



SPICe Briefing Pàipear-ullachaidh SPICe

Revised UK Agriculture Bill 2020

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This briefing considers the UK Agriculture Bill from a Scottish perspective. The Bill was introduced in the House of Commons on 16 January 2020. It follows on from the Agriculture Bill 2018 which was introduced in the House of Commons on 12 September 2018 but which fell at the end of the parliamentary session. Whilst the main purpose of the bill is to provide a legal framework which will underpin a new agricultural policy for England after Brexit, it also makes provisions which will apply in Scotland. This briefing explains each section of the Bill, and examines, in greater detail, those sections which will apply to Scotland..



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Executive Summary

The [UK Agriculture Bill](#) was introduced on 16 January 2020. It received its second reading on 3 February 2020, and the Committee Stage concluded on 5 March 2020. This Bill follows on from the 2017-2019 [UK Agriculture Bill](#) introduced in September 2018, which fell at the end of the previous Parliament. When comparing these two versions, this briefing refers to them as 'the 2019-2020 Bill' and 'the 2017-2019 Bill'.

As agriculture is a devolved policy area, some parts of this Bill apply in Scotland, while some do not. For example, the Bill makes provision for a new environmental land management scheme for England only, while making provision for UK-wide reporting on food security.

Much of the content of a future agricultural policy for Scotland is not contained in this Bill. The Scottish Government introduced the Agriculture (Retained EU Law and Data) (Scotland) Bill in November 2019. The Agriculture (Retained EU Law and Data) Scotland Bill (referred to in this briefing as 'the Scottish Agriculture Bill'), makes provision for an interim approach to agriculture policy for Scotland based on simplifying and improving retained EU law. The Scottish Government intends to bring forward new legislation in due course to make provision for a longer-term agricultural policy for Scotland.

While this briefing briefly goes through each section of the Bill, the analysis focuses on the implications of the Bill for Scotland. The House of Commons Library has produced a comprehensive [briefing](#) on the Bill as a whole.

Part 1 of the briefing describes the purpose of the bill.

Part 2 provides an overview of Brexit-related UK legislation, and what this means for Scotland.

Part 3 discusses what it means for agriculture to be devolved.

Part 4 outlines the differences between the 2017-2019 UK Agriculture Bill and the 2019-2020 UK Agriculture Bill.

Part 5 outlines the policy direction for England, as set out by the Bill.

Part 6 goes through each clause of the Bill.

Part 7 highlights the main issues raised at the second reading in the House of Commons on 3 February 2020.

Part 8 goes through the parts of the bill that apply in Scotland. These are:

- Clause 17 - Food Security
- Clause 27 - Fair Dealing Obligations
- Clauses 28-30 - Producer Organisations
- Clause 31 - Fertilisers
- Clause 32 - Identification and Traceability of Animals

- Clause 33 - Red Meat Levy
- Clauses 36 and 37 - Organic Products
- Clauses 40-42 - WTO Agreement on Agriculture

Part 9 outlines the Scottish Government's response.

Part 10 outlines the reception among Scottish stakeholders.

Part 11 provides a comparison between the UK Agriculture Bill and the Agriculture (Retained EU Law and Data) (Scotland) Bill. This section discusses the parallel provisions in each Bill, as well as the main difference between the bills: the UK Bill makes provision for a new long-term agricultural policy for England, while the Scottish bill is intended to make provision for a transition to a new agricultural policy, the details of which will be set out in further primary legislation.

Part 12 provides a discussion of trade and agricultural standards, as the main issue raised in the second reading.

Part 13 discusses a number of outstanding questions and issues for Scotland. These are:

- Will the UK Agriculture Bill be the basis for a common framework on agriculture?
- How will the possibility of changing regulatory standards in England affect Scotland's ability to keep pace with EU regulation?
- How will the UK Agriculture Bill and the policy direction it sets for England affect Scotland's policy direction?
- On what basis will funding for agriculture and land management be allocated?

1. Purpose of the Bill

The stated purpose of the Bill is to "establish a new agricultural system based on the principle of public money for public goods for the next generation of farmers and land managers."

It proposes to achieve this by making provision to:

- ensure that funding can be provided for agriculture and related activities;
- set out the future of direct payments once the UK leaves the EU;
- provide for support for agriculture in exceptional market conditions;
- allow for retained EU law to be amended;
- report on UK food security;
- provide for the collection and use of data from the agricultural supply chain;
- allow for regulations to be made on fair dealing within the supply chain, marketing standards, organic products and classification of carcasses;
- allow for the recognition of producer associations and set out their exemption from competition law;
- allow requirements to be set for fertilisers;
- create processes for the identification and traceability of animals;
- allow for schemes to be set up to redistribute the Red Meat Levy between the four UK nations;
- to make changes to rules on agricultural tenancies;
- to allow regulations to be made with regard to UK compliance with the World Trade Organisation (WTO) Agreement on Agriculture;¹

The need for this Bill has arisen as a result of Brexit. Leaving the EU means that the UK will no longer be part of the EU Common Agricultural Policy. This departure has necessitated the development of new agricultural policies across the UK.

Much of the Bill is concerned with establishing a framework for a new agriculture policy in England, and applies to England only. However, some provisions apply in other parts of the UK.

The UK Government intends to seek legislative consent for various provisions which it considers would be within the competence of the Scottish Parliament, the National Assembly for Wales, or the Northern Ireland Assembly.

2. Brexit-related UK legislation

This section of the briefing provides some information on the impact of the UK's exit from the EU on law-making in devolved areas. It also examines the powers that Ministers have to make laws in devolved areas.

2.1 What does the UK leaving the EU mean for law making?

Many of the laws in the UK derive from its membership of the EU. These laws cover issues from workers' rights to the labelling of food.

The UK left the EU on 31 January 2020. However, EU law will continue to apply during a transition period which will end on 31 December 2020.

For the purposes of legal continuity, the UK Government wishes to preserve, as far as possible, the legal position which exists immediately before the end of the transition period. This will be achieved by taking a "snapshot" of all of the EU law that applies in the UK at that point and bringing it within the UK's domestic legal framework as a new category of law, known as "retained EU law".

The creation of this new category of UK law was one of the main purposes of the [European Union \(Withdrawal\) Act 2018](#). The Act aims to ensure that the UK has the laws it needs after the end of the transition period. This could include, for example, the law on the nutrition and health claims made on food, or on ensuring environmental protection in marine areas.

The UK will be able to amend the policy underlying this retained EU law after the end of the transition period (i.e. with effect from 1 January 2021) by making new domestic laws (laws which apply across the UK or to any part of it).

For more on how domestic laws will be made see

2.2 Making new laws in devolved areas after EU exit

Some areas of law have always been determined at a UK level. For areas of law which are derived from the EU, such as agriculture, the UK must continue to comply with EU law until the end of the transition period on 31 December 2020.

From 1 January 2021 the UK will no longer be required to comply with EU law. Responsibility for policy in areas which were previously dealt with at an EU level will lie with the UK Government and/or the devolved governments.

Scottish Ministers will continue to have powers in devolved areas and the Scottish Parliament will continue to legislate for Scotland in respect of devolved matters. The UK Parliament has the power to pass law in all policy areas for the whole UK and it will continue to have that power. The UK Parliament will not normally pass primary legislation (an Act of Parliament) in devolved areas without seeking the consent of the devolved legislatures. This is through [the process of legislative consent](#).

Prior to 2018, UK Ministers generally only had powers to make regulations (secondary legislation) in devolved areas for the purpose of giving effect to EU law. That law, and the policy behind it, had been decided through the EU legislative process.

The [European Union \(Withdrawal\) Act 2018](#) gives UK Ministers power to make regulations in devolved areas for the purposes of amending laws so that they work effectively after the UK leaves the EU. The aim of these kinds of regulations is to achieve legal continuity after the end of the transition period.

The [European Union \(Withdrawal Agreement\) Act 2020](#) goes further and gives UK Ministers the power to make secondary legislation (regulations), capable of changing policy in devolved areas.

UK Ministers will not normally make such regulations in devolved areas without the consent of Scottish Ministers. In some cases, such agreement is a legal requirement, but not in all. The Scottish Parliament cannot scrutinise secondary legislation laid before the UK Parliament. However, it has a clear interest in such legislation where it relates to devolved matters.

The Scottish Parliament can scrutinise Scottish Ministers' decisions to consent to regulations which are made by UK Ministers in devolved areas. A process for this is being agreed between the Scottish Government and the Scottish Parliament. A [protocol is already in place for statutory instruments](#) made to fix deficiencies (gaps, errors and unintended consequences) as a result of powers given to UK and Scottish Ministers under the European Union (Withdrawal) Act 2018.

2.3 Do Ministers have new powers to make law in devolved areas as a result of EU exit?

The [European Union \(Withdrawal Act\) 2018](#) gives Scottish Ministers powers to amend the law in devolved areas by regulation (secondary legislation) so that Scottish laws work effectively after the UK leaves the EU and the transition period is complete. UK Ministers have powers under the [European Union \(Withdrawal Act\) 2018](#) to amend the laws in the UK, including Scottish laws, so that they work effectively after the UK leaves the EU. These powers have been conferred concurrently, meaning that either UK Ministers or the Scottish Ministers can make the regulations.

In some cases where the UK Government and the Scottish Government wish to pursue the same policy objective, the Scottish Government can ask the UK Government to lay statutory instruments that include proposals relating to devolved areas of responsibility. The UK Government can also make regulations in devolved areas without Scottish Ministers asking them to. UK Ministers will not normally make such regulations in devolved areas without the consent of the Scottish Ministers. That agreement is a legal requirement in some cases, but not in all.

The changes made by these kind of regulations are often technical and are there, in many cases, to achieve legal continuity. In some cases, the changes are very minor – removing references to EU institutions, for example. In other cases they are more significant - such as changes in regulatory requirements. The powers to make these kind of regulations are mainly time limited.

The European Union (Withdrawal Agreement) Act 2020 does, however, give UK and Scottish Ministers a suite of new powers in devolved areas that go beyond correcting deficiencies to achieve legal continuity. These powers have been conferred concurrently, meaning that either UK Ministers or Scottish Ministers can make the regulations. The suite of concurrent powers includes:

- powers to implement long term obligations for the recognition of citizens' rights under the Withdrawal Agreement
- powers to deal with separation issues such as the regulation of goods placed on the market
- powers to implement the Ireland/Northern Ireland protocol.

There are other powers created or amended in the regulations made under the European Union (Withdrawal) Act 2018 and also powers in other Brexit related legislation, such as the Direct Payments to Farmers (Legislative Continuity) Act 2020. Some of these powers may be used to make regulations which change policy. The powers are generally not time limited.

2.4 What is the significance of this Bill in the post EU exit legislative landscape?

This Bill is a direct result of the UK's exit from the EU, because policy in this area was previously set at EU level.

If new law was not made in this area then the legal position from 1 January 2021 would be as provided for under retained EU law.

This Bill sets a framework for a new agricultural policy to apply to England as well as provisions extending to devolved nations from 1 January 2021.

2.5 Does this legislation relate to common frameworks?

In many policy areas, EU laws have ensured that there is a consistent approach across the UK, even where these policy areas are devolved. This is because the UK and all of its governments have had to comply with EU law. In effect, this compliance has meant that the same policy has been followed.

The UK left the EU on 31 January 2020. There is now a transition period until 31 December 2020. Through the transition period the UK will continue to comply with EU law. After the end of the transition period, there is the possibility of policy divergence because the UK Government and the devolved administrations within the UK will no longer need to comply with EU law. Common frameworks can be developed so that rules and regulations in certain areas remain the same, or at least similar, across the UK. The UK Government has set out that it anticipates that a number of areas within agricultural policy (including

agricultural support, zootech [animal breeding and genetics] , fertilisers and organics) will be the subject of a common framework.²

A common framework is an agreed approach to a particular policy, including the implementation and governance of it. Common frameworks will be used to establish policy direction in areas where devolved and reserved powers and interests intersect.

Developments in common frameworks will be one of the factors which determines how Scotland and the rest of the UK will interact post EU exit.

Some common frameworks may be legislative but it is anticipated that the majority will be non-legislative. That means that they will be agreed through memorandums of understanding, concordats and so on, rather than being set out in primary legislation.

