

# Briefing Agriculture Bill: a co-operative analysis

September 2018

## 1 Introduction

- 1.1 In preparation for leaving the EU, Defra has introduced an Agriculture Bill to Parliament. This Bill is largely enabling legislation, providing the broad framework within which governments for England, Wales and Northern Ireland will have powers to set the legal and regulatory aspects of their future agricultural policies, through secondary legislation.<sup>1</sup>
- 1.2 Some sections of the Bill are explicitly England only. Schedule 3 gives powers to Welsh Ministers while Schedule 4 gives powers to Department of Agriculture, Environment and Rural Affairs in Northern Ireland.
- 1.3 Defra has also published a policy statement which provides an overview of its priorities and direction of travel. This includes some encouraging statements in relation to collaboration focused on innovation, research and development, productivity enhancement and environmental management.<sup>2</sup>
- 1.4 It is notable the Bill does not establish broad policy objectives for agriculture analogous to those currently provided in the EU *acquis* by TFEU39.
- 1.5 The Bill covers a number of areas that could be fundamental to the future development of co-operation in agriculture including: powers to create a new legal framework for ‘producer organisations’, ‘associations of producer organisations’, and ‘inter-branch organisations’; new accommodations for agricultural co-operation in UK competition law; and authorisation to provide financial and non-financial support to farm businesses and supply chain actors.
- 1.6 Government’s intention to create a new legal framework for producer organisations, associations of producer organisations and inter-branch organisations is a welcome indication that it intends to encourage, support and utilise farmer-to-farmer co-operation in its future agricultural policy. This is backed up by Defra’s latest policy statement. The Bill provides the barest of bones and the detail will be provided through secondary legislation. We look forward to Defra developing a clear and coherent co-operation policy, which can then inform the specifics of the producer organisation, association of producer organisation and inter-branch organisation legislation (see **part 2**).
- 1.7 Slightly less welcome, we have some concerns that the new accommodations for agricultural co-operation in UK competition law provided by this Bill will not replicate the EU *acquis* as is. Defra’s policy paper announces an intention to “*retain existing*

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<sup>1</sup> [https://publications.parliament.uk/pa/bills/cbill/2017-2019/0266/cbill\\_2017-20190266\\_en\\_2.htm#pt1-1q1](https://publications.parliament.uk/pa/bills/cbill/2017-2019/0266/cbill_2017-20190266_en_2.htm#pt1-1q1)

<sup>2</sup> <https://www.gov.uk/government/publications/the-future-for-food-farming-and-the-environment-policy-statement-2018>

*competition law exemptions*”<sup>3</sup> but the Bill appears to provide something more reductive and potentially more prohibitive, with greater emphasis on competition objectives, without reference to broader policy objectives for a resilient, sustainable agricultural economy, as currently provide in the EU *acquis* (see **part 3**).

1.8 The Bill also provides for the ending of support for collaboration in horticulture through the Fruit and Vegetables Aid Scheme. Without further policy detail from Defra it is difficult to interpret this part of the Bill (see **part 4**).

1.9 The Bill also provides a basis for government interventions in market data and first purchaser contracts. This could also have implications for how great (or otherwise) a role government sees for co-operation in fostering fairer more functional supply chains (see **part 5**).

## **2 Producer organisations, associations of producer organisations and inter-branch organisations**

2.1 This is UK-wide legislation. The Bill does not give the governments for Wales and Northern Ireland powers to amend it.

2.2 Section 22 of the Bill provides the basis for government to create a new UK-specific legal framework for producer organisation (‘POs’), associations of producer organisations (‘APOs’) and inter-branch organisations (‘IBOs’).<sup>4</sup> In doing so it transfers the framing aspects of the relevant articles of the Common Market Organisation Regulation (No 1308/2013) (the ‘CMO Regulation’) into UK law,<sup>5</sup> but leaves huge scope for Defra to set new details through secondary legislation.

2.3 Schedule 1, Part 2 of the Bill specifies which sectors the new POs, APOs and IBO frameworks will apply to. Encouragingly it appears Defra has included every sector currently covered by the CAP.<sup>6</sup>

2.4 In our response to Defra’s Food and Farming consultation we made the case for co-operation to be promoted, supported and utilised in post-Brexit agricultural policy. We encouraged Defra to redesign the PO, APO and IBO frameworks it inherits from the EU to be more flexible and useful for supporting a diversity of co-operative practices across all sectors and supply chains. Defra’s policy statement indicates its intention to support collaboration through PO, APO and IBOs.<sup>7</sup> Ideally we would like to see more policy detail in this area before secondary legislation is introduced.

