

LEGISLATIVE CONSENT MEMORANDUM

AGRICULTURE BILL

Introduction

1. The Agriculture Bill was introduced into the House of Commons on 16 January 2020. Many aspects of it are similar to the Agriculture Bill in the 2017-19 session, which fell on dissolution, but it contains some new provisions. It gives the UK Government broad powers to provide support for agriculture in England, both for an initial agricultural transition period and for the longer term, and to extend similar powers to Wales and Northern Ireland.

2. The Scottish Government considers that it is a relevant Bill under Rule 9B.1 of the Parliament's Standing Orders.¹ This memorandum has been lodged by Fergus Ewing, Cabinet Secretary for Rural Economy and Tourism, in accordance with Rule 9B.3.1(a). The Bill and supporting documents can be found at <https://services.parliament.uk/Bills/2019-20/agriculture/documents.html>
This memorandum relates to the Bill as introduced.

3. The Bill is necessary as a result of the UK's withdrawal from the EU. The Scottish Government deeply regrets the withdrawal of Scotland, as part of the UK, from the EU on 31 January 2020. This action was taken with no democratic mandate for withdrawal in Scotland.

4. However, the Scottish Government accepts the need to make preparations for the exceptional circumstances which arise as a result of that withdrawal and to ensure that Scottish citizens, families and businesses are not adversely affected by the impact of EU exit on agricultural support.

5. The Scottish Government intends to lodge a legislative consent motion in relation to certain provisions of the Bill, namely food security, fertilisers and the red meat levy only. The Scottish Government intends to continue to work with the UK Government to secure an approach to the provisions on organic products (clause 37(1)(a)), the identification and traceability of animals (clause 32(1)) and the WTO provisions that the Scottish Government can support. As such, there is no recommendation, at this time, that these provisions on organics, animal identification and traceability and WTO should be considered by the UK Parliament and they do not form part of the proposed legislative consent motion (see para 28).

6. As noted above, progress continues on the provisions on organic products, the identification and traceability of animals and WTO, although positive outcomes are more advanced specifically in relation to organics and animal identification and traceability. The Scottish Government has been pressing the UK Government to amend the organics clause 37(1)(a) and identification and traceability of animals clause 32(1) to include a requirement for consent of the Scottish Ministers when the Secretary of State makes subordinate legislation on matters relating to the devolved

¹ <http://www.parliament.scot/parliamentarybusiness/26512.aspx>

aspects of these subject areas, and understands that the UK Government is now likely to bring forward such an amendment. If the UK Government is prepared to amend clauses 37(1)(a) and 32(1) of the Bill to this effect, the Scottish Government would be able to recommend consent to the organics and identification and traceability of animals provisions in the Bill. The Scottish Government may therefore lodge a supplementary legislative consent memorandum and motion later in the Bill's passage through the UK Parliament.

Content of the Bill

7. The Explanatory Notes² accompanying the Bill set out the UK Government's view of its purpose and main functions, which operate alongside the powers conferred by the European Union (Withdrawal) Act 2018. The UK Government describes the principal purpose of the Bill as providing the legal framework for the 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, (paragraph 1 of the Explanatory Notes). The main provisions of the Bill are as follows:

Part 1 – Financial Assistance

Chapter 1 – New Financial Assistance Powers

Chapter 1 of this Part creates new powers for the Secretary of State to give financial assistance, in England, for or in connection with a range of purposes including land management, environmental protection, plant and animal health and welfare. This now includes rules on the forms and conditions for granting support, and on monitoring and enforcing compliance with these rules, allowing the creation of a new policy to replace the CAP in England after the end of the Implementation Period.

Chapter 2 – Direct Payments after EU Exit

Chapter 2 of this Part deals with financial support in England after exiting the EU, providing for a seven year agricultural transition period in England, phasing out or delinking basic payments during that period, and termination of basic payments at the end of that period.

