



Northern Ireland  
Assembly

Committee for Agriculture, Environment and Rural Affairs

# Report on Legislative Consent Memorandum on the UK Government Agriculture Bill 2019-2020

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Ordered by the Committee for Agriculture, Environment and Rural Affairs to be  
printed 19 March 2020

Report: NIA11/17-22 Committee for Agriculture, Environment and Rural Affairs



founded on the principle of paying public money for delivery of public goods.

5. There are UK-wide provisions within the Bill, which require legislative consent as they relate to devolved matters, namely Clause 17 (Food Security), 31 and 32 ( Fertilisers and Identification and Traceability of Animals), 36 and 37 (Organic Products) and 45 (Provisions Relating to Northern Ireland). The Bill also extends a number of provisions to Northern Ireland within Schedule 6 of the Bill for which legislative consent is also sought.
6. The Legislative Consent Motion was laid in the Assembly on Tuesday 3 March 2020. The draft motion, which will be tabled by the Minister for Agriculture, Environment and Rural affairs, is:

“That this Assembly agrees that the provisions in the Agriculture Bill, as introduced into the House of Commons on 16 January 2020, should be considered by the UK Parliament”.

## Committee Consideration

7. At its meeting on 20 February 2020, the Committee received an oral briefing from the Department outlining the detail of the Bill as it relates to Northern Ireland and informing the Committee that a Legislative Consent Motion would be required.
8. The Committee also took oral and written evidence on 13 and 20 February from the following stakeholders:
  - Brexit and Environment;
  - Dairy UK NI;
  - Department for Agriculture, Environment and Rural Affairs;
  - Mid Ulster Local Action Group;
  - Northern Ireland Agricultural Producers’ Association;

- Northern Ireland Environment Link;
- Northern Ireland Rural Women's Network;
- Rural Action;
- Rural Community Network; and
- Ulster Farmers' Union

9. The Committee commissioned a briefing paper on the Agriculture Bill from the Northern Ireland Assembly Research and Information Service.

## List of Abbreviations and Acronyms used in this Report

<b>AHDB</b>	<b>Agriculture and Horticulture Development Board</b>
<b>ANC</b>	<b>Areas of Natural Constraint</b>
<b>APHIS</b>	<b>Animal Plant Health Information System</b>
<b>CAP</b>	<b>Common Agricultural Policy</b>
<b>DAERA</b>	<b>Department of Agriculture, Environment and Rural Affairs</b>
<b>DEFRA</b>	<b>Department of Environment, Food and Rural Affairs</b>
<b>EU</b>	<b>European Union</b>
<b>NIAPA</b>	<b>Northern Ireland Agricultural Producers Association</b>
<b>NICS</b>	<b>Northern Ireland Civil Service</b>
<b>NIEL</b>	<b>Northern Ireland Environment Link</b>
<b>NIFAIS</b>	<b>Northern Ireland Food Animal Information Systems</b>
<b>NIMEA</b>	<b>Northern Ireland Meat Exporters Association</b>
<b>SPF</b>	<b>Shared Prosperity Fund</b>
<b>UFU</b>	<b>Ulster Farmers' Union</b>
<b>WTO</b>	<b>World Trade Organisation</b>

# INTRODUCTION

1. After the transition period<sup>1</sup>, UK agriculture will be operating outside of the EU's Common Agricultural Policy (CAP). CAP currently provides a common regulatory framework with a uniform set of rules and regulations. These are governed by the European Commission and therefore are applied consistently across the devolved administrations. CAP also provides nearly £4 billion of support annually to farmers and rural communities across the UK.
2. The Agriculture Bill, (the Bill), was introduced by the Department of Environment Food and Rural Affairs (DEFRA) to the UK Parliament on 16<sup>th</sup> January 2020. According to the Explanatory Notes<sup>2</sup> to the Bill, it will establish a new agricultural system based on the principle of public money for public goods for the next generation of farmers and land managers.
3. Large aspects of the Bill apply only to England and Wales. For England, one of the main concerns is the establishment of a new agricultural system based on the principle of public money for public goods for the next generation of farmers and land managers.
4. There are provisions within the Bill that are devolved and, on that, legislative consent of the Assembly is being sought. A *Legislative Consent Memorandum*<sup>3</sup> has been laid by DAERA in the Business Office. Further information on these provisions is contained in this report.
5. The Committee wishes it to be clearly understood that due to the complexity of the Bill and the limited time that it has had to consider and scrutinise the Bill, it has been unable to fully explore and understand the potential impacts and implications to the local agricultural industry, agri-food sector and rural communities. However, it has been able to identify some important issues that it brings to the attention of the Department of Agriculture, Environment and Rural Affairs and to the Northern Ireland Assembly.

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<sup>1</sup> Currently 31<sup>st</sup> December 2020

<sup>2</sup> <https://services.parliament.uk/Bills/2019-21/agriculture/documents.html> (page 4)

<sup>3</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017---2022/agriculture-bill-legislative-consent-memorandum---as-laid-2-march-2020.pdf>

## The Agriculture Bill and the Ireland/Northern Ireland Protocol (the Protocol)

6. The first such issue is the interaction between this Bill, the proposed Common Frameworks and the Ireland/Northern Ireland Protocol (the Protocol). It would appear to the Committee that the Protocol will mean that agricultural produce will have to comply with a range of EU rules and regulations and that over time, GB may move away from these rules and regulations. This has created concerns around regulatory divergence between this jurisdiction, GB and the EU. Some of the witnesses who presented to the Committee indicated that regulatory divergence could ultimately mean increased costs. In taking evidence, the Committee noted that there is a distinct lack of clarity in this area and a large degree of uncertainty. The Committee does not expect that this lack of clarity and uncertainty will be addressed in the short to medium term and is concerned about the impact this may have on farmers, rural communities and agri-food business.
7. Furthermore, Members of the Committee also expressed concerns about the impact of the Protocol and balancing trade both in the north / south and the east / west dimension. The potential interface between the Protocol and World Trade Organisation (WTO) rules was also identified as an issue. It is clear from the evidence taken by the Committee that while work is ongoing by relevant government departments there is a high level of uncertainty about these matters.
8. The Committee are aware that there may be different levels of preparation for the Protocol across the various Northern Ireland Civil Service (NICS) departments.

