



EXPLANATORY NOTES

Agriculture Act 2020

Chapter 21

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AGRICULTURE ACT 2020

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Agriculture Act 2020 (c. 21) which received Royal Assent on 11 November 2020.

- These Explanatory Notes have been prepared by the Department for Environment, Food and Rural Affairs (Defra) in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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Overview of the Act

- 1 The Agriculture Act underpins a new agricultural system based on the principle of public money for public goods.
- 2 The Agriculture Act includes the following:
 - Powers to give financial assistance. Payments may encompass (but are not limited to) environmental protection, public access to the countryside and measures to safeguard livestock and plants.
 - Powers to give financial assistance to support productivity outcomes for agriculture, horticulture and forestry activities.
 - The ability to establish an enforcement and inspection regime for the new financial assistance payments including powers to set out terms and conditions of future financial assistance.
 - Provisions relating to the setting of multi-annual financial assistance plans and reporting mechanisms relating to the giving of financial assistance.
 - Measures to continue making payments to farmers during a transition period with powers to simplify and phase out Direct Payments and to delink these payments from the land. This includes setting the agricultural transition period for England.
 - 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 or administrative arrangements for the schemes that could continue for a time now the United Kingdom has left the European Union (EU). These powers also enable the repeal of EU aid schemes for fruit and vegetable Producer Organisations and additional powers to simplify the rules, while honouring existing rural development payment schemes entered into prior to EU Exit which extend beyond Exit day.
 - A provision on reporting to Parliament on UK food security.
 - Provisions to intervene in exceptional market conditions. These powers allow the Secretary of State to declare a period of exceptional market conditions and to give financial assistance to support farmers who have been affected. They also would enable the Secretary of State to use the additional public intervention and private storage aid powers in retained EU legislation.
 - 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.

- Provisions for 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.
- Provisions to create a domestic system of recognition of Producer Organisations to encourage collaboration among growers. These provisions will provide for exemptions from competition law for recognised organisations.
- Provisions to modernise both the definition and enforcement of fertilisers, make amendments to agricultural tenancy legislation and make livestock traceability more effective.
- Provision for the Secretary of State and/or Scottish and/or Welsh ministers to set up a scheme allowing levy bodies to redistribute red meat levy among themselves, in some circumstances.
- Powers to make regulations setting and amending marketing standards for agricultural products and to make provision about organic products and the classification of carcasses by slaughterhouses.
- Provisions requiring the Secretary of State to report to Parliament on whether, or to what extent, provisions in free trade agreements (FTAs) that relate to agricultural products are consistent with the maintenance of UK statutory levels of protection in relation to human, animal and plant life or health; animal welfare; and the environment.
- Powers for the Secretary of State to legislate for the UK to comply with the World Trade Organisation (WTO) Agreement on Agriculture (AoA).
- Provisions for Wales and Northern Ireland, where this Act will legislate for similar powers (in particular areas) adapted for the Welsh Government and Department of Agriculture, Environment and Rural Affairs in Northern Ireland (DAERA) to be exercised by Ministers in those territories.

Policy background

Common Agricultural Policy (CAP)

3 The declared objectives of the CAP are as follows:

- to increase agricultural productivity through technological progress, optimising factors of production, especially labour;
- to ensure a fair standard of living for the agricultural community;
- to stabilise markets;
- to assure the availability of supplies; and
- to ensure supplies reach consumers at a reasonable price.

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- 4 UK agriculture was allocated a budget of around €4.0 billion each year through the CAP under the EU's Multi-Annual Financial Framework (MFF). The UK Government made an annual contribution to the MFF until 2020 under the terms of the Withdrawal Agreement. The CAP is comprised of two pillars. Pillar 1 includes Direct Payments, accounting for about 81% of the budget (€3.201bn in the UK in 2020) and also funds the Common Market Organisation Regulation (CMO). These payments were €0.043bn for the UK in 2019. Pillar 2 supports environmental outcomes, farming productivity, socio-economic outcomes and rural growth, accounting for the remaining 19% of the budget (€0.756bn in the UK in 2020). There are three Direct Payment schemes in England: the basic payment scheme, greening, and the young farmer payment. The three schemes combine to give each farmer applying a single Direct Payment for the scheme year, which runs from 1 January to 31 December.
- 5 Basic payment scheme is an area-based annual payment, made to farmers. Basic payment scheme accounts for almost 70% of the Direct Payments budget.
- 6 The CMO and market measures are also part of Pillar 1. These include private storage aid, intervention purchasing and other market measures that are product-specific.
- 7 Pillar 2 measures are delivered through multi-annual Rural Development Programmes in England and in each of the Devolved Administrations. The current programme period runs from 2014 to 2020. Most of the Pillar 2 expenditure is on environmental schemes which bring public benefit and would not always be considered by the market, for example environmental land management through agri-environment and forestry schemes.

Health and Harmony: the future of food, farming and the environment in a green Brexit

- 8 On 27 February 2018, the Secretary of State for Environment, Food and Rural Affairs published a Command Paper for consultation. "Health and Harmony" sought views on a new system of paying farmers "public money for public goods" – principally their work to enhance and protect the environment – and how to phase out Direct Payments under the rules of the CAP.
- 9 The consultation closed on 8 May 2018. Over forty thousand individual responses were received from a wide range of stakeholders including farmers and environmental, food and farming organisations as well as the general public.

Legal background

- 10 The legal basis of the CAP is set out in Articles 38 to 44 of the Treaty on the Functioning of the European Union ("the TFEU"). Following the entry into force of the Treaty of Rome, Member States' agricultural policies were replaced by intervention mechanisms at a European Community level.
- 11 The CAP regulations can be broadly divided into four subject areas, each of which is governed primarily by one or two directly applicable EU regulations (also referred to as basic acts). 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 (CMO) and cross cutting provisions that apply to all CAP payments:
 - rules that are cross-cutting and apply to all areas of the CAP: Regulation 1306/2013 on the financing, management and monitoring of the common agricultural policy ("the horizontal basic act");

- rules that relate only to Direct Payments: Regulation 1307/2013 establishing rules for Direct Payments to farmers under support schemes within the framework of the common agricultural policy (“the Direct Payments basic act”);
 - rules that relate only to Rural Development measures: Regulation 1305/2013 on support for Rural Development by the European Agricultural Fund for Rural Development (“the Rural Development basic act”); and Regulation 1303/2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund (“the common provisions basic act”); and
 - rules relating to the Common Market Organisation: Regulation 1308/2013 establishing a common organisation of the markets in agricultural products “CMO”); and Regulation 1370/2013 determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products.
- 12 There are also several delegated and implementing acts made under powers in the above basic acts setting out further detailed provisions. It is anticipated that the above EU regulations will be incorporated into domestic law under the European Union (Withdrawal) Act 2018 (although note the effect of section 18 of this Act).

Territorial extent and application

- 13 Section 56 sets out the territorial extent of the sections in the Act. The extent of an Act is the legal jurisdiction of which it forms part of the law; application refers to where it has practical effect. For example, a section may extend to the UK where it relates to retained EU legislation but apply only in the jurisdictions where the amended EU legislation will have practical effect.
- 14 The UK Parliament will not normally legislate for areas within the competence of the Senedd Cymru, the Scottish Parliament, or the Northern Ireland Assembly without the consent of the legislature concerned. In line with the Sewel Convention, the UK Government sought the legislative consent of all the Devolved Legislatures for the provisions that engage the Legislative Consent Motion process. Each of the Devolved Legislatures have agreed legislative consent on the recommendation of their respective Devolved Administrations: the Northern Ireland Assembly agreed on 31 March 2020; the Senedd Cymru on 29 September 2020 and the Scottish Parliament on 30 September 2020.
- 15 See the table in Annex A for a summary of the position regarding territorial extent and application in the UK.

Commentary on provisions of Act

Part 1: Financial Assistance

Chapter 1: New Financial Assistance Powers

Section 1: Secretary of State's powers to give financial assistance

- 16 Section 1 provides the Secretary of State with the power to give financial assistance. Financial assistance may be given to beneficiaries including, but not limited to, farmers, foresters, or those responsible for the management of the land. Section 1 sets out a list of purposes for which, and in connection with which, the Secretary of State could provide such assistance in England.
- 17 Subsection (1)(a) enables the Secretary of State to provide financial assistance for the delivery of environmental outcomes such as cleaner air, clean and plentiful water and thriving plants and wildlife by carrying out environmentally beneficial land and water management activities. It is intended to apply to land and to bodies of water such as ponds, lakes and rivers (excluding the sea) being managed to deliver environmental benefits. One example of how this subsection may be used is to improve air quality by creating financial incentives for the targeted planting of trees to help capture ammonia emissions and protect nearby sensitive habitats from damaging nitrogen deposition. This land management activity would contribute to the delivery of cleaner air and the protection of biodiversity.
- 18 Subsection (1)(b) enables the Secretary of State to provide financial assistance to support public access to and enjoyment of the countryside, farmland and woodland. This subsection also enables the provision of financial assistance to support understanding about the environmental benefits that land can provide. This subsection may be used, for example, to incentivise foresters to provide facilities for educational visits for schools, supporting pupils to visit natural environments and learn about the environment. This would contribute to the delivery of societal benefits including that of engagement with the environment. It may also be used to give financial assistance to farmers and land managers to share information about agroecology.
- 19 Subsection (1)(c) enables the Secretary of State to provide financial assistance for managing land or water in a way that maintains, restores or enhances cultural or natural heritage. This may include a building, monument, site, place, area or landscape identified as having a degree of significance due to its archaeological, architectural, artistic, historic or traditional interest. This subsection may be used to incentivise activities which conserve our cultural or natural heritage, which includes uplands and other landscapes. Funding could be used to support, for example, the maintenance of historic farm buildings, dry stone walls and conservation of limestone pavements. These all have intrinsic value as well as being resources for research, education, recreation and tourism. Funding under this subsection would contribute to the provision of societal benefits such as beauty, heritage and engagement with the environment.
- 20 Subsection (1)(d) enables the Secretary of State to provide financial assistance for or in connection with managing land, water or livestock in such a way as to mitigate or adapt to the effects of climate change. This subsection may, for example, be used to mitigate the causes of climate change by incentivising peatland restoration to protect the existing carbon store and reduce emissions of carbon dioxide to the atmosphere.

- 21 Subsection (1)(e) enables the Secretary of State to provide financial assistance for or in connection with managing land or water in such a way as to prevent, reduce or protect from hazards to, or caused by, the environment. This subsection, could, for example, be used to support actions that improve soil water infiltration and porosity to help mitigate against flooding.
- 22 Subsection (1)(f) enables the Secretary of State to support action by farmers, vets and other organisations to improve animal health and welfare, reduce endemic disease and keep livestock well maintained and healthy. This subsection could, for example, be used to fund measures to encourage participation in animal health or disease control schemes or support the financing of testing for a particular disease. It could also be used to strengthen animal welfare outcomes, such as ensuring animals have access to materials that allow them to express their natural behaviours.
- 23 Subsection (1)(g) enables the Secretary of State to provide financial assistance for measures to support the conservation and maintenance of UK native Genetic Resources relating to livestock or equines. These measures could, for example, be used to incentivise farmers to invest in rearing rare and native breeds or species, because these genetic resources may offer a way to sustainably increase food production and improve our capacity to adapt to climate change or the emergence of new animal or plant diseases by providing a breadth of genetic traits. These powers could also be used to incentivise existing gene banks to safeguard UK native and rare breed genetics or to provide on farm measures to manage disease risks amongst populations of rare breed livestock.
- 24 Subsection (1)(h) enables the Secretary of State to provide financial assistance for measures which protect or improve the health of plants, including wild plants, agricultural and horticultural crops, trees and bushes. This could, for example, include support for measures across the forestry, horticultural and other sectors, which reduce the risk of the introduction and spread of harmful plant pests and disease.
- 25 Subsection (1)(i) enables the Secretary of State to provide financial assistance for conserving plants grown or used in agricultural, horticultural or forestry activity. This includes conserving their wild relatives, or the genetic resources relating to any such plant. This could, for example, include support for measures to conserve and utilise crop wild relatives to improve our capacity to adapt to the emergence of new plant diseases, thereby increasing resilience and biosecurity across the agricultural, horticultural or forestry sectors.
- 26 Subsection(1)(j) enables the Secretary of State to provide financial assistance for protecting or improving the quality of soil. This could include measures which support farmers with decision making and soil management to improve soil health, such as assistance for soil monitoring programmes and funding of necessary soil health research to provide baseline site-specific understanding of soil properties. This power could also be used to incentivise farmers to invest in practices which protect and enhance soil health.
- 27 Subsection (2)(a) enables the Secretary of State to give financial assistance for starting, or improving the productivity of, agricultural, forestry, or horticultural activities (including the growing of flowers and non-food crops). This could be used, for instance, to enable a farmer to invest in equipment that would both increase productivity and deliver environmental benefits. For example, this could include giving a farmer a grant or loan to enable the purchase of precision application equipment for slurry. This equipment would allow the farmer to use slurry more effectively, reducing costs as well as reducing ammonia emissions.
- 28 Subsection 2(b) enables the Secretary of State to give financial assistance to support the ancillary activities of selling, marketing, preparing, packaging, processing or distributing agricultural, horticultural or forestry products. These activities can be funded if they are, or

will be, carried on by a producer (which is defined in subsection (5)) or by someone acting for the producer.

- 29 Subsection (3) specifies that financial assistance under subsections (1) and (2) may only be given in relation to England.
- 30 Subsection (4) places a duty on the Secretary of State, when framing any schemes under Section 1, to have regard to the need to encourage the production of food by producers in England, and its production by them in an environmentally sustainable way. This duty applies when the Secretary of State is making relevant decisions about the design of schemes under which financial assistance may be obtained under Section 1.
- 31 Subsection (5) provides definitions for Section 1.
- 32 Subsection (6) provides definitions for the Chapter.
- 33 Provisions relating to the form in which assistance may be given, conditions that may be imposed, delegation of functions, and publication of information about financial assistance that has been given are set out in Section 2. Provisions in relation to checking, enforcing and monitoring financial assistance are set out in Section 3.

Section 2: Financial assistance: forms, conditions, delegation and publication of Information

- 34 Subsection (1) provides that financial assistance may be given in any form. The form may depend on any number of factors, including the framework for giving assistance and the purpose for which it is provided. The examples included in the subsection are grants, loans and guarantees but financial assistance may be given in any other form. This enables the flexibility to make one-off payments for assistance such as a loan for capital items or ongoing payments as part of a longer-term agreement such as grants for the delivery of environmental benefits or other public goods.
- 35 Subsection (2) allows the Secretary of State to attach conditions to which the financial assistance will be subject.
- 36 Subsection (3) clarifies that a condition of receipt of financial assistance may include provision under which it is to be recovered.
- 37 Subsection (4) confers power on the Secretary of State to give financial assistance to another person or organisation who has designed or operates a scheme that provides financial assistance for one of the purposes specified in Section 1. Financial assistance may support both expenditure incurred by a third party in establishing and operating a scheme, as well as funding provided through that scheme. For example, this would enable the Secretary of State to fund local partnerships or other organisations or bodies (such as National Parks) to deliver a project that supports public access to and enjoyment of the countryside, farmland or woodland.
- 38 Subsection (5) provides a definition for “third party scheme” in subsection (4). This definition clarifies that a third party scheme is one that is made and operated by a third party (not the Secretary of State) and that funding for such a third party scheme must be used to support the delivery of one or more of the purposes described in section 1(1) and 1(2).
- 39 Subsections (6) and (7) enable the Secretary of State to delegate functions in relation to giving financial assistance including giving guidance or exercising a discretion.
- 40 Subsection (8) allows the Secretary of State to make regulations requiring the publication of information about payments under section 1. Subsection (9) provides that such information

may include information about the recipient of financial assistance, the amount of financial assistance received and the purpose for which the financial assistance was given.

- 41 Subsection (10) specifies that regulations made under this section are subject to the affirmative resolution procedure.
- 42 Subsection (11) provides a definition for “specified” as used in this section.

Section 3: Financial assistance: checking, enforcing and monitoring

- 43 Section 3 provides the Secretary of State with the power, to make regulations to check, enforce and monitor the conditions of financial assistance provided under section 1 in this Act.
- 44 Subsection (1) sets out that regulations made under this section should be in connection with the provisions of subsections (1)(a), (1)(b), (1)(c) and (1)(d).
- 45 Subsection (1)(a) sets out that regulations made under this section may make provision for checking eligibility criteria, and the consequences, where financial assistance has already been given, of those criteria not being met. These checks can be before or after receipt of financial assistance. For example, it might be necessary to check that an applicant for financial assistance for a scheme to protect a particular natural habitat has control of land that includes that particular habitat.
- 46 Subsection (1)(b) sets out that regulations made under this section may make provision for enforcing compliance with conditions as provided for by section 2.
- 47 Subsection (1)(c) sets out that regulations made under this section may make provision for monitoring to what extent the purposes as provided in subsections 1 and 2 of section 1 are met.
- 48 Subsection (1)(d) sets out that regulations under this section may make provision for the Secretary of State to investigate cases of suspected offences in connection with financial assistance. For example, where checks made under the provisions in subsections (1)(a), (1)(b) and (1)(c) reveal possible fraud offences concerning use of financial assistance given, the Secretary of State may investigate suspected fraud in relation to a potential prosecution under the Fraud Act 2006.
- 49 Subsection (2) sets out a list of enforcement options that regulations made under subsection (1) of this section may provide. This list is not exhaustive, and the regulations may be made for any of the purposes set out in subsection (1).
- 50 Subsections (2)(a) to (j) list some of the types of enforcement option that may be included within the regulations. These include provisions about the information that must be provided to assist with enforcement, powers of entry, inspection, search and seizure, record keeping requirements, and how eligibility criteria and conditions of financial assistance will be checked. It also includes provisions concerning the consequences if conditions of financial assistance are not met, including recovery of money that has been paid, suspending someone from a scheme and imposing monetary penalties. There is also the power to make regulations conferring functions to others and to establish a mechanism for appealing against decisions.
- 51 Subsection (3) specifies that powers included in regulations created under subsection (1) may not authorise entry to premises used wholly or mainly as private dwellings without a warrant issued by a justice of the peace. Private dwellings are defined in section 51 as to include any gardens, yards, garages and outhouses enjoyed with such a structure.
- 52 Subsection (4) expands on provisions made under subsection (2)(f) to include provision for interest on any recoverable amount to be payable from such a day (whether the day on which

financial assistance was given on a later day) as may be provided for in, or determined under, the regulations. The words 'determined under' allow for the regulations to set out a mechanism for a decision to be made on a case by case basis.

53 Subsection (5) specifies that regulations made under this section are subject to the affirmative resolution procedure.

54 Subsection (6) provides a definition for the use of the word "specified" for use in this section.

Section 4: Multi-annual financial assistance plans

55 This section places a duty on the Secretary of State to prepare, and then once prepared have regard to, multi-annual financial assistance plans, setting out the Government's plans for giving financial assistance using the powers in section 1. The periods that these plans must cover is set out in subsections 3 and 4.

56 Subsection (1) places a duty on the Secretary of State to prepare a document giving information on the expected use of the financial assistance powers under section 1.

57 Subsection (2) specifies the minimum information which must be included in a multi-annual financial assistance plan. This includes the plan period, the Government's strategic priorities for giving financial assistance during the plan period and appropriate details of financial assistance schemes under section 1 which are either in operation at the time that the plan is published or are expected to come into operation during the plan period.

58 Subsection (3) sets the period for the first multi-annual financial assistance plan as seven years, beginning with 1 January 2021. This covers the agricultural transition period.

59 Subsection (4) specifies that subsequent multi-annual financial assistance plans must cover a period of at least five years.

60 Subsection (5) specifies that the Secretary of State may not allow a plan to expire without a new plan being in place for the following period, ensuring that there is no gap between plans.

61 Subsection (6) places a duty on the Secretary of State to lay before Parliament and publish a multi-annual financial assistance plan at least 12 months ahead of it coming into effect. This will apply for all multi-annual financial assistance plans, except the first plan, which must be published as soon as practicable before 1 January 2021.

62 Subsection (7) places a duty on the Secretary of State to amend the multi-annual financial assistance plan, as soon as is practicable, if the Government's strategic priorities change, or if it appears to the Secretary of State that any information given in the plan has ceased to be accurate. For example, information may cease to be accurate in the light of updates and improvements to financial assistance schemes.

63 Subsection (8) places a duty on the Secretary of State, where a multi-annual financial assistance plan has been amended, to publish and lay before parliament a document setting out these amendments. This must be done as soon as is practicable.

