



Law Society  
of Scotland

# Agriculture Bill

Law Society of Scotland briefing for second reading

October 2018



## Introduction

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The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

In February 2018, the Department for Environment, Food and Rural Affairs published its paper *Health and Harmony: the Future of Food and Farming*<sup>1</sup> to which the Law Society responded.<sup>2</sup> We welcome the opportunity to consider and respond to the Agriculture Bill<sup>3</sup> and have the following comments to put forward for consideration.

## General remarks

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Various parts of the Bill extend to England and Wales only<sup>4</sup> and a number of other parts of the Bill extend to all jurisdictions but apply to England only<sup>5</sup> or extend to Northern Ireland only<sup>6</sup>. Our comments in this briefing are therefore principally restricted to Parts 6 and 7 of the Bill, being those Parts which extend to and apply to Scotland. We comment briefly on Clause 20 of the Bill, noting that although its provisions apply to England only, there may be an impact on Scottish businesses.

Given the significance of the potential impacts on food, farming and the environment of having differing policy and legislation across jurisdictional borders, strong collaboration between Defra and the devolved administrations is of considerable importance. We welcome the recognition given by Defra<sup>7</sup> of the importance of engaging with the devolved administrations and legislatures.

<sup>1</sup> <https://consult.defra.gov.uk/farming/future-of-farming/>

<sup>2</sup> <https://www.lawscot.org.uk/media/360987/18-09-12-rur-consultation-defra-health-and-harmony-paper.pdf>

<sup>3</sup> <https://services.parliament.uk/bills/2017-19/agriculture.html>

<sup>4</sup> Part 1, Part 3, clauses 17, 18 and 20 and Parts 1 and 3 of Schedule 1 insofar as it relates to Part 1, extend to England and Wales and apply to England only. In Schedule 3, Parts 1, 3 and 5 and paragraphs 16 and 17 extend to England and Wales.

<sup>5</sup> Part 2, clause 19, clause 21 and Schedule 5 extend to England and Wales, Scotland and Northern Ireland and apply to England only.

<sup>6</sup> Schedule 4, Parts 2 and 4 and paragraph 10 extend to Northern Ireland only.

<sup>7</sup> See comments in *Health and Harmony: the Future of Food and Farming*.

Much of the Bill is high level and provides powers for the Secretary of State to introduce regulations on several matters. We consider that extensive engagement with a wide variety of stakeholder groups is important in the context of those regulations being developed and introduced.

## **Matters arising in the context of devolution**

The October 2017 memorandum from the JMC(EN) acknowledges the need for common frameworks to be in place and noted that such frameworks will recognise devolution in Scotland, Wales and Northern Ireland. We note that areas in which common frameworks are anticipated comprise highly regulated areas of policy implemented by EU Directives, Regulations and Decisions and transposed by UK Acts and subordinate legislation, Scottish Acts and Scottish subordinate legislation; as well as a number of administrative, non-statutory arrangements.

We note that the memorandum agreed by the JMC(EN) requires to take into account of the *White Paper on Legislating for the Withdrawal Agreement between the United Kingdom and the European Union* (Cm 9674) (paragraph 67) and also the *White Paper on the Future Relationship between the United Kingdom and the European Union* (Cm 9593) (paragraph 56), while recognising the recommendations of the Public Administration and Constitutional Affairs Committee's report *Devolution and Exiting the EU: Reconciling Differences and Building Strong Relationships* (HC1485). In addition, the memorandum requires to be amended to take account of the changes which were made to the European Union Withdrawal Bill as it progressed through Parliament. The bill received the Royal Assent on 26 June 2018 and is now the European Union (Withdrawal) Act 2018.

The Cabinet Office published in late 2017 a list of 111 points where EU Law intersects with devolved matters. This has been supplemented by the publication of the UK Government's Frameworks analysis: *Breakdown of areas of EU law that intersect with devolved competence in Scotland, Wales and Northern Ireland* on 9 March 2018. This analysis sets out the UK Government's provisional assessment of areas of EU law that intersect with devolved competence in each devolved administration. We note that 24 of the policy areas in question are subject to more detailed discussion to explore whether legislative common framework arrangements might be needed, in whole or in part. A number of these areas relate to agriculture.

In order to add further information, we offer a survey of those policy areas relevant to agriculture (annexed to this paper) which includes details of the EU law concerned and the implementing legislation for Scotland and, where appropriate, for the UK (occasionally on a GB basis) and for England and Wales.

## Comments on the Bill

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### Clause 20: Marketing standards and carcass classification

Clause 20 provides the Secretary of State with powers to make provisions relating to marketing standards for products marketed in England. Although this clause applies to England only, we note that the provisions may impact upon products which are produced in Scotland, and other devolved jurisdictions, and marketed in England.

In the circumstances, we suggest that strong collaboration between Defra and the devolved administrations will be necessary to ensure clarity around the standards set by regulations under these provisions and where possible, to facilitate certainty in the internal market.

### Part 6: Producer organisations and fairness in the supply chain

#### Clauses 22 and 23

Clauses 22 and 23 concern producer and interbranch organisations. Producer organisations are referred to as: “bodies through which groups of primary producers in the agricultural sector coordinate their activities to improve their competitiveness.”<sup>8</sup> Clause 22 provides a framework for applications to be made to the Secretary of State by organisations to be recognised as a producer organisation, association of producer organisations or interbranch organisation. Such organisations benefit from certain exemptions from competition laws.

The provisions of clauses 22 and 23 reflect current EU law provisions in Council Regulation (EU) No 1308/2013, Commission Delegated Regulation (EU) No 2017/891 and Commission Implementing Regulation (EU) No 2017/892. These provisions will be converted into domestic law by the European Union (Withdrawal) Act 2018. This will ensure that the current frameworks for producer organisations will remain. It is hoped that this will ensure continuity for existing organisations.

