HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

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The Agriculture Bill (2017-19)

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Contents:

Contents

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Summary

The Agriculture Bill 2017-19 (HC Bill 266) was published on 12 September 2018. Second Reading of the Bill in the House of Commons is scheduled for Wednesday 10 October 2018.

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

The Bill provides for a range of enabling powers to ensure "stability" for farmers as the UK exits from the EU's Common Agricultural Policy and compliance with the World Trade Organisation Agreement on Agriculture. It also introduces new measures to change the way in which farmers and land managers are supported in the longer term.

It is the first substantial Brexit Bill in a domestic policy area which covers both devolved and reserved matters.

Leaving the CAP

The UK will have to leave the EU Common Agricultural Policy under any Brexit scenario. The body of EU regulation which forms the CAP will become 'retained EU law' on Exit Day.

Currently CAP allows for direct payments to farmers (subsidies), rural development payments (including agri-environment schemes) and certain market interventions.

As the UK has been a part of the CAP since 1973 the UK Government and stakeholders have described the Bill as a historic opportunity to radically reshape domestic agricultural policy. 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.

This 2018 Bill sets out to provide the architecture for most parts of the UK to start to develop their approaches to supporting farm businesses whilst meeting international trading obligations.

Funding

The UK Government has pledged to continue to commit the same cash total in funds (some €4bn per year) for farm support across the UK until the end of this parliament, expected in 2022. It 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".[1]

An enabling Bill

The Bill is an 'enabling' Bill containing 25 delegated powers with five of these allowing Ministers to modify primary legislation (Henry VIIIth powers). A Delegated Powers Memorandum and a Defra Policy Statement provide more detail on the powers being sought.

[1] HL 10006 [Agriculture: Subsidies] 18 September 2018

The UK Government has said that the Bill is "a deliberate departure" from the CAP approach. These delegated powers are designed to allow government policy to "evolve" in response to "changing environmental priorities and changing social and economic circumstances", reduce the bureaucracy of farm support and regulation and to enable the government to respond to the outcomes of EU withdrawal negotiations. This includes a 'no deal' scenario.

A UK-wide Bill?

The main body of the Bill applies to England. However, **Schedule 3** (Wales) and **Schedule 4** (Northern Ireland) extend similar powers to Welsh Ministers and the Department for Agriculture, Environment and Rural Affairs (DAERA) so that they can start preparing replacement schemes.

These powers were extended at the request of the Welsh Government and DAERA. However, the Scottish Government has not currently taken up the offer of powers in the Bill as it is in disagreement with the UK Government about its overall approach to repatriating EU powers in devolved areas of competence.

There are no specific Scottish provisions in the Bill. Scotland is however covered by the UK provisions relating to the World Trade Organisation.

What does the Bill do?

'Public payments for public goods'

- **Part 1 (Clauses 1-3)** 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. *(**Schedule 3** provides similar powers for Welsh Ministers but with greater emphasis on rural communities).*

Phasing out of Direct Payments

- To make way for this system, **Part 2, Chapter 1 (Clauses 4-8)** allows for the **phasing out of direct payments** (as currently provided for under the Common Agricultural Policy). *(**Schedule 3** introduces similar provisions for Wales but phase-out and delinking powers are not extended to Northern Ireland)*
- In England and Wales this is over a **7-year agricultural transition period** from 2021 with no direct payments being made after 2027 *(**Clause 5** and **Schedule 3**)*

Potential to 'delink' payments from farming requirements

- **Clause 7** 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 7(7) 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.

Data collection

- **Part 3 (Clauses 12-16)** includes wide powers, extending to Wales and Northern Ireland, to collect and share data from those involved with/having an impact on, matters linked to certain activities in, the agri-food supply chain. Household consumers are excluded from the requirement.

Market intervention

- **Part 4** of the Bill provides powers to reshape the future interventions that can be made in the market 'in exceptional circumstances'

Marketing Standards

- **Part 5** provides powers to tailor and modernise existing marketing standards regarding the quality of agricultural products and product information to customers in England. *(This power is extended to Wales and Northern Ireland in Schedules 3 and 4 respectively).*

Producer Organisations and Fairness in the supply chain

- **Part 6 (Clauses 22-25)** aim to strengthen the position of food producers in the supply chain. Measures are included to allow UK Producer Organisation (PO) rules to be introduced in place of EU rules. **Clause 25** provides for powers to introduce sector-specific codes. E.g. in areas where voluntary codes have not worked.

World Trade Organisation obligations

- **Part 7** includes provisions to secure compliance with the WTO Agreement on Agriculture. **Clause 26 supports UK membership of the WTO and the** Agreement on Agriculture by allowing the UK Government to set financial ceilings on the devolved administrations in relation to agricultural support that is considered as trade distorting.

Stakeholder reaction

The reaction to the Bill has been mixed. Whilst both farming organisations and environmental groups broadly support the new 'public money for public goods' approach to future farm support schemes (in England and Wales), there is concern from both groups that there will not be sufficient future funding beyond this Parliament.

A lot of stakeholder comment has focussed on whether the Bill has the right balance of measures between incentivising environmental protection and supporting productivity.

There has been a notable absence of consumer comment.

1. Some quick questions answered

1.1 Why is the Bill needed?

Under any Brexit scenario the UK has to leave the EU's Common Agricultural Policy (CAP) and its system of farm support payments, rural development programmes and market measures.

The Bill provides a range of powers aiming to ensure that the UK can make a transition out of the CAP and implement new approaches to farm payments and land management.

The Delegated Powers Memorandum for the Bill states that it is "a deliberate departure from the approach under the CAP."[2]

The CAP is primarily governed and underpinned by a core legislative framework of directly applicable EU regulations with associated delegated and implementing acts (tertiary legislation) for the period 2014-2020 in line with the EU budget cycle. These will be incorporated into UK law upon EU Exit by the *European Union (Withdrawal) Act 2018*. They will become retained direct EU legislation and it will be necessary to remove and reshape some elements of this to ensure that it works at domestic level.

The UK Government has said that the introduction of the Bill now means that:

> …all the necessary measures will be in place for the start of the agricultural transition in 2021, delivering a smooth transition to the new domestic policy. [3]

1.2 Is a money resolution needed?

Yes. A money resolution is required because the Bill allows for the Secretary of State to provide new financial payments to land managers and honour existing financial support under the CAP.[4] This will give rise to new public expenditure.

1.3 Is this a UK-wide Bill?

The Agriculture Bill is the first major Brexit related Bill to cover 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. [5]

[2] Defra, Agriculture Bill: Delegated Powers Memorandum from the Department for Environment, Food and Rural Affairs to the Delegated Powers and Regulatory Reform Committee, 12 September 2018 p.3
[3] Defra, Landmark Agriculture Bill to deliver a Green Brexit, 12 September 2018
[4] Bill 266-EN para 323
[5] Policy paper. Agricultural framework progress update: September 2018, A joint statement by the UK Government and the Welsh Government, 12 September 2018

The Bill mainly contains provisions setting a future agricultural policy framework for England. However, in some areas it also extends powers to **Wales** (Clause 27, Schedule 3) and **Northern Ireland** (Clause 28, Schedule 4).

Additional powers are given to Welsh Ministers in Part 1 of the Bill enabling them to give financial assistance, supporting businesses or communities in rural areas.

Areas where there are similar powers across England, Wales and Northern Ireland include: providing financial support to farmers after exiting the EU collection and sharing of data, intervention in agricultural markets, marketing standards and carcass classification.

Clause 34 sets out the extent of the Bill. Paragraphs 270- 274 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.[6]

There are also some provisions relating to reserved matters which extend to the whole of the UK. For example, in relation to the World Trade Organisation (WTO) Agreement on Agriculture and Competition Law.

Lesley Griffiths, Welsh Cabinet Secretary for Energy Planning and Rural Affairs, has said that she asked the UK Government to include powers for Welsh Ministers in the Agriculture Bill as "transitional" time limited provisions until a Welsh Agriculture Bill can be brought forward to "design a Made in Wales" system which works for Welsh agriculture.[7]

The provisions for **Northern Ireland** are "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."[8]

1.4 Coverage for Scotland

There are no Scottish-specific provisions in the Bill.

Defra has reported that whilst the Welsh Government and the Northern Irish Department for Agriculture, Environment and Rural Affairs (DAERA) took up the opportunity to have powers in the Bill, the Scottish Government "had chosen not to take any powers" in the Bill to establish new farm support systems after leaving the CAP.[9]

The UK Government has said:

> Agriculture is devolved and that is their choice. But our offer remains on the table.[10]

[6] Bill 266-EN (2017-2019)
[7] Welsh Government, Written Statement: Introduction of the Agriculture Bill, 12 September 2018
[8] Bill 266-EN para 254 -255
[9] Defra, UK Government Agriculture Bill: Scotland Myth Buster, 13 September 2018
[10] Defra, UK Government Agriculture Bill: Scotland Myth Buster, 13 September 2018

To date, no equivalent Scottish legislation has been announced. The Scottish Government Programme for Government 2018-19 (September 2019) does not include plans for an Agriculture Bill.

On publication of the Bill, the Scottish Government Cabinet Secretary for Rural Economy, Fergus Ewing, was widely reported in the press 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…
>
> 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. [11]

Mr Ewing has since made a statement on CAP in the Scottish Parliament and in answering questions he highlighted that:

> …we have received very strong advice that the UK Agriculture Bill conducts a power grab over significant devolved powers. That is completely unacceptable to us, and we will continue to seek to reason with Mr Gove to amend the bill accordingly.[12]

The UK Government took the unusual step of issuing a 'Scotland myth-buster' press release to explain the lack of Scottish provisions:

> Agriculture is devolved to the Scottish Government and will remain devolved. This Bill does not change that. Claims of 'power grab' are completely false and misleading.
>
> The UK Government is not seeking consent from the Scottish Parliament on this Bill as we are not legislating in areas of devolved competence in Scotland.
>
> No powers that could constrain devolved policy choices in Scotland are being introduced.
>
> For example, there is nothing in the Agriculture Bill which will stop existing Scottish Government policies – including the Voluntary Coupled Support and Less Favoured Area Support Scheme. They will still be possible under both retained EU law and the Agriculture Bill.
>
> Contrary to claims, Scottish farmers will continue to receive the same level of funding as they currently do until the end of this Parliament in 2022.[13]

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 are shared by Lesley Griffiths. 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

[11] 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

[12] Official Report of the Scottish Parliament, Common Agricultural Policy, 28 September 2018

[13] Defra, UK Government Agriculture Bill: Scotland Myth Buster, 13 September 2018

the WTO Agreement on Agriculture are reserved and that there is a strong relationship between WTO powers and devolved responsibilities on agriculture support.[14] (See also Chapter 9 on the WTO provisions).

1.5 When does the Bill come into force?

Clause 35 of the Bill sets out the commencement provisions.

The Secretary of State will lay regulations indicating when Clauses 22 to 24 and Schedule 2 (relating to Producer Organisations) will come into force. The regulations can say that they come into force at different times.

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.

Section 31 and Schedule 5 will not come into force until after the UK has left the EU. The Bill provides that these provisions will come into force on exit day instead if the rest of the Bill comes into force before that section. [15] The provisions relate to intervention in agricultural markets, marketing standards and carcass classification in England, Wales and Northern Ireland.

Legislative Consent

The Government has said that it will/would ordinarily (in the case of Northern Ireland) seek legislative consent for the following provisions:

- Clause 27 and Schedule 3 (within the competence of the National Assembly for Wales)
- Clause 28 and Schedule 4 (within the competence of the Northern Ireland Assembly) [16]

1.6 Does the Bill set out a UK agricultural framework?

No. The UK Government and Welsh Government issued a joint statement on Agricultural Frameworks in September 2018 which states that they are both of the view that the "vast majority of policy areas can be suitably managed through non-legislative, inter-governmental coordination". [17]

As part of the process, the Government are proposing to "develop an administrative framework for co-ordinating agricultural support spending and changes to marketing standards". The aim of this is to ensure effective co-ordination and dialogue between the administrations on how any changes to legislation in one part of the UK may affect other parts.[18]

[14] Welsh Government, Written Statement: Introduction of the Agriculture Bill, 12 September 2018
[15] Bill 266 – EN (2017-19) paras 319-320
[16] Bill 266-EN, paras 46-48
[17] Defra/Welsh Government, Agricultural Framework Progress Update, September 2018
[18] As above

There are other agriculture-related frameworks also being discussed, such as organic farming, as well as arrangements for cross-border holdings.

The UK Government has said:[19]

> We will continue to work with all parts of the UK to put in place a wider common framework relating to agriculture once we leave the EU.

1.7 Does the Bill contain delegated powers?

Yes. These are explained in the Delegated Powers Memorandum which accompanies the Bill.[20] 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 25 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 memorandum, summarises what the delegated powers are designed to achieve:

> The Agriculture Bill is a deliberate departure from the approach under the CAP of setting out detailed legislative rules covering the entire regulatory infrastructure of every payment scheme and of other aspects of agricultural policy. This will not be required in a purely domestic system. In particular, the delegated powers in the Bill are designed to:
>
> a) allow government policy to evolve in response to changing environmental priorities and changing social and economic circumstances;
>
> b) move away from the rigid bureaucratic constraints of the current CAP legislation; and
>
> c) enable government to respond to the, as yet unknown, outcomes of EU withdrawal negotiations. [21]

1.8 Has there been consultation on future farming plans across the UK?

Yes.

As a precursor to the Bill, Defra published consultation proposals in its February 2018 command paper Health and Harmony: the future for

[19] Defra, UK Government Agriculture Bill: Scotland Myth Buster, 13 September 2018
[20] Defra, Agriculture Bill: Delegated Powers Memorandum from the Department for Environment, Food and Rural Affairs to the Delegated Powers and Regulatory Reform Committee, 12 September 2018
[21] Defra, Agriculture Bill: Delegated Powers Memorandum from the Department for Environment, Food and Rural Affairs to the Delegated Powers and Regulatory Reform Committee, 12 September 2018 p.3

food, farming and the environment in a Green Brexit. The consultation closed in May 2018 and received over 44,000 responses.

Separate, devolved-led, consultations in the devolved administrations have also been issued and have concluded except for in Wales:

- Scottish Government, Stability and Simplicity: Proposals for a rural funding transition period, June 2018 (consultation closed 15 August 2018 with more than 120 responses and a report will be published later this autumn).[22]
- Welsh Government, Brexit and Our Land: Securing the future of Welsh Farming, July 2018 (consultation open until 30 October 2018)
- The Northern Irish Department for Agriculture, Environment and Rural Affairs (DAERA), Northern Ireland Future Agriculture Policy Framework: Stakeholder Engagement , August 2018 (consultation closed on 10 October 2018)

In addition, the House of Commons Environment, Food and Rural Affairs Committee carried out an inquiry on the proposals in the Health and Harmony consultation, reporting in June 2018.[23]

Findings from the inquiry and the proposals set out in these consultations are detailed in the Library Briefing Paper Brexit: UK Agriculture Policy.

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1.9 A new approach to domestic agriculture policy

Leaving the EU means leaving the EU Common Agricultural Policy under any Brexit scenario. It also means that the UK will have to meet its World Trade Organisation (WTO) obligations relating to agriculture through its own direct membership rather than through the EU.

The Agriculture Bill seeks to 'enable' the legislative framework to do this and includes a wide range of delegated powers.