64 Subsection (9) places a duty on the Secretary of State to have regard to priorities set out in the multi-annual financial assistance plan when determining what financial assistance to give, or the budget for any financial assistance schemes.

65 Subsection (10) provides a definition for "the Government" as used in this section.

Section 5: Annual and other reports on amount of financial assistance given

66 This section places a duty on the Secretary of State to prepare a report each financial year, detailing the financial assistance given under section 1 of the Act.

- 67 Subsection (1) places a duty on the Secretary of State to prepare an annual report about the financial assistance given under section 1 of the Act during the preceding year.
- 68 Subsection (2) specifies that the first year for which this duty will apply is 2021-22. This is the first year of the agricultural transition period.
- 69 Subsection (3) specifies information which the annual report must include, in addition to any other information which the Secretary of State considers appropriate. This includes the total amount of financial assistance given, the total amount of financial assistance given under financial assistance schemes in operation during the year and required information about those schemes as specified in subsection (4).
- 70 Subsection (4) specifies required information about financial assistance schemes to be included in annual reports. This includes the total amount of financial assistance given under a scheme and the extent to which this financial assistance met any obligations or commitments under the terms of the scheme, which may include, for example, the extent to which any financial assistance was given on time.
- 71 Subsection (5) enables the Secretary of State to include information in an annual report about amounts of financial assistance given by means other than by way of financial grants and to do so in a way that they consider to be most appropriate. For example, this could include information on financial assistance given by way of loans, guarantees or in any other form.
- 72 Subsection (6) enables the Secretary of State to prepare interim or other reports about the amounts of financial assistance given, in addition to the annual reports. For example, it may be necessary to produce interim reports covering financial assistance given during a set period of time within a financial year. There may also be occasions where it is appropriate for the Secretary of State to publish an additional report covering the financial assistance given over a period of several years. For example, the Secretary of State may publish a report covering three years' worth of expenditure on a particular scheme, to make it more convenient for the public to interrogate expenditure on that scheme.
- 73 Subsection (7) requires the Secretary of State to publish and lay before Parliament any report published under this section. This includes both annual reports, and any additional interim or other reports.
- 74 Subsection (8) sets a deadline for the laying of annual reports. Reports must be laid on or before 1 October in the year following the financial year to which they relate.

Section 6: Monitoring impact of financial assistance etc

- 75 This section places a duty on the Secretary of State to monitor the impact of financial assistance schemes under section 1 and requires these reports to be published and laid before Parliament.
- 76 Subsection (1) requires the Secretary of State to monitor the impact of financial assistance schemes. This could include, for example, monitoring the level of uptake of the schemes, the extent to which the actions required under these schemes have been taken, and an assessment of the extent to which public goods have been delivered. The Secretary of State must then make reports on the impact and effectiveness of the financial assistance schemes.
- 77 Subsection (2) enables the Secretary of State to monitor the impact of financial assistance given other than through financial assistance schemes made or operated on behalf of the Secretary of State, and to make reports on the impact and effectiveness of the financial assistance given. This would enable the Secretary of State to monitor the impact and make a report on the impact and effectiveness on, for example, a scheme made or operated by a third party.

- 78 Subsection (3) allows that monitoring under subsections (1) and (2) must be carried out in such a manner and for such period or periods as the Secretary of State feels appropriate for the scheme or financial assistance in question. This allows the mechanisms and length of monitoring to be adapted to reflect the scheme or type of financial assistance in question, and to reflect the period over which any effects would be expected to become apparent.
- 79 Subsection (4) allows that the number and frequency of reports made under subsections (1) and (2) to be as the Secretary of State considers appropriate for the scheme or type of financial assistance in question. This allows reporting periods to be matched to the schemes in question, and to reflect the period over which any effects would be expected to become apparent.
- 80 Subsection (5) requires that reports prepared under this section must be published and laid before parliament.

Chapter 2: Direct Payments After EU Exit

Section 7: Meaning of “basic payment scheme” and other expressions in Chapter 2

- 81 [This section sets out definitions for terms used in Chapter 2, in relation to the continuation and phasing out of Direct Payments during the agricultural transition period in England.
- 82 Subsection (2) defines the term “basic payment scheme” as covering the basic payment, which accounts for almost 70% of the overall payment; the greening component, which accounts for around 30% of the total payment and is made if certain agricultural practices that are beneficial to the environment and climate are upheld; and the young farmers payment, a top-up for eligible farmers aged 40 and under.
- 83 Subsection (3) defines the term “legislation governing the basic payment scheme”. This includes the EU “basic act” (the “Direct Payments Regulation” (Regulation 1307/2013)), which sets out the framework for CAP Direct Payments and was incorporated into UK law from 11pm on 31 January 2020 for the remainder of the 2020 scheme year under the Direct Payments to Farmers (Legislative Continuity) Act 2020. It also includes retained subordinate legislation relating to the “basic act”.
- 84 Subsection (4) defines the term “agricultural transition period for England” as that set out under section 8(1). The agricultural transition period is the period during which reductions will be applied to Direct Payments to phase them out in England.
- 85 Subsection (5) sets out that a direct payment under the basic payment scheme may be defined as such whether or not the greening and young farmer payment elements are included.
- 86 Subsection (6) defines a “Delinked payment” as that set out in section 12(2)(a). A delinked payment means that the Direct Payment would be delinked from land, so that there would no requirement for a recipient to farm land in order to receive the payment during the agricultural transition period.
- 87 Subsection (7) defines a “Relevant payment” as either a direct payment made under the basic payment scheme or a delinked payment.
- 88 Subsection (8) explains that the “Direct Payments Regulation” referred to in subsection (3) is Regulation (EU) No 1307/2013. This is the “basic act”.

Section 8: The agricultural transition period for England and the termination of relevant Payments

- 89 Section 8 sets out the starting year and duration of the agricultural transition period, during which Direct Payments will be phased out in England.

- 90 Subsection (1) sets the agricultural transition period as being seven years beginning in 2021. This means the last year in which Direct Payments will be made is 2027 unless the agricultural transition period is extended under subsection (3).
- 91 Subsection (2) sets out that once the agricultural transition period has ended in England, no more relevant payments will be made in England unless they are made in relation to the final year of the agricultural transition or earlier.
- 92 Subsection (3) provides powers to the Secretary of State to extend the agricultural transition period. This allows the Secretary of State to respond to unforeseen circumstances, which may warrant such an extension.
- 93 Subsection (4) qualifies the use of the power in subsection (3). The Secretary of State may extend the agricultural transition period more than once but, in doing so, any regulations must be made before the agricultural transition period, as it stands, runs out.
- 94 Subsection (5) specifies that regulations made under this section are subject to the affirmative resolution procedure.

Section 9: Power to modify legislation governing the basic payment scheme

- 95 Section 9 provides the Secretary of State with powers to modify retained EU legislation governing the basic payment scheme (including the greening and young farmer payment), as defined in section 7(3).
- 96 Subsection (1) provides the power to modify the legislation where the Secretary of State considers this would serve one or more of five specific purposes. The first purpose is the simplification of the administration of the basic payment scheme or making its operation more efficient or effective. The second purpose is the removal of provisions in the legislation which are either spent or of no practical use. The third purpose is the removal or reduction of burdens (as defined in subsection (3)) to people applying to or entitled under the basic payment scheme or making other improvements to the way the scheme operates in relation to those people. The fourth purpose is to secure that any sanction or penalty imposed is appropriate and proportionate. The fifth purpose is to limit the application of the basic payment scheme to land in England. This latter purpose will allow the Government to simplify the administrative arrangements for farmers who have land both in England and in one or more other part of the UK (i.e. Scotland, Northern Ireland and / or Wales).
- 97 Subsection (2) expressly provides that the power in subsection (1) includes the power to end greening payments before the end of the agricultural transition period. The greening requirements include the so-called “three crop rule” which determines the number of crops a farmer must grow. The power can only be exercised so long as the 30% portion of the overall budget currently allocated to greening remains available to recipients, providing they observe remaining basic payment scheme requirements. Subsection (2) is required to enable the ending of greening payments, otherwise this would be a change which would be beyond the scope of the power in subsection (1).
- 98 Subsection (3) states that ‘burden’, which the power in subsection (1)(c) is designed to remove or reduce, includes: a financial cost; an administrative inconvenience; and an obstacle to efficiency, productivity or profitability.
- 99 Subsection (4) specifies that regulations made under this section are to be subject to the negative resolution procedure, unless section 50(5) applies, in which case the procedure is affirmative.

Section 10: Power to provide for the continuation of the basic payment scheme beyond 2020

- 100 This section provides the Secretary of State with a power to make provision for the continuation of the basic payment scheme in England beyond 2020. The power in this section can only be exercised until the Department replaces the current basic payment scheme with delinked payments (which can occur, at the earliest, in 2022) or until Direct Payments are phased out completely at the end of the agricultural transition period.
- 101 The Direct Payments Regulation, which governs the basic payment scheme and became retained EU law for the 2020 scheme year at 11pm on 31 January 2020, does not contain a financial allocation after the 2020 scheme year. That Regulation only specifies annual financial ceilings in Annexes II and III up to, and including, the 2020 scheme year. The financial ceilings are used as the basis for calculating Direct Payments. There are no ceilings specified for 2021 or later years. Without a power to specify the Direct Payments ceiling, the Department could not make payments under the basic payment scheme after 2020.
- 102 This section is only concerned with payments under the basic payment scheme and is not concerned whatsoever with delinked payments. The power to make delinked payments is contained in section 12.
- 103 Subsection (1) provides the power for the Secretary of State to make regulations that modify the legislation governing the basic payment scheme, with the express purpose of ensuring that the basic payment scheme in England can continue for one or more years beyond 2020. The scheme cannot be extended if payments under the scheme have ceased by virtue of section 8(2) (the end of the agricultural transition period) or 12(7)(a) (the introduction of delinked payments). The power in subsection (1) is beyond the scope of section 9 which is concerned with modifications that, in the opinion of the Secretary of State, serve the purposes defined in that section.
- 104 Subsection (2) specifies that the power under subsection (1) includes a power to determine the Direct Payments ceiling in a specified manner, instead of, for example, specifying the amount in the Direct Payments Regulation. There is an important restriction in subsection (3)(a), namely, the Direct Payments ceiling for the relevant year, once determined, must be published as soon as practicable after it is made. Subsection (3)(b) allows the Secretary of State to delegate the determination of the Direct Payments ceiling to any person.
- 105 Subsection (4) provides definitions for certain terms used in this section.
- 106 Subsection (5) means that this section does not affect any power in the rest of Chapter 2 or any other enactment from being able to amend or revoke legislation applicable to the basic payment scheme after 2020.
- 107 Subsection (6) specifies that regulations made under this section are subject to the affirmative resolution procedure.

Section 11: Power to provide for phasing out direct payments

- 108 This section provides the power for the Secretary of State, during the agricultural transition period, to make reductions to Direct Payments under the basic payment scheme to phase the payments out.
- 109 Subsection (1) empowers the Secretary of State to make regulations that apply reductions to payments made under the legislation governing the basic payment scheme (as defined in section 7(3)). This power is beyond the scope of section 9 which is concerned with modifications that, in the opinion of the Secretary of State, serve the purposes defined in that

section.

- 110 Subsection (2) refers to section 12(7) for the circumstances under which the power (and provisions made under it) in section 11(1) will cease to have effect. The power, and related provisions, to phase out the basic payment scheme will cease to have effect once delinked payments are introduced, as the introduction of delinked payments will automatically lead to the termination of the basic payment scheme.
- 111 Subsection (3) defines the term “phasing out” as meaning the application of reductions to Direct Payments (under the power in section 11(1)). These reductions will be applied during the agricultural transition period (set out in section 8).
- 112 Subsection (4) provides that where the greening payment has ended under the power in section 9(2), during the modification of the basic payment scheme, references to Direct Payments under the basic payment scheme exclude greening payments. This would not affect the overall money available, as the greening element of the budget would still form part of the overall basic payment scheme budget.
- 113 Subsection (5) specifies that any regulations made under this section are subject to the affirmative resolution procedure.

Section 12: Power to make delinked payments

- 114 This section provides the power to the Secretary of State to delink Direct Payments from land. With delinked payments, there would be no obligation for the recipient of the payments, during the agricultural transition period, to remain a farmer. This will be called “delinking” payments because the current connection between the value of the payment and the area of land for which it is claimed will be broken. The amount of Direct Payments received by applicants during the agricultural transition, whether that be under the basic payment scheme (see sections 10 and 11) or delinked payments, will be less than received now and will be reduced further during the agricultural transition period as the payments are phased out.
- 115 Subsection (1) allows the Secretary of State to make provision, in regulations, to make delinked payments in relation to England. Delinked payments will be in place of Direct Payments under the basic payment scheme.
- 116 Subsection (2) defines the term “delinked payment” and specifies the conditions which satisfy the delinking period. The delinking period cannot begin, and therefore delinked payments cannot be introduced, before 2022. The delinking period ends at the end of the agricultural transition period (set out in section 8).
- 117 Subsection (3) lists the things that must be included in regulations for delinked payments. Subsection (3)(a) requires the Secretary of State to define who will be entitled to a delinked payment. The Secretary of State intends to set qualifying criteria based on a reference period (see subsection (5)). Subsection (3)(b) requires the Secretary of State to set out the method to calculate the value of delinked payments. The Secretary of State intends to calculate delinked payments based on a reference period (see subsection (5)) and then apply reductions during the remaining lifetime of the agricultural transition period for England as the payments are phased out.
- 118 Subsection (4) allows the Secretary of State to make further regulations concerning delinked payments as follows:
- Subsection (a) allows for recipients to opt out of receiving delinked payments. This avoids the perverse scenario of the Government making a payment that the recipient does not wish to receive;

- Subsection (b) allows for the Secretary of State to determine any circumstances under which a recipient is no longer regarded as entitled to delinked payments. Potential circumstances could include a business which has ceased to operate; and
- Subsection (c) allows the Secretary of State to introduce regulations so that it can pursue recovery of delinked payments to which the recipient was not, in fact, entitled.

119 Subsection (5) provides that entitlement to delinked payments may be defined by whether an individual was entitled to payment under the basic payment scheme during a reference period, of one or more years, prior to the introduction of delinking. Other definitions are not ruled out, which allows for further consultation.

120 Subsection (6) provides that the method for calculating the value of the delinked payment to any recipient may be based on the value of the “basic payment scheme” payment they were entitled to receive. This could, for example, be based on a single previous scheme year or an average over a number of previous scheme years. Other definitions are not ruled out, which allows for further consultation.

121 Subsection (7)(a) specifies that no payments under the basic payment scheme are to be made after the introduction of delinked payments (save for basic payment scheme payments related to prior years).

122 Subsection (7)(b) sets out that the power in section 11(1), and any regulations made under it, providing for the phasing out of Direct Payments under the basic payment scheme, will no longer have any effect once delinked payments are introduced.

123 Subsection (8) provides that regulations made under this section are to be subject to affirmative resolution procedure.

Section 13: Power to provide for lump sum payments in lieu of relevant payments

124 Section 13 provides a power to the Secretary of State to offer farmers the opportunity of taking a lump sum payment in place of the relevant payments they would otherwise have been entitled to receive during the agricultural transition period.

125 Subsection (1) empowers the Secretary of State to make provision in regulations to offer a lump sum payment to eligible persons.

126 Subsection (2) sets out conditions for eligibility for the lump sum payment. Eligible persons must apply for it; must be entitled to a relevant payment (which section 7(7) defines as either a Direct Payment under the basic payment scheme or a delinked payment) in respect of a year within the agricultural transition period (except for the last year of that period); and must meet any other eligibility criteria set out in regulations.

127 Subsection (3) sets out that those persons choosing the lump sum would do so in forfeiture of continued relevant payments (which section 7(7) defines as either a Direct Payment under the basic payment scheme or a delinked payment) during the agricultural transition period.

128 Subsection (4) provides the Secretary of State with the power to set the circumstances in which a lump sum payment is to be paid.

129 Subsection (5) provides that regulations made under this section are to be subject to affirmative resolution procedure.

Chapter 3: Other Financial Support After EU Exit

- 130 This section empowers the Secretary of State to make regulations that modify, in relation to England, the “horizontal basic act”, retained direct EU legislation made under it, and related domestic subordinate legislation (as incorporated into domestic law and modified, principally under the EU (Withdrawal) Act 2018).
- 131 The horizontal legislation concerns the financing, management and monitoring of the CAP. It is known as the horizontal legislation because it applies to schemes and measures that were established under the CAP: Direct Payments, Rural Development programmes and Common Market Organisation measures, such as the fruit and vegetable Producer Organisations (see section 15). For a fuller explanation of the scope and purpose of the horizontal legislation, please see Boxes 1 & 2.

Box 1: The horizontal legislation

Regulation 1306/2013 (the “horizontal basic act”) has a fundamental role in making the CAP work. It works together with Implementing and Delegated Acts to create an overarching horizontal legislative framework for the financing, management and monitoring of the CAP. Regulation 1306/2013 contains crosscutting provisions that apply to payments made under both pillars of the CAP (Direct Payment schemes, Rural Development measures, and Common Market Organisation measures).

It should be noted that some of the horizontal regulations were incorporated into domestic law and amended at EU Exit using the powers in the Direct Payments to Farmers (Legislative Continuity) Act 2020. This ensures the overarching CAP framework, as far as it applies to 2020 Direct Payments (which will be domestically funded), operates in a UK setting. Further operability amendments will be made to the horizontal regulations at the end of the implementation period to ensure the remaining provisions in those regulations, which will continue to be EU law during the implementation period, work domestically.

The horizontal legislation is designed to ensure the proper management of CAP funds. The regulations include rules governing paying agencies and other bodies involved in the administration of the CAP. Under the regulations, the UK Government has set up a “UK Coordinating Body”, whose main task is currently to collect and send information on implementation of the CAP to the Commission on behalf of the four UK paying agencies.

The horizontal regulations also include rules on application procedures, calculation of aid and penalties, payment windows and payment recovery. They include rules on checks to be carried out, including databases used to check compliance, audits and farm checks and administrative checks. They also include rules for the implementation of the farm advisory system, calculating the funds for public intervention purchase and the establishment of a single beneficiary website, which contains information relating to CAP beneficiaries. They also establish the system of “cross compliance” (see Box 2). They do not contain financial ceilings for schemes.

Box 2: Cross compliance

The horizontal legislation includes a cross compliance regime. CAP expenditure is primarily controlled through inspection programmes that check whether

beneficiaries meet the eligibility rules of the scheme in question. In addition to meeting the eligibility rules, beneficiaries that receive payments (either as a Direct Payment or as part of area-based CAP Rural Development schemes, e.g. agri-environment scheme) must also comply with a series of standards on the environment, animal and plant health and animal welfare collectively known as cross compliance.

Under cross compliance there is an obligation on beneficiaries to comply with statutory management requirements (known as SMRs) which are existing requirements already set out in separate EU legislation, and standards for good agricultural and environmental condition of land (known as GAECs) which are established at national level. In the event of a breach being detected (through inspection or otherwise) the horizontal regulations enable reductions to be made to the beneficiary's payments.

132 Subsection (1) outlines the overall scope of the power. It empowers the Secretary of State to modify, in relation to England, the retained horizontal legislation, including any related domestic subordinate legislation.

133 Subsection (2) qualifies the use of the power and lists a number of purposes for which it may be exercised. These are to secure that any provision of legislation referred to subsection (1) ceases to have effect; the simplification of the operation of such provision or to make its operation more efficient or effective; the removal or reduction of burdens (defined in subsection (3)) on people governed by the legislation, or making other improvements to the way the legislation applies in relation to these people; and securing that any sanction or penalty imposed is appropriate and proportionate.

134 Subsection (3) states that 'burden', which the power in subsection (2)(c) is designed to remove or reduce, includes: a financial cost; an administrative inconvenience; or an obstacle to efficiency, productivity or profitability. Subsection (3) also sets out a non-exhaustive list of the retained direct EU legislation that may be modified under this power and is intended to encompass direct EU legislation made under the horizontal basic act, as well as certain 'legacy regulations', relating to Rural Development schemes established before 2014, which are listed in subsection (4).

135 Subsection 4 provides a non-exhaustive list of the 'legacy regulations' referred to in subsection (4).

136 Subsection (5) provides that regulations made under this section are to be subject to negative resolution procedure, unless section 50(5) applies, in which case the procedure is affirmative.