We welcome the focus on effective competition law. It is hoped that this will provide legal certainty in the longer term, although as with any transition to a new regime, there may be some questions to be dealt with at the outset, perhaps particularly so for ‘informal’ farmers’ associations which will have to become recognised or review their agreements for anti-competitive clauses given the more formal approval process. Awareness-raising may be needed to ensure that producers are aware of the changes. Given the risks surrounding anti-competitive conduct, it may be helpful for the Competition and Markets Authority

<sup>8</sup> Explanatory Notes, paragraph 211.

(CMA) to contact all producers about the new provisions, in a similar manner to their warning letters to online retailers.

In essence, clause 23 replicates an existing exemption from competition laws which is applied by the Common Market Organisation Regulation (EU) 1308/2013 (the CMO Regulation) within the EU. The provisions of clause 23 are however more limited than the existing exemption.

Under the current exemption, any anti-competitive agreement which meets all of the CAP policy objectives<sup>9</sup> is potentially exempt from competition law, which gives any self-declared agricultural producer organisation a reasonable amount of freedom. Other agreements can be exempt subject to being between members of approved organisations, and/or being cleared by the European Commission in advance.

The arrangements under clause 23 drop this first policy-based general exemption and only retain specific exemptions. The main change beyond that is to replace the role of the Commission with roles for the Secretary of State and CMA. In this regard, we note two key issues:

1. subordinate legislation will be required under which the Secretary of State will have to approve the organisations that are permitted to have these agreements in place introducing a greater element for formality; and
2. certain types of agreement (between members of a recognised inter branch organisation) will have to be notified to the CMA in advance.

Therefore, scrutiny of the subordinate legislation will need to assess the practical effects of the new regime. In addition to considering the impact of the rules to be imposed on producer organisations, we note that it will be crucial for Defra and/or the CMA to be properly resourced to approve and regulate these producer organisations.

## **Clause 24**

Clause 24 concerns the powers of the Secretary of State to make regulations under clauses 22 and 23. Regulations are to be subject to negative resolution procedure unless they contain new sector-specific provisions, in which case, they are to be subject to affirmative resolution procedure. We consider this to be appropriate in the circumstances.

We welcome the provisions in 24(5) which require the Secretary of State to undertake consultation with relevant persons prior to any new sector-specific provisions being made by regulation.

<sup>9</sup> As set out in article 39 of the Treaty on the Functioning of the European Union.

The provisions of clause 35 allow for commencement of clause 22-24 by regulation. The Explanatory Notes to the Bill detail the reasoning behind such provisions<sup>10</sup> and we consider this is merited in the circumstances.

## Clause 25

Clause 25 enables the Secretary of State to make regulations about fair dealing of agricultural products. Such regulations may be sector-specific or in general terms. The Bill's Explanatory Notes highlight the power is:

“to make regulations to introduce obligations that promote fair contractual relationship between farmers and the first purchasers of their products.”<sup>11</sup>

We welcome the desire for fairness and protection from unfair trading practices which is supported by the Bill. It is important however that the principle of freedom of contract is given sufficient recognition.

Clause 25 is an enabling provision and as referred to above, we consider that consultation with relevant stakeholders will be crucial in the development and implementation of the regulations. Any obligations imposed under these provisions will require careful consideration due to the potential impact upon business.

Clause 25(5) provides regulation making powers for enforcement of compliance with any obligations imposed, including the imposition of civil penalties. Any such penalties should be reasonable and proportionate. It will be of great importance that those who are subject to any obligations imposed by the regulations are made aware of the enforcement mechanisms and consequences of non-compliance. What is the appeals procedure? We consider an appeals procedure is necessary to ensure access to justice.

We note that the Bill's Explanatory Notes highlight that the powers under this clause will not be exercised in respect of any commercial arrangements within the remit of the Groceries Code Adjudicator (GCA)<sup>12</sup>. While we agree with this approach, we consider there would be merit in this being recognised on the face of the Bill.

## Part 7: WTO Agreement on Agriculture

We note that Part 7 intersects directly with agricultural support, which has already been identified as a possible area for common frameworks. The powers of the Secretary of State to set overall subsidy levels

<sup>10</sup> Explanatory Notes, paragraph 214.

<sup>11</sup> Explanatory Notes, paragraph 234.

<sup>12</sup> Explanatory Notes, paragraph 235.

therefore seem very broad, with the potential to impact significantly on devolved competences without accompanying requirements for consultation etc. – see in particular 3(c) and 4(a).

We also note that on a practical level it is difficult to know in advance what level of domestic support the UK will be able to grant given issues over our 'share' of amber box support,<sup>13</sup> but the Bill refers just to 'domestic support' so there's sufficient flexibility there to deal with this.

Regulations under clause 26(1) are subject to the affirmative Parliamentary procedure. We consider this appropriate in the circumstances given the potentially wide scope of the provisions of the regulations. As referred to above, strong collaboration between Defra and the devolved administrations and engagement with a range of stakeholder groups will be of considerable importance in this context.

Clause 26(1) recognises that agricultural support programs are regulated by the WTO Agreement on Agriculture (AoA) and to that end, provides that the Secretary of State may make regulations for the purpose of securing compliance with the AoA. Agricultural support programs are however also disciplined by the WTO's Subsidies and Countervailing Measures Agreement (SCM), and a number of other matters covered by the Bill are disciplined by the Technical Barriers to Trade Agreement (TBT), Sanitary and Phytosanitary Agreement (SPS), and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) (Part 5). We note that similar provisions are not included in the Bill to ensure regulations are consistent with these other agreements: further information as to why different approaches are being taken would be helpful.

