

AGRICULTURE BILL

Delegated Powers Memorandum from the Department for Environment, Food and Rural Affairs to the Delegated Powers and Regulatory Reform Committee

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INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Agriculture Bill (“the Bill”). The Bill was introduced in the House of Commons on 12 September 2018. This memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“the Department”). This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

2. The Bill contains 25 individual provisions containing delegated powers. Five of these, clause 5(2), clause 22(7), clause 29(3)(c), clause 32(1) and, Schedule 1, Part 3, Paragraph 1(1), include a Henry VIII power.

3. The Department has considered the use of powers in the Bill as set out below and is satisfied that they are necessary and justified.

PURPOSE AND EFFECT OF THE BILL

4. The UK’s departure from the European Union (EU) is an historic opportunity to reform agriculture policy, suited to a domestic context. The Agriculture Bill will enable a smooth transition away from the EU’s Common Agricultural Policy (CAP) and support farmers to continue producing world-class food. It will help the farming, horticulture and forestry sectors become more profitable while sustaining our precious natural environment, through an ambitious new system based on paying public money for public goods.

5. As a member of the EU, the UK implements the Common Agricultural Policy (CAP). The CAP is governed primarily by directly applicable EU regulations, which will be incorporated into domestic law upon EU exit under the European Union (Withdrawal) Act 2018 and will become retained direct EU legislation. The majority of the detailed rules relating to the CAP payment schemes are set out in these EU regulations. Some of these EU regulations are also referred to as ‘basic acts’; they are EU regulations made by the European Parliament and Council and can themselves confer powers to the Commission to make delegated and implementing acts (which are sometimes referred to as ‘tertiary legislation’). There are five key basic

acts in the latest CAP regime, two of which cover rural development, whilst the rest cover direct payments, the common market organisation, and cross cutting provisions that apply to all CAP payments. There is a large amount of tertiary legislation made under the basic acts, which contains further detailed rules. There is also some domestic subordinate legislation which implements the CAP, supplementing some of the rules, where this is left to the discretion of Member States, and providing for their enforcement.

6. The Agriculture Bill is a deliberate departure from the approach under the CAP of setting out detailed legislative rules covering the entire regulatory infrastructure of every payment scheme and of other aspects of agricultural policy. This will not be required in a purely domestic system. In particular, the delegated powers in the Bill are designed to:

- a) allow government policy to evolve in response to changing environmental priorities and changing social and economic circumstances;
- b) move away from the rigid bureaucratic constraints of the current CAP legislation; and
- c) enable government to respond to the, as yet unknown, outcomes of EU withdrawal negotiations.

7. The Agriculture Bill will provide the legal framework required to transition out of the EU, replace the CAP and deliver a range of reforms; laying the foundations for a future system based on public money for public goods, for the next generation of farmers and land managers.

8. The Agriculture Bill will confer on the government the powers needed to deliver this policy in England and to devolve agricultural freedoms to the constituent nations, while maintaining common UK approaches where relevant.

9. The consultation document 'Health and harmony: the future for food, farming and the environment in a Green Brexit'¹ sets out the policy ambition that led to this Bill being introduced.

¹ Health and harmony: the future for food, farming and the environment in a Green Brexit. Available at: <<https://www.gov.uk/government/consultations/the-future-for-food-farming-and-the-environment>>

10. The Agriculture Bill includes the following:
 - A. powers to pay under the new system of delivering the policy aim of public money for public goods. Such payments may encompass (but are not limited to) environmental land management, animal health and welfare, plant and tree health;
 - B. powers to give financial assistance for access to capital grants and loans for productivity outcomes;
 - C. the ability to establish an enforcement and inspection regime for the new financial assistance powers, including powers to set out terms and conditions of future financial assistance;
 - D. measures to continue making payments to farmers during an agricultural transition period with powers to simplify and phase out Direct Payments and to delink these payments from the land. This includes setting the length of the agricultural transition period for England;
 - E. the ability to modify elements of the retained CAP regulations that set out the finance, control and reporting regime that applies across the CAP. These powers could, for example, allow the government to change elements of the cross-compliance regime, inspection regime or system of penalties applied to beneficiaries of the schemes that continue for a time after we leave the EU. These powers also enable the repeal of EU aid schemes for fruit and vegetable producer organisations and additional powers to simplify and improve the rules on rural development, whilst honouring existing payment schemes entered into prior to EU Exit which extend beyond Exit day;
 - F. powers to collect and share data from those within or closely connected to the agri-food supply chain. The data collected and shared under these provisions will help farmers and producers increase productivity, help producers to manage risk and market volatility and support animal and plant health and traceability;
 - G. provisions to intervene in exceptional market conditions. These powers would allow for the Secretary of State to declare a specified period of

exceptional market conditions and to intervene to support farmers through the market disturbance by making payments, loans and guarantees. These powers also enable the Secretary of State to use the additional public intervention and private storage aid powers in retained EU legislation;

- H. powers to make regulations to set and amend marketing standards for agricultural products and powers to make regulations for the classification of carcasses by slaughterhouses;
- I. provisions to create a domestic system of recognition of Producer Organisations to encourage collaboration amongst farmers and growers. These provisions will provide for the exemption from competition law for recognised organisations;
- J. provisions to enable the Secretary of State to make regulations imposing obligations on first purchasers of agricultural products in relation to contracts with producers. This is aimed at protecting producers and consumers from unfair trading practices;
- K. powers for the Secretary of State to legislate in order to comply with the World Trade Organisation (WTO) Agreement on Agriculture (AoA). These powers would enable the setting of financial ceilings for the devolved administrations and England in relation to agricultural support that is considered trade distorting and classified as ‘amber box’ by the WTO; the establishment of a decision-making process to classify agricultural support in accordance with WTO criteria, and require devolved administrations to provide information in relation to any of their proposed or existing farming support; and
- L. provisions for Wales and Northern Ireland, where this Bill will legislate for similar powers adapted for the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs (“DAERA”) in Northern Ireland, to be exercised by Ministers in those territories (Schedules 3 and 4).

SUMMARY OF DELEGATED POWERS

Clause	Power conferred	Justification	Parliamentary procedure
Clause 1(1) and 1(2)	This is not a legislative power, but a power for the Secretary of State to make financial payments.		
Clause 2(7)	A delegated power to impose a duty on the Secretary of State or another person to publish information about financial assistance which has been given under clause 1.	Future schemes are still being co-designed with stakeholders. The government wants to continue to be transparent in how public funds are being used, but to consult on the details of this with stakeholders.	Affirmative
Clause 3(1)	A delegated power to make regulations for the enforcement of the new financial assistance schemes.	This will be needed to enable the Secretary of State to effectively implement financial assistance schemes and ensure propriety of use of public funds. We want to design a proportionate regime to reflect the individual contracts farmers and land managers enter into with government.	Affirmative
Clause 5(2)	A delegated power to make regulations to extend the transition period as set out in clause 5(1).	A delegated power is needed to extend the transition period in regulations if required. This is a Henry VIII power.	Affirmative
Clause 6(1)	A delegated power to make regulations to modify retained EU legislation that governs the CAP basic payment scheme to simplify or improve the scheme or, by virtue of 6(2), to terminate greening payments.	This power will allow the Secretary of State to adapt the schemes in the light of continued experience of operating them and feedback from stakeholders. It also enables further consultation with stakeholders	Negative

Clause 7(1)	A delegated power to make regulations to phase out or delink direct payments.	A delegated power is needed so that the Secretary of State may conduct further, in-depth consultation with recipients and stakeholders before making the detailed amendments to the direct payment regime.	Affirmative
Clause 9(1)	A delegated power to make regulations to modify retained EU legislation relating to financing, managing and monitoring payments to farmers under retained EU legislation, in order to simplify or improve its operation.	A delegated power enables the Secretary of State to gradually amend overly technical and bureaucratic EU rules in response to continued experience of operating the schemes and feedback from stakeholders.	Negative
Clause 10(1)	A delegated power to make regulations to modify retained EU legislation relating to EU aid schemes for fruit and vegetable Producer Organisations (POs), for the purpose of securing that it ceases to have effect.	This power will allow the Secretary of State to close the EU fruit and vegetable aid schemes down in England, while allowing operational programmes already implemented by POs to run through to completion.	Negative
Clause 11(1)	A delegated power to make regulations to modify retained EU legislation relating to support for rural development.	This power enables the Secretary of State to continue to honour rural development (Pillar 2) legacy schemes. These powers would enable provision for continuation, simplification and improvement of existing rural development payment schemes entered into prior to EU Exit, which extend beyond Exit day.	Negative
Clause 12(2)	Clause 12(1) contains a non-legislative power on the face of the Bill for the Secretary of State to require information directly. Clause 12(2) is a delegated legislative power to make regulations to	Where information needs to be collected from a class of persons that is not readily identifiable (such as poultry keepers with less than 50 birds, upon whom there is no requirement to register with any public	Affirmative

	require the collection and sharing of data in the agri-food supply chain.	authority) then a statutory instrument will be needed to require information from that class of person.	
Clause 16(1)	A delegated power to make regulations to enforce data collection and sharing requirements.	A power to enforce requirements to provide data is needed to tailor penalties for failing to provide information so they are proportionate, and to allow for evolving technology and policy objectives.	Affirmative
Clause 17(1)	A power for the Secretary of State to declare exceptional market conditions. This is not a legislative power, but a power to declare exceptional market conditions with a requirement to lay a copy of the declaration before Parliament as soon as practicable.		
Clause 18(2)	Power to give financial assistance to producers whose incomes are adversely affected by exceptional market conditions. The Secretary of State has the power to make payments, loans and guarantees to affected farmers. This is not a legislative power.		
Clause 19(1)	A delegated power to make regulations to modify retained EU legislation relating to public intervention and private storage aid (in connection with a declaration of exceptional market conditions).	This delegated power will allow the Secretary of State to use public intervention and private storage aid powers more effectively by tailoring these types of aid to specific exceptional circumstances.	Negative
Clause 19(2)	A delegated power to make regulations to alter and revoke retained EU legislation relating to public intervention and private storage aid (other than in connection with declared exceptional market conditions).	The CAP currently provides powers to remove surplus products from the market and stabilise market prices. These domestic powers will enable the Secretary of State to alter the operation of these provisions, which would include amending what products and foodstuffs are eligible for specific aid schemes and gradually phase out these requirements as the sector becomes self-reliant.	Negative

