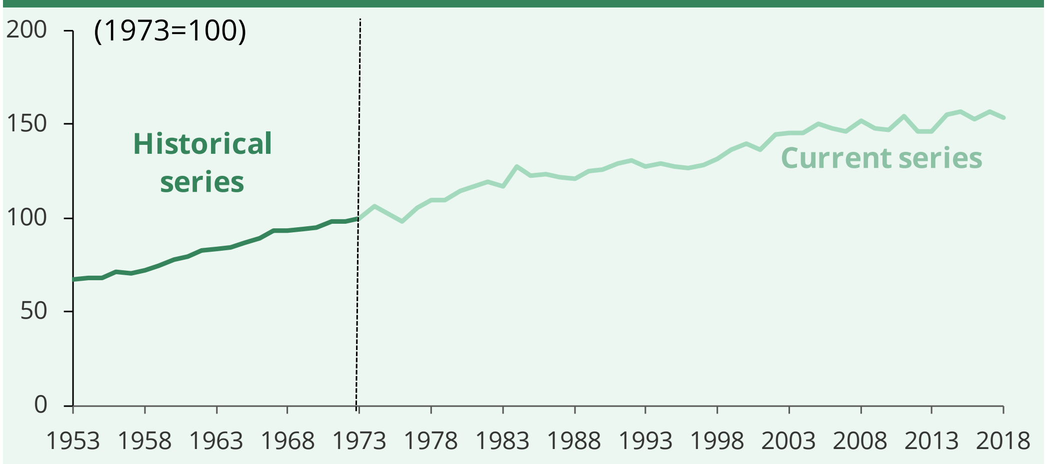
1 HM Treasury press release, Farmers' £3 billion support confirmed in time for 2020, 30 December 2019
2 Lords Written Question: Agriculture subsidies, HL Deb, 4 September 2018, HL 1006
3 See for example, Sustain, We are to get a new Agriculture Act – so let's have a look at the old one – the 1947 Agriculture Act, 27 July 2017

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



Note: Data for 1944-1950 include the Women's Land Army and prisoners of war.
Sources: Prior to 2000: H. F. Marks and D. K. Britton, A hundred years of British food & farming: A statistical survey 2000-2010: DEFRA, Agriculture in the United Kingdom 2012, Chapter 3 (The Structure of the Industry), Table 3.6
2011 onwards: DEFRA, Agriculture in the United Kingdom 2018, Chapter 2 - The Structure of the Industry, Table 2.5

Figure 2: Index of total factor productivity of UK agriculture



Source: Defra, Agriculture in the United Kingdom: chapter 3 – farming income, table 3.2, September 2019 and earlier editions

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

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

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

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

What does the CAP currently provide?

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

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

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

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

Pillar I

- **Direct payments**, mainly based on the area farmed.

  This mainly comprises the Basic Payment Scheme (BPS) and a 'greening' component which is 30% of the Direct Payment total, as well as the Young Farmers Scheme.

- **Market support measures** as part of the Common Market Organisation regulation (CMO).

  This is the set of rules used to organise the single market for agricultural products. The rules cover a wide range of provisions from market safety nets such as public intervention, exceptional measures in case of market disturbances such as animal disease outbreaks, marketing standards, trade provisions and various operational programmes for particular sectors e.g. fruit and vegetables, wine and hops.

Pillar II

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

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

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4 HC Deb 28 January 2020 c671-708

5 Defra, Evidence and Analysis Paper 7, Agriculture Bill: Analysis and Economic Rationales for Government Intervention, September 2018, p.2

Table 1: Total CAP payments by country and UK CAP payments by pillar

Euros million, EU financial years [a]

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

Notes:
a. Information based on EU financial year 16th October – 15th October. Figures exclude financial corrections/penalties.
b. Estimates based on average Sterling to Euro exchange rate for September 2018 (see ONS, Average Sterling exchange rate: Euro)
c. Market price support covers interventions in agricultural markets, e.g. public intervention and private storage aid. Payments are made by RPA in England on behalf of the UK.
d.Pillar 2 funds rural development, e.g. for agri-environment schemes, competitiveness of agriculture and economic diversification and quality of life in rural areas.
e. EAFRD is the European Agricultural Fund for Rural Development. Member states are required to co-finance these receipts with a contribution from their exchequer. Figures are based on in-year quarterly returns, rather than the annual account (in order to provide the split between EAFRD and co-financing)

Source: Agriculture in the UK datasets: Chapter ten - public payments, Table 10.7, 23 September 2019

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

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

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

6 Defra/Government Statistical Service, Moving away from Direct Payments, Agriculture Bill: Analysis of the impacts of removing Direct Payments, September 2018. [Data refers to 2014-15 to 2016-17 period]
7 Ibid.
8 Defra, Agriculture Bill: Analysis and Economic Rationales for Government intervention, Figure 12

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

Table 2: CAP payments and the Total Income from Farming, 2018 (£ million)

Country	Total direct CAP payments	Total Income from Farming (TIFF)[a]	% of total income from CAP payments[b]
United Kingdom	3,331	4,697	71%
England	2,177	3,358	65%
Wales	298	308	97%
Scotland	549	672	82%
Northern Ireland	307	360	85%

Notes:

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

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

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

Sources: Data sets accompanying Agriculture in the United Kingdom 2018:

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

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

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

The Government announced in December 2019 that nearly £3 billion of funding was being provided for the UK for 2020. The Government has also guaranteed the overall annual farm budget for each year of this Parliament.[10] However, the amount of future funding that each part of the UK receives in future will depend on the outcomes of negotiations between the devolved administrations and the UK Government. This will

9 Session 5, Oral evidence from The Rt. Hon Michael Gove, Secretary of State for Environment, Food and Rural Affairs to the Scottish Parliament's Rural Economy and Connectivity Committee, 26 June 2018, c4

10 HM Treasury press release, Farmers' £3 billion support confirmed in time for 2020, 30 December 2019

form part of the UK Government's future Spending Review. Treasury Minister Liz Truss said in July 2019 that the Government would not apply the Barnett formula to farm funding in England and that funding "will not just be allocated according to the population of each nation".[11]

Bew Review

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

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

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

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11 Agricultural subsidies, Written Question 27032, 5 July 2019
12 Convergence funding is an uplift of the financial ceiling for Direct Payments given by the EU to the UK reflecting adjustments made for the 2014-20 CAP scheme. For more information see briefing by Scottish Parliament Information Centre (SPICe) A review of convergence funding for agriculture in Scotland, June 2019
13 Defra, HM Treasury, Northern Ireland Office, Office of the Secretary of State for Scotland, Office of the Secretary of State for Wales, Domestic farm support funding (Bew Review): Government response, 6 September 2019
14 GOV.UK Prime Minister's Office/Scottish Office press release, Multi-million pound boost for Scottish farmers, 6 September 2020
15 Scottish Parliament Official Report, Common Agricultural Policy, 26 September 2018
16 BBC, Unions cautiously welcome post-Brexit farm funding budget, 9 May 2018

2. About the Bill

2.1 A UK-wide Bill?

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

The UK Government has said:

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

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

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

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

Legislative Consent

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

Coverage for Scotland

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

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

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

17 Policy paper. Agricultural framework progress update: September 2018, A joint statement by the UK Government and the Welsh Government, 12 September 2018

18 Defra, *Agriculture Bill: Explanatory Notes*, January 2020. This is hereafter cited as "Bill 7 – EN (2019-20)".

19 Bill 7 – EN (2019-20) para 15

20 Anna Brand, Scottish Parliament Information Centre (SPICe) briefing, Agriculture (Retained EU Law and Data) (Scotland) Bill, 18 November 2019

> This bill rides roughshod over the devolved settlement. For example, on compliance with World Trade Organisation rules, the bill could create sweeping unilateral powers that could constrain policy choices in Scotland.
>
> It is therefore of serious concern that the UK government could impose unwanted policies and rules on Scottish farmers in areas of devolved competency. [21]

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

Coverage for Wales

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

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

2.2 When does the Bill come into effect?

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

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

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

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[21] See for example, Scotland and Westminster clash over Agriculture Bill, Farmers Weekly, 14 September 2018 and BBC News, Agriculture Bill "a missed opportunity" Scots Ministers say, 13 September 2018
[22] Abi Kaye, Farmers Guardian, The New Agriculture Bill: an in-depth analysis of the key changes, 22 January 2020
[23] Welsh Government, Written Statement, UK Agriculture Bill, 16 January 2020
[24] Welsh Government, Written Statement: Introduction of the Agriculture Bill, 12 September 2018

2.3 Does the Bill contain delegated powers?

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

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

25 Agriculture Bill, Memorandum concerning the Delegated Powers for the Delegated Powers and Regulatory Reform Committee, January 2020 [Referred to in further footnotes as "Delegated Powers Memorandum"]

26 As above, para 16

3. Part 1 Chapter 1: Financial Assistance

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

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

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

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

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

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[27] GOV.UK, Health and Harmony: the future for food, farming and the environment in a Green Brexit – policy statement, 12 September 2018

3.1 New financial assistance powers (Clauses 1-6)

Public payments for public goods

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

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

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

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

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

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

[28] Soil Association, Commitment to soil in Agriculture Bill, 16 January 2020

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

		them to express their natural behaviours.
(g) conserving native livestock, native equines or genetic resources relating to any such animal; • ADDITION FOR 2019-20 BILL		This could be used to incentivise farmers to invest in rearing rare and native breeds or species because these genetic resources could sustainably increase food production or improve capacity to adapt to climate change or new diseases.
(h) protecting or improving the health of plants;	This includes: wild plants, agricultural & horticultural crops, trees, and bushes.	This can include support for measures across the forestry and horticulture sectors which reduce the risk of introduction and spread of harmful plant pests and disease.
(i) conserving plants grown or used in carrying on agricultural, horticultural or forestry activity, their wild relatives or genetic resources relating to any such plant; ADDITION FOR 2019-20 BILL		Could include support for measures to conserve and utilise crop wild relatives to improve capacity to adapt to new plant diseases thereby increasing resilience and biosecurity.
(j) protecting or improving the quality of soil. ADDITION FOR 2019-20 BILL		This could include measures which support farmers with decision making and soil management to improve soil health, such as assistance for soil monitoring and research. Could also be used to incentivise farmers to invest in practices which protect and enhance soil health.
(2) (a)….for or in connection with the purpose of starting, or improving the productivity of, an agricultural, horticultural or forestry activity;	This could be used to enable a farmer to invest in equipment that would both increase productivity and deliver environmental benefits.	This could include giving a farmer a grant or loan to enable the purchase of precision application equipment for slurry. This would allow the farmer to reduce the

		quantity of fertilisers used, reducing costs as well as reducing ammonia emissions.
2 (b) supporting ancillary activities carried on, or to be carried on, by or for a producer. ADDITION FOR 2019-20 BILL	Financial assistance can be given to support the ancillary activities of selling, marketing, preparing, packaging, processing or distributing agricultural, horticultural or forestry products.	Funding is for activities carried on by a producer (as defined in subsection 5) or someone acting for them.

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

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

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

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

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

Are farmers currently paid to support 'public goods'?

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

29 See GOV.UK, CAP greening criteria announced, 10 June 2014 and House of Commons Library briefing, Brexit impact across policy areas, 26 August 2016

30 Defra, Health and Harmony: the future for food, farming and the environment in a Green Brexit, 27 February 2018, Cm 9577, Executive Summary, para 13

31 HM Government, A Green Future: Our 25 Year Plan to Improve the Environment, 11 January 2018 p37

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

In Health and Harmony, Defra outlined the benefits of such schemes:

> There is evidence that land in publicly funded agri-environment schemes can deliver benefits which outweigh the payments made.[2] In England, over the last five years, agri-environment schemes have delivered successes such as:
>
> - 80,000 km maintenance, management and restoration of hedgerows, ditches and stonewalls.
> - estimated annual greenhouse gas savings of 1.5 $MtCO_2e$
> - creating nesting and food resources to increase breeding populations of nationally scarce farmland birds and pollinators such as cirl buntings, stone curlews and the marsh fritillary butterfly
> - 9,000 hectares of planted areas providing pollen and nectar sources for pollinators. Higher Level Scheme management for pollinators can significantly increase the size of wild bumblebee populations.[32]

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

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

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32 HM Government, A Green Future: Our 25 Year Plan to Improve the Environment, 11 January 2018, p37

33 See GOV.UK, CAP greening criteria announced, 10 June 2014 and House of Commons Library briefing, Brexit impact across policy areas, 26 August 2016

34 See for example, Defra, Implementation of CAP reform in England: Consultation Document, October 2013, para 6.2

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

transfers of 3% for France and 4.5% for Germany in the same direction.[36]

Early pilots of Environmental Land Management schemes

Defra has been running tests and trials in order to involve land managers in the "co-design" of the proposed new farm support system, with ELM at its core, ahead of the pilot launch in 2021.[37] Defra Secretary of State Theresa Villiers said on 8 January 2020 that 38 tests and trials were currently up and running, with "over thirty more to follow".[38]

The National Audit Office (NAO) published a report on Early review of the new farming programme (June 2019). This noted that Defra's plans for take-up of ELM (up to 82,500 enrolled by 2028) are more ambitious than the existing Countryside Stewardship agri-environment scheme (just under 20,000 agreements in place after four years), although it noted that Defra's view is that direct payments under CAP currently reduce incentives for such schemes.[39] The NAO recommended that Defra should extend participation in the tests and trials to include a wider range of farmers and other land managers, to provide more confidence that a reasonable level of take-up will be achieved. It also recommended that Defra make decisions on "which outcomes the government wishes to prioritise, and the associated payment mechanisms" in "good time" for the pilot starting in 2021.[40]

The previous Parliament's Environment, Food and Rural Affairs (EFRA) Committee subsequently held a hearing with Defra officials (July 2019) in which they provided an update. Defra Permanent Secretary Tamara Finkelstein said the Department had "taken a lot already" from the NAO report, and refocussed on communications with a "detailed design" for the ELM pilot due to be consulted on after summer 2019.[41]

Administration and Enforcement

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

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

Clause 2 allows the Secretary of State to make regulations requiring the publication of information about the public goods payments made under Clause 1. This can include information about the recipient, the amount and the purpose for which the financial assistance was given.