Chapter 3 – Other Financial Support after EU Exit

Chapter 3 of this Part empowers the Secretary of State to make regulations that modify, in relation to England, the “horizontal basic act”³, retained direct EU legislation made under it, and related domestic subordinate legislation (as incorporated into domestic law and modified under the EU (Withdrawal) Act 2018).

² <https://publications.parliament.uk/pa/bills/cbill/58-01/0007/en/20007en.pdf>

³ [Regulation \(EU\) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations \(EEC\) No 352/78, \(EC\) No 165/94, \(EC\) No 2799/98, \(EC\) No 814/2000, \(EC\) No 1290/2005 and \(EC\) No 485/2008](#)

Part 2 – Food and Agricultural Markets

Chapter 1 – Food Security

Chapter 2 of this Part places a duty on the Secretary of State to produce a report to lay before the UK Parliament, at least once every five years, on UK Food Security. This report will provide a broad understanding of what food security is, the challenges and risks to UK food security in a global context, and the Secretary of State's current assessment of the state of UK food security to inform the UK Government's policy thinking on the resilience and security of food supply.

Chapter 2 – Intervention in agricultural markets

Chapter 2 of this Part provides the Secretary of State with powers to declare a period of exceptional market conditions in relation to England, and to give financial assistance to support farmers who have been affected. They also enable the Secretary of State to use the additional public intervention and private storage powers in retained EU legislation concerning the CAP in response to a declaration of exceptional market conditions. Public intervention and private storage are market support measures that can be used to help stabilise the price of certain products; the Bill, mirroring provisions in the CAP, provides that when the price of these products drops below a certain reference threshold due to a supply surplus, product can be removed from the market thus increasing prices. However, the Bill contains powers to amend the retained direct EU legislation on public intervention and private storage aid. This includes the power to ensure legislation on private storage aid and public intervention ceases to have effect except in exceptional market conditions.

Part 3 - Transparency and Fairness in the Agri-food supply chain

Chapter 1 – Collection and Sharing of Data

This Chapter provides new powers for the Secretary of State to collect and share data from those within or closely connected to the agri-food supply chain in relation to their activities in England.

Chapter 2 – Fair dealing with agricultural producers and others in the supply chain

This Chapter contains powers to create statutory fair dealing obligations in agri-food supply chains. It gives the Secretary of State regulation-making powers to promote fair contractual dealing by business purchasers of agricultural products. It applies to the whole of the UK. It allows obligations to be imposed on business purchasers of agricultural products, including in relation to the need for written contracts, and the terms of such contracts which may relate to matters such as the quantity and quality of the product, pricing mechanisms and payment, and variation of the contract, as well as the enforcement of

compliance with such obligations through a complaints procedure and/or imposition of penalties.

Chapter 3 – Producer organisations

This Chapter sets out rules on giving special status to groups of farmers (i.e. producer organisations) to exempt them from some parts of competition law.

These clauses give the Secretary of State power to amend or revoke retained EU law in relation to producer and inter-branch organisations, and to introduce new legislation regarding the recognition of and rules governing such organisations, including the extension of the rules to non-members and their exemption from competition law.

The Secretary of State's powers in this Part extend to the UK as a whole.

Part 4 – Matters relating to farming and the countryside

Fertilisers

Clause 31 of the Bill amends provision in connection with the regulation of fertilisers in the Agriculture Act 1970 (“the 1970 Act”). In particular the definition of “fertiliser” in section 66 of the 1970 Act is amended to enable a broader range of materials to be regulated as a fertiliser in the UK. It also amends section 74A of the 1970 Act which confers powers on Ministers in the United Kingdom to make subordinate legislation for the regulation of fertilisers. The amendments to section 74A expand the power to make subordinate legislation so that fertilisers can in future be regulated on the basis of their function (as well as composition and content) and to make provision for an assessment, monitoring and enforcement regime to ensure compliance.

Identification and Traceability of Animals

Clause 32(1) of the Bill amends the Natural Environment and Rural Communities Act 2006. The amendment to the Natural Environment and Rural Communities Act 2006 gives the Secretary of State powers to assign, by order, to an agricultural board established by the Secretary of State under that Act functions exercisable in Scotland that relate to a) collecting, managing and making available information regarding the identification, movement and health of animals and b) the means of identifying animals.