Clause 20(1)	A delegated power to make regulations to set and amend existing marketing standards. Such regulations may make provision about enforcement.	A delegated power will enable the tailoring and modernisation of the existing marketing standards. Marketing standards are technical and this power will enable their modification to keep in line with modernisation, to best suit the domestic sector and to respond to changes required for trade purposes.	Affirmative
Clause 20(3)	A delegated power to make provision about the classification, identification and presentation of bovine, pig and sheep carcasses at slaughterhouses in England.	A delegated power will enable the updating of carcass classification provisions. Such provisions are technical in nature and this power will enable their modification to best suit the domestic sector.	Affirmative
Clause 21(1)	A delegated power to reproduce modifications under section 21 for the wine sector.	A delegated power will enable changes to be made to Annex 7 of the retained CMO legislation in line with changes made to the CMO regulation by clause 20.	Negative
Clause 22(7)	A delegated power to make regulations to set out additional and sector-specific conditions that an organisation must meet, in order to be a recognised Producer Organisation.	This power enables the Secretary of State to add to the conditions for recognition which are set out in the Bill and to change those conditions for specified sectors. This is a Henry VIII power.	Negative or Affirmative (if the regulations contain new sector-specific provisions)
Clause 22(8)	A delegated power to specify the time period within which an application for recognition must be determined. The Secretary of State is obliged to exercise this power.	This power will be used to make a purely administrative provision for the application process; such provision may need to change in light of changing practicalities.	Negative or Affirmative (if the regulations contain new sector-specific provisions)

Clause 22(10)	A delegated power to make regulations to make further provision about applications under this clause.	This power enables the introduction of further provisions about the administration of the applications process and the procedural elements of recognition. This is important given the potential need to respond to the practicalities of a (predicted) increase in volume of applications.	Negative or Affirmative (if the regulations contain new sector-specific provisions)
Clause 22(11)	This is a power for the Secretary of State to specify further matters in regulations, such as the specification of the minimum number of members that a producer organisation may have.	A delegated power is sought to enable the Secretary of State to make rules of a fairly technical nature and to tailor them to emerging sectors.	Negative or Affirmative (if the regulations contain new sector-specific provisions)
Clause 23(2)	A delegated power to make regulations to make further provisions about recognised Producer Organisations (POs), recognised Associations of Producer Organisations (APOs) and recognised Interbranch Organisations (IBOs). This clause allows the government to introduce new provisions concerning the ongoing requirements for POs, distinct from the previous powers concerning the nature of their initial recognition.	The purpose of ongoing requirements is to ensure that a Producer Organisation continues to operate in a way that justifies the ability of its members to coordinate their activities, which would otherwise be prohibited as anti-competitive. Ongoing requirements also enable the government to alter the conditions of its continued activity, in line with changes in the relevant sector and wider UK agriculture industry.	Negative or Affirmative (if the regulations contain new sector-specific provisions)
Clause 25(1)	A delegated power to make regulations to set out requirements for fair contractual dealing between farmers and first purchasers in the supply chain. These regulations will define principles of fair trading in agricultural products and enable the Secretary of State to publish, maintain	A power will allow sector specific codes to be developed through detailed consultation with relevant sectors. It is also needed to keep up with changing circumstances in a wide range of sectors and to tailor codes to each sector.	Affirmative if regulations contain a provision under subsection (3)(c). Otherwise negative.

	and enforce statutory obligations on fair contractual relations in agriculture trade.		
Clause 26(1)	Delegated powers to make regulations to ensure that the UK can meet its obligations under the WTO Agreement on Agriculture. These powers may establish a decision-making process to classify agricultural support in accordance with WTO criteria; make provisions about the levels of domestic support including individual limits for England, Wales, Scotland and Northern Ireland, and make provision requiring devolved authorities to provide information to enable the UK to comply with requirements of the AoA.	The UK's amber box is not yet known so it would be premature to apportion ceilings on the face of the Bill. A power will also allow the UK to respond to any changes to the AoA. Provisions made under this power can take into account the outcomes of ongoing consultations with the devolved administrations and allow for 'fine-tuning' of any processes that are established.	Affirmative
Clause 29(3)(c)	Powers to make regulations under the Bill to include a power to make supplementary, incidental, consequential, transitional or saving provision. This power allows regulations to modify primary legislation, retained direct EU legislation or subordinate legislation pursuant with 29(4). Given that regulations may modify primary legislation, this is a Henry VIII power.	These provisions will enable the Secretary of State to amend existing legislation where this is required further to the exercise of a delegated power in this Bill. This is a Henry VIII power.	The applicable procedure will be the relevant procedure for the delegated power that is being exercised.
Clause 32(1)	Power to make consequential etc. provision.	It is not possible to establish in advance all consequential, supplemental, transitional, transitory and savings provisions that may be required,	Negative; affirmative if regulations modify primary legislation.

		particularly given that we do not yet know the outcome of EU exit negotiations; a power is needed to avoid any legal uncertainty or legal lacunas after the Act comes into force. This is a Henry VIII power.	
Clause 35(2)	Commencement	This clause contains a standard power to bring provisions of the Bill relating to producer organisations into force by commencement regulations. By virtue of subsection (3), regulations may appoint different days for different purposes.	N/A
Schedule 1, Part 3, Paragraph 1	A delegated power to add or remove agricultural sectors from Schedule 1.	This power enables changes to be made to the Schedule that lists agricultural sectors to account for future changes in the structure of UK agriculture. This is a Henry VIII power.	Negative
Schedule 3	Wales.	The delegated powers conferred on Welsh Ministers in this Schedule are of a similar nature to those in the main body of the Bill.	The scrutiny procedures mirror those in the main body of the text.
Schedule 4	Northern Ireland.	The delegated powers conferred on DAERA in this Schedule are of a similar nature to those in the main body of the Bill. Differences include, adapting procedures to suit the Northern Irish context and slightly adapted purposes for which certain powers can be used.	The scrutiny procedures mirror those in the main body of the text, except the powers under paragraphs 2, 4 and 11, which are to be exercised using the affirmative resolution procedure to cater for the unique circumstances in Northern Ireland.

EXAMPLES IN THIS MEMORANDUM

11. This memorandum includes examples of how the powers might be used. One of the reasons for taking delegated powers is that this Bill will be before Parliament before the terms of the UK's withdrawal from the EU are known, and while full-scale design of future farming policy is under development in consultation with stakeholders and the sector. Any examples used in this paper are therefore illustrative of the way the powers could be used and do not represent confirmed plans at this stage.

ANALYSIS OF DELEGATED POWERS BY CLAUSE

Clause 1(1) and 1(2): Secretary of State's powers to give financial assistance

Power conferred on: Secretary of State

Power exercised by: N/A

Parliamentary Procedure: N/A

Context and Purpose

12. These are not a legislative power.

13. The 'Health and Harmony' consultation set out the government's intention for a new domestic agricultural policy to be underpinned by the principle of payment of public money for provision of public goods. Clause 1(1) of the Bill sets out a range of purposes for which the Secretary of State may provide financial assistance to incentivise and support farmers, land managers, growers and others to deliver public benefits that would otherwise be undersupplied by the market. Clause 1(2) details the Secretary of State's ability to give financial assistance in connection with productivity.

14. Detailed arrangements for any payment scheme established to give such assistance will be made with a view to adjusting priorities over time, in consultation with stakeholders. These priorities need to reflect a number of factors that are not yet known or that may change over time: the final arrangements of the UK's departure from the EU; changing environmental priorities; and changing social and economic circumstances in the future. Farmers and land managers will have the ability to decide how best they can deliver environmental benefits from their business and their land, without rigid bureaucratic constraints. We will work with potential participants to design, test, trial and pilot before rolling schemes out nationally.

15. Through the related clause 2, the Secretary of State will be able to provide such financial support in various forms, including grants, loans and financial instruments, and to apply conditions to that support. We will work with farmers and land managers to develop this detail. This clause will enable the Secretary of State to delegate functions related to the giving of financial assistance to other persons. For example, it will enable Defra to delegate the administration of aspects of the new Environmental Land Management system to organisations with relevant expertise.

The clause will also enable the Secretary of State to give financial assistance to support schemes made and operated by other persons (this may include National Parks or Local Authorities), providing those schemes give financial assistance for one of the purposes in clause 1.

Clause 2(7): Financial assistance: forms, conditions, delegation and publication of information

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure

Context and purpose

16. Clause 2(7) confers a power on the Secretary of State to impose a legal duty on the Secretary of State or another person to publish information about financial assistance which has been given under clause 1.

17. Information about beneficiaries of CAP schemes is currently published on a single website covering the whole of the UK. This is required by CAP transparency rules intended to support public control and scrutiny of how money is spent (Article 111 of Regulation 1306/2013). The website currently publishes, amongst other things, the names of beneficiaries (where they are natural persons), the municipality where they are resident (including the relevant part of their postcode) and the amount of payment received for each CAP measure.

18. The power in clause 2(7) will enable the Secretary of State to provide for the publication of information in relation to future financial assistance, which may include the information that is currently published on the single beneficiary website, but only in relation to England. Publication of such information, including the disclosure of some personal data relating to the recipients of such payments, will support greater public control by ensuring transparency on the public goods and services that have been paid for.

Justification for taking the powers

19. We are unable to set out in the Bill exactly what information should be published, and by whom, until payment schemes have been fully developed and we

establish the types of information that will be collected and the operational capabilities required for processing it. We will be working with stakeholders to design, test, trial and pilot before rolling schemes out nationally. We can then consider proportionate approaches to publication of beneficiary information. Clause 2(7) will also allow changes to be made to any publication requirements, where these are necessary to keep pace with any changes to how schemes are administered or to cover new schemes.

Justification for taking the procedure

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

Clause 3(1): Financial assistance: checking, enforcing and monitoring

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure

Context and Purpose

21. This clause is needed to enable the Secretary of State to set out an enforcement regime to effectively control the provision of financial support and ensure that public funds are properly given, suitably protected against fraud and are value for money. Regulations about enforcement may provide, amongst other things:

- a) the approach to inspection such as, what could be examined, sampled or recorded to aid an investigation;
- b) the information required from those who receive financial assistance or those who want financial assistance;
- c) the record keeping requirements for those who receive financial assistance;

- d) the powers of entry for authorities to effectively inspect those that apply for and receive financial assistance and to enforce financial assistance conditions;
- e) the approach to suspension from financial assistance and what will be requirements to remove the suspension;
- f) the penalties and offences to be imposed, and in what circumstances; and
- g) process for appealing against enforcement decisions.