Furthermore, clause 26 contains broad regulation-making powers. Certain powers are specifically mentioned; we consider that the power to make regulations to comply with the terms of negotiated settlements of WTO disputes should also be specifically included. At present it is not clear whether this power is implied but it is necessary to ensure full compliance with the AoA.

We note that international relations including the regulation of international trade is reserved under the Scotland Act 1998, Schedule 5, paragraph 7(1) but that the observation and implementation of international obligations is not reserved. Therefore, the Bill needs to take into account the provisions of the Scotland Act and the role which the Scottish Ministers and Parliament have to play under the law.

Clause 26(2)(b) envisages disputes between 'appropriate authorities' regarding the proper classification of domestic support for the purposes of the AoA and raises the possibility of the Secretary of State being the final arbiter on any classification decision. However, for the purposes of WTO law, the correct classification of any program is matter for international law, and in particular for resolution by the WTO dispute settlement system (or an authoritative interpretation under the Marrakesh Agreement). Formally speaking, these are two distinct matters: the way a program is classified for the purposes of WTO law need not in

<sup>13</sup> 'Amber box' subsidies are all domestic support measures which are subject to caps under the WTO Agreement on Agriculture. They are generally those subsidies which are considered to distort trade most significantly, such as measures to support prices, or those directly related to production quantities. On the UK's departure from the EU, the EU's current overall limit on 'amber box' subsidies will have to be divided between the UK and the EU.'

principle be the same as its classification under UK law. However, we suggest that there are obvious reasons to avoid significant disparities. The dispute resolution procedure devised under clause 26(2)(b) should include some mechanism for ensuring consistency with WTO law: we consider that this should be reflected in the Bill. Disputes might also arise in the context of the devolved administrations in this regard. For example, if the Scottish Government were of the view that for the purposes of WTO law a particular program benefiting Scottish producers would count as a green box subsidy, but the Secretary of State determined otherwise.

A significant issue raised by Part 7 of the Bill concerns the power granted to the Secretary of State to decide on the distribution of the overall amount of domestic support between England, Northern Ireland, Scotland and Wales. The content and shape of an ultimate common framework in this area will be very important. With a view to ensuring openness and transparency, we consider it essential that the Secretary of State be under an obligation to consult on the terms of regulations to be made under clause 26(3) and 26(4) to take into account representations made around levels of domestic support. We would expect the Secretary of State to make a statement in the House of Commons prior to such regulations being laid.

Finally, as we have referred to elsewhere,<sup>14</sup> the larger issue of how devolved authorities should be involved in trade negotiations more generally needs to be addressed in early course. This Bill makes clear in Part 7 that positions taken in WTO negotiations, such as those limiting overall Aggregate Measurement of Support (AMS), can have a significant effect on the work and mandates of the devolved authorities. A structured process for involving all stakeholders in the initial process of undertaking trade commitments in this area is needed. Liam Fox MP, Secretary of State for International Trade and President of the Board of Trade has already agreed on the need to, “deliver a UK trade policy that benefits business, workers and consumers across the whole of the UK, we need to reflect the needs and individual circumstances of England, Scotland, Wales and Northern Ireland”<sup>15</sup> and more concrete arrangements must be agreed to ensure this objective is achieved.

<sup>14</sup> See for example our response to the International Trade Committee’s inquiry into UK Trade Policy Transparency and Scrutiny <https://www.lawscot.org.uk/media/360663/22-06-18-con-tra-trade-policy-transparency-and-scrutiny.pdf> and our response to the Scottish Affairs Committee’s inquiry into Scotland’s priorities for future trade relations with the EU [https://www.lawscot.org.uk/media/360726/lss-response\\_tra\\_scotland-and-brex-it-trade-and-foreign-investment-inquiry\\_july-18.pdf](https://www.lawscot.org.uk/media/360726/lss-response_tra_scotland-and-brex-it-trade-and-foreign-investment-inquiry_july-18.pdf)

<sup>15</sup> <https://hansard.parliament.uk/commons/2018-07-16/debates/4BBDA637-F594-4A20-A333-97E1E88CFD15/TradePolicy>



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**ANNEX**

**Policy areas relevant to agriculture that are subject to more detailed discussion to explore whether legislative common framework agreements might be needed, in whole or in part**

Responsible UK Government Department	Area of EU Law (Policy Area)	Devolution Intersect			Additional Information
		NI	S	W	
DEFRA	Agricultural support	x	x	x	<p>Policies and Regulations under the EU Common Agricultural Policy covering Pillar 1 (income and market support); Pillar 2 (rural growth, agri-environment, agricultural productivity grants or services and organic conversion and maintenance grants); and cross-cutting issues, including compliance, finance, &amp; controls.</p> <p><u>Law Society Scotland Comments</u></p> <p><u>EU Law</u> Direct Payments Regulation 1307/201/EU, which establishes direct payments to farmers under Support Schemes within the framework of the Common Agricultural Policy.</p> <p><a href="https://ec.europa.eu/agriculture/direct-support_en">https://ec.europa.eu/agriculture/direct-support_en</a></p> <p><u>Scottish Law</u> Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015 Scotland will receive €4.6 billion to implement the Common Agricultural Policy (CAP) in Scotland until 2020. CAP provides funding for Scotland's farmers and landowners, along with a range of other support schemes. €3.7 billion is in direct payments to farmers, with just over €840 million per the Scotland Rural Development Programme (SRDP). The SRDP funds a wide variety of projects across Scotland to help rural communities, protect and enhance the environment, develop rural businesses and support the forestry and farming sectors.</p> <p><u>UK Government Technical Notices</u> Farm payments if there's no Brexit deal, 23 August 2018- <a href="https://www.gov.uk/government/publications/farm-payments-if-theres-no-brexite-deal">https://www.gov.uk/government/publications/farm-payments-if-theres-no-brexite-deal</a></p> <p>Receiving rural development funding if there's no Brexit deal, 23 August 2018- <a href="https://www.gov.uk/government/publications/receiving-rural-development-funding-if-theres-no-brexite-deal">https://www.gov.uk/government/publications/receiving-rural-development-funding-if-theres-no-brexite-deal</a></p>