Clause 32(2) amends, in relation to England and Wales, powers in the Animal Health Act 1981 to make subordinate legislation regulating the movement of animals. Clause 32 (3) & (4) make amendments to two EU Regulations on the identification of cattle and the identification of sheep and goats respectively, so that they will not apply in relation to England and Wales.

Red Meat levy

Clause 33 provides the Secretary of State, the Scottish Ministers, and the Welsh Ministers with the power to jointly make a scheme which will allow for red meat levy⁴ collected by the levy body of one GB country to be paid to the levy body of another GB country.

Agricultural tenancies

Clause 34 and Schedule 3 make provision in relation to agricultural tenancies in England and Wales, amending the Agricultural Holdings Act 1986 and the Agricultural Tenancies Act 1995. Provisions will deal with disputes where tenants wish to challenge restrictive clauses in their lease which might prevent them from receiving relevant financial assistance or complying with statutory duties. Types of financial assistance or statutory duties will be defined in regulations, as will the dispute process. Other changes deal with expanding the list of organisations who can appoint arbiters, amending the rent review process in relation to referring a dispute for arbitration/determination and dealing with certain improvements to the holding, amending succession procedures and changes around retirement age.

Part 5 – Marketing Standards, Organic Products and Carcass Classification

This Part provides the Secretary of State with powers to set and amend marketing standards for agricultural products (not extending to Scotland), make regulations on organic products (extending to Scotland), to make provision about the classification of carcasses by slaughterhouses (not extending to Scotland) and to make regulations on designations of origin, geographical indications and traditional terms in the wine sector (extending to Scotland).

Part 5 (clauses 36 and 37) in particular, provides the Secretary of State, and where appropriate Scottish Ministers, with powers to make regulations relating to the certification, import and export of organic products and the enforcement of organic regulations.

Part 6 – WTO Agreement on Agriculture

This Part (clauses 40 to 42) provides the Secretary of State with regulation-making powers in relation to the United Kingdom's compliance with the World Trade Organisation (WTO) Agreement on Agriculture (AoA)⁵.

This includes powers to set financial ceilings in relation to the amount of agricultural support that each administration of the UK can provide, and the establishment of a decision-making process in relation to the classification of

⁴ The red meat levy is a sum of money paid by red meat producers and slaughterers, per head of animal and collected at the point of slaughter. This money is used by Quality Meat Scotland for specified activities to assist the industry e.g. with red meat industry promotions, see the Quality Meat Scotland Order 2008.

⁵ https://www.wto.org/english/docs_e/legal_e/14-ag_01_e.htm

support for the purposes of the WTO AoA, including a dispute resolution process. It also includes powers requiring devolved authorities to provide information to the Secretary of State to allow for the classification and reporting of agricultural support to the WTO. In practice, this would allow the Secretary of State to decide how schemes, such as the Beef and Sheep coupled support schemes and the Less Favoured Area Support Scheme, would be classified under WTO rules, and how much money could be paid from them. The powers also enable the Secretary of State to act as the final arbiter if any devolved administration disputed this classification.

The Secretary of State's powers in this Part extend to the UK as a whole.

Part 7 and Schedules 5 and 6 – Wales and Northern Ireland

This Part, and these schedules, create similar powers, at their request, for the Welsh Government and for Northern Ireland Departments to those in parts [1 to 5] of Bill. The Scottish Government has included relevant provision in the Agriculture (Retained EU Law and Data) (Scotland) Bill in relation to marketing standards and carcass classification, market intervention and aid for fruit and vegetable producer organisations.

Part 8 General and Final Provisions

Part 8 lays down general provisions on data protection, regulation making powers, interpretation, consequential amendments, power to make consequential provision, extent, commencement and short title.