## Sunset clause for DAERA Provisions in the Bill

9. The second major matter that the Committee draws attention to is that of a sunset clause for the DAERA provisions in the Bill specifically schedule 6. This would be similar to that provided for the Welsh in clauses 43 & 44. In a written statement the Welsh Government<sup>4</sup> stated:-

*“The powers being taken for Welsh Ministers are intended to be temporary until an Agriculture (Wales) Bill is brought forward to design a ‘Made in Wales’ system which works for Welsh agriculture, rural industries and our communities. Provisions relating to Wales are contained in a separate Schedule.”*

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<sup>4</sup> <https://gov.wales/written-statement-uk-agriculture-bill>

10. The Committee discussed this approach at length and noted that there were advantages and disadvantages to a sunset clause for the DAERA provisions. In the absence of a sitting Assembly, DAERA was unable to bring primary legislation to the NI Assembly. There was also an absence of ministerial direction on the policy approach. In order to address the potential legislative and governance gap created because of EU Exit, DAERA took the tactic to deliver an option-based approach based on a roll over of the existing regime with the ability to deliver some modifications and simplifications. DAERA indicated that schedule 6 provisions are not a new policy approach but provide breathing space to, *“...so as not to prejudice or constrain the ability of an incoming Minister, Executive or Assembly to decide the long-term direction and nature of agricultural support policy in Northern Ireland”*.<sup>5</sup>
11. However, one of the disadvantages of this approach is that provisions are enacted by decisions of the Minister and the Assembly using the Statutory Rule route. While most of the provisions are enacted using the affirmative method, which allows for a higher level of scrutiny, statutory rules generally provide less opportunity for scrutiny and less opportunity for the Assembly to amend and change than primary legislation.
12. The Committee also noted a concern that there was an inherent danger in that the ‘old CAP system’ could be maintained for too long. Many of the stakeholders informed the Committee that leaving CAP presented an opportunity to create an improved system and one that aligned and delivered better outcomes for local farmers, the environment and rural communities.
13. The Committee indicated that it would endorse a sunset clause on the Northern Ireland provisions in the Bill, similar to that provided for Wales. The Committee recommend that the DAERA Minister brings forward local policies, followed in due course by primary legislation, tailored to the needs of the agricultural sector, agri-food and rural communities, within a similar timescale of the Welsh sunset clause.

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<sup>5</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017---2022/daera-evidence-agriculture-bill-200220.pdf>



## Future of Rural Development including its funding

14. The third issue that concerns the Committee is clarity on the future of rural development and specifically the availability of, and ring fencing of, funding for rural development. Rural Development is largely funded from CAP Pillar II and other EU sources. The Committee heard that it is envisaged that the replacement for EU funding for rural development will come from the Shared Prosperity Fund (SPF). Stakeholders from rural communities indicated that DAERA had already begun work on a new rural development policy framework - this had been warmly welcomed. However, there were concerns regarding funding for rural development.
15. It was understood that the UK Shared Prosperity Fund (SPF) would be the mechanism to replace all EU Structural Funds including rural development. No details of the SPF policy has yet been put forward by the UK Government, nor is there any guarantee that such replacement funding will be ring fenced. This is creating a degree of concern and uncertainty about the future for rural communities. The Committee endorsed this view and indicated that it shares the concerns around clarity and lack of information on the UK Shared Prosperity Fund.

## Schedule 6

16. The Committee also draws attention to some of the provisions in Schedule 6. These are enabling provisions and allow options for the DAERA Minister to bring forward by secondary legislation a number of provisions relating to :-
  - Part 1 Financial Support after EU Exit;
  - Part 2 Interventions in Agricultural Markets;
  - Part 3 Collection and Sharing of Data;
  - Part 4 Marketing Standards and carcass Classification;
  - Part 5 Data protection.
17. Part 1 of Schedule 6 provides provisions for the DAERA Minister to make, amongst other payments, payments for Areas of Natural Constraints (ANCs) Payments and for Coupled Support. The Committee noted a range of different views from stakeholders (and from the political parties) on these two issues in particular.
18. The Committee expressed its concerns that the Schedule 6 provisions will be brought forward, or not brought forward, by subordinate legislation, as this

provides less opportunity for scrutiny as well as substantially less opportunity for amendment.

## Other influencing factors

19. Finally, there are a number of factors outside the Bill that will influence its provisions and operation. These are outlined later in this report but include -
  - Funding;
  - Future Trade Deals and the potential that they could enable food imports of a lower standard than current EU based standards;
  - Conacre and tenancies issues;
  - Access to migrant labour;
  - New Compliance systems;
  - Tariffs and non-tariff barriers.
20. The Committee note that direct payments to farmers in 2020 are provided for in another and separate UK Act namely the Direct Payments to Farmers (Legislative Continuity) Act 2020. This Act was the subject of a previous Legislative Consent Motion debated and agreed by this Assembly on Monday 27<sup>th</sup> January 2020.
21. The Committee deliberated on and agreed not to take a committee position on the draft legislative consent motion.

