

# The Agriculture Bill 2020: a brief ahead of 2<sup>nd</sup> reading debate

## Introduction

The Agriculture Bill 2020 is crucially important for the farming sector. It will pave the way for a bold and ambitious new approach to domestic agricultural policy that can be designed specifically for the needs, and recognising the unique characteristics, of UK agriculture once we leave the European Union and its Common Agricultural Policy (CAP).

### A. Backing British Farming

The NFU believes that maintaining a robust and resilient domestic agricultural sector is in the nation's interest and that future agricultural policy must support farmers in their role as producers of food alongside other goods and services. In particular, by maintaining a strong and profitable primary production base in the UK, the nation benefits from:

- **A sufficient degree of self-sufficiency.** It is a matter of strategic national interest to ensure that our country can feed itself, and a high level of domestic production in a volatile world is a critical aspect of food security. This is the first time in more than 40 years that a Secretary of State has been directly responsible for the nation's food security.
- **A safe and traceable supply of domestic food.** Short supply chains and more direct oversight of food safety processes allow greater control of, and trust in, the food we deliver to consumers, meeting a clearly expressed desire for British food by the British public. A reduction in domestic production would also mean greater reliance on imports from other parts of the world, where we have no control over production standards, so exporting and likely increasing our environmental footprint and impact on animal welfare.
- **Support for jobs, investment and growth.** British farmers and growers are an important part of rural economies, providing jobs and driving growth both in food production and in diversified industries such as renewable energy and tourism. UK agriculture is also the bedrock of a domestic food industry that employs over 4.1m people and, as the UK's largest manufacturing sector, generates £121bn in value for the UK economy.
- **High standards of welfare and environmental goods.** Viable farm businesses mean farmers are better able to deliver positive environmental and animal welfare outcomes. Businesses that are struggling financially to survive will find it almost impossible to devote the time and resource to these important elements of our future policy. With agriculture occupying over 70% of the UK landmass, viable farm businesses play an irreplaceable role in looking after our cherished natural landscapes.

### B. The Agriculture Bill 2020

The NFU sees the Bill primarily as "enabling" legislation, providing fairly broad powers to current and future governments to provide financial assistance and make other policy interventions around land use and agriculture in the future. From the outset, it should be acknowledged that the 2020 Bill has addressed a large number of the concerns held by the NFU with the Bill first published in 2018 under the previous government.

1. **Provisions on food security.** The government will be required to report on the state of the nation's food security every 5 years. This is something the NFU has been calling for consistently for many years and will be even more important as we enter the uncertain period ahead with domestic policy change

and the likelihood of increased liberalisation of the UK food market through trade deals with new international partners post-Brexit.

**We believe that the Bill should be strengthened to ensure that, at least for the initial period following our departure from the EU, the frequency of reporting on food security should be increased to an annual requirement. There should also be clearer requirements relating to the degree of the nation's food security derived from domestic production, and a clear commitment to prevent any further declines in self-sufficiency.**

2. **Multi-annual financial programmes.** The Bill 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.

**We believe that there should be scope within the Bill for ministers to “carry over” any monies left unspent at the end of a particular budget year for spending in subsequent years.**

3. **Support for the production of food.** In developing new forms of financial assistance, the government will now be obliged to “have regard to the need to encourage the production of food by producers in England and its production by them in an environmentally sustainable way.” This is a welcome addition which will provide a robust starting point and ongoing reference point during the development of schemes such as the Environmental Land Management Schemes that are expected to be the centrepiece of the “public money for public goods” approach.

**We would like the government to set out exactly how it sees this provision influencing government policy in practice. We believe this requirement could be strengthened by an explicit requirement that any financial assistance scheme is designed to encourage the sustainable production of food by producers in England.**

4. **Phase out of BPS – ensuring a level playing field.** The Bill establishes a framework for the phasing out of direct payments in England (albeit not in other parts of the UK) over a 7 year transition period. There are no details about the manner in which direct payments (BPS) will be phased out in England. We expect the government to provide details of how this phase out will be managed, as well as the steps the government will take in ensuring that farmers across the UK will continue to be treated fairly and that the potential to distort trade in the UK domestic market is reduced.