DEFRA	Agriculture – fertiliser regulations	x	x	x	<p>Regulations providing common standards for compositional ingredients, labelling, packaging, sampling and analysis of fertilisers. The UK is also signed up to a number of international agreements (e.g. the Gothenburg Protocol) and EU agreements (the National Ceilings Directive related to fertiliser regulation)</p> <p><u>Law Society Scotland Comments</u></p> <p><u>EU Law</u> Regulation (EC) No 2003/2003 relating to fertilisers consolidates all the EU rules that apply to fertilisers. The Regulation ensures that these technical requirements are implemented throughout the EU. This consolidated version is of documentary value only.</p> <p>The regulation applies to mineral fertilisers consisting of one or more plant nutrients. Other fertilisers are governed by EU countries' national legislation.</p> <p>The regulation lists fertiliser types according to their specific characteristics. Once a fertiliser meets this designation it may bear the letters 'EC' which guarantees farmers that the fertilisers contain a minimum nutrient content and are safe to use. Information, including the manufacturer's details and the fertiliser's characteristics, must appear on packages, labelling and accompanying documents.</p> <p><u>English Law</u> The EC Fertilisers (England and Wales) Regulations 2006</p> <p><u>Scottish Law</u> The EC Fertilisers (Scotland) Regulations 2006</p> <p><u>UK Government Technical Notices</u> Manufacturing and marketing fertilisers if there's no Brexit deal, 24 September 2018- <a href="https://www.gov.uk/government/publications/manufacturing-and-marketing-fertilisers-if-theres-no-brexit-deal">https://www.gov.uk/government/publications/manufacturing-and-marketing-fertilisers-if-theres-no-brexit-deal</a></p> <p><u>European Commission Preparedness Notices</u> The European Commission Notice to Stakeholders: Withdrawal of the United Kingdom and EU Rules in the Field of Fertilisers, 25 September 2018 <a href="https://ec.europa.eu/info/sites/info/files/fertilisers_en.pdf">https://ec.europa.eu/info/sites/info/files/fertilisers_en.pdf</a></p>
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DEFRA	Agriculture – GMO marketing and civilisation	x	x	x	<p>Standards for marketing and cultivation of genetically modified organisms.</p> <p><u>Law Society Scotland Comments</u></p> <p><u>EU Law</u>          Directive 2001/18/EC (Deliberate Release)          Directive (EU) 2015/412 (Deliberate Release-possibility to restrict cultivation of GMOs in Member State's territory)          Directive 2009/41/EC (Contained Use)          Regulation 1829/2003 (Food and Feed)          Regulation 1830/2003 (Traceability and Labelling)          Regulation 1946/2003 (Transboundary Movements)          Genetically Modified Organisms (GMO) technology is strictly regulated and the EU has had a legal framework since the 1990s.</p> <p>EU legislation establishes the conditions for the development, use or marketing of a GMO or a food/feed product derived from GMOs. EU legislation on GMOs has two main objectives:          To protect health and the environment: a GMO or a food product derived from a GMO can only be put on the market in the EU after it has been authorised on the basis of a detailed EU procedure based on a scientific assessment of the risks to health and the environment and to ensure the free movement of safe and healthy GM products in the EU. GM authorisation in Europe adopts a precautionary, case-by-case approach where the scale of release is related to the level of risk.</p> <p>There are the following levels of authorisation:</p> <ol style="list-style-type: none"> <li>a. Contained use – This is GM research carried out in a contained environment, under Directive 2009/41/EC.</li> <li>b. Research releases - this is the deliberate release to the environment authorised under the Deliberate Release into the Environment of GMOs Directive, 2001/18/EC. These are small scale releases carried out under tight control.</li> <li>c. Commercial releases – is the deliberate release to the environment authorised under Part C of the Deliberate Release into the Environment of GMOs Directive, 2001/18/EC, or under the Genetically Modified Food and Feed Regulation, 1829/2003. This type of authorisation covers import and use of a GMO for food or feed and non-food use and it can allow EU-wide commercial scale growing of a GM crop. The Food Standards Agency (FSA) is responsible for food safety issues whilst Defra and</li> </ol>
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			<p>the devolved agriculture departments are responsible for assessing risks to the environment. All new crop varieties (GM and non GM) also have to be approved as suitable for agriculture via the National List trials route. The Traceability and Labelling Regulation 1830/2003/EC and Food and Feed Regulation 1830/2003/EC require the labelling of any intentional use of GM ingredients in food and feed. A GMO that has not been approved is not allowed in food and feed for sale in the EU.</p> <p><u>UK Law</u> Environmental Protection Act 1990 The Genetically Modified Organisms (Contained Use) Regulations 2014 The competent authority responsible for the Regulations consists of the Health and Safety Executive (HSE) and the Secretary of State for the Environment, Food and Rural Affairs (Defra) in England and Wales <a href="http://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs">www.gov.uk/government/organisations/department-for-environment-food-rural-affairs</a></p> <p>In Scotland, the HSE and the Scottish Government are the joint competent authority. The HSE considers the risk to the operator and the Scottish Government considers the risk to the environment from any GMO release.</p> <p><u>Scottish Law</u> Enforcement in Scotland</p> <p>In Scotland there are four sets of regulations granting powers to authorised officers for enforcement, and creating penalties for non-compliance. Local authorities are responsible for the enforcement of traceability and labelling requirements and for sampling and testing food and feed for GMOs. The GM Inspectorate and Science and Advice for Scottish Agriculture (SASA) is responsible for ensuring compliance with the regulations governing the deliberate release into the environment of GMOs in Scotland.</p> <p>The Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 Genetically Modified Food (Scotland) Regulations 2004 Genetically Modified Organisms (Traceability and Labelling) (Scotland) Regulations 2004 Genetically Modified Organisms (Transboundary Movements) (Scotland) Regulations 2005</p> <p><u>UK Government Technical Notices</u> Developing genetically modified organisms (GMOs) if there's no Brexit deal, 23 August 2018 <a href="https://www.gov.uk/government/publications/developing-genetically-modified-organisms-gmos-if-theres-no-brex-it-deal">https://www.gov.uk/government/publications/developing-genetically-modified-organisms-gmos-if-theres-no-brex-it-deal</a></p>
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					<p><u>European Commission Preparedness Notices</u> The European Commission Notice to Stakeholders: Withdrawal of the United Kingdom and EU Rules on Genetically Modified Food and Feed and the Deliberate Release of Genetically Modified Organisms into the Environment, 23 January 2018 <a href="https://ec.europa.eu/food/sites/food/files/plant/docs/brexit-notice_gmo.pdf">https://ec.europa.eu/food/sites/food/files/plant/docs/brexit-notice_gmo.pdf</a></p>
DEFRA	Agriculture – organic farming	x	x	x	<p>Regulations setting out standards for organic production certification.</p> <p><u>Law Society Scotland Comments</u></p> <p><u>EU Law</u></p> <p>The Council Regulation 834/2007/EC sets out the principles, aims and overarching rules of organic production and defines how organic products are to be labelled.</p> <p>The regulation has the following aims:</p> <ol style="list-style-type: none"> <li>a. sustainable cultivation systems</li> <li>b. a variety of high-quality products</li> <li>c. greater emphasis on environmental protection</li> <li>d. more attention to biodiversity</li> <li>e. higher standards of animal protection</li> <li>f. consumer confidence</li> <li>g. protecting consumer interests</li> </ol> <p>Synthetic resources may be permissible if there are no suitable alternatives. Such products, which must be scrutinised by the Commission and EU countries before authorisation, are listed in the annexes to the implementing regulation 889/2008/EC. 15</p> <p>Labelling organic foods Foods can be labelled "organic" if at least 95% of the agricultural ingredients meet the necessary standards. In non-organic foods, any ingredients which meet organic standards can be listed as organic. Organic production outlaws GMOs. However, the regulation on genetically modified food and feed sets a threshold (0.9%) under which a product's GMO content does not have to be indicated. Products with GMO content below this threshold can be labelled organic.</p> <p>Since 1 July 2010, EU producers of organic food have been required to use the EU organic logo.</p>