Section 15: Aid for fruit and vegetable Producer Organisations

137 Section 15 provides the Secretary of State with the powers to modify retained EU legislation on the EU Fruit and Vegetable Aid Scheme in England. This scheme provides financial aid to Producer Organisations recognised in the fruit and vegetable sector. The EU regulations underpinning the scheme will be converted into retained direct EU legislation, at the end of the transition period, through the European Union (Withdrawal) Act 2018. The intention is to introduce transitional provisions under section 50(3)(d) to allow approved operational programmes to run through to completion.

138 Subsection (1) will enable the Secretary of State to make regulations to ensure that the retained EU legislation (both the CMO and the related Delegated and Implementing Acts that sit underneath the CMO) which underpin the Fruit and Vegetable Aid Scheme), no longer applies in England.

139 Subsection (2) confirms that regulations made under this section are subject to the negative resolution procedure, unless section 50(5) applies, in which case the procedure is affirmative.

Section 16: Support for rural development

140 Section 16 provides the Secretary of State with the power to modify or repeal retained EU legislation relating to rural development in England. The power allows some existing rural development agreements to be extended with fewer restrictions, to be shortened and for agreements to be converted or adjusted into new agreements set up under Chapter 1 of this Act. It also allows the duration of the current Rural Development Programme for England to be extended and its budget to be increased and expressed in a currency other than Euros in the retained EU legislation. This section will not be used to introduce any new schemes, as they will be covered under section 1.

Box 3: Pillar 2

Pillar 2 of the CAP is implemented through Rural Development programmes in each devolved administration.

Rural development programmes provide rules and financing for grants and other forms of financial assistance and procured services for the farming, forestry and food sectors and to rural businesses and communities.

The objectives of Rural Development programmes include improving economic performance, promoting economic development and improving the competitiveness of primary producers (through socio-economic schemes) and protecting and enhancing ecosystems relating to agriculture and forestry (through agri-environment schemes).

The European Commission formally adopted the Rural Development Programme for England covering the 2014-2020 CAP round ("the RDPE") on 13 February 2015.

141 Subsection (1) enables the Secretary of State to modify the Rural Development basic act and retained direct EU legislation made under it for the purposes specified in relation to England.

142 Subsection (2) defines the "core contribution," which is referred to in subsection (1). It should be noted that there is currently no reference in the Rural Development basic act to the "core contribution". This will be inserted by the Rural Development (Amendment) (EU Exit) Regulations 2019, which are currently due to come into force on the Implementation Period completion day pursuant to paragraph 1 of Schedule 5 to the EU (Withdrawal Agreement) Act 2020.

143 Subsection (3) enables the Secretary of State to modify any retained direct EU legislation relating to support for rural development in England so that: the initial period for a commitment can be less than 5 years; restrictions on extending commitment periods can be removed; commitments can be converted or adjusted into new commitments under section 1 of the Act and; legislation can cease to have effect.

144 Subsection (4) gives a non-exhaustive list of the restrictions that may be removed in subsection (3)(b) in relation to extending commitments.

- 145 Subsection (5) enables the Secretary of State to modify the Common Provisions Regulation and retained direct EU legislation made under it to allow the payment deadline to be extended so that commitments can continue to be eligible for rural development support.
- 146 Subsections (6) provides definitions for terms used in subsections (1) to (5) in this section whilst subsection (7) provides a non-exhaustive definition for “the legacy regulations” which is referred to in subsection (6).
- 147 Subsection (8) states that regulations made under this section are subject to the negative resolution procedure, unless section 50(5) applies, in which case the procedure is affirmative.

Section 17: Continuing EU programmes: power to provide financial assistance

- 148 Section 17 enables the Secretary of State, the Welsh Ministers, the Scottish Ministers and DAERA to give financial assistance to existing rural development agreement holders and Producer Organisations under continuing EU programmes.
- 149 Subsection (1) sets out who is eligible to receive the financial assistance.
- 150 Subsection (2) provides definitions for the terms used in this section.

Section 18: Retained direct EU legislation

- 151 Section 18 provides that legislation relating to support for rural development, producer organisation aid, apiculture aid and agricultural promotions that has direct effect under the Withdrawal Agreement by virtue of section 7A of the EU (Withdrawal) Act 2018 in relation to existing EU programmes will also be retained direct EU legislation notwithstanding the effect of section 3(2)(a)(bi) of that Act.
- 152 Subsection (1) ensures that the relevant legislation provided for in this section will be retained direct EU legislation.
- 153 Subsection (2) sets out the EU regulations which will become retained direct EU legislation that relate to support for rural development.
- 154 Subsection (3) sets out the EU regulations which will become retained direct EU legislation that relate to producer organisation aid.
- 155 Subsection (4) sets out the EU regulations which will become retained direct EU legislation that relate to apiculture.
- 156 Subsection (5) sets out the horizontal regulations which will become retained direct EU legislation, to the extent that they relate to the support schemes described in subsection (1).
- 157 Subsection (6) sets out the EU regulations which will become retained direct EU legislation that relate to agricultural promotions.

Part 2: Food and Agricultural Markets

Chapter 1: Food Security

Section 19: Duty to report to Parliament on UK food security

- 158 Section 19 places a duty on the Secretary of State to produce a report to lay before Parliament on UK Food Security. This report will provide a broad understanding of what food security is, the challenges and risks to UK food security in a global context, and a current assessment of the state of food security to inform policy thinking on the resilience and security of food supply.

159 Subsection (1) requires the Secretary of State to prepare and lay before Parliament, at least every three years, a report containing an analysis of statistical data relating to UK food security.

160 Subsection (2) sets out the data that may be included in the report, which , may include data about global food availability, supply sources for food, resilience of the supply chain for food, household food security and expenditure on food, food safety and consumer confidence in food.

161 Subsection (3) defines the term “relevant day” in subsection (1), meaning the first report must be produced on or before the last sitting day for both Houses of Parliament before Christmas Recess in 2021.

Chapter 2: Intervention in Agricultural Markets

Section 20: Declaration relating to exceptional market conditions

162 Section 20 provides for the Secretary of State under subsection (1) to make a declaration stating that exceptional market conditions exist which warrant the use of the financial assistance or intervention powers under section 21.

163 The declaration of exceptional market conditions triggers the Secretary of State’s power under section 21 to make or agree to make payments, loans, guarantees and other forms of financial assistance available to affected farmers; or to operate the public intervention and private storage aid schemes.

164 Exceptional market conditions may exist where there is a severe disturbance, or the threat of such a disturbance, in the agricultural markets that has or could have a significant adverse effect on farmers in England, judged by the prices they can receive for the sale of agricultural products. This does not extend to impacts on farmers caused by other exceptional events, such as extreme weather events or animal disease unless they result in an actual or threatened market disturbance which results in reduced prices.

165 The critical factor determining whether a situation is considered to create exceptional market conditions under this section is the actual or threatened severe market disturbance that results in a fall in price of one or more agricultural products, regardless of the nature of the circumstances that gave rise to that disturbance.

166 Subsection (2) sets out a two-part test to identify where exceptional market conditions may exist. There must be a severe disturbance to agricultural markets, or the serious threat of one, and it must have, or threaten to have a significant adverse effect on producers to constitute exceptional market conditions.

167 Subsection (3) sets out what must be included in the declaration.

168 Subsection (3)(d) provides that the powers provided for in section 21 are available for use until the declaration is no longer in effect.

169 Subsection (4) states that the declaration has effect until the specified end-date, which must be no more than three months from the date when it is published.

170 Subsection (5) allows the Secretary of State to revoke the declaration made under subsection (1) by making and publishing a further declaration to that effect.

171 Subsection (6) provides a power to extend the declaration made under subsection (1) by a further three months, by making, and publishing a declaration to that effect at any time in the 7 days ending with the day of the original declaration’s end date.

172 Subsection (7) allows the Secretary of State to make a new declaration of exceptional market conditions relating to the same events if the exceptional market conditions continue.

173 Subsection (8) states that declarations made under subsections (1), (5), and (6) must be published and then laid before Parliament as soon as practicable.

174 Subsection (9) explains that “agriculture” in sections 20 and 21 includes “horticulture”.

Section 21: Exceptional market conditions: powers available to Secretary of State

175 Section 21 makes new powers available to the Secretary of State to intervene in agricultural markets in the event of a severe market disturbance, or the threat of such a disturbance, by providing financial assistance to farmers in England whose incomes are being affected by those exceptional market conditions or by operating public intervention and private storage aid schemes.

176 Under this provision, during a period of exceptional market conditions, the Secretary of State may: give or agree to give financial assistance by way of grants, loans, guarantees or in any other form, under any conditions he considers appropriate, including targeting payments to particular sectors and geographical areas; and exercise the public intervention and private storage aid powers which are available to him as he considers appropriate. The intention is that the Secretary of State will be able to apply the appropriate measures at short notice to resolve the exceptional situation at hand.

177 New powers are created so that any financial assistance or intervention scheme can be tailored to the domestic market, rather than relying on those which would exist in retained EU legislation that is designed to apply to the wider European agricultural market.

178 Subsection (1) states that this provision applies during the period for which the declaration of exceptional market conditions made under section 20 is in effect.

179 Subsection (2) provides that the Secretary of State may give or agree to give financial assistance to farmers whose incomes are or could be negatively affected by the exceptional market conditions detailed in the declaration made under section 20.

180 Subsection (3) allows the Secretary of State to use the public intervention and private storage aid schemes in response to the exceptional market conditions if he considers it appropriate.

181 Subsection (4) states that financial assistance given to farmers under subsection (2) may take the form of payments, loans, guarantees, or any other form the Secretary of State considers appropriate.

182 Subsections (5) and (6) explain that financial assistance may be given subject to any conditions which the Secretary of State considers appropriate, including how such assistance is to be repaid or otherwise made good.

183 Subsection (7) states that the Secretary of State may give or agree to give financial assistance after the declaration under section 20 has ceased to have effect, as long as the application for this assistance was submitted while the declaration was in force.

Section 22: Modification of certain retained direct EU legislation in connection with exceptional market conditions and for general purposes

184 Section 22 gives the Secretary of State the power to amend the retained direct EU legislation for England relating to public intervention and private storage aid. The aim of EU public intervention and private storage aid 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 to remove them from the market (private storage aid).

185 Subsection (1) enables the Secretary of State to modify the legislation so that the operation of such schemes may be tailored to prevailing domestic circumstances when they are used in a period of exceptional market conditions established in section 20.

186 Subsection (2) enables the Secretary of State to modify the legislation for either or both of the following purposes:

187 Subsection (2)(a) amends either scheme in such a way as it ceases to have effect in England (with savings made for the operation of the schemes in exceptional market conditions under section 20).

188 Subsection (2)(b) amends the general operation of either scheme.

189 Subsection (3) states that the power in subsection (1) includes the power to make specific amendments to the public intervention and private storage aid schemes that apply only in relation to a particular exceptional market condition declared under section 20.

190 Subsection (4) states that the powers conferred under subsections (1) and (2) include the ability to change what agricultural products are eligible for public intervention and private storage aid.

191 Subsection (5) sets out regulations made under this section are subject to the negative resolution procedure, unless section 50(5) applies, in which case the procedure is affirmative.

192 Subsection (6) sets out the retained direct EU legislation that concerns public intervention and private storage aid, and which is referred to in sections 20 and 21.

193 Subsection (7) explains that until paragraph 1 of Schedule 7 of the Act, which revokes the existing crisis measures powers in the CMO (articles 219, 220, 221 and 222 of EU Regulation 1308/2013), is in force; references in this section to exceptional market conditions subject to a declaration under section 20 also includes reference to actions being undertaken under the existing crisis powers.

194 If the Secretary of State deems public intervention or private storage aid as the most appropriate means of addressing the exceptional market conditions, any amendments necessary to the retained EU legislation would need to be made urgently, as an intervention scheme could not be implemented until those changes had been made.

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

Chapter 1: Collection and Sharing of Data

Section 23: Agri-food supply chains: requirement to provide information

195 Subsection (1) provides the Secretary of State with the power to collect data, by requirement, from persons in, or closely connected with, the agri-food supply chain. The information that may be collected under this power must relate to that person's activities that relate to the agri-food supply chain (colloquially known as "farm to fork"). Section 24 defines a person in or closely connected with an agri-food supply chain. A primary power is appropriate where the class of persons from whom information is to be required is a "known" class; for example, if they are readily identifiable and contactable.

- 196 Subsection (2) mirrors the power in subsection (1), except it is a power to make secondary legislation to collect information from persons in, or closely connected with, the agri-food supply chain. A power to make regulations is needed where the class of persons from whom information is required is not readily identifiable or quantifiable, or where it may be difficult to ascertain and contact them.
- 197 Subsections (1) and (2) clarify the territorial extent of the powers in this section as only applying to those activities taking place in England. Where a supply chain spans more than one of the constituent nations of the UK, unless an arrangement (formal or otherwise) is reached with the devolved administration/s in question, the intended information will not be able to be collected by the Secretary of State.
- 198 Subsection (3) refers to definitions.
- 199 Subsection (4) exempts the ultimate consumer (anyone who is only in the food chain because they consume the ultimate products) from the scope of the data collection powers.
- 200 Subsection (5) exempts any information which is subject to legal privilege from the scope of the data collection powers.
- 201 Subsection (6) states that a requirement to provide information under subsection (1) must be in writing i.e. that the Secretary of State must publish a requirement (on www.gov.uk for example) or write to the relevant person to require them to provide information.
- 202 Subsection (7) states that subsection (1) applies to the Crown.
- 203 Subsection (8) specifies that regulations made under this section are subject to the affirmative procedure.

Section 24: Meaning of “agri-food supply chain”

- 204 Subsection (1) explains that the definitions apply to the whole Chapter.
- 205 Subsections (2) and (3) define the “agri-food supply chain”, and the persons in it. The agri-food supply chain may be colloquially known as “farm to fork” – from primary producers, through intermediary food processors to retailers such as supermarkets and ultimately individual consumers. The products in the agri-food supply chain include any plant products grown (cereals, fruit and vegetables) as well as animal products for consumption (meat, dairy, eggs) including plant and animal products taken from the wild (for example, truffles and venison).
- 206 Subsection (4) defines which actors are considered to be “closely connected” to an agri-food supply chain. This will include those persons (individuals and companies) providing either goods or services for use in the agri-food supply chain. In relation to animal products, this will include (but is not limited to) veterinarians (and any other persons providing animal health or welfare services), abattoirs and cattle markets. This category will also include those who supply inputs to the practice of agriculture, such as feed and fertiliser merchants, machinery merchants and those who supply general equipment.
- 207 Subsection (4)(c) sets out that information may also be collected from any person performing activities capable of affecting activities in the supply chain. This may include, for example, persons keeping animals (such as those in petting zoos, or hobby chickens) where those animals could be a risk to, or at risk from, animals in the food chain in the event of a disease incursion or outbreak. This is just one example of how a person could be “closely connected” to the agri-food supply chain.

208 Subsection (5) clarifies that the list of persons connected to the agri-food supply chain is not closed.

209 Subsection (6) contains definitions.

Section 25: Requirement must specify purposes for which information may be processed

210 Subsections (1) sets out that the provisions apply whether the requirement is made under the general power or through secondary legislation.

211 Subsection (2) ensures that every request for information must set out the purposes behind the request for collecting the data.

212 Subsection (3) has the effect that the purposes for which information may be required must be in, or be included within, at least one of the purposes stated in subsection (4). The information cannot be used for purposes that fall outside those stated in the requirement to provide information.

213 Subsection (4) defines the broad categories of purposes for which requirements may be made.

214 Subsection (4)(a) enables data to be collected to support persons in the agri-food supply chain to increase productivity and manage risks and market volatility. This section aims at assisting primary producers, for example by collecting data that enables benchmarking of farm performance.

215 Subsection (4)(b) enables data to be collected for the purpose of promoting transparency or fairness in the agri-food supply chain. This may include information that will be used to establish price or profit monitoring tools for a supply chain, or information required to combat unfair trading practices, which occur in agri-food supply chains.

216 Subsections (4)(c) and (4)(d) enables data to be collected for improving animal health, welfare and traceability, and plant, fungi and soil health and quality. This could include collecting data that enables improvements in the ability to detect disease incursions, monitor disease levels and animal welfare standards, and target actions to tackle disease, whether this action be taken by industry or government.

217 Subsection (4)(e) enables data to be collected for minimising adverse environmental effects (such as runoff from fertiliser or greenhouse gas emissions) which could also include assessing baseline levels of effects, and monitoring improvements or deteriorations.

218 Subsection (4)(f) allows data to be collected for minimising waste from agri-food supply chains, which may include food waste (products going out of date or unused off cuts) which could also include assessing baseline levels of waste, and monitoring improvements or deteriorations.

219 Subsection (4)(g) enables data to be collected for monitoring or analysing markets connected to agri-food supply chains. This may include general commodity price levels or sectoral output statistics, which can be used to inform the use of crisis management measures.

220 Subsection (5) references the definitions outlined in section 24.

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

- 221 Subsection (1) states that the Secretary of State must publish a draft requirement before such a requirement is finalised. Subsections (1) (a) (ii) and (iii) stipulate the information to be included in the draft, including the deadline for comments. Subsection (1) (b) states that the final requirement may be imposed in either its draft or a revised form, based on the comments received in the published timeframe.
- 222 Subsection (2) states that the requirement may be imposed on a person at any time once the final drafting has been agreed.

Section 27: Provision of required information and limitations on its processing

- 223 Subsection (1) states that the provisions apply to requirements whether they are made under the general power or the power to set out requirements in secondary legislation.
- 224 Subsection (2) provides that information given in response to a requirement can only be used for the purpose that was set out in that requirement.
- 225 Subsection (3) stipulates that the requirement to only use information for the purpose for which it is provided apply to the first recipient of the information, and to anyone who subsequently receives the information. For example, a requirement for data may be issued for the purpose of “establishing demand level information” for a certain cut of meat. The authority may collect information about slaughterhouse throughput, which is then subsequently passed on to a different authority that collate the information to produce useable datasets. Both authorities would be obliged to only use the information for the specific stated purpose.
- 226 Subsection (4) notes that the purposes for which information can be used are subject to the restrictions on how information can be used, and in what forms it can be disclosed, which are stated in subsections (7) to (9).
- 227 Subsection (5) sets out that the requirement may detail matters including how, when, and to whom information is to be provided.
- 228 Subsection (6) establishes that the requirement, must set out the types of processing to which the information supplied may be subjected and the forms in which information supplied may be disclosed.
- 229 Subsection (7) sets out that information provided in response to a requirement may not be subjected to types of processing or disclosed in any form other than those specified in the requirement (unless the requirement specifies circumstances in which other forms of processing or disclosure may occur).
- 230 Subsection (8) sets out that, where there is a proposal for information provided under a requirement to be disclosed, that disclosure is subject to the conditions set out in subsection (9).
- 231 Subsection (9)(a) sets out that when there is a proposal to disclose information in a non-anonymised form, the person proposing the disclosure must consider whether the disclosure can harm the commercial interests of any person (meaning the person providing the information, or anyone else who may be affected by the disclosure of the information). Subsection 9(b) sets out that, if the proposer considers that the disclosure may be commercially harmful, then non-anonymised disclosure is not permitted, unless the Secretary of State considers there to be a public interest in disclosure.

232 Subsection (10) defines what is meant by “processing” information and lists types of processing that information may be subject to. This could include, for example, aggregating price data, making certain information accessible (to the public or a class of persons), creating statistics, and benchmarking certain performance-related data.

Section 28: Enforcement of information requirements

233 Subsection (1) provides the power for the Secretary of State to make secondary legislation to enforce data requirements whether those requirements arise under the general power or in secondary legislation. This means that requirements can be issued that contain information about the sanctions that will be applied in the event of non-compliance (if someone fails to provide information or provides false information).

234 Subsection (2) sets out definitions.

235 Subsection (3) clarifies that the provisions for enforcement will include details of how compliance will be monitored, investigated and addressed.

236 Subsection (4) details the matters that may be included in the enforcement provisions.

237 Subsection (4)(a) provides for the imposition of monetary penalties, which can either be a specified amount or an amount arrived at using a specified manner or calculation, or can be made by way of suspending or withholding payment.

238 Subsection (4)(b) provides that regulations may include provisions for recovering money by setting off debts against payments to be made or by requiring a security and may also include provision regarding interest.

239 Subsection (4)(c) states that regulations can be about providing advice or warnings.

240 Subsection (4)(d) provides for the regulations to enable the acceptance of undertakings.

241 Subsection (4)(e) enables regulations to confer functions on those enforcing the regulations.

242 Subsection (4)(f) enables regulations to set up review and appeal mechanisms.

243 Subsection (5) sets out that the monetary fines listed in subsection (4) (a) can be calculated using information relating to income, turnover or profits. This is so that fines may be calculated which are appropriate, and suitably dissuasive, for a broad range of operators.