2.5 This part of the Bill is not intended to become law immediately after Brexit. The existing PO, APO and IBO legislation in the CMO Regulation will be brought into UK law after

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<sup>3</sup> Ibid

<sup>4</sup> [https://publications.parliament.uk/pa/bills/cbill/2017-2019/0266/cbill\\_2017-20190266\\_en\\_3.htm#pt6-pb1-l1g22](https://publications.parliament.uk/pa/bills/cbill/2017-2019/0266/cbill_2017-20190266_en_3.htm#pt6-pb1-l1g22)

<sup>5</sup> CMO articles 152 for POs, 156 for APOs and 157 for IBOs: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:347:0671:0854:EN:PDF>

<sup>6</sup> [https://publications.parliament.uk/pa/bills/cbill/2017-2019/0266/cbill\\_2017-20190266\\_en\\_4.htm#sch1-pt2](https://publications.parliament.uk/pa/bills/cbill/2017-2019/0266/cbill_2017-20190266_en_4.htm#sch1-pt2)

<sup>7</sup> <https://www.gov.uk/government/publications/the-future-for-food-farming-and-the-environment-policy-statement-2018>

Brexit under the EU Withdrawal Act. Section 35 of the Bill gives the Secretary of State the power to commence this Section 22 at some later point, once the detail is worked out and allowing time for existing UK-based POs, APOs and IBOs to transition smoothly.<sup>8</sup>

- 2.6 The new PO, APO and IBO frameworks will be critical not only in the way that they might direct policy support for co-operation but also because they will form the basis for the ‘competition settlement’ post-Brexit (see **part 3** below).

### **3 New accommodations for agricultural co-operation in UK competition law**

- 3.1 This is UK-wide legislation. The Bill does not give the governments for Wales and Northern Ireland powers to amend it.
- 3.2 On the face of it, Defra’s published intention to “*retain existing competition law exemptions*”<sup>9</sup> encourages us to think the competition settlement provide by the EU *acquis* will be retained as is. But as anticipated the devils are in the detail.
- 3.3 In the EU *acquis*, the CMO Regulation provides ‘derogations’ from its fundamental competition rules for agricultural co-operation, both for recognised POs, APOs and IBOs and farmers’ associations more generally, where the latter further the objectives of the Common Agricultural Policy (CAP). TFEU39 defines CAP objectives as follows: increasing productivity of agricultural production, ensuring a fair standard of living for agricultural communities, stabilising markets, assuring supplies and ensuring reasonable prices for the consumer.<sup>10</sup> There are some general derogations that allow things like collective purchasing and joint processing and also varied derogations allowing different kinds of co-operation for specific sectors like dairy, meat and fruit and vegetables.
- 3.4 The whole *acquis* of EU law should be taken into account here. A full accommodation of agricultural co-operation would include the domestication of CJEU rulings relating to the interpretation of EU treaty and legislation, as applied to agricultural co-operation and to economic co-operation more generally.
- 3.5 Section 23 of the Bill establishes the new settlement for agricultural co-operation in UK competition law post-Brexit. Under this, Schedule 2 of the Bill makes the critical amendments to Schedule 3,9 of the Competition Act 1998, to make this settlement function outside of the EU *acquis*.
- 3.6 These parts of the Bill are not intended to become law immediately after Brexit. Section 35 of the Bill gives the Secretary of State the power to commence Section 23 and Schedule 2 at some later point. The existing competition settlement should be brought into UK law after Brexit under the EU Withdrawal Act and this new settlement will not be commenced until some later point, once the detail is worked out and allowing time for a

<sup>8</sup> See the Bill’s explanatory note: <https://publications.parliament.uk/pa/bills/cbill/2017-2019/0266/en/187266en06.htm>

<sup>9</sup> <https://www.gov.uk/government/publications/the-future-for-food-farming-and-the-environment-policy-statement-2018>

<sup>10</sup> [http://ec.europa.eu/competition/sectors/agriculture/overview\\_european\\_competition\\_rules\\_agricultural\\_sector.pdf](http://ec.europa.eu/competition/sectors/agriculture/overview_european_competition_rules_agricultural_sector.pdf)

smoother transition.<sup>11</sup>

- 3.7 Key changes the Bill makes to Competition Act 1998, Schedule 3, 9 are detailed below.
- 3.8 The current reference to broader agricultural policy (TFEU39) in the allowance of co-operation in the Competition Act 1998, Schedule 3, 9, will be removed and not replaced. Perhaps problematically, the Agriculture Bill does not create analogous policy objectives for the UK.
- 3.9 The current allowances of co-operation in the Competition Act 1998, Schedule 3, 9 and the CMO Regulation Article 209 cover both recognised POs, APOs and IBOs and crucially other ‘farmers’ associations’, where the latter further the objectives of the CAP and do not include an obligation to charge an identical price.<sup>12 13</sup> However, Schedule 2 of the Bill amends Competition Act 1998 so that allowance of co-operation is strictly limited to recognised POs, APOs and IBOs under Section 22 of the Bill, with no allowance for other farmers’ associations’ and no grounding in broader agricultural policy objectives.<sup>14</sup>
- 3.10 Further still, the Bill provides significant powers to the Competition and Markets Authority (CMA) to approve or reject IBO applications under the Competition Act 1998, Schedule 3, 9, with no reference to broader agricultural policy objectives.
- 3.11 So, the Bill provides new accommodations for agricultural co-operation in UK competition law, but only for POs, APOs or IBOs as recognised under Section 22 of the Bill, with increased discretion for the CMA to apply competition policy without reference to any broader agricultural policy objectives.
- 3.12 It concerns us that the existing accommodations for other ‘farmers’ associations’ outside of PO, APO and IBO frameworks are not going to be retained. If the PO, APO and IBO frameworks end up being well-designed and inclusive this may not be a problem, but that is unknowable at present.
- 3.13 It is also concerning that the new accommodations for co-operation will be made only with reference to competition law and policy, with no consideration of the need to resilient sustainable agricultural economies, as is currently the case inside the EU.