When introducing the Bill, Secretary of State for Environment, Food and Rural Affairs, Michael Gove said:

> "This is an ambitious Bill – representing the first new domestic farming policy in nearly 50 years – which ensures that our farmers' contribution to maintaining our countryside and producing healthy food will be greater than ever before. It is the first step towards a brighter, better and greener future for farming and our natural world outside the EU".[24]

[22] Scottish Parliament Official Report, Common Agricultural Policy, 26 September 2018
[23] HC 870, Sixth Report of the House of Commons Environment, Food and Rural Affairs Committee, The Future for Food, Farming and the Environment, June 2018
[24] HCWS 954 [Agriculture Bill] 12 September 2018

Many commentators are reflecting on the *Agriculture Act 1947* as the last time there was a new 'home grown' direction in agricultural policy of the scale proposed.[25]

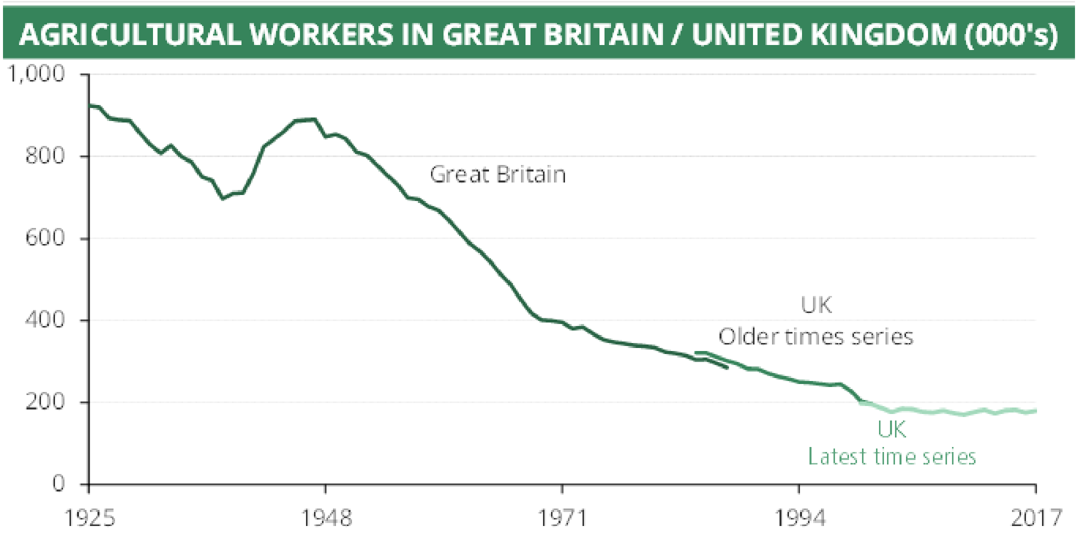
That Bill (mainly for England and Wales) sought to increase food production after the Second World War and introduced higher farming standards. Minister of Agriculture at the time, Thomas Williams, introduced it with the themes of stability and efficiency.[26] He also noted that if it had not been for the "efforts of the agricultural community during the recent war, it is just conceivable that these islands might have been starved into submission".[27]

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).

The Bill makes provision for the current system of direct payment to farmers, mainly based on the area farmed, to be phased out by 2028 in England. The Government's aim is to move to a new Environmental Land Management Scheme which makes payments for public goods such as environmental enhancement, climate change mitigation and improved access to the countryside.

The Devolved Administrations have also set out proposals for making the transition out of the Common Agricultural Policy (CAP) – see section 1.8.

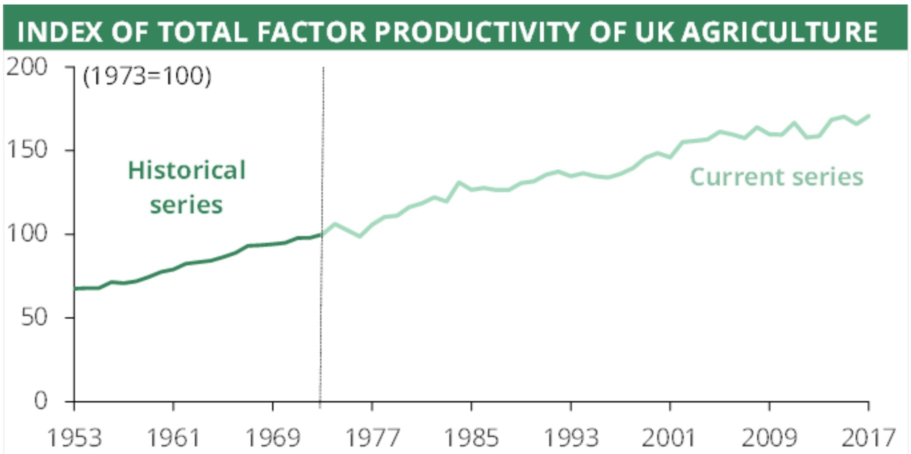
Figure 1



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 2017, Chapter 2 - The Structure of the Industry, Table 2.5

[25] 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
[26] HC Deb 27 January 1947 vol 432 c 624
[27] HC Deb 27 January 1947 vol 432 c623

Figure 2



Source: Defra, [Agriculture in the United Kingdom: chapter 3 – farming income](), table 3.2, May 2018 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 has published 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 delegated powers set out in the Bill.

1.10 Overall stakeholder reaction

The reaction to the Bill has been mixed. Whilst both farming organisations and environmental groups broadly support the new 'public money for public goods' approach to future farm support schemes (in England and Wales), there is concern from both groups that there will not be sufficient funding for these in the future. There has been a notable absence of comment from consumer groups.

A lot of stakeholder comment has focussed on whether the Bill has the right balance of measures between pursuing the new public goods approach to farm payments (see section 2.1) and improving farm productivity and food production.

There has also been some frustration that although the Bill indicates the broad direction of travel for agricultural policy more detail is not yet available. For example, Organic Farmers and Growers (a licensing body for organic farmers) has said that "whilst the plans set out some positive measures for organic producers, more detail is urgently needed".[28] The Country Land and Business Association (CLA) has taken a similar approach welcoming the broad range of public benefits supported in the Bill but wanting to see further details on areas such as future support for productivity. [29]

The Soil Association has been disappointed that the Bill is "not the radical rethink of food production that is desperately needed if the government is serious about saving nature, restoring soil health and tackling climate change."[30]

However, The National Trust welcomes the move away "from the current outdated and overcomplicated model that has not worked for farmers or nature".[31]

The National Farmers Union (NFU) has highlighted that this would be the first time since the 1920s that farmers would not be subsidised for basic food production.[32] It wants to see the Bill indicate that "food production is a central pillar of future policy".[33]

The Tenant Farmers Association has said:

> "This will be the first time that the UK Parliament will have had to think about setting a clear strategy for UK agriculture since before we joined the European Union in 1973. MPs must grasp the enormity of this task and the responsibility that is now being placed on their shoulders to deliver for farming, the environment and the health and welfare of our citizens".[34]

At first glance of the Bill the TFA said:

> "It fails to provide a comprehensive strategy for ensuring the sustainability and resilience of our domestic agriculture and the environment it supports."

Wildlife and Countryside Link (a coalition of 48 organisations) wants to see the public goods provision given priority in the Bill over other demands on public funding such as productivity support if the government is to achieve its ambition of leaving the environment in a better state for the next generation. It has also highlighted that a strong regulatory baseline is needed to "ensure essential environmental protections and underpin taxpayers' investment".[35]

Parliamentary Comment

Sue Hayman, Shadow Secretary of State for Environment, Food and Rural Affairs addressed an NFU/Food and Drink Federation fringe

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[28] Organic Farmers and Growers, New Agriculture Bill offers promise but lacks details says OF&G, 14 September 2018
[29] CLA, CLA reaction to Agriculture Bill, 12 September 2018
[30] Soil Association, Agriculture Bill is not the radical rethink we need, 12 September 2018
[31] National Trust, Agriculture Bill – National Trust response, 12 September 2018
[32] Comment from NFU/Food and Drink Federation fringe meeting at the Liberal Party Conference as reported in Ag Bill is 'seven-year notice to quit' *Farmers Weekly*, 21 September 2018 p.7
[33] NFU online, The Agriculture Bill – more than meets the eye, 2 October 2018
[34] MR18/36 Tenant Farmers Association, Parliament is set to chart the course of UK agriculture policy for the first time in a Generation, 1 October 2018
[35] Wildlife and Countryside Link, Agriculture: Update from the Group, 28 September 2018

meeting at the Labour Party Conference in September 2018 and highlighted that Labour would "fight to add direct payments for food producers" into the Bill and would put this in a "food manifesto" that would form the basis of the food policy of a future Labour government. However, she said that details of Labour's proposed farm payments had not been finalised. [36]

She also said that her team were looking at the idea of taking the food and farming budget out of the Treasury's annual budget cycle, committing to spending over several years to give more security and stability to food producers.[37]

The Labour Party's September 2018 Environment Policy also suggests that farming payments should support public goods. Its commitments relating to farming include: [38]

- 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

Tim Farron, Liberal Democrat Rural Affairs spokesperson outlined his views on the 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".[39]

Caroline Lucas, Green Party Co-Leader, has noted:

> …This Agriculture Bill has been injected with warm words about protecting our environment - but its failure to commit to long-term funding and strong enforcement powers means it reads more like a wish-list than a plan of action.
>
> While it's good to see an end to subsidies for wealthy landowners and ideas for encouraging farmers to improve our environment, promised payments for 'improving productivity' could end up accelerating industrial agriculture's destruction of nature. [40]

The House of Commons Environment, Food and Rural Affairs Committee has launched a short inquiry on the scope, provisions and powers proposed in the Bill.

Commenting on the introduction of the Bill to the Commons, Chair of the Committee, Neil Parish said:

> "The Agriculture Bill will be a landmark piece of legislation with potential to transform UK farming and commit to environmental protections.

[36] Direct payments would continue under Labour, Farmers Weekly, 28 September 2018
[37] As above
[38] The Labour Party, The Green Transformation: Labour's Environment Policy, 4 October 2018
[39] UK Agriculture Bill: 'a seven-year notice to quit the industry', New Food, 18 September 2018
[40] Caroline Lucas: Agriculture Bill "could end up actually destroying nature" 12 September 2018

> As Chair of the cross-party EFRA Committee, I look forward to scrutinising the details it contains, and consider what practical implications it will have for the British farming sectors."[41]

1.11 What does the CAP currently provide?

The Common Agricultural Policy (CAP) runs for a seven-year period in line with the EU budget cycle. The current CAP agreement and funding runs until 2020 and the EU process for agreeing the new CAP round for 2021-2027 is already underway.

The EU has budgeted its CAP post-2020 proposals on the basis that the UK does not participate as the CAP is not open to association with third countries.

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

Pillar I

Direct payments (€3.2 bn in 2017). 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** (€0.8bn in 2017) which includes support for agri-environment schemes and the wider rural economy.

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

House of Commons Library Briefing Brexit: UK Agriculture provides further background on the CAP. The Explanatory Notes also provide a Legal and Financial Overview of the CAP.[42]

The UK currently receives around €4bn in CAP funding each year.

Table 1 below show the breakdown across payments and across the UK Around 80% is spent on Direct Payments to farmers under Pillar 1. This also includes single Common Market Organisation (SCMO) interventions

41 House of Commons Environment, Food and Rural Affairs Committee, Agriculture Bill inquiry launched, 12 September 2018

42 Bill 266-EN (2017-2019) para 15-45

to support agricultural commodity prices). The remaining 20% is spent under Pillar 2 which includes agri-environment schemes and wider rural development projects.[43]

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
Total England CAP payments	2,761	2,696	2,777	2,792	2,714	2,533	2,626	2,525
Total Wales CAP payments	413	417	426	406	413	367	338	356
Total Scotland CAP payments	779	826	840	819	757	799	584	732
Total Northern Ireland CAP payments	384	388	390	400	415	410	379	361
Total UK CAP payments	**4,337**	**4,327**	**4,433**	**4,417**	**4,299**	**4,109**	**3,927**	**3,974**
Of which:								
Pillar 1	**3,424**	**3,309**	**3,348**	**3,326**	**3,234**	**3,150**	**3,121**	**3,171**
of which:								
Direct Aids	3,325	3,304	3,290	3,285	3,195	3,112	3,035	3,080
Market price support [b]	99	5	58	41	39	38	86	91
Pillar 2 [c]	**913**	**1,018**	**1,085**	**1,091**	**1,065**	**959**	**806**	**803**
of which:								
EAFRD [d]	512	653	742	752	798	709	641	542
Co-financing	401	365	343	339	267	250	165	261

Notes:

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

b.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.

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

d. 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

https://www.gov.uk/government/statistical-data-sets/agriculture-in-the-united-kingdom

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

Allocation of agricultural budgets between the devolved administrations is reserved.

EU CAP funding is provided at Member State level. This means that the UK's funding is then allocated by the UK Government to the devolved administrations. The basis for this is 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 who wanted a higher share. Environment Secretary, Michael Gove has suggested that the particular challenges of upland farming and the particular needs of Scotland and Northern Ireland may be acknowledged more in future allocations.[44]

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

44 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

House of Commons Library Briefing Brexit: UK Agriculture (Section 2.4) provides background on these funding allocations and the current debates on future funding.

The UK Government has guaranteed current levels of funding (cash total) until 2022 across the UK which will continue to be ring-fenced for agriculture and the rural economy.[45]

The amount of future funding that each part of the UK receives for successor arrangements beyond EU exit will depend on the outcomes of discussions between the devolved administrations and the UK Government on the financial settlements reflecting EU exit and the UK Government's 2019 Spending Review.[46]

The Scottish Cabinet Secretary for Rural Economy, Fergus Ewing, has said that there has been a "lack of clarity on key funding questions from the UK Government". In a statement to the Scottish Parliament on 26 September 2018 he said:

> …One of the most pressing of those is the basis on which Scotland's future funding allocation will be made. It cannot be made on the basis of the current low rate per hectare—the lowest in the UK. Since 2013, the Scottish Government, with the support of Parliament, has been trying to get that resolved. The failure of successive Tory Westminster Governments to honour their promises on convergence funding is problematic in two key ways. First, Scottish farmers have been short changed to the tune of £160 million. That amounts to about £14,000 for each hill farmer or crofter in this land.
>
> Secondly, it means that our farmers and crofters could continue to lose out in the future if the historical payment rates are used to determine funding allocations beyond Brexit. I welcomed the most recent promise from Michael Gove to review that situation, but I have been less welcoming of the unwarranted delay in getting that review under way. Let me make it clear that I will not stop pressing until it is under way, and until Scotland is guaranteed a fair funding allocation in the future. [47]

UK Government Scottish Secretary, David Mundell has said:

> The UK Government has already agreed to commit the same cash total in funds for farm support for Scotland until the end of this Parliament.
>
> This Bill ensures that new systems of farming support can be put in place after 2020 in England and Wales.
>
> Farmers in Scotland need the same reassurance - and time is running out for the Scottish Government to act.
>
> It is simply not acceptable for Scottish farmers to be kept in the dark about the future of agricultural policy in Scotland.[48]

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45 As above and Letter from George Eustice, Minister of State, Department for the Environment, Food and Rural Affairs to Lord Teverson, Chair of the House of Lords EU Energy and Environment Sub-Committee, 11 September 2017.