There may, however, be provision made in primary legislation which relates to a common framework. It is likely that some provisions made in this Bill will form part of common frameworks on agriculture. Similarly, some regulations (secondary legislation) are likely to make provision which is linked to common frameworks. Until common frameworks are explicitly developed, and details are shared by the UK and Scottish Governments, it is unclear what the broader extent of agricultural common frameworks will be.

As part of its scrutiny role, the Parliament needs to be able to consider the Scottish Government's approach to, and development of, common frameworks. The Scottish Government and the Scottish Parliament are therefore working together to produce a protocol for the sharing of information on common frameworks.

The committees of the Scottish Parliament will lead on scrutiny of common frameworks in their policy area.

Further information on common frameworks can be found on [SPICe's post-Brexit hub](#).

3. What does it mean for agriculture to be devolved?

Agriculture is a devolved policy area; the Scottish Ministers are responsible for the direction and design of agricultural policies for Scotland. Under the EU Common Agricultural Policy (CAP), Scottish Ministers are responsible for determining the variable elements of the CAP. For example, deciding how much money is transferred from [Pillar 1](#) (direct payments) to [Pillar 2](#) (rural development) (see Box 1) and the design of the Scottish Rural Development Programme. The European Parliament states:

"A higher degree of flexibility [in Pillar 2] (in comparison with the first pillar) enables regional, national and local authorities to formulate their individual seven-year rural development programmes based on a European 'menu of measures'. Contrary to the first pillar, which is entirely financed by the EU, the second pillar programmes are co-financed by EU funds and regional or national funds." As such, the Scottish Government is also responsible for setting the co-financing rate at which Scotland will contribute to the Scottish rural development budget.

Box 1: Financing the Scottish Rural Development Programme

EU member states have the opportunity to transfer up to 15% of their Pillar 1 budget into Pillar 2.³ Scotland chose to transfer 9.5%.

Figure 3a: Make up of the budget for Scottish Rural Development Programme (€ million)

EU contribution	Scottish Government co-financing	Transfer between pillars (i.e. EU contribution)	Total
478	838	364 (9.5%)	1,680 (approx. £1.3 million)

Kenyon, 2017⁴

What will happen at the end of the transition/implementation period?

After the transition/implementation period, agriculture will continue to be devolved. However, there are policy areas which impact the agricultural sector, such as competition regulation and international trade, which are reserved. These were the subject of debate during the passage of the 2017-2019 UK Agriculture Bill. In addition, the 2020 Bill makes new provision in relation to Scotland, for which the UK Government is seeking consent from the Scottish Parliament. This is explored further below.

4. Differences between the 2017-19 Bill and 2019-2020 Bill

In comparison to the [2017-2019 UK Agriculture Bill \(as amended in Public Bill Committee\)](#), the 2019-2020 Bill:

- pays increased attention to soil quality (Part 1, Clause 1(1)(j)))
- pays increased attention to genetic diversity (Part 1, Clause 1(1)(g) &(i))
- pays increased attention to food production (Part 1, Clause 1(4))
- makes provision for multi-annual assistance plans to be laid before Parliament (Part 1, Clause 4).
- has removed Clause 7 of the 2017-2019 Bill (as amended in Public Bill Committee) which conferred a power to reduce the direct payments ceilings for England in 2020 by up to 15% .
- makes provision which allows the Secretary of State to remove or reduce burdens to farmers by modifying existing legislation, including a new specific reference to cross-compliance rules. (Part 1, Clauses 9 and 14)
- makes provision to monitor food security for the whole of the UK (Part 2, Clause 17)
- makes new provision on fertilisers, including the power to make regulations for new assessment processes for fertilisers (Part 4, Clause 31)
- makes new provision for the identification and traceability of animals (Part 4, Clause 32)
- includes provisions to redistribute the Red Meat Levy (though this was subsequently added during the passage of the 2017-2019 Bill) (Part 4, Clause 33)
- makes new provision on agricultural tenancies for England (Part 4, Clause 34)
- makes new provision on organic products (Part 5, Clause 36).

5. Policy direction for England

The UK Agriculture Bill makes provision for a new direction of travel for agricultural policy in England. Clause 1 gives power to the Secretary of State to give financial assistance for a number of purposes. Current agricultural policies allocate the majority of funding in the form of direct payments based on the number of hectares that are owned and managed, for the purpose of income support to farmers. By contrast, Clause 1 specifies a number of environmental, social, and animal welfare purposes, in addition to improving the productivity of producers, for which financial assistance can be given.

The Bill also provides for an agricultural transition period, phasing out area-based direct payments over seven years, starting from 2021. The Bill includes new powers for the Secretary of State to do this, and to introduce interim measures as part of the transition, such as delinked payments, which 'delink' the payment entitlement from the need to manage the land for farming.

This reflects the new direction of travel for English agriculture policy, as set out in the UK Government consultation, '[Health and Harmony](#)' in February 2018. The consultation received over forty thousand responses, and the responses were [analysed](#) by the UK Government. While the consultation was held during a previous government, similar intentions from the current government were set out in the Queen's Speech in December 2019. There, it was stated that the purpose of a new agriculture bill would be to:

- "Replace the current subsidy system, which simply pays farmers based on the total amount of land farmed, and instead reward them for the work they do to enhance the environment, improve animal welfare and produce high quality food in a more sustainable way."
- "Deliver on the Government's manifesto commitments to support farmers and land managers to ensure a smooth and phased transition away from the bureaucratic and flawed CAP to a system where farming efficiently and improving the environment go hand in hand."
- "Set out the framework for a new Environmental Land Management scheme, underpinned by the principle of 'public money for public good'."⁵

Beyond these provisions, much of the detail of a new English agricultural policy and regulatory framework, and the specific terms of the transition, will be brought forward in regulation. For example, the Secretary of State has the power, by regulation, to modify retained EU law on direct payments and rural development, to provide for phasing out direct payments, to remove aid for fruit and vegetable producer organisations, to establish fair dealing obligations for agricultural producers, and so on. In many ways therefore, much of the detail remains to be set out.

The UK Government released two documents containing more detail on the future Environmental Land Management scheme for England in February 2020, one [Policy and Progress Update](#), and one [Policy Discussion Document](#). The UK Government invited the public to respond with their views.

The documents set out details for a three-tiered scheme to support land managers to carry out specific actions. They also provide some details of the ongoing tests and trials of new

approaches, and a planned national pilot for the new scheme. The documents also provide more information on the planned transition to a new system.

English stakeholders have reacted in a variety of ways. National Farmers Union president Minette Batters stated

“ I'm pleased that the government has clearly listened to many of the concerns we raised with the Bill in the last Parliament and has acted to ensure the vital role of farmers as food producers is properly valued. However, farmers across the country will still want to see legislation underpinning the government's assurances that they will not allow the imports of food produced to standards that would be illegal here through future trade deals. We will continue to press the government to introduce a standards commission as a matter of priority to oversee and advise on future food trade policy and negotiations. It is encouraging to see that the Agriculture Bill now recognises that food production and caring for the environment go hand-in-hand. Farmers are rightly proud of their environmental efforts and it is crucial this new policy recognises and rewards the environmental benefits they deliver, both now and in the future.”

National Farmers Union, 2020⁶

Likewise, Thomas Lancaster from the RSPB stated in a blog for Wildlife and Countryside Link, the network body for environmental NGOs:

“ We are pleased that the core principle of 'public money for public goods' which was proposed in the early version of the bill, has been retained: this is the idea that payments to farmers should move away from the area of land they own or rent, and toward the environmental and cultural benefits that the land can provide and society needs. [...] There are obviously gaps, and we will be working to fill them as the bill makes its way through parliament. The most concerning is a lack of assurance around trade policies and import standards. Farming and environment organisations speak with one voice when we say that it is crucial that imports of food under future trade policies are held to UK standards.”

Lancaster, 2020⁷

The provisions in this Bill won't apply immediately. Payments will continue much the same as under the EU Common Agricultural Policy during what is called the 'implementation period', which lasts until the end of 2020, as a result of the terms of the Withdrawal Agreement and the [Direct Payments to Farmers \(Legislative Continuity\) Act 2020](#). The provisions in this Bill will come into force following the implementation period (from 1 January 2021).

The new policy set out by the Bill will not apply in Scotland. However, agricultural support is one area that has been identified as needing a common policy frameworks across the UK. It is not clear how the development of a new English agriculture policy will impact the development of common frameworks for agriculture. A discussion on the questions that arise from this is included [below](#) in the section "Will the UK Agriculture Bill be the basis for a common framework on agriculture?"

6. The Bill

The following sections give an overview of the clauses of the Bill.

6.1 Part 1 - Financial Assistance

This Part of the bill gives the Secretary of State powers to:

1. give financial assistance (to replace common agricultural policy support)
2. set and modify the conditions on the assistance
3. create multi-annual plans for assistance
4. allow checking, enforcing and monitoring of funds and conditions.

6.1.1 Chapter 1 - New Financial Assistance Powers (applies in England only)

Clause 1 gives powers to the Secretary of State to provide financial assistance for -

- managing land or water in a way that protects or improves the environment
- supporting public access to and enjoyment of the countryside, farmland or woodland and better understanding of the environment
- managing land or water in a way that maintains, restores or enhances cultural heritage or natural heritage
- mitigating or adapting to climate change
- preventing, reducing or protecting from environmental hazards
- protecting or improving the health or welfare of livestock
- conserving native livestock, native equines or genetic resources relating to any such animals
- protecting or improving the health of plants.
- Conserving plants grown or used in carrying on an agricultural, horticultural or forestry activity, their wild relatives or genetic resources relating to any such plant
- Protecting or improving the quality of the soil
- starting, or improving the productivity of, an agricultural, horticultural or forestry activity
- Supporting ancillary activities carried on, or to be carried on, by or for a producer.

The clause also specifies that in devising assistance schemes, the Secretary of State "must have regard to the need to encourage the production of food by producers in England and its production by them in an environmentally sustainable way."

Clause 1 specifies that it applies only in relation to England.

Clause 2 gives wide ranging powers relating to the form of financial assistance, the conditions attached to it, and the information that must be provided by recipients. Detail will be set out in regulation.

Clause 3 gives wide ranging powers relating to checking, enforcement and monitoring of financial support and the conditions attached to it. Detail will be set out in regulation.

Clause 4 is new for the current iteration of this Bill, and places a duty on the Secretary of State to, "from time to time" prepare a "multi-annual financial assistance plan", which will provide details about how the Secretary of State will use the powers in the above sections.

Clause 4 specifies that the plan must specify the plan period, strategic priorities, and describe the financial assistance schemes. The first plan period will be for seven years from 1 January 2021, and subsequent plan periods may not be shorter than 5 years. The plan must have regard to the strategic priorities in determining the budget for financial assistance schemes.

Clauses 5 & 6 places duties on the Secretary of State to report annually to the UK Parliament on the amount of financial assistance given, and outlines the requirements for such a report (Clause 5) and to monitor the impact of financial assistance (Clause 6). In monitoring the impact of financial assistance, the Secretary of State must monitor the impact of each financial assistance scheme, and "make reports on the impact and effectiveness of the scheme (having had regard to the monitoring)". Clause 6 does not specify how frequently such monitoring and reporting should occur, beyond what "the Secretary of State considers appropriate".

6.1.2 Chapter 2 - Direct Payments after EU exit (applies in England only)

The Bill states that the agricultural transition period away from the CAP and to a domestic agricultural policy in England will be for seven years starting with 2021. This chapter enables regulations to be made for -

- The basic payment scheme (BPS) to be modified, including by ending greening before the end of the transition period
- Phasing out direct payments for all or part of the transition period
- Making delinked payments (payment no longer linked to how much land is owned or managed)
- Defining what, how much, who receives a delinked payment
- The payment of a lump sum in lieu of direct payments to which a land manager may have been entitled.

Clause 7 sets out relevant definitions in relation to the basic payment scheme.

Clause 8 provides for seven-year agricultural transition period for England from 2021, and for the termination of direct or delinked payments.

Clause 9 confers power on the Secretary of State to modify legislation governing the basic payment scheme in relation to England. This power was included in the previous version of this Bill; however, the purposes for which the Secretary of State may modify these provisions have been amended.

The Secretary of State may make changes for the purpose of:

- Simplifying the administration of the scheme
- Removing provisions which serve no purpose
- Securing that a sanction or penalty imposed under the scheme is appropriate and proportionate
- Limiting the application of the scheme to land in England only
- Removing or reducing burdens "on persons applying for, or entitled to, direct payments under the scheme or otherwise improving the way that the scheme operates in relation to them". "Burdens" are defined as (a) a financial cost; (b) an administrative inconvenience; or (c) an obstacle to efficiency, productivity or profitability.