22. The primary obligations on recipients of funding will be set out in non-legislative documents. The regulations provided by this clause will set out the enforcement procedures in respect of that funding, and will complement the primary obligations. These will be set during the design of any payment schemes and are not yet known so cannot be set out on the face of Bill, which is why we are requesting a regulation making power. The approach to enforcement will be proportionate to the support provided. For example we will look to make greater use of risk based targeting of inspections and provide the opportunity for those who have not met the conditions of financial assistance to rectify the situation before imposing sanctions. However, those who do not meet conditions and do not rectify an error can expect to face appropriate sanctions.

23. A delegated power will also enable the Secretary of State to adapt the enforcement regime should schemes change due to changing priorities or the use of technology in the sector and to ensure that it is suitably tailored to any new payment scheme. For example, increased use of remote sensing may reduce the need for inspections therefore the enforcement regime may need to adapt. Any sanctions created under this power will not be retrospective.

Justification for taking the power

24. As the primary obligations on recipients of funding will be set out in non-legislative documents, it follows that the enforcement procedures, which need to complement those obligations and the design of any payment schemes, should be set out in regulations. The approach to the enforcement of conditions of financial assistance will be determined following the design and piloting of schemes; this will enable us to design an inspection and enforcement regime which is appropriate and

proportionate to the support provided. For example, the sanctioning approach (e.g. payment recovery, suspension, penalty or offence) will be taken according to the type of financial assistance provided (grant, loan, guarantee or in any other form) and may be scaled according to the type of obligation that has been breached. A power will also enable the Secretary of State to adapt the enforcement regime where schemes change and to ensure that it is suitably tailored to any new payment scheme. Any sanctions created under this power will not be retrospective.

Justification for the procedure

25. We are seeking the affirmative resolution procedure as this power contains provision for the creation of criminal offences – including the level of any criminal penalty – to be set out in delegated legislation.

Clause 5(2): The agricultural transition period for England

Power conferred on: Secretary of State

Power exercised by: Regulation by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure

Context and Purpose

26. The government has committed to implementing an agricultural transition during which Direct Payments to farmers will be phased out. That agricultural transition period will start in 2021 and will be for seven years as specified in clause 5(1). This power will enable the Secretary of State to extend that period. This power may be exercised more than once but, in doing so, it must be exercised before the end of the period. This is a Henry VIII power as it will enable the Secretary of State to amend a provision in primary legislation.

Justification for taking the power

27. The power will enable the Secretary of State to respond swiftly to unforeseen circumstances which may demand the extension of the transition period, to enable payments to farmers to continue beyond the seven year period. These unforeseen circumstances could, for example, relate to unexpected exceptional trading conditions during the period in which farmers are adjusting to the phasing out of Direct Payments.

Justification for the procedure

28. The affirmative resolution procedure is sought as it would be important for Parliament to debate the extension of the agricultural transition period. The exercise of this power will have important budgetary implications, given the size of the current financial envelope for Direct Payments; the extension of Direct Payments could also impact on the investment of money in new schemes. It is also important that the consideration of the effect on farmers is fully debated, given the current significance of Direct Payments to the industry.

Clause 6(1): Power to modify legislation governing the basic payment scheme

Power conferred on: Secretary of State

Power exercised by: Regulation by Statutory Instrument

Parliamentary Procedure: Negative resolution procedure

Context and Purpose

29. The current basic payment scheme (including the greening payment and young farmer payment) will be incorporated into domestic law under the European Union (Withdrawal) Act 2018. This clause provides the Secretary of State with a power to modify the legislation governing that scheme. The Secretary of State, however, may only make modifications which he or she considers will simplify or improve the scheme, so far as it operates in relation to England. The power could be exercised to reduce the bureaucracy and any needless paperwork, which has been widely criticised. Simplifying the schemes in this and other ways will allow farmers to focus on preparing their businesses for the move away from the basic payment scheme to public money for public goods. It will not be capable of being used to increase burdens on farmers in circumstances where the Secretary of State does not consider them to be simplifications or improvements to the current regime.

30. The clause also provides a specific provision to end 'greening' payments during the agricultural transition period. Greening payments make up around 30% of the basic payment scheme and are made conditional on the farmer performing agricultural practices ostensibly of benefit to the environment. The greening requirements include the so-called 'three crop rule' which determines the number of crops a farmer must grow, regardless of the demands of the market. Removing the

greening payment would not affect the overall payment received by the farmer as the budget for the greening payment would be subsumed into the basic payment scheme budget.

Justification for taking the power

31. The government conducted an extensive consultation with stakeholders, which showed that there was a general desire for simplification. A delegated power enables the Secretary of State to adapt the schemes in the light of continued experience of operating them and feedback from stakeholders. It also enables further consultation with stakeholders. The simplifications introduced will be largely minor measures to improve and simplify the schemes, such as removing the rule that specifies how often farmers must use their basic payment scheme entitlements to claim payment. They will be temporary measures which will only be in place until we have introduced delinked payments or completely phased out the payments in accordance with clause 7.

Justification for the procedure

32. The intention is to exercise the power only to make technical changes to the basic payment scheme. These can only be made if such changes improve or simplify the scheme. It is proposed that the negative resolution procedure applies because the amendments being made will largely be minor or technical simplification measures to ease the transition away from Direct Payments.

Clause 7(1): Power to provide for phasing out direct payments and delinked payments

Power conferred on: Secretary of State

Power exercised by: Regulation by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure

Context and Purpose

33. This clause enables the Secretary of State to phase out Direct Payments during an agricultural transition period. This will enable a smooth transition to, and provide funds for, future schemes which offer better value for money (clause 1). Direct

Payments will be phased out by applying progressive reductions to the payments, with higher reductions initially applied to amounts in higher payment bands.

34. This clause empowers the Secretary of State to 'phase out' and eventually terminate the basic payment scheme by making such reductions. The progressive reductions will be applied to any "basic payment scheme" payments and delinked payments made during the agricultural transition.

35. The clause also empowers the Secretary of State to delink payments from land. This will remove the requirement to farm the land in order to receive the payments as they are phased out during the agricultural transition.

36. Under delinking the current connection between the value of the payment and the area of land for which it is claimed will be removed. Instead payments will be made based on a reference period. For example, it could be based on the value of the payment under the basic payment scheme received by the individual recipient during a certain reference period. The government will consult with stakeholders before setting the detailed rules. Delinked payments will proceed after the termination of the basic payment scheme.

37. Where the Secretary of State makes provision to terminate the basic payment scheme and make delinked payments, he is required to specify the year in which delinked payments are to be introduced; to end payments under the basic payment scheme, to prescribe who shall be entitled to delinked payments; and to establish the method of calculation of the delinked payment to any entitled recipient. It also gives the Secretary of State power to establish the conditions under which recipients no longer become eligible for delinked payments, to pursue the recovery of delinked payments to which the recipient was not entitled and to make provisions for offering farmers the opportunity of taking a lump sum payment in lieu of the payments they would otherwise be entitled to receive during the agricultural transition.

Justification for taking the power

38. During the recent extensive consultation we sought views on phasing out payments. We have included provisions in the Bill to put this in place. This may involve reductions to existing payments or introducing a more significant change in the form of delinked payments which could be designed to create maximum flexibility and opportunity for farmers. We will want to consult further with stakeholders, for

example, on how to define the ‘reference period’ by which delinked payments are calculated, and on whether any exemptions should be considered. Primary legislation is not considered a suitable vehicle for the detailed design specifications involved with such considerations. We will also want to ensure that alternative enforcement mechanisms are in place before payments are delinked so that we can maintain agricultural and environmental best practice.

Justification for the procedure

39. This power will enable payment reductions to be specified and represents a change from the existing scheme to a new form of delinked payments. Given the current significance of Direct Payments for the farming industry and budgetary considerations, it is suggested that the affirmative resolution procedure is used. Since the clause provides the Secretary of State with powers to set up and specify the eligibility criteria for a new system of payment (delinking), we are of the view that scrutiny by both houses is considered necessary. Such scrutiny is also sought in relation to the rates of reductions applied to farmers’ payments.

Clause 9(1): General provision connected with payments to farmers and other beneficiaries

Power conferred on: Secretary of State

Power exercised by: Regulation by Statutory Instrument

Parliamentary Procedure: Negative resolution procedure

Context and Purpose

40. This clause empowers the Secretary of State to make regulations which modify Regulation (EU) No 1306/2013 on the financing, management and monitoring of the common agricultural policy, tertiary EU legislation made under that Regulation, and related domestic subordinate legislation, so far as they have effect in England. This body of legislation, referred to in this document as “the Horizontal legislation” for ease of reference, applies to all payments under the CAP and therefore covers Direct Payments and Common Market Organisation (CMO) aid schemes (which fall under Pillar 1 of the CAP) and Rural Development Programmes (which fall under Pillar 2).

41. The Horizontal legislation sets out detailed arrangements for the financing, management and monitoring of the CAP, including rules governing how the schemes

are financed from EU funds, the accreditation and internal controls for the paying agencies of Member States, audits undertaken by the European Commission and other bodies, farm inspections, administrative checks, application procedures and financial penalties which may be applied when beneficiaries breach the rules.

42. The Horizontal legislation also includes rules on ‘cross compliance’, which point to requirements and standards on the environment, animal and plant health and animal welfare (‘cross compliance rules’), with which recipients of CAP payments must comply. They also establish a system of reductions which must be applied to CAP payments if there are breaches of cross compliance rules. Most of the cross-compliance rules themselves are contained in separate domestic and EU legislation and so cannot be amended by this power.

43. The Horizontal legislation does not set out financial ceilings for any of the CAP aid schemes. When we exit the EU, the Horizontal regulations will become retained direct EU legislation under the European Union (Withdrawal) Act 2018 and will continue to govern any ongoing schemes until those schemes come to an end.

44. The power to modify the Horizontal regulations has the following limitations.

45. Firstly, it is limited to making changes which the Secretary of State considers will simplify or improve the operation of those regulations (unless it is used to provide for legislation to cease to have effect). For example, the power would enable the Secretary of State to make changes to the inspection regime, such as reducing the numbers of inspections required where this would make the regime more proportionate and risk-based. It will not be possible to exercise these powers to significantly increase bureaucratic burdens which the Secretary of State cannot justify as improvements or simplifications.

46. Secondly, the Horizontal legislation will not apply to future payments made under clause 1. This power does not, therefore, enable the Horizontal legislation to be modified in order to extend its provisions to payments under that clause. Also, we do not intend to use this power to add new requirements or standards to existing cross compliance rules.