46 Scottish Government, Stability and Simplicity: Proposals for a rural funding transition period, June 2018 para 8

47 Scottish Parliament Official Report, Common Agricultural Policy, 26 September 2018

48 Defra, UK Government Agriculture Bill: Scotland Myth Buster, 13 September 2018

2. Part 1: New Financial Assistance Powers

Part 1 of the Bill **(Clauses 1-3)** legislates for a new, central focus for domestic agriculture in England - public payment for public goods. The Government wants this approach to underpin a new Environmental Land Management System which will be introduced as the current Direct Payment system is phased out (see section 3.1).

Details of the schemes are not yet available and approaches will be trialled in 2019 and 2020 with pilots in 2021. Part 1 of the Bill therefore provides for the overall outcomes which the new system is aiming for and the administrative and enforcement framework.

Part 1 provisions are replicated in Part 1 of **Schedule 3** for Welsh Ministers with some additions relating to support for rural communities. There are no similar provisions for Northern Ireland or Scotland.

Clause 1 makes provision for the Secretary of State to make financial payments to support a range of activities contributing to 'public goods' such as air and water quality, animal and plant health, public access to the countryside and farm productivity.

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".[49]
- 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".[50]

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.[51] Commons Library Briefing 25 Year Environment Plan (January 2018) provides more details on the plan.

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

[50] 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

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

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.[52]

Farmers are already used to this kind of approach (see section 2.2). Agri-environment schemes such as Countryside Stewardship provide farm payments under the rural development funding part of the CAP (Pillar 2). However, the Government is now proposing to make this kind of approach the main focus of farm payments from 2028.

2.1 Public payments for public goods (Clauses 1-3)

Clause 1 gives the Secretary of State powers to give financial assistance for, or in connection with any of the purposes set out in Table 1 below. It is not a legislative power, but a power for the Secretary of State to make financial payments.

These purposes are those "that would otherwise be undersupplied by the market".[53] 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.[54]

The Explanatory Notes state that the financial assistance "may be given to beneficiaries including, but not limited to, farmers, foresters, or those responsible for the management of the land" but this is not specified in the Bill.[55]

Clause 1 a) – g) sets out the activity without definition or explanation. However, the explanatory notes provide further explanation and examples of what kind of activities might be incentivised for each sub-section.

These are set out in **Table 2** below.

Defra's policy statement, accompanying the Bill, states that the government:

> "…will work with farmers and land managers who wish to improve the environment by entering into environmental land management contracts which could span several years.
>
> These contracts will make sure that the environmental benefits farmers help deliver, but which cannot be sold or bought, are paid for by the public purse".[56]

[52] See GOV.UK, CAP greening criteria announced, 10 June 2014 and House of Commons Library briefing, Brexit impact across policy areas, 26 August 2016
[53] Agriculture Bill: Delegated Powers Memorandum from the Department for Environment, Food and Rural Affairs to the Delegated Powers and Regulatory Reform Committee, para 13
[54] As above, para 15
[55] Bill 266-EN (2017-19) para 50
[56] Defra, Health and Harmony: Environment, Food and Farming in a Green Brexit – Policy Statement, 14 September 2018

Table 2: 'Public Goods' eligible for financial assistance

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.
(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.
(*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) mitigating or adapting to climate change;		Incentivise peatland restoration, in order to protect the existing carbon store and reduce emissions of carbon dioxide to the atmosphere.
e) preventing, reducing or protecting from environmental hazards;	This includes hazards to, or caused by, the environment.	Could be used to reduce flood risk by incentivising good soil management, leading to a reduction in soil compaction.
(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,	Could include measures to incentivise participation on health or disease

	reduce endemic disease and keep livestock well maintained and healthy.	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) protecting or improving the health of plants.	This includes: wild plants, agricultural 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 thereby protecting their health and increasing biosecurity.
(2) ….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.

Source: Explanatory Notes to the Bill p.12-13 (Bill 266-EN)

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. There is no indication of which body might administer the scheme. In England, the Rural Payments Agency currently administers CAP payments on behalf of Defra and has recently taken on the administration of agri-environment scheme funding.

It is worth noting that an interim report from Dame Glenys Stacey's Farm Inspection and Regulation Review (July 2018) has found that current enforcement "is nowhere near effective". The report states:

> …Farmers are frustrated by a lack of enforcement on the one hand, and disproportionate penalties on the other. Defra's arms-

> length bodies tell us they are not resourced to check compliance sufficiently or do not have the range of powers they need. There is no doubt that a good deal of non-compliance remains unchecked.
>
> Enforcement is skewed by CAP scheme requirements. A farmers' most common experience of enforcement will be CAP scheme inspections and deductions made to payments for failure to comply in one way or another with requirements that can themselves be exact and inflexible.[57]

Clause 2 (1) gives the flexibility for the assistance to be given in any form but it specifically mentions that it may be given by way of a grant, loan, or guarantee and subject to any conditions which the Secretary of State "considers appropriate" (Clause 2(2)). For example, how the assistance might be repaid.

Clause 2 (7) and (8) allow the Secretary of State to make regulations requiring the publication of information about the public goods payments made under Clause 1. This can include information about the recipient, the amount and the purpose for which the financial assistance was given. This kind of information is already published relating to CAP payments. The regulations would be subject to the affirmative resolution procedure.

Enforcing the conditions of new schemes

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

This includes checking whether eligibility criteria for receiving financial assistance has been met, complying with any related conditions and "monitoring the extent to which the purpose of the financial assistance has been achieved."[58] The Regulations can also make provision for a range of activities relating to enforcement: clawing back the financial assistance, imposing monetary penalties, creating offences and appeals.

It is envisaged that the primary obligations on recipients of funding will be set out in non-legislative documents. The UK Government has said that the regulations provided by this clause will set out the enforcement procedures in respect of that funding, and will complement the primary obligations. These will be set during the design of any payment schemes and are not yet known, hence it is requesting the delegated power.

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 (which will not be retrospective).

The UK Government also expects that the power will be used to enable the Secretary of State to adapt the enforcement regime to changing

[57] Farm Inspection and Regulation Review, July 2018 Interim Report, July 2018 p6
[58] Clause 3 (1) (c)

priorities or the use of technology. For example, remote sensing may reduce the need for inspections.[59]

2.2 Are farmers currently paid to support 'public goods'?

Direct payments (see section 3.1) and rural development grants (see section 3.2) across the UK are already 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 meeting 'greening' requirements and each part of the UK operates agri-environment schemes as part of their Rural Development Programmes. For example, Countryside Stewardship in England (which accounts for 87% of Pillar II spend in England).

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

> There is evidence that land in publically 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.[60]

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."[61] However, current farm support is still largely based on the area of land farmed.

The interim report of Dame Glenys Stacey's Farm Inspection and Regulation Review (July 2018) observes:

> It is the government's view that Common Agricultural Policy Payments have failed to reward some public goods adequately, such as measures to improve water quality and soil health. While agri-environmental schemes (Pillar 2) have produced evidenced benefits, government considers that overall, CAP has not been

[59] Defra, Health and Harmony: The Future for Food, Farming and the Environment in a Green Brexit, February 2018 Cm 9577 p.13
[60] As above
[61] See for example, Defra, Implementation of CAP reform in England: Consultation Document, October 2013, para 6.2

> effective enough at reversing environmental damage caused by agriculture.

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 differs 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. [62] These include some of the higher transfers among Member States with transfers of 3% for France and 4.5% for Germany in the same direction.[63]

The retained EU regulations allow for new agri-environment agreements to be commenced up to the end of the 2020 scheme year and payments made to farmers and land managers until funds allocated to the Rural Development Programme for England (RDPE) are exhausted (likely to be 2021 or 2022). Therefore, the last year of Countryside Stewardship agreements will be for those agreements starting on 1 January 2020.[64]

2.3 Which sectors might benefit?

Defra's policy statement accompanying the Bill highlights that upland farmers will be "well placed to benefit" from the new system of payments. It 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.[65]

However, with little detail available about the proposed schemes only past take-up of agri-environment schemes and analysis of the loss of direct payments (see section 3.1) give any indication how the new system will play out.

[62] 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

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

[64] Defra, Defra Evidence and Analysis Paper No.7: Agriculture Bill – Analysis and Economic Rationales for Government Intervention, September 2018 p20

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

Improving Productivity

As noted in Section 1.10 above a range of stakeholders including farming unions and the Soil Association want to see food production take more prominence in the Bill.

Clause 1 (2) allows the Secretary of State to give financial assistance for, or in connection with, the purpose of starting, or improving the productivity of an agricultural, horticultural or forestry activity.

This would allow the UK Government to continue to offer assistance schemes and grants relating to the wider operation and development of an agricultural business and efficient food production.

The Government has said:

> Our aim is to boost UK productivity by developing targeted transitional policies to reflect our farmers' needs. It is, however, important for the UK to take a more balanced approach to productivity targets and incorporate other issues, such as; provenance, animal welfare, and environmental costs alongside nutritional provision.[66]

Defra's policy statement accompanying the Bill indicates that this provision will:

> ..allow ministers to make payments during the agricultural transition period to improve farming productivity, which are compliant with our international agreements. For example, this could include supporting investment in technologies and methods that can help farmers to reduce the use of inputs such as fertilisers and pesticides, while maintaining or increasing production. This would help farmers to reduce costs and adjust to the new system during the agricultural transition, and simultaneously deliver environmental benefits.[67]

2.4 Stakeholder reaction

There is overall support for the principle of a 'public goods' approach to a new land management scheme but different views on how it should be balanced with other considerations.

The Woodland Trust has said 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".[68]

Defra's Summary of Responses to the Health and Harmony consultation summarises the reaction to the 'public goods' provisions:[69]

> 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

[66] HL 10221 [on Agriculture: Subsidies] 18 September 2018
[67] Defra, Health and Harmony: The Future for Food and Farming in a Green Brexit: Policy Statement, updated 14 September 2018
[68] Woodland Trust, Response to Agriculture Bill, 12 September 2018
[69] Defra, Health and Harmony: The future for environment, food and farming in a Green Brexit – Summary of Responses, September 2018 paras 15-17

> 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.

Farming organisations such as the National Farmers Union and The Tennant Farmers Association (TFA) have highlighted their concerns that the Bill's focus on public payments for public goods is not balanced with measures to improve productivity.

The Tenant Farmers Association has said that focussing almost exclusively on public money for public goods is "short-sighted and flawed".

Caroline Lucas (co-leader of the Green Party) has said

> "We need a robust and independent system for determining what farmers are paid for to ensure public money doesn't reward tokenistic gestures - such as having a wind turbine while continuing to drench fields in pesticides. This new system should be designed to dismantle the industrial agriculture that is destroying nature and wildlife, and encourage smaller-scale, sustainable farms with the highest animal welfare standards.[70]

The NFU has previously cautioned that only productive and viable businesses can deliver the environmental benefits envisaged in the Plan. It therefore believes that it is vital that a holistic approach is taken with environment policy joined- up with future food policy (as outlined in the Government's Industrial Strategy) and measures to manage volatility enabling 'profitable, productive and progressive' farm businesses post-Brexit.[71]

The Soil Association has said:

> …It's far from certain that the new schemes will provide the comprehensive support farmers need to move from decades of overreliance on agrochemicals and cheap fossil fuels to a more ecological approach across all our land.[72] "

The National Sheep Association has reiterated its calls for an average baseline payment to recognize what UK agriculture is already delivering. The NSA has highlighted that if a public goods model is going to work then the interpretation of public goods has to be far wider than "the environment and access" so that the majority of everyday farms can benefit. The NSA wants to see an average, baseline payment in

[70] Caroline Lucas: Agriculture Bill "could end up actually destroying nature" 12 September 2018

[71] NFU, 25 Year Environment Plan launched by PM: Environmental Policy and food production must go hand in hand – NFU, 12 January 2018

[72] Soil Association, Agriculture Bill is not the radical rethink we needed, 12 September 2018

recognition of the broad public value of productive farming which can be further built on via optional schemes.[73]

The Commons EFRA Committee has noted 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.125 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.[74]

Health and Welfare of Livestock

The British Veterinary Association (BVA) has welcomed the inclusion of animal health and welfare as a public good in the Bill which means it will be supported with public money in agricultural policy. 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.[75]

The policy statement accompanying the Bill states:

> As part of our move to higher regulatory standards, we will develop publicly-funded schemes for farmers to deliver animal welfare enhancements beyond the regulatory baseline that are valued by the public but not sufficiently provided by the market. We will focus on enhancements that deliver the greatest impact and benefit.[76]

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 in achieving our ambition.' [77] However, it also wants to see the Bill include measures to improve the maintenance of the existing path network and to incentivise farmers to enhance the path network.[78]

The Government has said that farmers and land managers will be expected "to comply with their existing regulatory obligations relating to Public Rights of Way and access, irrespective of whether they receive financial assistance under this measure. [79]

[73] NSA, NSA claims Agriculture Bill does not go far enough to recognise public goods already delivered by UK sheep farmers, 14 September 2018

[74] Environment, Food and Rural Affairs Committee inquiry, The future for food, farming and the environment, Sixth Report of Session 2017–19, HC 870, para 89

[75] BVA, Vets welcome recognition of animal health and welfare as public goods in new Agriculture Bill, 12 September 2018

[76] Defra, Health and Harmony: The Future for Food and Farming in a Green Brexit: Policy Statement, updated 14 September 2018

[77] Ramblers, MP Briefing [as viewed on 5 October 2018]

[78] As above

[79] As above

3. Part 2: Financial Support After Exiting the EU

3.1 Direct Payments (Chapter 1)

Chapter 1 is a key element of the Bill as it includes 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 2 above).

The UK Government has set out a proposed timetable for moving from the current system of CAP payments to a new Environmental Land Management System by 2028. [80] Further detail will be provided in secondary regulations and/or guidance.

EU Regulations on Direct Payments will be carried over into UK law as EU retained law under the *EU Withdrawal Act 2018* . **Chapter 1** of the Bill therefore seeks to give the Secretary of State various powers to amend this law.

Chapter 1 (Clauses 4-8) of the Bill provides for Direct Payments in England to be modified and phased out over an agricultural transition period of 7 years from 2021 whilst also allowing the 'delinking' of payments so that the payment is no longer linked to the area of land. In the period 2019

Direct Payments are the income support payments which UK farmers currently receive under the CAP paid out of the EU budget.[81]

They are mainly regulated under the EU Direct Payments Regulation.[82] 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.

Clause 5 provides for an 'agricultural transition period' and **Clause 6** provides the Secretary of State with powers to make regulations to simplify or improve legislation governing schemes. i.e. retained EU law in this area. The UK Government has indicated that it would like to make small simplifications to existing schemes in 2019 which could

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80 Defra, Health and Harmony: Environment, Food and Farming in a Green Brexit – Policy Statement: Timeline, September 2018

81 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. Updated 1 August 2018 (Accessed 26 September 2018)

82 Reg (EU) No.1307/2013

continue in 2020 within the rules of any implementation period set out in a UK/EU Withdrawal Agreement.

Clause 7 provides the Secretary of State with powers, over the whole or part of the agricultural transition period, to make regulations to phase out Direct Payments and/or terminate Direct Payments and instead make delinked payments.

Schedule 3 (Part 2) sets out provisions on Direct Payments for Wales. **Schedule** 4 (Part 1) sets out provisions on Direct Payments for Northern Ireland.

Box 1 below sets out key statistics on Direct Payments as currently paid under the CAP.