## COMMITTEE DELIBERATIONS ON SOME OF THE CLAUSES THAT EXTEND AND APPLY TO NORTHERN IRELAND

### Clause 17: Duty to report to Parliament on UK Food Security

22. The Agriculture Bill Explanatory Notes<sup>6</sup> states “*Clause 17 places a duty on the Secretary of State to produce a report to lay before Parliament on UK Food Security. This report will provide a broad understanding of what food security is the challenges and risks to UK food security in a global context, and our current assessment of the state of our food security to inform our policy thinking on the resilience and security of food supply.*”

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<sup>6</sup> <https://www.publications.parliament.uk/pa/bills/cbill/58-01/0007/en/20007en.pdf>

23. Key provisions are that:-

- The report to be once every 5 years; and
- May cover a number of themes such as Global food availability; Supply sources for food; Resilience of the supply chain for food; Household food security and expenditure on food; and Food safety and consumer confidence in food.

24. In its evidence to the Committee DAERA officials noted that they have no concerns with this clause:-

*'In addition, I mentioned earlier that there were a small number of UK-wide provisions that, in part, deal with devolved matters. These relate to the Secretary of State's duty to report to Parliament on food security, as you have heard. National security is a reserved matter, and food is one of 13 UK critical national infrastructure sectors. However, within that and within this particular issue, food and drink supply is a devolved matter, as is the analysis of statistical data that falls to DAERA'.<sup>7</sup>*

25. Various stakeholders raised the following concerns with the Committee:-

- UFU - indicated that they would like to see the report on food security on a more frequent basis, particularly during the initial transition to new trading arrangements and future agricultural support;
- NIEL - noted that sustainability of food consumed in the UK should be included as one of the assessment themes; and
- Brexit and Environment - pointed out that there is no clear focus within the 'public goods' on objects such as the production of high-quality food, healthy food or promoting human nutrition - something that could be targeted and would be highly desirable.

26. Research<sup>8</sup> commissioned by the Committee highlighted a number of other concerns including:-

- the lack of any provision that would enable the UK Government to take action in relation to any matters raised in a Food Security Report
- that there is no indication of any additional resources to address any identified issues; and
- that given that there is a possibility that food prices within Northern Ireland may rise, and there may be less choice for consumer as a result of the

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<sup>7</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/daera-evidence--agriculture-bill-200220.pdf>

<sup>8</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/raise--agriculture-bill--final-briefing-paper.pdf>

exit from the EU, that perhaps a clause to provide for a localised food security assessment may be useful.

27. The Committee indicated that it would like to see these reports produced more frequently than every five years, particularly in the initial transition years. It considers that one such report per Parliamentary term is insufficient and that an annual report, with specific reference to the devolved administration and any localised issues, would be more appropriate.

#### **Part 4 Clause 31- Fertilisers**

28. This clause will amend and create a broader definition for what constitutes a fertiliser. It will allow different requirements to be set, for example, for biostimulants, soil improvers and traditional mineral fertilisers to ensure the safety and quality of the various types of products marketed as a fertiliser in the whole of the UK. It includes the power to regulate for assessment, monitoring and enforcement regime for fertiliser compliance with composition, content and function requirements and for mitigating other risks to human, animal or plant health or the environment presented by fertilisers. It means that over time, the framework of regulations governing fertiliser can vary from that currently established by the EU Commission.
29. In its written evidence to the Committee, DAERA officials noted no concerns with this clause. However, Northern Ireland Agricultural Producers Association (NIAPA), who provided oral and written evidence to the Committee, did raise concerns regarding the costs associated with the assessment procedures and that the mitigation of risks to human, animal or plant health or the environment is paramount.
30. This clause enables the amendment and repeal of EU Regulation 2003/2003<sup>9</sup> that currently regulates areas including fertiliser chemical composition, labelling and traceability. The Research Paper<sup>10</sup> commissioned by the Committee, noted EU Regulation 2003/2003 is referenced within Annex 2 of the Protocol. This appears to mean that Northern Ireland must adhere to EU

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<sup>9</sup> *Regulation (EC) No 2003/2003 relating to fertilisers*

<sup>10</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017---2022/raise---agriculture-bill---final-briefing-paper.pdf>

Regulation 2003/2003 (which is due to be repealed and replaced on a phased basis by EU regulation 2019/1009) and that variation may not be possible. Over time, this could lead to variations in fertiliser regulations between this jurisdiction and the rest of the UK.

31. This Committee noted concerns on the interaction / overlap of the provisions of the Bill and the Ireland / Northern Ireland Protocol in relation to fertilisers. Due to lack of time for proper scrutiny, it has not been able to explore the possibility that such variation will or could occur. Likewise, it has not explored the implications and impacts of variation on our local industry - for example, the potential that it could create an uneven playing field. There are also issues around the supply of fertilisers and whether this potential variation will pose any problems for supply and cost of supply in the future.

### Clause 32 Identification and traceability of animals

32. This inserts a new section 89A into the Natural Environment and Rural Communities Act 2006 to enable the Secretary of State to make secondary legislation allowing the Agriculture and Horticulture Development Board (AHDB) to undertake a new statutory role in managing a new Livestock Information Service in England.
33. The functions that may be assigned to the AHDB include the collecting, managing and making available information regarding the identification, movement and health of animals or the means of identifying animals. These functions are devolved.
34. DAERA officials raised no concerns with the Committee regarding this clause. However, in its written evidence to the House of Commons Agriculture Public Bill Committee, DAERA stated at paragraph 10 of its written submission:-

*“Clause 32 - Identification and Traceability of Animals: Concerns that the SoS does not need to seek consent from the devolved administrations before making regulations in relation to a new statutory role for AHDB. This will involve managing a new Livestock Information Service (LIS) for England and will entail using animal ID information obtained from the devolved administrations. WG not happy either.”<sup>11</sup>*