SCHEDULE 1 – AGRICULTURAL SECTORS RELEVANT TO PRODUCER ORGANISATION PROVISIONS

Schedule 1 lists the agricultural sectors relevant to the producer organisation provisions. The list in schedule 1 can be amended by the Secretary of State using powers in clause 28(14).

SCHEDULE 2 – RECOGNISED ORGANISATIONS: COMPETITION EXCLUSIONS

This relates to clause 29 of the Bill. It provides for competition exemptions for recognised organisations i.e. producer organisations. This is achieved by making amendments to Schedule 3 to the Competition Act 1998 (general exclusions). The effect is that certain provisions of competition law do not apply to producer organisations in certain circumstances.

SCHEDULE 4 - AGRICULTURAL SECTORS RELEVANT TO MARKETING STANDARDS PROVISIONS

This Schedule lists the agricultural sectors which are relevant to the marketing standards provisions in the Bill. These agricultural sectors are subject to the power to make regulations in respect of marketing standards as provided for in Part 5, clause 35 of the Bill.

SCHEDULES 5 & 6 – POWERS RELATING TO WALES AND NORTHERN IRELAND

See comments under Part 7 above.

SCHEDULE 7 – THE CMO REGULATION: CONSEQUENTIAL AMENDMENTS

This schedule provides for consequential amendments to the CMO Regulation (Regulation (EU) No 1308/2013⁶ of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products) contained in Part 9, clause 31 of the Bill as follows:

- Part 4 (intervention in agricultural markets: England);
- Part 4 of Schedule 3 (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).

Requirement for legislative consent

8. The Explanatory Notes to the Bill⁷ set out the UK Government's view that the legislative consent of the Scottish Parliament is required for a number of its provisions (clauses 17, 31, 32, 33, 36 and 37)⁸. The Scottish Government agrees with this view on these specific provisions. However, the UK Government also sets out its view that the legislative consent of the Scottish Parliament is not required for Chapters 2 and 3 in Part 3 of the Bill (clauses on fair dealing and producer organisations) and Part 6 (WTO). The Scottish Government does not share this view in relation to Chapters 2 and 3 in Part 3 of the Bill (see below paragraphs on Fair Dealing with Agricultural Producers & Others in the Supply Chain, paragraph 12, Producer Organisations, paragraph 13 and World Trade Organisation Agreement on Agriculture, paragraph 20).

9. The Scottish Government believes the Bill is "a relevant Bill" within Rule 9B.1.1 of Standing Orders, as it makes provision applying to Scotland for purposes within the legislative competence of the Parliament, and alters the executive competence of the Scottish Ministers.

10. In particular, the Scottish Government considers that legislative consent is required for Part 2, Chapter 1 (clause 17), Part 3 Chapters 2 and 3 (and schedules 1 and 2), Part 4 (clauses 31 – 33), Part 5 (clauses 36 and 37) and Part 6 of the Bill (and

⁶<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R1308-20190101&qid=1588087940003&from=EN>

⁷ <https://publications.parliament.uk/pa/bills/cbill/2017-2019/0266/en/18266en.pdf>

⁸ See paragraphs 46 – 48 and Annex A of the Explanatory Notes

Part 8 of the Bill so far as relating to those Parts – in particular, clauses 46, 47 (apart from paragraphs (2), (6)(c) and (d), and (7)(c) and (d) and (9)); 48; 50; 52; 53 and 54).

Food Security

11. Clause 17 imposes a requirement on the Secretary of State to lay a periodic report before the UK Parliament providing an analysis of statistical data on food security in the UK. This report is to cover food availability and sources, supply chain resilience, household expenditure, food safety and consumer confidence. Food is generally a devolved subject. The UK Government, in its Explanatory Notes to the Bill, recognises that this provision requires the legislative consent of the Scottish Parliament.