Box 1: Direct Payments: current position

- **Some £1.65 billion of Direct Payments were paid to 85,000 farms in England in 2016: 10% of claimants received half of this but 33% of farms received less than £5,000 each.**
- **On average Direct Payments made up 9% of farm revenue**
- **They made up 21% of revenue in Less Favoured Area Grazing Livestock farms**
- **Some 83% of Farm Business Income for tenanted farms came from Direct Payments, compared to 61% for all farm types on average.**
- **Without Direct Payments 42% of farms had costs exceeding their revenue (the proportion is 19% if depreciation is excluded too).**
- **For 90% of farms, cost reductions of between 1 and 35% would have been needed for them to break even without Direct Payments**

Source: 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)

What is a Direct Payment? (Clause 4)

Clause 4 (4) of the Bill sets out the definition of a Direct Payment for the purposes of the Bill:

- A payment under the basic payment scheme (whether or not including a greening payment, a young farmers payment or both elements) or
- a delinked payment

This means that term in the Bill covers a payment made using retained and modified CAP regulations for the "basic payment scheme" (which can be further modified under **Clause 6**) or a delinked payment (see **Clause 7**)

The Agricultural Transition (Clause 5)

Clause 5 sets an **agricultural transition period** for England of seven years "starting with 2021". This period may be extended by the Secretary of State by Regulations during the transition period, more than once. The affirmative resolution procedure applies.

The UK Government has explained its reasoning for the timescale:

> This seven year agricultural transition will make sure there is a gradual transition from the current world to the new, avoiding a cliff-edge for businesses. It will give farmers sufficient time to adapt and prepare for the new environmental land management system which will be piloted and rolled out during the transition. 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.[83]

Stakeholder comment

Ministers had previously referred to a transition period of "several years" so this provision now provides a timescale. The NFU has said that it will look closely at the Government's proposals ensure that it is satisfied that this 7-year period will "be sufficient". The NFU wants the Bill to provide the Government with the powers to pause the process if it is "proving unmanageable for farmers and if our domestic food supply and food security are under threat."[84]

The transition period is at the longer end of a range from three to seven years suggested by witnesses to the Commons Environment, Food and Rural Affairs (EFRA).[85] 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.[86]

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.[87]

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.[88] 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

[83] Defra, Health and Harmony: Environment, Food and Farming in a Green Brexit – Policy Statement, 14 September 2018

[84] As reported in Food Ingredients 1st, New UK Agriculture Bill not enough to compete in volatile post-Brexit market claim farmers, 17 September 2018

[85] House of Commons 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

[86] As above, Chartered Institution of Water and Environmental Management (HAH0009), paras 5-5.5; Wildlife and Countryside Link (HAH0012), para 5.4

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

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

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.[89]

Making modifications and simplifications (Clause 6)

The UK Government has indicated that in the period 2020-2022 it would like to simplify the current schemes "to improve applicants' experiences". The policy statement arising from the Health and Harmony consultation states that the Government "will be able to do this even while our agriculture policy is still governed by the CAP, within the rules of the implementation period".[90]

The current BPS (including the greening payment and young farmer payment) will be incorporated into domestic law under the *European Union (Withdrawal) Act 2018*. [91]

Clause 6 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 which he/she considers will simplify or improve the scheme. The negative resolution procedure applies.

CAP Direct Payments could be an important exception within the Withdrawal Agreement. These will be under UK legislation from claim year 2020, not 2021. Direct support from 2020 will then operate under domestic legislation.[92] Under EU CAP reform proposals, although provisions are expected to come into force on 1 January 2021, specific articles would apply from 16 October 2020 (the start of the EU 2021 financial year). Given the proximity to the end of the Implementation Period, the UK is however seeking a "carve-out" from application of any Article earlier than 1 January 2021.[93] This would preferably be as part of the Withdrawal Agreement.[94]

Greening Payments

Clause 6 (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 '3 crop rule' which requires a certain number of crops to be planted through the year to

[89] As above, Q206
[90] Defra, Health and Harmony: Environment, Food and Farming in a Green Brexit – Policy Statement, 14 September 2018
[91] 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 29
[92] DAERA, Northern Ireland Future Agriculture Policy Framework: Stakeholder Engagement, 1 August 2018
[93] Cabinet Office, Explanatory Memorandum on European Commission proposals for post-2020 CAP reform [Accessed 11 September 2018]
[94] Rt Hon Michael Gove MP, Oral evidence to European Scrutiny Committee, EU Withdrawal, HC 763, 18 July 2018, Q 696

increase diversity. These have been found to have had limited impact compared to being part of an agri-environment scheme.[95]

After that point (from 2021) the Government will simplify current financial, management and reporting rules to "strip out unnecessary requirements, which will make the current system more appropriate to the country's needs."[96]

Removing the greening payment would not affect the overall payment received by the farmer as the budget for the greening payment would be subsumed into the Basic Payment Scheme budget.[97]

Proposed changes

The Government has confirmed that it will pay Direct Payments for the 2019 scheme year on the same basis as now. The EU rules for the Basic Payment Scheme, greening and young farmer payment will apply throughout the whole of 2019.[98]

The UK Government has indicated what it might seek to change:

- Look to make simplifications for 2020 as soon as possible (and in line with the implementation period) to make it easier to apply for and administer Direct Payments to increase value for money. The UK Government plans to allocate money paid in Direct Payments for 2020 in "much the same way as we do now".
- Simplify the 2019 Countryside Stewardship application process in England, within the rules of the implementation period.
- Reduce the bureaucracy and "any needless paperwork, which has been widely criticised".[99]

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 White Paper 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.

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.[100] The White Paper also criticised the current system for disproportionate penalties in parts and for its insufficient scope for

95 Alliance Environnement, Evaluation of the CAP greening measures, November 2017
96 GOV.UK, Health and Harmony: the future for food, farming and the environment in a Green Brexit – policy statement, 12 September 2018
97 Agriculture Bill, Delegated Powers Memorandum from the Department for Environment, Food and Rural Affairs to the Delegated Powers and Regulatory Reform Committee, September 2018, p20
98 As above
99 Agriculture Bill, Delegated Powers Memorandum from the Department for Environment, Food and Rural Affairs to the Delegated Powers and Regulatory Reform Committee, September 2018, p19
100 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

farmers to remedy underperformance. During the agricultural transition period there will be a more "integrated, appropriate and targeted enforcement system"than now.[101]

As part of the Government's commitment to designing a new, fairer enforcement system, Environment Secretary, Michael Gove has commissioned a farm inspection review for England conducted by Dame Glenys Stacey. The Interim report from the independent Farm Inspection and Regulation Review (July 2018) states that there are "compelling arguments for one multi-skilled field force, under the command and direction of one regulator day to day and in an emergency".[102] A final report is expected later in 2018.

Phasing out Direct Payments (Clause 7)

Clause 7(1) provides the power for the Secretary of State during the agricultural transition, to make reductions to Direct Payments under the Basic Payment Scheme and/or to terminate 'delinked' payments.

Clause 8 stipulates that no Direct Payments or delinked payments may be made after the end of the transition period in England, (unless dealing with previous year payments essentially).

Commentators have noted that the explicit inclusion of the end date for Direct Payments is helpful as farmers know what to expect after 2027 and can take appropriate decisions. IEG consider however that "the credibility of the phase-out could be enhanced if the full-time path of reductions were to be announced rather soon".[103]

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 support levels are guaranteed until 2022 but guarantees on spend cannot be set out to bind a future Parliament.

The Rationale for ending 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".[104] In January 2018, Mr Gove set out in his speech to the Oxford Farming Conference some of the current drawbacks with direct payments as he saw them:

> Paying landowners for the amount of agricultural land they have is unjust, inefficient and drives perverse outcomes…It gives the

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[101] As above, Executive Summary, paras 20-22

[102] Dame Glenys Stacey, Farm Inspection and Regulation Review: Interim Report, July 2018

[103] IEG Policy, Can England's future farm policy provide a model for the CAP? 14 September 2018

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

> 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. [105]

The Government's Agriculture Bill: Economic Rationale for Government Intervention analysis notes that two factors combine to ensure that the current system of Direct Payments is in many respects an inefficient and ineffective means of income support for households with low incomes:

> - **Direct Payments lack any system of means testing / targeting**. As a result, substantial payments are made through farm businesses to some farm households with already high incomes relative to the average UK household. Payments through farm businesses to households with incomes only slightly lower than the average UK household can boost incomes to provide them with much higher than average incomes, while some of the farm businesses with lowest incomes receive smaller payments.
> - The **ultimate beneficiaries of Direct Payments are seldom only the farm businesses who receive the payment**. Indeed the recipient may not even be the main beneficiary. In particular, the inflation of farm rents as a result of Direct Payments means that a substantial element of the subsidy increases the income from landowning rather than active farming.[106]

The analysis document also notes that:

- Direct Payments do little to deliver against the environmental outcomes of modern agricultural policy, but
- Such payments exert a small, stimulating effect on production. UK production of beef in particular is expected to fall as a result of removing Direct Payments as well as production of sheepmeat and milk.
- Changes in production are likely to lead, according to Defra modelling, to small increases in farmgate prices in ruminant livestock. [107]

Stakeholder views

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

The NFU's response to the Health and Harmony consultation 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

[105] GOV.UK, Farming for the Next Generation, 5 January 2017
[106] Defra, Evidence and Analysis Paper No. 7: Agriculture Bill: Analysis and Economic Rationale for Government Intervention, September 2018
[107] As above

> payments, it should not be arbitrarily pursued without sufficient and robust policy replacements.[108]

In Northern Ireland Pillar 1 of the CAP currently provides approximately €327m per annum of direct support to Northern Ireland farmers, Over the last five years, direct CAP support (Pillar 1) amounting to £1.3bn has accounted for 83% of the cumulative total income of the Northern Ireland (NI) agricultural industry. In two of these years, the industry (as a whole) would have been in a loss-making position without this support.[109]

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".[110]

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.[111]

Delinking Payments (Clause 7)

As well as phasing out Direct Payments, **Clause 7(1)** also empowers the Secretary of State to delink payments from land. This will remove the requirement to farm the land in order to receive the payments as they are phased out during the agricultural transition.

The UK 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".[112]

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. The

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108 NFU, Consultation response: Health and Harmony: Environment. Food and Farming in a Green Brexit, 8 May 2018
109 Northern Irish agriculture subsidies to fall after Brexit report warns, *The Irish News*, 16 January 2018
110 House of Lords European Union Committee, Brexit: Agriculture, 20th Report of Session 2016-17, May 2016 HL Paper 169, para 220
111 Dieter Helm, Agriculture After Brexit, March 2017
112 GOV.UK, Health and Harmony: the future for food, farming and the environment in a Green Brexit – policy statement, 12 September 2018

Government has said that it will consult with stakeholders before setting the detailed rules.[113]

The UK 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.[114]

If the Secretary of State makes provision to terminate the basic payment scheme and make delinked payments, **Clause 7 (3)** requires that he/she:

- Specifies the year in which delinked payments are to be introduced.
- End payments under the basic payment scheme
- Prescribe who will be entitled to delinked payments
- Establish the method of calculation of the delinked payment to any entitled recipient.

It also gives the Secretary of State the power to estabilish the conditions under which recipients no longer become eligible for delinked payments, pursue the recovery of delinked payments when the recipient was not entitled and to make provisions for offering farmers the opportunity of taking a lump sum payment in lieu of the payments they would otherwise be entitled to receive during the agricultural transition.

The UK Government has stated that:

> Money can be used to invest in their businesses 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.[115]

The policy statement explains that delinking removes the requirement to follow existing EU 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

[113] 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
[114] As above, para 36
[115] As above

> 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.[116]

A novel approach

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

Countries have, however, paid farmers reactively during crisis periods: for example the sudden abolition in New Zealand in 1985 of extensive farm subsidies led to 1% of the 80,000 farmers leaving the industry and the Government had provided one-off funds to help with the transition.[117]

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.[118]

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".[119]

Phasing out direct payments: next steps

What is the timescale for change?

A full timeline for changes to Direct Payments and other support schemes was published to accompany the Bill and policy statement.[120] **Box 2** below sets out key milestones.

[116] As above

[117] House of Lords European Communities Committee, Responding to price volatility: creating a more resilient agricultural sector, May 2016, HL Paper 146

[118] European Commission Press Release, EU Budget: the Common Agricultural Policy after 2020, 1 June 2018

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

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

Box 2: Timescales for change

2018 and 2019:

- Direct Payments for the 2018 scheme year will be paid as now. For 2019, greening and young farmer payments applying through the whole of the year and some minor simplifications will be made where possible.

2020:

- Direct Payments continue, with further simplifications within the rules of the implementation period - although money paid in direct payments will be allocated in "much the same way" as now.[121]

2021-27:

- Direct Payments in England will be phased out starting from 2021 when the first progressive reductions apply. [See details below]

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

The timescale includes a seven year 'agricultural transition' during which Direct Payments will be phased out, starting from 2021 and with the last payments being made for the 2027 scheme year. The Government says that this will "avoid a cliff-edge for businesses" and help them become "increasingly resilient, internationally competitive and better equipped to protect our environment. [122] 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.[123]

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.[124] (See WTO section below)

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121 GOV.UK, Health and Harmony: the future for food, farming and the environment in a Green Brexit – policy statement, 12 September 2018
122 GOV.UK, Health and Harmony: the future for food, farming and the environment in a Green Brexit – policy statement, 12 September 2018
123 As above
124 GOV.UK, Health and Harmony: the future for food, farming and the environment in a Green Brexit – policy statement, 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.[125]

Other options were considered in the Health and Harmony consultation.[126] 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.[127]

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 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.[128]

Figure 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).

125 As above

126 Defra, Health and Harmony: the future for food, farming and the environment in a Green Brexit, 27 February 2018, Cm 9577

127 Defra/Government Statistical Service, Moving away from Direct Payments, Agriculture Bill: Analysis of the impacts of removing Direct Payments, September 2018, pp 42,43

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

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

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%	5 to 10k	15,300	400
5%	10 to 15k	9,500	600
5%	15 to 20k	6,800	900
5%	20 to 25k	4,900	1,100
5%	25-30k	3,600	1,400
10% rate applied to subsidy amount between £30-50k	30 -40k	4,800	2,000
10%	40-50k	3,000	2,900
20% rate applied to subsidy amount between £50-150k	50-75k	3,700	5,600
20%	75-100k	1,600	10,700
20%	100-125k	800	15,800
20%	125-150k	400	20,800
25% rate applied to subsidy amount	150-200k	500	28,500

above £150k			
25%	200-250k	200	41,300
25%	250-300k	100	54,200
25%	Over 300k	100	108,800

** 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.

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 2017 scheme year".[129]

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.[130]

Defra published an analysis to accompany the Bill setting out the impact of moving away from Direct Payments. The analysis notes that the removal of Direct Payments impact on overall profit margins is likely to be "non-negligible".[131]

However, the impact varies by farm type and sector. For example, the pigs, poultry and horticulture sectors are least reliant on Direct Payments whilst Least Favoured Area and Lowland Grazing Livestock are the most dependent.

Figure 4 below sets out the proportion of farm revenue that comes from Direct Payments by sector.