					<p><u>UK Law</u></p> <p>The Organic Products Regulations 2009 The power of the Secretary of State, as a designated Minister, to make regulations which extend to Scotland, Wales and Northern Ireland remains exercisable by virtue of section 57(1) of the Scotland Act 1998 (c. 46); article 3(4) of the European Communities (Designation) (No. 3) Order 1999 (S.I.1999/2788), and article 3(2) of the European Communities (Designation) (No. 3) Order 2000(S.I. 2000/2812).</p> <p><u>UK Government Technical Notices</u> Producing and processing organic food if there's no Brexit deal, 23 August 2018 <a href="https://www.gov.uk/government/publications/producing-and-processing-organic-food-if-there-s-no-brexit-deal">https://www.gov.uk/government/publications/producing-and-processing-organic-food-if-there-s-no-brexit-deal</a></p>
DEFRA	Agriculture – zootech	x	x	x	<p>EU legislation providing a common framework of rules on breeding and trade in pedigree animals and germinal products in the EU and the treatment of imports from 3rd countries. Each of the UK regions has competent authorities in their areas for recognition of breed societies under this legislation.</p> <p><u>Our Comments</u></p> <p><u>EU Law</u> <a href="https://ec.europa.eu/food/animals/zootechnics/legislation_en">https://ec.europa.eu/food/animals/zootechnics/legislation_en</a></p> <p>a. Decision 2007/371/EC as regards herd books for animals of the bovine species b. Decision 2006/427/EC laying down performance monitoring methods and methods for assessing cattle's genetic value for pure-bred breeding animals of the bovine species c. Decision 2005/379/EC on pedigree certificates and particulars for pure-bred breeding animals of the bovine species, their semen, ova and embryos d. Decision 2005/375/EC on entering male sheep and goats in an annex to the flock book e. Directive 94/28/EC as amended by Directive 2008/73/EC on third country imports, which also requires Member States to publish up to date lists of approved breed societies and associations on the internet</p> <p><u>English Law</u> The Zootechnical Standards (England) Regulations 2012 <a href="https://www.gov.uk/government/publications/lists-of-recognised-animal-breeding-organisations">https://www.gov.uk/government/publications/lists-of-recognised-animal-breeding-organisations</a></p>

