



HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

13th Report of Session 2019–21

Agriculture Bill

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The Delegated Powers and Regulatory Reform Committee

The Committee is appointed by the House of Lords each session and has the following terms of reference:

- (i) To report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny;
- (ii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) sections 14 and 18 of the Legislative and Regulatory Reform Act 2006,
 - (b) section 7(2) or section 19 of the Localism Act 2011, or
 - (c) section 5E(2) of the Fire and Rescue Services Act 2004;

and to perform, in respect of such draft orders, and in respect of subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001, the functions performed in respect of other instruments and draft instruments by the Joint Committee on Statutory Instruments; and

- (iii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) section 85 of the Northern Ireland Act 1998,
 - (b) section 17 of the Local Government Act 1999,
 - (c) section 9 of the Local Government Act 2000,
 - (d) section 98 of the Local Government Act 2003, or
 - (e) section 102 of the Local Transport Act 2008.

Membership

The members of the Delegated Powers and Regulatory Reform Committee who agreed this report are:

Baroness Andrews

Lord Blencathra (Chair)

Baroness Browning

Lord Goddard of Stockport

Lord Haselhurst

Lord Haskel

Baroness Meacher

Lord Rowlands

Lord Thurlow

Lord Tope

Registered Interests

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://www.parliament.uk/hregister>. The Register may also be inspected in the Parliamentary Archives.

Publications

The Committee's reports are published by Order of the House in hard copy and on the internet at www.parliament.uk/hldprcpublications.

General Information

General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at <http://www.parliament.uk/business/lords/>.

Contacts for the Delegated Powers and Regulatory Reform Committee

Any query about the Committee or its work should be directed to the Clerk of Delegated Legislation, Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020 7219 3103. The Committee's email address is hldellegatedpowers@parliament.uk.

Historical Note

In February 1992, the Select Committee on the Committee work of the House, under the chairmanship of Earl Jellicoe, noted that "in recent years there has been considerable disquiet over the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion" (Session 1991–92, HL Paper 35-I, paragraph 133). The Committee recommended the establishment of a delegated powers scrutiny committee which would, it suggested, "be well suited to the revising function of the House". As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed experimentally in the following session. It was established as a sessional committee from the beginning of Session 1994–95. The Committee also has responsibility for scrutinising legislative reform orders under the Legislative and Regulatory Reform Act 2006 and certain instruments made under other Acts specified in the Committee's terms of reference.

Thirteenth Report

AGRICULTURE BILL

1. The Agriculture Bill was brought to the House of Lords on 18 May 2020. The Bill sets out a legal framework for the United Kingdom to replace the EU's common agricultural policy with a new system of agricultural support suited to domestic needs. The Bill contains 54 clauses and seven Schedules. It confers 40 law-making powers on Ministers. A Delegated Powers Memorandum has been provided by the Department for Environment, Food and Rural Affairs.¹

The Committee's report on the original Agriculture Bill

2. In our 34th report of Session 2017–2019,² we reported on the Bill (“the original Bill”) when it first appeared in the House of Commons in 2018. At that stage we were highly critical of the Bill's general approach to delegated powers.
 - (a) The Bill represented a major transfer of powers from the EU to Ministers of the Crown, bypassing Parliament and devolved legislatures.
 - (b) The Bill contained a skeletal framework for future regulatory changes rather than regulatory changes that could be debated here and now.
 - (c) The Bill contained only one statutory consultation requirement.
 - (d) Extensive powers were conferred on Ministers with correspondingly few duties. Powers were exercisable indefinitely and without sunset clauses.
 - (e) The Bill allowed Ministers to create unlimited monetary penalties, to create criminal offences punishable by up to two years' imprisonment and to confer enforcement functions on third parties.

The Government's response

3. The Government responded to our report in a letter dated 20 January 2020.³ **We welcome the Government's response, which engages very constructively with our concerns. The new Bill makes some important changes reflecting those concerns.** The Government acknowledge that the new agriculture system will take time to develop during the agricultural transition period lasting to 2027. In reflecting on our views, the Government agree that Parliament should have greater opportunity to scrutinise the Government's actions during the agricultural transition period.
4. Accordingly, the revised version of the Bill imposes various legal duties on the Secretary of State.

1 Department for Environment, Food and Rural Affairs, [Agriculture Bill Delegated Powers Memorandum](#).

2 [34th Report](#), Session 2017-19 (HL Paper 194).