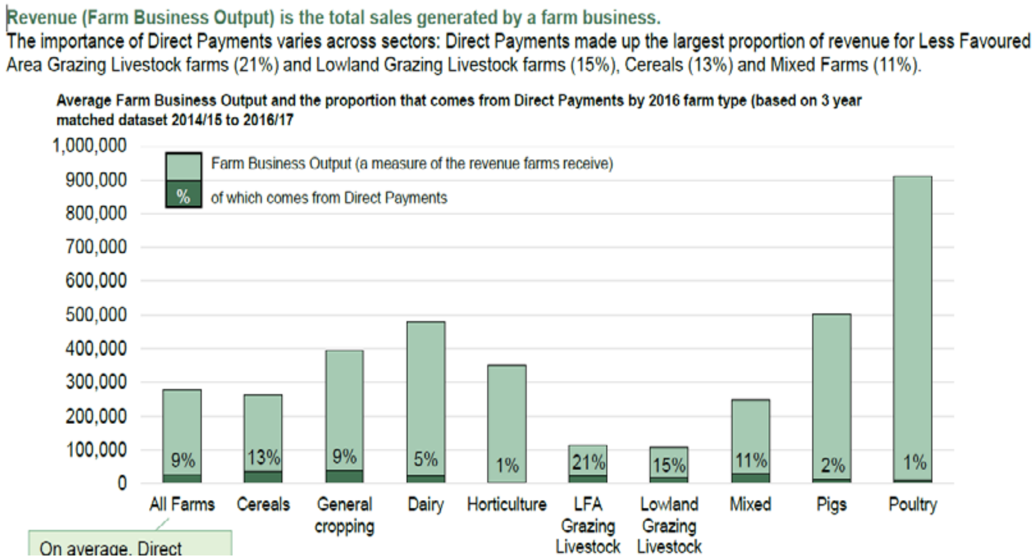
Figure 5 sets out CAP related payments as a proportion of total income from farming in 2017 (including both Basic Payment Scheme and agri-environment schemes). It clearly shows that in Wales in 2017 that payments were actually larger than the profits from agriculture with

[129] GOV.UK, Health and Harmony: the future for food, farming and the environment in a Green Brexit – policy statement, 12 September 2018
[130] Defra, Defra Evidence and Analysis Paper No.7, Agriculture Bill: Analysis and Economic Rationales for Government Intervention, September 2018 Executive Summary, p.4
[131] 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

payments representing more than 50% of their profits. **Table 3** provides the total income and total payments figures to illustrate this further.

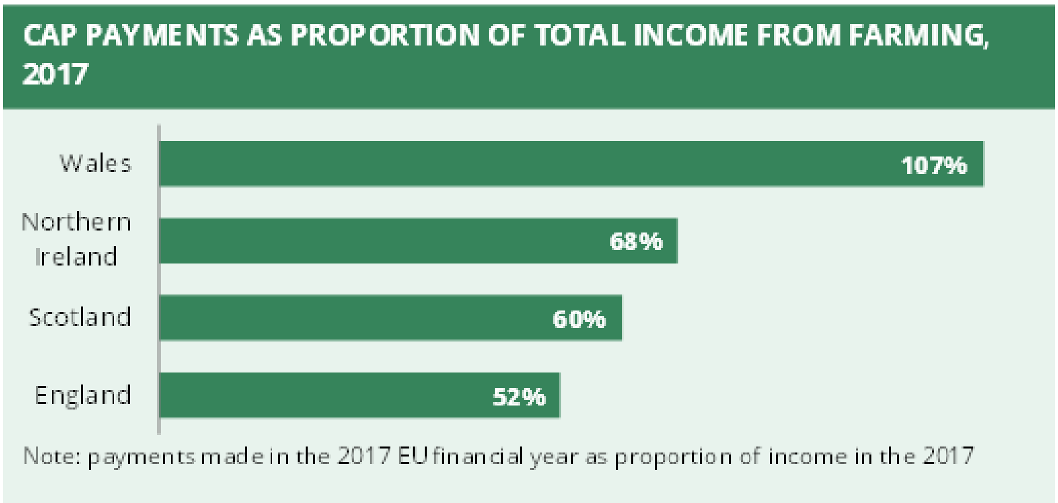
It should be noted that some of these payments e.g. for agri-environment schemes are already designed to compensate for income foregone by the farmer to provide environmental measures etc.

Figure 4: Direct Payments: Sector proportion



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

Figure 5



Sources: Agriculture in the United Kingdom data sets, Total income from farming: Chapter 3 - farming income (ODS, 73.2KB) - Table_3_2, Chapter 3 - farming income (ODS, 73.2KB); Total income from farming: Chapter 3 - farming income (ODS, 73.2KB) - Table_3_2, Chapter 3 - farming income (ODS, 73.2KB), Total Direct payments to farmers: Chapter 10 - public payments (ODS, 56.2KB)- Table_10_3, Chapter 10 - public payments (ODS, 56.2KB)

Table 3

CAP PAYMENTS AS PROPORTION OF TOTAL INCOME FROM FARMING, 2017			
Country	Total Income from Farming £ million	Total Direct payments to farmers £ million	CAP funding as proportion of income
England	4,077	2,129	52%
Scotland	917	552	60%
Northern Ireland	473	320	68%
Wales	276	296	107%
United Kingdom	5,743	3,297	57%

Sources: Data sets to accompany, Agriculture in the United Kingdom 2017 (Total income from farming: Chapter 3 -farming income (ODS 73.3KB) – Table 3.2 and Total Direct Payments to farmers: Chapter 10 -public payments (ODS, 56.2KB) Table 10.3.

Research by the Centre for Rural Economy at Newcastle University (not accounting for the provisions of the Agricultural Bill) has found that:[132]

> 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.
>
> Under Free Trade Agreement with the EU agricultural impacts are modest but by contrast under Unilateral Removal of Import Tariffs there are significant impacts on prices, production and income.
>
> Adoption of the World Trade Agreement tariff schedule favours some net importer sectors such as dairy.[133]

The Ulster Farmers' Union has said "ultimately the future of support for the agricultural industry will be dependent on the outcome of any future trade deals with the EU or other countries. If good deals are secured, farmers may not need more support than they received at present. However, if trade deals are agreed that undermine the industry, farmers will need much more to keep their businesses viable."[134]

Devolved administration approaches

The Devolved Administrations have consulted on varying policies on how support will be targeted in future. The Bill includes provisions on Direct Payments specifically for Wales (Schedule 3) and Northern Ireland (Schedule 4).

Wales

Schedule 3 includes measures for Wales which are mostly identical to those proposed for England (see section 9.1). However, it will be for

132

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

134 Ulster Farmers' Union, Comment on UK Agriculture Bill, 14 September 2018

the Welsh Government to exercise these powers in line with its policy objectives.

The Welsh Government has set out proposals for a new Land Management Programme for Wales including farming and forestry to replace the CAP in Wales in its entirety.[135] The consultation is open until 30 October 2018.

The proposed new Land Management Programme will have two elements of support:

- An Economic Resilience Scheme (investment for economic activities)
- A Public Goods Scheme (direct support for public goods delivery)

The Economic Resilience Scheme will provide investment for economic activities, in particular food and timber production. The Welsh Government proposes that the Economic Resilience scheme will provide targeted investment to both land managers and their supply chains.

The scheme will provide support to:

- increase market potential
- drive improvements in productivity
- diversify
- improve risk management and
- enhance knowledge exchange and skills.

In a written statement on 10 July 2018, the Welsh Government's Cabinet Secretary for Energy, Planning and Rural Affairs, announced that there will be a further detailed consultation in the spring and that her "ambition is to publish a Bill before the end of this Assembly term in 2021." The Welsh Government is planning for complete reform by 2025 and wants the legislation in place to ensure a phased transition period can take effect.[136]

Farming unions have welcomed the focus on public goods alongside production. The CLA has noted that the consultation "sets out a bold vision for supporting famers and land use in the future" and reflects "the changing expectation that the public have of farming and the way we use our land".[137]

Both NFU Cymru and the CLA have also cautioned that other measures to support farming as a business need to complement the new systems.[138] The CLA has said that it will be looking at the consultation to

[135] Welsh Government, Brexit and Our Land: Securing the future of Welsh Farming, 10 July 2018
[136] Welsh Government, Written Statement: Launch of Brexit – Our Land, Lesley Griffiths AM, Cabinet Secretary Energy, Planning and Rural Affairs
[137] As above
[138] See for example, NFU Cymru, First Minister speaks at packed NFU Cymru Brexit Seminar, 23 July 2018

"see how it fits alongside other enabling policies to provide farmers with the required conditions to sustain their businesses".[139]

Northern Ireland

The Bill includes measures for Northern Ireland which are mostly identical to those proposed for England – these are set out in Schedule 4 (see below).

The exceptions are:

- Clause 5 which relates to the transition period in England
- Clause 7 which relates to powers to phase out and delink payments
- Clause 8 which related to the termination of Direct Payments.
- Additional powers are given in Schedule 4, paragraph 2(1)(b) which give the Department for Agriculture, Environment and Rural Affairs (DAERA) powers in respect to reintroducing and modifying Direct Payment Regulation articles 48 and 49 in relation to making payments for areas of natural constraint.

DAERA has set out its thinking on future BPS simplification and transition arrangements in a stakeholder engagement document published in August 2018.[140] This notes that:

> - It is envisaged that there may be an opportunity to simplify the administration the existing direct support schemes for 2020 and 2021, for example in relation to the Basic Payment Scheme (BPS).
> - DAERA will seek the legal authority to maintain the status quo during the 2020 and 2021 scheme years, enabling it to continue to implement the Direct Payment schemes as if they were still operating under EU rules.
> - As part of a transition to a new agricultural policy framework, limited changes could be made in the 2020–2021 scheme years to simplify the current support regime and to remove requirements that are not particularly relevant or worthwhile in a Northern Ireland context.
> - The 2020–2021 scheme years could also be used to make the necessary preparations to deliver a new agricultural support framework post 2022 or pilot new approaches, and to signpost clearly any changes so that farmers have time to evaluate their future business plans.[141]

For the period **after 2021**, the paper discusses in general terms some broad components of future NI agricultural policy.

'Greening' measures (for transition up to 2021)

The consultation notes that the current CAP greening requirements are directly relevant to only a very small sub-set of Northern Ireland

[139] CLA, Welsh Government consultation "Brexit and our land" (accessed 26 September 2018]
[140] DAERA, Northern Ireland Future Agriculture Policy Framework: Stakeholder Engagement, 1 August 2018
[141] DAERA, Northern Ireland Future Agriculture Policy Framework: Stakeholder Engagement, 1 August 2018, para 2.2

producers and deliver minimal, if any, changes in farming practice, but require a disproportionate administrative effort to implement. Therefore, the greening requirements of crop diversification, ecological focus area and retention of permanent grassland could be abolished and the value of the greening payment incorporated into Basic Payment entitlement values.

One aspect of greening - the current ploughing ban on environmentally sensitive permanent grassland (i.e. within Special Protection Areas and Special Areas of Conservation) - could be retained. The ban helps protect areas such as peat and wetlands which are environmentally sensitive. This ban could be retained either through the Environmental Impact Assessment Regulations or by making it a condition of receiving the Basic Payment.

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".[142]

Scotland

The Bill does not include powers specifically related to Direct Payments in Scotland. The Scottish Government set out its proposals for rural funding after Brexit in its June – August 2018 consultation Stability and Simplicity: Proposals for rural funding transition period. The consultation outlines the pros and cons of working to no change in current payments for the implementation period (up to December 2020) and maintaining the CAP architecture but making selected changes designed to improve it.

Possible changes suggested within the latter course include: capping payments, streamlining applications, inspections and accounting, funding (from possible capping) used for new entrants, innovation, climate change and the environment.

The consultation states that **capping** "should be examined more closely" during transition with further analysis and consultation needed to determine a fair and simple capping policy. It notes that a "more progressive capping policy" could be a first step to a future agriculture policy which "widens the benefits/range of recipients,and supports new entrants and small businesses".[143]

The NFUS described the commitments to look at legislative simplification, disproportionate mapping, inspection and penalty processes as "music to the ears' of farmers and crofters.[144]

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142 Ulster Farmers Union, DAERA document a welcome start, 1 August 2018
143 Scottish Government, Stability and Simplicity: Proposals for a rural funding transition period, June 2018,pp 10-11
144 NFU Scotland, Union welcomes Scottish post-Brexit Agricultural Policy Consultation Launch, 20 June 2018

3.2 Other financial support (Part 2, Chapter 2)

Clauses in this section allow the Secretary of State to modify by regulations various retained direct EU law provisions.

All regulations under this section are subject to the negative resolution procedure.

General Provision (Clause 9)

Power to simplify and improve existing rules

Clause 9 allows the Secretary of State to make regulations which modify Regulation EU No 1306/2013 on the financing, management and monitoring of the CAP (known as the 'horizontal' regulation) tertiary legislation made under that Regulation, and related domestic subordinate legislation where they have effect in England.

The Government believes that a delegated power will enable the Secretary of State to adapt the existing control regime in the light of continued experience of operating the schemes and feedback from stakeholders.

This body of legislation covers Direct Payments and Common Market Organisation (CMO) aid schemes (Pillar 1 of the CAP) and Rural Development Programmes (Pillar 2).

It includes rules on how schemes are financed from EU funds, accreditation and internal controls for the paying Agencies of Member States, farm inspections, application procedures and financial penalties that can be applied when beneficiaries breach the rules.

It also covers cross compliance. These are the requirements and standards that must be met by recipients of CAP payments. They include a variety of requirements and standards covering the environment, animal husbandry and farm management. There are penalties for breaching cross-compliance rules.

When the UK exits the EU the Horizontal regulations will become retained direct EU legislation under the *European Union (Withdrawal) Act 2018* and it will continue to govern any ongoing schemes until those schemes come to an end.

Limitation of the power

The power to modify the Horizontal regulations is limited as follows:

- where the Secretary of State considers they will **simplify** or **improve** the operation of the regulations or where they provide for some legislation to cease to have effect.

  The Delegated Powers Memorandum states:

  > The power would enable the Secretary of State to make changes to the inspection regime, such as reducing the numbers of inspections required where this would make the regime more proportionate and risk-based. It will not be possible to exercise these powers to significantly increase bureaucratic burdens which

the Secretary of State cannot justify as improvements or simplifications.[145]

- The power does not enable the Horizontal legislation to be modified so that its power can extend to the new financial assistance provided for under Clause 1 (which specifies the public benefits). The Government has said that it "does not intend to use this power to add new requirements or standards to existing cross-compliance rules".[146]
- The powers will become redundant at the point when all payments to which they apply have ended or have been phased out. As the CAP operates in 7 year cycles the retained EU law has built in time-limited programmes.

Support for Rural Development (Clause 11)

Under the CAP, Member States work to Rural Development Programmes which have been agreed with the Commission and focus on agreed EU priorities tailored to local circumstances. They include agri-environment schemes. As implementation of the CAP is devolved, the devolved administrations each have their own separate Rural Development Programme.

The UK Government has already committed to running rural development (Pillar 2) legacy schemes. The government will continue to make payments, and honour the agreements farmers that have entered into under Pillar 2, which will run past EU Exit day.[147]

The UK Government has said that these schemes need to be allowed to operate after EU Exit until new arrangements can be implemented "otherwise there would be a hiatus in environmental protection and enhancement, with valuable opportunities being postponed or lost". This is because without a continued programme, land which was being managed for particular environmental benefits may be managed with different priorities. However, once the UK has left the EU, the Government believes that the detailed implementation rules could be simplified.[148]

Clause 11 provides the Secretary of State with the power to modify retained EU legislation relating to Rural Development in England under the negative resolution procedure.