Fair dealing with Agricultural Producers & Others in the Supply Chain

12. The UK Government takes the view that this provision (clause 27) is reserved. The Scottish Government disagrees with this view, and considers that this requires the Scottish Parliament's consent as it is for devolved purposes, namely the regulation of unfair contractual terms in commercial contracts by agricultural producers in Scotland. It does not relate to the competition law reservation which is specifically directed at the regulation of anti-competitive agreements – i.e. agreements which adversely affect the competitive structure of the market - and the abuse of a dominant position. The regulation of contract terms which are considered to be unfair on other grounds is not within the scope of that reservation.

Producer Organisations

13. Clauses 28 to 30 give the Secretary of State power to amend or revoke retained EU law in relation to producer and interbranch organisations, and to introduce new legislation regarding the recognition of, and rules governing such organisations, including exemption from competition law.

14. The UK Government takes the view that this is a reserved provision. The Scottish Government disagrees with this view, and considers that it requires the Scottish Parliament's consent as it is for a devolved purpose, namely the promotion of an effective agricultural market. It effectively replaces the EU producer organisation regime, which was clearly for that purpose. That, in pursuance of that purpose, it is necessary to exempt producer organisations from the Competition Act regime does not mean that the provisions relate to competition law: their purpose is not to regulate anti-competitive agreements. Whilst clause 29(1) and schedule 2 (amendments to the Competition Act 1998) would not be within the legislative competence as those modify the law on reserved matters, these provisions pursue the same devolved purpose as the remainder of the provisions in clauses 28 to 30.

Fertilisers

15. Fertilisers is a substantially devolved matter in Scotland, and clause 31 in the Bill reflects this, as the powers to make subordinate legislation amended by the Bill are, so far as exercisable within devolved competence, exercisable by the Scottish

Ministers for Scotland. The UK Government recognises that the fertilisers clause extending to Scotland triggers the LCM process.

Identification and Traceability of Animals

16. The provision for the identification and traceability of animals in relation to Scotland (Clause 32(1)) is for a purpose within the legislative competence of the Scottish Parliament. The UK Government recognises that extending the clause to Scotland triggers the LCM process.

Red Meat Levy

17. Clause 33 of the Bill concerns the red meat levy. It requires the Scottish Parliament's consent because the provision alters the executive competence of the Scottish Ministers, enabling them to work jointly with the Welsh Ministers and the Secretary of State to set up a redistribution scheme to resolve the inequity caused by the current operation of the red meat levy system. As it confers functions on the Scottish Ministers and relates to a devolved area, consent is required. The UK Government agrees with the requirement for consent for this provision.

Organic products

18. Part 5 (clauses 36 and 37) of the Bill concerns powers to make regulations relating to organic provisions. It requires the Scottish Parliament's consent as elements of it are for devolved purposes, namely to make new regulations and amend existing regulations relating to the certification, import and export of organic products and the enforcement of organic regulations where the content of the regulations would be within the competence of the Scottish Parliament if contained within an Act of the Scottish Parliament.

19. Clause 37(1)(a) gives the Secretary of State powers to make regulations on matters relating to devolved aspects of organics regulations without securing the consent of the Scottish Ministers (and of the Welsh Ministers and NI authorities as appropriate) as a pre-requisite to making such regulations. The Scottish Government has been pressing the UK Government to amend the clause to include a requirement for consent of the Scottish Ministers when the Secretary of State makes regulations on matters relating to the devolved aspects of organics, and understand that the UK Government is now likely to bring forward such an amendment.

World Trade Organisation Agreement on Agriculture

20. Part 6 (clauses 40 to 42) of the Bill requires the Scottish Parliament's consent as it concerns the implementation of international obligations (namely those arising from the WTO AoA) as regards matters (agriculture support) which are not reserved. The establishment of UK-wide arrangements for allocating financial ceilings under the WTO AoA to the various jurisdictions of the UK, in so far as it is concerned with the implementation of an international obligation in non-reserved matters, requires the Scottish Parliament's consent. Although the allocation of a quota requires to be dealt with on a UK-wide basis, respect for the allocation of competences implicit on the Scotland Act 1998 requires that this should be on the basis of consent. In any event,

clauses 40 to 42 contain provisions which would affect the executive competence of the Scottish Ministers as regards the exercise of functions concerning agricultural support in Scotland. The UK Government has now indicated that it considers that consent is required, to the extent that the provisions affect the executive competence of the Scottish Ministers, but not otherwise. The Scottish Government agrees that consent is required for the provisions which affect the executive competence of the Scottish Ministers but disagrees that the executive competence provisions are the only WTO provisions which require consent. As indicated above, the requirement for consent is wider than that.