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36 IEEP: CAP 2020, Member State implementation of the CAP for 2015-2020 - a first round-up of what is being discussed, 16 April 2014

37 National Audit Office, Early review of the new farming programme, 5 June 2019, p. 23

38 GOV.UK, A vision for future farming, 8 January 2020

39 National Audit Office, Early review of the new farming programme, 5 June 2019, p. 8

40 Ibid., p. 11

41 Environment, Food and Rural Affairs Committee, Oral evidence: The new farming programme, HC 2542, 17 July 2019, Qq3-5, 11

This kind of information is already published relating to CAP payments. The regulations would be subject to the affirmative resolution procedure.

Enforcing the conditions of new schemes

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

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

The UK Government has indicated that it will look to make greater use of risk-based targeting of inspections and provide the opportunity for those who have not met the conditions of financial assistance to rectify the situation before imposing sanctions.[42]

The UK Government also expects that the power will be used to enable the Secretary of State to adapt the enforcement regime to changing priorities or the use of technology. For example, remote sensing may reduce the need for inspections.[43]

The Commons EFRA Committee noted in the Report of its inquiry into the previous Bill that Defra has a "huge task" to ensure a lead agency and national framework are in place to start delivering its policy based on public goods with adequate funding to police an independent inspection regime. It has suggested that civil sanctions and fines could be hypothecated to provide the Environment Agency or equivalent public body with the necessary extra resources.[44]

Farmers have long criticised the administration of CAP schemes.[45] Dame Glenys Stacey's interim report on Farm Inspection and Regulation Review (July 2018) found that current enforcement "is nowhere near effective". The report states:

> …Farmers are frustrated by a lack of enforcement on the one hand, and disproportionate penalties on the other. Defra's arms-length bodies tell us they are not resourced to check compliance sufficiently or do not have the range of powers they need. There is no doubt that a good deal of non-compliance remains unchecked.
>
> Enforcement is skewed by CAP scheme requirements. A farmers' most common experience of enforcement will be CAP scheme inspections and deductions made to payments for failure to

42 Delegated Powers Memorandum, para 27
43 Defra, Health and Harmony: The Future for Food, Farming and the Environment in a Green Brexit, February 2018, Cm 9577, p. 13
44 Environment, Food and Rural Affairs Committee, *The future for food, farming and the environment, Sixth Report of Session 2017–19*, HC 870, para 89
45 See for example National Farmers' Union press release, RPA must act on Public Accounts Committee criticism, 2 March 2016

> comply in one way or another with requirements that can themselves be exact and inflexible.[46]

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

> We discuss enforcement. We propose that best practice approaches should apply, with the aim of bringing individuals into compliance. Swingeing sanctions will be appropriate on rare occasions, but enforcement should much more often start with advice and an opportunity to comply. It is important that the regulator applies the right combination of approaches to the situation.
>
> We go on to propose a variety of ways in which the regulatory burden could be reduced for farmers. Many farmers press for fewer inspections if they are a member of a farm assurance scheme, and we show how a strong farm assurance record could make a difference. Equally, there are other ways in which farmers can demonstrate they farm responsibly, and can be given due credit.[47]

What happens to Countryside Stewardship schemes after Brexit?

Retained EU regulations will allow for new agri-environment agreements to be commenced up to the end of the 2020 scheme year.[48] Government guidance on Countryside Stewardship after 2021 states that:

> Under current plans, new Countryside Stewardship agreements will continue to be available in the first few years of the agricultural transition period.
>
> We will ensure there is a smooth transition from Countryside Stewardship to the new Environmental Land Management (ELM) scheme. Under the transition plans, there will be a period of time in which both the old and new systems operate. This will allow time to plan and prepare for the future.
>
> No one in a Countryside Stewardship agreement will be unfairly disadvantaged when we transition to new arrangements under ELM. Until then, signing a Countryside Stewardship agreement gives a viable, long-term source of income for providing environmental benefits.[49]

The Government announcement in December 2019 of funding for 2020 stated that:

> Remaining EU funding under CAP Pillar 2 (for rural development and environmental projects) will continue until the current EU funding is used up or 2023, whichever is earliest.[50]

Clause 16 (see below) provides powers for the Secretary of State to modify regulations governing Countryside Stewardship schemes to give more flexibility over existing schemes (for example to change the length

46 Farm Inspection and Regulation Review, July 2018 Interim Report, July 2018, p. 6
47 Dame Glenys Stacey, Independent report Farm Inspection and Regulation Review: summary and recommendations, Updated 13 December 2018
48 Defra, Defra Evidence and Analysis Paper No.7: Agriculture Bill – Analysis and Economic Rationales for Government Intervention, September 2018 p20
49 GOV.UK, Farming is changing – here's what you need to know, August 2019 [Accessed 23 January 2020]
50 HM Treasury press release, Farmers' £3 billion support confirmed in time for 2020, 30 December 2019

of agreements or allow them to be adjusted into new agreements set up under Clause 1 of this Bill – payments for public goods ELM schemes).

3.2 Stakeholder reaction to public goods measures

Farming organisations[51] and environmental groups both broadly support the new 'public money for public goods' approach to future farm support schemes but there are different views on how it should be balanced with other considerations.

Notably farmers want food production itself to be considered a public good and for food production to be central to the Bill.[52] The NFU has welcomed recognition in this Bill that "food production and caring for the environment go hand-in-hand". This position is not supported by some environmental commentators such as George Monbiot who considers that food does not meet the definition of a public good.[53] Mr Monbiot also considers that support schemes should not be used where regulation should ensure the environment is protected.[54] The Tenant Farmers Association (TFA) has said that focussing almost exclusively on public money for public goods is "short-sighted and flawed". The TFA has also called for the new Bill to include legal measures for tenant farmers to participate in ELM schemes where landlords' objections are unreasonable. Further, the Association wants funding to be targeted at "active farmers".[55] Measures to enable tenant farmers to engage in ELM schemes where a landlord objects are included in the new Bill (**Schedule 3)** (See section 11 on Part 4 of the Bill below).

Many environmental organisations have welcomed the reintroduction of the approach in the new Bill. Greener UK congratulated the Government for "resetting farm policy [..] enabling farmers to tackle the environment crisis while producing the food we need". [56] The Woodland Trust said in connection with the previous Bill that future payments focussed on the "delivery and care of public goods" has been "a long time coming". The Trust has welcomed the "unprecedented opportunity to break down the barriers that have artificially divided farming and forestry for so long".[57]

A number of organisations including the Soil Association have welcomed the inclusion in the new Bill of protecting or improving soil in the list of purposes eligible for financial support.[58] Although Ministers

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51 Environment, Food and Rural Affairs Committee, *Written evidence submitted by the National Farmers Union (SAB0068)*, October 2018

52 NFU Online, Food production must be at centre of Agriculture Bill urges NFU, 10 October 2018

53 @GeorgeMonbiot tweet 16 January 2020

54 George Monbiot blog, Farmed Out, 12 October 2018

55 Tenant Farmers Association Press Release, New Agriculture Bill must not leave tenant farmers out in the cold, 13 January 2020

56 @GreenerUK tweet 16 January 2020

57 Woodland Trust, Response to Agriculture Bill, 12 September 2018

58 Soil Association, Commitment to soil in Agriculture Bill, 16 January 2020

considered that support could be provided for this under provisions in the previous Bill, the need to explicitly list soil in Clause 1 was raised by many Members and stakeholders.[59]

The British Veterinary Association (BVA) has welcomed the inclusion of animal health and welfare as a public good eligible for support. It had previously argued that this recognition was needed to to help guarantee that standards in this area are maintained or improved post Brexit. The BVA has said that vets must be involved in designing any interventions under the new system to improve animal health and welfare.[60]

Public Access

The Ramblers have welcomed the inclusion of public access as one of the 'public goods' in the Bill as "a welcome step in the right direction". However, it also wants to see an Agriculture Bill include measures to improve the maintenance of the existing path network and to incentivise farmers to enhance the path network.[61]

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

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

> Many respondents thought all environmental outcomes proposed as public goods were linked, with soil and biodiversity forming the foundations. Important non-environmental public goods included: high animal welfare standards; protection of crops, tree, plant and bee health; and preserving rural resilience, traditional farming and landscapes in the uplands.
>
> Public access was a popular topic of discussion. Many supported the benefits of access, such as improved public health and engagement, however farmers frequently raised concerns about potential damage to their businesses and property.
>
> It was felt by many that food and public health should have been included in the list of public goods proposed by the government.[62]

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

Part 1, Chapter 1 (Clauses 4,5 & 6) includes provisions new for this Bill. **Clause 4** requires the Secretary of State to prepare and have regard to multi-annual financial assistance plans. These must set out Government plans to support farmers under the Clause 1 powers (these powers include those on paying farmers to deliver public goods). The plans must set out the Government's strategic priorities for giving financial assistance and details of schemes in operation or expected to come into operation during the plan period. 4(3) states that the first

59 See Public Bill Committee on the Agriculture Bill 2017-19 document webpages
60 BVA, Vets welcome recognition of animal health and welfare as public goods in new Agriculture Bill, 12 September 2018
61 As above Ramblers, MP Briefing [Accessed 23 January 2020]
62 Defra, Health and Harmony: The future for environment, food and farming in a Green Brexit – Summary of Responses, September 2018 paras 15-17

such plan must cover a period of seven years from 2021, covering the Agricultural Transition Period. 4(4) states that subsequent plans must cover a period of at least five years.

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

Clause 6 requires the Secretary of State to monitor and report on the impact of "each financial assistance scheme" delivered under Clause 1 powers. The Clause gives the Secretary of State discretion in many respects such as over how monitoring is carried out and the number and frequency of reports for the scheme or other financial assistance. The Explanatory Notes state that reports could include, for example, the uptake of schemes and an assessment of the extent to which public goods have been delivered.[63]

Stakeholder views on multi-annual funding

Farmers have long called for certainty over future funding. The called for a "multi-annual budgetary framework that provides certainty for farmers and allows them to plan and invest for the future".[64] The NFU has welcomed the measures in the 2019-20 Agriculture Bill requiring the Government to publish longer-term plans. However, the NFU notes that:

> This is not the same as a fixed multi-annual financial budget like we see under the CAP – but taken alongside the government's commitment to maintain the farm support budget for the life of the Parliament (expected to be until 2024) this approach is very much welcomed.[65]

[63] Bill 7-EN (2019-20) para 74
[64] NFU Online, Food production must be at the heart of Agriculture Bill, NFU urges government, 10 October 2018
[65] NFU Expert Insight, The Agriculture Bill 2020, 20 January 2020

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

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

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

Direct Payments are the income support payments which UK farmers currently receive under the CAP paid out of the EU budget.[66] They are mainly regulated under the EU Direct Payments Regulation.[67] This regulation sets out the Basic Payment Scheme (BPS) that operates under the CAP. Member States tailor the operation of this scheme to their own circumstances within certain permitted parameters. In the UK, the implementation of CAP is devolved and funds are administered by national governments.