As with Clause 9 it allows the regulations to be repealed and simplified pending repeal.

The Regulations made under this section can only be made to stop a provision having an effect in relation to England or simplifying or improving its operation.

145 Agriculture Bill: Delegated Powers Memorandum from the Department for Environment, Food and Rural Affairs to the Delegated Powers and Regulatory Reform Committee, p 32
146 As above para 46
147 GOV.UK, Health and Harmony: the future for food, farming and the environment in a Green Brexit – policy statement, 12 September 2018
148 AS above para 58

Clause 11 (3) lists the main "retained direct EU legislation 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 11** will not be used to introduce any new schemes, as they will be covered by Clause 1 (see section 2.1) which sets out the areas where the Secretary of State can offer financial assistance to deliver 'public goods' and productivity.[149]

What current support is there for Rural Development?

The Rural Development Programme for England (RDPE) is for the period 2014-2020. The RDPE programme is funded through the European Agricultural Fund for Rural Development (EAFRD fund with match funding from the Exchequer. The fund forms part of what is known as Pillar 2 of the Common Agricultural Policy (CAP).

Priority themes for the rural development programme are set at EU level and Member Sates submit Rural Development Programmes to the Commission outlining how they are going to meet these and spend their allocation with additional public funds. Financial support must comply with the rules on State aid, except where a particular exemption operates for agricultural activities provided through the programme.[150]

The Rural Development Programme for England (RDPE) is overseen by Defra, managed by the Rural Payments Agency (RPA) and administered through a range of grants.

The RDPE has a range of schemes and capital grants. These include:

- Countryside Stewardship - agri-environment schemes offering financial incentives for farmers and land managers to look after the environment.
- Countryside Productivity
- Countryside Productivity -provides funding for projects in England which improve productivity in the farming and forestry sectors and help create jobs and growth in the rural economy.
- RDPE Growth Programme – grants for those carrying out a project to create jobs or bring more money into the rural economy (delivered by Local Enterprise Partnerships).
- Catchment Sensitive Farming: reduce agricultural water pollution - on going free training and advice which supports an Environmental Stewardship application
- Rural Development Programme for England: LEADER funding The LEADER scheme (Liaison Entre Actions de Développement de l'Économie Rurale – Liaison among Actors in Rural Economic Development) is available to local businesses, communities,

[149] Bill 266 – EN (2017-19) para 112
[150] Bill 266 – EN (2017-19) para 37

farmers, foresters and land managers. Applicants apply to a Local Action Group (LAG).

The UK government has guaranteed that any projects where funding has been agreed before the end of 2020 will be funded for their full lifetime. If the UK left the EU with no deal, the UK government would fund any remaining payments to farmers, land managers and rural businesses due after March 2019 ensuring continued funding for these projects until they finish. The guarantee also means that Defra and the devolved administrations can continue to sign new projects after the UK leaves the EU during 2019 and 2020, up to the value of programme allocations.[151]

Defra has said that if the UK leaves the EU without a deal it and the devolved administrations would:

> …ensure an uninterrupted flow of funding to farmers, rural businesses and communities. To ensure stability and continuity, the guarantee would be administered through existing national and local arrangements, modified and simplified as appropriate in line with domestic rules on public spending. Projects would need to continue to deliver good value for money and meet domestic strategic priorities.[152]

The UK Government has said that there would be no substantive change for farmers, land managers and rural businesses who have agreements funded by the UK Rural Development Programmes due to finish after 29 March 2019, and existing application and contracting arrangements would remain in place for those planning to seek funding after this date but before the end of 2020.

3.3 Aid for Fruit and Vegetable Producer Organisations (Clause 10)

The EU Common Market Organisation (CMO) regulation provides for growers in the fruit and vegetable sectors to form Producer Organisations (see section 7). Once recognised the growers can claim EU aid which is match-funded by the POs themselves under the EU Fruit and Vegetable Aid Scheme. The aid is capped based on the PO's turnover.

Clause 10 provides the Secretary of State with the powers to modify retained EU legislation on the EU Fruit and Vegetable Aid Scheme in England which is administered by the Rural Payments Agency.

Clause 10 (1) enables the Secretary of State to make regulations to ensure that the retained EU legislation underpinning the Fruit and Vegetable Aid Scheme **no longer** applies in England i.e. that the scheme is closed down.

[151] Defra, Receiving rural development funding if there's no Brexit deal, 23 August 2018
[152] As above

The fruit and vegetable sector would instead be able to benefit from the wider Producer Organisation measures provided for in **Part 6** of the Bill and those relating to fairness in the supply chain (see section 7 below)

Operational programmes implemented by POs will be allowed to run through to completion as long as they were approved prior to EU Exit. These transitional provisions are intended to allow time to consider future support, tailored to the specific needs of the domestic edible horticulture sectors, whilst maintaining certainty for POs already receiving aid.[153]

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.[154]

[153] Agriculture Bill: Delegated Powers Memorandum from the Department for Environment, Food and Rural Affairs to the Delegated Powers and Regulatory Reform Committee, para 53

[154] NFU, Consultation response to Health and Harmony: Environment, Food and Farming in a Green Brexit, 8 May 2018

4. Part 3: Collection and sharing of data

Part 3, Clauses 12 – 16 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 disease and risk management. [155]

Overview

There have been calls for a number of years for farmers' and food producers' position in relation to the supply chain to be strengthened.[156] 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".[157]

The NFU has often raised the issue of the 'black hole' in market data on the processor-buyer end of the supply chain which stifles trust, collaboration and the development of market risk management tools.

The Government states that the Bill's 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.[158]

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

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

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155 Agriculture Bill: Delegated Powers Memorandum from the Department for Environment, Food and Rural Affairs to the Delegated Powers and Regulatory Reform Committee, p 31

156 See for example NFU online article,

157 NFU online, [Improve Supply Chain Fairness says NFU](), 25 November 2016 (Accessed 26 September 2018)

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

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.

[Note: where a supply chain spans more than one of the constituent nations of the UK an arrangement would need to be made with the devolved administration in order for the data to be collected by the Secretary of State. Theoretically data collected by different nations could be combined to cover a whole supply chain where it covered more than one nation.]

Clause 12 gives the Secretary of State powers to require a person "in, or closely connected with, an agri-food supply chain" to supply information about connected activities (in England). Note: household members are specifically excluded in their role as consumers.

Clause 13 defines the meaning of agri-food supply chain. The supply chain covers persons carrying on agriculture or taking things from the wild through to the ultimate consumer. 'Persons closely connected with the supply chain' is defined widely, including those supplying inputs such as seeds or feed, or providing animal or plant health or food safety services. Any person carrying on activities capable of affecting these matters are defined as being in the closely connected persons category as well.

Clause 14 specifies the purposes for which information may be processed. These purposes are listed in 14(4) and include:

- help persons in agri-food supply chains to increase productivity, manage volatility and risks (physical ones such as climatic and disease or pollution, as well as financial risks);
- promote transparency and fairness in the supply chain,
- promote health of plants and certain creatures, minimise environmental effects and waste; monitoring market.
- In addition, information may be processed for any function of a public authority related to agri-food supply chains, as well as plant and animal health, food safety, waste, environmental protection and the countryside.

Clause 15 sets out limitations on information provision and processing. The clause 12 requirements to supply information may specify details such as how, when, to whom the information must be provided and in what form, by what means and at what times. Disclosure of information in otherwise than in anonymised form must take place after consideration of "whether the disclosure (if made in that form) would, or might, prejudice the commercial interests of any person", and if so it must be anonymised unless the Secretary of State considers it to be in the public interest for disclosure to be in some other form.

Clause 16 allows the Secretary of State to make enforcement provisions in regard to Clause 12(1) or (2). These can be monetary penalties for non-compliance, advice or warnings, imposition of restrictions (including prohibitions) on carrying out activities, undertakings to take or refrain from taking particular actions. Provisions may also be made by regulations for appeals and giving persons enforcement functions.

5. Part 4: Intervention in Agricultural Markets

The Common Agricultural Policy currently includes a range of agricultural market support measures under the Common Market Organisation (CMO) Regulation (see below).

The UK Government has said that it will 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.[159]

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. Defra's summary of responses states:[160]

> There was a perception that where support mechanisms do exist, they were reactive and ill-defined. Some respondents noted that there was a lack of clarity as to what defined a crisis and what the timelines were when the government might step in to support. There was criticism that when the government did act in a crisis, it is slow to pay out, and the farming recovery fund was cited as an example of this.

Part 4 of the BIll provides the Secretary of State with powers to shape the future interventions that will be made in England.

Clause 17 allows for the Secretary of State to make a declaration stating that "exceptional market conditions" exist which warrant the use of the financial assistance or intervention powers provided for in **Clause 18**.[161]

Clause 19 gives the Secretary of State the power to amend the retained direct EU legislation for England relating to public intervention and private storage aid and to tailor it to domestic need. This includes parts of the Common Market Organisation Regulation (CMO).

This provision in the Bill allows the Secretary of State to modify the retained EU legislation relating to public intervention and private storage aid for England so that it may be used more effectively in exceptional

[159] Defra, Health and Harmony: The future for food, farming and the environment in a Green Brexit: Summary of Responses, September 2018 p93
[160] Defra, Health and Harmony: The future for food, farming and the environment in a Green Brexit: Summary of Responses, September 2018 p93
[161] Bill 226-EN p24

market conditions. Modifications to any retained EU legislation under this power would be linked to the particular, exceptional market conditions declared under **Clause 17**.[162]

5.1 What assistance is provided at the moment?

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".[163]

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.[164]

In addition, there are broad powers for the EU to stabilise markets at times of crisis. Those powers were used most recently for UK producers to provide packages of support for dairy farmers in 2015 and 2016.[165] See Box 3 below.

Box 3: EU aid to UK dairy farmers during Russian sanctions (2015)

In 2015, there was a Russian ban on EU agricultural imports causing difficult conditions in certain markets, particularly dairy products.

In October 2015, The European Commission used Regulation (EU) No 1306/2016 on the financing, management and monitoring of the common agricultural policy and the CMO regulation to offer a support package worth €500 million to help those farmers most affected by the difficulties, including €420 million in national allocations to support the dairy and livestock sectors with flexibility for Member States to decide how to target this support.

It opened an enhanced private storage aid scheme for skimmed milk and opened a new one for cheese so that cheese makers could have more time to secure new markets.

The UK opted to use all of its €36 million allocation for the milk sector.

In July 2016, the European Commission provided a further €350m of aid for the dairy sector with approximately €30m earmarked for the UK.

Source: European Commission, The CAP in your country: UK, July 2017 and Aid package for farmers published, 15 February 2016

The CMO sets out how and when Member States can intervene in agricultural markets and what sector-specific support they can provide. For example, support can be provided for fruits and vegetables, wine, olive oil and school schemes.

[162] Agriculture Bill: Delegated Powers Memorandum from the Department for Environment, Food and Rural Affairs to the Delegated Powers and Regulatory Reform Committee, p 89
[163] Regulation (EU) No 1308/2013 Article 10
[164] .GOV.UK, Private Storage Aid [as viewed on 29 September 2019]
[165] Defra, Health and Harmony: The Future for Food, Farming and the Environment in a Green Brexit, February 2018

The CMO also includes rules on marketing of agricultural products (e.g. marketing standards, geographical indications and labelling) as well as the functioning of producer organisations. The CMO also covers issues related to international trade (e.g. licenses, tariff quota management, inward and outward processing) and competition rules.[166]

A number of UK intervention schemes (e.g. Private Storage Aid) are run by the Rural Payments Agency (RPA) with EU funding from the CAP. They are intended to stabilise the prices of certain products.

Intervention schemes can be seasonal or in response to exceptional market conditions. When intervention is open for a product, farmers and traders are invited to offer eligible products for sale into intervention. The European Commission decides when the schemes are open and they can change depending on the market situation.[167]

5.2 Exceptional market conditions" (Clauses 17-18)

Clause 17 (1) allows for the Secretary of State to make a declaration that there are "exceptional market conditions" in the agricultural market if he considers "there is or may be a severe disturbance, or serious threat of a severe disturbance in agricultural markets".[168]

A copy of the declaration would be laid before Parliament.[169] This is not a legislative power.

Clause 17 (2) sets out when these exceptional conditions exist. 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".[170]

Clause 17 (3) sets out what the declaration should state and describe. This includes "the grounds for considering" that the **Clause 17 (2)** test for exceptional circumstances has been met. For example, it might explain why the incomes of agricultural/horticultural producers would be affected in terms of a fall in the price of a product.[171]

The declaration can only have effect for 3 months at the most and can specify a time period when it is in effect.

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[166] EU Commission, Agricultural Markets [as viewed on 29 September 2018]
[167] .GOV.UK, Intervention schemes for agricultural products [as viewed on 29 September 2018]
[168] Agriculture Bill: Delegated Powers Memorandum from the Department for Environment, Food and Rural Affairs to the Delegated Powers and Regulatory Reform Committee, p 32
[169] Agriculture Bill: Delegated Powers Memorandum from the Department for Environment, Food and Rural Affairs to the Delegated Powers and Regulatory Reform Committee, p 31
[170] Clause 17 (2) (b)
[171] Agriculture Bill: Delegated Powers Memorandum from the Department for Environment, Food and Rural Affairs to the Delegated Powers and Regulatory Reform Committee, p 32

The act of declaring exceptional market conditions triggers the Secretary of State's powers in **Clause 18.**

Clause 18 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 as he sees appropriate of any available powers under retained direct EU legislation which provides for the operation of public intervention and aid for private storage mechanisms to provide this assistance.

Assistance can be given after the specified period if the application for it was received during that time.

5.3 Retained direct EU legislation relating to public market intervention and private storage (Clause 19)

Clause 19 (2) gives the Secretary of State the power to amend (by negative resolution) the retained direct EU legislation for England relating to public intervention and private storage aid. This includes stopping either scheme in England and/or amending the "general operation" of either scheme.[172]

Clause 19 (4) specifies what EU legislation this includes. For example, Articles 8-18 of the CMO Regulation – the specific articles which cover market intervention and private storage aid.

The Secretary of State can only amend the legislation after a declaration of exceptional market conditions. The Explanatory Notes highlight that "any amendments necessary to the retained EU legislation would need to be made urgently, as an intervention scheme could not be implemented until those changes had been made."[173]

Any modifications would also be linked to a particular period of exceptional market conditions and would not have "any permanent effect on the general operation of either scheme".[174]

The Delegated Powers Memorandum outlines the policy intention for Clause 19 (2):

> The policy intention is to move away from schemes created with the European market in mind. However, it is difficult to predict what the future domestic agricultural market may look like; what our future trading arrangements will be; or when the Secretary of State may be free to diverge from the retained EU legislation due to EU Exit negotiations. Therefore it is appropriate for there to be

[172] Bill 266 EN (2017-19), paras 193-195
[173] Bill 266 -EN (2017-19) para 198
[174] As above para 199

> a power that is broad enough to allow the phasing out to occur but to allow flexibility as to the timing and detail of changes.[175]

The memorandum also hints that the UK Government is unlikely to keep provisions relating to public intervention and private storage aid:

> 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.[176]

[175] Agriculture Bill: Delegated Powers Memorandum from the Department for Environment, Food and Rural Affairs to the Delegated Powers and Regulatory Reform Committee, para 106

[176] As above, para 100

6. Part 5: Marketing Standards and Carcass Classification

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.[177]

Defra's policy statement accompanying the Bill states that the Bill will:[178]

> …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,

6.1 Powers to set new marketing standards

The CMO regulation grants powers to the Commission to amend marketing standards in Section 1 of Chapter 1 of title 2.