47. Thirdly, a practical, rather than legislative, limitation is that the powers under this clause will become redundant at the point when all payments to which they apply have ended or been phased out. Such payments will be those made under the

provisions of the CAP legislation which are retained under the European Union (Withdrawal) Act 2018; there is specific provision for Direct Payments to be phased out and rural development payments, as well as aid under the CMO, are made under time-limited programmes.

Justification for taking the power

48. A delegated power enables the Secretary of State to adapt the existing control regime in light of continued experience of operating the schemes and feedback from stakeholders. Some of the modifications could be contingent on changes made to the schemes themselves. For example, changes made to simplify Direct Payments under Part 2, chapter 1 of the Bill could necessitate accompanying changes to the control regime in the Horizontal legislation.

49. The level of technical detail involved in amendments to the Horizontal legislation is deemed too high for inclusion in primary legislation. For example, changes may be made to the operational requirements for Defra databases that are currently used to administer the schemes, or to detailed administrative requirements such as the contents of the control report which is completed during farm inspections.

50. A delegated power will also enable the Secretary of State to respond quickly to any further changes which may be needed to adapt the control regime to deal with emerging issues, such as extreme weather events which, for example, could potentially warrant a change to the application deadline.

Justification for the procedure

51. This clause is subject to the negative resolution procedure. The negative resolution procedure would afford a level of scrutiny in the case of regulations made under this clause. Given the limitations on this power and the technical nature of amendments, there are unlikely to be policy issues that attract in depth Parliamentary debate and consideration.

Clause 10(1): Aid for fruit and vegetable producer organisations

Power conferred on: Secretary of State

Power exercised by: Regulation by Statutory Instrument

Parliamentary procedure: Negative resolution procedure

Context and purpose

52. The EU Common Market Organisation (CMO) regulation provides for growers in the fruit and vegetable sector to form Producer Organisations ('POs') which are formally 'recognised' under the EU regulations, with the aim of concentrating supply, planning production and making them stronger in the market place. Once recognised as a PO, the growers can claim EU aid, which is match-funded by the POs themselves, under the fruit and vegetable PO aid scheme ('the PO aid scheme'). The aid is capped, based on the PO's turnover.

53. Clause 10(1) will allow the Secretary of State to close the EU PO aid scheme down in England, while allowing operational programmes implemented by POs to run through to completion, provided they were approved prior to EU Exit; such programmes form the basis on which aid is agreed to be paid. These transitional provisions will allow time to consider future support, tailored to the specific needs of the domestic edible horticulture sector, whilst maintaining certainty for POs already receiving aid.

Justification for taking the power

54. A power is required in order to address and properly account for two matters that are not yet known: firstly, the Department will need to ensure that any changes it makes to the PO aid scheme will be consistent with the outcome of ongoing negotiations with the EU. Secondly, the Department may need to take account of any new successor scheme made under the financial assistance power in clause 1 when designing its transitional provisions.

55. This power is limited by the requirement that it may only be used to modify the existing PO aid scheme for the purpose of securing that it ceases to have effect. It cannot, therefore, be used to extend the scheme indefinitely or to make any burdensome changes to the scheme that are not made with the aim of closing it down.

Justification for the procedure

56. Amendments to the fruit and vegetable aid scheme provisions are likely to be highly technical; for example regulations may make provision for the number of administrative checks required to be carried out on PO members, or the format of returns to be completed by a PO. Additionally, the overarching purpose in exercising this power – the closure of the PO schemes – will already be approved by Parliament and enshrined in primary legislation.

Clause 11(1): Support for rural development

Power conferred on: Secretary of State

Power exercised by: Regulation by Statutory Instrument

Parliamentary Procedure: Negative resolution procedure

Context and Purpose

57. Rural development schemes providing financial support for farmers, foresters and other land managers have been a part of the CAP for approximately three decades. This support is there to help farming, forestry, food production, rural businesses and communities to improve productivity, promote economic growth (socio-economic schemes) and protect and enhance the environment (agri-environment schemes). In England, all of the schemes are coordinated in the Rural Development Programme for England and the current version covers the 2014-2020 CAP period and is aiming, amongst other things, to protect the natural environment on 2.5 million ha of farmed land, create about 6,750 jobs and fund planting of 14,000 ha of trees.

58. These schemes need to be allowed to operate after EU Exit until new arrangements can be implemented, otherwise there would be a hiatus in environmental protection and enhancement, with valuable opportunities being postponed or lost. However, some of the existing EU regulations for rural development can be seen as restrictive and overly bureaucratic, with detailed rules on implementation needing to be followed. Once we leave the EU we can be less restrictive. The reporting requirements could also be simplified to reduce the burden on administrative bodies. Some of the agri-environment schemes have proved problematic to operate and unpopular with stakeholders: with some commitments

currently needing to be undertaken for between 5 to 7 years, where shorter periods may be helpful, particularly as we transition to new arrangements. EU Exit is an opportunity to simplify existing arrangements for these schemes at the earliest opportunity, until the regulations can be repealed.

59. Clause 11 will provide for amending and repealing of the retained EU legislation relating to rural development for England; the main regulations are specified within the clause. Clause 11 allows for the regulations to be repealed and, pending repeal, to be simplified.

Justification for taking the power

60. The simplifications are likely to be technical in nature, for example reducing the evidence required in order to receive payment or widening the eligibility of expenditure for rural development to align it more closely with schemes implemented using domestic funding. This level of technical detail is best suited to secondary legislation.

61. A delegated power will also enable the Secretary of State to respond quickly to any further changes which may be needed to adapt these rules to deal with any emerging issues for example unforeseen adaptations to climate change.

Justification for the procedure

62. The power to make regulation will be exercised by Statutory Instruments made following the negative resolution procedure, as the changes being introduced under this clause will either be to repeal retained EU legislation or, in the interim, technical simplification measures such as reducing the need for exhaustive checks on claims. This clause will not be used to introduce any additional burden on stakeholders or involve the transfer of any powers.

Clause 12(2): Agri-food supply chains: requirement to provide information

Power conferred on: Secretary of State

Power exercised by: Regulation by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure

Context and Purpose

63. This clause is intended to make data collection throughout the agri-food supply chain more transparent and to improve dissemination of this information. It will enable the Secretary of State to make secondary legislation to collect and share data relevant to the agri-food supply chain (from farm to fork) to serve a specified number of purposes, largely relating to productivity, supply-chain fairness, animal disease and risk management.

64. Safeguards have been included to ensure that data is only collected where necessary for specific policy purposes which are listed in the clause, and it will not be possible for collected data to be used for any purposes other than those which are stated in the requirement. Where information provided in response to a requirement might prejudice the commercial interests of any person, that information may only be disclosed in an anonymised form, unless the Secretary of State considers it is in the public interest to disclose it in some other form.

65. The powers in the Bill cover both a general power exercisable by the Secretary of State, and a delegated power to make regulations. This is because a general power will only be useful where the class of persons from whom information is to be collected is readily identifiable. For example, abattoirs in England are an identifiable class, in that the government can use business records to contact them directly. Conversely, where information needs to be collected from a class of persons that is not readily identifiable (such as poultry keepers with less than 50 birds, upon whom there is no requirement to register with any public authority) then a Statutory Instrument will be required to reach that class of person.

Justification for taking the power

66. The format of the information that may be required may evolve. Technological change, in particular the rapid development of precision farming and increasing automation in food processing, is likely to give rise to novel sources of data which

could be used to improve agricultural performance. Technological change in how data can be securely disseminated is also likely to provide increasing opportunities to efficiently exploit data to drive productivity and support farmers and growers to manage volatility. A power is necessary to allow the Secretary of State to request information required to reflect these technological advances, and to gather and share novel data by means not currently known, both to strengthen evidence-based policy making and to enable monitoring of intervention success.

67. Delegation of these powers is important to ensure sufficient agility to accommodate future changes to the agri-business landscape. The government considers it of great importance to have time to consult widely on the policies which will deliver the public commitment to “explore how the collection and dissemination of market data can be improved in the longer-term to drive greater transparency”.²

68. As a result of EU Exit, the Department may also need to collect data that is not currently gathered. For example, there may be a greater future need to demonstrate the UK’s animal health status and the robustness of the UK’s animal disease surveillance systems in order to facilitate international trade once we leave the EU. A power is therefore required to remain responsive to any trade deals and other international negotiations contingent on EU Exit.

Justification for the procedure

69. It is proposed that the affirmative resolution procedure will be used for future data collection and sharing regulations. Market management measures warrant a high degree of parliamentary scrutiny, as do any provisions which may bring into question privacy and competition concerns. Data collection from supply chains which operate across internal borders is also likely to attract interest from the devolved administrations.

70. The greater degree of scrutiny afforded by the affirmative resolution procedure is sought in order to strike the right balance between achieving policy objectives and allaying concerns around data security and privacy. The intention is to use voluntary methods of data collection and sharing where possible, particularly with respect to animal health and traceability, using mandatory measures only where voluntary ones

² Groceries Code Adjudicator Review: Part 2 - Government response to the Call for Evidence on the case for extending the Groceries Code Adjudicator’s remit in the UK groceries supply chain. Available at gov.uk by searching “Groceries Code Adjudicator: extending its remit”

have been exhausted or are inappropriate. We will consult widely and seek industry input on draft Statutory Instruments made under these powers.

Clause 16(1): Enforcement of information requirements

Power conferred on: Secretary of State

Power exercised by: Regulation by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure

Context and purpose

71. The powers to collect and share data on the agri-food supply chain underpin a number of significant policy objectives, but without an enforcement mechanism, there is the risk that data collected will be incomplete or not fit for purpose. With respect to objectives such as supply chain transparency, and better animal health and traceability, it is important to have a holistic data picture. A delegated power is needed for the government to implement a proportionate and adaptable regulatory enforcement regime for data collection, which reflects the nature and importance of the data that may be collected and shared, and effectively encourages compliance.

72. Non-compliance with data collection requirements distributed for the Annual Business Survey are supported by fine-issuing powers under the Statistics of Trade Act 1947. The government aims to recreate similar fine-issuing powers for data collection using these powers.

73. Safeguards on the exercise of this power will be consulted on with stakeholders. For example, it may be considered appropriate to include:

- a) mandatory warning notices before fines are issued to first offenders;
- b) defences such as an inability to provide data on time due to exceptional circumstances (on-farm emergencies such as flooding or fire, for example);
and/or
- c) allowances for correction of inaccurate data provided, where it can be demonstrated that the inaccuracy is not deliberate or a failure to take reasonable care.