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

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

4.1 Agricultural transition period (Clause 8)

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

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

67 Reg (EU) No.1307/2013

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

The Government says the transition period will "avoid a cliff-edge for businesses" and help them become "increasingly resilient, internationally competitive and better equipped to protect our environment.[68] It considers that:

> A longer transition would have delayed the benefits of moving away from Direct Payments, which are poor value for money, untargeted and can inhibit productivity improvements. It could also have delayed farmers beginning to adapt for the future.[69]

The Government also states that support will be provided during the transition to invest in equipment, technology, and infrastructure. Support could be in the form of grants, loans, loan-guarantees, or capital allowances and would be compliant with international agreements.[70] (See WTO section below).

What happens during the agricultural transition period?

Defra published alongside the previous Bill information on the plans for reductions in Basic Scheme Payments in the first year (2021). The setting out of a timescale for the transition period also provides an end date for phasing out these payments (2027). There is no trajectory yet set out for further reductions in future years beyond 2021, other than the fact that "reduction percentages will be increased over the transition until the final payments are made for the 2027 scheme year".[71]

As well as the provisions for phasing out direct payments, the Bill includes measures to allow the 'delinking' of payments. The 'delinking' refers to the removal of the link between the value of the claim and the area of farm land. The Government has not said when it might introduce delinking but the Bill states (**Clause 12(2)(b)(i)**) that the earliest this can be is 2022. Direct payments can only continue until delinking is brought in (or alternatively until the end of the transition period).[72] This part of the Bill also provides powers for payments to be made in a lump sum. **(Clause 12)**.

Box 1 below sets out key milestones as published with the previous Bill's timeline for changes to Direct Payments and other support schemes.[73]

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68 GOV.UK, Health and Harmony: the future for food, farming and the environment in a Green Brexit – policy statement, 12 September 2018
69 Ibid.
70 Ibid.
71 GOV.UK, Health and Harmony: the future for food, farming and the environment in a Green Brexit – policy statement, 12 September 2018
72 Bill 7-EN (2019-20) para 98
73 GOV.UK, Health and Harmony: policy statement, Timeline, 12 September 2018

Box 1: Timescales for change

2020:

- Direct payments continue. Money paid in direct payments will be allocated in "much the same way" as now.[74]

2021-27:

- Direct payments in England will be phased out starting from 2021 when the first progressive reductions apply.
- Delinking may apply from 2022 at the earliest. (Direct Payments cannot continue if delinking is introduced)

2028 and beyond:

- No direct payments.

Source: GOV.UK, Health and Harmony: the future for food, farming and the environment in a Green Brexit – policy statement, Timeline, 12 September 2018

How will reductions be phased in?

The Government states that payment reductions will be applied in a "fair way", with higher reductions initially applied to amounts in higher payment bands.[75] Other options were considered in the Health and Harmony consultation.[76] These were:

a. progressive reductions with a £25,000 threshold,

b. capped reductions (ie no payments above a certain band threshold starting at £100,000),

c. flat rate reductions for all farms from year one of transition.[77]

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

1) signalling clearly that direct payments are ending,

2) targeting payments appropriately, and

3) reducing the risks of businesses having to exit or restructure.

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

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

> …This method of progressive reductions balances the views of those who feel recipients of the highest payments should initially

74 GOV.UK, Health and Harmony: the future for food, farming and the environment in a Green Brexit – policy statement, 12 September 2018
75 Ibid.
76 Defra, Health and Harmony: the future for food, farming and the environment in a Green Brexit, 27 February 2018, Cm 9577
77 Defra/Government Statistical Service, Moving away from Direct Payments, Agriculture Bill: Analysis of the impacts of removing Direct Payments, September 2018, pp 42,43

> face higher reductions, with the strong calls for the reductions to be shared amongst all farmers from the start of the transition. It reflects the views of many farmers that the whole industry needs to prepare for the changes and that applying reductions to all farmers sends an important signal that change is on its way. It also gives all farmers the same transition period.[78]

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

Table 3: Illustrative profile of reductions to reduce Direct Payments in year 1 of the transition

Figures in the table are illustrative based on 2016 payment data

Payments reductions (staggered between bands**)	2016 Direct Payment (£)	Number of farms in each group	Average reduction per business (£)
5% rate applied to all farms **up to £30k** of payments	0 to 5k	30,300	100
	5 to 10k	15,300	400
	10 to 15k	9,500	600
	15 to 20k	6,800	900
	20 to 25k	4,900	1,100
	25 to 30k	3,600	1,400
10% rate applied to subsidy amount **between £30-50k**	30 to 40k	4,800	2,000
	40 to 50k	3,000	2,900
20% rate applied to subsidy amount **between £50-150k**	50 to 75k	3,700	5,600
	75 to100k	1,600	10,700
	100 to 125k	800	15,800
	125 to 150k	400	20,800
25% rate applied to subsidy amount above **£150k**	150 to 200k	500	28,500
	200 to250k	200	41,300
	250 to 300k	100	54,200
	Over 300k	100	108,800

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

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

Stakeholder comment on the agricultural transition

The transition period is at the longer end of a range from three to seven years suggested by witnesses to the Commons Environment, Food and

[78] GOV.UK, Health and Harmony: the future for food, farming and the environment in a Green Brexit – policy statement, 12 September 2018

Rural Affairs (EFRA) in 2018.[79] Also, the Scottish Government's consultation Stability and Simplicity proposed a five-year transition period for farming and rural support. Those from the agricultural sector e.g. NFU and Dairy UK want the period to be long enough to ensure that farmers in England have time to adapt to change and invest to improve their productivity. However, environmental organisations such as Wildlife and Countryside Link and the Chartered Institution of Water and Environmental Management are concerned that any delay could result in inaction by farmers.[80]

The CLA wants to see transition offered as a managed process allowing farming businesses to adapt to the new trading environment, new labour arrangements and the new, food, farming and environmental policy rather than just the removal of Direct Payments.[81] Both the NFU and the CLA have called for a postponement in the start of the transition period to 2022 because of delays in progressing the previous Bill.[82]

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

4.2 Making modifications (Clause 9)

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

This retained EU law will apply at the end of the Implementation Period (IP) expected to be at the end of 2020. For most economic sectors, EU rules continue to apply during the IP. However, CAP Direct Payments rules were disapplied for 2020 under the terms of the UK EU Withdrawal Agreement. Despite this carve out, EU rules are being domesticated under the *Direct Payments to Farmers (Legislative Continuity) Bill 2019-20* for claim year 2020. This will enable continued payment of direct farm payments as now in 2020, and provisions of the

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

80 Ibid., Chartered Institution of Water and Environmental Management (HAH0009), paras 5-5.5; Wildlife and Countryside Link (HAH0012), para 5.4

81 CLA, Consultation response: Health and Harmony – The future for Food, Farming and the Environment in a Green Brexit, 20 April 2018

82 Country Land and Business Association, CLA President calls for more clarity on transition following release of Agriculture Bill , 16 January 2020

83 Environment, Food and Rural Affairs Committee inquiry, The work of Defra: Health and Harmony, HC 870, Q212 [Professor Dwyer]

84 Ibid., Q206

Agriculture Bill are intended to apply to payments from 2021. See Commons Library Briefing on the Direct Payments to Farmers Bill.

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

The negative resolution procedure applies.

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

Health and Harmony said that after the Brexit implementation period, payments could be made without adhering to cross-compliance rules. Instead, risk-based inspections would be made, and payments guaranteed as long as domestic animal welfare, environmental and other laws were observed.[85]

Greening Payments

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

Under the current BPS, around 30% of farmers' Direct Payments are linked to 'greening' requirements which they must meet by following certain practices. The greening requirements included the unpopular 'three crop rule' which requires a certain number of crops to be planted through the year to increase diversity. These have been found to have had limited impact compared to being part of an agri-environment scheme.[86]

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

4.3 Powers to continue making Direct Payments (Clause 10)

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

85 Defra, Health and Harmony: the future for food, farming and the environment in a Green Brexit, 27 February 2018, Cm 9577, Executive Summary, para 13
86 Alliance Environment, Evaluation of the CAP greening measures, November 2017

goods payments schemes. This Clause gives Ministers powers to continue to make the payments for one or more years beyond 2020.

Clause 10 can be exercised only until delinked payments replace the current BPS (2022 at the earliest) or until Direct Payments are phased out completely at the end of the transition period in 2027. This will avoid having two systems (direct payments and delinked payments) in operation at the same time. As noted below, **Clause 12** includes a power for separating or 'delinking' Direct Payments from land (ie there would be no obligation for the recipient to remain a farmer).[87]

4.4 Phasing out Direct Payments (Clause 11)

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

Views on phasing out Direct Payments

Government position

The Government considers that direct payments are a "poor tool for income support and can introduce distortionary incentives that inhibit productivity".[88] In January 2018, the former Environment Secretary Michael Gove set out in a speech to the 2017 Oxford Farming Conference his views on some of the drawbacks with direct payments:

> Paying landowners for the amount of agricultural land they have is unjust, inefficient and drives perverse outcomes…It gives the most from the public purse to those who have the most private wealth….It bids up the price of land, distorting the market, creating a barrier to entry for innovative new farmers and entrenching lower productivity. [89]

The Government's Agriculture Bill: Economic Rationale for Government Intervention published with the previous Bill sets out further analysis as to why the Government considers that direct payments are an inefficient and ineffective means of income support for households.[90]

Stakeholder views

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

87 Bill 7- EN (2019-20) para 112
88 Defra/Government Statistical Service, Moving away from Direct Payments, Agriculture Bill: Analysis of the impacts of removing Direct Payments, September 2018
89 GOV.UK, Farming for the Next Generation, 5 January 2017
90 Defra, Evidence and Analysis Paper No. 7: Agriculture Bill: Analysis and Economic Rationale for Government Intervention, September 2018

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

> Measures to help farmers manage their exposure to risk are essential to deal with a variety of external factors that contribute to income volatility such as global commodity market fluctuations, changing trade relations and weather, pest and disease threats. Direct payments are currently the most substantial and effective tool that farmers have to mitigate this volatility. While farmers in the UK share the aspiration of reducing their reliance on these payments, it should not be arbitrarily pursued without sufficient and robust policy replacements.[91]

Environmental groups have often criticised the fact that the payments are area based. The RSPB has said that Pillar I is "entitlement-based, untargeted, inefficient, and there is no link between outcomes and payments".[92]

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

> …the bulk of Pillar I payments do not go to poorer and marginal farmers. On the contrary Pillar I goes to those who own the land, dominated by larger more intensive farms. Quite why a farmer with, say, 2,000 hectares of intensive arable land should benefit is far from obvious. It is also unclear why a number of activities with little connection to the self-sufficiency and food security to which the lobbyists for this option refer, should receive Pillar I payments.
>
> The really pernicious aspect of Pillar I is the inflation of land prices. This has a number of undesirable consequences. It makes entry into the industry harder, acting as a barrier to entry.[93]

4.5 Delinking Payments (Clauses 12 & 13)

Clause 12 sets out powers to phase out Basic Payment Scheme (BPS) payments and/or terminate them and instead 'de-link' them the requirement to farm during the transition. **Clause 13** allows for these 'de-linked' payments to be made in a lump sum allowing farmers to invest in their business, diversify or retire from farming.