Clause 20 (1) provides for the Secretary of State to have a delegated power (under affirmative resolution) to tailor and modernise existing marketing standards regarding the quality of agricultural products and product information to customers in England. (This power is extended to Wales and Northern Ireland in Schedules 3 and 4 respectively).

Marketing standards are technical and this power "will enable their modification to keep in line with modernisation, to best suit the domestic sector and to respond to changes required for trade purposes".[179] Marketing standards aim to ensure efficient market operation and price

Clause 20 (3) 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 updating of these classifications is technical and this power "will enable their modification to best suit the domestic sector."[180] The classifications seek to ensure market transparency and efficiency by establishing mandatory standards for carcass specification and grading.[181]

Clause 21 (1) introduces a delegated power to modify Annex 7 of the CMO Regulation. The Explanatory Notes state that this clause (which relates to the wine sector) are "required for technical reasons". [182]

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[177] European Commission, Trade Desk: Marketing Standards (as viewed on 4 October 2018)
[178] Defra, Health and Harmony: The future for food, farming and the environment in a Green Brexit, 14 September 2018
[179] Defra, Agriculture Bill: Delegated Powers Memorandum from the Department for Environment, Food and Rural Affairs to the Delegated Powers and Regulatory Reform Committee, 12 September 2018 p.9
[180] Ibid
[181] DAERA, Northern Ireland Future Agriculture Policy and Framework, 1 August 2016
[182] Bill -266 EN (2017-19) p28

Annex 7 is referred to in sections of the CMO Regulation which Clause 20 (1) would allow the Secretary of State to amend or revoke.

The Delegated Powers Memorandum describes current Commission powers to amend marketing standards as "restrictive" and not easily allowing for technical updating. They only allow for amendments to be made in prescribed circumstances.

The provisions are intended to enable "modernisation of existing marketing standards, so that they deliver domestic standards for domestic farmers, retailers and consumers."

The Delegated Powers Memorandum sets out what the UK Government would seek to use the Clause 20 (1) power to do:[183]

> a) ensure that marketing standards do not place an excessive burden on farmers and other players in the food supply chain.
>
> b) protect consumers by establishing an inspections regime specific to England; and
>
> c) amend overly bureaucratic rules (for example by providing flexibility to consider changing standards which are purely visual and where other systems are in place ensuring the quality of products marketed).

The Delegated Powers Memorandum further points out that working within retained EU legislation would prevent the Secretary of State being able to take action to change any standards that are purely visual and therefore to encourage the marketing of a more diverse range of produce and reduce food waste.[184]

[183] Agriculture Bill: Delegated Powers Memorandum from the Department for Environment, Food and Rural Affairs to the Delegated Powers and Regulatory Reform Committee, para 116

[184] As above para 117

7. Part 6: Producer Organisations and Fairness in the Supply Chain (Schedules 1&2)

Part 6, **Clauses 22- 25**, and **Schedules 1 (Par 2) and Schedule 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".[185]

These powers are extended to Wales in **Schedule 3** Part 3 and Northern Ireland (to DAERA) in **Schedule 4** Part 2.

Two key routes are provided for to achieve this:

- Continued recognition of Producer Organisations - POs to continue collaboration between agricultural producers (**Clauses 22 – 24**) and
- Statutory Codes of Practice for contracts between producers and first purchasers of products (**Clause 25**).

This section of the Bill sets out UK PO rules which will supercede the EU regulations.

The Affirmative Resolution procedure applies to powers set out in **Clauses 22 and 23**.

Schedule 2 amends the *Competition Act 1998* provisions so that derogations from Competition Law that are currently provided for POs for agricultural products in the CMO regulation are retained and given effect in UK law. This allows for the co-ordinated negotiation and planning activities of a PO not to be classed as anti-competitive behaviour.

What are Producer Organisations (POs)?

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.[186] 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.[187]

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

[186] NFU, A guide to Producer Organisations in the Dairy Sector (Accessed 25 September 2018)

[187] European Commission, Producer Organisations and Associations of Producer Organisations [as viewed on 29 September 2018]

UK Government guidance on POs sets out the current position on recognition of a PO for growers.[188] This refers to current EU Regulations,[189] which require that:

PO recognition criteria

A PO must have:

- at least 5 individual grower members all of whom are separate legal entities;
- an annual turnover of €1 million marketable production; POs specifically recognised for mushrooms or nuts must have a minimum marketable production of €250,000;
- a democratic structure that gives members an equal say in the PO's management and operation (giving one member, one vote).

Have POs been encouraged in the UK?

The UK Government has previously expressed support for POs as a means to increase producer strength in the supply chain.[190] The Rural Development Programme for England (2007-2013) provided £5m to help producers to explore opportunities for collaboration. This was seen as seedcorn funding as the Government is not able to support POs directly.

POs have not tended to have been as widely adopted in the UK as elsewhere in the EU. However, the 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.

Box 4: 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. [191]
- 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.[192]

[188] GOV.UK, Introduction to Producer Organisations for Growers webpages (Accessed 25 September 2018)

[189] Council Regulation (EU) No 1308/2013, Commission Delegated Regulation (EU) No 2017/891, Commission Implementing Regulation (EU) No 2017/892

[190] Environment, Food and Rural Affairs Committee, Dairy prices, Fifth report of Session 2014-15, January 2015, HC 817

[191] NFU online, Dairy Crest Direct launches UK's first DPO, 28 May 2015

[192] AHDB, Dairy Crest Direct split into two, 24 December 2015

Creating a "bespoke" approach

Clauses 22-24 allow for existing EU arrangements for POs to be replaced with a "bespoke domestic version".[193]

The current EU regulations which allow recognition as a PO are contained in the CMO regulation. The UK Government is recreating the existing types of recognition criteria in the Bill but many specific elements of the criteria will be defined in secondary legislation. Clause 22 (7) gives the Secretary of State the power to add to the conditions of recognition in Clause 22. This power can also be used in relation to specific sectors where it can provide for exceptions to be made to the conditions of Clause 22. The Delegated Powers Memorandum explains that this latter effect is why it is a Henry VIIIth power.[194]

The measures are to be commenced by regulations to avoid this new regime operating in parallel to the existing EU regime as the CMO may still be in force after the Bill gains Royal Assent.[195]

Clause 22 sets out key conditions for PO recognition including that:

- The producers all operate in a "single agricultural sector"
- The organisation has a minimum number of members or its members have a specified minimum level of production (or both)
- The organisation carries out one or more specific activities on behalf of its members (and does not engage in prohibited activities.

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 23 provides for recognised organisations to be exempted from the Chapter 1 prohibition of the *Competition Act 1998*. Provisions may also be made under this clause for requirements for organisations to provide information and keep records etc.

Clause 24 allows the Secretary of State to delegate functions, including deciding applications for recognition. **Clause 24(2)** allows for exceptions or additional conditions to be applied 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".

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[193] Defra, Agriculture Bill: Delegated Powers Memorandum from the Department for Environment, Food and Rural Affairs to the Delegated Powers and Regulatory Reform Committee, 12 September 2018 para 137

[194] As above para 45

[195] Agriculture Bill Explanatory notes, p29

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.[196]

7.1 Fair dealing with agricultural producers (Clause 25)

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 21 (1) gives the Secretary of State to make regulations for the purpose of "promoting fair contractual dealing by the first purchasers of agricultural products". 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).[197]

Clause 25 (2) refers to making regulations "to impose obligations on the first purchasers of agricultural products in relation to contracts they make for the purpose of agricultural products from producers".

The Government has said it is 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)".[198]

The provision is aimed at addressing the unfair trading practices in agri-food supply chains which arise because of the "relatively weak market position of primary producers compared to other actors further

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[196] HC 474, Third report of the House of Commons Environment, Food and Rural Affairs Committee, Farmgate Prices, Session 2015-16
[197] Bill 266- EN (2017-19) para 235
[198] As above para 239

downstream in the supply chain, who are typically highly consolidated and possess considerable market power."

Fairness issues have been long debated with farmers expressing concern that they are at disadvantage in the marketplace.[199] Discussions have focussed particularly on the contractual regime and enforcement of codes of practice. The establishment of a Groceries Code Adjudicator (GCA) provided a mechanism to enforce the Grocery Supply Code of Practice but this does not cover relationships between farmers and first purchasers in many instances. The Bill does not propose a change in remit for the GCA and the powers will not cover commercial arrangements within the GCA's remit.

Stakeholder views

Mandatory Written Contracts in the Dairy Sector

Dairy UK has noted that the Bill 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 CMO". However, it has said that it is therefore "difficult to understand why Defra has signalled that they will be bringing forward proposals for the regulation of raw milk contracts under the CMO".[200]

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.[201] A review of the operation of the code in 2012 by Alex Fergusson MSP recommended that the code remain voluntary in nature.[202]

Prior to publication of the Bill, the Government had said it planned to introduce mandatory dairy written contracts in 2018, after public consultation. In June 2018 Defra Minister George Eustice said that:

> The Government is committed to improving supply chain fairness and in February this year announced a package of measures to help farmers and growers in the food supply chain. This included a commitment to consult on mandatory written contracts in the dairy sector, which we intend to launch shortly. The responses from this consultation will be used to inform future policy developments, including the consideration of any impacts on the dairy sector resulting from regulatory change.[203]

Dairy UK wants Defra to delay the regulation of contracts in the dairy sector until the powers of the Agriculture Bill are in place:

> Our analysis of the requirements of the CMO is that they are fundamentally incompatible with the need of the dairy sector to

199 See for example NFU online blog, NFU members press concerns of unfair trading, 9 March 2017 (Accessed 26 September 2018)

200 Dairy UK, Dairy UK responds to the publication of the Agriculture Bill, 13 September 2018

201 The Dairy Industry Code of Best Practice for Contractual Relationships available via NFU online (Accessed 25 September 2018)

202 AHDB archive, Voluntary Code can benefit both producer and processor, according to review, (Accessed 25 September 2018)

203 HC Deb25 June 2018, Dairy farming written question 154580

> compete in the volatile market place we can expect post-Brexit. So our first ask is that Defra delay the regulation of contracts in the dairy sector until the powers of the Agriculture Bill are in place, so we can tailor regulation to the needs of the British dairy sector and there is a full and wide-ranging consultation with all players in the dairy supply chain. [204]

The Environment, Food and Rural Affairs (EFRA) Committee recommended in its report Dairy Prices that the code remain voluntary.[205] The Committee concluded that "neither a statutory nor a voluntary code can set or regulate prices in an open market" but that "greater guarantees" of likely future income are required if (dairy) farmers "are not to continue to depart".[206]

However the NFU 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.[207]

Stakeholders have previously commented on the need for **longer term (more than annual) contracts** in evidence to an Environment, Food and Rural Affairs Committee 2016 inquiry into Farmgate Prices.[208] The Agriculture and Horticulture Development Board told the Committee that it was important to move towards a contractualised industry since that "at least gives you some degree of predictability and certainty over what you need to produce, when you need to produce it for, to what quality and the price you receive" However, it recognised that not all farmers would want to enter into long-term contracts for fear it might limit their gains in a rising market. The National Sheep Association emphasised that allowing individual farmers the choice was important.[209]

Some retailers such as Waitrose and Morrisons also told the Committee that they wanted to encourage long-term contracts.[210] The Committee recommended in its report that "Defra encourage farmers, processors and retailers to agree more long-term contracts that provide predicable income levels to encourage secure financial planning and investment decisions".[211]

The House of Lords European Committee published a report in May 2016 Responding to price volatility: creating a more resilient agricultural sector which noted that producers could be at a disadvantage in the supply chain:

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[204] Dairy UK, Dairy UK responds to the publication of the Agriculture Bill, 13 September 2018

[205] Environment, Food and Rural Affairs Committee, Dairy prices, Fifth report of Session 2014-15, January 2015, HC 817, para 30

[206] Environment, Food and Rural Affairs Committee, Dairy prices, Fifth report of Session 2014-15, January 2015, HC 817

[207] NFU online, Regulation of dairy contracts, updated May 2018 (Accessed 25 September 2018)

[208] Environment, Food and Rural Affairs Committee, Farmgate prices, Third Report of Session 2015–16, 16 March 2016, HC 474

[209] As above, para 112

[210] As above, para 113

[211] As above, para 115

> Longer term contracts can provide stability, but problems arise when retailers use the contracts with their suppliers for their own advantage, sometimes cancelling orders with little notice or compensation. This remains an ongoing cause for concern".[212]

Groceries Code Adjudicator

The Groceries Code Adjudicator Act 2013 established the Groceries Code Adjudicator (GCA) to regulate the operation of the Grocery Supply Code of Practice.[213] The role of the GCA is to act as "the independent regulator ensuring that regulated retailers treat their direct suppliers lawfully and fairly".[214] 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…. However the majority of farmers do not supply supermarkets directly. They are therefore covered [sic] and can be exposed to unfair trading practices".[215] 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. The Committee wrote to Ministers in January 2018 arguing that the remit of the GCA should be extended to cover indirect suppliers and so cover the whole food supply chain.[216] George Eustice, Defra Minister, replied that the call for evidence on the remit of the GCA recognised that:

> there are still some concerns about unfair trading practices in the groceries supply chain; in particular, amongst primary producers who are not covered by the GCA or the Code. The Government wants to do all it can to help, whilst taking account of the interests of all parties in the groceries sector.[217]

The Government has set out its position in a recent Lords PQ answer which stated that:

> It is important that farmers and growers are treated fairly by other operators in the supply chain. The Groceries Code Adjudicator plays an important role in making sure that businesses who supply directly to large supermarkets are treated lawfully and fairly.
>
> Many farmers and producers do not supply supermarkets directly, and earlier this year the Government announced a package of

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212 House of Lords European Committee Responding to price volatility: creating a more resilient agricultural sector, Fifteenth Report of Session 2015-16, May 2016, HL Paper 146

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

214 GOV,UK Groceries Code Adjudicator webpages (Accessed 25 September 2018)

215 Agriculture Bill Explanatory notes, p 31

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

217 Letter from Andrew Griffiths, Parliamentary Under Secretary of State for Small Business, BEIS, and George Eustice, Minister of State for Farming, Fisheries and Food, Defra 29 January 2018

measures to help farmers by improving transparency and integrity in the supply chain. These measures included:

- A £10 million collaboration fund to support farmers to come together and strengthen their position in the supply chain. This fund will be launched later this year.
- A commitment to explore with industry how the collection and dissemination of market data can be improved in the longer-term to drive greater supply chain transparency.
- Launching consultations on mandatory written contracts in the dairy sector and on carcase classification for sheep. The latter is underway.[218]

The Bill

Clause 21 (1) gives the Secretary of State to make regulations for the purpose of "promoting fair contractual dealing by the first purchasers of agricultural products".

Clause 25 (2) refers to making regulations "to impose obligations on the first purchasers of agricultural products in relation to contracts they make for the purpose of agricultural products from producers".