3 See [4th Report](#), Session 2019-21 (HL Paper 17).

- (a) Clause 4 requires the Secretary of State to prepare, publish and then have regard to, a document setting out the Government's plans for how they will use their powers under clause 1 to provide financial assistance.
 - (b) Clause 5 requires the Secretary of State to publish an annual report about the financial assistance given under clause 1 during each financial year.
 - (c) Clause 6 requires the Secretary of State to prepare a report about the impact and effectiveness of financial assistance given under clause 1.
 - (d) Clause 1(4) requires the Secretary of State, in framing any financial assistance scheme, to have regard to the need to encourage food production in an environmentally sustainable way.
 - (e) Clause 17 requires the Secretary of State to report to Parliament, at least every five years, on a statistical data analysis relating to food security in the UK.
5. There can be no doubt that the revised Bill still contains a significant transfer of power from the EU to Ministers of the Crown. Likewise, the Bill still consists largely of a framework for future regulatory changes rather than containing detailed changes that can be debated here and now. **Nevertheless, we welcome the above-mentioned amendments, which will enable Parliament to scrutinise more effectively the Government's actions and progress during the transition period.**
 6. Another of our concerns was that Ministers were given extensive powers to create criminal offences with a penalty of up to two years' imprisonment.⁴ In their letter of 20 January 2020, the Government stated that they had removed from the Bill the power to create criminal offences. In a subsequent letter,⁵ the Government corrected this statement and acknowledged that the Bill has removed the ability of Ministers only to create *imprisonable offences* in regulations. **While noting that the Bill still contains six provisions allowing Ministers to create criminal offences punishable by fines, ⁶ we welcome the fact that the Government have removed the power of Ministers to create imprisonable offences by statutory instrument.** This is a welcome acknowledgment that it is for Parliament, not Ministers, to legislate for imprisonable offences.
 7. We also drew attention to the fact that the original Bill contained only one statutory consultation requirement.⁷ The Government have assured us that they will consult prior to making changes across several areas of the Bill.⁸ **We welcome this assurance, while noting that the Bill still contains only one legal duty to consult.⁹**
 8. In our 34th report of Session 2017–2019, we also reported on various individual powers in the original Bill.

4 Clause 29(5) of the original Agriculture Bill introduced in 2018.

5 Published in Appendix 1 to this report.

6 Clauses 35(3)(f) and 36(9)(f) in relation to marketing standards and organic products. Paragraphs 15(3)(f) and 17(2)(f) of Schedules 5 (Wales) and 6 (Northern Ireland) contain corresponding provision for Ministers in the devolved administrations.

7 Clause 24(5) of the original Bill.

8 [4th Report](#), Session 2019–21 (HL Paper 17), page 12.

9 Clause 30(5).

Clauses 9, 14 and 16

9. We criticised what are now clauses 9, 14 and 16 because, as originally drafted, they conferred an unacceptably wide discretion on Ministers, allowing them to “simplify or improve” the regulations governing the basic payment scheme, the financing, management and monitoring of the common agricultural policy and support for rural development. Conscious that one person’s improvement is another person’s vandalism, we sought a clearer, more focused and proportionate test. For instance, clause 6 of the original Bill (now clause 9) allowed Ministers to modify the legislation governing the basic payment scheme to “simplify or improve the scheme”. This gave a very wide discretion to Ministers and practically no guidance.
10. Clause 9(1) now expands on the position more helpfully, in the following terms:
 - (a) simplifying the administration of the scheme or otherwise making its operation more efficient or effective;
 - (b) removing provisions which are spent or of no practical utility;
 - (c) removing or reducing burdens, or the overall burdens, on persons applying for, or entitled to, direct payments under the scheme or otherwise improving the way that the scheme operates in relation to them;
 - (d) securing that any sanction or penalty imposed under the scheme is appropriate and proportionate;
 - (e) limiting the application of the scheme to land in England only.
11. **The Government have drafted a clearer, more focused and proportionate test in clauses 9, 14 and 16, which we welcome.**

Clause 27

12. Clause 27 of the Bill¹⁰ addresses the relatively weak economic position of some primary agricultural producers compared with food processors, distributors and retailers further up the supply chain. The Secretary of State has power to make regulations imposing contractual obligations on business purchasers of agricultural products in relation to contracts with qualifying sellers.
13. The Government accepted that regulations which require the imposition of certain contractual terms should be governed by the affirmative procedure because of the intrusion into commercial relationships between third parties. However, paragraph 25 of our original report pointed out that regulations to require the parties not to include certain specified contractual terms also involved an intrusion into the commercial relationship between third parties, although only the negative procedure applied in such a case in the original Bill.¹¹ **We recommended that such regulations should be subject to the affirmative procedure. The Government have accepted this recommendation,¹² which we welcome.**

¹⁰ Clause 25 of the original Bill.

¹¹ Clause 25(9) of the original Bill.

¹² Clause 27(10).

Clauses 35 and 36

14. We criticised what is now clause 35 (originally clause 20) for conferring extensive powers on the Secretary of State to make regulations concerning marketing standards in relation to a wide range of agricultural products, including milk, beef, veal, poultrymeat, eggs, fruit, vegetables, hops, wine, olive oil and live plants. The regulations come with a powerful enforcement regime allowing Ministers to impose unlimited fines, create summary offences punishable with a fine and confer enforcement functions on third parties. Although the Government indicated their intention¹³ not to impose an “excessive burden” on farmers but instead to amend “overly bureaucratic” EU rules, the Bill neither prevented the creation of excessive burdens nor required the removal of overly bureaucratic EU rules.
15. We recommended that the Bill should contain more detail on the relevant principles, policies and criteria underlying marketing standards in the various agricultural sectors. The Government have not done anything to accommodate our reservations about the very wide powers contained in clause 35, apart from to narrow the offence-making provision in clause 35(3) (f). Furthermore, the Government have adopted similarly wide powers in clause 36 to cover the regulation of organic products and producers.
16. The Government acknowledge that the powers in clauses 35 and 36 go much wider than the changes that could be made to current EU law on marketing standards that became retained EU law under the European Union (Withdrawal) Act 2018. The Government’s letter of 20 January 2020 explains that:

“Marketing standards is a dynamic area of law and must be responsive to changes in the market, production methods and in consumer demands and priorities. Clause 35 will ensure that the law can be amended to effectively respond to changes relating to the nature of the relevant markets”.
17. No doubt this is true. But the same could be said of many other areas where there is a vigorous market and vibrant consumer demand. It does not follow that Ministers should be given extensive powers:
 - to make regulations giving power to demand information;
 - to enter business premises;
 - to inspect, search and seize;
 - to impose penalties;
 - to create criminal offences; and
 - to confer functions on third parties.

All this is allowed under clauses 35(3) and 36(9). Furthermore, the Minister has a Henry VIII power under clause 35(5) to extend these powers to agricultural products not already covered by Schedule 4 to the Bill.

18. The Government have not given much indication of how they propose to use their powers under clauses 35 and 36. Paragraphs 245 and 251(a) of the

¹³ The original Delegated Powers Memorandum, paras 112 and 116.

revised Delegated Powers Memorandum state the Government's intention not to impose an excessive burden on farmers or other members of the food supply chain. Paragraph 251(c) of the Memorandum states that the regulations will amend overly bureaucratic EU rules. In the Government's letter of 20 January 2020, they state their intention not to use clauses 35 and 36 to impose additional or excessive burden on farmers or other actors in the food supply chain. Instead, the Government propose to use these powers to allow the Secretary of State to respond to changes in the market and, in respect of organics legislation, to enable the sector to grow.

19. However, the Bill neither prevents excessive burdens being imposed nor requires the removal of overly bureaucratic rules. **We traditionally evaluate powers not on how Ministers say they will be used but on how they are capable of being used. In our view, clauses 35 and 36 confer on Ministers an inappropriately wide delegation of power.** The Bill should contain more detail on the relevant principles, policies and criteria underlying marketing standards in the various agricultural sectors and in relation to organic products.

Part 3 of Schedule 1

20. Paragraph 1(1)(a) of Part 3 of Schedule 1 to the original Bill contained a Henry VIII power, made under the negative procedure, allowing the Secretary of State to add or remove an agricultural sector from Part 1 or 2 of Schedule 1 to the Bill. This had an impact on, among other things, eligibility for producer organisation recognition (what are now clauses 28 and 30) and marketing standards (what is now clause 35). **We recommended that this Henry VIII clause should be subject to the affirmative procedure. The Government have accepted this recommendation,¹⁴ which we welcome.**

Conclusion

21. **This new version of the Agriculture Bill has benefited substantially from the Committee's scrutiny of the original Bill. In reporting on the original Bill, the Committee has undertaken what may be regarded as the equivalent of pre-legislative scrutiny and, as we have said at several points in this report, we welcome the Government's positive response to a number of the Committee's earlier recommendations. Although the revised Bill still contains a significant transfer of power from the EU to Ministers of the Crown, there is no doubt that, from this Committee's perspective, it is a marked improvement on the original Bill.**

¹⁴ Clauses 28(14), 30(4) and 35(5) and (6).

APPENDIX 1: NOTICE OF CORRECTION TO THE LETTER ON THE INTRODUCTION OF THE AGRICULTURE BILL, DATED 20 JANUARY

Letter from Victoria Prentis MP, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, and Lord Gardiner of Kimble, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, to the Rt Hon. Lord Blencathra, Chair of the Delegated Powers and Regulatory Reform Committee

It has come to the Department's attention that the letter that was sent from the Department to the Committee on 20 January 2020 regarding the introduction of the Agriculture Bill to Parliament contained a factual inaccuracy.

The letter contained the line "*The Department wishes to notify the Committee that it has removed the ability to create offences in the Bill.*" The Committee will be aware that provisions in the Agriculture Bill do contain such abilities.

The letter should have instead clarified that any new criminal offences created by powers in the Bill will only be punishable by a fine rather than imprisonment. The text should therefore read: *The Department wishes to notify the Committee that it has removed the ability to create imprisonable offences in the Bill.*

The Department did not spot this error before the letter was sent to the Committee, for which it apologises.

We again thank the Committee for their valuable scrutiny of the Agriculture Bill.

25 February 2020

APPENDIX 2: MEMBERS' INTERESTS

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://www.parliament.uk/hlregister>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 3 June 2020 Members declared the following interests:

Lord Blencathra

Deputy Chair of Natural England

Lord Thurlow

Owens a farm in Scotland

Attendance

The meeting on 3 June 2020 was attended by Baroness Andrews, Lord Blencathra, Baroness Browning, Lord Goddard of Stockport, Lord Haslehurst, Lord Haskel, Baroness Meacher, Lord Rowlands, Lord Thurlow and Lord Tope