



# Agriculture Act 2020

## 2020 CHAPTER 21

### PART 3

#### TRANSPARENCY AND FAIRNESS IN THE AGRI-FOOD SUPPLY CHAIN

### CHAPTER 1

#### COLLECTION AND SHARING OF DATA

#### **23 Agri-food supply chains: requirement to provide information**

- (1) The Secretary of State may require a person in, or closely connected with, an agri-food supply chain to provide information about matters connected with any of the person's activities connected with the supply chain so far as the activities are in England.
- (2) The Secretary of State may make regulations requiring a person in, or closely connected with, an agri-food supply chain to provide information about matters connected with any of the person's activities connected with the supply chain so far as the activities are in England.
- (3) See section 24 for provision about—
  - (a) the meaning of “agri-food supply chain”,
  - (b) who is in such a supply chain, and
  - (c) who is closely connected with such a supply chain.
- (4) Subsections (1) and (2) do not apply in relation to individuals in a supply chain so far as they are in the supply chain by reason of them, or members of their households, being the ultimate consumers (see section 24).
- (5) A requirement imposed on a person under subsection (1) or (2) does not apply to so much of the information as the person would in legal proceedings be entitled to refuse to provide on grounds of legal privilege.
- (6) A requirement under subsection (1) must be in writing.

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- (7) Subsection (1) binds the Crown.
- (8) Regulations under subsection (2) are subject to affirmative resolution procedure.

## **24 Meaning of “agri-food supply chain”**

- (1) This section has effect for the purposes of this Chapter.
- (2) An “agri-food supply chain” is a supply chain for providing individuals with items of food or drink for personal consumption where the items consist of or include, or have been produced using (directly or indirectly, and whether or not exclusively), the whole or part of—
  - (a) anything grown or otherwise produced in carrying on agriculture,
  - (b) any creature kept in carrying on agriculture, or
  - (c) any creature or other thing taken from the wild.
- (3) The persons in an agri-food supply chain are—
  - (a) those individuals (“the ultimate consumers”),
  - (b) the persons carrying on the agriculture or (as the case may be) taking things from the wild, and
  - (c) anybody in the supply chain between those persons and the ultimate consumers.
- (4) The persons “closely connected” with an agri-food supply chain are—
  - (a) anybody supplying seeds, stock, equipment, feed, fertiliser, pesticides, medicines or similar items to the persons within subsection (3)(b) for use in the agriculture or taking,
  - (b) anybody providing, to persons within subsection (3)(b) or (c), services related to—
    - (i) the health of creatures, or plants, involved in the supply chain, or
    - (ii) the safety or quality of the food or drink to be provided to the ultimate consumers,
  - (c) any person carrying on activities capable of affecting a matter mentioned in sub-paragraph (i) or (ii) of paragraph (b), and
  - (d) bodies representing persons within any of paragraphs (b) and (c) of subsection (3) and paragraphs (a), (b) and (c) of this subsection.
- (5) Activities of the kind mentioned in subsection (4)(c) are to be treated for the purposes of section 23(1) and (2) as connected with the supply chain, but this is not to be read as limiting the generality of “connected” in section 23(1) and (2).
- (6) In this section—
  - “agriculture” includes any growing of plants, and any keeping of creatures, for the production of food or drink;
  - “plants” includes fungi;
  - “seeds” includes bulbs and other things from which plants grow.

## **25 Requirement must specify purposes for which information may be processed**

- (1) This section applies to a requirement imposed under section 23(1) or (2).