244 Subsection (6) specifies that regulations made under this section are subject to the affirmative procedure.

Chapter 2: Fair Dealing with Agricultural Producers and Others in the Supply Chain

Section 29: Fair dealing obligations of business purchasers of agricultural products

245 Section 29 provides the Secretary of State with the power to make regulations to introduce obligations that promote fair contractual relationships between primary producers, Producer Organisations, associations of Producer Organisations, produce aggregators and the business purchasers of their products. As the issues faced by different farming sectors vary considerably, the section will enable sector-specific as well as general regulations to be made, to improve principles of fair contractual practice across the whole industry.

246 Subsection (1) empowers the Secretary of State to make regulations, including enforcement, imposing obligations on operators who buy agricultural products in the course of a business (“business purchasers”) from “qualifying sellers” (defined in subsection (3)).

- 247 Subsection (2) specifies that the powers under subsection (1) must be exercised to promote fair contractual dealing.
- 248 Subsections (3) – (5) set out definitions for the purposes of the section. A “business purchaser” is defined at subsection (3)(a) as set out above, as a person who purchases an agricultural product in the course of business which includes the purchase of products of that kind. A “qualifying seller” is defined at subsection (3)(b). This includes a person carrying on an agricultural activity for the production, or in connection with the production, of the product. This category of qualifying sellers is intended to capture farmers and other primary producers. The other categories of “qualifying seller” are Producer Organisations and Associations of Producer Organisations, recognised under section 30 of the Act, and produce aggregators, insofar as they are not themselves Producer Organisations or associations of Producer Organisations. Produce aggregators are further defined at subsections (4) and (5) as purchasers from more than one qualifying seller which do not carry out any further processing of the product. “Processing” is defined at subsection (11) of the section and helps determine whether a business is a ‘produce aggregator’. The definition of produce aggregators in this section is intended to cover and protect smaller sellers who do not typically engage in thorough processing activities, rather than established purchasers who are more likely to hold a dominant market position.
- 249 Subsection (6) sets out examples of the kinds of obligations that may be imposed on business purchasers under the section. This includes obligations to:
- use a written contract (subsection (6)(a)). This will aid transparency and certainty for those sectors, such as dairy, where it is appropriate;
 - include, or not include, a term in the contract dealing with a particular matter (subsection (6)(b)). This will ensure that key elements of the commercial arrangement are specifically agreed by producers, and is particularly useful in respect of pricing mechanisms that could otherwise result in hidden premiums and deductions;
 - include terms that make specific provision (subsection (6)(c)(i)). This means that the Secretary of State can specify the content of the terms to be included in a contract – for example, that notice periods for varying the contract may not be less than three months;
 - comply with a set of principles and practices that promote fair dealing (subsection (6)(c)(ii)). For example, if a contract includes an exclusivity section, fair dealing principles could require that qualifying sellers is not be paid less for surplus product than if they sold the surplus to a third party.
- 250 The list in subsection (6) is non-exhaustive. In certain circumstances, regulations under the section could also impose obligations which are not strictly connected to a term in the contract. These could be related to problematic behaviours which may typically occur before a contract is signed, or outside of the contractual agreement. As an example, a business purchaser may threaten a qualifying seller with commercial retaliation, such as threatening to remove the seller from their business’s approved supplier list in response to a qualifying seller querying the contract with a lawyer before agreeing to sign.
- 251 Subsection (7) provides examples of the types of terms that could be regulated through the contractual obligations imposed under subsection (6)(b) and (c).

- 252 Subsection (8) outlines the enforcement provisions which may be made under subsection (1)(b), such as investigating complaints and creating a robust appeals process. It is intended that obligations will be set out in sector-specific statutory codes, which will initially be introduced in the sectors where voluntary codes have been unable to significantly improve contractual relationships (for example dairy).
- 253 Subsection (9) provides the Secretary of State with powers to delegate authority to another person. This will be used to enable an independent party to consider appeals provided for under subsection (8)(d).
- 254 Subsection (10) specifies that regulations made under this section are subject to the affirmative resolution procedure.
- 255 Subsection (11) contains further definitions relevant to this section.

Chapter 3: Producer Organisations

Box 4: Producer Organisations

Producer Organisations (POs) are bodies through which groups of primary producers in the agricultural sector coordinate their activities to improve their competitiveness.

Through the EU regime, recognised POs benefit from several exemptions from competition rules which enable farmers to collaborate in ways that make markets work better in the interests of producers and consumers (for example through joint production planning and processing). The European Union (Withdrawal) Act 2018 converted existing EU regulations into domestic law to minimise disruption for existing POs. A domestic PO regime will be created under which any new PO will be recognised and to which existing POs will transition.

Section 30: Producer and interbranch organisations etc.: application for recognition

- 256 Section 30 sets out the conditions that need to be met for groups of operators to qualify for recognition as one of three types of organisations. Much of the detail of the conditions is to be “specified” pursuant to regulations to be made by the Secretary of State under this section.
- 257 An organisation may apply for recognition as a PO under subsection (1) if it meets the conditions in subsection (2). The detail of these conditions to be specified will ensure that only organisations that meet the objectives of the PO structure will be eligible for recognition. For example, the conditions will ensure that the organisation is representative of the sector (or sectors) in which it operates, that it carries out activities that will improve the market position of its members, and that its members control it in a fair and democratic way. Once a PO is recognised, its members can collaborate in carrying out certain activities in ways that would normally be prohibited by competition law; these exemptions are set out in Schedule 2 by way of amendment to the Competition Act 1998.
- 258 Subsections (3) and (4) set out conditions which need to be met for a group of recognised POs to be eligible for recognition as an Association of Producer Organisations (APO). APOs are vehicles for even greater scale collaboration between producers in the same sector. An organisation may apply for recognition as an Association of Producer Organisations (APO) under subsection (3) if it meets the conditions in subsection (4), namely that all the APO’s members are recognised POs, and that the industry itself drove the formation of the APO. APOs enjoy very similar exemptions from competition law to those that apply to POs.

- 259 An organisation may apply for recognition as an interbranch organisation (IBO) under subsection (5) if it meets the conditions in subsection (6). IBOs are vehicles to enable greater vertical collaboration within an agricultural supply chain. They differ from POs and APOs in that they can include members from different stages of the supply-chain (so long as they include at least one producer member). Their activities are not usually focused on production or marketing, but on wider market issues, including research and development to improve the way that products are placed on the market, or to explore potential export markets. Because of the potentially far-reaching nature of an IBO's activities, the agreements between its members can have particularly distortive effects on competition. The provisions regulating their exemption are therefore stricter than for the other types of organisation.
- 260 Subsection (7) provides that "unlawful activities" in subsections (2)(f) and (6)(f) includes a failure to comply with a duty, as well as breaching a prohibition.
- 261 Subsection (8) defines what it means for businesses within an IBO to meet the condition at subsection (6)(a)(ii), which requires the business to be carrying out activities linked to any one or more agricultural sectors.
- 262 Subsection (9) allows the Secretary of State to introduce further conditions, beyond those set out in subsections (2), (4) and (6), that prospective organisations would need to meet in order to qualify for recognition.
- 263 Subsection (10) requires the Secretary of State to specify in regulations the period within which an application for recognition under subsections (1), (3) or (5) must be determined.
- 264 Subsection (11) requires the Secretary of State to notify both the applicant and the Competition and Markets Authority when an application decision has been made. If an application is granted, this must be published online (on GOV.UK, for example).
- 265 Subsection (12) allows the Secretary of State to introduce further provision, by regulations, about the application process, which may include supporting evidence to be submitted, factors the Secretary of State will take into account when deciding an application, amending time periods or deadlines, application fees or provision about reviews and appeals.
- 266 Subsection (13) contains definitions.
- 267 Subsection (14) allows the Secretary of State to amend, by regulations, the list or descriptions of agricultural sectors listed under Schedule 1.

Section 31: Recognised organisations: competition exemptions and further provision

- 268 This section sets out the exemptions from general competition law, which are available to recognised organisations, and confers power on the Secretary of State to make further provision about recognised organisations.
- 269 Subsection (1) refers to Schedule 2, which amends the Competition Act 1998 to give domestic effect to competition exemptions framed in similar terms to those that currently exist in EU legislation. This is necessary because the exemptions are currently given effect by section 10 of the Competition Act 1998, which is going to be "turned off" when the equivalent retained EU legislation repealed, and a new domestic PO regime is introduced. The exemptions will allow the members of recognised organisations to collaborate in carrying out activities in ways that would normally be prohibited under general competition law, as long as the organisations comply with conditions intended to ensure that the benefit of their coordinated activities justifies any adverse effects on competition.
- 270 Subsection (2) allows the Secretary of State, by regulations, to make further provision about recognised organisations.

- 271 Subsection (3) provides examples of such further provision; including introducing further requirements or reporting obligations with which a recognised organisation needs to comply. These will ensure that a recognised organisation continues to operate in a way that justifies the freedom its members enjoy when operating outside of the normal competition rules and includes the power to make provisions about monitoring and enforcement.
- 272 Subsection (4) details the type of provisions that may be introduced under subsection (3), to monitor and enforce compliance with ongoing recognition requirements.
- 273 Subsection (5) specifies that the provisions introduced under subsection (2) may also include provisions regarding the ability for POs, APOs and IBOs to delegate some of their functions. In the absence of such provision, it would not be clear that a third party carrying out a recognised organisation's functions benefitted from the competition exemption enjoyed by the recognised organisation in respect of those functions.
- 274 Subsection (6) contains definitions.

Section 32: Regulations under sections 30 and 31

- 275 This section makes provision about the regulation-making powers in sections 30 and 31.
- 276 Subsection (1) makes it clear that the Secretary of State can use the powers in sections 30 and 31 to delegate functions to another body, in particular the function of deciding applications for recognition. This will allow the Secretary of State to ensure that the appropriate body carries out the administration of the recognition regime.
- 277 Subsection (2) confers power on the Secretary of State to make regulations introducing sector-specific PO, APO or IBO rules, which could introduce additional or different conditions for recognition, or make other additional or different provisions. This would allow the recognition criteria to be tailored to the needs of a sector if the producers in that sector were experiencing particularly adverse market conditions. For instance, this would allow for the limits placed on the size of a PO to be altered, if market conditions warranted such a change.
- 278 Subsection (3) specifies that regulations made under sections 30 and 31 are subject to the negative procedure, unless either section 50(5) applies, the regulations contain new sector-specific provision, or the regulations amend Schedule 1. Subsection (4) provides that in these cases, the affirmative resolution procedure applies.
- 279 Subsection (5) requires the Secretary of State, before introducing any new sector-specific provision, to consult with persons who are representative of any agricultural sector to which the regulations will apply, or persons otherwise affected by the provision. This reflects the fact that sector-specific provision could substantially advantage or disadvantage a sector so there is a particular need for transparency and engagement.
- 280 Subsection (6) contains definitions.

Part 4: Matters Relating to Farming and the Countryside

Section 33: Fertilisers

- 281 Subsection (2) amends the definition of a fertiliser under section 66 of the Agriculture Act 1970 to enable a broader range of materials to be regulated as a fertiliser in the UK.
- 282 Subsection (3) amends section 74A of the Agriculture Act 1970 to enable the regulation of fertilisers on the basis of their function. This will allow different requirements to be set, for example, for biostimulants, soil improvers and traditional mineral fertilisers to ensure the safety and quality of the various types of products marketed as a fertiliser in the UK.

- 283 Subsection (4) allows for regulations to set out an assessment, monitoring and enforcement regime for ensuring the compliance of fertilisers with composition, content and function requirements and for mitigating other risks to human, animal or plant health or the environment presented by fertilisers.
- 284 New subsection (1A) inserted into section 74A of the Agriculture Act 1970 will enable the Secretary of State, Welsh Ministers, Scottish Ministers and a Northern Ireland department to put in place the infrastructure for conformity assessment procedures to be carried out on fertilisers and to confer market surveillance functions on a public authority. It will also enable requirements to be placed on manufacturers and others involved in the supply of fertilisers to keep and, where required, provide information relating to fertilisers to the market surveillance authority for traceability purposes and to assist the authority in its role.
- 285 New subsection (1B) inserted into section 74A of the Agriculture Act 1970 sets out the matters relating to the conformity assessment process for fertilisers which may be provided for in regulations made by the Secretary of State, Welsh Ministers, Scottish Ministers and a Northern Ireland department. These matters relate to creating and mobilising the structures and processes required for an effective and workable assessment system, recognition of a person or organisations to undertake assessments, the creation of an appeals system, charging regime or framework, and recognition and registration processes.
- 286 New subsection (1C) inserted into section 74A of the Agriculture Act 1970 sets out enforcement powers which may be conferred on a public authority with market surveillance functions, including powers to undertake further assessment of fertilisers, to prohibit the sale of certain fertilisers, to impose fines on those who breach regulations, and conferring powers to enter and inspect, take samples or seize and destroy materials if necessary.
- 287 New subsection (1D) inserted into section 74A of the Agriculture Act 1970 provides that fertiliser regulations must not impose or confer a power or duty requiring or authorising the disclosure or use of information that would contravene data protection legislation.
- 288 New subsection (1E) inserted into section 74A of the Agriculture Act 1970 provides a power to make regulations that amend or repeal Regulation (EC) No. 2003/2003 relating to fertilisers and other retained direct EU legislation relating to fertilisers.
- 289 Subsection (5) amends section 84 of the Agriculture Act 1970. It provides that the first regulations made by the Secretary of State, Welsh Ministers, Scottish Ministers and a Northern Ireland department under section 74A (1A) to (1E) of the Agriculture Act 1970 are subject to the affirmative procedure. Subsequent regulations made by the Secretary of State, Welsh Ministers, Scottish Ministers and a Northern Ireland department under section 74A (1A)(b) (conferring on a public authority functions relating to market surveillance and regulation) and (1D)(a)(i) and (ii) (amending and repealing retained EU law relating to fertilisers) are also subject to the affirmative procedure.
- 290 Subsection (6) amends section 86 of the Agriculture Act 1970 to amend the modifications for Northern Ireland in section 84 of that Act to take account of the new subsection (2D) in subsection 33(5).

Section 34: Identification and traceability of animals

- 291 Section 34 amends the Natural Environment and Rural Communities Act 2006 (NERC Act 2006) to allow for new data collecting and sharing functions. This includes the running of a database to be assigned to a board established under that Act and to enable the assignment of functions relating to the means of identifying animals. It amends section 8 of the Animal Health Act 1981 (AHA 1981) to reflect advancements in animal identification technology and to provide that orders made under section 8 will bind the Crown. It disapplies in relation to

England and Wales, at a later date, retained EU legislation on the identification and traceability of cattle, sheep and goats. The purpose of the section is to prepare for the introduction of a new digital and multi-species traceability service, the Livestock Information Service (LIS), based on a database of animal identification, health and movement data.

- 292 Subsection (1) inserts a new section 89A into the NERC Act 2006. New subsection (1) of section 89A inserted into the NERC Act 2006 will allow the Secretary of State to assign to a board, established under the NERC Act 2006, functions related to collecting, managing and sharing certain information in England, Wales, Northern Ireland and Scotland. This information is identification, movement or health data of animals. It will also allow the assignment of functions relating to the means of identifying animals such as issuing individual identification numbers to animals.
- 293 New subsection (2) of section 89A inserted into the NERC Act 2006 provides that the Secretary of State should seek approval from devolved administrations before making an order which assigns to a board functions which are exercisable in relation to the territories of those administrations.
- 294 New subsection (3) of section 89A inserted into the NERC Act 2006 provides that an order made assigning functions to a board must not require or authorize the disclosure or use of information that would contravene data protection legislation.
- 295 New subsection (4) of section 89A inserted into the NERC Act 2006 ensures that “animals” has the same meaning as in section 8 of the AHA 1981, to ensure that the functions assigned under this act can be exercised in relation to animals that otherwise might not be covered, such as domestic pigs or equines. These amendments enable the Agriculture and Horticulture Development Board (AHDB) to be assigned the function of managing the new Livestock Identification Service. An example of how this power could be used is to facilitate risk-based trading by enabling the AHDB to make available to buyers’ information on the health risk involved in purchasing certain animals. This could be used as a tool to combat the spread of disease.
- 296 Subsection (2) amends the AHA 1981 such that in England and Wales the term “marking of animals” is replaced by “means of identifying animals”, and that provision made under subsection (1) of the AHA 1981 may bind the Crown. The amendment will allow secondary legislation that will be made under powers of the AHA 1981 to encompass new developments in the technology for identifying animals. This amendment provides for new developments in the technology and methodology of identifying animals, such as the use of electronic identification. It will also enable legislation to be made covering Crown animals, such as military and police horses. Previously legislation for equines was made under the European Communities Act 1972, which will be revoked upon EU exit.
- 297 Subsections (3) and (4) will, at a date to be set by the Secretary of State, disapply in relation to England and Wales the identification, traceability, and inspection provisions in retained EU legislation for cattle (parts of Regulation (EC) No 1760/2000) and sheep and goats (Council Regulation (EC) No 21/2004) respectively. These regulations will be replaced with an order made under the AHA 1981. As a consequence of the European Union (Withdrawal) Act 2018, these regulations will become retained EU law, a category of domestic law, and will be treated as if they are primary legislation. This retained EU legislation will be disapplied by commencing subsections (3) and (4) at the time an order is made under AHA 1981 amending the identification, traceability and inspection regime. These subsections avoid the need to make further primary legislation at that point.

Section 35: Red meat levy: payments between levy bodies in Great Britain

- 298 The livestock industry in Great Britain operates with complex livestock movements and animals may gain economic value in more than one part of the country. Producer levies are collected at slaughterhouses, regardless of where animals spend their lives or gain value. In each part of Great Britain, the relevant levy body collects red meat levy, under a common levy collection framework set out in the Natural Environment and Rural Communities Act 2006, the Red Meat Industry (Wales) Measure 2010, the Agriculture and Horticulture Development Board Order 2008 and the Quality Meat Scotland Order 2008. “Red meat” in this context refers to meat from pigs, cattle and sheep for human consumption.
- 299 An inequity in the red meat levy system was caused when significant amounts of producer levy collected at English slaughterhouses related to animals that spent all or some of their lives gaining value in Scotland and Wales. A red meat levy redistribution scheme would resolve this unfairness. The Agriculture Act enables the Secretary of State and ministers to set up a redistribution scheme allowing levy bodies to redistribute red meat levy among themselves, in some circumstances.
- 300 Section 35 enables a scheme to be made for some of the red meat levy collected by a levy body in one country within Great Britain to be paid to another levy body in Great Britain. This would reflect the fact that some cattle, sheep or pigs produced in one country may be slaughtered in another country. Without the ability to make payments under a scheme the producer levy paid in respect of those animals in the country of slaughter can only be spent on activities which benefit red meat producers in that country.
- 301 Subsection (1)(a) allows the establishment of a scheme so that agricultural levy boards in two or more countries in Great Britain can redistribute red meat levy between themselves.
- 302 Subsection (1)(b) allows for a scheme to amend, suspend or revoke an earlier scheme, enabling an existing scheme to be updated.
- 303 When the section refers to a payment, it means a payment that is made under the scheme by a levy body. Subsection (2) suggests some details that the scheme may include about the calculation method, who determines the amount of a payment within the levy body, for example, finance directors, or their delegates, as well as details about when and how the payment is made. It allows the scheme itself to specify its duration.
- 304 Subsection (3) suggests that the scheme may give details about the method of calculating the payment amount and any matters relevant to that. This may include a number of relevant animals, such as those whose red meat levy has been collected by the levy body making the payment in a specific period. The animals that are relevant to the calculation may be required to have a ‘connection’ with country receiving the payment, for example, to have gained some economic value in that country.
- 305 Subsection (4) requires that any payment made under the scheme is to be treated by the recipient levy body as if it were red meat levy collected by that body, for example in respect of the activities and purposes for which it can be spent.
- 306 Subsection (5) allows the scheme to make further provisions beyond those in this section, including provisions that confer new functions on the levy boards if required to facilitate the implementation of the scheme.
- 307 Subsection (6) imposes a new obligation on levy boards affected by such a scheme to comply with it.

308 Subsection (7) provides that any such scheme will be made jointly by agreement between the Secretary of State, and the Scottish and Welsh Ministers. It cannot be brought into being without agreement. The scheme will be published.