The Government has said that this approach will "send a clear signal to farmers that we are leaving behind the Common Agricultural Policy and Direct Payments are coming to an end".[94]

Delinked payments would only start after the termination of the basic payment scheme but the Government has not said at which point during the agricultural transition period this might occur. It previously

91 NFU, Consultation response: Health and Harmony: Environment. Food and Farming in a Green Brexit, 8 May 2018

92 House of Lords European Union Committee, Brexit: Agriculture, 20th Report of Session 2016-17, May 2016 HL Paper 169, para 220

93 Dieter Helm, Agriculture After Brexit, March 2017

94 GOV.UK, Health and Harmony: the future for food, farming and the environment in a Green Brexit – policy statement, 12 September 2018

said in relation to the last Bill that it will consult with stakeholders before setting the detailed rules.[95]

The Government has explained that the connection between the value of the payment and the areas of land for which it is claimed will be removed. Instead, payments will be made based on a reference period. For example, they could be based on the value of the payment under the Basic Payment Scheme received by the individual recipient during a certain reference period.[96]

The Government has stated that:

> Some farmers could use the money to invest in their business without having to worry about the bureaucratic paperwork that accompanies the Basic Payment Scheme. Others may choose to use the money to diversify their activities or decide to stop farming altogether and use the payment to contribute to their retirement. It should increase the ease with which new entrants, and those existing farmers wishing to expand, could acquire land. […]
>
> We consider this approach best meets the widespread desire for simplification, while at the same time increasing the range of options available to farm businesses to adjust for the future. It gives farmers the greatest flexibility on how they use the money received. To provide further flexibility, and in response to ideas put forward in response to our consultation, we will look to give farmers the option of taking a one-off lump sum payment in place of all their annual Direct Payments.[97]

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

> …all farmers must continue to comply with good land management and husbandry standards. We are committed to maintaining a strong regulatory baseline, with enforcement mechanisms that are proportionate and effective. Alternative enforcement mechanisms will be introduced before Direct Payments are delinked so that we can maintain agricultural and environmental best practice.[98]

A novel approach

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

Countries have, however, paid farmers reactively during crisis periods: for example the sudden abolition in New Zealand in 1985 of extensive farm subsidies led to 1% of the 80,000 farmers leaving the industry and

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95 Agriculture Bill, Delegated Powers Memorandum from the Department for Environment, Food and Rural Affairs to the Delegated Powers and Regulatory Reform Committee, September 2018, para 36

96 Ibid.

97 GOV.UK, Health and Harmony: the future for food, farming and the environment in a Green Brexit - policy statement, 14 September 2018

98 Ibid.

the Government had provided one-off funds to help with the transition.[99]

The UK approach on delinking also diverges from EU approaches. The current EU CAP has a requirement for subsidy claimants to be 'active farmers' and post 2020 CAP schemes are likely to require Member States to define an active farmer more rigorously.[100]

Defra's summary of responses to the *Health and Harmony consultation* noted that the 'delinking' of direct payments from land "was less popular amongst respondents than retaining and simplifying the existing schemes. Many also wanted to see the continuation of protections which maintain agricultural and environmental best practice".[101]

Impact of proposed changes

Defra's paper Agriculture Bill: Analysis and Economic Rationales for Government Intervention suggests that "most farm businesses will be able to make modest cost reductions in order to improve efficiency, which will be required when Direct Payments come to an end".[102]

Defra published an analysis to accompany the previous Bill setting out the impact of moving away from Direct Payments. The analysis notes that the impact of the removal of Direct Payments on overall profit margins is likely to be "non-negligible".[103]

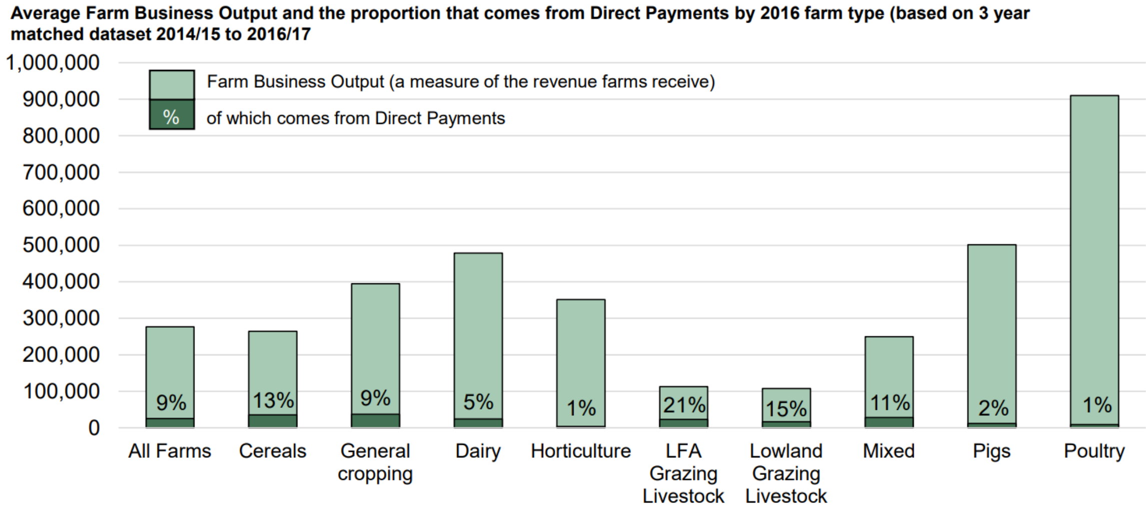
However, the impact varies by farm type and sector. For example, the pigs, poultry and horticulture sectors are least reliant on Direct Payments whilst Least Favoured Area and Lowland Grazing Livestock are the most dependent. **Figure 3** below shows Defra's analysis of how important Direct Payments are for different sectors in England.

99 House of Lords European Communities Committee, Responding to price volatility: creating a more resilient agricultural sector, May 2016, HL Paper 146
100 European Commission Press Release, EU Budget: the Common Agricultural Policy after 2020, 1 June 2018
101 Defra, *Health and Harmony: the future for food, farming and the environment in a Green Brexit Summary of responses*, September 2018, p. 4
102 Defra, Defra Evidence and Analysis Paper No.7, Agriculture Bill: Analysis and Economic Rationales for Government Intervention, September 2018, Executive Summary, p.4
103 Defra/Government Statistical Service, Moving away from Direct Payments, Agriculture Bill: Analysis of the impacts of removing Direct Payments, September 2018, p34 and fig 11

Figure 3: Direct Payments: Sector proportion

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

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



Source: Defra/Government Statistical Service, Moving away from Direct Payments, Agriculture Bill: Analysis of the impacts of removing Direct Payments, September 2018.

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

> Removal of agricultural subsidies will affect most farm businesses but effects will vary by sector, region and devolved governments:
>
> – Arable and dairy farms may be relatively unaffected.
>
> – Sheep and beef producers in more remote locations such as the Scottish uplands are most likely to be affected and many may struggle to survive.[104]

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

4.6 Devolved administration approaches to direct payments

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

Scotland

The Scottish Government has introduced the *Agriculture (Retained EU law and data) (Scotland) Bill* and proposes to keep farm support largely the same until 2024.[105] This makes provision from 2021 and goes wider than the Direct Payments to Farmers Bill as it would allow amendment of any part of CAP legislation, not just direct payment rules.[106]

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104 Rural Economy and Land Use (Relu), Practice Note No.7 Brexit: How will UK agriculture fare when we leave the EU? August 2018

105 Scottish Government, Stability and simplicity: proposals for a rural funding transition period, 20 June 2018

106 Anna Brand, Scottish Parliament Information Centre (SPICe) briefing, UK Direct Payments to Farmers (Legislative Continuity) Bill 2020, 15 January 2020

Wales

Measures in Schedule 3 of the *Agriculture Bill 2017-19* broadly replicated the proposed approach for England of phasing out direct payments and bringing in payments for public goods. It also included provisions to allow payments for rural community support. These have not been included in the *Agriculture Bill 2019-2021*. The Welsh Assembly considers an Assembly Bill would be more appropriate.[107] The Welsh Minster for Environment, Energy and Rural Affairs Lesley Griffiths said that powers in the UK Agriculture Bill would no longer be appropriate given the time since the introduction of the previous Bill.[108] She would be publishing a White Paper in 2020 to pave the way for a new Welsh Agriculture Bill. The Welsh Government has consulted on its approach in two main consultations. Firstly, its 2018 Brexit and our land consultation,[109] and then in a further consultation on Sustainable Farming and our Land in 2019.[110] The Welsh Government is planning for complete reform by 2025 and wants legislation in place to ensure a phased transition period can take effect. Lesley Griffiths has however said she wanted Basic Payment Scheme to stay in place in 2020 and 2021 (subject to sufficient UK Government funding) to give assurances to Welsh farmers and to allow them to plan ahead.[111]

Northern Ireland

The Northern Irish Department for Agriculture, Environment and Rural Affairs (DAERA), consulted in its document Northern Ireland Future Agriculture Policy Framework: Stakeholder Engagement, in August 2018.[112] The *Agriculture Bill 2017-19* provisions were intended to enable DAERA to continue to make payments to farmers and land managers after the UK leaves the EU and to "ensure that future Executive Ministers have the flexibility to develop policy once an Assembly is returned".[113]

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

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107 National Assembly for Wales, In brief blog, Assembly to debate giving consent to the UK Direct Payments to Farmers Bill, 15 January 2020

108 Welsh Government, Written Statement, UK Agriculture Bill, 16 January 2020

109 Welsh Government, Brexit and Our Land: Securing the future of Welsh Farming, July 2018

110 Welsh Government, Sustainable Farming and Our Land, 30 October 2019

111 Further details on Welsh farm policy are included in the Welsh Assembly Research Paper, Diversification and resilience of Welsh farming: prospects after Brexit, December 2019

112 DAERA, Northern Ireland Future Agriculture Policy Framework: Stakeholder Engagement,

113 Agriculture Bill 2017-19, 266-EN para 254 -255

The Ulster Farmers Union (UFU) has said that it is "essential that the local share of farm support remains the same as now, but farmers recognise the delivery model is going to change." The UFU wants a model that is targeted at "those who take the risks in primary food production".[114]

[114] Ulster Farmers Union, DAERA document a welcome start, 1 August 2018

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

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

This provision relates to regulations governing operation of the CAP including financing and monitoring. The powers in **Clause 14** give Ministers scope to simplify and amend a wide range of legislation related to the 'Horizontal Regulation'. That Regulation (Regulation 1306/2013) has a fundamental role in making the CAP work. It includes rules on how farmers must comply with other EU rules on environmental and animal welfare standards (so-called 'cross-compliance). Amendments to make these EU laws operable in the UK during the Implementation Period in 2020 have been included in the *Direct Payments to Farmers (Legislative Continuity) Bill 2019-20*. The Explanatory Notes to the Agriculture Bill state that amendments are likely to be needed beyond the Implementation Period (ie after the end of 2020) to make laws work domestically.[115]

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

The EU Common Market Organisation (CMO) regulation provides for growers in the fruit and vegetable sectors to form Producer Organisations (POs). Once recognised, the growers can claim EU aid which is match-funded by the POs themselves under the EU Fruit and Vegetable Aid Scheme. This Clause provides the Secretary of State with the powers to modify retained EU legislation on the Scheme in England which is administered by the Rural Payments Agency. The Explanatory Notes explain further.[116] It is intended to allow Schemes to run to their conclusion but this Clause enables the scheme to be closed down.

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

In its response to the *Health and Harmony* consultation the NFU highlighted how POs underpin the UK berry industry and how this scheme had helped to increase the UK production of strawberries e.g. with investment in protective tunnels extending the season and new varieties achieving 100% UK soft-fruit supply to retailers during the British season.[117]

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115 Bill 7-EN para 128&129
116 Bill 7-EN paras 135-137
117 NFU, Consultation response to Health and Harmony: Environment, Food and Farming in a Green Brexit, 8 May 2018

5.3 Support for rural development (Clause 16)

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

Powers here are exercised under the negative resolution procedure.

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

The Explanatory notes confirm the intention that **Clause 16** will not be used to introduce any new schemes, as they will be covered by Clause 1 which sets out the areas where the Secretary of State can offer financial assistance to deliver 'public goods' and productivity.[118]

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

[118] Bill 7 – EN (2019-20) para 138

6. Part 2: Food and agricultural markets

6.1 Food security (Clause 17)

Provisions

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

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

The explanatory notes state that this report:

> will provide a broad understanding of what food security is, the challenges and risks to UK food security in a global context, and our current assessment of the state of our food security to inform our policy thinking on the resilience and security of food supply.[119]

Background

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

> This is the first time in more than 40 years that a Secretary of State has been directly responsible for the nation's food security, yet food security has drifted off the Government's agenda, and they are not offering any clear vision for the future of our nation's food supply. The Bill is worryingly silent when it comes to food poverty. It says nothing about the balance between the production of healthy and sustainable British food and reliance on imports, the jobs and health and safety of agricultural workers, and preventing trade deals involving lower standards, undercutting British producers.[120]

SNP environment spokesperson Deirdre Brock also considered the "lack of focus on food production a fundamental flaw of the Bill" and a "serious omission at a time when food security has become a major concern".[121] The NFU called on the Bill to "promote the nation's strategic priorities by supporting domestic agriculture to ensure food security".[122]

119 Bill 7 – EN (2019-20) para 145
120 HC Deb 10 Oct 2018, c164
121 Agriculture Bill: First Sitting, 13 November 2018, c359
122 NFU, Food production must be at the heart of Agriculture Bill, NFU urges government, 10 October 2018

In response to the new Bill, the NFU has said that the commitment to report on food security is "reassuring" but "must be more than simply a box-ticking exercise".[123]

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

Other assessments of food security

The themes which may be addressed in food security reports under the new Bill are broadly similar to those of the *UK Food Security Assessment*, originally published in August 2009. This was produced by Defra under the Brown Government and set out the challenges and risks facing UK food security.[127]

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

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

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

Box 2: Food security and self-sufficiency

Food security has many dimensions but is often discussed in relation to the resilience of a country's food supply. This is linked to the concepts of self-sufficiency and dependence upon imports, but should not be considered as covering all aspects of food security.[124] The UK is approximately 61% self-sufficient in all foods and 75% sufficient in indigenous foods.[125]

The NFU has tried to demonstrate the UK's level of self-sufficiency by calculating when in the year food would run out if only UK food was consumed. According to the NFU, at the current rate of production, if the UK tried to survive solely on food produced in the UK from 1 January, it would run out in the second week of August.[126]