74. Such safeguards will need to reflect the nature of the requirement to provide information, the actor from whom it is required and their ability to respond.

Justification for taking the power

75. The enforcement regime will need to reflect and complement what is set out in regulations made under clause 12(2) or in any requirement to supply information under clause 12(1). The power to enforce information requirements does not provide for the creation of any criminal offences and only allows for civil penalties. Any civil penalties would not be retrospective and it is commonplace to set out civil penalty regimes in secondary legislation.

Justification for the procedure

76. The affirmative resolution procedure is sought for the exercise of this power. This would provide a higher degree of scrutiny for the enforcement regime proposed, which is likely to cover a range of types of enforcement, tailored to each group of actors in the agri-food supply chain, and considering the nature and importance of the data required. This procedure will also guarantee scrutiny of the degree of consultation with industry, to ensure their input on the level and type of enforcement required to appropriately dissuade non-compliance.

77. The affirmative resolution procedure will also ensure that adequate parliamentary scrutiny is afforded in order to achieve a suitable balance between the protection of personal data and commercial data and the objectives which these powers seek to achieve.

Clause 17(1): Declaration relating to exceptional market conditions

Power conferred on: Secretary of State

Power exercised by: Declaration

Parliamentary Procedure: Copy of the declaration to be laid before Parliament

Context and purpose

78. This is not a legislative power.

79. This clause allows for the Secretary of State to make a declaration that there are exceptional market conditions in the agricultural market if he considers there is or

may be a severe disturbance, or a serious threat of a severe disturbance, in agricultural markets. The declaration may only be made if the disturbance has, or is likely to have, a significant adverse effect on farmers in terms of the prices that can be achieved for one or more agricultural products. The declaration of exceptional market conditions triggers the Secretary of State's power at clause 18 to make payments, loans and guarantees to affected farmers.

80. The clause also sets out what information must be included in the declaration: it must describe the severe disturbance or threatened disturbance, specify any agricultural products that are or are likely to be affected, explain the likely impact on agricultural producers (for example, why the incomes of agricultural producers would be affected in terms of a fall in the price of a product), state that the powers in clause 18 to give financial assistance have been triggered, and specify when the declaration will cease to have effect.

81. Under the clause the declaration is limited in duration to three months from the date when the declaration is published, although there is a power to extend that by a further three months and, if the exceptional circumstances continue, to make a new declaration of exceptional market conditions relating to the same events.

82. The declaration must be published and then laid before Parliament as soon as practicable.

Clause 18(2): Exceptional market conditions: powers available to Secretary of State

Power conferred on: Secretary of State

Power exercised by: N/A

Parliamentary Procedure: N/A

Context and Purpose

83. This is not a legislative power.

84. Under clause 18 the Secretary of State has the power to give or agree to give financial assistance in the form of payments, loans and guarantees to affected farmers when exceptional market conditions have been declared, under any

conditions he considers appropriate, including being able to target payments to particular sectors and geographical areas.

85. In the CMO Regulation, the Commission is given powers to intervene in agricultural markets to mitigate any extreme circumstance which has or may have a significant negative impact on farmers' incomes. These powers are being revoked in the Bill in Schedule 5. This proposed power aims to replace these powers with a new domestic power for the Secretary of State to react to exceptional market conditions declared under clause 17 by focused payments to farmers facing significant market disturbance.

86. The aim of the provision is to support the income of farmers when it is unexpectedly low due to exceptional market conditions. The agricultural markets can at times be unpredictable and the nature of exceptional market conditions is that they cannot be forecast. As such, any action which may be taken to mitigate the situation also cannot be predicted.

Clause 19(1): Modification in connection with exceptional market conditions and for general purposes

Power conferred on: Secretary of State

Power exercised by: Regulation by Statutory Instrument

Parliamentary Procedure: Negative resolution procedure

Context and purpose

87. In Regulation (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products ('the CMO Regulation'), the Commission is given powers to intervene in the agricultural markets to mitigate any extreme circumstance which has or may have a significant negative impact on farmers' incomes.

88. One of the crisis powers provided for under Article 219 of the CMO Regulation is the ability for the Commission to derogate from rules laid down regarding the general use public intervention and private storage aid in order to use the schemes in cases of actual or threatened severe market disturbance.

89. This provision in the Bill allows the Secretary of State to modify the retained EU legislation relating to public intervention and private storage aid for England so

that it may be used more effectively in exceptional market conditions. Modifications to any retained EU legislation under this power would be linked to the particular exceptional market conditions declared under clause 17. They would not have any effect on the general use of either scheme.

90. Regulations made under this delegated power could, for example, do the following:

- a) open a public intervention scheme for a product not currently eligible under the general rules;
- b) extend an intervention window past the dates laid out in the retained legislation; or
- c) make exceptions to the rules for the schemes' general operation to make them more accessible in exceptional market conditions.

91. Outside of the articles relating to crisis measures in the CMO Regulation (which will be revoked for England under Schedule 5) the power to amend both schemes elsewhere in the retained legislation for any other purpose, is limited.

Justification for taking the power

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

93. There may be circumstances in which public intervention or private storage aid are the most effective way to mitigate an extreme market disturbance. To ensure the schemes can be used effectively in this situation it may be necessary to make changes not provided for once the retained legislation has been revoked.

94. The agricultural market can at times be erratic, and the nature of exceptional market conditions is that they cannot be forecast. Therefore, there must be flexibility in how the Secretary of State can amend public intervention and private storage aid, as the best way to use them will depend on the nature of the exceptional market conditions, which are themselves unpredictable. For example, we cannot know now what products might require the Secretary of State to open an intervention scheme

or whether and to what extent an intervention window might need to be extended; for these reasons it would not be possible to make any such amendments on the face of the Bill.

Justification for the procedure

95. The negative resolution procedure is suggested for statutory instruments laid under this power.

96. The power in this clause could only be used after the declaration of exceptional market conditions as laid out in clause 17 has been made. Any power would be intended for use only in exceptional circumstances where threats of severe market disturbance occur so swiftly or unexpectedly that immediate action is necessary to mitigate the significant adverse effects on farmers' incomes. A delay in taking action could aggravate the situation and lead to the exceptional market conditions turning into a more severe or prolonged disturbance, or the need to take more robust action at a later date.

97. Modifications made to retained EU legislation made under this power would be linked to particular exceptional market conditions and would not have any permanent effect on the general operation of either scheme.

98. Due to the urgency with which measures to address the exceptional market conditions would need to be implemented, the limited nature of amendments under this power, and the requirement for the Secretary of State to lay the declaration before parliament as soon as practicable, provided for in clause 17; the negative resolution procedure is considered the most appropriate.

Clause 19(2): Modification in connection with exceptional market conditions and for general purposes

Power conferred on: Secretary of State

Power exercised by: Regulation by Statutory Instrument

Parliamentary Procedure: Negative resolution procedure

Context and Purpose

99. The aim of EU intervention is to provide a safety net to farmers by removing surplus products from the market and thereby stabilising market prices. The market price of certain goods is monitored, so that when the market situation so requires, eligible goods may be bought in, stored and resold once prices have risen (public intervention buying) or producers may be paid to store products for an agreed period in order to remove them from the market (private storage aid).

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

101. The proposed power gives the Secretary of State the ability to modify retained EU legislation which relates to public intervention and private storage aid (as set out and defined in clause 19), for either or both of the following purposes:

- a) to amend either scheme in such a way as it ceases to have effect in England;
- b) to amend the general operation of either scheme.

102. Modifications made to public intervention and private storage aid under this power will only apply in relation to the general use of these schemes. It will not affect the power in clause 19(1) allowing the Secretary of State to amend either scheme in relation to exceptional market conditions declared under clause 17.

Justification for taking the power

103. The power to amend the public intervention and private storage aid schemes in the retained EU legislation is limited. For example, the retained legislation does not enable products to be added to or omitted from the eligible products list; it does not provide for the switching off of mandatory public intervention of certain products; nor does it allow for the revocation of either scheme.

104. To ensure these schemes can be tailored to the domestic agriculture market, they may need to be altered in ways not currently provided for under the existing legislation.

105. One power which is not provided for in the retained EU legislation is the ability to repeal these market intervention schemes. The power under this clause will enable the Secretary of State to phase out these market intervention schemes for England. Such a decision would require further discussions with the devolved administrations.

106. The policy intention is to move away from schemes created with the European market in mind. However, it is difficult to predict what the future domestic agricultural market may look like; what our future trading arrangements will be; or when the Secretary of State may be free to diverge from the retained EU legislation due to EU Exit negotiations. Therefore, it is appropriate for there to be a power that is broad enough to allow the phasing out to occur but to allow flexibility as to the timing and detail of changes.

Justification for the procedure

107. This clause uses the negative resolution procedure.

108. Amendments to intervention schemes with the aim to make them more suited to the domestic market would not be made in a vacuum. Before any instrument is laid there would be examination of the agricultural sector as a whole and its individual product markets, and we may consult with relevant stakeholders.

109. Similarly, amendments made to the retained EU legislation with the intent of phasing out public intervention and private storage aid would be made subject to the terms of any withdrawal agreement with the EU; and may require consultation with devolved administrations; and other relevant stakeholders. Any amendments are likely to be technical changes to scheme design.

Clause 20(1): Marketing standards and carcass classification

Power conferred on: Secretary of State

Power exercised by: Regulation by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure

Context and Purpose

110. At present many agricultural products marketed in the EU have to conform to marketing standards at all marketing stages including at import and export stage. The current EU legislation pertaining to marketing standards will become retained EU legislation under the European Union (Withdrawal) Act 2018.

111. Clause 20(1) is a power to set marketing standards for products marketed in England. The power enables the Secretary of State to amend or revoke the current marketing standards as set out in retained EU legislation and in domestic legislation, as well as giving the flexibility to introduce new standards that will be tailored to suit the domestic agricultural sectors.

112. The power in clause 20(1) will be used to make regulations concerning marketing standards tailored to suit the domestic sector, to ensure that the standards and rules do not place an excessive burden on farmers and other players in the food supply chain and to continue to match modifications made at international level to ensure English farmers are not disadvantaged.

113. Regulations made under clause 20(1) may also provide for the enforcement of marketing standards, and clause 20(4) sets out the matters enforcement regulations may concern, for example, conferring powers of entry, imposing penalties, creating offences and providing for appeals. This power will allow for the current enforcement requirements to be replicated for any standards which may be introduced in new sectors. This will provide consistency across the way the standards are enforced, and provide for the potential to introduce a standard enforcement regime across all the marketing standards in the future.