309 Subsection (8) names the red meat levy bodies for England and Scotland as the Agriculture and Horticulture Development Board (AHDB) and Quality Meat Scotland (QMS), respectively. For Wales, the same subsection names the Red Meat Industry (Wales) Measure 2010, which provides Welsh Ministers with the power to levy its red meat industry. Welsh Ministers have currently delegated their functions to Hybu Cig Cymru (HCC).

310 Subsection (9) defines the producer red meat levy in question by referring to the definitions in the relevant legislation that frames the activity of the levy body in each country.

311 Overall, section 35 provides the Secretary of State, Scottish, and Welsh Ministers with the power to agree and publish a scheme to redistribute part of the producer red meat levy. Duties on levy boards under the scheme are freestanding, to sit alongside their duties under existing legislation. This section only affects the redistribution of levy; the collection of levy and the existing purposes and functions of levy boards remain subject to the existing legislation.

Section 36: Agricultural tenancies

312 Section 36 makes provision in relation to agricultural tenancies as specified in Schedule 3.

Part 5: Marketing Standards, Organic Products and Carcass Classification

Section 37: Marketing standards

Box 5: Marketing Standards

EU marketing standards establish detailed rules with regard to the quality of agricultural products and providing product information to consumers. Overall, they are beneficial to producers, traders and consumers. They encourage high-quality production, improve profitability and transparency and protect consumer interests. A number of EU marketing standards are based on international standards, for example the United Nations Economic Commission for Europe, the International Organisation of Vine and Wine, and hence their adoption can also facilitate trade with third countries that adhere to the same standards.

At present certain 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 in section 6 of the EU (Withdrawal) Act 2018. The relevant body of EU law is as follows:

Council Regulations:

- REGULATION (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007

- COUNCIL REGULATION (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)
- REGULATION (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008
- REGULATION (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animal and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97

Commission Delegated and Implementing Acts:

- COMMISSION REGULATION (EC) No 1825/2000 of 25 August 2000 laying down detailed rules for the application of Regulation (EC) No 1760/2000 of the European Parliament and of the Council as regards the labelling of beef and beef products
- COMMISSION REGULATION (EC) No 566/2008 of 18 June 2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing of the meat of bovine animals aged 12 months or less
- COMMISSION REGULATION (EC) No 589/2008 of 23 June 2008 laying down detailed rules for implementing Council Regulation (EC) No 1234/2007 as regards marketing standards for eggs
- COMMISSION REGULATION (EC) No 617/2008 of 27 June 2008 laying down the detailed rules for implementing Regulation (EC) No 1234/2007 as regards marketing standards for eggs for hatching and farmyard poultry chicks
- COMMISSION IMPLEMENTING REGULATION (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors
- COMMISSION IMPLEMENTING REGULATION (EU) NO 1333/2011 OF 19 December 2011 laying down marketing standards for bananas, rules on the verification of compliance with those marketing standards and requirements for notifications in the banana sector
- COMMISSION REGULATION (EC) No 1850/2006 of 14 December 2006 laying down detailed rules for the certification of hops and hop products
- COMMISSION REGULATION (EC) No 1295/2008 of 18 December 2008 on the importation of hops from third countries
- COMMISSION REGULATION (EC) No 445/2007 of 23 April 2007 laying down certain detailed rules for the application of Council Regulation (EC) No

2991/94 laying down standards for spreadable fats and of Council Regulation (EEC) No 1898/87 on the protection of designations used in the marketing of milk and milk products

- COMMISSION REGULATION (EEC) No 2568/91 of 11 July 1991 on the characteristics of olive oil and olive-residue oil and on the relevant methods of analysis
- COMMISSION IMPLEMENTING REGULATION (EU) No 29/2012 of 13 January 2012 on marketing standards for Olive Oil
- COMMISSION REGULATION (EC) No 543/2008 of 16 June 2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for Poultrymeat
- COMMISSION DELEGATED REGULATION (EU) 2018/273 of 11 December 2017 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the scheme of authorisations for vine plantings, the vineyard register, accompanying documents and certification, the inward and outward register, compulsory declarations, notifications and publication of notified information, and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards the relevant checks and penalties, amending Commission Regulations (EC) No 555/2008, (EC) No 606/2009 and (EC) No 607/2009 and repealing Commission Regulation (EC) No 436/2009 and Commission Delegated Regulation (EU) 2015/560
- COMMISSION IMPLEMENTING REGULATION (EU) 2018/274 of 11 December 2017 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the scheme of authorisations for vine plantings, certification, the inward and outward register, compulsory declarations and notifications, and of Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards the relevant checks, and repealing Commission Implementing Regulation (EU) 2015/561
- COMMISSION DELEGATED REGULATION (EU) 2019/33 of 17 October 2018 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation
- COMMISSION IMPLEMENTING REGULATION (EU) 2019/34 of 17 October 2018 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, amendments to product specifications, the register of protected names, cancellation of protection and use of symbols, and of Regulation (EU) No 1306/2013 of the European

Parliament and of the Council as regards an appropriate system of checks

- COMMISSION DELEGATED REGULATION (EU) 2019/934 of 12 March 2019 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards wine-growing areas where the alcoholic strength may be increased, authorised oenological practices and restrictions applicable to the production and conservation of grapevine products, the minimum percentage of alcohol for by-products and their disposal, and publication of OIV files.
- COMMISSION IMPLEMENTING REGULATION (EU) 2019/935 of 16 April 2019 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards analysis methods for determining the physical, chemical and organoleptic characteristics of grapevine products and notifications of Member States decisions concerning increases in natural alcoholic strength

Commission Decision:

- 2010/791/EU: COMMISSION DECISION of 20 December 2010 listing the products referred to in the second subparagraph of point III(1) of Annex XII to Council Regulation (EC) No 1234/2007 (notified under document C(2010) 8434)

Marketing standards apply differently to each product. For example, the dairy regulations covering milk, milk products and spreadable fats set out the required ingredients and composition standards for these products, whereas the beef and veal regulations cover traceability between the animal and the meat and the labelling of the meat.

The CMO Regulation grants powers to the Commission to amend marketing standards under certain constraints as set out in section 1 of chapter 1 of title 2.

313 Section 37 gives the Secretary of State a power to make provision relating to marketing standards for agricultural products marketed in England through regulations. This includes the ability to amend or revoke the current marketing standards as set out in retained EU legislation and in domestic legislation, as well as the flexibility to introduce new standards that will be tailored to suit the domestic agricultural sectors.

314 Subsection (1) gives the Secretary of State the power to make provision concerning marketing standards through regulations.

315 Subsection (1)(a) states that Schedule 4 contains the list of agricultural products for which marketing standards may be made.

316 Subsection (1)(b) states that this power applies to products which are marketed in England.

317 Subsection (2) outlines what matters the regulations made under subsection (1) may concern, for example, the matter of restrictions as regards the use of certain substances and practices, or classification criteria such as grading into classes, weight, sizing and age. The list is non-exhaustive but currently covers the remits of all existing EU marketing standards that will be retained via the EU (Withdrawal) Act 2018.

- 318 Subsection (3) states that regulations made under subsection (1) may include provisions about enforcement. It also outlines what matters these enforcement regulations may concern, for example, conferring powers of entry, creating summary offences punishable with a fine and imposing monetary penalties. This list is non-exhaustive. This allows for the current marketing standards enforcement requirements to be replicated for any new standards which may be introduced, and for existing enforcement requirements to be amended as necessary.
- 319 Subsection (4) states that regulations made under subsection (1) may not authorise entry to a private dwelling, without a warrant issued by a justice of the peace. "Private dwelling" is defined at section 51.
- 320 Subsection (5) gives the Secretary of State the power to make regulations to amend section 37 or Schedule 4 for the reasons specified.
- 321 Subsection (5)(a) gives the Secretary of State the power to add or remove products from the list in Schedule 4.
- 322 Subsection (5)(b) gives the Secretary of State the power to alter the description of a product listed in Schedule 4.
- 323 Subsection (6) states that regulations made under this section are subject to the affirmative resolution procedure.

Section 38: Organic products

- 324 Section 38 provides the Secretary of State, and where applicable, the Devolved Ministers, with the powers to make provision relating to organic certification, the import and export of organic products and the enforcement of organic regulation. It allows the Secretary of State to make new organics regulations and amend the existing regime.
- 325 Subsection (1) confers powers on the Secretary of State to make regulation in relation to organic certification, which is the principle means of regulating organics. Certification can be certification of organic products, of activities relating to organic production, including preparation, processing, distribution and marketing, and of persons carrying out activities relating to organic products.
- 326 Subsections (2), (3) and (4) expand on subsection (1). Subsection (2)(a) allows the Secretary of State to make provision relating to "certification authorities". This allows certification activities to be delegated, for example by the Competent Authority to private Control Bodies, as in the current organics regime. Subsection (3) sets out a non-exhaustive list of purposes for which provisions may be made on the objectives, principles and standards of organic production in relation to organic certification. Subsection (4) expands on the provisions that may be made under subsection (1) in relation to labelling, marketing and sale of organic products.
- 327 Subsection (5) confers a power on the Secretary of State to make provision in relation to the import of organic products into the United Kingdom. Subsection (6) expands on subsection (5) to set out the circumstances within which restrictions or prohibitions on the import of organic products may be made. These circumstances include where imports are recognised as compliant or equivalent with organic standards applicable in the United Kingdom, or where a trade agreement is in place.
- 328 Subsection (7) confers power on the Secretary of State to make provision in relation to the export of organic products from the United Kingdom to overseas countries, including export procedures.

329 Subsection (8)(a) confers a general power to prohibit marketing, sales or other organic production activities in cases of non-compliance, and subsection (8)(b) confers a power to make provision for the charging of fees in respect to functions relating to organic certification.

330 Subsections (8)(c), (9) and (10) relate to enforcement, which is consistent with other enforcement sections in this Act.

331 Subsections (11) and (12) define the terms “marketing”, “organic production” and “organic product”. Subsection (13) specifies the types of products that qualify for organic certification.

Section 39: Organic products: supplementary

332 Section 39 explains who can make the regulations under section 38 and other technical issues related to their making.

333 Under subsection (1) the Secretary of State can exercise the power across the UK, including in relation to devolved matters. Scottish Ministers, Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland can regulate organics in their areas as far as they can exercise powers within their devolved competences.

334 Subsection (2) states that the Secretary of State may only make regulations under section 38 containing provision which could be made by an authority in subsection (1)(b) to (d) with the consent of that authority.

335 Subsections (3) and (4) relate to the parliamentary procedure to be used for making provisions. The affirmative resolution procedure is to be used where the powers relate to the objectives, principles and standards of organic production as referred to in section 38(3) or where section 50 (5) applies. Otherwise the affirmative resolution procedure will apply on first use and the negative procedure thereafter.

Section 40: Carcass classification

Box 6: Carcass classification

Carcass classification, which takes place in slaughterhouses within a prescribed time after the point of slaughter, was originally introduced as a basis for market support, but is now mainly used to calculate the payment due to producers from slaughterhouses.

The carcass classification scales define the characteristics and the quality of the carcass as presented, and as such they can also be seen as equivalent to a marketing standard which makes the market in meat more transparent, helping both buyers and producers.

The current EU legislation pertaining to carcass classification will become retained EU legislation under section 6 of the EU (Withdrawal) Act 2018. The relevant legislation is:

Council Regulations:

- REGULATION (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007

Commission Delegated and Implementing Acts:

- COMMISSION DELEGATED REGULATION (EU) 2017/1182 of 20 April 2017 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the Union scales for the classification of beef, pig and sheep carcasses and as regards the reporting of market prices of certain categories of carcasses and live animals.
- COMMISSION IMPLEMENTING REGULATION (EU) 2017/1184 of 20 April 2017 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the Union scales for the classification of beef, pig and sheep carcasses and as regards the reporting of market prices of certain categories of carcasses and live animals

The Commission's carcass classification powers are currently set out in section 1 (article 10) and section 4 (articles 19-21) of chapter 1 of title 1 of the CMO regulation.

336 Section 40 gives the Secretary of State the power to make provision relating to carcass classification by slaughterhouses in England, through regulations. This will include the ability to amend or revoke the current carcass classification rules as set out in retained EU legislation and in domestic legislation, as well as the flexibility to introduce new standards and rules that will be tailored to suit the domestic agricultural sectors.

337 Subsection (1) gives the Secretary of State the power to make regulations regarding the classification, identification and presentation of bovine, pig and sheep carcasses by slaughterhouses in England.

338 Subsection (2) states that regulations made under subsection (1) may include provision about enforcement. It also outlines what matters these enforcement regulations may concern, for example, conferring powers of entry, creating offences and imposing monetary penalties. This list is non-exhaustive. This will allow for the current carcass classification enforcement requirements to be replicated for any new standards which may be introduced, and for existing enforcement requirements to be amended as necessary.

339 Subsection (3) states that regulations made under subsection (1) may not authorise entry to a private dwelling, without a warrant issued by a justice of the peace. "Private dwelling" is defined at section 51.

340 Subsection (4) states that regulations made under this section are subject to the affirmative resolution procedure.

Section 41: Power to reproduce modifications under section 37 for wine sector

341 Section 41 gives the Secretary of State the power to make provisions relating to marketing standards for products marketed in or exported from England through regulations. This also covers the ability to amend or revoke the current marketing standards, as set out in retained EU legislation. This includes Annex 7 of the CMO Regulation, which outlines the definitions, designations, and sales descriptions of the marketing standards of specific products.

342 Annex 7 is referenced in various articles which appear in section 2 of chapter 1 of title 2 of the CMO Regulation. This area of law is reserved. This section is required for technical reasons in order to ensure that changes made to Annex 7 using the power in Section 37 (to add new products for example) feed through to the relevant articles in section 2 of Chapter 1 of Title 2.

343 Section 41(1) gives the Secretary of State the power to make modifications, through regulations, to Annex 7 of the CMO Regulation. This power will only apply for the purposes of replicating any modifications made to Annex 7 under section 41(1) so that these are reflected in section 2 of Chapter 1 of Title 2 of CMO Regulation.

344 Subsection (2) states that regulations made under this section are subject to the negative resolution procedure, unless section 49(5) applies, in which case the procedure is affirmative.

Section 42: Reports relating to free trade agreements

345 Section 42 requires the Secretary of State to report to Parliament on whether, or to what extent, provisions in free trade agreements (FTAs) that relate to agricultural products are consistent with the maintenance of UK statutory levels of protection in relation to human, animal and plant life or health; animal welfare; and the environment. Subsection (1) states that the Secretary of State must lay such a report before Parliament before any FTA may be laid before Parliament under Part 2 of the Constitutional Reform and Governance Act 2010 (CRaG). Subsection (5) states that copies of the report must be provided to the Devolved Administrations and relevant Parliamentary Committees that appear to the Secretary of State to have an interest in the report.

346 The structure of each individual report will be tailored to the country in question and cover relevant aspects as required. Subsection (4) states that the Secretary of State may seek independent, expert advice when preparing each report.

347 Subsection (6) sets out exceptions for the EU future relationship and certain FTAs negotiated with parties to existing FTAs. This section does not apply to a UK FTA if each other party is the EU or a Member State of the EU. Nor does it apply to UK FTAs negotiated before the second anniversary of IP completion if each other party and the EU were parties to an FTA that was in effect before Exit day.

Part 6: WTO Agreement on Agriculture

348 Sections 43-45 provide the Secretary of State with the powers to ensure the UK's compliance with its obligations under the World Trade Organisation (WTO) Agreement on Agriculture (AoA).

349 The "Agreement on Agriculture" – as referred to in subsections 43(1), 43(5), 44(1), 44(4), 44(6), 44(8) and 45(2) - is an international treaty that sets out a number of general rules and commitments on agricultural trade practices as agreed by WTO members. These measures fall under three pillars; disciplines on domestic support, market access and export subsidies. The EU is a WTO member and the UK is also a member of the WTO in its own right; as such they are both signatories to the AoA and after EU exit the UK will continue to be subject to any commitments and obligations under the AoA. The UK Government will be responsible for ensuring that all UK policies on domestic support in relation to agriculture are WTO compliant.

350 The domestic support provisions relate to various forms of (direct and indirect) government financial support given to producers of certain agricultural products (as defined in Part I of the AoA). Payments made to agricultural producers during the agricultural transition and through any future domestic support schemes will need to comply with the AoA.

351 This section ensures that all support schemes are properly classified (as amber, green or blue box), and if they fall into the amber box, that they do not cause the UK to breach its Aggregate Measurement of Support (AMS) commitment (See Boxes 7-10). This section also ensures that the UK is able to meet its obligations to make notifications required under the AoA and respond to any challenges from other WTO members.

Box 7: Green box

Green box: Measures that have no, or at most minimal, trade-distorting effects (such as effects on prices or production levels). There is currently no WTO requirement to limit these payments but to be green box compliant (and hence exempt from the 'reduction commitment') they must meet both the basic and the scheme-specific criteria set out in Annex 2 of the AoA.

The basic criteria (set out in Annex 2 (paragraph 1) of the AoA) require support to be provided through a publicly funded government programme rather than transfers from consumers; and that the support shall not have the effect of providing price support to producers.

Scheme-specific criteria vary according to the intended aims of the policy and are set out in paragraphs 2-13 of Annex 2 of the AoA. Some examples of the scheme-types listed include: **decoupled income support** (direct payments decoupled from (i.e. not linked to) levels of production) and **payments under environmental programmes**. To be green box compliant, programmes must comply with the relevant Annex 2 criteria including, for payments made under environmental programmes that they must be limited to the extra costs or loss of income involved in complying with the programme.

Other examples include **structural adjustment assistance provided through investment aids** (the relevant green box criteria include a condition that eligibility for such payments must be determined by reference to clearly defined criteria in government programmes designed to assist the financial or physical restructuring of a producer's operations in response to objectively demonstrated structural disadvantages) and **payments under regional assistance programmes** whereby the relevant green box criteria include a condition that the payments must be limited to the extra costs or loss of income involved in undertaking agricultural production in the prescribed area.

Box 8: Blue box

Blue box schemes include direct payments coupled to limited levels of production. Such schemes do not meet the green box criteria for direct payments (because they are coupled (or linked to) levels of production) but it is considered that their negative effects are reduced by meeting the 'production-limiting' criteria set out in Article 6 paragraph 5(a) of the AoA. Hence, like green box schemes, blue box schemes are currently exempt from the reduction commitment (and are not included in the calculation of the AMS) as long as one or more of the following conditions is met:

- payments are based on fixed area and yields; or
- payments are made on 85 per cent or less of the base level of production (according to a fixed reference period); or
- livestock payments are made on a fixed number of head.

Box 9: Amber box

Payments that do not meet either the green box or blue box criteria are by default classified as amber box. Amber box payments may have trade-distorting effects and are therefore

limited under the AoA.

All WTO members are allowed to provide *de minimis* levels of amber box support. For developed countries, the *de minimis* allowance is up to 5% of the value of production (for that product) for product-specific support plus 5% of the total value of production for non-product-specific support.

Some WTO members, including the UK, have provision to provide additional levels of amber box domestic support (above *de minimis* levels) but there is an upper limit on this additional support referred to as the AMS (Aggregate Measurement of Support) commitment.

The EU notifies the AMS to the WTO on behalf of all EU Member States combined. On leaving the European Union, the UK will be required to make its own annual AMS notification to the WTO.

Box 10: Aggregate Measurement of Support (AMS)

The AMS is the annual level of domestic support given to producers of the agricultural products listed in Annex 1 of the AoA not including support that is exempt under Article 6 of the AoA (blue box support), support that is exempt under Annex 2 of the AoA (green box support) or amber box support made within *de minimis* levels. Where amber box support exceeds *de minimis* levels all of that support must be included in the AMS calculation, not just the amount above *de minimis* levels.

352 Subsection 43(2) links the three sections (43, 44 and 45) which give the Secretary of State power to make regulations for securing compliance with obligations of the United Kingdom under the AoA (the “purpose” specified in subsection 43(1)).

Section 43: Power to make regulations for securing compliance with WTO

Agreement on Agriculture: general

353 Subsection (3) enables the Secretary of State to confer functions on another person; provide for the delegation of functions and enable any other person to exercise a discretion in relation to the functions outlined above. The difference between (3)(a) and (3)(b) is that (a) provides for the regulations themselves to confer functions on another person, whereas (b) enables the Secretary of State to delegate functions through regulations.

354 Subsection (4) specifies that any regulations introduced under this section are subject to the affirmative resolution procedure.

