Agriculture Bill
EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Agriculture Bill as introduced in the House of Commons on 12 September 2018 (Bill 266).

- These Explanatory Notes have been prepared by the Department for Environment, Food and Rural Affairs in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.

- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.
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Overview of the Bill

1 The Agriculture Bill ("the Bill") will provide the legal framework for the United Kingdom (UK) to leave the Common Agricultural Policy (CAP) and establish a new system based on public money for public goods for the next generation of farmers and land managers.

2 The Agriculture Bill includes the following:

- Powers to give financial assistance and move towards a new system based on paying public money for public goods. Such payments may encompass (but are not limited to) environmental protection, public access to the countryside and measures to reduce flooding.

- Powers to give financial assistance for access to capital grants and loans for productivity outcomes.

- 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.

- 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, inspection regime or system of penalties applied to beneficiaries of the schemes that continue for a time after we leave 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 and improve the rules whilst honouring existing rural development payment schemes entered into prior to EU Exit which extend beyond Exit day.

- 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 to intervene in exceptional market conditions. These powers allow for 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 powers in retained EU legislation.

- Powers to make regulations setting and amending marketing standards for agricultural products and to make provision about the classification of carcasses by slaughterhouses.

- Provisions to create a domestic system of recognition of Producer Organisations to encourage collaboration amongst growers. These provisions will provide for
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exemptions from competition law for recognised organisations.

- 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.

- Powers for the Secretary of State to legislate for the UK to comply with the World Trade Organisation (WTO) Agreement on Agriculture (AoA). These powers would enable the setting of financial ceilings on the devolved administrations and England in relation to agricultural support that is considered trade distorting and classified as “amber box” by the WTO; the establishment of a decision-making process to classify agricultural support in accordance with WTO criteria, and require devolved administrations to provide relevant information in relation to any of their proposed or existing farming support.

- Provisions for Wales and Northern Ireland, where this Bill will legislate for similar powers adapted for the Welsh Government and Department for Agriculture, Environment and Rural Affairs in Northern Ireland (DAERA) to be exercised by Ministers in those territories.

**Policy background**

**Exiting the European Union (EU)**

3 On 1 January 1973 the UK joined the European Economic Community, which has since evolved to become today’s European Union. As part of its membership, the UK joined the CAP, which has underpinned UK agricultural policy for the 45 years since.

4 On 17 December 2015 the European Union Referendum Act 2015 received Royal Assent. The Act made provision for holding a referendum in the UK and Gibraltar on whether the UK should remain a member of the EU. The referendum was held on 23 June 2016 and a majority voted to leave the EU.

5 The European Union (Notification of Withdrawal) Act 2017 received Royal Assent on 16 March 2017. On 29 March 2017, the Prime Minister gave notification of withdrawal of the UK from the EU under Article 50(2) of the Treaty on European Union (TEU).

6 Leaving the EU means the UK will also cease to participate in the CAP. The Agriculture Bill will take advantage of this opportunity to provide powers to implement a new domestic system of agricultural and environmental policy.
**Common Agricultural Policy**

7 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.

8 UK agriculture receives around €4.0 billion in support from the EU every year via the CAP, which the UK Government also funds as part of its membership of the EU. The CAP is comprised of two “pillars”. Pillar 1 provides Direct Payments, accounting for about 88% of total payments (€3.2 billion in the UK in 2016). It also funds payments under the Common Market Organisation (CMO); the entire CMO funding received from the EU was €86m in 2016. Pillar 2 accounts for the remaining 12%, supporting environmental outcomes, farming productivity, socio-economic outcomes and rural growth (€0.8 billion in 2016).

9 There are three direct payment schemes in England: the basic payment scheme (BPS), 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.

10 BPS is an area-based annual payment, made to farmers. BPS accounts for almost 70% of the direct payments budget, but has a cost-benefit ratio of less than 1.

11 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.

12 In England, Pillar 2 measures are included in the Rural Development Programme for England (RDPE). One such measure is the Countryside Stewardship Scheme. The majority of Pillar 2 expenditure is on environmental schemes which bring public benefit and that the market would not always consider, for example environmental land management through agri-environment and forestry schemes. There is strong evidence that these agri-environment schemes have cost-benefit ratios of between 2.2 and 5.5. This means the schemes provide a high return for money spent.

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

13 On 27 February 2017, the Environment Secretary, the Rt Hon Michael Gove MP, 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.

14 The consultation closed on 8 May. Over forty thousand individual responses have been

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1 See Article 38 of the Treaty on the Functioning of the European Union (TFEU).

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Legal background

Legal and Financial Overview of the CAP

15 The legal basis of the CAP is 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.

16 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 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.

17 There are also a number of 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.

Financing of the CAP

18 For many years the CAP was financed from a single fund, the European Agricultural Guidance and Guarantee Fund (“EAGGF”). On 1 January 2007 the EAGGF was replaced by two funds which form part of the EU’s general budget: the European Agricultural Guarantee Fund (“the EAGF”) which finances measures under Pillar 1; and the European Agricultural Fund for Rural Development (“EAFRD”) which finances measures under Pillar 2.

19 The legal basis for the setting up of the funds is Article 40(3) TFEU.
CAP reforms

The CAP has undergone five major reforms in recent decades:

- the “1992 reform” replaced the system of protection through prices with a system of compensatory income support;
- “Agenda 2000” attempted to align EU prices with world prices, partly offset by direct aid to producers and introduced environmental cross-compliance as a condition for granting aid and the option of reducing such aid (modulation) to finance Rural Development measures. The reforms also introduced a new Rural Development policy known from then on as the “second pillar of the CAP”;
- the “2003 reform: towards a CAP based on decoupled aid” overhauled the CAP and introduced decoupling of aid from volumes produced. Other reforms included making single payments conditional on a series of criteria concerning the environment and public health. Payments were made compatible with WTO rules with the aim of them being classified as non-trade distorting;
- the “2009 Health Check” reinforced complete decoupling of aid from production by moving the remaining payments coupled to production into the single farm payment scheme; and
- the “2013 reform” set the broad outlines of the current CAP for the period 2014-2020. These reforms included replacing the single farm payment with a system of staged payments and consolidated single CMO tools to provide safety nets for use solely in the event of price crises or market disruption.

Overview of Pillar 1 Direct Payments

There are three agricultural direct payment schemes, under the CAP, that apply in England. They include:

a. the basic payment scheme (“BPS”), which is the main scheme of Direct Payments to farmers that offers a basic layer of income support;

b. the greening payment, which is a top-up payment for agricultural practices beneficial for the climate and the environment; and

c. the young farmer scheme, which is also a top-up payment for young farmers.

To be entitled to a direct payment, a farmer must submit an application form every year, meet the BPS eligibility criteria and, where relevant, the additional conditions for the greening payment or the young farmer scheme. A farmer who is found to be eligible must comply with greening practices and cross compliance rules concerning food safety, animal health, plant health, the environment, the protection of water resources, animal welfare and the condition in which farmland is maintained. The consequence of not doing so could result in a reduction of payments or no payments. If this occurs a farmer can challenge this decision via a complaints procedure and ultimately an appeal to the Minister.

A direct payment is akin to income support. Its aim is to stabilise a farmer’s income from sales on the markets, which are subject to volatility. Unlike domestic benefits it is not universal nor is it means tested. Rather it is based upon the number of hectares farmed (and accompanying payment “entitlements”), which is decoupled from production. The amount paid is determined according to a range of additional factors: the payment region of which there are three in England, greening payment rates and additional amounts if the farmer is a “young” farmer.

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Core eligibility criteria for BPS

24 Farmers may apply for Direct Payments every year, normally in May, declaring every parcel of their farm holding, the payment entitlements they want to activate and any other relevant information.

25 There are some key important conditions to fulfil under Regulation 1307/2013 in order to receive payments: to be an “active farmer”, to have eligible land and to hold entitlements. All of these conditions need to be complied with every year.

The young farmers’ scheme

26 To encourage generational renewal, the basic payment awarded to young farmers (who must be no more than 40 years of age), newcomers or farms set up in the previous five years is increased for the first five years. 2% of the national budget allocation is used to finance this supplement. It is mandatory for Member States and is additional to other measures available for young farmers under rural development programmes.

27 Under this scheme, young farmers can apply for an extra payment on top of their BPS payment. In England this is worth up to 25% of the average value of the entitlements they hold, multiplied by the number of entitlements they use to claim BPS – but only the first 90 entitlements count. The exact percentage will depend on how many farmers apply each year.

Payments and reductions

28 Payments are made annually and begin in December. The amount to be paid to a farmer depends upon a range of factors. The number of entitlements and eligible hectares, the payment region, the greening payment rate and whether that farmer is a young farmer. Where the BPS payment to be granted to a farmer for a given calendar year exceeds €150,000, the sum in excess of that amount must be reduced by 5%.