Defra Minister Zac Goldsmith indicated in response to a Parliamentary Question on 8 October 2019 that the review was ongoing, but no updated assessment appears to have been published before the new Agriculture Bill was introduced.[128]

The new Bill also comes as Defra has progressed work on developing a National Food Strategy. This will be informed by an independent review led by Henry Dimbleby, and is intended to cover "the entire food chain,

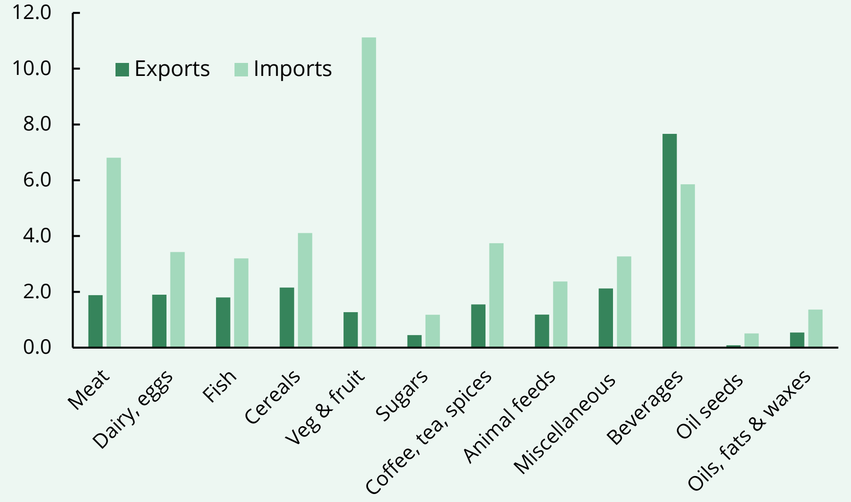
[123] NFU, Agriculture Bill reintroduced - hear from the President, 17 January 2020
[124] Defra's *UK Food Security Assessment* (2009) stated that "self sufficiency is not the same as food security" and the debate had shifted to a broader discussion of the complex factors that affect food security (p. 8).
[125] Defra and Devolved Administrations, Agriculture in the UK 2018, June 2019, table 14.1 p98. Food Production to Supply Ratio is calculated as the farm-gate value of raw food production (including for export) divided by the value of raw food for human consumption.
[126] NFU, NFU calls for government commitment on British food self-sufficiency, 11 August 2019
[127] Defra, *UK Food Security Assessment*, 2009
[128] Written Answer Food Supply: Climate Change 292213, 8 October 2019

from field to fork". The terms of reference for the strategy state that "we cannot afford to ignore new challenges to food security".[129]

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

UK trade in food, feed and drink, 2018

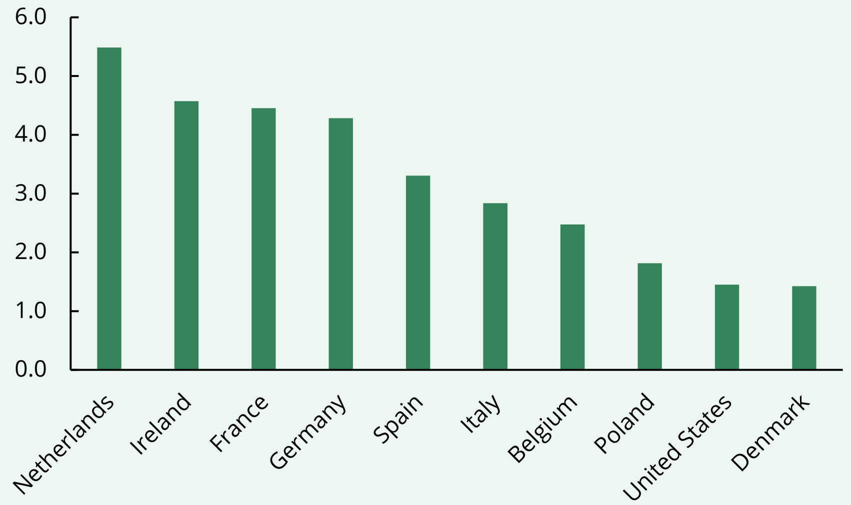
£ billions



Source: HMRC, UK Trade Info

Top 10 sources of UK imports of food, feed and drink, 2018

£ billions



Source: HMRC, UK Trade Info

[129] Defra, Developing a national food strategy: independent review 2019 – terms of reference, 17 August 2019

7. Part 2 Chapter 2: Intervention in agricultural markets

7.1 Exceptional market conditions (Clauses 18-20)

The CAP currently includes a range of agricultural market support measures under the Common Market Organisation (CMO) Regulation (see below).[130]

The CMO includes measures on **public intervention** and the payment of aid for the storage of products by private operators (**private storage**). Intervention involves the competent authority in the Member State buying and storing the products until they are disposed of. Putting products into storage helps to stabilise the market for a product if there's a surplus and prices become weak.[131]

In addition, there are broad powers for the EU to stabilise markets at times of crisis. Those powers were used recently for UK producers to provide packages of support for dairy farmers in 2015 and 2016.[132]

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

> As well as helping to manage their short-term volatility, farmers may also in highly exceptional circumstances need support in the event of a significant crisis such as a disease outbreak or catastrophic weather. We propose domestic provision for safety net mechanisms currently provided by the EU Common Market Organisation regulations**,** which will allow the government to intervene in such crises. We will consider how best to define and respond to these crises in future.[133]

Defra has reported that the majority of respondents to the *Health and Harmony consultation* suggested that government intervention was essential in a crisis. Respondents did not limit the need for this to a disease outbreak or adverse weather but also "referenced market intervention in times of extreme price volatility". Consultation responses also highlighted a lack of awareness about current crisis support mechanisms and when they would be used.[134]

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

130 The EU's Common Market Organisation (CMO) is part of the Common Agricultural Policy. It is a complex legal framework provided by Regulation (EU) No 1308/2013 which consists of 232 articles "to stabilise the markets and to ensure a fair standard of living for the agricultural community".
131 GOV.UK, Private Storage Aid [as viewed on 29 September 2019]
132 Defra, Health and Harmony: The Future for Food, Farming and the Environment in a Green Brexit, February 2018
133 Defra, Health and Harmony: The future for food, farming and the environment in a Green Brexit: Summary of Responses, September 2018, p. 93
134 Ibid.

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

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

The Secretary of State can also make use of any available powers under retained direct EU legislation which provides for the operation of public intervention and aid for private storage mechanisms. **Clause 20** gives the Secretary of State the power (under the negative resolution process) to amend the retained direct EU legislation for England, including parts of the Common Market Organisation Regulation (CMO). This could include stopping or amending how the public intervention and/or private storage aid schemes operate in England.[135]

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

> Analysis suggests that public intervention and private storage aid are not required to enable farmers to manage their risks. They can have negative effects, encouraging more risky farming practices and crowding out the development of futures markets, innovative contracts and private sector insurance products, Such market intervention schemes run counter to the image of a dynamic start and self-reliant agriculture industry.[136]

[135] Bill 7 EN (2019-20), para 175
[136] Bill 7 EN (2019-20), para 172

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

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

The Regulations are subject to the Affirmative Resolution procedure.

This clause is intended to make data collection throughout the agri-food supply chain more transparent and to improve the dissemination of this information. It will enable the Secretary of State to make secondary legislation to collect and share data relevant to the agri-food supply chain to serve a specified number of purposes. These are largely related to: productivity, supply chain fairness, animal and plant disease and risk management.[137]

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

Why are these provisions needed?

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

The NFU has said that there is a "black hole" in market data in parts of the supply chain, particularly the processor-buyer end, which "stifles trust, collaboration and the development of market risk management tools".[138]

The Government states that such provisions will help farmers since:

> With more transparent data, food producers will be able to respond more effectively to market signals, strengthen their negotiating position at the farm gate and seek a fairer return. Better data will also enable farmers to benchmark their performance and to track and manage risks to their business. It will also improve disease control, and consequently productivity, through greater sharing of traceability and animal health data.[139]

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

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137 Delegated Powers Memorandum, para 127

138 NFU online, Improve Supply Chain Fairness says NFU, 25 November 2016 (Accessed 28 January 2020)

139 GOV.UK, Health and Harmony: the future for food, farming and the environment in a Green Brexit – policy statement, 12 September 2018

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

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

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

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

The Government aims to strengthen fairness in the supply chain.

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

Clause 27 gives the Secretary of State powers to make regulations to impose obligations on "business purchasers of agricultural products in relation to contracts they make for the purchase of agricultural products from qualifying sellers" (27(1)). Obligations might include a requirement to use a written contract or to include specific terms in a contract, for example on premiums or deductions. This is for the purpose of "promoting fair contractual dealing by the business purchasers of agricultural products from qualifying sellers". These powers "will not be exercised in respect of any commercial arrangements" within the Grocery Code Adjudicator's (GCA) remit (see section below on the GCA).[140]

The provision is aimed at addressing the unfair trading practices in agri-food supply chains which arise because of the disparity between primary agricultural producers who "tend to be small, individual businesses operating without strong links between them" compared to other actors further up the supply chain, who are "typically highly consolidated businesses that command substantial shares of the relevant market".[141]

Notably, the new Bill has widened the scope for the application of these powers. Formerly, the "qualifying seller" was limited to "the producer" and only "first purchasers" were covered by the requirement, as opposed to "business purchasers" in the current Bill wording. This has been welcomed by groups such as Sustain who had advocated such a change.[142]

[140] Bill 7- EN (2019-20) para 238
[141] Bill 7-EN (2019-20) para 234
[142] Sustain press release, New Agriculture Bill launched, Sustain comments on the changes, 16 January 2020

Fairness issues have been long debated with farmers expressing concern that they are at disadvantage in the marketplace.[143] Discussions have focussed particularly on the contractual regime and enforcement of codes of practice.

Mandatory Written Contracts in the Dairy Sector

A potential use of this clause is to require a written contract between a producer and purchaser. Dairy UK has noted in connection with the previous Bill that it allows the Secretary of State to regulate contracts in agriculture and that this has "the potential of providing greater flexibility than is currently allowed" under the EU's Common Market Organisation CMO rules".[144]

Currently EU rules give Member States discretion to make written contracts between milk producers and processors mandatory or not. Voluntary approaches have been in place for several years in the UK dairy sector. Volatility in prices led to establishment of the Voluntary Code of Practice (VCOP) for dairy contracts in 2012.[145] A review of the operation of the code in 2012 by Alex Fergusson MSP recommended that the code remain voluntary in nature.[146]

Prior to publication of the previous Bill, the Government had said in 2018 that it planned to consult on mandatory dairy written contracts after public consultation.[147] Dairy UK said then that it wanted Defra to delay the regulation of contracts in the dairy sector until the powers of the Agriculture Bill were in place.[148]

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

> …has not created significant lasting change. And so now we have no choice but to call for the regulation of dairy contracts. We can't go on with farmers shouldering all of the risk and buyers chopping and changing contract terms whenever it suits them.[149]

Defra Minister George Eustice said in October 2019 that the Government intended to introduce mandatory written contracts in the dairy sector and would consult on proposals after the UK leaves the EU.[150]

Groceries Code Adjudicator

143 See for example NFU online blog, NFU members press concerns of unfair trading, 9 March 2017 (Accessed 23 January 2020)
144 Dairy UK, Dairy UK responds to the publication of the Agriculture Bill, 13 September 2018
145 The Dairy Industry Code of Best Practice for Contractual Relationships available via NFU online (Accessed 25 September 2018)
146 AHDB archive, Voluntary Code can benefit both producer and processor, according to review, (Accessed 23 January 2020)
147 HC Deb, 25 June 2018, Dairy farming written question 154580
148 Dairy UK, Dairy UK responds to the publication of the Agriculture Bill, 13 September 2018
149 NFU online, Regulation of dairy contracts, updated May 2018 (Accessed 25 September 2018)
150 PQ 292403 [on Milk: Contracts], 4 October 2019

Some commentators have called for the remit of the Groceries Code Adjudicator to be extended to cover more of the supply chain. However this Bill does not do that. Rather it includes other measures on transparency and contracts, as outlined above.

The Groceries Code Adjudicator Act 2013 established the Groceries Code Adjudicator (GCA) to regulate the operation of the Grocery Supply Code of Practice.[151] The role of the GCA is to act as "the independent regulator ensuring that regulated retailers treat their direct suppliers lawfully and fairly".[152] The Explanatory notes to the Bill note that:

> it is widely recognised that the GCA has improved the relationship between large grocery retailers and their direct suppliers and the first statutory review of the GCA found that it is an exemplary modern regulator.
>
> However the majority of farmers do not supply supermarkets directly. They are therefore not covered by the GCA and can be exposed to unfair trading practices".[153]

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

The EFRA Committee has inquired into the remit of the GCA on several occasions in recent years and has argued that the remit of the GCA should be extended to cover indirect suppliers and so cover the whole food supply chain.[154]

The Government said in 2018 that it expected that obligations will be set out in statutory, sector-specific codes "which will initially be introduced in the sectors where voluntary codes have been unable to significantly improve contractual relationships (for example dairy)".[155]

The Delegated Powers Memorandum accompanying the Bill provides more detail. It states that statutory codes will be developed through consultation with industry.[156] This may take some time to do as each sector-specific code will go through the consultation process.