355 Subsection (5) contains definitions.

Section 44: Regulations under section 43: limits on provision of domestic support in the United Kingdom

356 WTO agreements permit some forms of trade-distorting support (classified by the WTO as amber box support). Controls on amber box use provide for some WTO members, including the UK, to provide capped levels of (permitted) trade-distorting support. Section 44 gives the Secretary of State powers to set limits on levels of domestic support (for the purpose of securing compliance with obligations of the United Kingdom under the AoA).

357 Subsection (1) clarifies that this subsection applies to domestic support for which a limit applies to the United Kingdom under the AoA (domestic support of the “relevant kind”). Subsection (2) provides for the possibility that the limits on domestic support under the AoA may arise through exception for certain types of support, or by specific limits on certain types of support, or by a combination of these two mechanisms (note that amber box support is ‘identified’ in the AoA as support that is not exempted under either Annex 2 or Article 6 of the AoA (see Boxes 7-10 above)).

358 Subsection (3)(a) gives the Secretary of State powers to set a limit on domestic support of the relevant kind for the United Kingdom as a whole, which under power in subsection (4), may be lower than the total amount allowable to the United Kingdom under the AoA to allow for a portion of that limit to be reserved for the purposes described in subsection (8); subsection (3)(b) provides power to divide the remainder of the limit between England, Wales, Scotland and Northern Ireland.

359 Subsection (8) sets out the matters that the Secretary of State may take into account when deciding the limits set in regulations made under subsection (3) including domestic support that may need to be given across the whole of the UK, including crisis measures, and domestic support of the relevant kind given by offshore territories where that spending counts towards the amount allowable to the United Kingdom under the AoA.

Section 45: Regulations under section 43: classification of domestic support

360 WTO members including the United Kingdom are obliged to classify domestic support in accordance with the definitions set out in the AoA. Subsections (2) and (3) give the Secretary of State the power to set out in regulations a process designed to classify and to facilitate review of, the classification of domestic support in accordance with this obligation. Subsection (3)(b) gives the Secretary of State powers to set out in regulations a process for resolving disputes between authorities regarding classification. The Secretary of State will be responsible for defending the classification of UK domestic support measures at the WTO and therefore may reserve the right to make a final binding decision on classification.

361 WTO members are required to make notifications in support of their AoA obligations, including an annual notification on levels of domestic support to agricultural producers, and justification where support has been classified as green box or blue box.

Part 7: Wales and Northern Ireland

Section 46: Wales

362 Further provisions relating to Wales can be found in Schedule 5. This is at the request of the Welsh Government. These powers are intended to be time limited until a Welsh Agriculture Bill can be brought forward.

Section 47: Duration of provision in relation to Wales

363 Section 47 ensures that the following provisions expire at the end of 2024; section 46 and Schedule 5, section 52(b) and, in Schedule 7, Part 2, section 56(1)(g), and in section 57(3), paragraph (b) and, so far as relating to Part 2 of Schedule 7, paragraph (c). It also allows Welsh Ministers, by regulations, to make transitional, transitory or saving provisions in connection with this section.

364 Subsections (9) and (10) provide that regulations made under this section are subject to the negative resolution procedure, unless they are regulations which modify primary legislation (with or without other provision), in which case they are subject to the affirmative resolution procedure.

Section 48: Northern Ireland

365 Further provisions relating to Northern Ireland can be found in Schedule 6. This is to enable DAERA to continue to make payments to farmers and land managers after the UK leaves the EU and to ensure that Executive Ministers have the flexibility to develop policy in Northern Ireland.

Part 8: General and Financial Provisions

Section 49: Data protection

366 This section seeks to preserve the status of existing data protection legislation including the General Data Protection Regulation. This is to ensure that no power or duty conferred under this Act will erode existing data protection legislation.

367 Subsection (1) sets out that this section applies to duties or powers to disclose or use information, imposed or conferred by Parts 1 to 6 of this Act.

368 Subsection (2) specifies that any duty or power in the Act that would disclose or use information must not contravene the data protection legislation.

369 Subsection (3) defines data protection legislation.

Section 50: Regulations

370 Subsection (1) specifies that any power conferred on the Secretary of State or Welsh Ministers to make regulations under this Act is exercisable by statutory instrument

371 Subsection (2) specifies that any power conferred on the Department for Agriculture, Environment and Rural Affairs to make regulations under this act is exercisable by statutory rule.

372 Subsection (3) details the scope of powers to make regulations under this Act.

373 Subsection (4) specifies that by virtue of subsection (3)(d) powers to make regulations includes the power to modify primary legislation, retained direct EU legislation or subordinate legislation.

374 Subsection (5) details that regulations made under subsection (3)(d) which modify primary legislation are subject to the affirmative resolution procedure.

375 Subsection (6) specifies the processes by which the appropriate authority may make regulations under the affirmative resolution procedure in this Act.

376 Subsection (7) specifies the processes by which the appropriate authority may make regulations under the negative resolution procedure in this Act.

377 Subsection (8) specifies that any regulations made under this Act under the negative resolution procedure, may by regulations be made under the affirmative resolution procedure instead.

378 Subsection (9) specifies that section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies in relation to the laying of a document before the Northern Ireland Assembly.

379 Subsection (10) specifies that this section does not apply to regulations made under section 57.

Section 51: Interpretation

380 This section provides information on how terms should be interpreted in the Act.

Section 52: Consequential amendments

381 This section makes consequential amendments in respect of Schedule 7 and the CMO Regulation.

Section 53: Power to make consequential etc provision

382 Subsection (1) specifies that Secretary of state may, subject to subsections (5) and (6) by regulations make supplementary, incidental or consequential provision in relation to any provision of this Act.

383 Subsection (2) specifies that the Welsh Ministers may make supplementary, incidental or consequential provision in connection with subsections (2)(a)(b)(c)(d)(e)(f), so far as they apply in relation to Wales.

384 Subsection (3) specifies that the Scottish Ministers may make supplementary, incidental or consequential provision in the law of Scotland in connection with subsections (3)(a)(b), so far as relating to Scotland.

385 Subsection (4) specifies that DAERA may by regulations make supplementary, incidental or consequential provision in the law of Northern Ireland in connection with (4)(a)(b)(c)(d), as so far as they apply in relation to Northern Ireland.

386 Subsections (5) specifies where Secretary of State may not make regulations under subsection (1).

387 Subsections (6) specifies where the Secretary of State may make regulations under subsection (1).

388 Subsection (7) specifies that regulations made under section (1) may modify primary legislation, retained direct EU legislation or subordinate legislation in connection with any provision in this Act.

389 Subsection (8) specifies that regulations made under section (1) that would modify primary legislation are subject to the affirmative resolution procedure.

390 Subsection (9) specifies that other regulations under section (1) are subject to the negative resolution procedure.

Section 54: Power to make transitional etc provision

391 Subsection (1) details that the appropriate authority may make regulations in connection with the commencement of any provision of this Act.

392 Subsection (2) details which appropriate authority may make regulations in connection with the commencement of particular provisions of this Act.

Section 55: Financial provision

393 This section details the purposes for which Parliament will be required to provide money.

Section 56: Extent

394 Subsection (1) lists which provisions of the Act extend to England and Wales only.

395 Subsection (2) lists which provisions of the Act extend to Northern Ireland only.

396 Subsection (3) lists which provisions of the Act extend to England, Wales and Scotland only.

397 Subsection (4) specifies that all other provisions of the Act not listed in subsections (1) – (3) extend to England and Wales, Scotland and Northern Ireland.

Section 57: Commencement

- 398 Subsection (1) specifies the provisions of the Act which come into force on the day of Royal Assent.
- 399 Subsection (2) details which provisions come into force by regulations on a day appointed by the Secretary of State.
- 400 Subsection (3) details which provisions come into force by regulations on a day appointed by Welsh Ministers.
- 401 Subsection (4) details which provisions come into force by regulations on a day appointed by the Department of Agriculture, Environment and Rural Affairs.
- 402 Subsection (5) specifies that different days may be appointed for different purposes.
- 403 Subsection (6) specifies that other provisions not falling within subsections (1)-(5) will come into force two months after the day on which the Act is passed.

Section 58: Short title

- 404 This section contains the short title by which the Act may be cited.

Schedule 1: Agriculture sectors relevant to producer organisation provisions

- 405 Schedule 1 lists the agricultural sectors relevant to producer organisation provisions.
- 406 Further detail on what is covered by each of these sectors will be expounded in subsequent regulations; however, the intention is to apply these terms in line with their clearly understood meaning in common trade usage.
- 407 For example, in the ‘beef sector’, a producer would be understood as including an individual/business raising live animals intended for slaughter, and a processor would be understood as an individual/business involved in secondary activity (slaughtering, processing, butchering etc.). Producers of composite goods (such as meat pies or beef-based ready meals) would not be considered as active in the beef sector. Instead they would be understood as part of the ‘food manufacturing sector’ (not covered by these producer organisation provisions).

Schedule 2: Recognised organisations: Competition exclusions

- 408 Paragraph 1 of Schedule 2 amends Schedule 3 of the Competition Act 1998, in order to domesticate exclusions from competition law that are currently available to recognised POs in the CMO Regulation.
- 409 Paragraph 2(1) amends paragraph 9 of Schedule 3 to the Competition Act, in relation to general exclusions for agricultural products.
- 410 Paragraph 2(2) replaces paragraph 9(1) of Schedule 3 to the Competition Act, which gives domestic effect to the EU exemptions with a new subparagraph setting out the conditions of derogations under the new regime. That is, the Chapter 1 prohibitions (the general prohibition of anti-competitive behaviour) is not applicable to agreements between the members of a recognised PO, or members of an APO, who collectively carry out planning production, optimisation of production costs, product placing on the market or negotiation of supply contracts (or any combination thereof). This exclusion is referred to as the “RPO exclusion”. The paragraph introduces two conditions, upon which the application of the RPO exclusion is dependent.

- 411 Condition A is that a PO must concentrate the supply of produce, and place said produce on the market. These actions must occur whether or not there is a transfer of ownership of the products to the PO. This is so that the PO can administer contracts and transactions on behalf of its members without the additional necessity of purchasing the actual products. Subsection (b) sets out that the same conditions apply to APOs. APOs must concentrate the supply of its PO members' products, and place those products on the market, whether or not a transfer of ownership occurs.
- 412 Condition B sets out that a member of a PO (representing a certain sector) cannot be a member of another PO that operates in the same sector. Subsection (b) sets out that the same conditions apply to the constituent PO members of an APO; they cannot be members of another APO from the same agricultural sector.
- 413 Sub-paragraph (1E) provides that the Secretary of State may decide that the RPO exclusion may still apply, even if condition B is not met, where a producer has production units located in different parts of the country. It further states that the Secretary of State is empowered to decide that the RPO exclusion applies in other circumstances, where Condition B is not met, but the application of the exclusion is appropriate.
- 414 Paragraphs 2(3), (4) and (5) make operational changes to the Competition Act to account for the UK's withdrawal from the EU.
- 415 Paragraph 3 inserts paragraph 10 in Schedule 3 to the Competition Act which establishes the competition law exemptions that are available to recognised IBOs. IBOs operate vertically along the supply-chain (i.e. are comprised of members involved in other activities beyond primary production, such as processing or manufacturing).
- 416 Sub-paragraph (2) of paragraph 10 in Schedule 3 to the Competition Act establishes a further condition which sets out that the competition exclusion available for recognised IBOs ("the RIBO exclusion") is dependent on notifying the Competition and Markets Authority (CMA) of the agreement and receiving notice that the CMA is satisfied that application of the RIBO exclusion is appropriate. Subparagraph (3) sets out that the CMA must consider, in deciding the above, whether the benefit of the RIBO exclusion outweighs any potential impact on fair competition in the UK.
- 417 Sub-paragraph (4) of paragraph 10 in Schedule 3 to the Competition Act empowers the CMA to decide, at any time, that a RIBO exclusion for a particular agreement is no longer in effect.
- 418 Sub-paragraph (5) of paragraph 10 in Schedule 3 to the Competition Act sets out that the existing conditions in sub-paragraphs (4)-(8) of paragraph 9 of Schedule 3 of the Competition Act, which set out that further information, could be requested to inform a decision on a general agricultural exclusion, are replicated for the Secretary of State when deciding whether to grant a RIBO exclusion.

Schedule 3: Agricultural tenancies

- 419 Schedule 3 Part 1 specifies amendments to the Agricultural Holdings Act 1986 ("the 1986 Act") and Part 2 specifies amendments to the Agricultural Tenancies Act 1995 ("the 1995 Act") as enabled by section 36 of this Agriculture Act.

Part 1 Introductory

- 420 Paragraph 1 provides that the 1986 Act is amended as set out below.

Notices relating to third party determination of rent

421 Paragraphs 2 and 3 amend section 12 and Schedule 2 of the 1986 Act to replace a demand for arbitration in the rent review process with a notice of determination which may be followed by either arbitration or third-party determination if the rent review is not agreed by the parties. This enables a third-party to be appointed to resolve a rent dispute at any time before the rent review date (where both parties agree to that appointment) as an alternative to arbitration.

Appointment of arbitrators

422 Paragraphs 4 to 6 make amendments to sections 12, 22, and 84 of the 1986 Act to provide that the President of the Royal Institution of Chartered Surveyors (RICS), the President of the Central Association of Agricultural Valuers (CAAV), and the Chair of the Agricultural Law Association (ALA) are listed as persons that tenants and landlords may apply to for the appointment of an arbitrator to resolve disputes arising under the 1986 Act. These amendments widen the list of persons able to make such appointments from the current provision of only the President of RICS so that a wider pool of arbitrators is made available and tenants and landlords have more choice. Paragraphs 6(7) and 6(8) enables the Secretary of State in relation to England and the Welsh Ministers in relation to Wales to make regulations to amend the list of persons able to appoint arbitrators so that the list can be updated as needed from time to time.

Requests for landlord's consent or variation of terms

423 Paragraph 7 amends the 1986 Act by adding a new section 19A providing powers for the Secretary of State in relation to England and the Welsh Ministers in relation to Wales, to make provision through regulations to enable tenants to refer to arbitration or third party determination requests for landlord's consent to activities that are restricted under the terms of their tenancy agreement or requests for a variation of terms, where that request:

- in relation to England relates to the tenant accessing financial assistance schemes under sections 1, 2(4) and 21 of the Agriculture Act, or so that the tenant can meet a statutory obligation; or
- in relation to Wales relates to the tenant accessing financial assistance in exceptional market conditions under paragraph 7 of Schedule 5 of the Agriculture Act, or so that the tenant can meet a statutory obligation.

Arbitration or third-party determination of rent: relevant factors

424 Paragraph 8 amends Schedule 2 of the 1986 Act (which sets out the process for arbitration or third party determination of rent review disputes) to specify that if, by written agreement, the tenant has agreed to make payments to the landlord for improvements to the holding that are wholly or partly financed by the landlord, such payments are to be disregarded from considerations of changes to rent and also that any benefit from the improvement to the tenant is also to be disregarded from rent considerations whilst the tenant is still making payments for that improvement.

Notices to quit: cases where consent of tribunal not required

425 Paragraph 9 amends Part I of Schedule 3, Case A of the 1986 Act (which governs the procedure for notices to quit for some tenants of Local Authority Smallholdings) by removing sixty-five as the specified age when a retirement notice to quit can be issued by the landlord and replacing it with pensionable age (the age at which the tenant can claim their State Pension as defined by Part 1 of Schedule 4 of the Pensions Act 1995). This updates the Case A provisions so that they are in line with State Pension legislation.

Succession on death or retirement: condition relating to occupation of commercial unit (the Commercial Unit Test)

426 Paragraphs 10 to 16 amend the 1986 Act to repeal all provisions relating to the Commercial Unit Test (which specifies that an applicant succession tenant who already occupies a commercial unit of land is not eligible to succeed to an Agricultural Holdings Act tenancy) so that these provisions will no longer apply when the provision is commenced. Section 57 of the commencement provisions of this Agriculture Act provides that the provisions in this Schedule 3 will come into force two months after Royal Assent, except for the provisions relating to the repeal of the Commercial Unit Test and the Suitability Test which will come into force by regulations made by the Secretary of State in relation to England and the Welsh Ministers in relation to Wales. This is so that the repeal of the Commercial Unit Test provisions will not take effect until the new Suitability Test regulations are made and commenced.

Succession on death or retirement: condition relating to suitability (the Suitability Test)

427 Paragraph 17 of this Schedule amends section 39(8) of the 1986 Act (applications for tenancy of holding) to confer a power on the Secretary of State in relation to England and the Welsh Ministers in relation to Wales, to make regulations specifying the criteria that must be considered when determining a person's suitability to become a tenant of the holding and also to have regard for any views stated by the landlord on the tenant's suitability. The provision specifies that the regulations must relate to the person's capacity to farm the holding commercially to a high standard of efficient production and care for the environment. The provisions also specify that the regulations may include criteria such as the person's experience, training or skills in agriculture and business management, the person's health, financial standing and character and criteria relating to the character and condition of the holding and the terms of the tenancy.

428 Paragraph 18 makes consequential amendments to other sections of the 1986 Act relating to this new provision.

Succession on retirement: minimum age of retiring tenant

429 Paragraphs 19 and 20 make amendments to sections 51 and 53 of the 1986 Act to repeal the minimum age of sixty-five before which applications to the First-tier Tribunal (Property Chamber) Agricultural Land and Drainage Tribunal for succession on retirement can be made, so that applications for succession on retirement may be made at any age in future.

Regulations and orders

430 Paragraph 21 amends section 94 (orders and regulations) of the 1986 Act to update the provisions relating to powers to make regulations and orders so that they reference either House of Parliament in the case of a statutory instrument made in England by the Secretary of State or Lord Chancellor, and the Senedd Cymru in relation to a statutory instrument made by the Welsh Ministers in Wales.

Part 2 Introductory

431 Paragraph 22 provides that the 1995 Act is amended as set out below.

Appointment of arbitrators

432 Paragraphs 23 to 29 make amendments to sections 12, 19, 22, 28, 30, 38 and 39 of the 1995 Act to extend the list of professional authorities that tenants and landlords may apply to for the appointment of an arbitrator to resolve disputes arising under the 1995 Act so that it is the same as those listed in section 84 of the 1986 Act. This extends the list of professional authorities able to appoint arbitrators under the 1995 Act from the current provision of only the President of the Royal Institution of Chartered Surveyors (RICS) to include the President of the Central Association of Agricultural Valuers (CAAV) and the Chair of the Agricultural

Law Association (ALA) so that a wider pool of arbitrators is made available and tenants and landlords have more choice. Any changes made to that list by regulations made under the powers given to the Secretary of State in relation to England and the Welsh Ministers in relation to Wales (in section 84 of the 1986 Act) will also apply to the 1995 Act.

Schedule 4: Agriculture products relevant to marketing standards provisions

433 Schedule 4 lists the agricultural products to which marketing standards apply (Section 37).

Schedule 5: Provisions relating to Wales

434 Schedule 5 extends similar powers to the Welsh Ministers as those conferred on the Secretary of State in Part 1 (Chapters 2 and 3), Part 2 (Chapter 2), Part 3 (Chapter 1) and Part 5 of the Act. The powers are intended to be temporary and section 47 (duration of provision in relation to Wales) provides that Schedule 5 and certain related provisions will expire at the end of 2024 (subject to certain savings provision as set out in section 47). Alternative provision will be made by a Wales Agriculture Bill to be introduced in the Senedd. The powers in this Act are needed now to ensure continuity and ensure effective operation of the internal market in the UK.

Schedule 5, Part 1: Financial support after exiting the EU

435 Paragraphs 1 to 3 of Part 1 of Schedule 5 provide for the payment of Direct Payments in Wales under the basic payment scheme.

436 Paragraph 1(1) sets out definitions for terms used in paragraphs 1 to 3. Paragraph 1(2) defines the term “basic payment scheme” as covering the basic payment, the greening component, and the young farmers payment. A difference from the equivalent provision for England (Part 1, Chapter 2, section 7), is that paragraph 1 also provides that the basic payment scheme includes redistributive payments. A redistributive payment is a payment for a limited number of first hectares in addition to the payment rate per hectare calculated for all of the land receiving a payment under the scheme. These payments are made in Wales and are not made in England.

437 Paragraph 2 of Schedule 5 confers on the Welsh Ministers powers to modify certain legislation governing the basic payment scheme so far as it operates in relation to Wales. Paragraph 2(1) specifies five purposes for which the legislation may be modified:

- a) Simplifying the administration of the scheme or otherwise making its operation more efficient or effective;
- b) removing provisions which are spent or of no practical utility;
- c) removing or reducing burdens, or the overall burdens, on persons applying for, or entitled to, direct payments under the scheme or otherwise improving the way that the scheme operates in relation to them;
- d) securing that any sanction or penalty imposed under the scheme is appropriate and proportionate;
- e) limiting the application of the scheme to land in Wales only.