Clauses for which the Scottish Government Considers Legislative Consent is required

21. The clauses which the Scottish Government considers that legislative consent is required for are shown in the table at **Annex A**.

22. The legislative consent memorandum on the European Union (Withdrawal) Bill, submitted to the Scottish Parliament on 12 September 2017⁹, set out the Scottish Government's position that policy responsibility and expertise for matters within devolved competence lie with the Scottish Government, accountable to the Scottish Parliament¹⁰. As set out above, a number of provisions of the Agriculture Bill deal with matters within the legislative competence of the Scottish Parliament, as well as altering the executive competence of the Scottish Ministers. The Scottish Government supports some of the provisions for which consent is required, but does not support the UK Government's current provisions for others.

Organic products and identification and traceability of animals

23. In relation to the provisions on organics (clauses 36 and 37) and identification and traceability of animals (Clause 32(1), the Scottish Government believes that regulations under these provisions extending to Scotland and relating to devolved matters, when made by the Secretary of State, should be made only with the consent of the Scottish Ministers. If the UK Government is prepared to amend the Bill to this effect, the Scottish Government would be able to recommend consent to these provisions in the Bill.

Fair dealing in the supply chain, producer organisations and WTO Agreement on Agriculture

24. In addition, the Scottish Government does not accept that the provisions set out in Part 3, Chapter 2 (clause 27) and 3 (clause 28 to 30) and Part 6 (clause 40-42) of the Bill is an accurate reflection of devolved responsibilities in the area of producer organisations, fair dealing and WTO Agreement on Agriculture and would not support or recommend to the Scottish Parliament that consent should be given to powers for the Secretary of State in the areas covered by this provision in the Bill.

⁹ <http://www.parliament.scot/S5ChamberOffice/SPLCM-S05-10-2017.pdf>

¹⁰ See paragraph 17 of that Memorandum.

25. Whilst the United Kingdom is responsible in international law for compliance with its international obligations, Paragraph 7(2) of Schedule 5 to the Scotland Act 1998¹¹ explicitly provides that observing and implementing international obligations are not reserved matters.

26. Part 6 of the Bill places constraints on the Scottish Ministers' ability to exercise functions within devolved competence in relation to agriculture support in Scotland. In particular, the Scottish Ministers' powers to adopt policies to support farming in Scotland would be affected by decisions made by the UK Government in exercise of powers under Part 6 of the Bill. The Scottish Government has proposed that regulations under this Part of the Bill extending to Scotland should only be made with the consent of the Scottish Ministers.

Red meat levy, food security and fertilisers

27. The Scottish Government currently recommends that the Scottish Parliament should be invited to give its consent to the provisions of the Bill relating to the red meat levy (clause 33), food security (clause 17) and fertilisers (clause 31). As noted above, the Scottish Government expects to be able to recommend consent to the provisions on organic products (clauses 36 and 37) and identification and traceability of animals (clause 32) should necessary amendments on consent to the making of regulations be brought forward by the UK Government. The Scottish Government intends to continue to engage with the UK Government on these matters and will lodge a supplementary legislative consent memorandum to reflect any progress in these discussions.

Draft Legislative Consent Motion

28. The draft motion, which the Cabinet Secretary for Rural Economy and Tourism intends to lodge is:

“That the Scottish Parliament agrees that the provisions related to food security, fertilisers and the red meat levy in the Agriculture Bill, introduced into the House of Commons on 16 January 2020, so far as these matters fall within the legislative competence of the Scottish Parliament and alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament.”