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- (2) The requirement must specify the purposes for which the information may be processed.
- (3) Each purpose specified must be in, or covered by, the list of purposes in subsection (4).
- (4) The list of purposes is as follows—
  - (a) helping persons in agri-food supply chains to—
    - (i) increase productivity,
    - (ii) manage risks (including, but not limited to, financial risks, non-financial trading risks, climatic risks, and risks of or from disease or pollution), or
    - (iii) manage market volatility;
  - (b) promoting transparency or fairness in agri-food supply chains;
  - (c) promoting the health, welfare or traceability of creatures of a kind kept for the production of food, drink, fibres or leathers;
  - (d) promoting the health or quality of plants, fungi or soil;
  - (e) minimising adverse environmental effects of activities connected with agri-food supply chains;
  - (f) minimising waste arising from activities connected with agri-food supply chains;
  - (g) monitoring, or analysing, markets connected with agri-food supply chains.
- (5) For the meaning of “agri-food supply chain” (and “person in” such a chain) see section 24.

## **26 Requirements under section 23(1): duty to publish draft requirement**

- (1) Before a particular requirement is imposed under section 23(1), the Secretary of State must have—
  - (a) published—
    - (i) a draft of the requirement,
    - (ii) a description of the persons on whom it is proposed that the requirement may be imposed, and
    - (iii) the deadline for making comments on the draft, which must not be earlier than 4 weeks after the date of publication, and
  - (b) decided, in the light of comments received before the deadline (and any other relevant matters), whether the requirement should be imposed in the terms of the draft or in revised terms.
- (2) A requirement in the decided form may be imposed on a person at any times after the decision when the person is within the published description.

## **27 Provision of required information and limitations on its processing**

- (1) This section applies to a requirement imposed under section 23(1) or (2).
- (2) Information provided in response to the requirement may be processed for, but only for, purposes specified in the requirement (see section 25).
- (3) Subsection (2) applies—
  - (a) to the person to whom the information is provided, and

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- (b) to a person to whom the information is disclosed,  
but, in the case of a person within paragraph (b), subsection (2) does not authorise processing contrary to the terms on which disclosure is made.
- (4) Subsections (2) and (3) are subject to subsections (7) to (9).
- (5) The requirement may specify how and when the required information is to be provided, including (in particular)—
  - (a) the person to whom the information is to be provided (who may be a person other than the Secretary of State);
  - (b) the form in which the information is to be provided;
  - (c) the means by which it is to be provided;
  - (d) the time or times at which, or by when, it is to be provided.
- (6) The requirement must specify—
  - (a) the types of processing to which the information may be subjected, and
  - (b) if the types of processing specified include disclosure of any kind, the forms in which the information may be disclosed.
- (7) Information provided in response to the requirement—
  - (a) may not be subjected to types of processing other than those specified in the requirement, and
  - (b) may not be disclosed in any form other than those specified in the requirement, except in circumstances specified in the requirement.
- (8) Subsection (9) applies if—
  - (a) information is provided in response to the requirement, and
  - (b) a person (“P”) proposes to make a disclosure of the information that is permitted by subsection (7).
- (9) Where P proposes that the disclosure should be of the information otherwise than in anonymised form—
  - (a) P must consider whether the disclosure (if made in the form proposed) would, or might, prejudice the commercial interests of any person, and
  - (b) if P considers that it would or might do so, the disclosure (if made) must be of the information in anonymised form unless the Secretary of State considers that it is in the public interest for the disclosure to be of the information in some other form permitted by subsection (7) (in which event the disclosure may be of the information in that other form).
- (10) In this Chapter “processing”, in relation to information, means an operation or set of operations which is performed on information, or on sets of information, such as—
  - (a) collection, recording, organisation, structuring or storage,
  - (b) adaptation or alteration,
  - (c) retrieval, consultation or use,
  - (d) disclosure by transmission, dissemination or otherwise making available,
  - (e) alignment or combination, or
  - (f) restriction, erasure or destruction.