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<sup>11</sup> <https://publications.parliament.uk/pa/cm5801/cmpublic/Agriculture/memo/AB13.htm>

35. The Committee heard from various stakeholders who did raise some concerns with this clause. Dairy UK and Northern Ireland Meat Exporters Association (NIMEA) both felt that the clause should not apply to here because “*NI will have to adhere to EU Regulations and standards for animal identification and traceability. With the potential for UK and EU approaches to diverge, allowing NI to have its own systems avoids the complexity of divergence.*”<sup>12</sup>
36. Moreover, Dairy UK remarked that one of the areas that the local dairy sector uses in its positioning in export markets, and to gain competitive advantage, is in its robust and long-standing traceability system. It noted that buyers in export markets have a number of key purchase criteria, one of which is product quality and safety. The proposition to purchase local dairy products is based on the confidence and trust that buyers can have in the products; and this is based, in part, on the traceability system. The main concern was that having a one-size fits all approach for the whole of the UK minimises this positioning and proposition to foreign buyers to buy local dairy products because this clause would remove the direct control that is currently exercised by DAERA, and would thus dilute the competitive advantage in this area.
37. This is again another example of an interface between the Bill and the Protocol that creates some cause for concern. The Committee draws attention to this aspect and to the fact that lack of time and resources has not allowed this issue to be properly deliberated upon.
38. Due to lack of time, the Committee has not been able to explore the question of whether the potential powers for the AHDB to approve the animal identification tags will be cognisant of Northern Ireland’s ongoing commitment to align with EU animal identification regulations as set out in Annex 2 of the Protocol.
39. There are also unanswered questions around the role of the proposed Livestock Information System for the UK and the APHIS / NIFAIS system in this jurisdiction.

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<sup>12</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/dairy-uk-ni-written-evidence.pdf>

40. In a late submission to the Committee DAERA provided some clarification on the policy intent behind Clause 32 and stated:-

- *'DAERA / NI livestock traceability systems will not be subsumed into a UK wide system. NI will continue to adhere to EU standards and the requirements of the protocol.*
- *NI will continue to approve its own identification tags. They will liaise closely with Defra on tag approval and testing of tags. This mutually beneficial arrangement will continue.*
- *AHDB / Livestock Information Ltd will not be performing a role in livestock identification in NI. LIL will operate the Livestock Information Service (LIS) throughout England. LIS will interoperate with equivalent services across the Welsh and Scottish Administrations to enable livestock movements across mainland UK borders.*
- *It is expected that APHIS/ NIFAIS will also continue to interface with GB systems/ LIL/ LIS/ UK. View in the same way as it does now, via the Cattle Tracing System (CTS). That is managed as Exports and Imports between NI and CTS.'*

41. In that same submission DAERA provided some clarification on the consent provisions for Clause 32. It noted that Minister Poots had written to the DEFRA Minister seeking provision to be included to the effect that DAERA's consent would be required with regard to the assignation of functions as these relate to the collecting, managing and making available information regarding the identification, movement and health of animals, or the means of identifying animals. DAERA indicated that DEFRA was now seeking collective agreement within Whitehall to a UK Government amendment being tabled on clause 32 to the effect that consent provisions would be included. This will most likely happen in the House of Lords.

42. The Committee notes that both it and the industry is very proud of our traceability. It recommends that the DAERA Minister provides it with regular updates on how our Identification System (APHIS / NIFAIS) interface with any new system arising from the provisions in the Bill.

## **Part 5 Clause 36-37 Organic products**

43. This clause provides for the certification of: organic products; activities relating to organic products; and persons or groups of persons carrying out activities relating to organic products. Those parts of the clause that relate to trade are reserved, whereas those parts, which relate to organic products, are devolved.

44. As background, it is worth noting that organic production within Northern Ireland at present is limited, accounting for only 0.8% of Northern Ireland's total agricultural area in 2018, as compared to an overall UK figure of 3.1%<sup>13</sup>. There could however be potential for growth in the sector here given trends towards sustainable agriculture and a growing emphasis on food provenance amongst consumers.
45. In its written evidence to the House of Commons Public Bill Committee, at paragraph 9, DAERA noted concerns that the Secretary of State would not seek the consent of the devolved administrations when making regulations about organic matters that are devolved.
46. DAERA also expressed concerns that the UK Government would amend retained EU Regulations on organic production and labelling of organic products. However, locally it would be constrained by the Protocol that includes the EU Organic Regulations<sup>14</sup>.
47. Another concern raised was that clause 37 gives DAERA powers to make regulations *"...to the extent that they would be within the legislative competence of the NI Assembly if contained within an Act of that Assembly made without the SoS's consent. Clause 37 has similar provision for SG and WG"*.<sup>15</sup>
48. DAERA noted that the devolved administrations are concerned about their regulating making powers because they are not aware of any Primary Legislation that would allow any of the administrations to make Organic Regulations; and that this is being discussed by the lawyers.
49. NIAPA noted that there are some consumer trends towards alternative methods of farming and that organics need regulation to ensure that what is advertised is what is provided. It further stresses that such legislative competence to do this should rest with DAERA.