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[151] Commons Library Briefing Paper, Supermarkets: the Groceries Code Adjudicator, 12 November 2015, CBP 6124

[152] GOV,UK Groceries Code Adjudicator webpages (Accessed 28 January 2020)

[153] Bill 7-EN (2019-20), paras 235& 236

[154] Letter from Neil Parish, Chair of Environment, Food and Rural Affairs Committee to Rt Hon Michael Gove MP, 11 January 2018

[155] Bill 7-EN (2019-20), para 239

[156] Delegated Powers Memorandum, para 146

10. Part 3 Chapter 3: Producer Organisations

Background

Part 3, Chapter 3, Clauses 28-30 and **Schedules 1 and 2** aim to "support farmers in getting the right price for the food they produce, clamping down on unfair trading practices along the supply chain".[157]

This part of the Bill replaces the existing EU-derived regime for the recognition of Producer Organisations (POs). It recreates existing types of recognition criteria to minimise disruption for existing POs, and because the current model is familiar and remains suitable for a domestic regime.[160]

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

Producer organisations may help to concentrate supply, improve the marketing of products, optimise production costs and carry out research. The establishment of POs is encouraged by EU rules. Those POs specifically recognised by their Member State benefit from a number of exemptions from competition rules with specific rules for certain sectors, in particular the fruit and vegetable sector.[161] This can strengthen the position of farmers and producers in the supply chain as they can join forces, for example for joint production planning and processing.[162]

Box 3: Dairy Crest Direct Ltd – First UK dairy producer organisation

In February 2015, the Rural Payments Agency (RPA) formally recognised Dairy Crest Direct Ltd as a Dairy Producer Organisation (PDO).

DCD had received a £110,000 grant from Defra's Dairy Fund under the Rural Development Programme for England 2007-2013

When it was set up DCD represented 1,050 dairy farmers in England and Wales supplying 1.5bn litres of milk.[158]

DCD now represents 360 farmers in Devon and Cornwall after Direct Milk DPO Ltd was established to represent DCD members transferring from Dairy Crest to Müller when Dairy Crest sold its dairy business in December 2015.[159]

UK Government guidance on POs sets out the current position on recognition of a PO for growers.[163] POs have not tended to have been as widely adopted in the UK as elsewhere in the EU. However, the

157 GOV.UK, Health and Harmony: the future for food, farming and the environment in a Green Brexit – policy statement, 12 September 2018
158 NFU online, Dairy Crest Direct launches UK's first DPO, 28 May 2015
159 AHDB, Dairy Crest Direct split into two, 24 December 2015
160 Bill 7-EN (2019-20), para 153
161 NFU, A guide to Producer Organisations in the Dairy Sector (Accessed 28 January 2020)
162 European Commission, Producer Organisations and Associations of Producer Organisations (accessed 28 January 2020)
163 GOV.UK, Introduction to Producer Organisations for Growers webpages (Accessed 28 January 2020)

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

Provisions

Clause 28 sets out the conditions that need to be met for groups of operators to be recognised as one of three types of Producer Organisation (PO). Once recognised, a PO's members can collaborate in carrying out certain activities in ways which would normally be prohibited by competition law. These exemptions are set out in Schedule 2 by way of amendment to the Competition Act 1998. (**Clause 29)**

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

Clause 30(2) allows for exceptions or additional conditions to be introduced for recognition, if there is a need for sector-specific provision "due to market conditions or other circumstances creating adverse effects on agricultural producers in that sector" and "sector-specific provision is appropriate to remedy or mitigate the adverse effects".

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

Stakeholder comment

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

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

> Farmers can give themselves greater power to negotiate the price of their produce and more power in the market place by coming together in Producer Organisations. Collective decision-making has not been the traditional model for UK farmers, but the modern supply chain means that attitudes have to change. Farmers must recognise the strength they can achieve through being part of a Producer Organisation.[164]

[164] HC 474, Third report of the House of Commons Environment, Food and Rural Affairs Committee, Farmgate Prices, Session 2015-16

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

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

11.1 Fertilisers

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

Under the 1970 Act a fertiliser is defined as something "used for the cultivation of crops or plants of any description, including trees".[165] This has led to a focus on mineral fertilisers and the new provisions aim to reflect the emergence of innovative products (such as bio-stimulants and soil conditioners/improvers). Inclusion of these measures in the Bill aims to support a reduced reliance on non-renewable materials, and highlight negative consequences of fertiliser use, including emissions and contamination of soils and watercourses.[166] Charlotte Morton, Chief Executive of the Anaerobic Digestion and Bioresources Association (ADBA), said that the Bill "sheds a welcome focus on fertilisers".[167]

Clause 31(2) of the Bill broadens what is defined as a fertiliser to allow for the "appropriate regulation of this new innovative market".[168] **Clause 31(3)** allows the regulation of fertilisers on the basis of their "function", in addition to regulation based on "composition or content" as under the 1970 Act, allowing allow different requirements to be set for different types (e.g. soil conditioner/improver, plant bio-stimulant, fertiliser inhibitor/additive, growing medium and blended fertiliser).[169] Regarding the regulatory regime, the Delegated Powers Memorandum also states:

> These will be consulted on and might be subject to a staged "roll-out", to allow the industry to adjust to the changes. A staged "roll-out" would also allow regulators to gain experience running the system with lower risk functionalities and components before increasing the ambition to regulate for higher risk level materials. This approach would be supported by delegated powers.[170]

165 *Agriculture Act 1970*, section 66(1)
166 Delegated Powers Memorandum para 188
167 Resource.co, Soil quality at heart of Agriculture Bill, 17 January 2020
168 Delegated Powers Memorandum para 190
169 Ibid., para 195
170 Ibid.

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

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

The Delegated Powers Memorandum provides more information on the envisaged assessment and enforcement regime based on product function and content (such as the use of composts or digestates as fertilisers). Conformity assessment/notified bodies will provide assessment services, often laboratory services, and it will be a requirement that a conformity assessed mark is affixed to compliant fertilisers before they are placed on the market. The market surveillance authority will, where possible, make use of current industry expectations, such as using notices and fines aligned to Environment Agency policies.[171]

Clause 31(4) also allows these regulations to amend and repeal *EU Regulation 2003/2003* relating to fertilisers, and other retained direct EU legislation. The Delegated Powers Memorandum explains that this regulation is already to be repealed by the new *EU Regulation 2019/1009*, which has a staggered application. Clause 31(4) will therefore allow those elements of the new regulation which become retained EU law to be amended or repealed if inconsistent with the new domestic regime.[172]

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

11.2 Identification and traceability of animals

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

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

[171] Ibid., paras 199-203
[172] Ibid., para 206

> deliver a competitive trade advantage, make us more resilient and responsive to animal disease and will drive innovation, interoperability and productivity improvements throughout the meat and livestock sectors.[173]

The AHDB has said that the LIS is expected to be delivered "by late 2020".[174] NFU President Minette Batters said in January 2019 that the LIS could "help build productivity, drive a progressive UK livestock industry after we leave the EU and underpin the quality of Brand Britain".[175]

Clause 32 amends the *Natural Environment and Rural Communities Act 2006* ("the 2006 Act") to enable the AHDB (established by powers under the Act) to manage the new system. The explanatory notes state that these amendments will enable the Agriculture and Horticulture Development Board (AHDB) to manage the LIS.[176]

Clause 32(1) adds a new section to the 1986 Act which allows "a board established under that Act" to be given functions relating to the collection, management and availability of information regarding animal health, movement and identification. The Delegated Powers Memorandum states that "the AHDB is ideally placed to be able to deliver the programme and the new service", but also notes that assigning the functions in this way also means that they could be assigned to any new board in future established under the Act without the need for further primary legislation.[177]

Functions may also be given relating to the means of identifying animals (i.e. the format of identification tags, and the issuing of individual identification numbers). Section 8 of the *Animal Health Act 1981* provides a power to make orders "for prescribing and regulating the marking of animals". This is amended by **Clause 32(2)** to replace reference to "the marking of animals" with "the means of identifying animals" (in relation to England), which the explanatory notes state will allow associated secondary legislation to reflect new technologies.[178] This Clause also establishes that orders under this section may bind the Crown (the explanatory notes states that this means Crown animals such as police horses will be covered).[179]

Clauses 32(3) and 32(4) amend two EU regulations, (*Regulation 1760/2000* on cattle identification, and *Regulation 21/2004* on sheep and goat identification) to disapply them in relation to England (subject to commencement). The explanatory notes state that this will allow the named EU regulations, once they have become retained EU law, to be disapplied and replaced with a new order without the need for further primary legislation.[180]

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173 AHDB, *Livestock Information Programme* [accessed 28 January 2020]
174 Ibid.
175 NFU, Livestock Information Service can transform livestock sector - NFU President, 22 January 2019
176 Bill 7-EN (2019-20), para 286
177 Delegated Powers Memorandum para 218
178 Bill 7-EN (2019-20), para 287
179 Ibid.
180 Ibid., para 288

11.3 Red Meat Levy

Background

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

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

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

For example, the levy boards calculated in 2015 that:

- 66% of sheep slaughterings occur in England but only 47% of the breeding sheep are based there; and
- 96% of pig slaughterings occur in England, but only 91% of breeding pigs are based there.[181]

In December 2015 HCC, QMS and ADHB suggested a new approach to apportion levies across nations where animals were reared in a different country from that in which they were slaughtered.[182] The Environment, Food and Rural Affairs Committee also considered the issue in its 2016 *Farmgate Prices* report, and recommended:

> that Defra amend current legislation to ensure that red meat levy funds raised are fed back to the regions in which the livestock were reared, not, as at present, those in which they are slaughtered. (Paragraph 59).[183]

In February 2018, the levy boards announced progress on joining up work to promote GB red meat, using levy funding. They stated that this interim arrangement was in place while a long-term solution was sought, which HCC chief executive Glynn Howells said would require legislation.[184]

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181 AHDB Pork, Levy boards submit possible new mechanism for red meat levy, December 2015

182 Ibid.

183 Environment, Food and Rural Affairs Committee, *Farmgate Prices*, HC 474, 2 March 2016, paras 58-9

184 QMS, Levy Bodies Announce £2 million Programme of Joint Activity, 6 February 2018

There were no provisions on the red meat levy in the *Agriculture Bill 2017-19* as originally introduced, but the UK Government said in September 2018 that discussions with the Welsh and Scottish Governments were ongoing.[185] Scottish Government Rural Economy Secretary Fergus Ewing was quoted in the press as saying the UK Government needed to "stop pledging and start acting" on the issue.[186]

Amendments similar to the provisions in the current Bill were put down at Committee Stage, and after discussion with the Member concerned, the Government supported a new amendment on the issue. Scottish National Party environment and rural affairs spokesperson Deidre Brock MP also said she would support the Government-backed clause subject to receiving assurances that the scheme would be regularly reviewed to ensure it is "operating properly" and that timescales for the scheme would be specified to give certainty to levy boards.[187]

During the Committee Stage debate in November 2018, Defra Minister George Eustice also highlighted an ongoing consultation and review of the ADHB which was considering whether there could be a different methodology for collecting the levy, potentially as an ear tag or registration levy at the point when animals are born, as a "long-term solution".[188] A request for views on the future of the AHDB was held between August and November 2018, but the summary of responses was delayed due to Defra resources being focussed on EU exit preparations.[189]

Provisions

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

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

Factors in calculating the amount to be paid may be specified in the scheme, including the number of animals in respect of which the levy was imposed that have a "given connection" to the recipient levy board's country (for example having gained some economic value in that country, as the explanatory notes state).[190]

NFU Cymru welcomed the reform of levy distribution, which it said had resulted in a "significant annual loss" of funds to HCC, and looked

185 GOV.UK, UK Government Agriculture Bill - Scotland myth-buster, 13 September 2018
186 *The Press and Journal*, Call to find 'fair solution' to red meat levy issue, 10 September 2018
187 Agriculture Bill Committee, Fourteenth Sitting, 15 November 2018 c435
188 Ibid., c434
189 GOV.UK, *Agriculture and Horticulture Development Board (AHDB): Request for views* [accessed 28 January 2020]
190 Bill 7-EN (2019-20), para 297

forward to working with the relevant bodies "to ensure that a mutually agreed, equitable and fit for purpose scheme is up and running as soon as possible".[191]