Cross compliance rules, inspections and penalties

29 In order to receive the full amount of Direct Payments for which they are eligible, farmers have to respect other EU rules concerning food safety, animal health, plant health, the climate, the environment, the protection of water resources, animal welfare and the condition in which farmland is maintained. This link is known as cross-compliance.

30 There are two different sets of rules under cross-compliance:

- statutory management requirements; and
- good agricultural and environment conditions.

31 Inspections in England are carried out by the Rural Payments Agency to verify that all cross-compliance requirements are being met. Failure to meet these requirements will lead to financial penalties being applied to the payments.

32 There is no ability to waive penalties save where there is an event outside the farmer’s control. This is known as force majeure or exceptional circumstances. If this applies then the penalty can be waived. A false declaration made deliberately or recklessly may lead to criminal prosecution.

Overview of Pillar 2 Rural Development Programme

33 Pillar 2 of the CAP is the financial support provided through the European Agricultural Fund for Rural Development (“the EAFRD”) to promote sustainable rural development throughout the EU.

34 The EAFRD operates through programmes prepared by Member States and adopted by the Commission. Member States submit either a single Rural Development Programme or a set of regional Rural Development programmes for each seven year programming period.
These Explanatory Notes relate to the Agriculture Bill as introduced in the House of Commons on 12 September 2018 (Bill 266)
More specifically, the CMO Regulation (together with various Commission delegated and implementing regulations) provides for:

- Market support measures such as public purchasing (intervention) or aid for temporary storage (private storage aid) when internal prices fall to a certain (trigger) level; and sector specific schemes designed – for example, to improve access to food (the current school milk and fruit schemes) and improve competitiveness (including schemes for the fruit and vegetable and wine sectors, and for the provision of statistical information).

- Marketing standards which are rules on marketing of a range of agricultural products, both imported and domestically produced, covering a wide range of detail (for example, standard classifications for eggs; production processes; labelling requirements, and quality standards for certain fruit and vegetables).

- International trade setting out the detailed rules for managing the import and export of products as well as provision for safeguard measures where imports threaten to destabilise EU markets. There are also powers to subsidise exports. A number of bilateral trade agreements have been (and continue to be) negotiated by the Commission on wine to facilitate trade and as a way to recognise and protect the EU’s geographical indications. These measures in part 3 of the CMO are not being dealt with through the Agriculture Bill.

- Exemptions from standard EU competition rules (for example allowing the collective bargaining on prices, and the formation of producer organisations) and requirements for provision of statistical information by Member States used to monitor the markets (about 13 different EU Regulations).

- Exceptional measures to help manage market crises (for example support measures to the dairy sector, or trade measures such as opening reduced-tariff quotas for imports of sugar if stocks are low).

**Territorial extent and application**

Clause 34 sets out the territorial extent of the clauses in the Bill. The extent of a Bill is the legal jurisdiction where it forms part of the law; application refers to where it has practical effect. [For example, a clause 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.]

The UK Parliament will not normally legislate for areas within the competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned. The government will therefore seek legislative consent for provisions in clause 27 and Schedule 3 which would be within the competence of the National Assembly of Wales. Clause 28 and Schedule 4 contain provisions which would be within the competence of the Northern Ireland Assembly and for which Legislative Consent would ordinarily be sought.

See the table in Annex A for a summary of the position regarding territorial extent and application in the UK. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.
Commentary on provisions of Bill

Part 1: New financial assistance powers

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

50 Clause 1 provides the Secretary of State with the power to provide 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. Clause 1 provides a list of purposes for which, and in connection with which, the Secretary of State could provide such assistance in England. This will enable the Secretary of State to provide assistance as follows.

51 Subsection (1)(a) will enable the Secretary of State to provide financial assistance for the delivery of environmental outcomes such as clean 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 incentivising the planting of trees around farms to help capture ammonia emissions and protect nearby sensitive habitats from damaging nitrogen deposition. This land management activity would contribute to the delivery of clean air and the protection of biodiversity.

52 Subsection (1)(b) will enable the Secretary of State to provide financial assistance to support public access to and enjoyment of the countryside, farmland and woodland. This subsection will also enable the provision of financial assistance to support understanding about the environmental benefits land can provide. This subsection may be used, for example, to incentivise foresters to provide facilities for educational visits for schools, supporting pupils visiting natural environments and learning about the environment. This would contribute to the delivery of societal benefits including that of engagement with the environment.

53 Subsection (1)(c) will enable the Secretary of State to provide financial assistance for managing land or water in a way that maintains, restores or enhances natural or cultural 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. They include “designated cultural heritage assets” and natural heritage such as geological assets. The maintenance of historic farm buildings, dry stone walls and conservation of limestone pavement are examples of how this subsection may be used to incentivize activities which conserve our cultural and natural heritage, which have intrinsic value as well as being resources for research, education, recreation and tourism. This would contribute to the provision of societal benefits such as beauty, heritage and engagement with the environment.

54 Subsection (1)(d) will enable the Secretary of State to provide financial assistance for activities undertaken to mitigate or adapt to climate change. This subsection may be used to mitigate climate change by incentivising peatland restoration, in order to protect the existing carbon store and reduce emissions of carbon dioxide to the atmosphere.

55 Subsection (1)(e) will enable the Secretary of State to provide financial assistance for activities undertaken to prevent, reduce or protect from hazards to, or caused by, the environment. This subsection, therefore, could be used to reduce flood risk by incentivising good soil management, leading to a reduction in soil compaction.

56 Subsection (1)(f) will enable 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. Examples of how this could be given include,
measures to incentivise participation in health or disease control schemes, supporting the financing of testing for a particular disease or strengthening animal welfare outcomes, such as reducing the impact of health conditions and ensuring animals have access to materials that allow them to express their natural behaviours.

57 Subsection (1)(g) will enable 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 can include support for measures across the forestry and horticultural sectors which reduce the risk of introduction and spread of harmful plant pests and disease thereby protecting their health and increasing biosecurity.

58 Subsection (2) will enable the Secretary of State to give financial assistance for starting, or improving the productivity of, agricultural, horticultural or forestry activities. This could be used, for instance, to enable a farmer to invest in equipment that would both increase productivity and deliver environmental benefits. This could include giving a farmer a grant or loan to enable purchase of precision application equipment for slurry. This equipment would allow the farmer to reduce the quantity of fertilisers used, reducing costs as well as reducing ammonia emissions.

59 Provisions relating to the forms, conditions, delegation and publication of information relating to financial assistance as set out in clause 2. Provisions for checking, enforcing and monitoring financial assistance are set out in clause 3.

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

60 Subsection (1) provides that financial assistance may be provided in any form. This will depend on the scheme and the purpose that the assistance is provided for. 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 capital items or ongoing payments as part of a longer term agreement such as the delivery of environmental benefits or other public goods.

61 Subsection (2) allows the Secretary of State to attach conditions to which the financial assistance will be subject.

62 Subsection (3) clarifies that a condition of receipt of financial assistance may include provision under which it is to be recovered.

63 Subsection (4) provides the power for the Secretary of State to give financial assistance to another person or organisation who has designed or operates a scheme which provides financial assistance for one of the purposes specified in clause 1. For example, this would enable the Secretary of State to fund local partnerships or other organisations (such as National Parks) to present and deliver financial assistance proposals.

64 Subsection (5) allows the Secretary of State to delegate any of their functions in relation to giving financial assistance to another person or organisation (for example, the administration of a payment scheme), which might include (functions listed in subsection (6)) such as giving guidance or exercising discretion.

65 For example, subsection (5) would allow Defra to delegate the administration of some aspects of new Environmental Land Management schemes to organisations that might have relevant expertise.

66 Subsections (7) and (8) allow the Secretary of State to make regulations requiring the publication of information about payments under clause 1. 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.

Clause 3: Financial assistance: checking, enforcing and monitoring

67 Clause 3 provides the Secretary of State with the power, if desired, to make regulations to check, enforce and monitor the conditions of financial assistance provided under Part 1 in this Bill.

68 Subsection (1) sets out that regulations made under this clause should be in connection with that provided in subsections (1)(a), (1)(b) and (1)(c).

69 Subsection (1)(a) sets out that regulations made under this clause make provision for checking eligibility criteria as provided for by clause 2. 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.

70 Subsection (1)(b) sets out that regulations made under this clause make provision for enforcing compliance with conditions as provided for by clause 2.

71 Subsection (1)(c) sets out that regulations made under this clause make provision for monitoring to what extent the purposes as provided in subsection 1 of clause 1 are met.

72 Section (2) sets out a list of enforcement options that regulations made under subsection (1) of this clause may provide. This list is not exhaustive and the regulations may be made for any of the purposes set out in subsection (1).