Justification for taking the power

114. The Commission powers to amend marketing standards are restrictive and do not easily allow for technical updating. They allow only for amendments to be made

in prescribed circumstances. For example, the Commission currently only has the power to adopt delegated acts concerning marketing standards if it is to take into account the expectations of consumers and to improve the economic conditions for the production and marketing as well as the quality of the agricultural products covered by the marketing standards.

115. If it was deemed necessary to amend or revoke the current standards, or set new ones, the Secretary of State would be unable to do so unless it was demonstrated that the above considerations had been taken into account for marketing standards.

116. EU exit will enable modernisation of the existing marketing standards, so that they deliver domestic standards for domestic farmers, retailers and consumers. Regulations under this power will:

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

117. Relying on the retained EU legislation would prevent the Secretary of State from taking action where the motivation was, for example, to:

- a) encourage the marketing of a more diverse range of produce and reduce food waste (for example, by having the flexibility to change any standards that are purely visual); or
- b) introduce more proportionate inspection regimes.

118. Without the proposed power, there would be difficulties in tailoring marketing standards to fit the needs of the domestic farming sector.

119. Marketing standards are governed by extensive and technically detailed provisions, which vary considerably across different sectors. It would not be

appropriate to set out this level of technical detail in primary legislation. In addition, any changes to marketing standards would need to be tailored to deliver domestic standards for domestic farmers, retailers and consumers, against a backdrop of any Withdrawal Agreement with the EU and future trade deals.

120. A power is also required to enable the Department to update marketing standards should it be necessary to keep pace with changes made to the EU regime after EU exit. This could require fairly rapid amendments, the detail of which is not yet known.

121. The Secretary of State is also able to make regulations on the enforcement of marketing standards, to ensure that marketing standards made for new products are enforced consistently with existing standards and to provide for any changes which might be necessary to the enforcement regime. Compliance with marketing standards is important for consumers, and so in the past the decision has been taken to impose criminal penalties for breaches of the standards. It is therefore necessary for the Secretary of State to have the power to create new offences as and when marketing standards are made for new products. Any offences created under this power will not be retrospective.

Justification for the procedure

122. This clause is subject to the affirmative resolution procedure. Changes to marketing standards will be technical in nature, but their impact can be wide ranging and the power contains provision for the creation of criminal offences.

Clause 20(3): Marketing standards and carcass classification

Power conferred on: Secretary of State

Power exercised by: Regulation by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure

Context and Purpose

123. Carcass classification, which takes place in slaughterhouses post slaughter, is used to calculate the payment due to producers from slaughterhouses based on the quality of the carcass. The carcass classification scales define the characteristics and the quality of the carcass as presented. As such they can also be seen as a

marketing standard that makes the market in meat more transparent and helps both buyers and producers. The current EU legislation pertaining to carcass classification will become retained EU legislation under the European Union (Withdrawal) Act 2018.

124. Clause 20(3) contains the new domestic power for the Secretary of State to make regulations relating to the classification, identification and presentation of bovine, pig and sheep carcasses by slaughterhouses in England. The power also enables the Secretary of State to amend or revoke retained EU legislation and domestic legislation relating to carcasses, as well as giving the flexibility to introduce rules in this sector that will be tailored to suit domestic requirements.

125. In the retained direct EU legislation the delegated powers to amend carcass classification rules are restrictive, only allowing for amendments to be made in prescribed circumstances. For example, it would not be possible to change mandatory application of classification for certain species.

126. The power in clause 20(3) will provide for regulations concerning carcass classification to be tailored to suit the domestic sector, to ensure that carcass classification rules do not place an excessive burden on farmers and other players in the food supply chain and to continue to match the modification made to the rules at international level to ensure English farmers and slaughterhouses are not disadvantaged.

127. Regulations made under clause 20(3) may also provide for enforcement, and clause 20(4) sets out the matters enforcement regulations may concern, for example, conferring powers of entry, imposing penalties, creating offences and providing for appeals. This power will allow for the current enforcement requirements to be replicated for any new carcass classification rules which may be introduced. This will provide consistency across the way the carcass classification rules are enforced.

Justification for taking the power

128. A power is required in order for the Department to update carcass classification provisions should it be necessary to keep pace with changes made to the EU regime after EU exit. This could require fairly rapid amendments, the detail of which is not yet known. Changes made to carcass classification rules are likely to require technically detailed provisions which would not be appropriate for primary legislation.

129. The Department intends to continue taking a considered, sector-specific approach to amending carcass classification rules. This power will allow the Department to undertake sector-specific consultations and make changes tailored for particular sectors. For example, a future development may include extending classification to include eating quality of meat. This technology is being developed in other beef producing countries.

130. It is important that the Secretary of State is able to make provision for an enforcement regime in order to ensure that regulations made under this power are complied with, and appropriate penalties which are consistent with the existing law can be applied. As the classification, identification and presentation of carcasses is important not only for tracking prices paid to farmers, but also for consumer protection, it has in the past been enforced by the imposition of criminal penalties for breach of the rules, and so it is necessary for the Secretary of State to have the power to create new offences if necessary as and when there is a change to the rules. Any offences created under this power will not be retrospective.

Justification for the procedure

131. This clause is subject to the affirmative resolution procedure. Changes to carcass classifications will be technical in nature, but their impact can be wide ranging and the power contains provision for the creation of criminal offences.

Clause 21(1): Power to reproduce modifications under section 20 for wine sector

Power conferred on: Secretary of State

Power exercised by: Regulation by Statutory Instrument

Parliamentary Procedure: Negative resolution procedure

Context and Purpose

132. Under clause 20, the Secretary of State will have the power to make provisions relating to marketing standards for products marketed in England through regulations. This will also cover the ability to amend or revoke the current marketing standards, as set out in retained EU law, including Annex 7 of the CMO regulation.

133. Annex 7 of the CMO regulation outlines the definitions, designations, and sales descriptions for specific marketing standards products. Although its primary purpose relates to marketing standards, it is also used as a shorthand in other parts of the CMO regulation to refer to those products. Such cross references appear in Section 2 of Chapter 1 of Title 2 of the CMO regulation, which is a reserved area of law.

134. The purpose of this power is therefore to ensure that these cross references work. Amendments made to Annex 7 under clause 20 will only apply to England, and will not therefore feed through the reserved area of law in Section 2 of Chapter 1 of Title 2 of the CMO regulation. This power enables the Secretary of State to correct that by extending the amendments to Annex 7 for the whole of the UK thereby ensuring that the references to Annex 7 align.

Justification for taking the power

135. This power is necessary to ensure that any changes made to Annex 7 of the CMO regulation using the power in clause 20 will subsequently flow through to the references to Annex 7 which appear in Section 2 of Chapter 1 of Title 2 of CMO Regulation. This makes the cross reference work, and ensures clarity as to which products are being referred to.

Justification for the procedure

136. This clause is subject to the negative resolution procedure. Changes to Annex 7 of the CMO Regulation will be technical in nature, to ensure alignment across different elements of the retained CMO regulations.

Clause 22(7): Producer and interbranch organisations etc.: application for recognition

Power conferred on: Secretary of State

Power exercised by: Regulation by Statutory Instrument

Parliamentary Procedure: Negative, unless concerning new sector-specific provisions then Affirmative resolution procedure

Context and Purpose

137. The Agriculture Bill replaces the existing European regime for the recognition of Producer Organisations, Associations of recognised Producer Organisations and Interbranch Organisations (referred to in this memorandum as “POs”, “APOs” and “IBOs” respectively) with a bespoke domestic version.

138. The primary purpose of PO recognition is to bestow upon legally recognised groups of primary producers exemptions from competition law which allows them to engage in certain co-ordinated activities which would otherwise be prohibited (such as managing production and collectively negotiating supply contracts). The unique structure of agriculture, with large numbers of small, atomised producers conducting business with highly consolidated processors and retailers has led to significant power imbalances in the supply chain, which greater levels of collaboration could serve to address.

139. The current regulations which allow recognition as a PO (contained in the CMO) are EU-wide, and were drafted so as to encompass the entirety of the EU. The government are recreating the existing types of recognition criteria in primary legislation (although many specific elements of the criteria will be defined in secondary legislation). This is necessary to minimise the degree of disruption for existing POs and to account for the fact that the current PO model is familiar to domestic producers and remains a suitable system for a domestic regime.

140. This power enables the Secretary of State to add to the conditions for recognition which are currently set out in clause 22 of the Bill i.e. those which apply to POs, APOs and IBOs, in all agricultural sectors. This power is also capable of being exercised by virtue of clause 24(2) in relation to specific sectors. Where it is exercised in relation to specific sectors, the power is wider because it may also provide for

exceptions to be made to the conditions in clause 22 and, as such, it is a Henry VIII power.

141. By way of example, sector-specific regulations made under this power may be used as follows:

- a) to amend the condition in clause 22(2)(a) to allow for a PO to be composed of members operating in two distinct sectors, which may be closely linked within a single supply-chain (e.g. cereals and hops, where barley growers and hop growers may potentially supply the same brewery) in order that efficiencies of supply (such as co-ordinating);
- b) to remove the discretionary element of recognition (so an applicant, on fulfilling the criteria, is automatically granted legal recognition as a PO, without being subject to the decision making process that lay with the Commission, but will henceforth lie with the Secretary of State). Similar provision was made in the so called “Milk Package”, introduced by the EU in 2012, which was a series of measures to improve the position of the European dairy sector, made available exclusively to European dairy farmers.

142. By virtue of clause 29(3)(c), the power in clauses 22 and 23 can be used to make supplementary, incidental, consequential, transitional, or saving provision, which may include applying, amending or revoking retained direct EU legislation on POs and treating organisations recognised under retained direct EU law as recognised under clause 22. The Department expects to exercise this power solely for the purposes of revoking elements of the EU PO scheme which will be redundant once the domestic scheme has replaced them, and for making transitional provision securing continuity of treatment for POs recognised under the EU legislation.

143. This power to make regulations includes the power to delegate functions. The Secretary of State is required to consult representatives of the sector, or persons who may be affected, before making new sector-specific provisions under these powers.

Justification for taking the power

144. It is not possible to predict exactly what additional conditions may be required in future to the entirety of the PO regime, or what agricultural sectors will require

specific changes in future and what those changes might be. A power is therefore sought to make these changes in response to changes in market conditions.