438 Paragraph 2(2) clarifies that the Welsh Ministers may terminate greening payments in relation to Wales using the powers available under paragraph 2(1), so long as that provision does not reduce the amount of a direct payment to which a person would have been entitled had the provision not been made.

- 439 Paragraph 2(3) defines “burden” (as used in paragraph 2(1)(c)) as including a financial cost, an administrative inconvenience, or an obstacle to efficiency, productivity or profitability.
- 440 Paragraph 2(4) provides that regulations made under this paragraph are subject to the negative procedure, unless section 50(5) applies, in which case the procedure is affirmative. These powers reflect those available to the Secretary of State under section 9 of the Act in relation to England.
- 441 Paragraph 3 of Schedule 5 confers on the Welsh Ministers powers to modify legislation to secure continuation of the basic payment scheme in Wales after 2020. Paragraph 3(6) provides that regulations made under this paragraph are subject to the affirmative resolution procedure. These powers reflect those available to the Secretary of State under section 10 of the Act in relation to England.
- 442 Paragraph 4 of Schedule 5 confers on the Welsh Ministers powers to modify, so far as it operates in relation to Wales, retained direct EU legislation relating to the financing, management and monitoring of the common agricultural policy, and subordinate legislation relating to that legislation.
- 443 Paragraphs 4(1) and (2) provide that the Welsh Ministers may make regulations to modify that legislation, so far as it operates in relation to Wales, for one or more specified purposes. Those purposes are:
- a) securing that any provision of that legislation ceases to have effect, or;
 - b) simplifying the operation of any provision of such legislation, or making its operation more efficient or effective;
 - c) removing or reducing burdens, or the overall burdens, imposed by such legislation on persons applying for, or in receipt of, payments governed by the legislation, or otherwise improving the way that the legislation operates in relation to such persons;
 - d) securing that any sanction or penalty imposed by such legislation is appropriate and proportionate.
- 444 Paragraph 4(5) provides that regulations made under this paragraph are subject to the negative resolution procedure unless section 50(5) applies, in which case the procedure is affirmative. These powers reflect those available to the Secretary of State under section 14 of the Act in relation to England.
- 445 Paragraph 5 of Schedule 5 confers on the Welsh Ministers powers to modify retained direct EU legislation relating to apiculture and subordinate legislation relating to that legislation. Paragraph 5(2) defines “retained direct EU legislation relating to apiculture” by reference to a non-exhaustive list. Paragraph 5(3) provides that regulations made under this paragraph are subject to the affirmative resolution procedure unless section 50(5) applies, in which case the procedure is affirmative.
- 446 Paragraph 6 of Schedule 5 confers on the Welsh Ministers powers to modify retained direct EU legislation relating to support for rural development and subordinate legislation relating to that legislation. Paragraph 6(2) defines “retained direct EU legislation relating to support for rural development” by reference to a non-exhaustive list. Paragraph 6(3) provides that regulations made under this paragraph are subject to the affirmative resolution procedure. These powers could be used to make extensions of schemes and projects beyond the existing RDP 2014-20 or to operate a domestic Welsh equivalent.

Schedule 5, Part 2: Intervention in Agricultural Markets

- 447 Paragraph 7 of Schedule 5 enables the Welsh Ministers to make and publish a declaration if the Welsh Ministers consider there are exceptional market conditions. Paragraph 7(2) sets out a two-part test to identify where exceptional market conditions may exist. Paragraph 7(3) sets out what must be included in the declaration. Paragraph 7(4) states that the declaration has effect until the specified end-date, which must be no more than three months from the date when it is published. Paragraph 7(5) allows the Welsh Ministers to revoke the declaration made under Paragraph 7(1) by making and publishing a further declaration to that effect. Paragraph 7(6) provides a power to extend the declaration made under paragraph 7(1) for a period not exceeding three months, by making and publishing a declaration to that effect at any time in the 7 days ending with the day of the original declaration's end date. Paragraph 7(7) allows the Welsh Ministers to make a new declaration of exceptional market conditions relating to the same events if the exceptional market conditions continue. Paragraph 7(8) states that declarations made under paragraph 7(6) must be published and then laid before Senedd Cymru as soon as practicable. Paragraph 7(9) explains the meaning of certain terms used in paragraphs 7 and 8.
- 448 Following a declaration under paragraph 7, the Welsh Ministers may then exercise the powers conferred under paragraph 8, until the declaration is no longer in effect. Paragraph 8(2) provides that the Welsh Ministers may give, or agree to give, financial assistance to support agricultural producers in Wales whose incomes are being, or are likely to be, adversely affected by the exceptional market conditions described in the declaration. Paragraph 8(3) provides that the Welsh Ministers may also make such use as they consider appropriate of any available powers under retained direct EU legislation which provides for the operation of public intervention and aid for private storage mechanisms in response to the declaration.
- 449 Paragraph 9 of Schedule 5 confers on the Welsh Ministers powers to modify retained direct EU legislation relating to public market intervention or aid for private storage so that operation of such schemes may be tailored to prevailing domestic circumstances when they are used in a period of exceptional market conditions established under paragraph 7.
- 450 Paragraph 9(2) provides that the Welsh Ministers may make regulations to modify that legislation for the purpose of securing that such legislation ceases to have effect in relation to Wales otherwise than in connection with exceptional market conditions that are the subject of a declaration under paragraph 7, or altering the operation of that legislation in relation to Wales otherwise than in connection with such market conditions (and pending the legislation ceasing to have effect).
- 451 Paragraph 9(3) states that the power conferred by paragraph 9(1) includes the power to make specific amendments to the public intervention and private storage aid schemes that apply only in relation to the exceptional market conditions which are the subject of a particular declaration specified in the regulations.
- 452 Paragraph 9(4) states that the powers conferred by paragraphs 9(1) and (2) include the power to change what agricultural products are eligible for public intervention and private storage aid.
- 453 Paragraph 9(5) provides that regulations made under this paragraph are subject to the negative resolution procedure, unless section 50(5) applies, in which case the procedure is affirmative.
- 454 Paragraph 9(6) defines "retained direct EU legislation relating to public market intervention or aid for private storage" for the purposes of this paragraph.

455 Paragraph 9(7) states that until paragraph 2 of Schedule 7 to the Act, which amends the existing exceptional measures powers in the CMO (articles 219, 220, 221 and 222 of EU Regulation 1308/2013), is in force, references in this paragraph to exceptional market conditions subject to a declaration under paragraph 7 also includes reference to actions being undertaken under the existing exceptional measures powers.

456 The powers conferred on the Welsh Ministers in Part 2 of Schedule 5 are very similar to the intervention powers conferred on the Secretary of State under Part 2, Chapter 2 of the Act in respect of England (sections 20-22).

Schedule 5, Part 3: Collection and sharing of data

457 Part 3 of Schedule 5 confers on the Welsh Ministers powers to collect and share data from those within or closely connected to the agri-food supply chain.

458 Paragraph 10(1) provides that the Welsh Ministers 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 Wales.

459 Paragraph 10(2) provides that the Welsh Ministers may make regulations requiring persons referred to in paragraph 10(1) to provide such information. Paragraph 10(8) provides that regulations made under this paragraph are subject to the affirmative resolution procedure.

460 Paragraph 11 defines the meaning of certain terms for the purposes of this Part, including "agri-food supply chain" and persons in and closely connected with such supply chains.

461 Paragraph 12 provides that the requirement for data to be collected and shared under paragraphs 10(1) and (2) must specify purposes for which the information may be processed. Paragraph 12(4) lists the purposes which include, for example, helping farmers and producers to increase productivity, manage risk and market volatility, and to support animal and plant health.

462 Paragraph 13 imposes a duty on the Welsh Ministers to publish a draft requirement before a particular requirement for collection of data is imposed under paragraph 10(1). Paragraph 13(1) provides that the final requirement may be imposed in either its draft or a revised form, taking account of comments received in the published timeframe (and any other relevant matters).

463 Paragraph 13(2) states that the requirement may be imposed on a person at any time once the final drafting has been agreed, when the person is within the published description.

464 Paragraph 14 sets out the procedures for processing a requirement to provide information under paragraphs 10(1) and (2).

465 Paragraph 15 provides that the Welsh Ministers may make regulations in relation to enforcement of a requirement to provide information under paragraphs 10(1) and (2).

466 Paragraph 15(6) provides that regulations under this paragraph are subject to the affirmative resolution procedure.

467 The powers conferred on the Welsh Ministers in Part 3 of Schedule 5 are the very similar to the collection and data sharing powers conferred on the Secretary of State under Part 3, Chapter 1 of the Act in respect of England.

Schedule 5, Part 4: Marketing standards and carcass classification

- 468 Part 4 of Schedule 5 confers on the Welsh Ministers powers in respect of marketing standards in Wales and carcass classification by slaughterhouses in Wales.
- 469 Paragraph 16(1) provides that the Welsh Ministers may make provision relating to marketing standards for agricultural products marketed in Wales. This includes the ability to amend or revoke the current marketing standards as set out in retained EU legislation and in domestic legislation, as well as the flexibility to introduce new standards that will be tailored to suit the domestic agricultural sectors.
- 470 Paragraph 16(2) provides a non-exhaustive list of certain matters that the regulations may cover; for example, criteria such as appearance, the type of farming or production method and matters relating to storage and transport.
- 471 Paragraph 16(3) provides that the regulations make may provision about enforcement and outlines some of the matters that may be covered (amongst other things), such as, for example, conferring powers of entry, creating summary offences and imposing monetary penalties. The list is non-exhaustive. This allows for the ability to amend or revoke the current marketing standards enforcement requirements to be replicated for any new standards which may be introduced, and for existing enforcement requirements to be amended as necessary.
- 472 Paragraph 16(4) states that regulations made under paragraph 16 may not authorise entry to a private dwelling, without a warrant issued by a justice of the peace. "Private dwelling" is defined at section 51.
- 473 Paragraph 16(5) provides that regulations made under this paragraph are subject to the affirmative resolution procedure.
- 474 Paragraph 17(1) contains the list of agricultural products for which marketing standards may be made.
- 475 Paragraph 17(3) provides that the Welsh Ministers may make regulations to amend the list of products for which marketing standards may be set, by adding or removing a product from the list, or altering the description of a product.
- 476 Paragraph 17(4) provides that regulations made under this paragraph are subject to the affirmative resolution procedure.
- 477 Paragraph 18(1) confers powers on the Welsh Ministers to make provision about the classification, identification and presentation of bovine, pig and sheep carcasses by slaughterhouses in Wales. This includes the ability to amend or revoke the current carcass classification rules as set out in retained EU legislation and in domestic legislation, as well as the flexibility to introduce new standards and rules that will be tailored to suit the domestic agricultural sectors.
- 478 Paragraph 18(2) states that regulations made under paragraph 18(1) may include provision about enforcement and outlines some of the matters that may be covered (amongst other things), such as, for example, conferring powers of entry, creating summary offences and imposing monetary penalties. The list is non-exhaustive. This will allow for the current carcass classification enforcement requirements to be replicated for any new standards which may be introduced, and for existing enforcement requirements to be amended as necessary.
- 479 Paragraph 18(3) states that regulations made under paragraph 18 may not authorise entry to a private dwelling, without a warrant issued by a justice of the peace. "Private dwelling" is defined at section 51.

480 Paragraph 18(4) provides that regulations made under this paragraph are subject to the affirmative resolution procedure.

481 The powers conferred on the Welsh Ministers in Part 4 of Schedule 5 are very similar to the marketing standards and carcass classification powers conferred on the Secretary of State under Part 5 of the Act in respect of England (sections 37 and 40).

Schedule 5 Part 5: Data Protection

482 Paragraph 19(1) applies to a duty or power to disclose or use information where the duty or power is imposed or conferred by or under any provision of Schedule 5. Paragraph 19(2) provides that any such power or duty does not operate to require or authorise the disclosure or use of information which would contravene the data protection legislation (but the duty or power is to be taken into account in determining whether the disclosure or use would contravene that legislation). Paragraph 19(3) defines “data protection legislation” for the purposes of this provision.

483 Similar provision is made by section 49 in respect of Parts 1 to 6 of the Act.

Schedule 6: Provisions relating to Northern Ireland

484 Schedule 6 extends similar powers to DAERA as those conferred on the Secretary of State in relation to Part 1 (Chapter 2 and Chapter 3), Part 2 (Chapter 2), Part 3 (Chapter 1) and Part 5 of the Act.

Schedule 6, Part 1: Financial support after exiting the EU

485 Paragraphs 1-4 of Part 1 of Schedule 6 provides for the payment of Direct Payments in Northern Ireland under the basic payment scheme and the coupled support scheme.

486 Paragraph 1(1) sets out the definitions for terms used in paragraph 1-4. Paragraph 1(2) defines the term “basic payment scheme” as covering the basic payment, the greening component, and the young farmers payment. A difference from the equivalent provision for England (Part 1, Chapter 2, section 7), is that paragraph 1 also provides that the basic payment scheme includes redistributive payments if a decision is taken by DAERA to make such payments, and payments for areas with natural constraints if provision is made under paragraph 2(1)(b). A redistributive payment is a payment for a limited number of first hectares in addition to the payment rate per hectare calculated for all of the land receiving a payment under the scheme.

487 Paragraph 2(1) of Schedule 6 confers on DAERA powers to modify certain legislation governing the basic payment scheme so far as it operates in relation to Northern Ireland for or in connection with making changes that will simplify or improve the scheme, and for making provision to reintroduce and modify articles 48 and 49 of the Direct Payments Regulation in relation to making payments for areas of natural constraint.

488 Paragraph 2(2) clarifies that DAERA may terminate either or both greening payments and young farmer payments in relation to Northern Ireland using the powers available under paragraph 2(1)(a).

489 Paragraph 2(3) provides that regulations made under this paragraph are subject to the affirmative resolution procedure.

490 Paragraph 3 of Schedule 6 confers on DAERA powers to modify legislation to secure continuation of the basic payment scheme in Wales after 2020. Paragraph 3(6) provides that regulations made under this paragraph are subject to the affirmative resolution procedure.

- 491 Paragraph 4 of Schedule 6 confers on DAERA powers to modify certain legislation governing the coupled support scheme so far as it operates in relation to Northern Ireland for the purposes of making changes that will simplify or improve the scheme and for making for the continuation of the option to make payments under the scheme beyond the time at which the option would cease.
- 492 Paragraph 4(2) provides that regulations made under this paragraph are subject to the affirmative resolution procedure.
- 493 Paragraph 5 of Schedule 6 confers on DAERA powers to modify, so far as it operates in relation to Northern Ireland, retained direct EU legislation relating to the financing, management and monitoring of the common agricultural policy, and subordinate legislation relating to that legislation.
- 494 Paragraphs 5(1) and (2) provide that DAERA may make regulations to modify that legislation, so far as it operates in relation to Northern Ireland, for either of two specified purposes. Those purposes are:
- a) securing that any provision of that legislation ceases to have effect, or:
 - b) simplifying or improving the operation of any provision of such legislation.
- 495 Paragraph 5(4) provides that regulations made under this paragraph are subject to the affirmative resolution procedure unless section 50(5) applies, in which case the procedure is affirmative.
- 496 Paragraph 6 of Schedule 6 confers on DAERA powers to modify retained direct EU legislation relating to apiculture and subordinate legislation relating to that legislation. Paragraph 6(2) defines “retained direct EU legislation relating to apiculture” by reference to a non-exhaustive list. Paragraph 6(3) provides that regulations made under this paragraph are subject to the affirmative resolution procedure unless section 50(5) applies, in which case the procedure is affirmative.
- 497 Paragraph 7 of Schedule 6 confers on DAERA powers to modify retained direct EU legislation relating to support for rural development and subordinate legislation relating to that legislation. Paragraph 7(2) defines “retained direct EU legislation relating to support for rural development” by reference to a non-exhaustive list. Paragraph 7(3) provides that regulations made under this paragraph are subject to the affirmative resolution procedure. These powers could be used to make extensions of schemes and projects beyond the existing RDP 2014-20 or to operate a domestic Northern Ireland equivalent.
- 498 The powers conferred on DAERA in Part 1 of Schedule 6 are very similar powers to the financial support powers conferred on the Secretary of State in relation to Part 1 (Chapter 2 and Chapter 3) of the Act in relation to England, with the exception of:
- a) Section 8 which relates to the agricultural transition period for England
 - b) Section 11 which relates to the phasing out of Direct Payments
 - c) Section 15 which modifies aid schemes for fruit and vegetable POs

Schedule 6, Part 2: Intervention in Agricultural Markets

- 499 Paragraph 8(1) provides that DAERA may give, or agree to give, financial assistance to support agricultural producers in Northern Ireland whose incomes are being, or are likely to be, adversely affected by disturbances in agricultural market, where DAERA considers that there is either a severe, or serious threat of a severe disturbance and prices achievable by

agricultural producers in Northern Ireland for one or more agricultural products are, or are likely to be adversely effected. Paragraph 8(2) provides that DAERA may also make such use as they consider appropriate of any available powers under retained direct EU legislation which provides for the operation of public intervention and aid for private storage mechanisms as an alternative to, or in conjunction with the financial assistance under this paragraph.

- 500 Paragraph 9(1) of Schedule 6 confers on DAERA powers to modify retained direct EU legislation relating to public market intervention or aid for private storage for the purpose of either securing that such legislation ceases to have effect in relation to Northern Ireland, or altering the operation of that legislation in relation to Northern Ireland (pending the legislation ceasing to have effect).
- 501 Paragraph 9(2) provides that the powers conferred by paragraph 9(1) includes the power to change what agricultural products are eligible for public intervention and private storage aid.
- 502 Paragraph 9(3) provides that regulations made under this paragraph are subject to the affirmative resolution procedure.
- 503 Paragraph 9(4) defines “retained direct EU legislation relating to public market intervention or aid for private storage” for the purposes of this paragraph.
- 504 The powers conferred on DAERA in Part 2 of Schedule 6 are very similar to the intervention powers conferred on the Secretary of State in Part 2 (Chapter 2) of the Act in relation to England, with the exception of section 20 relating to the declaration of exceptional market conditions.

Schedule 6, Part 3: Collection and sharing of data

- 505 Part 3 of Schedule 6 confers on DAERA powers to collect and share data from those within or closely connected to the agri-food supply chain.
- 506 Paragraph 10(1) provides that DAERA 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 Northern Ireland.
- 507 Paragraph 10(2) provides that DAERA may make regulations requiring persons referred to in paragraph 10(1) to provide such information. Paragraph 10(8) provides that regulations made under this paragraph are subject to the affirmative resolution procedure.
- 508 Paragraph 11 defines the meaning of certain terms for the purposes of this Part, including “agri-food supply chain” and persons in and closely connected with such supply chains.
- 509 Paragraph 12 provides that the requirement for data to be collected and shared under paragraphs 10(1) and (2) must specify purposes for which the information may be processed. Paragraph 12(4) lists the purposes which include, for example, helping farmers and producers to increase productivity, manage risk and market volatility, and to support animal and plant health.
- 510 Paragraph 13 imposes a duty on DAERA to publish a draft requirement before a particular requirement for collection of data is imposed under paragraph 10(1). Paragraph 13(1) provides that the final requirement may be imposed in either its draft or a revised form, taking account of comments received in the published timeframe (and any other relevant matters).
- 511 Paragraph 13(2) states that the requirement may be imposed on a person at any time once the final drafting has been agreed, when the person is within the published description.

- 512 Paragraph 14 sets out the requirements for processing a requirement to provide information under paragraphs 10(1) and (2).
- 513 Paragraph 15 provides that DAERA may make regulations in relation to enforcement of a requirement to provide information under paragraphs 10(1) and (2).
- 514 Paragraph 15(6) provides that regulations under this paragraph are subject to the affirmative resolution procedure.
- 515 The powers conferred on DAERA in Part 3 of Schedule 6 are very similar to the collection and data sharing powers conferred on the Secretary of State in Part 3 of the Act in relation to England.