On the last point, it is important to note that the "legislation covering the basic payment scheme" includes the Direct Payments Regulation, and its subordinate legislation.

Clause 9 also makes provision to end greening payments in relation to England "so long as that provision does not reduce the amount of direct payment to which a person would have been entitled had that provision not been made."

These changes can be made under the negative resolution procedure.

Clause 10 confers the power to provide for the continuation of the basic payment scheme beyond 2020, but only until the Government brings in delinked payments, or until direct payments are phased out at the end of the agricultural transition period.

Clause 11 confers the power to phase out direct payments during the agricultural transition period.

Clause 12 confers the power to make so-called "delinked" payments. The explanatory notes state that this clause

"provides the power to the Secretary of State to delink Direct Payments from land. With delinked payments, there would be no obligation for the recipient of the payments, during the agricultural transition period, to remain a farmer. This will be called 'delinking' payments because the current connection between the value of the payment and the area of land for which it is claimed will be broken"

UK Government, 2020⁸

This clause confers power on the Secretary of State, by regulation, to introduce delinked payments in place of direct payments under the basic payment scheme, but not before 2022. The Secretary of State must specify the rules for receiving these payments, how they are calculated, and so on.

Clause 13 confers power on the Secretary of State, by regulation, to provide for lump sum payments in lieu of basic payments or delinked payments. Opting for a lump sum would mean that the recipient forfeits continued direct or delinked payments.

6.1.3 Chapter 3 - Other Financial Support After EU Exit (applies in England only)

Clause 14 makes general provision connected with payments to farmers and other beneficiaries. It allows the Secretary of State, by regulation, to modify the Horizontal Regulations (Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy) and subordinate legislation relating to it.

The Secretary of State may do so for the purpose of:

- ensuring that any provision of the legislation ceases to have effect
- simplifying the operation of any provision and make it more efficient or effective
- removing or reducing burdens to applicants or recipients, or improving the operation of the legislation in that respect
- Securing that sanctions or penalties imposed by such legislation is appropriate and proportionate.

It is important to note that the Horizontal Regulations and its subordinate legislation is responsible for setting out the rules for cross-compliance. Cross-compliance is a sanction mechanism, by which farmers who do not adhere to cross-compliance rules (more information on what these rules are can be found on the [European Commission's website](#)) may have their payments reduced. Cross-compliance includes both statutory requirements provided for under other aspects of EU law, as well as additional good management requirements for the environment, animal and plant health and animal welfare, as set out in the Horizontal Regulations. This is discussed in greater detail in the section on Trade and Standards [below](#).

Clause 15 confers power on the Secretary of State, by regulation, to terminate aid to fruit and vegetable producers in England.

Clause 16 confers power on the Secretary of State, by regulation, to "modify or repeal retained EU legislation relating to Rural Development in England"⁸. The clause will allow the Secretary of State to make regulations to adjust contract lengths, extend contracts with fewer restrictions, or "be converted or adjusted into new agreements set up under Section 1" of the Bill.⁸ The current rural development programme may also be extended, its budget increased, and currency expressed other than in Euros. The Explanatory Notes clarify that new schemes cannot be introduced under this clause, this is covered in Clause 1.

6.2 Part 2 - Food and Agricultural Markets

6.2.1 Chapter 1 - Food Security (applies to whole of UK)

Clause 17 places a duty on the Secretary of State to report on food security to the UK Parliament at least once every five years. They must report on the whole of the UK, and provide "an analysis of statistical data related to food security". The data analysed in the report may include data on:

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

The UK Government is seeking consent from the Scottish Government for this clause to apply to Scotland.

6.2.2 Chapter 2 - Intervention in Agricultural Markets (applies in England only)

Clause 18 enables the Secretary of State to make a declaration stating that exceptional market conditions exist under certain conditions.

Clause 19 enables the Secretary of State to intervene in markets in the event of exceptional market conditions. This part allows the Secretary of State to react to "severe market disturbance, or the threat of such a disturbance"⁸, which would have a significant effect on agricultural producers in England.

In such circumstances -

- financial assistance may be given
- power to modify retained direct EU law to allow public intervention and aid for private storage, may be used. These powers are conferred by **Clause 20**. Corresponding provisions for Scotland are made in the Scottish Agriculture Bill.

The Explanatory Notes state that these clauses do not extend to other exceptional events (e.g. animal disease, weather) unless they result in actual or threatened market disturbance.⁸

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

6.3.1 Chapter 1 - Collection and Sharing of Data (applies in England only)

Clause 21 makes provision to require actors in the agri-food supply chain to provide information on their activities. This relates only to activities taking place in England; corresponding provisions for activities taking place in Scotland are included in Section 13 of the Scottish Agriculture Bill.

Clause 22 defines agriculture supply chain, and uses the same definitions as the Scottish Agriculture Bill mentioned above. However, the UK definition does not except fish, while the Scottish Bill does.

Clause 23 provides that the requirement to provide information under Clause 21 must specify the purpose for which information is processed, and provides a list of acceptable purposes.

Clause 24 states the requirements on the Secretary of State to publish, and invite comments on, a draft requirement, and specify who the requirement will affect.

Clause 25 states what can and must be included in a requirement to provided information, and sets out limitations on processing information. These provisions are very similar to those made in the Scottish Agriculture Bill.

Clause 26 sets out enforcement rules for information requirements. These provisions are the same as those made in the Scottish Agriculture Bill.

6.3.2 Chapter 2 - Fair Dealing with Agricultural Producers and Others in the Supply Chain (applies to whole of UK)

Clause 27 deals with fair dealing obligations of business purchasers of agricultural products. The Secretary of State may make regulations to impose obligations to ensure fair contracts between business purchasers and agricultural suppliers.

6.3.3 Chapter 3 - Producer Organisations (applies to whole of UK)

Clause 28 makes provision for recognition for producer organisations, interbranch organisations (organisations for collaboration between producers and different parts of the supply chain) and associations of producer organisations. The clause states that organisations of agricultural producers, producer organisations or agricultural businesses that meet respective conditions may apply to the Secretary of State for recognition as a producer organisation, association of producer organisations, or interbranch organisation. The Secretary of State may, by regulation, specify additional conditions, and make further provision about applications to become a producer organisation.

Clause 29 makes provision for Schedule 2 of the Bill to amend Schedule 3 of the Competition Act 1998. The Clause sets out the exemptions for producer organisations from competition law, and allows the Secretary of State to make further provision in relation to recognised organisations.

Clause 30 makes additional provision under clauses 28 and 29, allowing the Secretary of State to delegate functions to other bodies and make sector-specific provision, and also sets the procedure for creating new regulations under the above two clauses.

6.4 Part 4 - Matters Relating to Farming and the Countryside

Fertilisers (applies to whole of UK)

Clause 31 amends the definition of a fertiliser under section 66 of the Agriculture Act 1970 to enable a broader range of materials to be regulated as a fertiliser in the UK. It also amends section 74A of the Agriculture Act 1970 to enable the regulation of fertilisers on the basis of their function. This will allow different requirements to be set, for example, for biostimulants, soil improvers and traditional mineral fertilisers to ensure the safety and quality of the various types of products marketed as fertiliser in the UK.

Clause 31 also allows for regulations to set out an assessment, monitoring and enforcement regime for ensuring the compliance of fertilisers with composition, content and function requirements and for mitigating other risks to human, animal or plant health or the environment presented by fertilisers. However, the power to make regulations under section 74A is exercisable only by the Scottish Ministers, having been transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

The UK Government intends to seek the legislative consent of the Scottish Parliament to this provision because it falls within devolved competence.

Identification and Traceability of Animals (applies to whole of UK)

Clause 32 makes provision for the identification and traceability of animals. As set out in the Explanatory Notes:

“ Clause 32 amends the Natural Environment and Rural Communities Act 2006 (NERC Act 2006) to allow for new data collecting and sharing functions. This will include the running of a database to be assigned to a board established under that Act and to enable the assignment of functions relating to the means of identifying animals. It will amend section 8 of the Animal Health Act 1981 (AHA 1981) to reflect advancements in animal identification technology and to provide that orders made under section 8 will bind the Crown... The purpose of the clause is to prepare for the introduction of a new digital and multi-species traceability service, the Livestock Information Service (LIS), based on a database of animal identification, health and movement data.”

The UK Government intends to seek the legislative consent of the Scottish Parliament to these provisions because they are within devolved competence.

Red Meat Levy (applies to whole of UK)

Clause 33 makes provision for red meat levy payments to be made between levy bodies in the four UK nations. The red meat levy is the payment collected at slaughterhouses per head of pig, cattle and sheep. The levy is collected and spent by the levy body in each country (in Scotland's case, Quality Meat Scotland) for the benefit of red meat producers in that country.

Under this clause, a scheme may be put into place which administers the redistribution of red meat levy payments. The clause specifies how and when payment is to be made between levy bodies, how to calculate the distribution of payments, and related rules.

The UK Government intends to seek the legislative consent of the Scottish Parliament to these provisions because they are within devolved competence.

Agricultural Tenancies (applies only to England)

Clause 34 makes provision in relation to agricultural tenancies in England. It relates to the rights and obligations of tenants.

6.5 Part 5 - Marketing Standards (England only), Organic Products (all UK), and Carcass Classifications (England only)

Clause 35 gives power to the Secretary of State, by regulation, to set marketing standards for products marketed in England. These powers are largely mirrored in the Scottish Agriculture Bill, and relate to the same sectors. There are two small differences between the two:

- Clause 35(2)(j) excludes "live poultry" in addition to poultrymeat and spreadable fats from provisions relating to the "place of farming or origin" in regulations made under these powers. Section 8(1)(j) in the Scottish Agriculture Bill does not.
- Regulations made under this Clause are subject to the affirmative resolution procedure in the UK Agriculture Bill, while any Scottish regulations would be subject to the negative procedure.

Clauses 36 and 37 deal with the power to create regulations for organic products. Clause 36 confers the power to make regulations on the certification of organic products, activities related to organic products, and persons or groups of persons carrying out activities relating to organic products. Regulations made under this clause may set rules for organic certification, marketing, import, export and sale, and about the "objectives, principles and standards of organic production".

The UK Government is seeking consent from Scottish Ministers to legislate for organic products on behalf of the whole of the UK, and, as specified in Clause 37, to confer power on "Scottish Ministers, if and to the extent that provision made by the regulations would be within the legislative competence of the Scottish parliament if contained in an Act of that Parliament".

Clause 38 confers power on the Secretary of State to bring forward regulations to make provision about the classification, identification and presentation of cattle, pig and sheep carcasses by slaughterhouses in England. This mirrors similar provision in the Scottish Agriculture Bill. However, Scottish regulation would be subject to the negative procedure, while English regulation would be subject to affirmative resolution procedure.

Clause 39 confers power on the Secretary of State to reproduce modifications made under Clause 35 on marketing standards for the wine sector. This clause will apply in Scotland.

6.6 Part 6 - WTO Agreement on Agriculture (applies to whole of UK)

Clauses 40-42 confer power on the Secretary of State to make regulations for securing the UK's compliance with the World Trade Organisation's Agreement on Agriculture (WTO AOA). The WTO AOA is an international treaty that sets rules for trade in agricultural products. The AOA covers market access, domestic support and export competition (e.g. use of export subsidies). ⁹ These clauses relate to domestic support for agriculture.

Under the AOA, support schemes are classified into different categories - green box, amber box and blue box - depending on their capability to distort trade. There are no limits on blue and green box forms of agricultural support. There are limits on amber box forms of support - price support and aid coupled to production. Scotland is currently the only country within the UK providing coupled support (where support is linked to, for example, the number of cattle a farmer has) via the Scottish Suckler Beef Support Scheme and the Scottish Upland Sheep Support Scheme ¹⁰.

Figure 6: The WTO's constraints on agricultural support

	Description	WTO constraint
Green box	Support with no, or minimal, trade distorting effects or effects on production, and that meets policy-specific criteria. (e.g. research programmes, pest and disease-control measures, agri-environment schemes. Also, the EU claims, decoupled income support including, the Basic Payment Scheme and its Greening component)	No expenditure limits apply
Blue Box	Direct payments under production limiting programmes (e.g. area payments or 'livestock payments ... made on a fixed number of head)	Currently no expenditure limits
Amber Box	Price support (e.g. milk will be sold at £X per litre) and aid coupled to production (e.g. a farmer will get £X for each beef cattle)	Support in this category must be within de minimis limits, unless the WTO member has negotiated additional entitlement, as the EU has.