Involvement of the Scottish Government in the Development of the Bill

29. As noted at paragraph 1, much of the current Bill has been carried over from the Agriculture Bill considered by the UK Parliament in the 2017-19 session. Defra discussed aspects of that previous Bill prior to its introduction, although the views of the Scottish Government were not always taken into account. The position of the Scottish Government in relation to that Bill is set out in the Legislative Consent Memorandum lodged on 29 October 2018¹².

¹¹ <http://www.legislation.gov.uk/ukpga/1998/46/schedule/5/part/II/crossheading/foreign-affairs-etc>

¹² <https://www.parliament.scot/S5ChamberOffice/SPLCM-S05-19.pdf>

30. The provisions on the red meat levy were added to that Bill by amendment made in Committee. Those were based to a large extent on detailed proposals and drafting instructions produced by the Scottish Government.

31. Prior to the introduction of the current Bill, Defra again discussed some aspects of the Bill with the Scottish Government, although generally too late in the process for the Scottish Government's comments to be taken into account. As a result, there are remaining issues with the new provisions on organic products and identification and traceability of animals that have still to be resolved.

Common Frameworks

32. Common frameworks are being developed under the principles agreed between the UK Government and Scottish and Welsh Governments at the Joint Ministerial Committee (European Negotiations) (JMC(EN)) in October 2017. Areas covered by this Bill have been proposed for the development of frameworks. In relation to organic products and fertilisers, non-statutory frameworks have been proposed, with clauses 31, 36 and 37 providing any required statutory underpinning.

33. Part 6 (WTO Agreement on Agriculture) establishes a statutory framework. The UK Government takes the view that it is needed to ensure compliance with international obligations. In the view of the Scottish Government, it fails to meet the agreed principles that frameworks "be based on established conventions and practices, including that the competence of the devolved institutions will not normally be adjusted without their consent", and that observing and implementing international obligations are devolved matters.

Financial Implications

34. The Bill has few financial implications for Scotland. The provisions of Part 1 (Financial Assistance) do not apply in Scotland. Based on current market flows, and the precise terms of the scheme that is being developed, the provisions on the red meat levy in clause 33 are expected to result in a significant ongoing net payment from the Agriculture and Horticulture Development Board to Quality Meat Scotland in respect of sheep and cattle reared in Scotland but slaughtered in England.

35. The provisions in Part 6 (WTO Agreement on Agriculture), as noted at paragraph 7 above, includes powers to set financial ceilings in relation to the amount of agricultural support in certain classifications that each administration in the UK can provide. In practice, this would allow the Secretary of State to decide how schemes, such as the Beef and Sheep coupled support schemes and the Less Favoured Area Support Scheme, would be classified under WTO rules, and how much money could be paid from them.

36. Clause 36 (organic products) allow for regulations made under that clause to provide for the charging of fees in respect of functions under those regulations. That would effectively replicate current practice with approved control bodies dealing with certification and the Soil Association maintaining the database.

Conclusion

37. It remains a matter of regret to the Scottish Government that the UK is withdrawing from the EU. The Scottish Government considers this will have widespread detrimental effects on the UK and Scotland, and has deep concerns over the harm that will be inflicted on Scotland by withdrawal from the European Union.

38. Whilst the Scottish Government can accept the main purpose of the Agriculture Bill, as replacement legislative underpinning is required in a number of the areas covered by the Bill, it does not support all detailed aspects of the Bill's provisions and does not accept that the approach taken to this Bill is entirely consistent with devolved responsibilities. The Scottish Government therefore recommends that Parliament be invited to agree to the consent of the provisions related to the red meat levy, fertilisers, and food security at this time. The Scottish Government also recommends that the Parliament should note that a supplementary LCM could be brought forward to cover organic products and identification and traceability of animals, at a later stage in the Bill's progress should the UK Government bring forward the expected amendments to introduce statutory consent requirements within the Agriculture Bill.