Schedule 6, Part 4: Marketing standards and carcass classification

- 516 Part 4 of Schedule 6 confers on DAERA powers in respect of marketing standards in Northern Ireland and carcass classification by slaughterhouses in Northern Ireland.
- 517 Paragraph 16(1) provides that DAERA may make provision relating to marketing standards for agricultural products marketed in Northern Ireland. This includes the ability to amend or revoke the current marketing standards as set out in retained EU legislation and in domestic legislation, as well as the flexibility to introduce new standards that will be tailored to suit the domestic agricultural sectors.
- 518 Paragraph 16(2) provides a non-exhaustive list of certain matters that the regulations may cover; for example, criteria such as appearance, the type of farming or production method and matters relating to storage and transport.
- 519 Paragraph 16(3) provides that the regulations make may provision about enforcement and outlines some of the matters that may be covered (amongst other things), such as, for example, conferring powers of entry, creating summary offences and imposing monetary penalties. The list is non-exhaustive. This allows for the ability to amend or revoke the current marketing standards enforcement requirements to be replicated for any new standards which may be introduced, and for existing enforcement requirements to be amended as necessary.
- 520 Paragraph 16(4) states that regulations made under paragraph 16 may not authorise entry to a private dwelling, without a warrant issued by a justice of the peace. "Private dwelling" is defined at section 51.
- 521 Paragraph 16(5) provides that regulations made under this paragraph are subject to the affirmative resolution procedure.
- 522 Paragraph 17(1) contains the list of agricultural products for which marketing standards may be made.
- 523 Paragraph 17(3) provides that DAERA may make regulations to amend the list of products for which marketing standards may be set, by adding or removing a product from the list, or altering the description of a product.
- 524 Paragraph 17(4) provides that regulations made under this paragraph are subject to the affirmative resolution procedure.
- 525 Paragraph 18(1) confers powers on DAERA to make provision about the classification, identification and presentation of bovine, pig and sheep carcasses by slaughterhouses in Northern Ireland. This includes the ability to amend or revoke the current carcass classification rules as set out in retained EU legislation and in domestic legislation, as well as the flexibility to introduce new standards and rules that will be tailored to suit the domestic agricultural sectors.

- 526 Paragraph 18(2) states that regulations made under paragraph 18(1) may include provision about enforcement and outlines some of the matters that may be covered (amongst other things), such as, for example, conferring powers of entry, creating summary offences and imposing monetary penalties. The list is non-exhaustive. This will allow for the current carcass classification enforcement requirements to be replicated for any new standards which may be introduced, and for existing enforcement requirements to be amended as necessary.
- 527 Paragraph 18(3) states that regulations made under paragraph 18 may not authorise entry to a private dwelling, without a warrant issued by a justice of the peace. "Private dwelling" is defined at section 51.
- 528 Paragraph 18(4) provides that regulations made under this paragraph are subject to the affirmative resolution procedure.
- 529 The powers conferred on DAERA in Part 4 of Schedule 6 are very similar to the marketing standards and carcass classification powers conferred on the Secretary of State under Part 5 of the Act in respect of England.

Schedule 6, Part 5: Data protection

- 530 Paragraph 19(1) applies to a duty or power to disclose or use information where the duty or power is imposed or conferred by or under any provision of Schedule 5. Paragraph 19(2) provides that any such power or duty does not operate to require or authorise the disclosure or use of information which would contravene the data protection legislation (but the duty or power is to be taken into account in determining whether the disclosure or use would contravene that legislation). Paragraph 19(3) defines "data protection legislation" for the purposes of this provision.
- 531 Similar provision is made by section 49 in respect of Parts 1 to 6 of the Act.

Schedule 7: The CMO regulation: Consequential amendments

- 532 Schedule 7 provides details of consequential amendments to the CMO Regulation. These amendments affect those powers in the CMO Regulation which will become redundant in light of the new powers in sections 20, 21 (exceptional market conditions), 37 (marketing standards) and 40 (carcass classification). In relation to exceptional market conditions, Parts 1 and 2 of Schedule 7 disapply these articles for agricultural producers in England and Wales respectively. In relation to marketing standards and carcass classification, Parts 3 – 5 of Schedule 7 disapply the relevant articles for products marketed in or slaughterhouses situated in England, Wales and Northern Ireland respectively.
- 533 Schedule 7 also saves any EU regulations made by the Commission under article 19(6), article 20(p) – (u), and article 21 of the CMO Regulation (carcass classification) in relation to slaughterhouses in England, Wales and Northern Ireland; or under section 1 or section 3 of Chapter 1 of Title 2 of the CMO Regulation (marketing standards and wine labelling) in relation to products marketed in England, Wales and Northern Ireland. This ensures that existing marketing standards made in tertiary legislation by the Commission will remain in force even though the powers under which they were made have been disapplied for England, Wales and Northern Ireland.
- 534 The relevant articles of the CMO Regulation are as follows:
- a) Articles 219, 220, 221 and 222 (exceptional measures). These articles are redundant in light of the powers in sections 20 and 21 for the Secretary of State to act in periods of exceptional market conditions,
 - b) Article 19(6) (the Commission's powers to amend carcass classification rules),

- c) Article 20(p) – (u) (the Commission’s powers to makes rules on the implementation of the carcass classification scales),
- d) Article 21 (the Commission’s powers to make rules on the classification of light lamb carcasses),
- e) Article 73 (which sets out the scope of the EU marketing standards in section 1 of Chapter 1 of Title 2 to the CMO Regulation). This article is amended to ensure that references in section 1 of Chapter 1 of Title 2 to the CMO Regulation to marketing standards, as they apply in relation to products marketed in England, Wales and Northern Ireland, include standards set in regulations under the power in section 37(1),
- f) Article 75 (which sets out the content of EU marketing standards rules and the Commission powers to set and amend marketing standards),
- g) Article 78(3) - (5) (the Commission’s power to amend definitions, designations and sales descriptions),
- h) Article 80(3) - (5) (the Commission’s powers relating to oenological practices),
- i) Articles 86, 87 and 88 (the Commission’s powers relating to optional reserved terms),
- j) Article 91 (the Commission’s powers to make rules relating to the implementation of marketing standards),
- k) Article 119(3)(b) (the Commission’s power to make derogations from wine labelling rules),
- l) Article 122 (the Commission’s powers relating to wine labelling), and
- m) Article 123 (the Commission’s power to make rules relating to the implantation of wine labelling rules).

Commencement

535 The Secretary of State, the Welsh Ministers and DAERA as appropriate will make regulations to bring the provisions specified in sections 57 (2), (3) and (4) into force.

536 The following provisions come into force on Royal Assent:

- a. Sections 17 and 18;
- b. any provision of Parts 1 to 7 which confers a power to make regulations, modifies legislation so as to confer a power to make regulation or a power to make an order by statutory instrument or any other provision that affects the exercise of such powers;
- c. Part 8, excluding section 52 and Schedule 7, comes into force on the day of Royal Assent.

537 The following provisions come into force by way of regulations made by the Secretary of State if they do not fall into categories listed in section 57(1)(b) or 57(1)(c).

- a. Sections 20 and 21;
- b. Sections 30 and 31 and Schedules 1 and 2;
- c. So far as relating to England, section 34(3) and (4), paragraphs 10 to 16 and 18 of Schedule 3, and section 36 so far as relating to those paragraphs;
- d. Parts 1 and 2 of Schedule 7 and section 52 so far as relating to those Parts.

538 The rest of the provisions of the Act will come into force two months after Royal Assent.

Related documents

539 The following documents are relevant to the Act and can be read at the stated locations:

- Health and harmony: the future for food, farming and the environment in a Green Brexit, available here: <https://www.gov.uk/government/consultations/the-future-for-food-farming-and-the-environment>
- Farming for the future: Policy and progress update; available here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/868041/future-farming-policy-update1.pdf
- Environmental Land Management: Policy Discussion Document, available here: https://consult.defra.gov.uk/elm/elmpolicyconsultation/supporting_documents/elmdiscussiondocument20200225a%20002.pdf

Annex A - Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
Sections 1-6 (New financial assistance power powers)	Yes	No	No	No
Sections 7-16 (Direct Payments and other financial support after EU Exit)	Yes	No	No	No
Section 17 (Continuing EU programmes: power to provide financial assistance)	Yes	Yes	Yes	Yes
Section 18 (Retained direct EU legislation)	Yes	Yes	Yes	Yes
Section 19 (Food security)	Yes	Yes	Yes	Yes
Sections 20-22 (Intervention in Agricultural Markets)	Yes	No	No	No
Sections 23-28 (Collection and sharing of data)	Yes	No	No	No
Sections 29 -32 (Fair dealing with Agricultural Producers and Producer Organisations)	Yes	Yes	Yes	Yes
Sections 33-34 (Fertilisers and Identification and Traceability of Animals)	Yes	Yes	Yes	Yes
Section 35 (Red Meat Levy)	Yes	Yes	Yes	No
Section 36 (Agricultural tenancies)	Yes	Yes	No	No
Section 37 (Marketing Standards)	Yes	No	No	No
Sections 38-39 (Organic	Yes	Yes	Yes	Yes

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products)				
Section 40 (Carcass classification)	Yes	No	No	No
Section 41 (Power to reproduce modifications under section 37 for wine sector)	Yes	Yes	Yes	Yes
Section 42 (Reports relating to free trade agreements)	Yes	Yes	Yes	Yes
Sections 43-45 (WTO Agreement on Agriculture)	Yes	Yes	Yes	Yes
Sections 46-47 (Provisions relating to Wales)	No	Yes	No	No
Section 48 (Provisions relating to Northern Ireland)	No	No	No	Yes
Clause 49 (Data protection)	Yes	No	No	No
Clauses 50-51 (Regulations and interpretation)	Yes	Yes	Yes	Yes
Clause 52 (consequential amendments)	Yes	Yes	No	Yes
Clauses 53-54 (Power to make consequential and transitional etc provision)	Yes	Yes	Yes	Yes
Clauses 55 (Financial Provision)	Yes	No	No	No
Schedule 1: Agricultural sectors relevant to Producer organisation provisions	Yes	Yes	Yes	Yes
Schedule 2: Competition exclusions	Yes	Yes	Yes	Yes
Schedule 3: Agricultural tenancies	Yes	Yes	No	No
Schedule 4: Agricultural sectors relevant to marketing standards provision	Yes	No	No	No

Schedule 5: Wales	No	Yes	No	No
Schedule 6: Northern Ireland	No	No	No	Yes
Schedule 7: The CMO Regulation	Yes	Yes	No	Yes

Annex B - Hansard References

540 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	16 January 2020	Vol. 669 Col. 45WS
Second Reading	03 February 2020	Vol. 671 Col. 70
Public Bill Committee	11 February 2020	First sitting Vol. 671 Col. 1
	11 February 2020	Second sitting Vol. 671 Col. 39
	13 February 2020	Third sitting Vol. 671 Col. 89
	13 February 2020	Fourth sitting Vol. 671 Col. 111
	25 February 2020	Fifth sitting Vol. 672 Col. 161
	25 February 2020	Sixth sitting Vol. 672 Col. 193
	27 February 2020	Seventh sitting Vol. 672 Col. 217
	27 February 2020	Eight sitting Vol. 672 Col. 241
	03 March 2020	Ninth sitting Vol. 672 Col. 285
	03 March 2020	Tenth sitting Vol. 672 Col. 315
	05 March 2020	Eleventh sitting Vol. 672 Col. 345
	05 March 2020	Twelfth sitting Vol. 672 Col. 377
Report and Third Reading	13 May 2020	Vol. 676 Col. 276
<i>House of Lords</i>		
Introduction	18 May 2020	Vol. 803 Col. 980
Second Reading	10 June 2020	Vol. 803 Col. 1751
Grand Committee	07 July 2020	First sitting Vol. 804 Col. 995
	09 July 2020	Second sitting Vol. 804 Col. 1227
	14 July 2020	Third sitting Vol. 804 Col. 1588
	16 July 2020	Fourth sitting Vol. 804 Col. 1768
	21 July 2020	Fifth sitting Vol. 804 Col. 2061
	23 July 2020	Sixth sitting Vol. 804 Col. 2325
	28 July 2020	Seventh sitting Vol. 805 Col. 127
Report	15 September 2020	First sitting Vol. 805 Col. 1134
	17 September 2020	Second sitting Vol. 805 Col. 1415
	22 September 2020	Third sitting Vol. 805 Col. 1691
Third Reading	01 October 2020	Vol. 806 Col. 305
Commons Consideration of Lords Amendments	12 October 2020	Vol. 682 Col. 64
Lords Consideration of Commons Reasons and Amendments	20 October 2020	Vol. 806 Col. 1460
Commons Consideration of Lords message	04 November 2020	Vol. 683 Col. 385
Lords Consideration of	09 November 2020	Vol. 807 Col 833

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Commons Reasons and Amendments		
Royal Assent	11 November 2020	House of Lords Vol. 807 Col. 1021
		House of Commons Vol. 683 Col. 888

Annex C - Progress of Bill Table

541 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 1	Clause 1	Clause 1	Clause 1	Clause 1	Clause 1
Section 2	Clause 2	Clause 2	Clause 2	Clause 2	Clause 2
Section 3	Clause 3	Clause 3	Clause 3	Clause 3	Clause 3
Section 4	Clause 4	Clause 4	Clause 4	Clause 4	Clause 4
Section 5	Clause 5	Clause 5	Clause 5	Clause 5	Clause 5
Section 6	Clause 6	Clause 6	Clause 6	Clause 6	Clause 6
Section 7	Clause 7	Clause 7	Clause 7	Clause 7	Clause 7
Section 8	Clause 8	Clause 8	Clause 8	Clause 8	Clause 8
Section 9	Clause 9	Clause 9	Clause 9	Clause 9	Clause 9
Section 10	Clause 10	Clause 10	Clause 10	Clause 10	Clause 10
Section 11	Clause 11	Clause 11	Clause 11	Clause 11	Clause 11
Section 12	Clause 12	Clause 12	Clause 12	Clause 12	Clause 12
Section 13	Clause 13	Clause 13	Clause 13	Clause 13	Clause 13
Section 14	Clause 14	Clause 14	Clause 14	Clause 14	Clause 14
Section 15	Clause 15	Clause 15	Clause 15	Clause 15	Clause 15
Section 16	Clause 16	Clause 16	Clause 16	Clause 16	Clause 16
Section 17					Clause 17
Section 18					Clause 18
Section 19	Clause 17	Clause 17	Clause 17	Clause 17	Clause 19
Section 20	Clause 18	Clause 18	Clause 18	Clause 18	Clause 21
Section 21	Clause 19	Clause 19	Clause 19	Clause 19	Clause 22
Section 22	Clause 20	Clause 20	Clause 20	Clause 20	Clause 23
Section 23	Clause 21	Clause 21	Clause 21	Clause 21	Clause 24
Section 24	Clause 22	Clause 22	Clause 22	Clause 22	Clause 25
Section 25	Clause 23	Clause 23	Clause 23	Clause 23	Clause 26
Section 26	Clause 24	Clause 24	Clause 24	Clause 24	Clause 27
Section 27	Clause 25	Clause 25	Clause 25	Clause 25	Clause 28
Section 28	Clause 26	Clause 26	Clause 26	Clause 26	Clause 29
Section 29	Clause 27	Clause 27	Clause 27	Clause 27	Clause 30
Section 30	Clause 28	Clause 28	Clause 28	Clause 28	Clause 31
Section 31	Clause 29	Clause 29	Clause 29	Clause 29	Clause 32
Section 32	Clause 30	Clause 30	Clause 30	Clause 30	Clause 33
Section 33	Clause 31	Clause 31	Clause 31	Clause 31	Clause 34
Section 34	Clause 32	Clause 32	Clause 32	Clause 32	Clause 35

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Section 35	Clause 33	Clause 33	Clause 33	Clause 33	Clause 36
Section 36	Clause 34	Clause 34	Clause 34	Clause 34	Clause 37
Section 37	Clause 35	Clause 35	Clause 35	Clause 35	Clause 39
Section 38	Clause 36	Clause 36	Clause 36	Clause 36	Clause 40
Section 39	Clause 37	Clause 37	Clause 37	Clause 37	Clause 41
Section 40	Clause 38	Clause 38	Clause 38	Clause 38	Clause 42
Section 41	Clause 39	Clause 39	Clause 39	Clause 39	Clause 43
Section 42					<i>Inserted during ping-pong</i>
Section 43	Clause 40	Clause 40	Clause 40	Clause 40	Clause 44
Section 44	Clause 41	Clause 41	Clause 41	Clause 41	Clause 45
Section 45	Clause 42	Clause 42	Clause 42	Clause 42	Clause 46
Section 46	Clause 43	Clause 43	Clause 43	Clause 43	Clause 50
Section 47	Clause 44	Clause 44	Clause 44	Clause 44	Clause 51
Section 48	Clause 45	Clause 45	Clause 45	Clause 44	Clause 52
Section 49	Clause 46	Clause 46	Clause 46	Clause 46	Clause 53
Section 50	Clause 47	Clause 47	Clause 47	Clause 47	Clause 54
Section 51	Clause 48	Clause 48	Clause 48	Clause 48	Clause 55
Section 52	Clause 49	Clause 49	Clause 49	Clause 49	Clause 56
Section 53	Clause 50	Clause 50	Clause 50	Clause 50	Clause 57
Section 54					Clause 58
Section 55	Clause 51	Clause 51	Clause 51	Clause 51	Clause 59
Section 56	Clause 52	Clause 52	Clause 52	Clause 52	Clause 60
Section 57	Clause 53	Clause 53	Clause 53	Clause 53	Clause 61
Section 58	Clause 54	Clause 54	Clause 54	Clause 54	Clause 62
Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1
Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2
Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 3
Schedule 4	Schedule 4	Schedule 4	Schedule 4	Schedule 4	Schedule 4
Schedule 5	Schedule 5	Schedule 5	Schedule 5	Schedule 5	Schedule 5
Schedule 6	Schedule 6	Schedule 6	Schedule 6	Schedule 6	Schedule 6
Schedule 7	Schedule 7	Schedule 7	Schedule 7	Schedule 7	Schedule 7

Annex D - Glossary

Affirmative resolution procedure: a type of parliamentary procedure that applies to statutory instruments (SIs) and describes the form of scrutiny that the SI receives from Parliament. Both Houses of Parliament must actively approve an SI laid under the affirmative procedure before it can become law.

Chapter: A grouping of clauses under a subheading within a Part of an Act.

Clause: The basic unit of an Act, divided into subsections, then paragraphs, then sub-paragraphs. Once the Bill becomes an Act, a clause becomes a section.

Commencement: The coming into effect of legislation. In the absence of a commencement provision, the Act comes into force from the beginning of the day on which Royal Assent was given (at midnight).

Genetic Resources: The Convention on Biological Diversity defines Genetic Resources as genetic material of actual or potential value. It further defines Genetic Material as any material of plant, animal, microbial or other origin containing functional units of heredity.¹

Long title: The passage at the start of a bill that begins “A Bill to...” and then lists its purposes. This defines the scope of the Bill and as such, the content of the bill must be covered by the long title.

Negative resolution procedure: An SI laid under the negative procedure becomes law on the day the Minister signs it (when it is made) and remains law unless a motion, or ‘prayer’, to reject it is agreed by either House within 40 sitting days.

Part: A grouping of clauses under a heading in the body of an Act. Also, a subdivision of a Schedule.

Retained EU legislation: As the UK leaves the EU, the EU (Withdrawal) Act 2018 will convert the body of existing EU law into domestic law and preserve the body of laws made in the UK to implement EU obligations. “Retained EU legislation” refers to this these bodies of legislation.

Retained direct EU legislation: is defined in section 20 of the European Union (Withdrawal) Act 2018. Any direct EU legislation forms part of domestic law by virtue of section 3 of that Act, and includes directly applicable EU regulations, decisions or tertiary legislation. It does not include the body of domestic laws made in the UK to implement EU obligations.

Regulation: secondary legislation made through SIs.

Schedule: Acts may have Schedules that appear after the main clauses in the text. They are often used to spell out in more detail how the provisions of the Act are to work in practice. Parliamentarians can still amend Schedules.

Section: When the bill becomes an Act, “clauses” become “sections” but the names of the other subdivisions stay the same.

¹ This definition is sourced from <https://www.cbd.int/convention/text/>.

Short title: The title by which a bill is known during its passage through Parliament; for example, “Agriculture Bill”, and when it becomes an Act the “Agriculture Act 2020”.

Statutory instrument: Statutory instruments are the most common form of secondary (or delegated) legislation.

Territorial application: Territorial application refers to the territory where an Act (or provisions of an Act) has a practical effect.

Territorial extent: The extent of a Act refers to the legal jurisdiction of which an Act, or provisions of an Act, will become a part. There are three legal jurisdictions in the UK: (1) England and Wales, (2) Scotland and (3) Northern Ireland. The extent of an Act or provision can be different from its application.

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