11.4 Agricultural tenancies

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

Agricultural tenancies were not dealt with in the *Agriculture Bill 2017-19* but they were the subject of a Defra consultation between April and July 2019. This followed from the work of the Tenancy Reform Industry Group (TRIG), an industry advisory group to Defra, which identified several areas of agricultural tenancy legislation presenting potential barriers to productivity and structural change. These included succession procedures which may prevent skilled farmers from taking over holdings, and restrictive clauses in tenancy agreements which could prevent tenants from accessing future agricultural and land management schemes.[192]

Then Defra Secretary of State Michael Gove had said in October 2018 that reforms around tenant farmers would be brought forward "in parallel" to the previous Agriculture Bill, but no such legislation was introduced in the 2017-19 Parliament.[193] The 2019 consultation proposed legislative changes in several of the areas raised by TRIG, as well as considering non-legislative actions, such as disseminating industry best practice, guidance, training, and model agreements.[194]

Some of the issues raised in the consultation are the subject of provision in the new Agriculture Bill, notably around restrictive clauses in tenancy agreements. The Tenant Farmers Association (TFA) welcomed the inclusions but said the tenancy provisions need to be "bolstered with further measures to assist older tenants into retirement, encourage landlords to let for longer periods of time and protect tenants from spurious notices to quit".[195] The Central Association of Agricultural Valuers, which is given a role in the new provisions around appointment of arbitrators, said "letting land out to the right people should be a key part of the changes we see under the Agriculture Bill, but we wait to see what the modernisation of tenancies will entail".[196] It was reported in January 2020 that Defra intends to put further, more "controversial",

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191 NFU Cymru, NFU Cymru responds to the publication of the UK Government's Agriculture Bill, 17 January 2020

192 Defra, *Agricultural tenancy consultation and call for evidence on mortgage restrictions and repossession protections for agricultural land in England*, April 2019, pp 8-10

193 Farmers Guardian, Gove promises tenancy reform 'in parallel' to Agriculture Bill, 3 October 2018 [paywall]

194 Defra, *Agricultural tenancy consultation and call for evidence on mortgage restrictions and repossession protections for agricultural land in England*, April 2019, pp 8-10

195 TFA, TFA Media Release – MR20/03 – New Agriculture Bill in Better Shape Than Its Predecessor, 20 January 2020

196 CAAV, Agriculture Bill is a monumental step, 16 January 2020

changes on hold with a view to introducing another piece of legislation in due course.[197]

Background to tenancies

There are two main types of agricultural tenancy:

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

The *Agricultural Holdings Act 1986* was introduced to provide more security to tenant farmers. Generally, tenancies granted under the 1986 Act have lifetime security of tenure and those granted before 12 July 1984 also carry statutory succession rights, on death or retirement. In 2017, approximately 20,500 farms in England had a 1986 Act tenancy, covering 1.4 million hectares.[198]

The *Agricultural Tenancies Act 1995* was introduced to provide a simpler, more flexible framework to encourage more agricultural lettings. Farm Business Tenancies provide a flexible framework, can vary in length and do not have statutory succession rights. In 2017, approximately 18,200 farms in England had a Farm Business Tenancy, and such tenancies with a term of a year or longer covered £1.2 million hectares.[199]

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

Arbitration and third party determination

Background

The 1986 Act currently allows landlords or tenants, by notice, to demand that a rent review or other dispute be referred for arbitration. If the parties cannot agree on an arbitrator, the tenant or landlord can apply to the President of the Royal Institution of Chartered Surveyors (RICS) to appoint one. The *Deregulation Act 2015* added an alternative mechanism through which the landlord and tenant could refer a rent review to third party determination. The Foot Anstey law firm notes that in practice, the third party will be an expert in the area, most likely an experienced land agent.[200]

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

197 Farmers Guardian, The new Agriculture Bill – an in-depth analysis of the key changes, 22 January 2020 [paywall]
198 Defra, *Agricultural tenancy consultation and call for evidence on mortgage restrictions and repossession protections for agricultural land in England*, April 2019, p. 5
199 Ibid., pp 5-6
200 Foot Anstey, *Reform of the Agricultural Holdings Act*, 20 July 2015

Provisions (in Schedule 3)

Paragraphs 2 and 3 makes various amendments to the 1986 Act to replace the demand for arbitration with a "**notice of determination**" that can precede either of the two mechanisms. The explanatory notes state that this will allow the parties to agree to the appointment of a third party to resolve a dispute at any time before the rent review date, as an alternative to arbitration.[201]

Paragraphs 4, 5 and 6 amend the 1986 Act so that other "professional authorities" can also appoint arbitrators, namely the President of the Central Association of Agricultural Valuers (CAAV) and the Chair of the Agricultural Law Association (ALA), in addition to the President of the Royal Institute of Charted Surveyors (RICS) as at present. The explanatory notes state that this will give tenants and landlords more choice.[202] The Secretary of State or Welsh Ministers are given the power to make regulations further amending the list of professional authorities. This is a Henry VIII power as it involves the amendment of primary legislation, but the Delegated Powers Memorandum states that the negative procedure (the default for regulations under the 1986 Act) is appropriate "given the narrow scope of the power". It further states that any changes introduced through regulations will be developed in consultation with industry.[203]

Paragraphs 23 to 29 also amend the *Agricultural Tenancies Act 1995* ("the 1995 Act") to make similar changes regarding professional authorities who may appoint arbitrators in disputes under that Act. The explanatory notes state that any changes to this definition in the 1986 Act (by regulations, as described above) will also apply to the 1995 Act.[204]

Requests for the landlord's consent

Background

Tenant farmers have raised the question of restrictive clauses in tenancy agreements potentially making it difficult to access support under the new "public goods" scheme. The Tenant Farmers Association's (TFA) response to Defra's tenancy reform consultation stated that many tenants are restricted to using their holdings for agricultural purposes only, and would be "disenfranchised" if landlords did not give consent for them to access new schemes providing public money for public goods. Even if consent is given, the TFA expressed concern that landlords could use this leverage to "secure unreasonable demands from tenants".[205]

The Opposition put down an amendment to the *Agriculture Bill 2017-19* at Committee Stage, which would have allowed tenants to refer

201 Bill 7-EN (2019-20), para 404
202 Ibid., para 405
203 Delegated Powers Memorandum para 243
204 Bill 7-EN (2019-20), para 415
205 TFA, *Tenant Farmers Association Response to Agricultural Tenancy Consultation and Call for Evidence on Mortgage Restrictions and Repossession Protections for Agricultural Land in England*, July 2019, paras 6.1-6.2

refusals of consent to arbitration or third party determination. Defra Minister George Eustice indicated that agricultural tenancy law was outside the scope of that Bill, but he referred to the upcoming consultation.[206] The new Bill now includes provisions dealing with this issue.

Provisions

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

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

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

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

The regulations may provide that the tenant can refer such a request for arbitration if no agreement has been reached, and that the landlord and tenant can refer the request for third party determination. The Delegated Powers Memorandum states that the dispute process will be designed in consultation with tenants and landlords, and that regulations under this paragraph can be reviewed and adjusted as the new financial assistance schemes are rolled out.[207]

Tenant Farmers Association chief executive George Dunn responded positively to these provisions, saying they would "give tenant farmers the confidence they need to make plans and participate as they desire in whatever new schemes are brought forward".[208]

The Suitability Test

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

1986 Act tenancies granted before 12 July 1984 carry statutory succession rights, on death or retirement, for close relatives provided

[206] Agriculture Bill: Fourteenth Sitting, 20 November 2018 c 532
[207] Delegated Powers Memorandum, para 236
[208] TFA, TFA Media Release – MR20/03 – New Agriculture Bill in Better Shape Than Its Predecessor, 20 January 2020

the potential successor meets certain eligibility criteria. A 1986 Act tenant can also name a successor to take over the holding when they retire, with similar conditions for succession to those that apply on succession on death. A close relative of the deceased or retired tenant can apply to the relevant Tribunal in order to succeed to the tenancy.[209]

The Tribunal must be satisfied that the applicant is both eligible and suitable. Eligibility currently includes the "Commercial Unit Test", meaning that an applicant is not eligible if they are "the occupier of a commercial unit of agricultural land". The tenancy reform consultation stated that the "Commercial Unit Test" is now out of step with policy aims of improving farming productivity by encouraging the transfer of land into the hands of skilled commercial farmers.[210]

In determining suitability, the relevant Tribunal is currently required to have regard to "all relevant matters" including experience of agriculture, age, physical health, financial standing and the views of the landlord. Defra's consultation stated that industry found this test to be out of date and setting "a low standard of suitability", due in part to the absence of a requirement for business management skills.[211]

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

Criteria which may be included are listed, and are similar to the existing test, but include criteria relating to experience/skills in agriculture "or business management". The Tribunal is still to have regard to any views stated by the landlord in determining the applicant's suitability. The Delegated Powers Memorandum explains that the details of the new "Suitability Test" will be developed in consultation with tenants and landlords, and regularly reviewed to keep up with developments in industry-led work on continuing professional development and farming skills.[212]

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

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209 In England, this is the First-tier Tribunal (Property Chamber), and in Wales, the Agricultural Land Tribunal.

210 Defra, *Agricultural tenancy consultation and call for evidence on mortgage restrictions and repossession protections for agricultural land in England*, April 2019, p. 21

211 Ibid.

212 Delegated Powers Memorandum, para 245-7

Other provisions

Paragraph 8 amends Schedule 2 of the 1986 Act to make clear that payments by a tenant to a landlord for productivity improvements should be disregarded by any arbitrator or third party in a rent review dispute. The tenancy reform consultation explained that this "may help unlock landlord investment" and productivity improvements. Without the change, Defra stated, any such payments agreed between the landlord and the tenant can currently be viewed as an obligation of the tenancy and may be deemed relevant in a rent review.[213]

Paragraph 9 deals with changes to pensionable age by amending a part of Schedule 3 of the 1986 Act which deals with notices to quit local authority smallholdings under the *Agriculture Act 1970* (sometimes referred to as "county farms").[214] The amendment establishes that the Tribunal's consent is not required for such notices when a tenant has reached pensionable age, rather than the age of 65 as currently set.

Paragraphs 19 and 20 repeal provisions of the 1986 Act requiring that, in order for a person named in the retirement notice to be able to apply to succeed to the tenancy, the retiring tenant must not be under 65. The explanatory notes state that this will mean applications for succession on retirement may be made at any age in future. Defra's tenancy reform consultation had highlighted that the removing the minimum age of 65 would allow holdings to be passed on sooner, unlocking potential productivity improvements.[215]

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

213 Defra, *Agricultural tenancy consultation and call for evidence on mortgage restrictions and repossession protections for agricultural land in England*, April 2019, p. 29
214 Defra, *Sixty-eighth Annual Report to Parliament on Local Authority Smallholdings in England*, 27 February 2019, p. 3
215 Defra, *Agricultural tenancy consultation and call for evidence on mortgage restrictions and repossession protections for agricultural land in England*, April 2019, p. 17

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

12.1 Marketing Standards

The UK currently works to a range of EU marketing standards for agricultural products which are designed to guarantee quality. They are set out in the CMO regulation. The requirements vary by products and this variation takes into account aspects such as: freshness, size and presentation.[216]

Defra's policy statement accompanying the previous Bill states that the Bill will:

> …set common marketing standards. These powers will make sure that marketing standards (for example, the grading of eggs) will protect farmers and consumers, are proportionate and will support the agriculture sector and take account of other objectives such as animal welfare.[217]

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

Clause 36 gives Ministers powers to make new provisions or amend existing provisions regarding organic certification, the import and export of organic products and the enforcement of organic regulation. This is a new section added for the 2019-20 Bill. **Clause 37** extends this power to Ministers in Scotland, Wales and Northern Ireland where it is within legislative competence.

The Delegated Powers Memorandum explains that current organic product regulations become retained EU law at the end of the implementation period on 31 December 2020. However there are only limited powers to amend them. This could restrict the ability to amend rules, for example to reflect UK environmental standards or any future trade agreements. The new power is therefore needed to enable wider changes to the law after the end of the Implementation Period.[218]

12.2 Carcass classification

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

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216 European Commission, Trade Desk: Marketing Standards (as viewed on 4 October 2018)

217 Defra, Health and Harmony: The future for food, farming and the environment in a Green Brexit, 14 September 2018

218 Delegated Powers Memorandum, Paras 277 & 278

establishing mandatory standards for carcass specification and grading.[219]

[219] DAERA, Northern Ireland Future Agriculture Policy and Framework, 1 August 2016

13. Part 6: WTO Agreement on Agriculture

What kind of WTO rules apply to agriculture?