SCOTTISH GOVERNMENT
May 2020

CLAUSES FOR WHICH THE SCOTTISH GOVERNMENT CONSIDERS THAT LEGISLATIVE CONSENT IS REQUIRED

Provision	Effect
<p>Part 2, Chapter 1, Clause 17</p> <p>Food Security</p>	<p>Requirement for consent acknowledged by the UK Government.</p> <p>The legislative consent motion at para 28 above recommends that the Scottish Parliament agrees that the provisions on food security should be considered by the UK Parliament.</p>
<p>Part 3 Chapter 2 (clause 27)</p> <p>Powers relating to fair dealing obligations of business purchasers of agricultural products</p>	<p>Requires the Scottish Parliament's consent as it is for devolved purposes, namely, the regulation of unfair contractual terms in commercial contracts by agricultural producers in Scotland.</p> <p>Requirement for consent is not acknowledged by the UK Government.</p> <p>No recommendation that these provisions should be considered by the UK Parliament at this time.</p>
<p>Part 3 Chapter 3 (clauses 28 to 30)</p> <p>Powers relating to the official recognition of producer and interbranch organisations, and associated exemptions from competition law.</p>	<p>Requires the Scottish Parliament's consent as it is for devolved purposes, namely the promotion of an effective agricultural market.</p> <p>Requirement for consent is not acknowledged by the UK Government.</p> <p>No recommendation that these provisions should be considered by the UK Parliament at this time.</p>
<p>Part 4 (clause 31)</p> <p>Fertilisers</p>	<p>Requirement for consent acknowledged by the UK Government.</p> <p>The legislative consent motion at para 28 above recommends that the Scottish Parliament agrees that the provisions on fertilisers should be considered by the UK Parliament.</p>
<p>Part 4 (clause 32)</p>	<p>Requirement for consent acknowledged by the UK Government.</p>

Identification and Traceability of animals	No recommendation that these provisions should be considered by the UK Parliament at this time.
Part 4 (clause 33) Red Meat Levy	Requirement for consent acknowledged by the UK Government. The legislative consent motion at para 28 above recommends that the Scottish Parliament agrees that the provisions on the red meat levy should be considered by the UK Parliament.
Part 5 (clauses 36 and 37) Powers relating to Organic Products	Requirement for consent acknowledged by the UK Government. Clause 37(1)(a) however does not seek the Scottish Ministers' consent when the Secretary of State makes regulations on matters relating to devolved aspects of organics regulations. No recommendation that these provisions should be considered by the UK Parliament at this time.
Part 6 (clauses 40 to 42) Powers to introduce regulations in relation to the WTO Agreement on Agriculture.	Requires the Scottish Parliament's consent as it relates to the implementation of international obligations (namely those arising from the WTO Agreement on Agriculture) as regards matters (agriculture support) which are not reserved, and contains provisions which would affect the executive competence of the Scottish Ministers as regards the exercise of functions concerning agriculture support in Scotland. Requirement for consent is acknowledged only in part (alteration to executive competence only) by the UK Government. No recommendation that these provisions should be considered by the UK Parliament at this time.
Part 8 (clauses 46, 47 (apart from paragraphs (2), (6)(c) and (d), (7)(c) and (d) and (9)); 48; 50; 52; 53 and 54) Ancillary provisions e.g. extent and interpretation	Those require the Scottish Parliament's consent so far as those relate to provisions in Parts 2 to 6 listed above, within the legislative competence of the Scottish Parliament or so far as affecting the executive competence of the Scottish Ministers. In so far as these provisions relate to food security, fertilisers and the red meat levy the legislative consent motion at para 28 above recommends that the Scottish Parliament agrees that the provisions should be considered by the UK Parliament. Otherwise (i.e. where the provisions do not relate to food security, fertilisers or red meat levy) there is no recommendation that these provisions should be considered by the UK Parliament at this time.

*This Legislative Consent Memorandum relates to the Agriculture Bill (UK legislation)
and was lodged with the Scottish Parliament on 4 May 2020*

AGRICULTURE BILL – LEGISLATIVE CONSENT MEMORANDUM

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