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<sup>13</sup> *Organic farming statistics 2018, Defra, Table 4, page 7*

<sup>14</sup> <https://publications.parliament.uk/pa/cm5801/cmpublic/Agriculture/memo/AB13.htm>

<sup>15</sup> <https://publications.parliament.uk/pa/cm5801/cmpublic/Agriculture/memo/AB13.htm>



50. The Committee Research Paper<sup>16</sup> noted other key issues and observations including:-

- Does DAERA have any plans to utilise the potential powers through regulation they could have around organic certification, the import and export of organic products and the enforcement of organic regulation?
- Has any assessment been made as to whether the utilisation of such powers would boost either organic production or the processing of organic produce here?
- Would DAERA even be able to utilise these potential powers given the fact that Northern Ireland is required to adhere to EU rules on organic production and labelling as Council Regulation (EC) No 834/2007<sup>17</sup> is an integral part of Annex 2 of the Ireland/Northern Ireland Protocol<sup>18</sup>?
- As an added complication, Council Regulation (EC) No 834/2007 is being repealed from January 1<sup>st</sup> 2021 to be replaced by Regulation (EC) No 2018/848<sup>19</sup>. This new Regulation is also found within Annex 2 of the Ireland/Northern Ireland Protocol; and
- Has any assessment of the risk of regulatory divergence between GB and the EU been undertaken in relation to organic standards and any likely impacts this could have on local producers and processors?

51. In a late submission to the Committee DAERA provided some clarification on the consent provisions for Clause 37. It noted that Minister Poots had written to the DEFRA Minister seeking provision to be included to the effect that DAERA's consent would be required should UK Government wish to make organic regulations under clause 36 in relation to devolved matters. It further indicated that DEFRA is now seeking collective agreement within Whitehall to UK Government amendments being tabled to the effect that consent provisions would be included. This will most likely happen in the House of Lords.

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<sup>16</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017---2022/raise---agriculture-bill---final-briefing-paper.pdf>

<sup>17</sup> *Council Regulation (EC) No 834/2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91*

<sup>18</sup> *Ireland/Northern Ireland Protocol to the UK/EU Withdrawal Agreement, 17 October 2019*

<sup>19</sup> *Regulation (EU) 2018/848 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007*

## Clause 45 - Provisions relating to Northern Ireland

52. Clause 45 notes that further provisions relating to Northern Ireland can be found in Schedule 6. Clause 43 provides similar provisions for Wales. The Scottish Government have confirmed that it intends to bring forward its own separate Scottish Agriculture Bill rather than have a schedule in the UK Agriculture Bill.
53. However, clause 44 of the Bill provides a sunset clause of the end of 2024 for some of the provisions that apply to Wales. Witnesses such as NIEL noted that, by not time bounding the provisions relating to Northern Ireland, there is a risk that 'business as usual may continue indefinitely' leading to delays in developing a bespoke localised agricultural policy framework:-

*'Clause 45 in Part 7, in conjunction with schedules 5 and 6, outlines the extent and nature of the application of the Bill to Wales and Northern Ireland, but there is, of course, an important difference. Clause 44 outlines that the main provisions that apply to Wales will expire in 2024. That is what is often referred to as a sunset clause, and it places the onus on the Welsh Government to develop their own domestic legislation in a time-bound manner. With no sunset clause or similar arrangement for Northern Ireland, provisions are not time-bound, which presents a risk that a business-as-usual approach may continue indefinitely. That would see the continuation of the current system, which is widely regarded as inefficient, ineffective and inequitable, and lead to an incentivisation of a model of farming that has resulted in long-term declines in a range of environmental indicators, as evidenced by the 2019 'State of Nature' report.'*<sup>20</sup>

54. The Committee understands that the approach taken by DAERA, in the absence of the Northern Ireland Executive and local Ministers, was conservative, proportionate and appropriate for the circumstances. The Committee also note that during this period DAERA has undertaken considerable stakeholder engagement on a Future Agricultural Policy Framework. The Committee welcome this engagement. Its position on a sunset clause for Northern Ireland are noted earlier in this report.

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<sup>20</sup> <http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=21369&eveID=11581>

## Schedule 6: Northern Ireland

55. Schedule 6 is the schedule that provides powers to the DAERA Minister similar to that provided to the DEFRA Minister. The Explanatory Notes that accompany the Bill (at page 49) state:-

*“This is to enable DAERA to continue to make payments to farmers and land managers after the UK leaves the EU and to ensure that Executive Ministers have the flexibility to develop policy in Northern Ireland.”*

56. Part 1 of Schedule 6 deals with the delivery of financial support after EU Exit and allows for DAERA to modify retained EU law in connection with the continuation of some form of the basic payment system, the potential to make payments for Areas of Natural Constraint and Coupled Support. DAERA also has the power to modify retained EU law as it relates to rural development provision.
57. Part 2 gives powers relating to intervention in agricultural markets to DAERA, similar to those conferred on the Secretary of State in Part 4 of the Bill with the exception of clause 18 relating to the declaration of exceptional market conditions. Part 3 gives powers relating to the collection and sharing of data to DAERA, similar to those conferred on the Secretary of State in Part 3 of the Bill. Part 4 gives DAERA powers to set marketing standards and make provision for the classification of carcasses.
58. In its written briefing to the Committee, DAERA provided information on the rationale for schedule 6 as follows:-

*“The rationale behind taking these provisions is to ensure that the status quo can be maintained until such time as future agricultural policy in Northern Ireland is agreed. It will provide a power to continue the basic payment scheme beyond 2020, as well as having the ability to make important simplifications where it would be sensible to do so, and also enable Northern Ireland to keep pace with the rest of the UK. Furthermore, the Northern Ireland-specific provisions were included having regard to a set of overarching principles. These were that: there would be the continuation of a legal basis to provide the current suite of Pillar 1 agricultural support payments (and options) post EU exit; the provisions would not constrain the Executive’s ability to continue to deliver current schemes and implement options available under the Rural Development Programme and Common Market Organisation provided by existing and retained EU legislation, for so long as Ministers consider this appropriate; and The Executive would have sufficient flexibility to develop and implement future agricultural policy*

*consistent with the principles agreed by JMC (EN), which included the functioning of the UK's internal market.”<sup>21</sup>*

59. The Ulster Farmers' Union (UFU) in its written evidence to the Committee stated that Schedule 6 Part 1:-

*“Provides legal basis for continuation until a new regional policy determined (can include ‘resilience support’ and also note need for ‘tracking’ of ROI agricultural support under NI/ROI Protocol). The Bill also requires government to establish multi-annual financial programmes. This is not the same as the fixed multi-annual financial budgets associated with the CAP - but taken alongside the government's commitment to maintain the farm support budget for the life of the Parliament (expected to be until 2024) this approach is welcome.”<sup>22</sup>*

60. NIAPA, in its written comments noted that the powers provided to DAERA enabling them to modify regulations are essential in relation to specific issues that can only be properly addressed within the region.