## **28 Enforcement of information requirements**

- (1) The Secretary of State may by regulations make provision for enforcement of a requirement imposed under section 23(1) or (2).
- (2) In the following provisions of this section “specified” means specified in regulations under subsection (1).
- (3) In subsection (1) “enforcement” includes (in particular)—
  - (a) monitoring compliance,
  - (b) investigating non-compliance, and
  - (c) dealing with non-compliance.
- (4) The provision that may be made by regulations under subsection (1) includes (in particular)—
  - (a) provision for the imposition of monetary penalties for non-compliance with requirements, whether penalties—
    - (i) of a specified amount,
    - (ii) of an amount calculated in a specified manner,
    - (iii) of an amount, not exceeding a specified maximum or a maximum calculated in a specified manner, decided by a specified person or a person of a specified description, or
    - (iv) by way of suspending, or withholding, payment of any amounts;
  - (b) provision for recovery of amounts due in respect of monetary penalties, including provision for any of interest, set-off and security for payment;
  - (c) provision about the giving of advice or warnings;
  - (d) provision for the acceptance of undertakings to take, or refrain from taking, particular actions;
  - (e) provision giving persons functions in connection with enforcement of requirements;
  - (f) provision about review of, or appeals against, things done (including decisions made) in connection with enforcement of requirements.
- (5) In subsection (4)(a) “specified manner” includes (in particular) a manner framed by reference to a specified matter such as a person’s profits, income or turnover.
- (6) Regulations under subsection (1) are subject to affirmative resolution procedure.

## **CHAPTER 2**

### **FAIR DEALING WITH AGRICULTURAL PRODUCERS AND OTHERS IN THE SUPPLY CHAIN**

## **29 Fair dealing obligations of business purchasers of agricultural products**

- (1) The Secretary of State may make regulations—
  - (a) imposing obligations on business purchasers of agricultural products in relation to contracts they make for the purchase of agricultural products from qualifying sellers;
  - (b) providing for the enforcement of obligations imposed under paragraph (a).

- (2) The powers under subsection (1) are exercisable for the purpose of promoting fair contractual dealing by business purchasers of agricultural products from qualifying sellers.
- (3) For the purposes of this section—
- (a) the purchaser, in relation to a contract for the purchase of an agricultural product, is a “business purchaser” if the person purchases the product in the course of carrying on a business that includes purchasing products of that kind;
  - (b) the seller, in relation to a contract for the purchase of an agricultural product, is a “qualifying seller” if the person (whether within or outside the United Kingdom) is any of the following—
    - (i) a person carrying on an agricultural activity for the production of products of that kind or otherwise in connection with their production;
    - (ii) a recognised producer organisation;
    - (iii) a recognised association of producer organisations;
    - (iv) a produce aggregator (so far as not falling within sub-paragraph (ii) or (iii)) for that product.
- (4) In subsection (3)(b)(iv), a “produce aggregator” for a product means a person—
- (a) who purchases products of that kind from more than one seller each of whom is a qualifying seller in relation to the contract for the purchase, but
  - (b) who does not carry out any processing activities in relation to that kind of product or any other kind of product which the person sells.
- (5) For the purposes of subsection (4)(a), a seller may fall within paragraph (iv) of subsection (3)(b) by virtue of an earlier application of subsection (4).
- (6) The kinds of obligation that regulations under this section may impose in relation to a contract include—
- (a) obligations to contract in writing;
  - (b) obligations to include, or not to include, in the contract terms dealing with specified matters;
  - (c) where terms dealing with specified matters are included in the contract (whether or not by virtue of paragraph (b))—
    - (i) obligations relating to the provision that must be made by those terms;
    - (ii) obligations to comply with specified principles and practices as to the provision that should be made by those terms.
- (7) The following are examples of the matters that may be specified under subsection (6)(b) and (c)—
- (a) the quantity and quality of products to be purchased;
  - (b) how products are to be provided (including timing of deliveries);
  - (c) pricing mechanisms (including mechanisms for adjustments, premiums and deductions);
  - (d) payment (including timing and method of payments);
  - (e) charges for processing, marketing or advertising products;
  - (f) exclusivity of contractual dealing;
  - (g) the provision of information between the parties;
  - (h) variation of a contract (including notice periods for variation and retrospective variations);