Clause 25 (3) sets out the kinds of obligations that can be imposed:

- Obligations to contract in writing;
- Obligation to include in contracts "terms dealing with specific matters" or not to include such terms;
- Obligations relating to the provision that must be made by terms in contracts as well as obligations to comply with specified principles and practices as to the provision that should be made by those terms.

The Explanatory Notes state that this will cover obligations in both written and unwritten contracts. [219] Obligations might include a requirement to use a written contract or to include specific terms in a contract, for example on premiums or deductions.

The Government has said it is 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)".[220]

There is no specific mention of codes of practice in Clause 25 but the Delegated Powers Memorandum accompanying the Bill provides more detail and outlines how Clause 25 (1) gives the Secretary of State the power to define, for the UK, principles of fair trading in agricultural products, and to publish, maintain and enforce **statutory, sectoral codes of practice** on fair contractual relations in agricultural trade. These are intended to "prohibit certain problematic behaviours" and

[218] HL Deb 6 August 2018, Farmers: Supermarkets:Written question - HL9854
[219] Bill 266 – EN (2017-19) para 236
[220] As above para 239

"protect producers from unfair trading practices".[221] This provision will therefore create new sector-specific codes of contractual conduct or place existing voluntary codes on a statutory footing.[222]

Clause 25(4) gives examples of the kinds of matters which may be specified – the quantity and quality of products to be purchased, how products are to be provided (including the timing of deliveries), pricing mechanisms, payment (including timing and method of payment) and charges for processing products. Other examples are exclusivity and variations, durations and terminations of contracts.

Clause 25 (5) allows for the Secretary of State to establish an enforcement regime with a power to allow for an independent party to have delegated authority to determine appeals.[223] It is envisaged that enforcement will be carried out by the Rural Payments Agency.[224]

Regulations can determine compliance arrangements including reference to a specified person, the imposition of civil penalties or a requirement to pay penalties by a first purchaser of agricultural products deemed to be non-compliant with the obligations in regulations.

[221] GOV.UK, Health and Harmony: the future for food, farming and the environment in a Green Brexit – policy statement, 12 September 2018 and [221] Defra, Agriculture Bill: Delegated Powers Memorandum from the Department for Environment, Food and Rural Affairs to the Delegated Powers and Regulatory Reform Committee, 12 September 2018 para 174

[222] As above, para 179
[223] Agriculture Bill Explanatory notes, pp31,32
[224] Bill 266 – EN (2017-19) para 239

8. Part 7: WTO Agreement on Agriculture

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).[225]

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 'schedule' of trade commitments at the WTO. This process is not expected to be straightforward.[226]

Defra expects the UK to receive a share of the EU's current Aggregate Measurement of Support (AMS) allowance after EU Exit. AMS is the annual level of agricultural support given to agricultural producers exempting any green or blue box support (ie. Least trade distorting -see box below). However, this is still subject to agreement with other WTO members and therefore cannot be set out on the face of the Bill.

This overall UK ceiling needs to be set before individual limits for each appropriate authority across the UKL can be set. The Delegated Powers Memoranda states that "Defra will work closely with the devolved administrations on the methodology for setting these limits during the course of further consultation with HM Treasury."[227]

Clause 26 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).

However, the UK Government is still in discussions with the Devolved Administrations to agree the necessary processes to classify agricultural support and notify it to the WTO. It has therefore said that it cannot put these details on the face of the Bill. It has also highlighted that as the process "may need to be refined and fine-tuned after implementation", secondary legislation avoids the need to amend primary legislation.[228]

The delegated powers in Clause 26 (1) can be used to establish a:[229]

- decision-making process to classify agricultural support in accordance WTO criteria

[225] Defra, Agriculture Bill: Delegated Powers Memorandum from the Department for Environment, Food and Rural Affairs to the Delegated Powers and Regulatory Reform Committee, 12 September 2018 para 184
[226] House of Commons Library Briefing CBP 08397, What if there's no Brexit deal, 10 September 2018 para 6.1
[227] As above para 188
[228] As above para 191
[229] As above p.55

- make provisions about the levels of domestic support including individual limits for England, Wales, Scotland and Northern Ireland and
- make provision requiring devolved authorities to provide information to enable the UK to comply with AoA.

Regulations made under these powers would be subject to the Affirmative Resolution procedure.

Scottish and Welsh Concerns

The Scottish and Welsh Governments have already expressed concern about these parts of the Bill relating to the WTO.

A Scottish Government spokesman has said:

> 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."[230]

However, the UK Government's view is that the Scottish Parliament does not have the legal competence to act in this area.[231]

Welsh Cabinet Secretary for Energy, Planning and Rural Affairs, Lesley Griffiths has highlighted that the WTO provisions are one of the outstanding areas of the Bill which "could have a significant effect on devolved competence". She has called for agreement on "a better process for managing this important part of agricultural support". [232]

The UK Government has said, that "while this is a reserved matter", it "will work closely with the devolved administrations on this given their interest".[233]

8.1 What kind of WTO rules apply to agriculture?

The 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.

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[230] Scottish Government rejects suggestion it "misunderstood" Agriculture Bill, *Farmers Guardian*, 20 September 2018
[231] Defra, UK Government Agriculture Bill: Scotland Myth Buster, 13 September 2018
[232] Welsh Government, Agriculture Bill is an important step in supporting Welsh farmers post-Brexit – Lesley Griffiths, 11 September 2018
[233] Defra, UK Government Agriculture Bill: Scotland Myth Buster, 13 September 2018

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.[234] 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.[235]

Box 5 : 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

[234] See WTO, Domestic support in agriculture (accessed 11 September 2018)

[235] House of Lords European Union Committee, Brexit: Agriculture inquiry, oral evidence 8 March 2017, Q86

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

The Bill

Clause 26: The Government states that the Clause is intended to enable the UK to meet its WTO obligations and not to exceed permissible levels of support (subsidy):

> The domestic support provisions relate to various forms of government financial support given to domestic producers of agricultural products, both direct and indirect. Payments made to agricultural producers during the agricultural transition and through any future public money for public goods schemes, would need to comply with the AoA. This clause intends to ensure that all support schemes are properly classified as amber, green or blue, and if they fall into the amber box, that they do not cause the UK to exceed its Aggregate Measurement of Support (AMS) limit. This clause also intends to ensure that the UK is able to meet its obligations to make notifications required under the AoA.[236]

The UK, as a WTO member, is responsible for ensuring that all policies are WTO compliant. The Bill includes:

> …powers [to] set financial limits on the level of farming subsidies paid by the devolved administrations (Scotland, Wales and Northern Ireland) and England. The powers will make provision for a process for the classification of schemes and require the devolved administrations to provide information on their support regimes, enabling us to comply with World Trade Organisation rules.[237]

Clause 26 (2) sets out that the Regulations may make provision for:

- A process for the appropriate authorities to decide how different types of domestic support should be classified (including reviewing and amending existing classifications).
- A process for the resolution of disputes between the appropriate authorities regarding the classification of domestic support, which may include provision making the Secretary of State the final arbiter on any decision on classification

Clause 26(3) states that regulations may set out provisions about levels of domestic support. These can set out:

- the total amount of domestic support allowable to the UK
- a limit on the amount of domestic support that may be given by all the appropriate authorities combined (which can be less than the former).

[236] Agriculture Bill Explanatory notes pp32,33
[237] GOV.UK, Health and Harmony: the future for food, farming and the environment in a Green Brexit – policy statement, 12 September 2018

- Individual limits can be set on the amount of domestic support that may be given "by each appropriate authority in England, Wales, Scotland and Northern Ireland".

Clause 26 (4) allows for these limits to be different for different authorities or for different classes of domestic support and the Secretary of State is given a power to define the limits by monetary amount, percentage of total support or "in any other way" s/he deems appropriate.

Regulations may require a devolved authority to provide information to the Secretary of State for a range of purposes such as resolving disputes with other countries signed up to the Agreement on Agriculture or for resolving disputes about classification of support.

9. Part 8: Wales and Northern Ireland (Schedules 3 and 4)

9.1 Wales

Lesley Griffiths, Welsh Cabinet Secretary for Energy Planning and Rural Affairs said in a written statement to the Welsh Assembly that she had asked the UK Government to include powers from Welsh Ministers in the Agriculture Bill as "transitional" time limited provisions until a Welsh Agriculture Bill can be brought forward to "design a Made in Wales" system which works for Welsh agriculture.[238]

The provisions in **Schedule 3** enable Welsh Ministers to be able to continue making payments to farmers and land managers once the UK leaves the EU, to make changes to current schemes and to enable the implementation of replacement land management schemes.

Provisions relating to Wales are contained in a separate Schedule "so that any changes the National Assembly wishes to see for Welsh Ministers can be made easily".[239]

The written statement explains the nature of the Welsh powers in the Bill:[240]

> There are a small number of additional powers being taken in Wales. In addition to a small number of technical differences, our powers also include an emphasis on supporting rural communities and businesses involved in supply chains.
>
> In general, these are enabling powers which provide for Welsh Ministers to bring forward Wales-specific regulations to the Welsh Assembly for scrutiny. Regulations will not be brought forward until the policy development process has concluded. In "Brexit and our Land" we committed to bring forward a white paper in spring 2019.

Schedule 3 extends mostly identical powers to the Welsh Ministers as those given to the Secretary of State in Clauses 1-5 of the Bill.[241]

However, the Schedule adds further areas in Part I (which apply only to Wales) where Ministers can provide financial assistance. These include:

- Supporting businesses or communities in rural areas
- Starting or improving the productivity of, an agricultural, horticultural or forestry activity.
- Supporting persons who are involved in the production, processing, marketing or distribution of products deriving from an agricultural, horticultural or forestry activity.

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[238] Welsh Government, Written Statement: Introduction of the Agriculture Bill, 12 September 2018
[239] As above
[240] Welsh Government, Written Statement: Introduction of the Agriculture Bill, 12 September 2018
[241] Bill 266-EN (2017-18) para 292

The range of eligible recipients of support is also broader in the Welsh provisions including land managers and those throughout the supply chain, whilst in England payments are restricted to those 'starting, or improving the productivity of, an agricultural, horticultural or forestry activity'.[242]

Schedule 3 requires legislative consent from the Assembly.

Welsh consultation on future plans

The Welsh Green Paper, Brexit and our Land is still out to consultation until 30 October 2018.

It includes proposals for a new 'Land Management Programme.' The consultation indicates the approach it will take:

> …reflecting our desire to keep land managers on the land, we will develop an outcome-based scheme that focuses on rewarding delivery. The outcomes will directly relate to domestic or international commitments and land managers will be paid an appropriate value for those outcomes rather than being compensated for input costs. In many cases, traditional land management practices will remain important for the delivery of these outcomes. As such, there is no reason why a farmer or forester cannot produce both public goods and food and timber.[243]

In addition, it sets out how alongside providing a "valuable income stream" and environmental protection, one of the objectives for the new scheme is to:

> …increase rural community resilience and rural social capital by ensuring land managers have the opportunity to continue managing their land as part of the rural community.[244]

9.2 Stakeholder reaction to the Bill

NFU Cymru's position on the Agriculture Bill states that the common theme it is hearing from Members as it gathers views on the Welsh consultation is that "food production must be at the heart of any future agricultural policy in Wales if these businesses are to prosper in the future". [245] The Union has also said:

> "….We must also realise that Wales has an excellent environmental story to tell, but be under no illusion that it is farmers that maintain and enhance our environment alongside providing safe, quality, affordable food.
>
> NFU Cymru maintains that any future Welsh agricultural policy should contain volatility or stability measures, to sit alongside environmental and productivity measures, in order to support farmers' core role as food producers. Given that agriculture underpins the Welsh food and drink sector worth almost £7 billion a year to the Welsh economy and employing over 240,000

[242] Senedd Research In Brief, What does the Agriculture Bill mean for Wales? 28 September 2018
[243] Welsh Government, Brexit and our Land, Securing the Future of Welsh Farming, p.42
[244] Welsh Government, Brexit and our Land, Securing the Future of Welsh Farming, p.42
[245] NFU Cymru, Position Statement: UK Government Agriculture Bill, 12 September 2018

> people, we need future policy that supports this important sector and allows it to prosper post-Brexit".[246]

9.3 Northern Ireland

Schedule 4 extends similar powers to the Department for Agriculture, Environment and Rural Affairs (DAERA) as those given the Secretary of State in England in Parts 2-5 of the Bill.[247]

For ease of reference, the powers in Schedule 4 are set out in **Table 4** below showing any difference with the corresponding parts of the Bill for England.

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

The scope of the power DAERA are seeking in paragraph 2(1) of Schedule 4 includes 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.[248]

The Delegated Powers Memorandum accompanying the Bill explains that this measure related to areas of natural constraint is needed because provisions relating to these payments "are likely to be removed" by regulations made under the EU Withdrawal Act to deal with 'deficiencies' arising from withdrawal. This means that specific provision needs to be made in Northern Ireland after EU Exit to enable these payments to be made.[249]

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
- 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.[250]

[246] As above
[247] Bill 266- EN (2017-19) para 296
[248] Defra, Agriculture Bill: Delegated Powers Memorandum from the Department for Environment, Food and Rural Affairs to the Delegated Powers and Regulatory Reform Committee, 12 September 2018 para 210
[249] As above para 211
[250] Farming News, Gove package is simply not for us, 15 September 2018

Table 4: Extension of Powers to DAERA

Schedule 4	**Area covered**	**Equiv. part of the Bill**	**Difference in powers**
Powers not extended	New Financial Assistance Powers (i.e. paying for public goods)	Part 1	N/A
Part 1	Financial Support after Exiting the EU	Part 2	Schedule *doesn't* include an equivalent of: **Clause 5:** agricultural transition **Clause 7:** powers to phase out Direct Payments and delink payments **Clause 8:** Termination of Direct Payments **Clause 10:** Modifies aid schemes for fruit and vegetable POs Has additional powers for DAERA to: Modify articles 48 and 48 of the Direct Payments Regulation relating to payments for areas of natural constraint.
Part 2	Collection and Data Sharing	Part 3	Same provisions but refer to DAERA and Northern Ireland instead of England and Secretary of State.
Part 3	Intervention in agricultural markets	Part 4	Gives similar powers to DAERA to those given to the Secretary of State
Part 4	Marketing Standards and Carcass classification	Part 5	

9.4 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:[251] This is discussed in relation to Direct Payments in Section 3.1 and also in Commons Library Briefing Brexit: UK Agriculture Policy.

9.5 Stakeholder reaction to the Bill

The Ulster Farmers Union has said that it is "pleased to see provisions in place that take into consideration the political situation in Northern Ireland". The Union has 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".[252]

The Union is pleased that, despite the absence of Stormont, the Bill recognises that Northern Ireland's needs are different from the other regions and will not pre-judge or constrain the decisions of incoming Ministers, NI Executive and Assembly. However, it has highlighted that it is difficult for farmers and businesses to plan as no real decisions can be taken at the moment. [253]

DUP MEP Diane Dodds welcomed the Bill as a further part of preparing support for the future of agriculture and rural communities post-Brexit. She has indicated that the DUP will be seeking an amendment to the Bill to ensure that payments to farmers are uninterrupted in the case of further delay to restoring the Assembly.[254]

[251] DAERA, Northern Ireland Future Agriculture Policy Framework: Stakeholder Engagement, 1 August 2018
[252] Ulster Farmers' Union, UFU comment on UK agriculture Bill, 14 September 2018
[253] As above
[254] Farming News, Gove package is simply not for us, 15 September 2018

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