Kenyon, 2017¹¹

However, some WTO members are allowed to exceed the “de minimis” limits in the Amber box because historically they have provided this type of support. The EU is allowed to exceed these limits, and has Amber Box entitlements of €72.4 billion. As part of the EU and the CAP, the UK shares this entitlement. Indeed, total EU CAP payments are well within this limit¹².

Outwith the EU, new domestic agriculture policy will be constrained by the WTO Agreement on Agriculture rules.

More information on these rules and limits can be found on the [WTO website](#).

These clauses make provision to ensure that the UK as a whole comply with these rules, by classifying different domestic support schemes into different categories, and setting maximum levels of support in accordance with the UK's allowance. Therefore, regulations may set a limit on the amount of domestic support that may be given to the UK as a whole, and set limits for England, Wales, Scotland and Northern Ireland on the amount of support that may be given in that country. Different limits may be set for different countries, and regulation may specify whether different kinds of domestic support do not count towards the limits set.

Clause 42 specifies that these powers allow the Secretary of State to make provision setting out a process for how domestic support should be classified, and a process for the resolution of disputes regarding the classification of domestic support, "which may include provision making the Secretary of State the final arbiter on any decision on classification." Under this clause, regulations may be made requiring a devolved authority to provide information to the Secretary of State for the purpose of carrying out the functions referred to above.

6.7 Part 7 - Wales and Northern Ireland

Clauses 43-45 make provision for Wales and Northern Ireland.

Clause 43 makes provision for Wales in Schedule 5. As in the 2017-2019 Agriculture Bill, these powers have been included at the request of the Welsh Government, but in the 2019-2020 Bill Welsh Government opted not to take powers to allow Wales to transition to new schemes. Lesley Griffiths, Welsh Government Minister for Environment, Energy and Rural Affairs stated on 16 January 2020 that the powers are:

“intended to be temporary until an Agriculture (Wales) Bill is brought forward to design a ‘Made in Wales’ system which works for Welsh agriculture, rural industries and our communities. [...] The Bill introduced on 16 January, provides powers for the Welsh Ministers to continue paying Direct Payments to farmers beyond 2020 and gives our farmers much needed stability during this period of uncertainty. It also contains certain other powers, including those which are important to ensure the effective operation of the internal market in the UK. Given the passage of time since the original Bill was first introduced in September 2018, I have reflected on the scope of the Welsh schedule, taking into account the helpful reports provided by the Senedd during scrutiny. I have concluded it is no longer appropriate to take powers to allow the Welsh Ministers to operate or transition to new schemes. My intention now is these will be provided for instead by the Agriculture (Wales) Bill. I intend to publish a White Paper towards the end of 2020 which will set out the context for the future of Welsh farming and pave the way for an Agriculture (Wales) Bill.”

Griffiths, 2020¹³

As such, Schedule 5 extends similar powers to Welsh Ministers as those conferred on the Secretary of State in Parts 1-3 and 5 of the Bill.⁸ This includes provision for financial support after exiting the EU, intervention in agricultural markets, collection and sharing of data, marketing standards and carcass classification, and data protection.

Clause 45 makes provision in relation to Northern Ireland in Schedule 6, and extends similar powers to the Northern Ireland Department for Agriculture, Environment and Rural Affairs (DAERA) as those conferred on the Secretary of State in part 1 chapter 2, part 2 chapter 2, part 3 chapter 2 and part 5 of the Bill.⁸ This includes provision for financial support after EU exit, intervention in agricultural markets, collection and sharing of data, marketing standards and carcass classification, and data protection. However, the powers extended to DAERA are more extensive than those extended to Welsh Ministers, given Welsh Ministers' intention to introduce separate Welsh legislation, as noted above.

6.8 Part 8 - General and Final Provisions

Part 8 includes general and final provision, including on data protection (Clause 46), rules for making regulations (Clause 47), clarifying interpretation of different terms (Clause 48), and consequential amendments (Clause 49).

Clause 50 confers power on "the appropriate authority" to make supplementary, incidental or consequential provision, by regulation. Scottish Ministers are not included as an appropriate authority, as Scotland has not opted to take powers via the Bill.

Clause 51 makes provision for money provided by Parliament to be paid to operate schemes and financial assistance programmes provided for under the Bill, and related administrative expenditure.

Clause 52 sets out the extent of the clauses in the Bill.

- The Bill extends to Scotland in Clauses 27-30 (fair dealing with agricultural producers and producer organisations), Clause 39 (Power to reproduce modifications under Section 35 for wine sector), Clauses 40-42 (WTO Agreement on Agriculture), Clauses 47-48 (Regulations and interpretation), Clauses 50-54 (final provisions), Schedule 1 (Agricultural sectors relevant to producer organisation provisions), Schedule 2 (competition exclusions). The UK Government is not seeking Scottish Government consent for these clauses.
- The Bill also extends to Scotland for Clause 17 (Food Security), Clauses 31-32 (Fertilisers and identification and traceability of animals), Clause 33 (Red Meat Levy), Clauses 36-37 (organic products). The UK Government is seeking Scottish Government consent for these clauses.
- Unlike Wales and Northern Ireland, Scotland has chosen not to take powers via the UK Agriculture Bill.

The extent of the Bill is explored further [below](#).

6.9 Schedules

Schedule 1 sets out the agricultural sectors relevant to provisions for producer organisations. Schedule 1 is intended to apply to Scotland.

Schedule 2 sets out competition exclusions for recognised producer organisations, amending the Competition Act 1998. Schedule 2 is intended to apply to Scotland.

Schedule 3 sets out rules for agricultural tenancies in England.

Schedule 4 sets out agricultural products relevant to provisions on marketing standards. This schedule applies to England.

Schedules 5 and 6, as noted [above](#), make provision for Wales and Northern Ireland

Schedule 7 makes provision for amendments to the Common Organisation of Markets Regulation, including for exceptional market conditions in England and Wales, Marketing Standards and Carcass Classifications in England, Wales and Northern Ireland.

7. Issues raised in the House of Commons

The Bill passed its second reading in the House of Commons on 3 February 2020, and passed the committee stage on the 5 March 2020. As of publication of this briefing, the Bill was at the report stage. No date for Report stage has yet been set.

Second Reading

The most frequently raised issue was the **lack of firm duty on trade and standards**, to ensure that imported agricultural products meet the same environmental, food safety and animal welfare standards as those produced in the UK. As discussed more [below](#), a major criticism of the bill from stakeholders, opposition and backbench MPs alike has been that without this commitment, trade deals which allow goods produced to lower standards to be imported into the UK may undercut UK production.

In addition, issues raised at second reading included:

Governance:

- the need for inter-governmental structures to establish and maintain common frameworks for agriculture;
- the perceived lack of adherence to the devolved settlement. Scottish MPs raised that they felt the Bill was straying into areas of devolved competence;
- the need for new measures of success for agriculture beyond yield;
- the lack of provision for farm advice in the Bill, to support farmers to make the transition;
- a lack of vision to protect rural communities;
- a lack of provision to protect agricultural workers;

Environment:

- the need to maintain food production abroad so not to risk offshoring the UK's environmental impact;
- disappointment that the Bill is not clearer about financially rewarding a transition to 'agroecology', or a whole-farm approach to agriculture with the environment at its core;
- the need to enshrine baseline environmental standards that all farmers should adhere to, whether in receipt of funding or not, and the lack of provision for this in the Bill;
- that the Bill is not ambitious enough about climate change or the environment by banning the most damaging practices and taking on board best-practice recommendations from e.g. the Environmental Audit Committee's Soil Health Inquiry;

- while there are *powers* conferred on the Secretary of State, MPs raised the overall lack of *duties* on the Secretary of State to e.g. safeguard the environment;
- lack of incorporation of the UK Committee on Climate Change's advice for reaching net-zero;

Food:

- lack of consideration in the Bill for the whole food system, including:
 - food prices and food poverty;
 - healthy food
 - food sustainability
- that only reporting on food security every five years is inadequate; many MPs felt that the UK Government should report every year to begin with;

Funding:

- the need to consider currency fluctuation, and whether support to farmers will take this into account;
- questions around what the multi-annual framework for farm support is and when the details will be worked out;
- whether support for farmers will keep pace with the support received by farmers in other countries;
- when details of the Shared Prosperity Fund would be made available;

Additional questions on trade and standards:

- the lack of protections on food quality and protected geographical indicators;
- concerns about potential tariffs between Northern Ireland and the British mainland;
- the impact of trade deals on the support offered within the Bill.

Committee Stage

A number of amendments were proposed at the committee stage. Most of the amendments suggesting substantive changes were rejected after a vote, including an amendment addressing the issue of imports, as discussed during the [second reading](#).

The proposed amendment read:

“Import of agricultural goods

(1) Agricultural goods may be imported into the UK only if the standards to which those goods were produced were as high as, or higher than, standards which at the time of import applied under UK law relating to—

- (a) animal welfare,
- (b) protection of the environment, and
- (c) food safety.

(2) “Agricultural goods”, for the purposes of this section, means—

- (a) any livestock within the meaning of section 1(5),
- (b) any plants or seeds, within the meaning of section 22(6),
- (c) any product derived from livestock, plants or seeds.”

The full list of amendments and their status can be found here:

https://publications.parliament.uk/pa/bills/cbill/58-01/0007/amend/agriculture_rp_pbc_0305.pdf

8. Parts that apply in Scotland

As noted above, much of the Bill only applies in England. The Bill contains 54 clauses and 7 schedules. 16 of the substantive clauses (i.e. not including the final provisions of an administrative nature which apply in all Bills) Bill extend and apply to Scotland.

Those clauses are:

- Clause 17 (food security);
- Clauses 27-30 (Fair Dealing with Agricultural Producers and Producer Organisations); and the schedules introduced by these clauses (Schedule 1 (Agricultural sectors relevant to Producer Organisation provisions);
- Schedule 2 (Competition Exclusions).
- Clauses 31-32 (Fertilisers and Identification and Traceability of Animals);
- Clauses 36 – 37 (Organic Products);
- Clause 39 (Power to reproduce modifications under section 35 for wine sector);
- Clauses 40-42 (WTO Agreement on Agriculture)

The substantive clauses which apply in Scotland are explored below.

8.1 Food Security

Clause 17 places a duty on the Secretary of State to report on food security to the UK Parliament at least once every five years. They must report the whole of the UK, and provide "an analysis of statistical data related to food security". The data analysed in the report may include data on:

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

As noted in the Explanatory Notes, these metrics are taken from the 2010 [UK Food Security Assessment](#).

The UK cross-government programme on food security research define food security as:

“ when all people are able to access enough safe and nutritious food to meet their requirements for a healthy life, in ways the planet can sustain into the future. ¹⁴ ”

The introduction of this clause on food security, as well as a duty on the Secretary of State to "have regard to the need to encourage the production of food by producers in England

and its production by them in an environmentally sustainable way" when framing any new financial assistance scheme,¹ is new for this version of the Bill. Environment Secretary Theresa Villiers said of the Bill as a whole that it "enabl[es] a balance between food production and the environment which will safeguard our countryside and farming communities for the future"¹⁵. This signals a slight shift in focus from the 2017-2019 Bill, which received [criticism](#) from the National Farmers Union (NFU) that it did not place enough emphasis on food production. NFU President Minette Batters said of the food security provisions in the Bill:

" This is something the NFU has been calling for consistently for many years and will be even more important as we enter the uncertain period ahead with domestic policy change and the likelihood of increase liberalisation of the UK food market through trade deals with new international partners post Brexit."

At the Oxford Farming Conference, Theresa Villiers stated:

" And there will be new provisions to require the Government to conduct a regular review of food security. Planning for a possible no-deal outcome including a focus on potential disruption at Dover has provided a timely reminder of the huge importance of domestic food production. I firmly believe that society's approach to farming, if guided by simplistic economics, hugely under-estimates its significance in so many ways, its importance for the wider rural economy, for environmental stewardship, for keeping the cost of living down, and for feeding the nation. In an uncertain world, food security is an issue that we must take very seriously and this is a point I will always emphasise around the Cabinet table.¹⁶ "

According to the Explanatory Notes to the Bill, the "report [on food security] will take a broad understanding of what food security is".⁸

Greener UK, an alliance of major environmental NGOs broadly support the inclusion of the provision, but stressed the need for a comprehensive assessment:

" The new provision in the bill to assess food security every five years will provide MPs with the information they need to hold the government to account. It is crucial though that this assessment includes a consideration of the sustainability of food consumed in the UK, whether produced at home or overseas. This is not specified in the bill, despite it being part of the last such assessment in 2010.¹⁷ "

Food Policy in Scotland

The UK Government is seeking consent from the Scottish Parliament for this clause to apply to Scotland, and therefore report on food security in relation to Scotland.