73 Subsections (2)(a) to (k) lists 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, record keeping requirements, inspection 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, imposing penalties and creating criminal offences (within prescribed limits). There is also the power to make regulations conferring functions to others and to establish a mechanism for appealing against decisions.

Part 2: Financial support after exiting the EU

Chapter 1: Direct payments

Clause 4: Meaning of “basic payment scheme” and other expressions in Chapter 1

74 This clause sets out definitions for terms used in Part 2, chapter 1, in relation to the continuation and phasing out of Direct Payments during an agricultural transition period in England.

75 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.

76 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 will be carried forward under the
European Union (Withdrawal) Act 2018. It also includes retained subordinate legislation relating to the “basic act”.

Subsection (4) defines the term “Direct payment” as a payment made using retained and modified CAP regulations for the “basic payment scheme” (which may be further modified under clause 6), or a delinked payment (see clause 7).

Subsection (5) defines the term “agricultural transition period for England” as that set out under clause 5. The agricultural transition period is the period during which reductions will be applied to Direct Payments to phase them out in England.

Subsection (6) defines a “Delinked payment” as that made under clause 7(1)(b). 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.

Subsection (7) explains that the “Direct Payments Regulation” referred to in subsection (3) is Regulation (EU) No 1307/2013. This is the “basic act” as referred to in paragraph 90 above.

Subsection (8) defines the term “Phasing out” as meaning the application of reductions to Direct Payments (under the power in clause 7(1)(a)). These reductions will be applied during the agricultural transition period (set out in clause 5).

Clause 5: The agricultural transition period for England

Clause 5 sets out the starting year and duration of the agricultural transition period, during which Direct Payments will be phased out in England.

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.

Subsection (2) 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 a change.

Subsection (3) qualifies the use of powers in subsection (2). 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.

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

Clause 6 provides the Secretary of State with powers to modify retained EU legislation relating to the basic payment scheme (including the greening and young farmer payment), as defined in clause 4(2).

Subsection (1) provides the power to modify the legislation where the Secretary of State considers that it will simplify or improve the scheme. The intention of simplification is to reduce some of the unnecessarily burdensome CAP and BPS requirements that are not appropriate in a domestic context. This provides the opportunity to reduce the administrative burdens on recipients of the basic payment scheme and on government. The Secretary of State would look to make simplifications at the earliest opportunity, in advance of using any powers to delink payments from land in clause 7(1)(b).

Subsection (2) provides a specific power to end greening payments before the end of the agricultural period. The greening requirements include the so-called “three crop rule” which determines the number of crops a farmer must grow. The 30% portion of the overall budget currently allocated to greening would remain available to recipients provided they observed remaining basic payment scheme requirements.
Subsection (3) specifies that regulations made under clause 6 are to be subject to the negative resolution procedure.

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

Clause 7 provides the power for the Secretary of State, during the agricultural transition, to make reductions to Direct Payments under the basic payment scheme; to delink payments from land; and to offer farmers the opportunity to take a lump sum payment in lieu of farming the 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 we will not link the current connection between the value of the payment and the area of land for which it is claimed anymore.

Subsection (1) provides a power for “phasing out” Direct Payments during the agricultural transition period. Subsection 1(a) empowers the Secretary of State to make regulations that apply reductions to payments made under the retained CAP regulations (the “basic payment scheme” as defined in clause 4(2)). Subsection 1(b) allows the Secretary of State to make regulations which replace the “basic payment scheme” with delinked payments. Reductions made through regulations provided under subsection (1)(a) may also apply to delinked payments. Subsection 1(b) caters for delinked payments being introduced at any point during the agricultural transition period.

Subsection (2) defines the term “delinked payment”.

Subsection (3) provides mandatory requirements as to what must appear in regulations for delinked payments, as follows:

- paragraph (a) requires that regulations introducing delinked payments must specify their starting year;
- paragraph (b) requires that no “basic payment scheme” payments are to be made once delinked payments are introduced. It therefore makes it clear that delinked payments are a replacement for payments under the basic payment scheme;
- paragraph (c) 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 (4)).
- paragraph (d) 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 (4)).

Subsection (4) 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.

Subsection (5) provides that the method for calculating the value of the delinked payment to any particular 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.

Subsection (6) allows the Secretary of State to make further regulations concerning delinking as follows:

- paragraph (a) allows for recipients to opt out of receiving delinked payments.
avoids the perverse scenario of the government making a payment that the recipient does not wish to receive;

- paragraph (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

- paragraph (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.

97 Subsection (7) empowers the Secretary of State to provide the offer of a lump sum payment to eligible recipients of Direct Payments. Those persons choosing the lump sum would do so in forfeiture of continued Direct Payments during the agricultural transition period.

98 Subsection (8) provides that where the greening payment has ended, for the purposes of the provisions in this clause, 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.

99 Subsection (9) provides that regulations made under clause 7 are to be subject to affirmative resolution procedure.

Clause 8: Termination of direct payments

100 This clause sets conditions for ending Direct Payments, and ensures that no payments under any Direct Payments scheme, whether they are delinked or part of the basic payment scheme, can be made in any year following the termination of the agricultural transition period.

101 Subsection (1) stipulates that basic payment scheme payments are to cease at the end of the agricultural transition period. This caters for the situation where delinked payments are not been introduced.

102 Subsection (2) specifies the following conditions for ending payments in the event that delinked payments are implemented:

- paragraph (a) disapplies subsection (1). Where delinked payments are implemented, clause 7 (3)(b) will take effect and will provide for the end of the basic payment scheme before the end of the agricultural transition period.

- paragraph (b) states that delinked payments are to cease at the end of the agricultural transition period.

Chapter 2: Other financial support: modification of legislation in relation to England

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

103 This clause empowers the Secretary of State to make regulations which modify the “horizontal basic act” (as incorporated into domestic law carried forward and modified according to the EU (Withdrawal) Act 2018) in relation to England.

104 The horizontal legislation concerns the financing, management and monitoring of the CAP. It is known as the horizontal legislation because it applies to CAP Pillar 1 Direct Payments, Pillar 2 Rural Development Programmes and measures within the Pillar 1 Common Market Organisation, such as the fruit and vegetable Producer Organisations (see clause 10). For a
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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 legislative framework for the financing, management and monitoring of the CAP. Regulation 1306/2013 contains cross-cutting 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 may be repealed or amended at EU Exit (under forthcoming EU (Withdrawal) Act 2018 Statutory Instruments) to ensure the overarching CAP framework operates in a UK setting.

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 under Pillar 1 of the CAP or as part of the agri-environment Rural Development schemes under Pillar 2) 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 requirements set out in 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 CAP rules enable reductions to be made to the beneficiary’s CAP payments.
105 Subsection (1) and (2) outline the overall scope of the power. They empower the Secretary of State to modify, in relation to England, the retained horizontal legislation, including any related domestic subordinate legislation. Any such modifications (except where they provide for legislation to cease to have effect) are to be made solely where the Secretary of State considers they will simplify or otherwise improve the way the legislation operates.

106 Subsection (3) limits the power provided by this clause. The power cannot be used to extend the horizontal legislation to schemes set up under Part 1 of the Bill (new financial assistance powers). This means, in effect, that the power provided by this clause will elapse when the schemes currently covered by the horizontal legislation have been ended or phased out in England.

107 Subsection (4) sets out a non-exhaustive list of the retained direct EU legislation that may be modified under this power and is intended to encompass any other direct EU legislation made under the above EU regulations.

Clause 10: Aid for fruit and vegetable producer organisations

108 Clause 10 provides the Secretary of State with the powers to modify retained EU legislation on the EU Fruit and Vegetable Aid Scheme in England. This scheme provides financial aid to Producer Organisations recognised in the fruit and vegetable sector, with the aim of helping them to increase their competitiveness, improving planning of production and quality of produce, and helping them to reduce their environmental impact. The EU regulations underpinning the scheme will be converted into domestic law through the European Union (Withdrawal) Act 2018. We will allow operational programmes approved prior to EU Exit to run through to completion.

109 Subsection (1) will enable the Secretary of State to make regulations to ensure that the retained EU legislation underpinning the Fruit and Vegetable Aid Scheme no longer applies in England.

110 Subsection (2) confirms that regulations made under this clause are subject to the negative resolution procedure.


Clause 11: Support for rural development

112 Clause 11 provides the Secretary of State with the power to modify retained EU legislation relating to Rural Development in England. The power is to be used to either repeal the regulations or, in the interim, to simplify or improve them. This will allow for the early introduction of improvements to the operation of existing schemes, based on lessons learned while operating under the CAP, such as the introduction of more flexible start dates for new agreements or simplification of how schemes are enforced. This will simplify the application process and make schemes easier to run. This clause will not be used to introduce any new schemes, as they will be covered under clause 1.
Subsection (1) enables the Secretary of State to change retained EU legislation relating to support for Rural Development and any subordinate legislation which relates to it.