61. In its oral evidence to the Committee, Dr Viviane Gravey (Queen's University Belfast, School of HAPP) and Dr Mary Dobbs (Queen's University Belfast, School of Law) of the Brexit and Environment academic network referenced that the provision in schedule 6 provided a breathing space:-

*‘One of the benefits that can be striven for right now is to use it as a breathing space to go and consider that it is not actually necessary to seek to have it applied to Northern Ireland as well. There are certain elements within schedule 6 that will apply, and certain UK components that will apply across, but what it can do is give you a little bit of a breathing space, because there is a lot to be dealt with at the moment beyond agriculture, but also in dealing with the protocol, looking at how that will shift and how the general context will shift and to say, well, actually the UK Agriculture Bill provides for the continuation of funding for the moment, along with the promises from the Government. It allows for the adaptation of the basic payment scheme, and it allows it to continue on for Northern Ireland for the moment. It allows for the continuation*

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<sup>21</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/daera-briefing-paper--agriculture-bill.pdf>

<sup>22</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/ufu-briefing-paper.pdf>

*of the rural development funding for Northern Ireland and its differential treatment for the devolved administrations.*<sup>23</sup>

62. The Committee noted that Rural Community Network, Rural Action and NI Rural Women's Network supported the need to retain a basic payment scheme in Northern Ireland to provide continuity for farmers and landowners until the Minister, the Executive, and the Assembly agree how payments to farmers may need to change. They indicated that this gives breathing space to consider the issues and how the "public money for public goods" principle will apply to the diverse range of farms across Northern Ireland. The same groups did express concerns regarding Rural Development indicating that:-

*'A further question that should be considered by the Committee is how provisions in the UK Agriculture Bill will interact with proposals for a UK Shared Prosperity Fund (UKSPF) and the work DAERA has begun on a Rural Development Policy Framework.'*<sup>24</sup>

63. The three groups further noted:-

*'Our understanding, from a workshop for rural stakeholders held in Belfast in January last year is that the UKSPF will be the mechanism used to replace EU Structural Funds and will include a strand for rural development. We are concerned that no policy proposals for the UKSPF have been put forward by the UK Government as these will shape the nature of rural development across the UK. Furthermore, we are concerned from discussions at the Rural Stakeholder engagement event that there may be no ring-fenced funding element for rural development within the Fund.'*<sup>25</sup>

64. This issue was echoed by Mr Connor Corr representing the Local Action Groups. He indicated that the UK Government Agriculture Bill provided an opportunity for devolved government to design and deliver policy and asked that this now be prioritised by Minister Poots and the Executive under devolution to develop and implement seamlessly a Rural Development Programme post 2020.

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<sup>23</sup> <http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=21318&evidID=11580>

<sup>24</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017---2022/rcn-rural-action-and-nirwn-briefing-paper-on-uk-government-agriculture-bill.pdf>

<sup>25</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017---2022/rcn-rural-action-and-nirwn-briefing-paper-on-uk-government-agriculture-bill.pdf>

65. Dairy UK and NIMEA indicated that they were content with Part 1 of Schedule 6 since it enables Northern Ireland to roll forward Pillars 1 and 2, as well as CMO matters, and, where appropriate, to make simplifications. Both organisations agreed that DAERA should have powers to deal with market disturbances by providing financial assistance to agricultural producers whose incomes are adversely affected. They also agreed that DAERA should have powers to use public intervention and private storage mechanisms.
66. On Part 4, Marketing standards and carcass classification, Dairy UK and NIMEA noted that it makes sense that, during the transition period, the provisions in this Part of the Bill are in place. Both organisations noted that after the transition this region would operate to EU standards on SPS matters. They also noted that there is no recognition in the Bill that future divergence between UK and EU Marketing standards will affect this jurisdiction. Neither is there any clarity regarding how DAERA will apply its devolved powers in this area.
67. Representing the Environment Sector, NIEL expressed some concerns with aspects of Schedule 6, and other powers outlined within the NI schedule, which, in its view, could be regarded as a possible regressive step in the development of a sustainable land management policy:-

*‘Coupled support is directly tied to agricultural production. Under previous iterations of the CAP, support was directly linked to production. This resulted in a range of unintended consequences including overproduction, market distortion and significant environmental degradation. In recognition of these flaws, the CAP has gradually removed (decoupled) the link between the receipt of income support payments and the production of specific products. This is to avoid overproduction and make sure that farmers are responding to genuine market demand and managing environmental impact.’<sup>26</sup>*

68. NIEL also commented that ANC payments come with little conditionality on how land is managed:-

*‘Unconditional support represents a significant missed opportunity to incentivise more sustainable land management in these areas (such as our uplands) which in many cases can deliver significant public benefits. It makes little financial or environmental sense to try and overcome natural*

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<sup>26</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/niel-briefing-paper-on-uk-agriculture-bill-.pdf>

*'disadvantage' through incentivising increased production. Areas of natural disadvantage may provide comparatively little value in terms of productive output; however, when managed sympathetically, they often provide significant public benefits through the delivery of environmental public goods. In these areas, it represents better value for money to support and reward farmers for delivering these. As such, our view is that alternative policy tools could achieve a greater impact for both farming and the environment and improve farm resilience whilst accepting that the economics of farming in uplands is challenging.'* <sup>27</sup>

## UK WIDE CLAUSES NOT REQUIRING LEGISLATIVE CONSENT

69. The Bill also contains some clauses that apply UK wide, but which do not require legislative consent as they fall under an area of reserved competence. DAERA briefing identifies these as clause 27, 28-30 and 40-42.