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- (i) duration and termination of a contract.
- (8) The provision that may be made under subsection (1)(b) includes provision—
- (a) for complaints relating to alleged non-compliance to be referred to a specified person;
  - (b) as to how those complaints are to be investigated and how an allegation of non-compliance is to be determined;
  - (c) in the event of a determination of non-compliance, for the imposition on a business purchaser of agricultural products from a qualifying seller of monetary penalties or a requirement to pay compensation (or both);
  - (d) for appeals against such penalties or requirements.
- (9) The powers under subsection (1)(b) include power to—
- (a) confer functions on any person;
  - (b) provide for a person to exercise a discretion in dealing with any matter.
- (10) Regulations under this section are subject to affirmative resolution procedure.
- (11) In this section—
- “processing activities” includes activities such as butchering, baking, fermenting, rendering and preserving (whether by drying, canning, bottling, freezing or otherwise) but does not include activities such as packing, cleaning, sorting, transporting and storing;
  - “recognised association of producer organisations” means an association recognised under section 30(3);
  - “recognised producer organisation” means a producer organisation recognised under section 30(1);
  - “specified” means specified in regulations under this section.

## CHAPTER 3

### PRODUCER ORGANISATIONS

#### **30 Producer and interbranch organisations etc: application for recognition**

- (1) An organisation of agricultural producers that meets the conditions in subsection (2) may apply to the Secretary of State to become a recognised producer organisation.
- (2) The conditions are—
- (a) that the organisation is made up only of agricultural producers (its “members”);
  - (b) that the organisation was formed on the initiative of one or more of its members;
  - (c) that the organisation has a specified minimum number of members, or its members have a specified minimum production, or both;
  - (d) that the constitution of the organisation meets specified requirements;
  - (e) that the organisation carries out, on behalf of its members, one or more specified activities;
  - (f) that the organisation does not engage in specified unlawful activities.

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- (3) An association of recognised producer organisations that meets the conditions in subsection (4) may apply to the Secretary of State to become a recognised association of producer organisations.
- (4) The conditions are—
- (a) that the association is made up only of recognised producer organisations (its “members”);
  - (b) that the association was formed on the initiative of one or more of its members.
- (5) An organisation of agricultural businesses that meets the conditions in subsection (6) may apply to the Secretary of State to become a recognised interbranch organisation.
- (6) The conditions are—
- (a) that the organisation is made up only of businesses carrying on—
    - (i) activities as an agricultural producer, or
    - (ii) activities linked to any one or more agricultural sectors, (its “members”);
  - (b) that the organisation has—
    - (i) at least one member that is an agricultural producer, and
    - (ii) at least one member involved in the processing or distribution of agricultural products;
  - (c) that the organisation was formed on the initiative of one or more of its members;
  - (d) that the organisation has a specified minimum number of members, or its members who are agricultural producers have a specified minimum production, or both;
  - (e) that the organisation carries out, on behalf of its members, one or more specified activities;
  - (f) that the organisation does not engage in specified unlawful activities.
- (7) In subsections (2)(f) and (6)(f) “unlawful activities” means activities which involve breaching a prohibition or failing to comply with a duty.
- (8) In subsection (6)(a) the reference to activities linked to an agricultural sector are to activities carried on by the business as—
- (a) a processor or distributor of agricultural products within that sector, or
  - (b) a producer, processor or distributor of products made (to any extent) from agricultural products within that sector.
- (9) The Secretary of State may by regulations specify additional conditions that an organisation of agricultural producers, an association of recognised producer organisations or an organisation of agricultural businesses must meet in order to be able to make an application under this section.
- (10) The Secretary of State must by regulations specify the time period within which an application under subsection (1), (3) or (5) must be determined.
- (11) The Secretary of State must notify a decision on whether to grant an application to—
- (a) the applicant, and
  - (b) the Competition and Markets Authority,
- and, in the case of a decision to grant an application, must publish the decision online.