The Scottish Government is currently looking at legislating on food, and have committed to introducing a [Good Food Nation](#) Bill this year. The Scottish Government held a [consultation on proposals for legislation](#) between December 2018 and April 2019, which included proposals for the Scottish Government to prepare their own statements of food policy and have regard to them in the exercise of their functions. The [analysis of consultation responses](#) showed support for such statements, and noted that:

“ A key perspective was of a need for a holistic or whole system approach, involving all sectors and relevant groups working together so that policies relate to all parts of the food system. ...A significant number of organisations noted the need to avoid policy conflict and dovetail with other policies or initiatives such as climate change goals, human rights legislation, transport policies and so on.”

As such, the Scottish Government may have the opportunity to consider security of supply and access to food as part of its wider food policy.

8.2 Fair Dealing Obligations

The Explanatory Notes to the Bill state:

“ Primary agricultural producers in the UK tend to be small, individual businesses operating without strong links between them. By contrast, operators further up the supply chain - processors, distributors and retailers - tend to be highly consolidated businesses that command substantial shares of the relevant market. This disparity makes primary producers vulnerable to unfair trading practices. It often forces them into contractual relationships which impose on them commercially harmful terms, but to which they have no commercial alternative and in respect of which there is no legal protection ⁸ ”

Consequently, this clause enables the Secretary of State to make regulations that establish fair contractual relationships between primary producers and "business purchasers".

Under the Bill this clause applies to Scotland, but the UK Government does not intend to seek legislative consent. This position is the same as it was during the passage of the 2017-2019 Bill.

The [SPICE briefing](#) on the 2017-2019 Bill noted:

“ Regulation of unfair contract terms is a matter of Scots private law, and is therefore devolved. However, “the regulation of anti-competitive practices and agreements” is reserved. In the [Explanatory Notes](#) the UK Government suggest that this clause pursues a similar aim to that of the Groceries Supply Code of Practice, which promotes fair dealing between supermarkets and their suppliers. The Code applies on a UK basis, and is enforced by a UK adjudicator. The Code was concerned with anti-competitive practices in the UK groceries sector, and the market dominance of the 10 largest supermarkets. A debate relates to whether clause 25 is directed at unfair contractual terms, which is a devolved matter, or anti-competitive agreements and practices, which is reserved ¹⁸ ”

In the Explanatory Notes for the amendments put forward by Scottish Government for the 2017-2019 Bill, the Scottish Government stated:

“ In the Scottish Government’s view, this involves matters in a devolved policy area, namely the regulation of unfair contractual terms in commercial contracts by agricultural producers in Scotland. Therefore, in line with the devolution settlement, where such regulations extend to Scotland, these should only be made with the consent of the Scottish Ministers. ¹⁹ ”

8.3 Producer Organisations

A Producer Organisation (“PO”) is an organisation formed by a group of farmers that carries a status under EU law. Through the PO, the farmers coordinate their activities to increase their competitiveness. POs benefit from a number of exemptions from competition law which enable their members to collaborate in ways which would otherwise breach competition law (such as, joint production planning and processing, collective negotiations). There is therefore a connection between the PO regime and competition law.

Clauses 28-30

- set out the conditions that organisations of producers must meet to be recognised as a PO under a new domestic regime. As the Explanatory Notes state, "these have been kept broadly consistent with the substance of the existing regime, and the Bill includes powers for the Secretary of State to specify the details of these conditions".⁸
- establish the exemptions from competition law that are available to recognised producer organisations, by amending the Competition Act 1998.

The Bill applies these clauses in Scotland, but the UK Government is not seeking legislative consent. As with fair dealing obligations, this was a point of debate during the passage of the 2017-2019 UK Agriculture Bill.

The [SPICe briefing](#) on the 2017-2019 Bill noted:

“ The Sewel Convention will apply if these serve a devolved purpose. Agricultural policy is a matter which falls within devolved competence. Producer organisations (POs) help to strengthen the position of producers in the food chain and contribute to a healthy and competitive agricultural market. It is therefore possible to argue that legislating in relation to POs serves a devolved purpose. ”

“ However, in order operate as intended, POs need to be exempt from certain competition law requirements. “Competition” is a reserved matter under [Schedule 5, Head C \(Trade and Industry\) of the Scotland Act 1998](#). The reservation covers “regulation of anticompetitive practices and agreements: abuse of dominant position; monopolies and merger.” The reservation was designed to ensure the continuation of a common United Kingdom system for the regulation of competition matters. Competition matters are currently regulated by the Competition Act 1998 which introduced a prohibition approach to anti-competitive agreements and abuse of a dominant position. ”

“ Due to the interaction between POs and competition law, the debate surrounds whether the purpose of this clause is the promotion of an effective agricultural market (which is devolved) or the regulation of anti-competitive practices (which is reserved). 18 ”

In the Explanatory Notes for the amendments put forward by Scottish Government for the 2017-2019 Bill, the Scottish Government state:

" In the Scottish Government's view, this relates to matters in a devolved policy area, namely the promotion of an effective agricultural market to replace the EU producer organisation regime and therefore, in line with the devolution settlement, decisions on such applications in relation to Scotland should be taken by the Scottish Ministers. ¹⁹ "

8.4 Fertilisers

The provisions on fertilisers are new for the 2019-2020 Agriculture Bill. As noted in the Explanatory Notes to the Bill, Clause 31 "enables the regulation of fertilisers based on function. This will allow different requirements to be set, for example, for biostimulants, soil improvers and traditional mineral fertilisers to ensure the safety and quality of the various types of products marketed as a fertiliser in the UK." ⁸ In addition, Clause 31(4) "allows for regulations to set out an assessment, monitoring and enforcement regime for ensuring the compliance of fertilisers with composition, content and function requirements and for mitigating other risks to human, animal or plant health or the environment presented by fertilisers." ⁸

The assessment of fertilisers is currently regulated at an EU level. However, there are a range of other regulations that apply in relation to the environment, health and safety, chemical use, planning and more. Some of these additional regulations are domestic and some also come from the EU. The Agricultural Industries Confederation provide a useful summary of the regulations that apply, [here](#).

This clause specifically mentions the assessment of fertilisers, but in subsection 4, which makes provision for a section to be inserted into the Agriculture Act 1970, power is given to make regulations to amend or repeal EU Regulation 2003/2003 of 13 October 2003 relating to fertilisers, or "amending or repealing other retained direct EU legislation".

The regulation of fertilisers is important to ensure their safe manufacture and use, and to limit their impact on the environment. Approximately 150 kilotonnes (kt) of nitrogen from mineral fertilisers and 147kt of nitrogen from animal manure are added to Scottish soils every year; yet, the Centre for Ecology and Hydrology estimates that 132kt of nitrogen is lost from Scottish soils and goes directly into water bodies, and 19kt of nitrogen is released directly from Scottish soils into the atmosphere, and more is released indirectly ²⁰. Nitrous oxide is a potent greenhouse gas; around 80% of Scotland's nitrous oxide emissions come from agriculture. ²¹

The UK Government is seeking the legislative consent of the Scottish Parliament to extend this clause to Scotland because it falls within devolved competence. The power to make regulations under section 74A is exercisable (insofar as within devolved competence) only by the Scottish Ministers, having been transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

8.5 Identification and Traceability of Animals

Provisions for the identification and traceability of animals are new for the 2020 UK Agriculture Bill. As detailed [above](#), Clause 32 makes provision for a UK-wide system for tracing and identifying animals. Identifying and tracing animals helps to ensure a high

standard of food safety and animal welfare, for example, allowing authorities to track livestock disease. These provisions would allow the Secretary of State to establish a board to oversee livestock information. The House of Commons Library Briefing on the Agriculture Bill notes:

“ The Agriculture and Horticulture Development Board (AHDB) is leading on the development of a new multi-species livestock information, identification and tracking service. This will be known as the Livestock Information System (LIS) and its programme vision states: '*Working in partnership, Defra and industry will develop worldleading standards of livestock traceability in the UK. This will deliver a competitive trade advantage, make us more resilient and responsive to animal disease and will drive innovation, interoperability and productivity improvements throughout the meat and livestock sectors.*' The AHDB has said that the LIS is expected to be delivered “by late 2020”. ²² ”

The Explanatory Notes state that "The purpose of the clause is to prepare for the introduction of a new digital and multi-species traceability service, the Livestock Information Service (LIS), based on a database of animal identification, health and movement data." ⁸ The Explanatory Notes also clarify that the LIS will be managed by AHDB.

Scotland currently has its own system of livestock traceability - ScotEID - managed by the Scottish Agricultural Organisation Society (SAOS). Its website states:

“ ScotEID is the livestock traceability system for Scotland. On behalf of the Scottish Government and the Scottish livestock industry, SAOS continues to manage research and development of livestock movement data systems through supply chains, including the development of cattle electronic identification (EID). Our work on livestock traceability continues to advance towards the conclusion of an all species data system, working in real time. In preparation for the demise of the GB-wide cattle tracing system (CTS), work is in hand to extend ScotEID's coverage to cattle births, deaths and farm business to farm business moves. ²³ ”

ScotEID and LIS are complementary systems, but it is not clear how the powers in the UK and Scottish Bills will relate to one another. The National Farmers Union for Scotland (NFUS) noted in their March 2020 edition of Scottish Farming Leader that livestock traceability is one of the areas in which UK and Scottish approaches must be coordinated:

“ Going forward, it is essential that powers are not overlapping. What is needed are different powers, rather than parallel powers, to enable (where appropriate) differentiated approaches across the UK that are also sufficiently co-ordinated to handle the likes of cross-border movements of livestock. If not, then Scotland's ambitions for a multi-species database under the ScotEID could theoretically be undermined. ²⁴ ”

The UK Government intends to seek the legislative consent of the Scottish Parliament to these provisions because they are within devolved competence. New section 89A of the Natural Environment and Rural Communities Act 2006 (“2006 Act”) (as inserted by clause 32) will allow the Secretary of State to assign to a body established under the 2006 Act, functions related to collecting managing and sharing certain information. The power to establish a body is exercisable by the Secretary of State alone, however, the body so established will be able to exercise functions in relation to Scotland.

8.6 Red Meat Levy

As noted [above](#), Clause 33 on the Red Meat Levy makes provision for the creation of a scheme for levy monies collected at slaughterhouses to be redistributed between the UK levy bodies. In Scotland, the levy body is Quality Meat Scotland (QMS). The UK Government is seeking consent from the Scottish Government for this clause, and the clause specifies that any scheme for redistributing the red meat levy "is to be made jointly by" the Secretary of State, Scottish Ministers, and Welsh Ministers, if it involves the levy body in the respective territory.

This clause resolves long-held concerns by Scotland and Wales that the current system of collecting levies is unfair. The levy is collected at the slaughterhouse, regardless of where an animal was reared and may have spent most of its life. Therefore, as the Explanatory Note states,

" significant amounts of producer levy collected in English slaughterhouses relate to animals that spent all or some of their lives gaining value in Scotland and Wales. Levy collected in England must be spent for the benefit of levy payers in England; it cannot be spent solely for the benefit of those Scottish and Welsh producers. Over recent years, this has been acknowledged as an inequity that should be remedied.⁸"

As an example, AHDB, the levy board for England, highlighted in 2015 that "Scotland has 22% of the breeding sheep in Great Britain, but only 10% of the sheep slaughterings".²⁵ This would lead to the levy money for slaughtering sheep reared in Scotland to go to levy bodies outside of Scotland.

The omission of provisions for redistributing the red meat levy was a point of debate when the 2017-2019 Agriculture Bill was introduced. However, provision regarding the levy was added by Public Bill Committee. These provisions remain in the 2020 Agriculture Bill.