### Clause 27 Fair dealing with agricultural producers

70. This includes the publishing or enforcement of sector specific statutory codes of practice to counteract any unfair trading that may arise due to the relatively weak market position of primary producers compared to others in the supply chain.

### Clause 28 - 30 Producer organisations

71. This includes recognition and exemption from competition law for Producer Organisations.

### Clause 40 - 42 WTO Agreement on Agriculture

72. This includes powers to set financial ceilings for the level of agricultural support paid in both England and the devolved administrations. It establishes a decision-making process to classify agricultural support in accordance with WTO criteria. It requires the devolved administrations to provide information in relation to any proposed or existing farm support.
73. The WTO Agreement on Agriculture sets limits on how much domestic support can be provided by a country, and is categorised into different “boxes” depending on the extent to which the support distorts trade on agricultural markets.

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<sup>27</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/niel-briefing-paper-on-uk-agriculture-bill-.pdf>

74. This matter was raised by Brexit and Environment Group who outlined the following in written evidence to the Committee:-

*“Part 6 is a crucial component and aims to ensure UK-wide compliance with the WTO Agreement on Agriculture. Section 41 provides for the UK to impose limits on subsidies that fall within the Amber Box (the most trade-distorting form of subsidies, e.g. payments linked to agricultural production). This includes a UK-wide limitation and also individual limits for the devolved territories, thereby facilitating compliance by the UK as a whole. Section 42 also provides for creating regulations to address the classification of domestic support across the UK, which is necessary in order to see whether the limit on Amber Box support is being complied with.”<sup>28</sup>*

75. Responding to questions on this issue, DAERA officials remarked:-

*‘We do not have particular concerns about this issue. It is more a political issue than anything else in relation to the positions adopted by Scotland and Wales. The UK now has obligations, under WTO rules, to report on the nature of support within agriculture. That needs to be done. Any new measures coming forward in agriculture will have to be classified by where they fall within WTO classifications. The UK will inherit about €5.9 billion of amber box headroom, if you like, which is well in excess of any budget that the UK would ever spend on agriculture. This is amber box, which is the most trade-distorting element within WTO classification. There is no limit, under WTO rules, on blue box support or green box support. Therefore, in effect, there is virtually no circumstance that we can think of where the WTO will limit our room for manoeuvre on policy, and therefore we are not overly concerned about this issue. We do have certain constraints in terms of the nature of agricultural support arising out of the Northern Ireland protocol. That is an entirely separate matter. The WTO issue, as I say, is probably more a political matter rather than a practical matter, as far as we are concerned.’<sup>29</sup>*

76. In a late submission to the Committee DAERA informed the Committee that there has been a change in the UK Government's position on what aspects of these clauses were outside devolved competency. Previously, the UK Government's view was that provisions in clauses 40 - 42 were outside devolved competence. However, clauses 42(4) and (5) confer a power on the Secretary of State to make regulations that may require a devolved authority

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<sup>28</sup> <http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/agriculture-environment-and-rural-affairs/legislative-consent-motions/agriculture-bill/written-submissions/brexit-and-environment-group-the-uk-agricultural-bill-and-future-ni-policy.pdf>

<sup>29</sup> <http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=21363&evidID=11581>



(which includes DAERA) to provide information to the Secretary of State. The UK Government's view is that this arguably amounts to an alteration of the executive competence of the Northern Ireland Ministers, and that these specific sub-clauses therefore engage the legislative consent process in the Northern Ireland Assembly. The view of the Department remains that these clauses will not impose any constraint on policy decisions on agricultural support in practice and that the Minister had been approached regarding the amendment of the Legislative Consent Memorandum to reflect this matter.

## **OTHER ISSUES OUTSIDE THE REMIT OF THE BILL**

### Funding

77. CAP funding and the current level of distribution between the four regions including that it should be ring fenced has been in place for some time. What it will be replaced with in terms of amounts of funding, its distribution between the jurisdictions and possible UK Government centralisation of subsidy levels etc. is still unclear. In its written evidence to the Committee, Brexit and Environment referred to the Bew Review, which made recommendations regarding the farm support budget 2020-22, that may see Northern Ireland with reduced amounts of funding for farm support. It also called upon the UK Government to offset that budgetary reduction. The UK Government have committed to working with the devolved administrations on funding allocation including that the current annual budget for farmers in the UK would be guaranteed for every year of the Parliament i.e. until 2024. However, what happens beyond that is not guaranteed. This is a major area of concern for the farming and wider rural community.