**We are concerned that, should the coming years prove particularly challenging for farming – whether due to political, commercial or climatic circumstances – the Bill does not provide sufficient scope in England for government to make the necessary interventions. It is imperative that English farmers are treated fairly and disparities in farm incomes must not be accentuated by the availability, or otherwise, of Direct Support Payments or equivalent forms of financial assistance across the UK.**

5. **Fair Dealings for Farmers.** The Bill seeks to protect producers from unfair trading practices by allowing the imposition of obligations on business purchasers of agricultural products in relation to contracts with producers, as well providing for the enforcement of those obligations. These provisions are welcome, although a great deal of work lies ahead through secondary legislation to ensure the objective of strengthening the position of farmers in the supply chain is realised.

**We have some concerns about technical elements of the current drafting which we will seek to address during the line-by-line scrutiny of the Bill.**

6. **Tenancy Reform:** The NFU is pleased to see the reforms that have been brought forward on agricultural tenancies. They will give tenants greater flexibility and remove some barriers to productivity and potentially allow them access to new Environmental Schemes.

**It is disappointing that not more of the reforms have been taken forward in the Bill, in particular the need to include requests for landlord's consent or variation of terms under the Agricultural Tenancies Act in addition to AHA tenancies.**

7. **Coherence of Trade and Agricultural policies.** A significant deficiency is the absence of any commitment to uphold British farming production standards in the context of international trade negotiations. The NFU believes that it would be futile to develop a comprehensive and ambitious domestic support policy, simply for UK farmers' efforts to be undermined through the importation of products not produced to the same level of environmental or animal health/welfare standards expected of them domestically.

**It is essential that government policy is coherent and that trade policy and agricultural policy go hand in hand. The Bill should contain provisions to require all food imported into the UK be produced to at least equivalent standards, as they relate to animal welfare, environmental protection and any other legitimate public policy concerns associated with food production, as those required of producers in the UK.**

### C. NFU detailed concerns Agriculture Bill 2020

The following detailed brief sets out how the NFU believes that the Bill can be improved to ensure it provides a framework in which government can support farmers as productive and sustainable food producers – with all the accompanying benefits that has for their effectiveness in delivering public goods.

#### 1. An “agricultural” Agriculture Bill

In pursuit of clarity of purpose, there should be explicit and clear overarching agricultural objectives on the face of the Bill – it is after all an Agriculture Bill. We believe that the Agriculture Bill must focus specifically on agriculture, underpinning a farming model in the UK that is sustainable, productive and plays an active role in delivering food production and public goods. If non-agricultural objectives are supported, the opportunity to facilitate the development of a sustainable farming model – sustainable both environmentally and economically – will be missed.

This is also important for confidence in government policy-making, both for industry and the wider public. Budgetary expenditure under the Agriculture Bill must be clearly connected to agriculture, or misunderstandings will arise as to the purpose of financial assistance, confusing debate about appropriate levels and justifications for support.

Nevertheless, as the Bill stands, there is a real risk that financial assistance will be provided for schemes and beneficiaries that have no connection with farming or farmland, particularly as relates to broader environmental purposes. It is of course right and proper that the government pursues a range of environmental objectives through public policy – whether related to agriculture or not. However, if government and industry are to develop a farming model that integrates profitable food production with high environmental and animal welfare standards, policies pursued under the Agriculture Bill should be focused on agriculture, and government should seek to pursue other environmental objectives through other legislation.

**The NFU believes that the Bill should, in the first clause, clearly define who the beneficiaries of any financial assistance measures should be. This should relate explicitly to those who are involved in the production of products deriving from an agricultural or horticultural or forestry activity, or those**

**with an interest in agricultural land, where the financial assistance relates directly to that land.** This remains consistent with the wide range of purposes for which financial assistance can be provided, as stated in clause 1 of the current draft of the Bill. But it will ensure that those purposes are connected to agriculture – for instance ensuring farm practices protect soils, water and air or improve agricultural productivity. It would preclude programmes being designed which would be unrelated to agriculture (e.g. on golf courses or airfields) and which would draw support away from incentivising and rewarding good agricultural practice – the stated aim of this government.