8.7 Organic Products

As explained [above](#), Clauses 36-37 deal with the power to make regulations for organic products. This is a devolved area, and as such, the UK Government is seeking consent from the Scottish Parliament to legislate in this area on behalf of the whole of the UK. Clause 36 confers power to make Regulations on the Secretary of State and the Scottish Ministers (to the extent that provision would be within devolved competence). However, there is no requirement on the Secretary of State to consult, or to obtain the consent of the Scottish Ministers if the Secretary of State decides to make Regulations under clause 36.

The EU currently sets the rules for organic products²⁶, but delegates the responsibility to ensure compliance with the regulations to a National Competent Authority; in the UK this is the UK Department for Environment Food and Rural Affairs (Defra).²⁷ While policy on organics is within devolved competence, the development of that policy on organics has been aligned to date between Defra and the devolved administrations. The Scottish Government and the UK Government have normally worked together to create a pan-UK approach.

To become an organic producer, you need to comply with a set of rules, and become certified with an approved certification scheme, such as Soil Association, Organic Farmers

and Growers, Scottish Organic Producers Association, Biodynamic Agricultural Association, and Organic Food Federation.²⁷ There are also rules for labelling, marketing, import, export and sale of organic products.

8.8 WTO Agreement on Agriculture

As set out [above](#), the WTO Agreement on Agriculture (WTO AOA) is an international treaty that sets rules for trade in agricultural products. The AOA covers market access, domestic support and export competition (e.g. use of export subsidies).⁹ The AOA categorises domestic support into three different categories, depending on whether they are considered to be trade distorting. There are upper limits on how much domestic support that is potentially trade distorting can be given to producers.

Part 6 (Clauses 40-42) of the Bill makes provision for classifying support into the different WTO categories, setting limits for the whole of the UK and dividing the total allowable amount of support between the four UK nations, and settling disputes regarding classification of support.

The UK Government is not seeking consent for these clauses, but note that they extend and apply to Scotland. In the 2017-19 iteration of the UK Agriculture Bill, similar provisions on the WTO Agreement on Agriculture were a point of contention between the UK and the Scottish Governments.

The [SPICe briefing](#) on the 2017-2019 Bill noted that at the time, the [UK Government myth buster](#) stated -

"The Scottish Government has claimed powers enabling us to comply with our WTO obligations should be exercised jointly; however, the Scottish Parliament does not have the legal competence to act in this area. While this is a reserved matter, the UK Government will work closely with the devolved administrations on this given their interest. Just as we did ahead of the Agriculture Bill's introduction."

However, the [Scottish Government](#) said -

"... on compliance with WTO 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."

Is this a reserved or devolved issue?

Schedule 5, Part 1, of the Scotland Act 1998 contains the following reservation -

7(1) International relations, including relations with territories outside the United Kingdom, the European Union (and their institutions) and other international organisations, regulation of international trade, and international development assistance and co-operation are reserved matters.

(2) Sub-paragraph (1) does not reserve—

- (a) observing and implementing international obligations, obligations under the Human Rights Convention and obligations under EU law,
- (b) assisting Ministers of the Crown in relation to any matter to which that subparagraph applies.

The Scottish Government has stated that "In addition, there are already mechanisms in the Scotland Act 1998 to ensure compliance with international obligations."

A question might arise as to whether the purpose of the provision is

- to regulate international trade (which is reserved) or
- to implement and observe international obligations (which is devolved). ¹⁸

In the Explanatory Notes for the amendments put forward by Scottish Government for the 2017-2019 Bill, the Scottish Government state:

" In the Scottish Government's view, this involves matters in a devolved policy area, namely the implementation of international obligations as regards matters which are not reserved (in relation to agricultural support). Therefore, in line with the devolution settlement, where such decisions relate to Scotland, they should only be taken with the consent of the Scottish Ministers. ¹⁹ "

The UK Government acknowledges at paragraph 328 of its Delegated Powers Memorandum on the Bill, that the devolved administrations have an interest in this matter and has undertaken to work closely with them when making Regulations under these delegated powers.

9. Scottish Government Response

As the Institute for Government explain,

“ Devolution to Scotland, Wales, and Northern Ireland does not formally alter the principle of parliamentary sovereignty, meaning that Westminster is still able to pass legislation for all parts of the UK, including in relation to devolved policy areas. However, since 1999 the UK government has followed a convention, known as the Sewel Convention, that the UK Parliament “will not normally legislate with regard to devolved matters without the consent” of the devolved legislatures.²⁸ ”

To grant consent, the devolved legislatures vote on a legislative consent motion (LCM). Usually, this occurs before the last amending stage in the House of the UK Parliament in which the Bill was introduced. In the case of the Agriculture Bill, this would usually be before the Report Stage in the House of Commons. At the time of publication, the Bill is due to start the report stage; the Scottish Government is still to bring forward a recommendation for consent or refusal.

9.1 Proposed Scottish Government Amendments

The Cabinet Secretary for the Rural Economy and Tourism, Fergus Ewing MSP, wrote to the Secretary of State for Environment, Food and Rural Affairs, the Rt Hon George Eustice MP on 20 February. In [the letter](#), the Cabinet Secretary proposed a number of amendments to the UK Agriculture Bill²⁹. These are:

- **Clause 27 - Fair dealing obligations:** to require the consent of Scottish Ministers where regulations made under this section contain provision that apply to Scotland; and to require the Secretary of State to consult affected stakeholders.
- **Clause 28 - Recognition of producer and interbranch organisations:** to require applications for recognition as a producer or interbranch organisation to be made to the "appropriate authority", as opposed to the Secretary of State. In Scotland's case, the appropriate authority would be the Scottish Ministers.
- **Clause 29 - Competition exemptions for recognised organisations:** Similarly, to provide that permission can be requested from an appropriate authority, as above.
- **Clause 30 - Regulations made under Clauses 28 and 29:** allowing any appropriate authority (as above) to delegate functions, e.g. for deciding applications to be recognised as a producer organisation.
- **Clause 40 - Making regulations for securing compliance with the WTO Agreement on Agriculture:** to require the consent of Scottish Ministers in order to make regulations under this section.
- **Clause 42 - Classification of domestic support and provision of information as part of Section 40 securing compliance with the WTO Agreement on Agriculture:** removing provision to make the Secretary of State the final arbiter on any decisions on classifying domestic support as part of complying with WTO rules; and removing provision requiring devolved authorities to provide information to the Secretary of State.

In addition, the Cabinet Secretary proposed three new clauses:

- **Quality schemes for agricultural products and foodstuffs:** to require the Scottish Ministers' consent before the Secretary of State can exercise functions under retained EU law on protected designations of origin, protected geographical indications, and traditional specialities
- **International trade agreements:** Preventing a cabinet minister from laying a trade agreement before parliament unless the agreement includes an affirmation of the UK's rights and obligations under the [Sanitary and Phytosanitary Agreement](#) of the WTO; and prevents the importation of food and agricultural products produced to a lower standard than that required in the UK.
- **Agricultural payments to Scottish Ministers:** Requiring the Secretary of State to make available 'at least' the equivalent funding that Scottish Ministers received in the year prior to exit day under Pillar 1 and Pillar 2 of the Common Agricultural Policy.

At the time of publishing (the Bill has completed the Committee Stage) none of the above amendments have been made.

10. Reception among Scottish stakeholders

Reactions from Scottish stakeholders have been mixed.

Scottish Land & Estates noted:

“ Today’s UK Agriculture Bill gives English farmers more certainty than Scottish farmers which demonstrates that we urgently need a long-term vision to secure the future of Scottish farming and land management.”

“ The Bill has major implications for Scottish farming, and it is crucial that the Scottish and UK Governments work together to address big UK-wide issues such as trade and standards. Any common framework must be developed collaboratively rather than being imposed on the devolved nations by Westminster.”

“ It is very concerning how the new Bill highlights that more progress has been made on life beyond the Common Agricultural Policy south of the border. There is a clear message coming from the sector including those set out in our paper ‘#Route2050: the future direction of land management in Scotland’ that after nearly 50 years of being tied to this EU policy, the Scottish Government now has the opportunity to create new policy which rewards and invests in farming and wider land management, tailored to Scotland’s requirements.³⁰ ”

The **National Farmers Union Scotland (NFUS)** commented on the UK Agriculture Bill (unpublished at the time of writing):

“ The UK Agriculture Bill, published today, sets out a detailed roadmap for the agricultural policy in England after the UK leaves the EU and the Common Agricultural Policy. The Scottish Government has introduced a Bill to the Scottish Parliament which will establish its own framework for developing a future agricultural policy, the detail of which NFU Scotland remains keenly focused on. ”

“ However, this does not mean that NFU Scotland does not retain significant interests in the passage of the UK Agriculture Bill, which contains various UK-wide aspects. These wide-ranging elements pertain to things like producer organisations, supply chain contracts (including for the dairy sector), and compliance with World Trade Organisation rules. The new Bill will also contain a clause that will allow UK and Scottish ministers to settle the long-running issue of red meat levy repatriation. ”

“ Front and foremost of NFU Scotland’s priorities as the UK transitions out of the CAP is ensuring that the successor policies put in place across the UK are supported by a multiannual funding framework – allowing businesses to plan ahead and invest. This is a key amendment which NFU Scotland will demand that this Bill delivers on.”

“ In addition, NFU Scotland remains concerned that in the negotiation of new Free Trade Arrangements with the EU and international partners, there will be little protection offered to domestic producers from cheaper imported produce that has been produced to lower standards. Our first preference is for a Standards Commission to be established but NFU Scotland will lobby MPs strongly to include a provision within the Agriculture Bill to require all food imported into the UK to be produced to at least equivalent food production standards as those required of producers in the UK.”

“ Overall, it is vital that the approach being taken for English farmers via the UK Agriculture Bill is rolled out in a complementary fashion to the Scottish Government’s approach for Scottish farmers and crofters – and that decision-making processes established via the UK Agriculture Bill in terms of future financial and regulatory frameworks ensure that Scottish interests are represented and consulted upon. Crucially, the UK Bill must ensure that the consent of devolved administrations is given on matters concerning these UK-wide frameworks. [...] ³¹ ”

As a UK-wide organisation, **Soil Association's** Gareth Morgan commented on the UK Agriculture Bill:

“ We are pleased to see the continued commitment to public money for public goods in the Agriculture Bill - rewarding farmers who store carbon and protect water and wildlife. It’s great the government has listened and soil is now referenced within the bill and that payments will be available to farmers for protecting or improving soil quality.””

“ Much more is necessary to bring the radical change our farming sector needs to solve the climate, nature and diet crises. Small tweaks to the status quo will not suffice. It is disappointing the bill still does not commit to support for farmers to adopt nature-friendly agroecological farming, like organic, or environmental action across the whole farm, rather than in small areas. Nor does it signal support to enable the radical shift away from artificial fertiliser and pesticides needed to restore nature and soils capable of storing carbon.”

“ The ambition set out in the bill is also totally dependent on sensible trade deals. If we allow imports of food from countries with low environmental standards, UK farming will be unfairly penalised and the Agriculture Bill will remain wishful thinking with our impacts on climate and nature merely offshored. It is vital we have proper parliamentary scrutiny of trade deals and it is worrying that the government is resisting legislating on this. ³² ”

In relation to both the Scottish and UK Agriculture Bills, **Soil Association Scotland** stated:

“ Westminster’s new Agriculture Bill (introduced on January 16) clearly states it will “support farmers to farm more innovatively and protect the environment”, while Europe is reforming the Common Agricultural Policy in the light of the global climate emergency.”