#### **4 Fruit and Vegetables Aid Scheme**

- 4.1 This section concerns England only.
- 4.2 Section 10 of the Bill gives the government powers of secondary legislation to end the legal framework for supporting collaboration in horticulture through the Fruit and Vegetables Aid Scheme (currently found in the CMO Regulation and being brought into

<sup>11</sup> [https://publications.parliament.uk/pa/bills/cbill/2017-2019/0266/cbill\\_2017-20190266\\_en\\_4.htm#pt9-l1q35](https://publications.parliament.uk/pa/bills/cbill/2017-2019/0266/cbill_2017-20190266_en_4.htm#pt9-l1q35)

<sup>12</sup> <http://www.legislation.gov.uk/ukpga/1998/41/schedule/3/crossheading/agricultural-products>

<sup>13</sup> <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:347:0671:0854:EN:PDF>

<sup>14</sup> [https://publications.parliament.uk/pa/bills/cbill/2017-2019/0266/cbill\\_2017-20190266\\_en\\_4.htm#sch2](https://publications.parliament.uk/pa/bills/cbill/2017-2019/0266/cbill_2017-20190266_en_4.htm#sch2)

UK law by the EU Withdrawal Act<sup>15</sup>).

- 4.3 In our submission to Defra's Food and Farming consultation we suggested that the ways in which the Fruit and Vegetables Aid Scheme incentivises, supports and utilises collaboration, focused on innovation adaptation, productivity enhancement and the consumer, should point the way for a new collaboration policy more generally. We hope Section 10 of the Bill is not an indication that government plans to dismantle what, overall, has been very successful support for collaboration in horticulture, without replacing it with something even better.

## **5 Interventions in market data and first purchaser contracts**

- 5.1 Part Four of the Bill provides for government to make interventions relating to the collection and sharing of market data. The Bill gives governments for England, Wales and Northern Ireland powers to legislate separately in this area.
- 5.2 Meanwhile, Section 25 of the Bill provides for government to legislate to create 'fair dealing obligations' of first purchasers of agricultural products. This is UK-wide legislation.
- 5.3 These parts of the Bill suggest that when it comes to making supply chains more functional and equitable, intervention and regulation are at the forefront of policymakers' minds. Governments must ensure that future policies in this area do not impede or undermine the ability of farmers to co-operate with one another in pursuit of the same objectives.

## **6 Concluding remarks and priorities**

- 6.1 The basis for new PO, APO and IBO frameworks provided by the Bill encourage us to think co-operation will be encouraged, supported and utilised in post-Brexit agricultural policy. Defra's latest policy statement gives us further encouragement and we look forward to seeing more detail in this area. Given that the new PO, APO and IBO frameworks will not commence immediately after Brexit, we think there is time to get them right.
- 6.2 We have concerns that the Bill will eventually replace the current 'competition settlement' for agricultural co-operation with something reductive and potentially more prohibitive, with greater emphasis on competition objectives, without reference to broader policy objectives for a resilient, sustainable agricultural economy, as currently provide in the EU *acquis*. We do not have an assessment of the real world impact of these rather subtle changes. We need to discuss this with Defra, our members and experts in this area of policy and law. Given that this new settlement will not commence immediately after Brexit, there is time to get this right.

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<sup>15</sup> [https://publications.parliament.uk/pa/bills/cbill/2017-2019/0266/cbill\\_2017-20190266\\_en\\_2.htm#pt2-ch2-1q10](https://publications.parliament.uk/pa/bills/cbill/2017-2019/0266/cbill_2017-20190266_en_2.htm#pt2-ch2-1q10)

- 6.3 We will also seek assurances from Defra that it will not dismantle the Fruit and Vegetables Aid Scheme without developing even better collaboration schemes for horticulture and other sectors as well.
- 6.4 We will also see seek assurances from Defra that its future policies to improve fairness in supply chains, will not impede or undermine the ability of farmers to co-operate with one another in pursuit of the same objectives.

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