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

These measures fall under three pillars:

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

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

In WTO terminology, subsidies are identified by 'boxes' given the colours of traffic lights (see Box 4).[220] Amber is used for subsidies that distort trade and production and should be limited, green box subsidies broadly cannot distort trade or involve price support. UK Ministers have already acknowledged that the UK might need to use its Amber Box allowances, not just Green Box allowances, in paying for a wider range of public goods than environmental enhancement.[221]

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

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

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

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

220 See WTO, Domestic support in agriculture (accessed 11 September 2018)
221 House of Lords European Union Committee, Brexit: Agriculture inquiry, oral evidence 8 March 2017, Q86

Box 4: About WTO "box" classifications

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

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

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

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

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

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

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

Source: House of Lords European Union Committee, Brexit: Agriculture report. HL paper 169, May 2016, p23

Why are these provisions needed?

After EU Exit, the UK government will be responsible for ensuring that all UK policies on domestic support in relation to agriculture and rural development are compliant with World Trade Organisation (WTO rules).[222]

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

222 Delegated Powers Memorandum, para 320

'schedule' of trade commitments at the WTO. This process is not expected to be straightforward.[223]

Defra expects the UK to receive a share of the EU's current allowance after EU Exit. AMS is the annual level of agricultural support given to agricultural producers exempting any green or blue box support (i.e. least trade distorting - see Box 4). However, the Delegated Powers Memorandum states that this is still subject to agreement with other WTO members and therefore cannot be set out on the face of the Bill.[224]

This overall UK ceiling needs to be set before individual limits for each appropriate authority across the UK can be set. The Memoranda states that while the devolved administrations will be able to implement their own agricultural support policies, compliance with WTO obligations is a reserved matter. It states that Defra is therefore responsible for notifying support schemes under the WTO AoA requirements.[225]

Scottish and Welsh Concerns

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

A Scottish Government spokesman said in 2018:

> The Agriculture Bill gives the Secretary of State wide powers to decide how farm support payments everywhere in the UK will be classified in relation to international trade rules and to set limits on how much can be paid out by each administration.
>
> "These are unilateral powers for the UK Government, despite agriculture being a devolved area. This is unacceptable."[226]

However, the UK Government's view is that the Scottish Parliament does not have the legal competence to act in this area.[227]

Welsh Cabinet Secretary for Energy, Planning and Rural Affairs, Lesley Griffiths highlighted that the WTO provisions are one of the outstanding areas of the Bill which "could have a significant effect on devolved competence". In 2018 she called for agreement on "a better process for managing this important part of agricultural support".[228]

The Delegated Powers Memorandum notes that:

> This clause has been subject to scrutiny by the devolved administrations and [Defra] has undertaken to work closely with those administrations on the making of Regulations under these delegated powers. Use of these delegated powers will therefore be subject to a high degree of scrutiny, with the balances and checks that go along with this.[229]

223 House of Commons Library Briefing CBP 08397, What if there's no Brexit deal, 10 September 2018 para 6.1
224 Delegated Powers Memorandum, para 323
225 Ibid., para 321
226 Scottish Government rejects suggestion it "misunderstood" Agriculture Bill, *Farmers Guardian*, 20 September 2018
227 Defra, UK Government Agriculture Bill: Scotland Myth Buster, 13 September 2018
228 Welsh Government, Agriculture Bill is an important step in supporting Welsh farmers post-Brexit – Lesley Griffiths, 11 September 2018
229 Delegated Powers Memorandum, para 328

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

14.1 Wales

Clause 43 states that Schedule 5 makes provisions in relation to Wales. **Schedule 5** has significant differences to the previous Bill's provisions. The previous Bill included in Schedule 3 similar provisions to those in England relating to the replacement of direct payments with payments for public goods. These are not in the new Bill's schedules. Some other measures in this Bill apply in Wales and are included in Schedule 5. For example, measures on marketing classifications and agricultural tenancies.

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

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

14.2 Northern Ireland

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

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

Powers for DAERA include the ability to reintroduce and modify the Direct Payments Regulation in relation to making payments for areas of natural constraint due to the specific environment in Northern Ireland.[230]

Ensuring Continuity

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

- the continuation of a legal basis for the current suite of agricultural support payments after EU exit,
- to provide a future Executive with the flexibility to develop future agriculture policy in Northern Ireland, and
- ensure that no constraints are placed on a future Executive's ability to continue the current schemes and options available under the Rural Development Programme and the Common Market Organisation for as long as that is considered necessary.[231]

[230] Delegated Powers Memorandum, para 448
[231] Farming News, Gove package is simply not for us, 15 September 2018

DAERA Consultation on Future Plans

DAERA published a stakeholder engagement document in August 2018 setting out the key desired outcomes and long-term vision for the NI agricultural industry:[232] This is discussed in relation to sections above and also in Commons Library Briefing Brexit: UK Agriculture Policy.

Stakeholder reaction to the Bill

The Ulster Farmers Union said in relation to the previous Bill that it was "pleased to see provisions in place that take into consideration the political situation in Northern Ireland". The Union particularly welcomed that the Bill allows for a "continued legal basis to ensure, as far as possible, that the status quo in terms of agricultural support can be continued until a new policy direction can be established".[233]

232 DAERA, Northern Ireland Future Agriculture Policy Framework: Stakeholder Engagement, 1 August 2018

233 Ulster Farmers' Union, UFU comment on UK agriculture Bill, 14 September 2018

15. Stakeholders' overall views

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

Both farming organisations,[234] and environmental groups broadly support the new 'public money for public goods' approach to future farm support schemes.[235] Notably farmers want food production itself to be considered a public good and for food production to be central to the Bill.[236] A key addition in the current Bill is a requirement that Ministers in devising financial support schemes have regard to "the need to encourage the production of food by producers in England and its production by them in an environmentally sustainable way". The Secretary of State must also report to Parliament at least once every five years on food security. This is something the NFU has long called for. The NFU has also welcomed recognition in this Bill that "food production and caring for the environment go hand-in-hand".[237] However, Chair of the Environment, Food and Rural Affairs Committee, Neil Parish, said in a recent debate that the revised Bill goes some way to address this but it does not have enough about farming and food production.

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

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

The letter added that:

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

234 NFU, Written Evidence to the Environment, Food and Rural Affairs Committee inquiry into the Agriculture Bill 2017-19, October 2019
235 Wildlife and Countryside Link, Agriculture Bill 2020: Do good things come to those who wait? January 2020
236 NFU Online, Food production must be at the heart of the agriculture bill, NFU urges Government, 10 October 2018
237 NFU online, Agriculture Bill: Hear from the President, 17 January 2020

> safeguard standards while allowing sufficient flexibility to conduct meaningful trade negotiations.[238]

Signatories also reiterated support for the establishment of a trade and standards commission. This would bring together a wide variety of stakeholders to "engage on the UK's trade policy and how it affects our standards".[239]

Farmers also want longer-term assurances on funding. The National Farmers' Union welcomed the £3 billion commitment to 2020 farm funding and the certainty for 2020 payments in provisions of the Direct Payments to Farmers' Bill. But the NFU has called for a "multi-annual budgetary framework that provides certainty for farmers and allows them to plan and invest for the future". The NFU has welcomed measures in the 2019-20 Agriculture Bill requiring the Government to publish longer-term plans.

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

Stakeholders were also keen for the previous Agriculture Bill to make faster progress. Delays in progressing that Bill led to the National Farmers' Union calling for a delay in introducing the new farm support approaches for at least a year (to 2022). Opposition Members have also criticised the failure of the previous Bill to reach the statute books.

238 NFU online, Letter to Prime Minister: NFU leads charge on trade and standards asks ahead of Brexit, 27 January 2020
239 Ibid.

16. Political party views

16.1 Labour Party

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

> Reconfigure funds for farming and fishing to support sustainable practices, smaller traders, local economies and community benefits;
>
> Embed and enhance in policy the responsibility for farmers to conserve, enhance and create safe habitats for birds, insects and other wild animals, and encourage the growth of wild flowers.[240]

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

Shadow Secretary of State for Environment, Food and Rural Affairs, Luke Pollard, has said he supported a public money for public goods approach as in the previous Agriculture Bill - with the addition of food as a public good.[241] Mr Pollard however has raised concerns about lowering of food standards in future trade deals.[242]

Criticism of delays

Opposition Members have criticised the delay in progressing the *Agriculture Bill 2017-19* in the last Parliament. Labour Shadow Secretary of State Luke Pollard said during the debate on the *Direct Payments to Farmers (Legislative Continuity)* Bill should be unnecessary.[243] He also asserted that the Government was legislating for another "cliff edge" since the complexity of new farm support funding under the Agriculture Bill could require the 2020 provisions in the *Direct Payments to Farmers Bill* to be extended.[244]

Responding to the second reading debate on the *Direct Payments to Farmers Bill*, Defra Minister George Eustice said that the Agriculture Bill had been delayed during protracted debate on the Withdrawal Agreement but that it was "back on track" for the agricultural transition period to begin from 2021 as always envisaged.[245]

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[240] The Labour Party, The Green Transformation: Labour's Environment Policy, 4 October 2018
[241] *Direct Payments to Farmers (Legislative Continuity) Bill 2019-20,* HC Deb, 21 January 2020, c178
[242] Ibid., c180
[243] Ibid., c178
[244] Ibid., c179
[245] Ibid., c217 & c218

16.2 SNP

The position of the Scottish Government about concerns over powers the UK Government is seeking in relation to Scotland under this Bill is set out in Chapter 2 above. Spokesperson Deirdre Brock has also expressed concerns over food standards in trade deals. In relation to the Bew review recommendation for an uplift in Scottish farm funds, she also argued that Scottish farmers had not received enough compensation.[246]

16.3 Plaid Cymru

Plaid Cymru Spokesman Ben Lake supported the *Direct Payments to Farmers Bill* which offered "some certainty to farmers in Wales". He argued that co-decision making was needed between the four UK nations on future regulation and finances to prevent excessive market distortion within the UK.[247]

Former Chair of the Environment, Food and Rural Affairs Committee, Neil Parish, welcomed the Bill. He raised concerns that the new Agriculture Bill, whilst being "better than it was" did not have enough in it on farming and food production. Additionally, he said that farming should not be undermined by lower environmental or animal welfare standards in future trade deals.[248]

16.4 Liberal Democrat

The 2019 Liberal Democrat manifesto said public goods and "effective land management" would be supported by reducing payments to larger farmers. Tim Farron, Liberal Democrat Rural Affairs spokesperson outlined his views on the previous *Agriculture Bill* at his Party's conference in September 2018. He has said that the Bill "amounts to a seven-year notice for many producers to quit the industry and will significantly damage the rural environment".[249] In relation to the new Bill Tim Farron noted that there were questions over farmers' ability to plan for the medium and long term if delays in the new Environmental Land Management Scheme meant there was a need to "bodge together extensions of one year at a time".[250]

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

246 Ibid., c178 and c180
247 Ibid., c201-203
248 Ibid., c183
249 UK Agriculture Bill: 'a seven-year notice to quit the industry', New Food, 18 September 2018
250 Direct Payments to Farmers (Legislative Continuity) Bill, HC Deb 21 January 2020 c191

17. Further information

The Library has published a series of related briefings on agriculture:

- House of Commons Library, Migrant workers in agriculture, June 2017
- House of Commons Library, Brexit: Future Agriculture Policy, 11 September 2018
- House of Commons Library, The Agriculture Bill (2017-19), 9 October 2018
- House of Commons Library, The UK's EU Withdrawal Agreement, updated 8 July 2019 [This refers to the previous Withdrawal Agreement and includes provisions on agriculture during the Implementation Period. See also the paper on the October 2019 Withdrawal Agreement, published 18 October 2019.]
- House of Commons Library, What happens if the UK leaves the EU with no deal? 28 December 2018 [This includes information on agri-food trade]
- House of Commons Library, Brexit: Trade tariffs if there's no deal, 13 March 2019
- House of Commons Library Briefing, EU preparations for a no deal Brexit, 30 July 2019
- House of Commons Library Briefing, No deal Brexit: What happens to farm payments, 13 August 2019
- Commons Library Briefing, Brexit: Trade issues for food and agriculture, November 2019
- Commons Library Briefing, Direct Payments to Farmers (Legislative Continuity) Bill (2019-20), January 2020
- Commons Library, Insights for the new Parliament: Farm Futures, 24 January 2020
- Commons Library Insight, Brexit next steps: Farm funding in 2020, 29 January 2020
- Key relevant environment briefings are:
  - Commons Library Briefing, 25 Year Environment Plan, January 2018
  - Commons Library Briefing, Analysis of The Environment Bill, 24 October 2019 [this refers to the Environment Bill introduced in the 2019 session, before the dissolution of Parliament and subsequent General Election]

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