Subsection (2) specifies that the changes in subsection (1) are for the purposes of ensuring that the retained EU legislation ceases to have effect in England or that its operation is simplified or improved.

Subsection (3) provides a non-exhaustive list of the retained EU legislation that may be modified.

Subsection (3)(a) refers to the Rural Development basic act. This regulation lays down the general rules governing support for Rural Development, establishes the concept of a Rural Development programme, sets its content and the measures that can be included and their operation and financing.

Subsection (3)(b) refers to Regulation (1310/2013). This regulation facilitates the transition for schemes made under Regulation 1698/2005 to those made under the Rural Development basic act.

Subsection (3)(c) refers to Regulation (1698/2005). This regulation lays down the general rules governing support for Rural Development that apply to schemes and projects that began during the 2006-2013 CAP round.

Subsection (3)(d) refers to the common provisions basic act. This regulation set rules on socio-economic schemes designed for Rural Development purposes and forms of support.

Subsection (3)(f) refers to Regulation (1257/99). These regulations instigated early Rural Development schemes, some of which are still active.

Subsection (3)(g) refers to Regulation (2080/92). These regulations established an aid scheme for forestry. Some of the aid programmes are still active.

Subsection (3)(h) refers to Regulation (2078/92). These regulations described an aid scheme for farmers to have a positive effect on the environment and the countryside. Some elements of this aid scheme are still live.
Part 3: Collection and sharing of data

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

123 Subsection (1) provides the Secretary of State with the power to collect data, by requirement, from persons within, or closely connected to, the agri-food supply chain. The information that may be collected under this power must relate to that person’s activities that are in or connected with the agri-food supply chain (colloquially known as “farm to fork”). Clause 13 defines a person in or closely connected to 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.

124 Subsection (2) mirrors the power in subsection (1), except it is a power to make secondary legislation to exercise the power to collect information from persons within, or closely connected to, the agri-food supply chain. A power to make regulations is needed where the class of persons from whom information is to be required is not readily identifiable or quantifiable, or where it may be difficult to ascertain and contact them. The regulations made under this subsection will be the written requirement to provide information.

125 Subsections (1) and (2) clarify the territorial extent of the powers in this clause 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.

126 Subsection (3) refers to definitions.

127 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.

128 Subsection (5) 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 a person to whom the subject applies in order to state the requirement to provide information. This subsection does not apply to subsection (2), for which the requirement may be stipulated in secondary legislation only.

129 Subsection (6) states that the requirements to provide information under subsections (1) and/or (2) may apply to the Crown.

130 Subsection (7) specifies that regulations made under subsection (2) are subject to the affirmative procedure.

Clause 13: Meaning of “agri-food supply chain”

131 Subsection (1) explains that the definitions apply to the whole Part.

132 Subsections (2) and (3) define the extent of what is considered to be part of an “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).

133 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 goods and/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.

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.

Clause 14: Requirement must specify purposes for which information may be processed

This clause provides the details that must be provided in a requirement to provide information.

Subsections (1) sets out that this is the case where the requirement is made under the general power or through secondary legislation.

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

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

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

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 clause aims at assisting primary producers, for example by collecting data which enables benchmarking of farm performance.

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 which 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.

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

Subsection (4)(e) enables data to be collected for the purpose of 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.

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.

Subsection (4)(g) enables data to be collected for the purpose of monitoring or analysing

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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.

146 Subsection (4)(h) is an encompassing purpose for public authorities which have functions relating to activities in the agri-food supply chain and persons or activities affected by it. This could include public authorities with responsibilities for food safety and environmental protection.

Clause 15: Provision of required information and limitations on its processing

147 Subsection (1) states that the provisions apply to requirements whether they are made under the general power or the power in secondary legislation.

148 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.

149 Subsection (3) stipulates that the requirement to only use information for the purpose for which it is provided applies to the first recipient of the information in response to the requirement, 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.

150 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 (6) to (9).

151 Subsection (5) specifies what information may be contained in the requirement.

152 Subsection (6) sets out that where a requirement specifies a certain type (or types) of processing that collected information may undergo (such as aggregation) that information may not undergo any other forms of processing that are not specified in the requirement.

153 Subsection (7) 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 subsections (8) and (9).

154 Subsection (8) 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 impact 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 (b) qualifies 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.

155 Subsection (9) clarifies that where a disclosure may be commercially harmful, and the Secretary of State does not consider there to be a public interest in non-anonymised disclosure, then the information must not be disclosed in any other form beyond that specified in the requirement.

156 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.
Clause 16: Enforcement of information requirements

157 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 which will be applied in the event of non-compliance (if someone fails to provide information, or provides false information).

158 Subsection (2) sets out definitions.

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

160 Subsection (4) details the list of possible sanctions that may be included in enforcement provisions.

161 Subsection (4)(a) provides for the imposition of fines, which can either be a specified amount or an amount arrived at using a specified manner or calculation;

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

163 Subsection (4)(c) states that regulations can be about providing advice.

164 Subsection (4)(d) provides for the imposition of restrictions on carrying out activities. For instance, if a business entity fails to comply with an information requirement placed upon it, it may be prohibited from carrying out specific business activities.

165 Subsection (4)(e) provides for the regulations to enable the taking of undertakings;

166 Subsection (4)(f) enables regulations to confer functions on those enforcing the regulations.

167 Subsection (4)(g) enables regulations to set up appeal mechanisms.

168 Subsection (5) sets out that this amount can be calculated using information relating to income, turnover or profits. This is in order that fines may be calculated which are appropriate, and suitably dissuasive, for a broad range of operators.

Part 4: Intervention in Agricultural Markets

Exceptional market conditions

Clause 17: Declaration relating to exceptional market conditions

169 Clause 17 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 clause 18.

170 The declaration of exceptional market conditions triggers the Secretary of State’s power at clause 18 to make or agree to make payments, loans and guarantees to affected farmers; or operate the public intervention and private storage aid schemes.

171 Exceptional market conditions may exist where there is severe disturbance, or the threat of such a disturbance, in the agricultural market which has or could have a significant adverse effect on the incomes of farmers in England. This does not extend to other exceptional events, such as extreme weather events or animal disease unless they result in an actual or threatened market disturbance.

172 The critical factor determining whether a situation is considered to create exceptional market conditions.
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conditions under this clause 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 which gave rise to that disturbance.

173 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 do, or threaten to do significant harm to producers in order to constitute an exceptional market condition.

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

175 Subsection (3)(d) provides that the powers provided for in clause 18 are available for use until the declaration is no longer in effect.

176 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.

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

178 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 within 7 days of the original declarations end date.

179 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.

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

181 Subsection (9) explains that “agriculture” in clauses 17 and 18 includes “horticulture”.

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

182 Clause 18 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 that exceptional market condition or by operating public intervention and private storage aid schemes.

183 Under this provision, during a period of exceptional market conditions, the Secretary of State may: make or agree to make payments, loans, and guarantees under any conditions he considers appropriate, including targeting payments to particular sectors and geographical areas; and exercise public intervention and private storage aid powers 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.

184 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 which are designed to apply to the wider European agricultural market.

185 Subsection (1) states that this provision applies during the period for which the declaration of exceptional market conditions made under clause 17 is in effect.

186 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 clause 17.

187 Subsection (3) allows the Secretary of State to use the public intervention and private storage
aid schemes in response to the market disturbance if they consider it appropriate.

188 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.

189 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.

190 Subsection (7) states that the Secretary of State may give or agree to give financial assistance after the declaration under clause 17 has ceased to have effect, as long as the application for this assistance was submitted while the declaration was in force.

**Retained direct EU legislation relating to public market intervention and private storage aid**

**Clause 19: Modification in connection with exceptional market conditions and for general purposes**

191 Clause 19 gives the Secretary of State the power to amend the retained direct EU legislation for England relating to public intervention and private storage aid.

192 The power at subsection (1) allows the Secretary of State to amend the legislation 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 in clause 17.

193 Subsection 2 sets out that modifications can be made for either or both of the following purposes:

194 Subsection (2)(a) is to amend either scheme in such a way as it ceases to have affect in England (with savings made for the operation of the schemes in exceptional market conditions under clause 18, if necessary)

195 Subsection (2)(b) is to amend the general operation of either scheme

196 Subsection (3) sets out regulations made under this power are subject to the negative resolution procedure.

197 Subsection (4) sets out the retained direct EU legislation that concerns public intervention and private storage aid, and which is referred to in clauses 18 and 19.

198 The power in subsection (1) may only be used after a declaration of exceptional market conditions as laid out in clause 17 has been made. 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.