We welcome Clause 1 (4) in obligating the Secretary of State “to have regard” to the need to encourage the production of food by producers in England and its production by them in an environmentally sustainable way. We would like the government to set out exactly how it sees this provision influencing government policy in practice. We believe this requirement could be strengthened by an explicit requirement that any financial assistance scheme is designed to encourage the sustainable production of food by producers in England.

## 2. Promoting the nation’s strategic priorities

The government has a strategic interest in ensuring a sufficient level of domestic food production. The NFU welcomes the newly created duty on the government to report on the state of the nation’s food security. This is something the NFU has been calling for consistently for many years and will be even more important as we enter the uncertain period ahead with domestic policy change and the likelihood of increased liberalisation of the UK food market through trade deals with new international partners post Brexit.

We believe that the Bill should be strengthened to ensure that at least for the initial period following our departure from the EU, the frequency of reporting on food security should be increased from once every five years, to an annual requirement. This initial period of annual reporting should last at least for the next 7 years covering the period of the agricultural transition and the development of new trading relationships with the EU and other international partners.

## 3. Competitiveness and financial resilience

There are many aspects of the Bill which will impact on the resilience and competitiveness of farm businesses which will need to be examined closely during its legislative passage.

- **Scope of powers for Financial Assistance (clause 1):** The NFU welcomes provisions within the Bill to assist farmers to improve their productivity and ancillary activities such as processing and marketing of agricultural products. Alongside this, the NFU believes that ministers should have scope to introduce financial assistance to increase the competitiveness and financial resilience of farm businesses through non-agricultural diversification where that diversification supports or maintains the agricultural activities on the farm.
- **Delinking (clause 12):** **The provisions on de-linking require further detail on how they will be used and what alternative arrangements will be introduced in place of the current conditions attached to receipt of direct payments.** The Bill also allows the government to discontinue the EU Fruit and Vegetable Aid Scheme (clause 15), although the government has indicated that existing programmes will continue to run until completion. We are keen to understand more details from government about the successor scheme it intends to introduce under the powers in the Bill.
- **Phase out (clause 11):** Government has set out its intentions for reducing direct payments in the first year of the agricultural transition, which is established as 2021. The NFU believes that with less than a year to go, time is rapidly running out for the government to have all of the necessary legislation and implementation decisions and process in place for this timescale. There are still many aspects of the transition and the successor future farming support policy which remain unclear and the concern is that

there will be a “gap” before alternative and effective schemes are in place and the start of the phasing out. The NFU has long maintained that there must be a smooth transition for the agricultural industry away from the existing CAP support policy schemes, ensuring maximum certainty for farm businesses amidst the political uncertainty of EU withdrawal and the resulting UK independent trade policy.

The NFU has called for a delay to the start of the agricultural transition period and more specifically the commencement of the phasing out of BPS support payments for farmers in England. For the vast majority of farming sectors, the BPS provides a vital source of farm incomes. The most recent government figures on Farm Business Income (FBI 2018/2019) show the reliance of many farmers on those payments, with many farmers facing a financial loss from food production alone. The phasing out of this vital source of funding, without a clear understanding of what will replace it, is a cause of considerable concern for many farmers. **We are concerned that, should the coming years prove particularly challenging for farming – whether due to political, commercial or climactic circumstances – the Bill does not provide sufficient scope in England for government to make the necessary interventions.**

**Table 1: Reliance of BPS to support Farm Business Incomes**

farm business income (FBI) by cost centre 2018/19 (£)	Agriculture	Agri- environment	Diversification out of agriculture	Basic payment scheme	Total FBI	% of FBI from BPS
Cereals	10,200	2,600	18,200	36,400	67,300	54%
Dairy	30,300	3,300	9,400	30,700	73,700	42%
Cattle & Sheep (Lowland)	-15,800	2,800	9,700	15,800	12,500	126%
Cattle & Sheep (LFA)	-21,500	10,300	2,700	24,000	15,500	155%
Specialist Pigs	-1,000	2,400	15,700	12,600	29,600	43%
Mixed	-5,100	4,500	13,700	32,400	45,500	71%
All types	5,600	3,900	13,000	27,300	49,700	55%