Justification for the procedure

145. The exercise of this power is subject to the negative resolution procedure where delegated provisions apply to all POs; the affirmative resolution procedure will apply where provisions are made which apply only to specific sectors.

146. Negative resolution procedure: Provisions that apply to all POs will be of a technical or administrative nature. The power only allows for the Secretary of State to impose additional conditions for recognition that will apply to all agricultural sectors. The core recognition criteria cannot be relaxed through amendment or removal in these circumstances.

147. The anticipated consequential and transitional provision will be particularly uncontroversial. We will be revoking legislation that is being replaced with provision that is in many respects identical in purpose and effect, and which Parliament has had the opportunity to approve in a well-developed state because it is set out in detail on the face of the Bill. The repeal of redundant EU legislation should not be controversial in these circumstances, and a debate in each House about such provisions would be disproportionate.

148. Affirmative resolution procedure: In contrast to the above, regulations under this power that make sector-specific provision can potentially disapply or modify elements of the recognition regime set out in primary legislation. Sector-specific provisions could give rise to controversy as they are capable of creating an advantage for one or more sectors over others and any special treatment should be duly justified. In addition this power also amounts to a Henry VIII power which could be used to make more wide-ranging and substantive changes to the recognition regime. For these reasons it is considered that any such amendments should receive a higher level of Parliamentary scrutiny.

Clause 22(8): Producer and interbranch organisations etc.: application for recognition

Power conferred on: Secretary of State

Power exercised by: Regulation by Statutory Instrument

Parliamentary Procedure: Negative, unless concerning new sector-specific provisions then Affirmative resolution procedure

Context and Purpose

149. This provision requires the Secretary of State to make regulations specifying the time period for deciding whether to grant recognition to POs, APOs and IBOs that have applied.

Justification for taking the power

150. This power will be used to make a purely administrative provision for the recognition process; such provision may need to change in light of changing practicalities.

Justification for the procedure

151. Provisions made under these powers will be of an administrative nature. For the same reasons set out in relation to clause 22(7), the negative resolution procedure will provide sufficient parliamentary scrutiny for such provision.

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

Clause 22(10): Producer and interbranch organisations etc.: application for recognition

Power conferred on: Secretary of State

Power exercised by: Regulation by Statutory Instrument

Parliamentary Procedure: Negative, unless concerning new sector-specific provisions then Affirmative resolution procedure

Context and Purpose

153. As explained in relation to clause 22(7), the government anticipates that wider changes to the agricultural landscape and government initiatives will lead to the emergence of a far more collaborative agricultural sector; which historically has been lacking in the UK. Given this, it is likely that there will be increased interest in the PO model and, subsequently, a greater volume of applications which require processing. Clause 22(10) enables the Secretary of State to introduce further provisions relating to the PO scheme applications process.

154. This power includes the power to enable the Secretary of State to delegate functions, including the function of deciding applications for recognition under clause 24(1) The Secretary of State is required to consult representatives of the sector, or persons who may be affected, before making new sector-specific provisions under these powers.

Justification for taking the power

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

156. Clause 29(3)(c) sets out that the above delegated power can be used to make consequential or transitional provisions amending or revoking retained direct EU

legislation. Such provision will be made only for the purposes of revoking redundant EU legislation that has been replaced by broadly analogous domestic provisions, and to secure continuity for existing POs.

Justification for the procedure

157. Provisions made under these powers will be of an administrative nature. Provision about applications will be made in response to the practicalities of the recognition process, and will be aimed at facilitating a more efficient process for applicants and the recognising authority, and at creating a procedure for appealing recognition decisions. Any consequential or transitional provisions applying or revoking retained EU legislation will be limited and uncontroversial. Therefore, for the reasons same reasons set out in relation to clause 22(7), the negative resolution procedure is proposed.

158. However, where regulations concern new sector-specific provisions, the affirmative resolution procedure will be used. As sector-specific provisions can disapply elements of the primary legislation, a higher degree of Parliamentary scrutiny is warranted.

Clause 22(11): Producer and interbranch organisations etc.: application for recognition

Power conferred on: Secretary of State

Power exercised by: Regulation by Statutory Instrument

Parliamentary Procedure: Negative, unless concerning new sector-specific provisions then Affirmative resolution procedure

Context and Purpose

159. This power enables the Secretary of State to make regulations to specify the following matters in relation to recognised organisations:

- a) the minimum number of members;
- b) the minimum production;
- c) the requirements that must be met by the constitution of a PO;

- d) the activities which a PO must carry out on behalf of its members; and
- e) the activities in which recognised organisations are prohibited from engaging.

160. The above matters will form detailed PO recognition requirements; they are currently set out in tertiary legislation in the corresponding EU regime. Initially, it is likely that regulations made under this power will closely emulate the rules set out in that regime in order to preserve continuity and give certainty to existing POs.

161. This power is capable of being exercised to make provisions that apply to all POs, or only in relation to specific sectors (by virtue of clause 24(2)). This power can also be used to make supplementary, incidental, etc. provision, pursuant to clause 29(3)(c).

162. This power to make regulations includes the power to delegate functions. The Secretary of State is required to consult representatives of the sector, or persons who may be affected, before making new sector-specific provisions under these powers.

Justification for taking the power

163. Regulations under this power will set out requirements that are currently contained in EU tertiary legislation and be too detailed and technical for domestic primary legislation. The Department also foresees that we may need to change these rules in response to economic and other conditions affecting specific agricultural sectors. For example, emerging sectors, where future growth forecasts are difficult to predict (goats for meat production, novel cereal crops etc.) may eventually warrant modifications to the minimum number of members or minimum level of production. It is not possible to predict which sectors may require these specific changes and precisely what those changes should be, therefore a power is sought in the Bill to effect these changes in response to sector-specific needs as they arise.

Justification for the procedure

164. Provisions made under these powers will largely be of a technical or administrative nature. Therefore the negative resolution procedure is proposed.

165. Sector-specific provisions could give rise to controversy as they are capable of creating an advantage for one or more sectors over others and any special

treatment should be duly justified. A higher level of scrutiny through the affirmative resolution procedure should apply where such provision is made.

Clause 23(2): Recognised organisations: competition exemptions and further provision

Power conferred on: Secretary of State

Power exercised by: Regulation by Statutory Instrument

Parliamentary Procedure: Negative, unless concerning new sector-specific provisions then Affirmative resolution procedure

Context and purpose

166. As explained in relation to clause 22(7), the government anticipates increased interest in agricultural collaboration in the future, which is likely to mean greater take up of the Producer Organisation model. Clause 23(2) allows the government to introduce new provisions concerning the ongoing requirements for Producer Organisations, distinct from the previous powers concerning the nature of their initial recognition.

167. Regulations under this power may make provision for ongoing requirements, for the monitoring and enforcement of those requirements (including the imposition of financial penalties) and for the suspension or withdrawal of recognition (including about review and appeal of any suspension or withdrawal). Regulations may also make provision about the extent to which recognised POs may outsource certain functions.

168. A PO only needs to comply with the recognition criteria at the time that a recognition decision is made. The purpose of ongoing requirements is to ensure that a PO continues to operate in a way that justifies the ability of its members to coordinate their activities that would otherwise be prohibited as anti-competitive.

169. This power is capable of being exercised to make provisions that apply to all POs, or only in relation to specific sectors (by virtue of clause 24(2)). This power can also be used to make supplementary and incidental provision, pursuant to clause 29(3)(c).

170. Under clause 24(5), where this power is to be exercised to make sector-specific provisions, the Secretary of State will be required to consult with representatives of those sectors and with persons who may otherwise be affected by the provisions. This power to make regulations includes the power to delegate functions.

Justification for taking the power

171. Ongoing requirements enable the government to alter the conditions of a POs continued activity, in line with changes in the relevant sector and wider UK agriculture industry. Given the UK has a history of low level collaboration, the anticipated substantial increase in co-operative economic behaviour is likely to lead to large changes in the competitive environment, which are not easy to foresee, and to which the government should be equipped to respond in order to ensure that fair competition is not inadvertently undermined.

Justification for the procedure

172. Provisions made under these powers will largely be of a technical or administrative nature and therefore the negative resolution procedure is proposed.

173. However, where regulations concern new sector-specific provisions, which may be more controversial as they are likely to advantage or disadvantage particular agricultural sectors over others, the affirmative resolution procedure will be used.

Clause 25(1): Fair dealing obligations of first purchasers of agricultural products

Power conferred on: Secretary of State

Power exercised by: Regulation by Statutory Instrument

Parliamentary Procedure: Negative, unless concerning provisions under 25(3)(c), then Affirmative resolution procedure

Context and Purpose

174. This power is for the Secretary of State to define, for the UK, principles of fair trading in agricultural products, and to publish, maintain and enforce statutory sectoral codes of practice on fair contractual relations in agricultural trade. The provision is

aimed at addressing unfair trading practices in agri-food supply chains, that arise because of the relatively weak market position of primary producers compared to other actors further downstream in the supply chain, who are typically highly consolidated and possess considerable market power. The provisions are intended to counteract the ability of processors and other actors in the supply chain to abuse their dominant market position by enabling the introduction of sector-specific codes of conduct which will establish broad principles of fair business conduct and prohibit certain problematic behaviours.

175. The power only allows obligations to be imposed on first purchasers of agricultural products and may only be made for the purpose of promoting fair contractual dealing, by those first purchasers of agricultural products.

176. The regulations may make provision for codes of contractual conduct to be introduced to establish parameters of acceptable behaviour for actors in agri-food supply chains. Such codes might require that the contracts between a producer and first purchaser of agricultural produce contain certain types of terms, for example terms that specify how the price for any produce sold under the contract will be calculated.

177. In addition to requiring contracts to contain certain types of terms, the powers are capable of being used to specify the actual content of the terms that will bind the parties in a commercial relationship – particularly under subsection (3)(c)(i). This power might be used, for example, to require that notice periods for contractual variations must not be less than a specified period.

178. Under clause 25(5), regulations may make provision for enforcement, including the imposition of civil penalties or requirements for first purchasers to pay compensation. There are no powers to create criminal offences.

Justification for taking the power

179. The sector specific codes will be developed through detailed consultation with industry. Past experience (in setting up similar codes, such as the Groceries Supply Code of Practice) suggests that a considered design process reaps a dividend in final performance, and that targeted actions are more effective than broad-brush approaches, so the consultation process may take some time and will be repeated for every sector-specific code introduced. The government is aware of long-standing

complaints relating to contractual conduct between producers and intermediaries in certain domestic farming sectors (chiefly red meats and dairy). Creating new sector-specific codes of contractual conduct, or placing existing voluntary codes on a statutory footing, will alleviate many of the complaints around unfair trading practices and encourage fairer business relationships.