					<p><u>Scottish Law</u> The Zootechnical Standards Regulations 1992 The Zootechnical Standards Amendment (Scotland) Regulations 2007</p> <p><u>European Commission Preparedness Notices</u> The European Commission Notice to Stakeholders: Withdrawal of the United Kingdom and EU Rules in the field of breeding of animals, 23 January 2018 <a href="https://ec.europa.eu/food/sites/food/files/animals/docs/brexit-notice_animal-breeding.pdf">https://ec.europa.eu/food/sites/food/files/animals/docs/brexit-notice_animal-breeding.pdf</a></p>
DEFRA	Animal health and traceability	x	x	x	<p>EU rules and standards that aim to maintain animal health and allow their movement, including policies covering: prevention of disease (entering UK) control of disease (endemic and exotic, surveillance (for exotic disease) movement of livestock, pet passports and veterinary medicines.</p> <p><u>Law Society Scotland Comments</u></p> <p><u>EU Law</u></p> <p>The Regulation on Transmissible Animal Diseases, the EU Animal Health Law provides:</p> <ol style="list-style-type: none"> <li>Simpler rules to enable authorities to focus on preventing and eradicating disease</li> <li>Clearer responsibilities for farmers, vets and others dealing with animals</li> <li>Better surveillance of pathogens, electronic identification and registration of animals</li> <li>Earlier detection and control of animal diseases to reduce animal epidemics</li> <li>More flexibility to adjust rules to local circumstances</li> </ol> <p>The Animal Health Law strengthens the enforcement of health and safety standards for the agri-food chain and is also a key output of the Animal Health Strategy 2007-2013 "Prevention is better than cure". Several delegated and implementing acts will be adopted by the EU until April 2019 to make the new rules applicable.</p> <p>Farmed Animals – Council Directive 98/58/EC concerning the protection of animals kept for farming purposes.</p>

			<p>Regulation 1/2005 on the Protection of Animals during Transport and related operations sets out minimum standards for the welfare of animals during transport. The Regulation applies to the transport of all live vertebrate animals for the purposes of economic activity, i.e. a business or trade.</p> <p><u>English Law</u>  The Animal Welfare Act 2006 (AWA) contains the general laws relating to animal welfare. It is an offence to cause unnecessary suffering to any animal. The AWA contains a Duty of Care to animals - anyone responsible for an animal must take reasonable steps to make sure the animal's needs are met. The welfare of farmed animals is additionally protected by The Welfare of Farmed Animals (England) Regulations 2007, which are made under the AWA.</p> <p>The Welfare of Animals at Markets Order 1990 (WAMO) covers treatment of animals in markets to ensure they are not caused injury or unnecessary suffering. The order sets out arrangements for penning, food and water and the care of young animals. Responsibility for enforcing WAMO rests with local councils.</p> <p>The Welfare of Animals (Transport) (England) Order 2006  The welfare of farmed animals is additionally protected by the Welfare of Farmed Animals (England) Regulations 2007, which are made under the AWA.  Welfare of Farmed Animals (England) Regulations 2007  Welfare of Farmed Animals (England) (Amendment) Regulations 2010  These regulations implement EU directives on the welfare of calves, pigs, laying hens, conventionally reared meat chickens and a general welfare framework directive, which sets down minimum standards for the protection of all farmed livestock.  The regulations cover all farmed animals. Schedule 1 contains requirements for inspections, record keeping, freedom of movement, buildings, equipment and the feeding and watering of animals. Guidance has been prepared to accompany the regulations.</p> <p><u>Scottish Law</u>  The Animal Health and Welfare (Scotland) Act 2006  The Welfare of Farmed Animals (Scotland) Regulations 2010  The Welfare of Animals (Transport) (Scotland) Regulations 2006  The functions conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.  <a href="http://www.gov.scot/Topics/farmingrural/Agriculture/animal-welfare/policies/Legislation">http://www.gov.scot/Topics/farmingrural/Agriculture/animal-welfare/policies/Legislation</a>  <a href="http://www.gov.scot/Resource/0051/00512255.pdf">http://www.gov.scot/Resource/0051/00512255.pdf</a></p>
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DEFRA	Animal welfare	x	x	x	<p>EU rules relating to aspects of animal welfare including on-farm issues, movement of livestock and slaughter.</p> <p><u>UK Government Technical Notices</u> Exporting animals and animal products if there's no Brexit deal, 24 September 2018 <a href="https://www.gov.uk/government/publications/exporting-animals-and-animal-products-if-theres-no-brexit-deal">https://www.gov.uk/government/publications/exporting-animals-and-animal-products-if-theres-no-brexit-deal</a></p> <p>Importing animals and animal products if there's no Brexit deal, 24 September 2018 <a href="https://www.gov.uk/government/publications/importing-and-exporting-plants-if-theres-no-brexit-deal">https://www.gov.uk/government/publications/importing-and-exporting-plants-if-theres-no-brexit-deal</a></p>