199 Modifications made to retained EU legislation made under the power in subsection (1) would be linked to a particular period of exceptional market conditions and would not have any permanent effect on the general operation of either scheme.
Part 5: Marketing standards and carcass classification

Clause 20: Marketing standards and carcass classification

Box 4: Marketing standards and carcass classification

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 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.

Marketing standards apply differently to each product/sector. For example, the dairy regulations covering milk, milk products and spreadable fats set out the compositional standards for these products, whereas the beef and veal regulations cover traceability, identification and labelling of the animal or animal product.

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

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 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. 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.

200 Clause 20 will give the Secretary of State a domestic power to make provisions relating to marketing standards for products marketed in England and carcass classification by slaughterhouses in England, through regulations. This will include the ability to amend or revoke the current marketing standards and 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.

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

These Explanatory Notes relate to the Agriculture Bill as introduced in the House of Commons on 12 September 2018 (Bill 266)
202 Subsection (1)(a) states that Part 1 of Schedule 1 contains the list of agricultural sectors for which marketing standards may be made. Schedule 1 also contains a power for the Secretary of State to make regulations to amend the list of products for which marketing standards may be set.

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

204 Subsection (2) outlines what matters the regulations made under the power in 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.

205 Subsection (3) 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.

206 Subsection (4) states that regulations made under subsections (1) or (3) may include provisions about enforcement. It also outlines what matter these enforcement regulations may concern, for example, conferring powers of entry, creating offences and imposing penalties as per clause 29. This list is non-exhaustive. This will allow 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.

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

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

208 Under clause 20, the Secretary of State will have the power to make provisions relating to marketing standards for products marketed in or exported from England through regulations. This will also cover 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 the marketing standards of specific products.

209 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 clause is required for technical reasons in order to ensure that changes made to Annex 7 using the power in clause 20 (to add new products for example) feed through to the relevant articles in section 2 of chapter 1 of title 2.

210 Clause 21 will give the Secretary of State a domestic 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 clause 20(1) so that these are reflected in section 2 of chapter 1 of title 2 of CMO Regulation.

Part 6: Producer Organisations and fairness in the supply chain

Producer Organisations

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

212 Through the EU regime, recognised POs benefit from a number of 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

*These Explanatory Notes relate to the Agriculture Bill as introduced in the House of Commons on 12 September 2018 (Bill 266)*
and processing). Existing EU regulations will be converted into domestic law by the European Union (Withdrawal) Act 2018 in order 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 eventually transition.

213 Clauses 22-24 lay out the conditions for recognition which apply to groups of producers wishing to apply for recognition under the new domestic regime. These have been kept broadly consistent with the substance of the existing regime, and the Bill includes powers for the Secretary of State to specify the details of these conditions. These clauses also establish, through amendments to the Competition Act 1998, the exemptions from competition law that are available to recognised organisations.

214 Clause 35 allows for commencement by regulation because, unlike other provisions in the Bill, the PO provisions create a fairly detailed regime; all that remains to be done by secondary legislation is to fill in some technical detail, and perhaps tailor the regime to changing market conditions and other developments in the industry. If the provisions in the Bill are commenced two months after of Royal Assent, this is likely to be while the UK is still bound by the PO regime contained in the CMO. This would present a potential cause for legal uncertainty, given so it will look like two parallel PO regimes are in operation concurrently. Furthermore, should commencement be two months after Royal Assent, this may result in face-of-the-Bill provisions being in force before we have made the secondary legislation which specifies the technical details of the scheme.

Clause 22: Producer and interbranch organisations etc: application for recognition

215 Clause 22 sets out the conditions that need to be met for groups of operators to qualify for recognition as one of three types of organisation. Much of the detail of the conditions is to be “specified” pursuant to regulations to be made by the Secretary of State under subsection (12).

216 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 in which it operates, that it carries out activities that will improve the market position of its members, and that it is controlled by its members 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, subsections (3) and (4) set out conditions which need to be met in order 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.

217 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 of 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.

218 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

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are capable of having particularly distortive effects on competition. The provisions regulating their exemption are therefore stricter than for the other types of organisation.

219 Subsection (7) 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.

220 Subsection (8) requires the Secretary of State to specify in regulations the time period within which an application for recognition under subsections (1), (3) or (5) must be determined.

221 Subsection (10) allows the Secretary of State to introduce further requirements concerning the actual application process. These will be purely administrative provisions such as introducing a new requirement for the submission of further supporting evidence or amending the deadlines involved in the applications process.

**Clause 23: Recognised organisations: competition exemptions and further provision**

222 This clause 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.

223 Subsection (1) refers to Schedule 2 which amends the Competition Act 1998 so as 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 we leave the EU. We are taking this opportunity to provide a wholly domestic basis for the exemptions. 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.

224 Subsection (2) allows the Secretary of State, by regulations, to make further provision about recognised organisations. Subsection (3) provides examples of such additional 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 to collaborate outside of the normal competition rules, and includes the power to make provisions about monitoring and enforcement.

225 Subsection (4) details the type of provisions that may be introduced under Subsection (2), in order to monitor and enforce compliance with ongoing recognition requirements.

226 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.

**Clause 24: Regulations under clauses 22 and 23**

227 This clause makes provision about the regulation-making powers in clauses 22 and 23.

228 Subsection (1) makes it clear that the Secretary of State can use the powers in clauses 22 and 23 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 administration of the recognition regime is carried out by the appropriate body.

229 Subsection (2) confers power on the Secretary of State to make regulations introducing sector-
specific PO, APO or IBO rules, which could make exceptions from or disapply any of the provisions set out in clauses 22 and 23. 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.

230 Subsection (5) requires the Secretary of State, before introducing any new sector-specific provisions, to consult with industry. Industry is defined as persons who are representative of a sector, or persons who will be affected by any new regulations. 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.

Fair dealing with agricultural producers

Clause 25: Fair dealing obligations of first purchasers of agricultural products

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

232 The Groceries Code Adjudicator (GCA) was appointed in 2013 to enforce the Groceries Supply Code of Practice (the Code). It is widely recognised that the GCA has improved the relationship between large grocery retailers and their direct suppliers, and the first statutory review of the GCA found that it is an exemplary modern regulator.

233 However, the majority of farmers do not supply supermarkets directly. They are therefore covered by the GCA and can be exposed to unfair trading practices.

234 Clause 25 provides the Secretary of State with the power to make regulations to introduce obligations that promote fair contractual relationships between farmers and the first purchasers of their products. As the issues faced by different farming sectors vary considerably, the clause includes powers to introduce sector-specific codes, as well as general powers to improve principles of fair contractual practice across the whole industry.

235 Subsection (1) empowers the Secretary of State to make regulations aimed at promoting fair contractual dealing by the operators who buy produce directly from farmers in the course of a business (“first purchasers”). However, these powers will not be exercised in respect of any commercial arrangements within the GCA’s remit.

236 Subsection (2) specifies that the regulations must impose obligations on first purchasers (for example processors; abattoirs) about the contracts they make to buy produce from farmers. This covers both written and unwritten contracts.

237 Subsection (3) sets out the kinds of obligations that may be imposed, and it is an exhaustive list. The Secretary of State may require first purchasers to:

- use a written contract (subsection (3)(a)). This will aid transparency and certainty for those sectors, such as dairy, where it is appropriate;
- include a term in the contract dealing with a particular matter (subsection (3)(b)). Subsection (4) lists examples of the types of term that a first purchaser can be required to include. 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;

- agree terms that make specific provision (subsection (3)(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; and or

- agree terms that comply with a set of principles and practices that promote fair dealing (subsection (3)(c)(ii)). For example, if a contract includes an exclusivity clause, fair dealing requires that farmers should not be paid less for surplus product than if they sold the surplus to a third party.

238 Subsection (4) provides examples of the types of terms that could be regulated through the contractual obligations imposed under subsection (3).

239 Subsection (5) provides the Secretary of State with powers to establish an enforcement regime, and impose civil penalties for non-compliance. It is expected 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).

240 We anticipate that the enforcement will be carried out by the Rural Payments Agency. If the situation arose where a farmer felt that their contract was in breach of a statutory code that farmer would be able to approach the enforcement body, who would determine whether the first purchaser had complied with its fair dealing obligations. If it wasn’t compliant the first purchaser would have an opportunity to amend the contract to address the issues, and if they didn’t do so within a set period of time (set out in secondary legislation) it would be possible to impose a fine or a requirement to pay compensation on the first purchaser.

241 Subsection (6) provides the Secretary of State with powers to delegate authority to another person. This is most likely to be used to enable an independent party to consider appeals provided for under subsection (5)(d).