### Future Trade Deals and Lower standards on animal welfare

78. There has been considerable public and media concern regarding the UK Government approach to new Trade Deals with countries who have lower standards on animal welfare. Many have called for the Bill to be amended to protect UK standards and prevent imports of food that is cheaper because of lower animal food standards. This is a view that has been endorsed by the Ulster Farmers Unions who, in written evidence to the Committee noted:-

*'Protection of UK production standards not included and provisions must be added to require all food imported into the UK to be produced to at least equivalent environmental, animal welfare and food safety standards.'*<sup>30</sup>

79. The Committee noted the amendment laid in the House of Common by Simon Hoare MP as follows:-

***"Import of agricultural goods after IP completion day***

*(1) After IP completion day, agricultural goods imported under a free trade agreement may be imported into the UK only if the standards to which those goods were produced were as high as, or higher than, standards which at the time of import applied under UK law relating to—*

- (a) animal welfare,*
- (b) protection of the environment,*
- (c) food safety, hygiene and traceability, and*
- (d) plant health.*

*(2) The Secretary of State must prepare a register of UK production standards, to be updated annually, to which goods imported under subsection (1) would have to adhere.*

*(3) "Agricultural goods" for the purposes of this section, mean—*

- (a) any livestock within the meaning of section 1(5),*
- (b) any plants or seeds, within the meaning of section 22(6),*
- (c) any product derived from livestock, plants or seeds.*

*(4) "IP completion day" has the meaning given in section 39 of the European Union (Withdrawal Agreement) Act 2020.*<sup>31</sup>

80. The Committee indicated that it agreed with this amendment. It was disappointed that it was not agreed at the Public Bill Committee for the Agriculture Bill. It noted that it was on the Notice of Amendments, 16 March 2020, Consideration of Bill (Report Stage), and would like to see it made by the House of Commons.

Conacre

81. Previous Assembly Committees have been aware that the localised conacre system of land tenure has some disadvantages for farming practise and business planning. While the Agriculture Bill provides a means to address agricultural tenancy issues in England & Wales, there is no similar provision for this region. In its evidence to the Committee DAERA officials noted:-

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<sup>30</sup> <http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/agriculture-environment-and-rural-affairs/legislative-consent-motions/agriculture-bill/written-submissions/brexit-and-environment-group-the-uk-agricultural-bill-and-future-ni-policy.pdf>

<sup>31</sup> [https://publications.parliament.uk/pa/bills/cbill/581/0106/amend/agriculture\\_rm\\_rep\\_0312.pdf](https://publications.parliament.uk/pa/bills/cbill/581/0106/amend/agriculture_rm_rep_0312.pdf)

*“The conacre system does not really work for anybody, because no one wants to invest their time or money in the land, and you also cannot access agrienvironment schemes unless you have a five-year agreement. That automatically rules out some people from moving in that direction, and if we want to change things – we are in the middle of a climate and ecological emergency – we need to do something differently and we need more money spent to deliver environmental outcomes that can, at the same time, improve farming resilience, if we get the design of that correct.”<sup>32</sup>*

#### Access to migrant labour

82. The agri-food industry is heavily reliant on migrant labour. The UK Government, on the 19th February, recently published a policy statement on ‘The UK's points-based immigration system’<sup>33</sup>. The Committee took the opportunity to discuss this with DAERA and with Dairy UK & NIMEA and noted that the concerns that agri-food processing sector has regarding the possible impacts this will have on the agri-food sector. In response to questions on this matter, NIMEA remarked that it had surveyed its members and on average 60 - 70% of those who were working across the meat plants were European Economic Area workers, and that the roles varied from unskilled to semi-skilled and skilled jobs:-

*‘One member has informed me that, if they applied the points-based entry system to their business, 80% percent of the staff that they brought in over the last 10 years would have got 20 points, 15% would have got 40 points and 5% would have got 30 points. There is a huge challenge here for us’.<sup>34</sup>*

83. NIMEA express concerns that one impact of this policy was the potential movement of capital to where the labour is. In its evidence to the Committee NIMEA noted:-

*‘We could have free movement of goods across the island but not have free movement of labour. That is a massive issue because, if goods can come into Northern Ireland tariff free and there is free movement in that but not free movement of migrant labour in particular, operations in Northern Ireland could*

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<sup>32</sup> <http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=21363&evidID=11581>

<sup>33</sup> <https://www.gov.uk/government/publications/the-uks-points-based-immigration-system-policy-statement/the-uks-points-based-immigration-system-policy-statement>

<sup>34</sup> <http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=21367&evidID=11581>

*be encouraged to become less competitive without those skilled workers, and you would see capital moving to where the labour is.*<sup>35</sup>

84. The migrant labour issue, and its impact on the agri-food industry, was highlighted by practically all the stakeholders as a very serious issue. The Committee are aware of the considerable concerns by the agri-food sector in that the policy does not appear to take account of the unique circumstances of this jurisdiction.

#### Compliance

85. The Committee noted that there is little or no information in the Bill or any accompanying documentation on what the new system of compliance, offences, enforcement and penalties may be.

#### Tariffs

86. The Department for International Trade has launched a public consultation to inform the UK's new independent global tariff policy including on agri-food produce. The Committee requested from DAERA, an assessment of what this might mean for local farmers and the agri-food sector, as it will have wide reaching and long lasting impacts. That Assessment<sup>36</sup> noted -

*'It is difficult to fully consider the impact of these proposals when the actual tariffs that may be removed have not been listed. Under the Protocol NI would apply the EU external tariff regime. Therefore, these proposals mean there is potential for tariffs on imports to be removed or reduced for GB compared to those applied to imports into NI under the Protocol. This may impact on the ability of NI firms and NI goods to compete in the GB market. The suggested simplification of expressing all agricultural tariffs as a single percentage of value could affect their effectiveness. Agricultural prices can be volatile and a fall in prices will reduce the tariff applied (if expressed as a percentage of value) and could lead to an import surge at a time when prices are already low which will further compound the market problem. Typically, many agricultural tariffs are made up of two elements, one which is a percentage of price and a second element that is independent of price with the latter continuing to offer a given level of protection even when prices are low.'*

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<sup>35</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/nimea-dairy-uk-evidence--agriculture-bill-200220.pdf> (page 3)

<sup>36</sup> <http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017--2022/daera-written-briefing--department-for-international-trade-consultation-on-the-uk-global-tariff-policy-2.pdf>

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