				<p><u>European Commission Preparedness Notices</u></p> <p>The European Commission Notice to Stakeholders: Withdrawal of the United Kingdom and EU Rules on animal feed, 23 January 2018  <a href="https://ec.europa.eu/food/sites/food/files/safety/docs/brexit-notice_animal-feed.pdf">https://ec.europa.eu/food/sites/food/files/safety/docs/brexit-notice_animal-feed.pdf</a></p> <p>The European Commission Notice to Stakeholders: Withdrawal of the United Kingdom and EU Rules on animal health and welfare and public health related to the movement of live animals, 27 February 2018  <a href="https://ec.europa.eu/info/sites/info/files/file_import/movements_of_live_animals_en.pdf">https://ec.europa.eu/info/sites/info/files/file_import/movements_of_live_animals_en.pdf</a></p> <p>The European Commission Notice to Stakeholders: Withdrawal of the United Kingdom and EU Rules for authorisations and certificates for transporters of live animals, drivers and attendants, 23 January 2018  <a href="https://ec.europa.eu/food/sites/food/files/animals/docs/brexit-notice_animal-transport.pdf">https://ec.europa.eu/food/sites/food/files/animals/docs/brexit-notice_animal-transport.pdf</a></p> <p>The European Commission Notice to Stakeholders: Withdrawal of the United Kingdom and EU Rules on Certificates of competence pursuant to the requirements of Regulation (EC) NO 1099/2009 on the protection of animals at the time of killing, to slaughterhouse operators, 23 January 2018  <a href="https://ec.europa.eu/food/sites/food/files/animals/docs/brexit-notice_animal-killing.pdf">https://ec.europa.eu/food/sites/food/files/animals/docs/brexit-notice_animal-killing.pdf</a></p>	
HSE and DERRA	Chemicals regulation (including pesticides)	*x	*x	*x	<p>EU regulations on the classification, labelling and packaging of substances and mixtures (CLP); the placing on the market and use of biocidal products (e.g. rodenticides); the export and import of hazardous chemicals; the registration, evaluation, authorisation and restriction of chemicals (REACH); and plant protection products (e.g. pesticides)</p> <p><u>Law Society Scotland Comments</u></p> <p><u>EU Law</u></p> <p>The Sustainable Use of Pesticides Directive 2009/128/EC</p> <p>The European Commission is responsible for the approval of active substances for use in pesticides in Member States. Approval is given after a rigorous assessment process involving the European Food Safety Authority, Member States and scientific experts.</p> <p>The Directive includes provisions aimed at reducing risks and impacts on human health and the environment, and to improve controls on distribution and use:</p> <ol style="list-style-type: none"> <li>a. A National Action Plan</li> <li>b. compulsory testing of application equipment</li> <li>c. provision of training for and arrangements for the certification of operators, advisors and distributors</li> <li>d. a ban (subject to limited exceptions) on aerial spraying</li> </ol>

					<p>e. provisions to protect water, public spaces and conservation areas f. the minimisation of risks from handling, storage and disposal g. the promotion of low input regimes</p> <p><u>UK Law</u> The Food and Environmental Protection Act 1985 as amended by the Pesticides Act 1998.</p> <p>When an active substance is approved by the EU, companies can apply to the regulatory authority in each Member State for permission to place their product on the market. In the UK this is the Chemicals Regulation Division (CRD) of the Health and Safety Executive. The CRD publishes guidance on the Health and Safety Executive website.</p> <p>Code of Practice for Using Plant Protection Products in Scotland: <a href="http://www.gov.scot/resource/doc/161422/0043816.pdf">http://www.gov.scot/resource/doc/161422/0043816.pdf</a></p> <p>The Code of Practice reflects the Scottish Government's policy to reduce the effect of pesticide use on people and on the environment while controlling pests, diseases and weeds. The Plant Protection Products (Sustainable Use) Regulations 2012 are UK regulations which implement Directive 2009/128/EC.</p> <p>The power of the Secretary of State, as designated Minister, to make Regulations that extend to Scotland remains exercisable by virtue of section 57(1) of the Scotland Act 1998.</p> <p><u>European Commission Preparedness Notices</u> Questions and answers related to the United Kingdom's withdrawal from the European Union with regards to plant protection products and pesticides residues, 2 October 2018 <a href="https://ec.europa.eu/info/sites/info/files/qa-plant-protection-products_en_0.pdf">https://ec.europa.eu/info/sites/info/files/qa-plant-protection-products_en_0.pdf</a></p> <p>The European Commission Notice to Stakeholders: Withdrawal of the United Kingdom and EU Rules on plant protection products <a href="https://ec.europa.eu/food/sites/food/files/plant/docs/brexit-notice_pesticides.pdf">https://ec.europa.eu/food/sites/food/files/plant/docs/brexit-notice_pesticides.pdf</a></p>
DEFRA	Environmental quality – pesticides	x	*x	*x	Regulations governing the authorisation and use of pesticides products and the maximum residue levels in food, and framework for action on sustainable use of pesticides.
Food Standards	Food and feed safety and hygiene law (food	x	x	x	EU regulations laying down the general principles and requirements of food and feed safety and hygiene; food and feed law enforcement (official controls); food safety labelling; risk analysis; and incident