242 Subsection (7) contains a power to revoke those parts of retained EU legislation that overlap with this clause.

**Part 7: WTO Agreement on Agriculture**

**Clause 26: WTO Agreement on Agriculture: regulations**

243 Clause 26 provides 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).

244 The “Agreement on Agriculture” – as referred to in subsections (1), (2), (3)(a), (6)(a)(ii), (6)(b)(ii-iv), and (9) - 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 constraints 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.

245 The domestic support provisions relate to various forms of government financial support given to domestic producers of agricultural products, both direct and indirect. Payments made to agricultural producers during the agricultural transition and through any future
public money for public goods schemes, would need to comply with the Agreement on Agriculture.

This clause intends to ensure that all support schemes are properly classified as amber, green or blue, and if they fall into the amber box, that they do not cause the UK to exceed its Aggregate Measurement of Support (AMS) limit (See Boxes 5-8). This clause also intends to ensure that the UK is able to meet its obligations to make notifications required under the AoA.
Box 5: Green box

Green box: Measures that have no, or at most minimal, trade-distorting effects or effects on production. There is currently no WTO requirement to limit these payments but they must meet certain basic and scheme-specific criteria.

The basic criteria require support to be provided through a publicly-funded government programme rather than transfers from consumers; and that support shall not have the effect of providing price support to producers.

Scheme-specific criteria vary according to the policy. Some examples include: decoupled income support; no production is required to receive payment; payments under environmental programmes; payment shall be limited to the extra costs or loss of income involved in complying with the government programme.

Structural adjustment assistance provided through investment aids: eligibility for such payments shall 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.

Payments (made either directly or by way of government financial participation in crop insurance schemes) for relief from natural disasters: eligibility for such payments arise only following a formal recognition by government authorities that a natural or like disaster has occurred or is occurring; and shall be determined by a production loss which exceeds 30% of the average of production.

Payments under regional assistance programmes: the payments shall be limited to the extra costs or loss of income involved in undertaking agricultural production in the prescribed area.

Box 6: Amber box

Amber box and de minimis: payments that do not meet the green or blue box criteria are assumed to cause trade distortion and are notified by WTO members as amber box.

All WTO members are allowed to provide de minimis levels of amber box support. For developed countries the de minimis is usually 5% of the value of production for product-specific support plus 5% of the total value of production if support is not product-specific. Some WTO members, including the UK, have provision to provide levels of amber box domestic support over and above de minimis levels but there is an upper limit on this additional support (based on historic use).

On leaving the European Union, the UK will be required to notify use of the Aggregate Measurement of Support (AMS) to the WTO on an annual basis (the EU currently notifies this on the UK’s behalf).
Box 7: Blue box
Blue box: Trade-distorting domestic support with “production-limiting” conditions designed to reduce distortion. Under current WTO agreements, members are not required to limit such payments if:
- 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 8: Aggregate Measurement of Support (AMS)
AMS: refers to the annual level of agricultural support given to agricultural producers, expressed in monetary terms, other than support that is exempt under article 6 of Annex 2 of the AoA (green box or blue box).

247 The clause is constrained by Subsection (1) which describes the purpose for the clause (compliance with the AoA).

248 Under the AoA, WTO members are obliged to classify domestic support on the basis of its potential to distort trade. Subsection (2)(a) gives the Secretary of State the power to set out in regulations a process designed to facilitate review of, and reach agreement on, the classification of domestic support in accordance with this obligation. Subsection (2)(b) gives the Secretary of State powers to set out in regulations a process for resolving disputes where agreement on the classification of a domestic support scheme has not been reached. 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.

249 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. Subsection (3) gives the Secretary of State the powers to implement this ceiling on amber box support in UK law. Subsection (3) also gives the Secretary of State powers to reserve a portion of this ceiling for measures that need to be given across the whole of the UK, including crisis measures, and powers to divide the remainder between the UK to set intra-UK ceilings.

250 There are currently no WTO ceilings on domestic support that (according to WTO definitions) does not distort trade or artificially stimulate production (green box support). Similarly, there is currently no ceiling on (blue box) trade-distorting support where (in accordance with WTO criteria) production limiting arrangements are in place (such as headage payments based on fixed number of livestock). Subsection (4)(b) gives the Secretary of State powers to set ceilings on green box and/or blue box support if disciplines on these classifications of domestic support are agreed at the WTO.

251 Ceilings on amber box domestic support are currently expressed in monetary amounts (euros). Subsection (4)(c) gives the Secretary of State powers to set out UK and intra-UK ceilings on domestic support by means other than by monetary amounts to align with changes in the way that WTO ceilings on domestic support are expressed at the WTO where appropriate.
252 WTO members are required to make notifications in support of their AoA obligations, including an annual notification on levels of domestic support made towards agriculture, and justification where this support is classified as exempt from the amber box ceiling. WTO members can be challenged by other WTO members if they feel that their obligations under the AoA have not been met. Subsection (6) gives the Secretary of State the powers to set out in regulations provisions for collecting information for the purposes of compliance with AoA obligations including domestic support notifications and responding to challenges from other WTO members, and may include placing obligations on devolved administrations.

253 Subsection (7) enables the Secretary of State to confer functions on another person, make provision for the delegation of functions and enable any other person exercise a discretion in relation to the functions outlined above. The difference between (a) and (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.

Part 8: Wales and Northern Ireland

Clause 27: Wales

254 Further provisions relating to Wales can be found in Schedule 3. This is at the request of the Welsh Government in order to continue making payments to farmers and land managers once the UK leaves the EU, to make changes to current schemes and to enable implementation of replacement land management schemes. These powers are intended to be time limited until a Welsh Agriculture Bill can be brought forward.

Clause 28: Northern Ireland

255 Further provisions relating to Northern Ireland can be found in Schedule 4. 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 future Executive Ministers have the flexibility to develop policy once an Assembly is returned.

Part 9: Final provisions

Clause 29: Regulations

256 Subsection (1) provides that regulations under this Bill will be statutory instruments.

257 Subsection (2) provides that regulation-making powers conferred under this Bill on DAERA are exercisable by statutory rule. Statutory instruments are the principal form in which delegated legislation is made in Northern Ireland.

258 Subsection (3) applies to any power to make regulations under this Bill; it provides that those powers are capable of (a) making provision that binds the Crown, (b) making different provision for different purposes, and (c) making supplementary, incidental, consequential, transitional or savings provision.

259 Subsection (4) provides that supplementary, incidental, consequential transitional or savings provisions that are made under subsection (3) may modify primary legislation, retained direct EU legislation or subordinate legislation.

260 Subsection (5) says that regulations under this Act creating offences may not provide for an offence created by the regulations to be punishable with imprisonment for a period exceeding:

- in the case of conviction on indictment, 2 years,
- in the case of summary conviction, 3 months.

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261 Those periods replicate the periods mentioned in para 1(1)(d) of Schedule 2 to the ECA.

262 Subsection (6) sets out the process for regulations made under the affirmative resolution procedure. These instruments cannot be made unless a draft has been laid before and approved by both Houses.

263 Subsection (7) sets out the process for regulations made under the negative resolution procedure. These instruments become law when they are made (they may come into force on a later date) and remain law unless there is an objection from either House. The instrument is laid after making, subject to annulment if a motion to annul (known as a “prayer”) is passed within forty days.

264 Subsection (8) provides that any regulations made under this Bill which are subject to the negative resolution procedure can be made under the affirmative resolution procedure.

265 Subsection (9) provides that clause 29 does not apply to regulations under clause 35, which may be used to commence provisions of this Bill.

Clause 30: Interpretation

266 This clause sets out definitions of commonly used terms in this Bill.

Clause 31: Consequential amendments

267 This clause notes that Schedule 5 makes consequential amendments to the CMO Regulation in consequence of:

- Part 4 (Intervention in agricultural markets);
- Part 4 of Schedule 27 (intervention in agricultural markets: Wales);
- Part 3 of Schedule 4 (intervention in agricultural markets: Northern Ireland);
- Part 5 (marketing standards and carcass classification: England);
- Part 5 of Schedule 3 (marketing standards and carcass classification: Wales);
- Part 4 of Schedule 4 (marketing standards and carcass classification: Northern Ireland).

Clause 32: Power to make consequential etc provision

268 This clause provides the power to make regulations for any consequential, supplemental, transitional or transitional provision or savings in connection with any provisions in the Bill. This is a standalone power which, in contrast to the power in section 29(3)(c), may be exercised independently from the exercise of one of the other powers to make regulations under this Bill.

Clause 33: Financial Provision

269 Money provided by Parliament is to be available for:

- giving financial assistance under clause 1(1) or (2) or 18(2),
- making delinked payments under provisions made by regulations under section 7(1)(b),
- operating the public market intervention and aid for private storage mechanisms in exceptional market conditions,
- administrative expenses incurred by the Secretary of State as a result of provisions in this Bill,

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any increase as a result of this Bill in amounts already payable.