“ Rural Economy Secretary Fergus Ewing has said the [Scottish Agriculture] Bill’s scope is simply to translate EU law into Scottish law post- Brexit, but Soil Association Scotland says while the detail may be for a future Bill, the time to set a direction is now. ³³ ”

11. Comparison with Agriculture (Retained EU Law and Data) (Scotland) Bill

In some ways, the UK Agriculture Bill makes similar provision for England as the Scottish Agriculture Bill makes for Scotland. This is the case in relation to:

- **the power to modify retained EU law.** In the Scottish Bill, changes can be made to "simplify or improve the operation of the provisions of the legislation" ³⁴. In the UK Bill, the changes that can be made are specified to a greater extent. The Direct Payments Regulation, and retained direct EU legislation relating to the financing, management and monitoring of the common agricultural policy and legacy regulations, including on cross compliance, may be modified in such a way that provisions cease to have effect; that the operation of any provision of such legislation is simplified or made more efficient or effective; that it reduces burdens on applicants; that it secures that sanctions and penalties are appropriate and proportionate. Rural Development Regulations can be modified in such a way that contracts can be varied, changed or extended, and for provisions to cease to have effect.
- **the power to extend the operation of elements of CAP legislation beyond 2020.** The Scottish Bill gives power to Scottish Ministers to provide for the operation of CAP legislation for one or more years beyond 2020. The UK Bill also does this but only for direct payments legislation. Both pieces of legislation also include the power to amend the direct payments ceiling for their respective jurisdictions. However, the Scottish Bill makes provision to amend the payments ceiling "on the amounts of any payments or expenditure for any purpose under the legislation" ³⁴.
- **the power to amend legislation related to public intervention and private storage aid.** The Scottish Bill confers power to Scottish Ministers to modify the legislation so that it ceases to apply for a period, ceases to have effect, or simplifies or improves the operation of the legislation in relation to Scotland. The UK Bill confers power to the Secretary of State to modify the legislation in relation to England, but also to declare exceptional market conditions. The modifications are specified in greater detail; for example, the Bill confers power to the Secretary of State to change the agricultural products that are eligible for public market intervention and aid for private storage.
- **the power to modify legislation on aid for fruit and vegetable producers.** The Scottish Bill confers power to Scottish Ministers to simplify or improve the operation of this legislation in relation to Scotland; however, the UK Bill confers power to the Secretary of State only to secure that it ceases to have effect, in relation to England.
- **the power to modify marketing standards.** The Scottish and UK Bills confer the same power to Scottish Ministers and the Secretary of State respectively to modify marketing standards for products marketed within their own jurisdictions. Minor differences between the Scottish and the UK provisions are that UK regulations brought forward are subject to the affirmative resolution procedure, while Scottish regulations are subject to the negative; and the UK provisions reference live poultry, while the Scottish provisions do not.

- **the power to modify carcass classifications.** As above, the powers conferred to Scottish Ministers and UK ministers by the respective Bills are nearly identical. Scottish regulations brought forward under this power are subject to the negative procedure, while UK regulations brought forward are subject to the affirmative resolution procedure. The Scottish provisions also specify that Scottish Ministers must consult "such persons as they consider are representative of the interests of persons likely to be affected by the regulations as they consider appropriate."
- **the requirement to provide information, and the purpose, limitation and enforcement of information provision.** The UK and Scottish Bills make very similar provision on the requirement to provide information, the purposes for which this can be required, and the limitations and enforcement powers. There are some differences; for example, the UK Bill does not except fish from the definition of "agri-food supply chain". Further minor differences are discussed [above](#).

In relation to the above sections, both Bills make largely similar provision.

However, the scope of the UK and Scottish Bills is different. The purpose of the Scottish Agriculture Bill is to provide for minor modifications to retained EU law during an interim period to 2024, not to make bigger changes to policy. In giving evidence to the Rural Economy and Connectivity Committee, Dr John Kerr, Head of Agriculture Policy for the Scottish Government, [stated](#) on 20 November 2019:

“ There will continue to be a CAP, and the bill’s purpose is to allow us to operate that until such time as we bring in new primary legislation. ³⁵ ”

The Scottish Agriculture Bill is intended to maintain stability, and simplify elements of the operation of the CAP by implementing the recommendations put forward by the [Simplification Task Force](#) in their [final report](#). New primary legislation is envisaged to set out the long-term direction of Scottish policy.

More detailed information on the Scottish Agriculture Bill can be found in the associated [SPICe briefing](#).

By contrast, the UK Agriculture Bill sets a new policy direction for England, and provides for direct payments to be phased out over seven years. As detailed [above](#), the UK Agriculture Bill makes provision to reward farmers for enhancing the environment, improving animal welfare and producing food in a more sustainable way, and is founded on the principle of 'public money for public goods'. It is intended that England will move away from an area-based system of farm support, which has been the foundation of the EU CAP since reforms in 2003 decoupled subsidies from production. ³⁶

A new policy direction for Scotland has not yet been articulated. The Cabinet Secretary for the Rural Economy, Fergus Ewing MSP, has said that it would be inappropriate to bring forward new proposals until the [Farming and Food Production Future Policy group](#) has published their recommendations. He stated on 15 January 2020:

“ the farming and food production advisory group is working hard, and is due to provide us with recommendations in due course. It is right that we should have regard to the work of that group and others before we come forward with proposals. ³⁷ ”

The Cabinet Secretary has indicated that he does not intend for Scotland to phase out direct payments,³⁸ though delivering "public goods" has been a key feature in Scottish Government and stakeholder discussions on future policy in Scotland.^{39 40 41 42}.

12. Trade and Standards

UK and Scottish stakeholders, Scottish Government, some MSPs and MPs and academic commentators have shared concerns that the UK Agriculture Bill opens the door for lowering environmental, animal welfare and food safety standards, complicating trade with the EU, or undercutting UK producers by allowing the import of goods produced to lower standards.

12.1 Maintaining UK Standards

During the implementation period to 31 December 2020, the production of agricultural products in the UK continues to be regulated according to EU standards. Both the UK and Scottish Governments have made commitments to maintain environmental, animal welfare and food safety standards in UK food production.

The Scottish Government set out in their response to the UK Government's consultation on future free trade agreements in November 2018 that:

" Membership of the EU, Single Market and Customs Union has given the UK a strong framework for protecting and advancing individual and collective rights, as well as a range of broader societal interests. Not only do they protect the interests of workers through a variety of measures, and adopt strategies for promoting greater inclusion for Small and Medium Enterprises (SMEs) and under-represented groups, they also ensure a high level of environmental protection, measures to combat climate change, and high regulatory and animal welfare standards. **It is vital that, if the UK leaves the EU, these protections are not lost or traded away in the interests of securing a trade deal.** "

Scottish Government, 2018⁴³ (Bold added)

More generally, the Scottish Government have committed to "keep pace' with EU law in devolved areas" ⁴⁴ via the proposed Continuity Bill, which is due to be introduced in 2020.

Similarly, the UK Government have stated that they are committed to maintaining standards. Then UK Secretary of State for Environment, Food and Rural Affairs, Theresa Villiers, stated during the second reading of the UK Agriculture Bill:

" I can reassure the hon. Lady that our manifesto is very clear on this. We will maintain our high standards of animal welfare, food safety and environmental protection. It is there in our manifesto, and we will defend that line in our trade negotiations. ⁴⁵ "

However, the UK Government have also ruled out the possibility of regulatory alignment with the EU. In a written statement to the UK Parliament, Prime Minister Boris Johnson outlined that:

" The UK will maintain its own autonomous sanitary and phytosanitary (SPS) [see box 1below] regime to protect human, animal and plant life and health and the environment, reflecting its existing high standards. In certain areas it may be possible to agree equivalence provisions to reduce practical barriers to trade at the border. ⁴⁶ "

Box 1: Sanitary and Phytosanitary Standards

Sanitary and phytosanitary (SPS) standards are rules on food safety for people and feed safety for animals, and on animal and plant health. The EU has a set of SPS standards⁴⁷ which all member states have to abide by. UK nations had to abide by these standards as a member state, and must continue to follow the rules during the implementation period to 31 December 2020. From 1 January 2021, the UK will be able to set its own SPS regime.

There appears to be some contradiction between the commitment to maintaining standards and ruling out regulatory alignment. It is not clear what shape "equivalence measures" would take, and whether this measure would address the contradiction.

Provisions exist within the UK Agriculture Bill to modify (by regulations) EU legislation, in relation to England, governing the basic payment scheme, and the financing, management and monitoring of the common agricultural policy. This includes the rules governing [cross-compliance](#) (see Box 2).

Box 2: What is cross-compliance?

Cross-compliance is a set of rules that farmers and crofters must abide by in order to receive any support payments. These rules are underpinned by a common framework across the EU. They fall into two categories:

Statutory Management Requirements (SMRs):

SMRs make a link between agricultural support and existing EU regulations on public, animal and plant health (e.g. EU General Food Law, Hormones Ban Directive, regulation on plant protection products), animal welfare (directives on the protection of farmed animals), and the environment (nitrates directive, birds and habitats directives). A full list of SMRs can be found on the [European Commission's website](#).

Any land manager could be prosecuted for failing to comply with SMRs regardless of whether or not they receive support payments. In addition, land managers who do receive support payments may also have penalties imposed for breaches, in addition to prosecution.

Good Agricultural and Environmental Conditions (GAECs):

GAECs are standards for good agricultural management. A framework for these is set at the EU level, and implemented, with some flexibility, by member states.

All land managers receiving payments must respect these rules, or face penalties in relation to their payments. These rules do not link back to other statutory requirements, but are enshrined in Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy.

The GAEC rules enshrined in EU regulation are:

GAEC 1: Establishment of buffer strips along watercourses.

GAEC 2: Where use of water for irrigation is subject to authorisation, compliance with authorisation procedures.

GAEC 3: Protection of ground water against pollution.

GAEC 4: Minimum soil cover.

GAEC 5: Minimum land management reflecting site specific conditions to limit erosion.

GAEC 6: Maintenance of soil organic matter level through appropriate practices.

GAEC 7: Retention of landscape features.⁴⁸

Clause 14 makes provision to modify (by regulation) Regulation (EU) No 1306/2013 (which contains cross-compliance rules) in relation to England. It also makes provision to modify subordinate legislation to this legislation. This can be done for the purpose of:

- Ensuring that provision in the legislation ceases to have effect;

- Simplifying the operation of provisions in the legislation, or making it more efficient or effective;
- Removing or reducing burdens on applicants or beneficiaries, or improving the way that the legislation operates in relation to applicants or beneficiaries;
- ensuring that sanctions and penalties are appropriate and proportionate.

A "burden" is defined as a financial cost, administrative inconvenience, or obstacle to efficiency, productivity, or profitability.

This does allow for the possibility of changing cross-compliance rules on good agricultural and environmental conditions, though statutory management requirements would remain unless their underpinning legislation were amended (the power to do this is not provided for under this Bill, but would be provided for under the EU Withdrawal Act 2018).

12.2 Trade and imports with different standards

Leaving the EU may introduce the possibility of divergence from the EU regulatory framework to allow the UK to strike trade deals with third countries, and allow the importation of agricultural products produced to different standards than those required in the UK.

Notably, this has led to [widely reported](#) concerns over chlorinated chicken and hormone-injected beef entering the UK market, particularly from the United States. These particular products have become somewhat representative for both the palatability and consumer confidence in products with lower standards, and for the acceptability of the use of these practices, made necessary "to combat lower standards of rearing" ⁴⁹.

The UK Agriculture Bill does not explicitly allow for these and other practices to happen in the UK, nor for the import of these sorts of products. However, as many have noted, it does not rule out the importation of agricultural products that are produced to a lower standard, nor does it enshrine UK/EU standards. At second reading, opposition MPs tabled an amendment on the issue which read:

“ That this House, whilst recognising that on leaving the EU the UK needs to shift agricultural support from land-based payments to the delivery of environmental and other public benefits, declines to give a Second Reading to the Agriculture Bill because it fails to provide controls on imported agricultural goods, such as chlorinated chicken or hormone treated beef, and does not guarantee the environmental, animal welfare and food safety standards which will apply. ⁴⁵ ”

The amendment was defeated by 320 to 206 ⁴⁵

As noted in the section above on the [Committee Stage](#), a proposed amendment was also defeated at this stage. The amendment read:

The proposed amendment read:

“Import of agricultural goods

(1) Agricultural goods may be imported into the UK only if the standards to which those goods were produced were as high as, or higher than, standards which at the time of import applied under UK law relating to—

- (a) animal welfare,
- (b) protection of the environment, and
- (c) food safety.

(2) “Agricultural goods”, for the purposes of this section, means—

- (a) any livestock within the meaning of section 1(5),
- (b) any plants or seeds, within the meaning of section 22(6),
- (c) any product derived from livestock, plants or seeds.”

The concern regarding trade deals and imported products surround the risk of placing UK producers at a competitive disadvantage compared to producers whose prices reflect lower standards, and undermining domestic standards around animal welfare, environment and food safety. Complications may also arise with regard to trading with the EU, if it was felt that EU standards were not met by UK products. Concerns also relate to consumer confidence in food, which reflects a complex landscape of values and beliefs.