Agency	and feed safely and hygiene law, and the controls and verify compliance with food and feed law (official controls)		<p>handling. The regulations set out an overarching and coherent framework for the development of food and feed legislations and lay down general principles, requirements and procedures that underpin decision making in matters of food and feed safety, covering all stages of food and feed production.</p> <p><u>Law Society Scotland Comments</u></p> <p><u>EU Law</u> See the extensive EU law in this area in the Food and Feed Guide in the section on Scottish Law.</p> <p><u>UK Law (exc. Scotland)</u> Feed and food safety and standards are devolved in the UK. The Food Standards Agency (FSA) has responsibility for feed and food safety law in England, Wales and Northern Ireland. Following changes in 2010, FSA responsibilities for food law across England, Wales and Northern Ireland are no longer harmonised.</p> <p>In England, Defra is responsible for food labelling, other than for matters of food safety such as 'Use By' dates and allergens labelling. The Department of Health has central government responsibility for nutrition-related food legislation in England.</p> <p>In Wales, the FSA retains responsibility for general food labelling. The Welsh Government is responsible for nutrition related to food legislation.</p> <p>In Northern Ireland, the FSA retains responsibility for general food labelling and nutrition related to food legislation in Northern Ireland.</p> <p><i>Food Standards Agency Food and Feed Law Guide</i> <a href="https://www.food.gov.uk/sites/default/files/food_feed_law_guide_dec2016.pdf">https://www.food.gov.uk/sites/default/files/food_feed_law_guide_dec2016.pdf</a></p> <p><u>Scottish Law</u> Food Standards Scotland (FSS) was established 1 April 2015 as the national food body for Scotland, with responsibility for central Government functions previously carried out by the FSA in Scotland. The FSS has published a Food and Feed Law Guide which sets out the EU Law and Scottish implementing regulations. The Guide can be found at: <a href="http://www.foodstandards.gov.scot/downloads/Scottish_Food_and_Feed_Law_Guide_-_August_2017_1.pdf">http://www.foodstandards.gov.scot/downloads/Scottish_Food_and_Feed_Law_Guide_-_August_2017_1.pdf</a></p>
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DEFRA	Food compositional standards	x	x	x	<p>Minimum standards for a range of specific food commodities such as sugars, coffee, honey, caseins, condensed milk, chocolate, jams fruit, juices and bottled water.</p> <p><u>Law Society Scotland Comments</u></p> <p><u>EU Law</u> Regulation 1169/2011/EU on the provision of food information to consumers</p> <p><u>English Law</u> The Food for Specific Groups (Information and Compositional Requirements) (England) (Amendment) Regulations 2017</p> <p><u>Scottish Law</u> The Food Information (Scotland) Regulations 2014</p>
DEFRA	Food labelling	x	x	x	<p>Regulations setting out requirements on provision of information to consumers on food labels.</p> <p><u>Law Society Scotland Comments</u></p> <p><u>EU Law</u> Regulation 1169/2011/EU on the provision of food information to consumers, <a href="http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011R1169">http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011R1169</a></p> <p><u>English Law</u> The Food Information Regulations 2014 <a href="http://www.legislation.gov.uk/uksi/2014/1855/contents/made">http://www.legislation.gov.uk/uksi/2014/1855/contents/made</a></p> <p><u>Scottish Law</u></p>

					<p>The Food Information (Scotland) Regulations 2014  <a href="https://www.legislation.gov.uk/ssi/2014/312/note/made">https://www.legislation.gov.uk/ssi/2014/312/note/made</a> UK Policy</p> <p>UK Policy  <a href="http://www.foodstandards.gov.scot/publications-and-research/guide-to-creating-a-front-of-pack-nutrition-label-for-pre-packed-products-s">http://www.foodstandards.gov.scot/publications-and-research/guide-to-creating-a-front-of-pack-nutrition-label-for-pre-packed-products-s</a> - (joint UK and devolved guidance)</p>
DEFRA	Plant health, see and propagating material	*x	*x	*x	<p>Requirements in relation to the import and internal EU movement of plants and plant products, risk assessment of new plant pests and outbreak management. Assurance and auditing of policies across the UK to protect plant biosecurity. Requirements for plant variety rights, registration of plant varieties and quality assurance of marketed seed and propagating material.</p> <p><u>EU Law</u>  a. EU marketing requirements, including rules for specific seeds  b. Directives related to Conservation Varieties  c. Lists of implementing measures related to marketing of specific seeds  d. Review of EU legislation on the marketing of seed and plant propagating material</p> <p><u>English Law</u>  The Plant Health (England) Order 2005  Protecting Plant Health: A Plant Biosecurity Strategy for Great Britain:  <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307355/pb14168-plant-health-strategy.pdf">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307355/pb14168-plant-health-strategy.pdf</a></p> <p><u>Scottish Law</u>  The Plant Health (Scotland) Order 2005  <a href="http://www.gov.scot/Topics/farmingrural/Agriculture/plant/PlantHealth/PolicyAndLegislation">http://www.gov.scot/Topics/farmingrural/Agriculture/plant/PlantHealth/PolicyAndLegislation</a></p> <p><u>UK Government Technical Notices</u>  Importing and exporting plants if there's no Brexit deal, 24 September 2018  <a href="https://www.gov.uk/government/publications/importing-and-exporting-plants-if-theres-no-brex-it-deal">https://www.gov.uk/government/publications/importing-and-exporting-plants-if-theres-no-brex-it-deal</a></p> <p><u>European Commission Preparedness Notices</u>  The European Commission Notice to Stakeholders: Withdrawal of the United Kingdom and EU Rules on Plant Health, 21 March 2018  <a href="https://ec.europa.eu/info/sites/info/files/file_import/plant_health_en.pdf">https://ec.europa.eu/info/sites/info/files/file_import/plant_health_en.pdf</a></p>



				<p>The European Commission Notice to Stakeholders: Withdrawal of the United Kingdom and EU Rules on Plant Variety Rights, 23 January 2018 <a href="https://ec.europa.eu/food/sites/food/files/plant/docs/brexit-notice_plant-variety-rights.pdf">https://ec.europa.eu/food/sites/food/files/plant/docs/brexit-notice_plant-variety-rights.pdf</a></p> <p>The European Commission Notice to Stakeholders: Withdrawal of the United Kingdom and EU Rules in the field of marketing of seeds and other plant reproductive propagating material, undated <a href="https://ec.europa.eu/info/sites/info/files/file_import/plant_reproductive_material_en.pdf">https://ec.europa.eu/info/sites/info/files/file_import/plant_reproductive_material_en.pdf</a></p> <p>The European Commission Notice to Stakeholders: Withdrawal of the United Kingdom and EU Rules on Trade in Protected Species of Wild Fauna and Flora, 7 march 2018 <a href="https://ec.europa.eu/info/sites/info/files/notice_to_stakeholders_brexit_protected_species.pdf">https://ec.europa.eu/info/sites/info/files/notice_to_stakeholders_brexit_protected_species.pdf</a></p>
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