- The Bill is currently drafted in such a way that ministers have the power to proceed with, and in essence pause, the phase out of direct payments during the agricultural transition period. **We believe that the scope of ministers’ powers should be extended to include provision to reverse any steps taken during the transition period to phase out direct payments.** This would be particularly important in a scenario where payments to farmers had been reduced, but where the funds “freed up” had not been spent on alternative programmes, and so remained unused. The Bill must enable government to return unspent funds to farmers as direct payments if they are not being used for other purposes. It would also allow ministers to change tack and reverse reductions in direct payments if they were found to be having a detrimental impact on the nation’s ability to produce food.
- Exceptional market conditions (clauses 18 and 19): We welcome the provision of powers for ministers to respond to exceptional market conditions which will provide a vital safety net for farmers at times of crisis. **As it stands, however, the powers are somewhat limited and in our view, clause 18 needs to be amended** so that the two conditions in 18(2) are alternatives (not cumulative); the ‘exceptional market conditions’ should include ‘significant’ rather than ‘severe’ disturbances; and finally the ‘exceptional market conditions’ should include disturbances to input costs and/or costs of production, as well as disturbances to agricultural markets/prices.

#### 4. Valuing and protecting of our standards

The NFU wants to see an approach to UK international trade policy, once we have left the EU, which supports our farmers to grow their businesses and to grow food for Britain and beyond. The Bill should



ensure that British farmers can continue to produce food to the current high environmental and animal welfare standards of which they are proud, whilst being able to compete on a level playing field with producers elsewhere in the world and without being undermined by cheaper imports produced to lower standards.

Specifically, government must ensure that future trade deals always contain provision to prevent agricultural products and food which does not meet our environmental, animal welfare, and food safety standards from entering the country. But this does not address the wider issue of how, outside specific trade agreements, government intends to stick to its promise not to allow food produced to lower food safety, environmental, and animal welfare standards – and it is important to note the distinction between all three – that could undermine the government's broader ambitions for a productive and sustainable UK farming industry.

**The Bill should contain provisions to require all food imported into the UK be produced to at least equivalent standards, as they relate to animal welfare, environmental protection and any other legitimate public policy concerns associated with food production, as those required of producers in the UK.** A failure to do so would undermine the principles that should be at the very heart of the Bill - an efficient, productive, profitable UK farming sector meeting the needs and expectations of the British public, both in terms of the food they eat and the public goods they value.

## 5. Multi-annual Financial Programmes

Whilst not on the face of the Bill, the NFU welcomes the government's commitment to maintain cash total for farm support funding until the end of this Parliament (expected in 2024). This, taken alongside the obligation in the Bill for the government to publish multi-annual financial programmes, is very much welcomed. In addition we believe that there should be scope within the Bill for ministers to "carry over" any monies left unspent at the end of a particular budget year for spending in subsequent years.

## 6. Strengthening farmers' position in the supply chain

The NFU believes the Bill should establish the right operating conditions for farming to thrive in a competitive environment that is fair, transparent, responsive and equitable. We therefore welcome the provisions relating to the establishment of producer organisations, fairness in the supply chain, and the collection and sharing of data. The NFU believes these are vital components of the Bill and will help farmers to better respond to market demands and work in greater collaboration with the supply chain, with risks and rewards better balanced across all parties. However we do have concerns about elements of the current drafting as follows;