Clause 34: Extent

270 Once the Bill becomes an Act of Parliament the following provisions will extend to England and Wales only:

- Part 1 which relates to new financial assistance powers
- Part 3 which relates to the collection and sharing of data
- Clauses 17 and 18 which relate to the declaration of exceptional market conditions and the powers available to the Secretary of State in exceptional market conditions
- Clause 20 which relates to the power to make regulations for marketing standards and carcass classification.

271 In Schedule 3:

- Part 1 relating to new financial assistance powers for Wales
- Part 3 relating to the collection and sharing of data
- Paragraphs 16 and 17 relating to the declaration of exceptional market conditions and power available to the Welsh Ministers in exceptional market conditions
- Part 5 relating to marketing standards and carcass classification for Wales.

272 The following provisions in Schedule 4 extend to Northern Ireland only:

- Part 2 relating to the collection and sharing of data
- Paragraph 10 relating to powers available to DAERA in exceptional market conditions
- Part 4 relating to marketing standards and carcass classification for Northern Ireland.

273 The rest of the Act will extend to the UK. This is because the relevant provisions:

- Relate to a reserved matter; or
- Amend, or give powers to amend retained EU legislation which will extend to the UK. Such provisions may, however, apply more narrowly to a particular jurisdiction.

274 Please see Annex A for more information.

Clause 35: Commencement

275 This clause is a standard provision which explains when the provisions of the Bill will come into force (i.e. begin to have an effect).

276 The Secretary of State will lay regulations saying when clauses 22 to 24 and Schedule 2 will come into force. The regulations may say that they come into force at different times.

277 The rest of the provisions of the Bill will come into force two months after the Bill is granted Royal Assent and becomes an Act. However, section 31 and Schedule 5 will not come into force until after the UK has left the EU; if the rest of the Bill comes into force before that, section 31 and Schedule 5 will come into force on exit day instead.

Clause 36: Short Title

278 This clause provides that the short title of the Act will be the Agriculture Act 2018.


**Schedules**

**Schedule 1: Agricultural products: sectors**

279 Parts 1 and 2 list the agricultural sectors to which some of the provisions apply. Part 1 relates to marketing standards (clauses 20-21). Part 2 relates to Producer Organisations (clauses 22-24) and fair dealing provisions (clause 25).

280 Schedule 1 Part 3 paragraph 1 “Regulations” (clause 24 – subsections (1) and (2)) confers on the Secretary of State the power to amend, by regulation, the list of sectors in Schedule 1 and to set out in further detail the list of products which falls within each sector.

**Schedule 2: Recognised organisations: competition exclusions**

281 The derogations from Competition Law that are available to recognised POs currently reside in the CMO Regulation. Schedule 2 amends the Competition Act 1998, to domesticate these derogations.

282 The amendments in Schedule 2 subsection (1) apply to paragraph 9 of the Competition Act, which deals with general exclusions for agricultural products.

283 Subsection (2) replaces Schedule 3 paragraph 9 subparagraph 1 of the Competition Act, which gives domestic effect to the EU exemptions with a subparagraph setting out the conditions of derogations under the new regime. That is, the chapter 1 prohibitions (the general prohibition of anti-competitive behavior) is not applicable to agreements between the members of a recognised PO, or members of an APO, who collectively carry out planning production, optimization 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.

284 Condition A sets out 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.

285 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.

286 Subsection (1E) caveats 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.

287 Subsections (3), (4) and (5) make operational changes to the Competition Act to account for the UK’s withdrawal from the EU.

288 Subparagraph (3) 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).
289 As such, subsection (2) 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. Subsection (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.

290 Subsection (4) empowers the CMA to decide, at any time, that a RIBO exclusion for a particular agreement is no longer in effect.

291 Subsection (5) sets out that the existing conditions in Schedule 3 Paragraph 9 Competition Act sub-paragraphs (4)-(8), 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: Provision relating to Wales

292 Schedule 3 extends mostly identical powers to the Welsh Ministers as those conferred on the Secretary of State in Parts 1-5 of the Bill.

293 Part 1 gives powers to the Welsh Ministers to provide new financial assistance. Paragraphs 1(2)(a) and (b) confer additional powers on the Welsh Ministers enabling them to give financial assistance for or in connection with:

- supporting businesses or communities in rural areas;
- supporting people who are involved in the production, processing, marketing or distribution of products from an agricultural, horticultural or forestry activity.

294 Powers granted to the welsh Ministers in Part 2 to provide financial support after exiting the EU with the exception of the power to modify aid schemes for fruit and vegetable POs. A different definition of BPS to that in the corresponding Bill clause for England is given to include the redistributive payments made under BPS Wales.

295 Parts 3 and 4 give the Welsh Ministers powers relating to the collection and sharing of data and intervention in agricultural markets.

Schedule 4: Provision relating to Northern Ireland

296 Schedule 4 extends similar powers to DAERA as those conferred on the Secretary of State in Parts 2-5 of the Bill.

297 Part 1 gives similar powers to DAERA to those conferred on the Secretary of State in Part 2 of the Bill with the exception of:

- Clause 5 which relates to the agricultural transition period for England
- Clause 7 which relates to powers to phase out Direct Payments and delink payments
- Clause 8 which relates to the termination of Direct Payments
- Clause 10 which modifies aid schemes for fruit and vegetable POs

298 Paragraph 2(1)(b) confers additional powers on DAERA which include powers to reintroduce and modify articles 48 and 49 of the Direct Payments Regulation in relation to making payments for areas of natural constraint.

299 Part 2 gives similar powers to DAERA to those conferred on the Secretary of State in Part 3 of the Bill.

These Explanatory Notes relate to the Agriculture Bill as introduced in the House of Commons on 12 September 2018 (Bill 266)
Part 3 gives similar powers to DAERA to those conferred on the Secretary of State in Part 4 of the Bill with the exception of clause 17 relating to the declaration of exceptional market conditions.

Schedule 5: the CMO Regulation: consequential amendments

Schedule 5 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 clauses 18, 19 and 20. Schedule 5 disapplies these articles for England, Wales and Northern Ireland.

Schedule 5 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 but that the powers under which they were made are disapplied for England, Wales and Northern Ireland.

Articles 219, 220, 221 and 222 (exceptional measures) are amended under paragraph 1 to ensure that the articles do not apply in relation to agricultural producers in England or Wales. These articles are redundant in light of the powers in clauses 17 and 18 for the Secretary of State to act in periods of exceptional market conditions.

Article 19(6) (the Commission’s powers to amend carcass classification rules) is amended under paragraph 3 to ensure that this paragraph does not apply to the classification, identification and presentation of carcasses by slaughterhouses in England, Wales and Northern Ireland.

Article 20(p) – (u) (the Commission’s powers to makes rules on the implementation of the carcass classification scales) is amended under paragraph 4 to ensure that these paragraphs do not apply in relation to slaughterhouses in England, Wales and Northern Ireland.

Article 21 (the Commission’s powers to make rules on the classification of light lamb carcasses) is amended under paragraph 5 to ensure that the article does not apply to the classification of carcasses by slaughterhouses in England, Wales and Northern Ireland.

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) is amended under paragraph 6 to ensure that references in this Section, as they apply in relation to products marketed in England, Wales and Northern Ireland., include standards set in regulations under the power in clause 20(1).

Article 75 (which sets out the content of EU marketing standards rules and the Commission powers to set and amend marketing standards) is amended under paragraph 7 to ensure that the article does not apply in relation to products marketed in England, Wales and Northern Ireland.

Article 78(3) - (5) (the Commission’s powers to amend definitions, designations and sales descriptions) is amended under paragraph 8 to ensure that these paragraphs do not apply in relation to products marketed in England, Wales and Northern Ireland.

Article 80(3) - (5) (the Commission’s powers relating to oenological practices) is amended under paragraph 9 to ensure that these paragraphs do not apply in relation to products marketed in England, Wales and Northern Ireland.

Articles 86, 87 and 88 (the Commission’s powers relating to optional reserved terms) are
amended under paragraph 10 to ensure that the articles do not apply in relation to products marketed in England, Wales and Northern Ireland.

312 Article 91 (the Commission’s powers to make rules relating to the implementation of marketing standards) is amended under paragraph 11 to ensure that the article does not apply in relation to products marketed in England, Wales and Northern Ireland.

313 Article 119(3)(b) (the Commission’s power to make derogations from wine labelling rules) is amended under paragraph 12 to ensure that this point does not apply in relation to products marketed in England, Wales and Northern Ireland.

314 Article 122 (the Commission’s powers relating to wine labelling) is amended under paragraph 13 to ensure that the article does not apply in relation to products marketed in England, Wales and Northern Ireland.