Tim Benton, former UK Champion on Food Security, along with co-authors Antony Froggatt, Georgina Wright, Catherine E. Thompson and Richard King, conclude in their report for Chatham House on "Food Politics and Policies in Post-Brexit Britain" that:

- "There is a risk of a two-tier regulatory system emerging whereby, after its withdrawal from the EU, the UK produces food at higher standards but imports cheaper and potentially lower-quality food from countries with reduced welfare or environmental standards. These developments could affect consumer confidence and cause public distrust.
- "Meanwhile, new market conditions could incentivize greater intensification and/or reduce the number of small farms, affecting the profitability and structure of the UK farming sector. This should be managed carefully to ensure that the cultural link between British citizens and their rural environment is not negatively affected.
- "The UK will also need to invest in more reliable supply chains and develop resilience in prospective partner countries to help them respond to the combined threats of climate change and global environmental degradation, as this could impact the resilience of the UK's food system, food prices and availability.
- "Currently, the UK operates on a 'just in time' food system, maintaining five to 10 days' worth of groceries in the country (often less in the case of fresh produce). Once the UK is outside the EU, its food industry will need to factor in time for longer inspections of food imports at its borders, and build the necessary infrastructure to conduct these checks." ⁵⁰

Benton *et al*'s conclusions suggest a need for cross-portfolio and joint government working to create a coherent policy landscape on food production, trade and consumption. It is not currently clear from the Bill how these links will be made.

12.3 Implications for Scotland

Scottish stakeholders have raised the importance of maintaining standards, highlighting that Scottish food production and branding is based on a reputation for quality, including a high number of protected geographical indications. During a roundtable with the Rural Economy and Connectivity Committee on Brexit and Agriculture on 18 September 2019, James Withers, CEO of Scotland Food and Drink commented

“ It will be important, as we go into wider trade deals, that we do not use them to lower our standards, and that we do not invite America into our market by allowing food to come in that is of a standard that we would not allow to be produced in our own country. It is important that we do not take an opportunity to unpick the regulatory framework. To some extent, the industry is never a fan of regulation: people round this table will frequently complain about levels of regulation, but the reality is that regulation underpins our brand. We do not want to gold plate regulation, but we want to maintain our world class standards of food protection.”

Scottish Parliament, 2019⁵¹

Jonnie Hall, Director of Policy for NFU Scotland agreed:

“ If we allow any erosion or dilution of our standards, we will be shooting ourselves in both feet, big style. We are not a “stack it high, sell it low” commodity-driven agricultural economy: far from it. We must maintain our integrity throughout everything that we do—environmental standards, animal health and welfare and so on.”

Scottish Parliament, 2019⁵¹

For Scotland, this has a number of implications.

Internal market

It is not clear how possible diverging standards between the UK countries will affect the UK internal market, and whether changes in other UK countries will place practical constraints on the exercise of devolved powers.

Trade with the European Union

Conversely, meeting EU standards is likely to be required for trade with the EU, which is important for some Scottish sectors such as lamb⁵². There may therefore be differing standards required for trade with the EU and within the UK.

New trade agreements

Because trade is reserved, Scotland has no formal legal role in developing new trade agreements between the UK and other countries. The Scottish Government highlighted in their published paper [Scotland's role in the development of future UK trade arrangements](#) that:

“ There is not currently, and nor is there proposed to be, any legal requirement to consult the devolved administrations and legislatures, stakeholders or the public. The MoU and Concordatsⁱ provide the only articulation at present of Scotland's rights and responsibilities in protecting and promoting its interests in the field of international relations and international trade.⁵³ ”

The Scottish Government has concluded that, given the complexity of trade agreements and their broad scope, which stray into devolved policy areas, both the Scottish Government and Scottish Parliament must have a role in "all stages of the formulation, negotiation, agreement and implementation of future trade deals and future trade policy."⁵³

⁵³ More information on this can be found in the SPICe briefing on [Negotiating the future UK and EU relationship](#).

The Scottish Government, Scottish stakeholders and Scottish public currently have no formal role in agreeing trade negotiations, and therefore will have no power over products placed on the Scottish market. The sale of agricultural products produced to lower standards than is allowed in Scotland, may also therefore undermine Scotland's ability to keep pace with EU standards and maintain current rules.

ⁱ The "MoU and Concordats" refer to the Memorandum of Understanding and Supplementary Agreements between the UK Government, the Scottish Ministers, the Welsh Ministers and the Northern Ireland Executive Committee and the Concordats on Co-ordination of European Union Policy Issues and on International Relations between the UK and devolved governments. These were published in October 2013: <https://www.gov.scot/binaries/content/documents/govscot/publications/agreement/2013/10/devolution-mou/documents/devolution-agreement-pdf/devolution-agreement-pdf/govscot%3Adocument/Devolution%2BAgreement.pdf>

13. Questions and Considerations

Brexit has given rise to a number of new policy, legal and constitutional questions in relation to this Bill.

A discussion of these is included below.

13.1 Will the UK Agriculture Bill be the basis for a common framework on agriculture?

Both the UK and Scottish Governments have stated their intention to put in place common frameworks in areas where UK-wide cooperation is deemed necessary. Within the agricultural sector, there are a number of areas regarding which the UK government has indicated that common frameworks will be developed, including agricultural support, genetically modified organisms (GMOs), zootech (animal breeding and genetics), animal health and traceability, animal and plant health, food labelling, pesticides, organics, fertilisers, and food and feed safety and hygiene law².

Some of these topics, such as organics, animal health and traceability, and fertilisers, are dealt with within the UK Agriculture Bill - and the UK Government are seeking consent to legislate on behalf of Scotland. However, in areas such as agricultural support, the UK Agriculture Bill does not extend to Scotland.

It is therefore not clear to what extent the UK Agriculture Bill is the basis for a common framework on agriculture.

13.2 How will the possibility of changing regulatory standards in England affect Scotland's ability to keep pace with EU regulation?

Both the UK and Scottish Governments have made commitments to maintain environmental, animal welfare and food safety standards.

The Scottish Government set out in their response to the UK Government's consultation on future free trade agreements in November 2018 that:

" Membership of the EU, Single Market and Customs Union has given the UK a strong framework for protecting and advancing individual and collective rights, as well as a range of broader societal interests. Not only do they protect the interests of workers through a variety of measures, and adopt strategies for promoting greater inclusion for Small and Medium Enterprises (SMEs) and under-represented groups, they also ensure a high level of environmental protection, measures to combat climate change, and high regulatory and animal welfare standards. It is vital that, if the UK leaves the EU, these protections are not lost or traded away in the interests of securing a trade deal."

Scottish Government, 2018⁴³ (Bold added)

As noted in [section 12.1](#), the Scottish Government have committed to "keep pace" with EU law in devolved areas⁴⁴ via the proposed Continuity Bill.

Likewise, the UK Government have committed to maintain high standards of animal welfare, food safety and environmental protection. This was reiterated during the second reading of the bill (see [section 12.1](#))

However, there appears to be some contradiction between the commitment to maintain high standards, and recent announcements ruling out regulatory alignment with the EU. Prime Minister Boris Johnson's written statement to Parliament on 3 February 2020⁴⁶ stated:

"The UK will maintain its own autonomous sanitary and phytosanitary (SPS) regime [see Box 1 in section 12.1] to protect human, animal and plant life and health and the environment, reflecting its existing high standards. In certain areas it may be possible to agree equivalence provisions to reduce practical barriers to trade at the border."⁴⁶

The UK Agriculture Bill confers power on the Secretary of State to make changes to regulation for England, for example, in relation to cross-compliance. It is not clear where "equivalence provisions" will be in place, and whether this resolves the apparent contradiction between maintaining the same standards while not maintaining regulatory alignment.

While agriculture is devolved and this leaves Scotland free to determine its own standards, the realities of the internal market or the terms of any new trade agreements may complicate the Scottish Government's ambitions to keep pace if UK Government regulations were to change for England.⁵⁴ Therefore, it is not clear whether potential regulatory divergence at UK and Scottish levels will affect the ability of Scottish Government to keep pace with EU law.

13.3 How will the UK Agriculture Bill and the policy direction it sets for England affect Scotland's policy direction?

Scotland and the UK are on different timelines when it comes to developing post-Brexit policies for agriculture and land use. The UK Agriculture Bill sets a new policy direction for agricultural support for England, which amounts to a significant departure from the EU's Common Agricultural Policy from 2021. Conversely, Scotland has taken a different approach, and has committed to maintain current structures until 2024, from which time a new policy will be in place.³⁹ Details on an approach to long-term future agricultural policy are yet to be published; a stakeholder group, the [Farming and Food Production Future Policy Group](#) is currently developing proposals.

Currently, "it is EU law that secures the UK internal market in matters such as public procurement, agricultural support and state aid"⁵⁵. Consequently, [as mentioned in section 13.1 above](#), agricultural support is one of the areas that the UK Government has indicated will require a common framework², but the shape of this framework has yet to be set out.

Given that a policy framework for England appears to be developing *before* a common framework is set out, will the policy direction set out for England direct Scotland's policy and, more broadly, will it place practical constraints on the exercise of devolved powers in this area?

13.4 On what basis will funding for agriculture and land management be allocated?

Related to discussions on [common frameworks](#) and [agricultural support](#) is the question of rural funding.

Then Chancellor of the Exchequer, Sajid Javid, announced a package of nearly £3bn of funding for agriculture for 2020/21 and 2021/22. £473m of this funding is allocated to Scotland. The UK Government stated that

“ The cash injection will allow the funding for Direct Payments for 2020 to continue at the same level as 2019 and supplement the remaining EU funding that farmers will receive for development projects until 2023 at the latest. We will guarantee the current annual budget to farmers in every year of the Parliament. [...]”

“ Under the Withdrawal Agreement, the UK will continue to participate in all EU programmes financed under the EU’s 2014-2020 multi-annual budget. The UK will leave the EU’s CAP Direct Payments scheme in 2020, earlier than all other EU programmes, as 2020 Direct Payments are funded from the 2021 EU budget. [...]”

“ Remaining EU funding under CAP Pillar 2 (for rural development and environmental projects) will continue until the current EU funding is used up or 2023, whichever is earliest. The UK Government will fund Direct Payments for 2020 domestically. The UK will leave the Common Agricultural Policy (CAP) Direct Payments scheme, which supports farmers across Europe with subsidies in 2020. This will be replaced by a new system based on public money for public goods. The cash injection will allow the funding for Direct Payments for 2020 to continue at the same level as 2019 and supplement the remaining EU funding that farmers will receive for development projects until 2023 at the latest. We are committed to matching the current budget available to farmers in every year of this Parliament⁵⁶ ”

What is guaranteed is 2020 direct payments, as well as the existing commitment to fund contracts entered into under Pillar 2 prior to 31 December 2020.

While the UK Government has stated that they will "guarantee the current annual budget to farmers in every year of the Parliament", it is unclear whether this applies to funding that is not for farming activities (e.g. forestry, LEADER, etc.). In addition, whether the above constitutes a guarantee has been questioned by the Scottish Government. The Cabinet Secretary for the Rural Economy and Tourism, Fergus Ewing MSP stated on 23 January 2020 that

" I have got a letter that says that the intention is to make payments [for farm support] for future years. It says what the payment will be this year. Incidentally, it does not mention Lord Bew's money, nor does it confirm technical matters, such as the rate applicable for currency exchange and how that will be dealt with. Most important is that it says: "This decision on funding for 2020-21 should not be taken as a precedent for these Spending Review decisions." In other words, the payment for this year should not be taken as a precedent for the following years."

Scottish Parliament, 2020⁵⁷

Future funding for Scotland:

In addition, it is not clear what this means for Scotland. The then Chancellor's update states that

" The UK will leave the Common Agricultural Policy (CAP) Direct Payments scheme, which supports farmers across Europe with subsidies in 2020. This will be replaced by a new system based on public money for public goods. "

Given that this "new system based on public money for public goods" applies to England only, this does not give clarity on what future funding for Scotland will be based on. As noted above, the power to develop agricultural support systems is devolved.

There is as yet no long-term forecast for agricultural funding, and it is unclear what implications any future common frameworks, or policy development in England, may have for funding allocated to Scotland.

Recently published details of Defra's new [Environmental Land Management Scheme for England](#) states that:

" Our ambition is to channel public money into the delivery of public goods – focusing on improving the health of our environment, on a far greater scale than achieved under the CAP (and at a lower cost). ⁵⁸ "

If there were to be a reduction in funding in England, it is not clear if Scotland's budget would be affected.

As noted in the [Scottish Government's proposed amendments to the Bill](#), the Scottish Government are requesting 'at least' the same amount of agricultural funding for every year post-Brexit as was received under the EU Common Agricultural Policy.

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