- Collection and sharing of data (clauses 21-26): Farmers need access to robust market data, which the provisions in the Bill would contribute to. Clear market signals on price and volumes traded can improve responsiveness to demand, allowing farmers to adjust output accordingly. Furthermore, greater market transparency is required for better uptake and use of risk management tools that can help to tackle market volatility. The NFU is pleased to see that this version of the Bill has incorporated some safeguards around the collection and processing of data to ensure that it is clear how the information will be used, and that it will be used in accordance with data protection legislation. **However, we do still have some concerns that some of the purposes for which information can be processed do not relate directly to improving supply chain transparency, or supporting the development of risk management tools to help farmers manage volatility. We would therefore like to see these purposes drafted in a more focused way to ensure that they achieve the legitimate aims of improving transparency and managing volatility.**
- Producer Organisations (clauses 28-30): The NFU welcomes the powers in the Bill that establish a UK-focused approach to producer organisations. **We believe that the existing principles that underpin**

**producer organisations should be retained including exemption from competition laws.** Producer organisations should also have the ability to access financial assistance.

- Fair Dealing with agricultural producers (clause 27): The NFU believes that any contract terms that farmers sign up to should be clear, fair and equitable and that the risk that farmers bear under those contracts should be fairly allocated and appropriately balanced with the reward obtained. **The powers to impose obligations on business purchasers of agricultural products in relation to contracts with producers are very welcome. The lists of matters that may be specified under such contracts should be as wide as possible; the government should be able to specify contract terms in regulations as necessary. The NFU believes that there should be an obligation on the Secretary of State to introduce regulations to ensure a baseline of fair dealings between business purchasers and producers across all sectors, and that these regulations should be brought forward within 12 months of the Bill coming into force. This will ensure that there is an overarching requirement for fair dealing across the whole agricultural industry, with sector specific regulations developed to address any specific areas of unfair practice.** The NFU believes that the role of regulating agricultural contracts should be given to a body which is competent to undertake qualitative assessments; for example, the Groceries Code Adjudicator's office.

## 7. Reducing the administrative burden on farming

The NFU welcomes the provisions in the Bill that seek to reduce the administrative burden on farming. We call on ministers to use their powers to minimise bureaucracy and administrative complexity and to put fairness and proportionality at the heart of enforcement mechanisms (including appropriate sanction regimes and an effective independent appeals system). The future system must have the aim of regulating to compliance, not regulating to penalise, and it must recognise non-regulatory approaches such as earned recognition as part of enforcement regimes.

## 8. UK Frameworks: Maintaining a level playing field

Ministers must ensure that the Bill adequately addresses the issues stemming from devolution - maintaining a level playing field amongst the home nations, ensuring fairness and equity for all UK farmers, whilst also respecting the devolution settlements, the UK internal market, and the United Kingdom's international obligations. **It is therefore concerning that the scope for ministers in Wales to maintain financial assistance to farmers in the form of the Basic Payment Scheme is not replicated for England and the scope of financial assistance powers are not clearly established with respect to Scotland. It is imperative that English farmers are not treated unfairly and disparities in farm incomes must not be accentuated by the availability, or otherwise, of Direct Support Payments or equivalent forms of financial assistance across the UK.**

## 9. Appropriate use of ministerial powers

The Bill does not incorporate on its face all of the details of a future agricultural support regime. Instead, much of the detail will be established in future under delegated legislation. It is important that these powers to create secondary legislation are used effectively to help create the right operating conditions for farming to thrive in a competitive environment – one that is fair, transparent, responsive and equitable.

The NFU believes there is a balance to be struck between how much detail appears on the face of the Bill and the acceptance of delegated powers to Ministers. There must be appropriate checks and balances in place and a **clear commitment from government to ongoing stakeholder consultation and, where appropriate, co-design of future support measures with the farming industry.**

There is much work to be done in developing the government's flagship successor to the CAP support schemes, **the new Environmental Land Management system**, and there needs to be much greater clarity about how existing environmental schemes will operate alongside the introduction of new

arrangements. There are also concerns about the operation of payments during the agricultural transition, in particular **that transitional payments may discriminate against tenant farmers** wishing to retire if they are required to pass on any lump sum payment to their landlord in accordance with their tenancy agreement.

All of these critical issues (and more), although extraneous to the provisions of the Bill, are an integral part of future policy, and we urge MPs to explore and interrogate them fully during the passage of the Bill.