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- (12) The Secretary of State may by regulations make further provision about applications under this section, such as provision about—
- (a) the evidence to be supplied with an application;
  - (b) the factors to be taken into account in deciding an application;
  - (c) time periods and deadlines;
  - (d) application fees;
  - (e) reviews and appeals.
- (13) In this section—
- “agricultural producer” means a producer operating in one or more agricultural sectors;
- “agricultural product” means a product produced by a producer operating within any agricultural sector (including, where relevant, a live animal or plant);
- “agricultural sector” means a sector listed in Schedule 1;
- “specified” means specified in regulations made by the Secretary of State.
- (14) The Secretary of State may by regulations amend Schedule 1 for the purpose of—
- (a) adding, altering or removing an entry in the list of sectors;
  - (b) giving further detail on the sectors in that list (for example by adding definitions, making provision as to what falls, or does not fall, within a sector or including any other interpretative material).

### **31 Recognised organisations: competition exemptions and further provision**

- (1) Schedule 2 amends Schedule 3 to the Competition Act 1998 (general exclusions) so as to exclude certain agreements between members of recognised organisations from the Chapter 1 prohibition.
- (2) The Secretary of State may by regulations make further provision about recognised organisations.
- (3) The type of provision that may be made in the regulations includes—
- (a) ongoing requirements with which a recognised organisation must comply;
  - (b) provision about the monitoring and enforcement of those requirements.
- (4) Provision made by virtue of subsection (3) may (among other things) include provision—
- (a) about the provision of information;
  - (b) about the keeping of records;
  - (c) about the suspension or withdrawal of recognition;
  - (d) about appeals;
  - (e) conferring functions (including functions involving the exercise of a discretion) on a person.
- (5) The regulations may also include provision about the extent to which, and the circumstances in which, recognised organisations may delegate certain functions, which may include a procedure requiring that an organisation request permission from the Secretary of State.
- (6) In this section, “recognised organisation” means—

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- (a) a recognised producer organisation,
- (b) a recognised association of producer organisations, or
- (c) a recognised interbranch organisation.

### **32 Regulations under sections 30 and 31**

- (1) The power to make regulations under sections 30(9), (10) or (12) and 31 includes power to make provision allowing the Secretary of State to delegate functions, including the function of deciding applications for recognition under section 30.
- (2) Regulations under sections 30(9), (10) or (12) and 31 may make additional or different provision, including in the case of section 30(9) an exemption from a condition in section 30, in relation to a specified agricultural sector (“sector-specific provision”) if the Secretary of State is satisfied that—
  - (a) there is a need for sector-specific provision due to market conditions or other circumstances creating adverse effects on agricultural producers in that sector, and
  - (b) the sector-specific provision is appropriate to remedy or mitigate the adverse effects.

Except as provided by this section, regulations under those provisions may not make different provision in relation to different agricultural sectors.

- (3) Regulations under sections 30 and 31 are subject to negative resolution procedure unless—
  - (a) section 50(5) applies,
  - (b) the regulations contain new sector-specific provision, or
  - (c) the regulations contain provision made under section 30(14).
- (4) Regulations under sections 30 and 31 which contain new sector-specific provision or provision made under section 30(14) are subject to affirmative resolution procedure.
- (5) Before making regulations which contain such provision the Secretary of State must consult—
  - (a) persons who are representative of any agricultural sector (or any part of an agricultural sector) to which the regulations will apply, and
  - (b) persons who may otherwise be affected by the sector-specific provision or by the provision under section 30(14) (as the case may be).
- (6) In this section—
  - “agricultural sector” means a sector listed in Schedule 1;
  - “new sector-specific provision” means sector-specific provision that did not apply by virtue of any retained direct EU legislation immediately before this section comes into force.