315 Article 123 (the Commission’s power to make rules relating to the implantation of wine labelling rules) is amended under paragraph 14 to ensure that the article does not apply in relation to products marketed in England, Wales and Northern Ireland.

316 Paragraph 15 states that any regulations made under article 19(6), article 20(p) – (u), and article 21 of the CMO Regulation will continue to apply to slaughterhouses in England, Wales and Northern Ireland, notwithstanding the amendments made in paragraph 3 – 5 of Schedule 5.

317 Paragraph 16 states that any regulations made under section 1 or section 3 of chapter 1 of title 2 of the CMO Regulation will continue to apply to products marketed in England, Wales and Northern Ireland, notwithstanding the amendments made paragraph 6 – 14 of Schedule 5.
Commencement

319 The Secretary of State will lay regulations saying when clauses 22 to 24 and Schedule 2 will come into force. The regulations may say that they come into force at different times.

320 The rest of the provisions of the Bill will come into force two months after the Bill is granted Royal Assent and becomes an Act. Section 31 and Schedule 5 will not come into force until after the UK has left the EU; if the rest of the Bill comes into force before that, section 31 and Schedule 5 will come into force on exit day instead, as per clause 35.

Financial implications of the Bill

321 The following items of new expenditure are to be paid out of money provided by Parliament:

- giving financial assistance under clause 1(1) or (2) or 18(2),
- making delinked payments under provisions made by regulations under section 7(1)(b),
- operating the public market intervention and aid for private storage mechanisms in exceptional market conditions,
- any other administrative expenditure incurred in consequence of this Bill or regulations under it,
- any increase attributable to this Bill or regulations under it in the sums payable under any other Act out of money so provided.

322 We have committed to keeping the same cash total in funds for farm support until the end of the parliament. Current annual spend in England is around £2bn-£2.5bn. Spend currently varies depending on the prevailing GBP/EUR exchange rate and other factors such as domestic spending on crisis support. We will set the reduction percentages for Direct Payments taking account of our detailed plans for future schemes and wider decisions about government spending. Departmental spending plans will be presented to Parliament through Main Estimates and Supplementary Estimates, which must be authorised by Parliament before they take effect.

Parliamentary approval for financial costs or for charges imposed

323 A money resolution is required where a Bill gives rise to, or creates powers that could be used so as to give rise to, new charges on the public revenue (broadly speaking, new public expenditure). This Bill requires a money resolution because the Secretary of State is likely to incur significant expenditure in providing new financial payments to land managers (See Part 1, clauses 1 to 3) and in honouring existing financial support under the CAP (see Part 2, clauses 4 to 12).

Compatibility with the European Convention on Human Rights

324 The Government considers that the Agriculture Bill is compatible with the European Convention on Human Rights (“ECHR”). Accordingly the Secretary of State for Environment,
Food and Rural Affairs has made a statement under clause 19(1)(a) of the Human Rights Act 1998 to this effect.

The government’s ECHR analysis can be found in the memorandum to the Joint Committee on Human Rights.

**Related documents**

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

- [Health and harmony: the future for food, farming and the environment in a Green Brexit](#)
Annex A - Territorial extent and application in the United Kingdom

Part 1, Part 3, clauses 17, 18 and 20 and Part 1 of Schedule 1 and Part 3 of Schedule 1 insofar as it relates to Part 1 extend to England and Wales and apply to England only. In Schedule 3, Parts 1, 3 and 5 and paragraphs 16 and 17 extend to England and Wales. Provision corresponding to these clauses would be within the competence of the devolved legislatures:

Part 2, clause 19 and clause 21 and Schedule 5 extend to England and Wales, Scotland and Northern Ireland and apply to England only. Corresponding provision would not be within the competence of the devolved legislatures.

In Schedule 4, Parts 2 and 4 and paragraph 10 extend to Northern Ireland only.

All other clauses and schedules extend to England and Wales, Scotland and Northern Ireland and apply as set out in the table below:²

<table>
<thead>
<tr>
<th>Provision</th>
<th>Extends to E &amp; W and applies to England?</th>
<th>Extends to E &amp; W and applies to Wales?</th>
<th>Extends and applies to Scotland?</th>
<th>Extends and applies to Northern Ireland?</th>
<th>Would corresponding provision be within the competence of the National Assembly for Wales?</th>
<th>Would corresponding provision be within the competence of the Scottish Parliament?</th>
<th>Would corresponding provision be within the competence of the Northern Ireland Assembly?</th>
<th>Legislative Consent Motion needed?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clauses 1-3 (Financial assistance)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Clauses 4-11 (Modifying retained EU legislation on Direct Payments and general provision, EU aid schemes for fruit and vegetable producers and Rural Development programme)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Clauses 12-18 (Data collection and sharing; exceptional market conditions)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Clause 19 (Modification of retained EU legislation relating to exceptional</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

² References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

These Explanatory Notes relate to the Agriculture Bill as introduced in the House of Commons on 12 September 2018 (Bill 266)
Minor or consequential effects

The following provisions that apply to England have effects outside England, all of which are, in the view of the Government of the UK, minor or consequential:

**Clauses 4-8: (Direct payments)**

These clauses extend to the UK because they relate to retained EU legislation or contain powers to amend retained EU legislation relating to Direct Payments. They apply to England only but have a minor effect outside England because of their extent.

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3 References in this Annex to an effect of a provision being minor or consequential are to its being minor or consequential for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

*These Explanatory Notes relate to the Agriculture Bill as introduced in the House of Commons on 12 September 2018 (Bill 266)*
Clause 9: (General provision connected with payments to farmers and other beneficiaries)

This clause contains a power to amend retained EU legislation relating to Regulation 1306/2013 and therefore extends to the UK. It applies to England only but has a minor effect outside England because of its extent.

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

This clause contains a power to amend retained EU legislation relating to aid schemes for fruit and vegetable producers and therefore extends to the UK. It applies to England only but has a minor effect outside England because of its extent.

Clause 11: (Support for rural development)

This clause contains a power to amend retained EU legislation relating to Rural Development and therefore extends to the UK. It applies to England only but has a minor effect outside England because of its extent.

Clause 19: (Exceptional market conditions)

This clause contains powers to amend retained EU legislation relating to public intervention and private storage aid and therefore extends to the UK. It applies to England only but has a minor effect outside England because of its extent.

Clause 21: (Marketing standards and carcass classification)

This clause contains a power to amend retained EU legislation relating to wine and therefore extends to the UK. It applies to England only but has a minor effect outside England because of its extent.

Subject matter and legislative competence of devolved legislatures

Part 1, Part 3, clauses 17, 18 and 20 and Part 1 of Schedule 1 and Part 3 of Schedule 1 insofar as it relates to Part 1 apply to England only and are within the legislative competence of the devolved legislatures because they relate to agriculture. Agriculture is within the competence of the Scottish Parliament because it is not a reserved matter under Schedule 5 of the Scotland Act 1998. It is within the competence of the National Assembly of Wales because it is not a reserved matter under Schedule 7A of the Government of Wales Act 2006. It is within the competence of the Northern Ireland Executive because it is neither reserved under Schedule 3 to the Northern Ireland Act 1998 or excepted under Schedule 2 to that Act.
**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. An SI laid under the affirmative procedure must be actively approved by both Houses of Parliament before it can become law.

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

Clause: The basic unit of a bill, 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).

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.

Money resolution: A Money resolution must be agreed by the House of Commons if a new Government Bill proposes spending public money on something that hasn’t previously been authorised by an Act of Parliament. Money resolutions, like Ways and Means resolutions, are normally put to the House for agreement immediately after the Bill has passed its Second reading in the Commons.

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 a bill. 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 we have made in the UK to implement our 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. It is any direct EU legislation which 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 we have made in the UK to implement our EU obligations.

Regulation: secondary legislation made through SIs.

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4 Definitions are sourced from both [www.parliament.uk](http://www.parliament.uk) and the Guide to making legislation on [www.gov.uk](http://www.gov.uk).

*These Explanatory Notes relate to the Agriculture Bill as introduced in the House of Commons on 12 September 2018 (Bill 266)*
Schedule: Bills may have a number of 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 bill are to work in practice. Schedules can still be amended by parliamentarians.

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

Short title: The title by which a bill is known during its passage through Parliament; for example “Agriculture Bill”, and when it passes the “Agriculture Act 2018”.

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

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

Territorial extent: The extent of a Bill refers to the legal jurisdiction of which a bill, or provisions of a bill, 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 a Bill or provision can be different from its application.
AGRICULTURE BILL
EXPLANATORY NOTES

These Explanatory Notes relate to the Agriculture Bill as introduced in the House of Commons on 12 September 2018 (Bill 266).

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