180. Supply-chain structures are likely to evolve as UK agriculture adjusts to post-Brexit trading environments and new players may enter the marketplace. These potential changes, coupled with inherent variability of agriculture in general (as new products emerge and rise to prominence and others decline) are likely to lead to changes regarding which sectors require statutory codes of conduct; it is therefore proposed that delegated powers are used to keep up with changing circumstances in a wide range of sectors and to tailor provisions to each sector.

Justification for the procedure

181. Given that wide consultation with industry will inform the necessary content of the codes which, where appropriate, will be based on established best practice, the negative resolution procedure is proposed.

182. The Department is of the view that where the powers are used to specify the actual content of the terms that will bind the parties in a commercial relationship – particularly under subsection (3)(c)(i) - such intrusion into the commercial relationship between third parties warrants a higher degree of scrutiny and hence the application of the affirmative resolution procedure is proposed.

Clause 26(1): WTO Agreement on Agriculture: regulations

Power conferred on: Secretary of State

Power exercised by: Regulation by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure

Context and Purpose

183. As the UK leaves the EU the government's responsibilities at the WTO will increase and the UK government will take control of functions that were previously carried out by the European Commission on the government's behalf.

184. WTO rules on agriculture are set out in the Agreement on Agriculture (“AoA”) which includes disciplines on domestic support and special safeguards as well as rules on market access and export competition. After EU Exit, the UK government will be responsible for ensuring that all UK policies on domestic support in relation to agriculture and rural development are WTO compliant.

185. Although the subject matter of this clause is reserved, agriculture is a devolved matter and Defra wants to leave as much freedom as possible to the devolved administrations in the design and implementation of their farming subsidy schemes, save where it might impact on the UK’s WTO compliance. Defra is looking to ensure that all support schemes designed and implemented by the devolved administrations are properly classified as amber, green or blue and, if they fall into the amber box, do not cause the UK to exceed its limits.

186. This power allows the Secretary of State to make regulations to set financial ceilings on the devolved administrations and England in relation to agricultural support that is considered trade distorting and classified as ‘amber box’ by the WTO; establish a decision-making process to classify agricultural support in accordance with WTO criteria, and require devolved administrations to provide information in relation to any of their proposed or existing farming support.

Justification for taking the power

187. A delegated power is necessary for the following reasons.

188. While Defra expects the UK to receive a share of the EU’s current Aggregate Measurement of Support (“AMS”) allowance after EU exit, this is still subject to agreement with other WTO members and therefore the exact amounts involved cannot be set out on the face of the Bill. AMS refers to the annual level of agricultural support given to agricultural producers, expressed in monetary terms, other than support that is exempt under Article 6 of Annex 2 of the AoA (green box or blue box). The UK ceiling will also need to be agreed before individual limits for each appropriate authority in England, Wales, Scotland and Northern Ireland can be set. Defra will work closely with the devolved administrations on the methodology for setting these limits during the course of further consultation with HM Treasury.

189. Setting out these provisions in secondary legislation means that if obligations under the AoA change (by agreement between all WTO members including the UK,

or in the event of successful challenge of UK policy by other WTO members) there is scope to incorporate these changes by changing secondary rather than primary legislation, although these changes would be subject to the affirmative resolution procedure.

190. We are working with the devolved administrations to agree the process that will be used to classify domestic support in accordance with the AoA. The detail of these processes have not yet been finalised or agreed with the devolved administrations and we therefore cannot set out this process on the face of the Bill. It is possible that the process may need to be refined and ‘fine-tuned’ after implementation, setting out the process in secondary legislation avoids the need to amend primary legislation in the event of this happening.

191. We are working with the devolved administrations to agree the process that will be used to notify domestic support to the WTO in accordance with the AoA. The detail of these processes have not yet been finalised or agreed with the devolved administrations and we therefore cannot set out this process on the face of the Bill. Again, it is possible that the process may need to be refined and ‘fine-tuned’ after implementation, setting out the process in secondary legislation avoids the need to amend primary legislation in the event of this happening, although again changes will be subject to the affirmative resolution procedure. Similarly, the information required by the UK government to respond to any challenges by other WTO members, or for the UK government to raise challenges against other WTO members, could vary according to the nature of the dispute. It is therefore not possible to set out details of the types of information that might be required on the face of the Bill.

Justification for the procedure

192. The affirmative resolution procedure will be used as there will be a high level of scrutiny of Defra’s proposals for future management of the UK’s amber box. The proposals have a direct impact on, and will be of strong interest to, the devolved administrations as they will determine the overall limits to the amount of amber box domestic support that may be given in the UK as a whole, and the allocation for England and each of the devolved administrations; the Department considers that these matters are sufficiently significant to the agricultural sector and to the ongoing relationship between UK administrations, that Parliament should be given the opportunity to debate them.

Clause 29(3)(c): Regulations

Power conferred on: Secretary of State.

Power exercised by: Regulations made by statutory instrument.

Parliamentary Procedure: Negative or Affirmative resolution procedure according to the delegated power being exercised

Context and Purpose

193. Clause 29(3)(c) extends the powers to make regulations under the Bill to include a power to make supplementary, incidental, consequential, transitional or saving provision. This power allows regulations to modify primary legislation, retained direct EU legislation or subordinate legislation pursuant with 29(4). Given that regulations may modify primary legislation, this is a Henry VIII power.

194. Clause 29(5) provides that where offences are created by regulations under the Bill, they may be punishable with imprisonment for a period not exceeding (a) 2 years in the case of conviction on indictment, or (b) 3 months in the case of summary conviction.

Justification for taking the power

195. These provisions will enable the Secretary of State to amend existing legislation where this is required further to the exercise of a delegated power in this Bill. They also place limits on the length of any imprisonment for breach of offences created by regulations under the Bill.

Justification for the procedure

196. The applicable procedure will be the relevant procedure for the delegated power that is being exercised.

Clause 32(1): Power to make consequential etc. provision

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Negative, unless the power is exercised to modify primary legislation, then Affirmative resolution procedure

Context and Purpose

197. Clause 32(1) provides the Secretary of State with a general power to make consequential, supplemental, transitional or transitory provision or savings in connection with any provision of this act. Regulations made using this power may modify primary legislation, retained direct EU legislation or subordinate legislation. Given that regulations may modify primary legislation, this is a Henry VIII power.

Justification for taking the power

198. This power may only be exercised in connection with a provision of the Act. It is not possible to establish in advance all consequential, supplemental, transitional, transitory and savings provisions that may be required, particularly given that we do not yet know the outcome of EU exit negotiations; a power is needed to avoid any legal uncertainty or legal lacunas after the Act comes into force.

Justification for the procedure

199. The Department considers that the affirmative resolution procedure should apply where the power is exercised to modify primary legislation and the negative resolution procedure in all other cases.

Clause 35(2): Commencement

Power conferred on: Secretary of State.

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: None

Context and purpose

200. This clause contains a standard power to bring certain provisions of the Bill into force by commencement regulations. By virtue of subsection (3), regulations may

appoint different days for different purposes. Sections 22 to 24 and Schedule 2 (Producer Organisations) come into force by regulations.

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

Schedule 1: Agricultural Products: Sectors

Schedule 1, Part 3, Paragraph 1: Agriculture Products: Sectors: Regulations

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary Procedure: Negative resolution procedure

Context and purpose

202. Part 1 of Schedule 1 lists the agricultural sectors for which marketing standards may be set (clause 20). Part 2 of Schedule 1 lists the agricultural sectors in which producers are eligible for PO recognition (clauses 22-24) and the agricultural sectors in relation to which the Secretary of State may make regulations promoting fair contractual dealing by first purchasers (clause 25).

203. Schedule 1, Part 3, Paragraph 1 contains a Henry VIII power for the Secretary of State to add or remove an agricultural sector from any of the lists in Part 1 or Part 2 of Schedule 1.

204. There is a further delegated power to set out products that fall within each sector or otherwise give further detail on the sectors; the Department does not consider this further power to be a Henry VIII power as it does not permit changes to be made to primary legislation, instead it allows the Secretary of State to give further detail in respect of each sector.

Justification for taking the power

205. The Schedule reflects the sectors represented in domestic agricultural production at present and the government will set out in secondary legislation the details of which products these market sectors are composed of. Taking a delegated

power to define the parameters of each sector allows the government to elaborate complex details which would be difficult to achieve on the face of the Bill.

206. Equally, it is likely that technological progress and environmental change in the future may see new sectors of production rise to prominence, as novel crop varieties or species become viable to produce. Should agricultural sectors change a power is needed to amend the sectors listed in Part 1 or 2 of this Schedule. The nature of these developments is uncertain, therefore it is necessary for the Department to have powers to revisit the relevant sectors and give further detail as to a sector if necessary.

Justification for the procedure

207. Provisions made under this power will be exclusively of a technical nature; relating to the addition or removal of eligible sectors and setting out which products are considered to belong to each sector, therefore the negative resolution procedure is sought.

Schedule 4: Provision relating to Wales

208. This Schedule sets out powers the Welsh government are seeking in relation to Wales, which are broadly similar to many of the powers in the Bill which the Secretary of State may exercise in England. The Welsh government are also seeking additional powers to give financial assistance in connection with:

- a) Supporting businesses or communities in rural areas
- b) Supporting people who are involved in the production, processing, marketing or distribution of products from an agricultural, horticultural or forestry activity

209. These additional provisions are not delegated powers.

Schedule 5: Provision relating to Northern Ireland

210. This Schedule sets out powers DAERA are seeking in relation to Northern Ireland, which are broadly similar to many of the powers in the Bill which the Secretary of State may exercise in England. The scope of the power DAERA are seeking in paragraph 2(1) of Schedule 4 includes the ability to reintroduce and modify Articles

48 and 49 of the Direct Payments Regulation in relation to making payments for areas of natural constraint due to the specific environment in Northern Ireland.

Justification for taking the power

211. Paragraph 2(1)(b) is needed because provisions regarding payments for areas of natural constraint are likely to be removed by regulations made under the EUWA to deal with deficiencies arising from withdrawal; therefore specific provision needs to be made to enable those payments to be made in Northern Ireland after EU Exit.

Justification for the procedure

212. The power under paragraphs 2, 4 and 11 are to be exercised using the affirmative resolution procedure to cater for the unique circumstances in Northern Ireland.