

On your farm



Jonathan Manser of Knights Solicitors takes a look at what England's new Agriculture Bill has in store.

On 31 January the UK left the EU and is currently in a transition period until 31 December, following which all EU rules and regulations will cease to apply. The UK Government is frantically drafting 20 years' worth of new legislation to replace or enact EU law before that deadline.

As you can imagine, this is no easy feat and the process for enacting new legislation is time consuming. Before a new law is passed it must be scrutinised by Parliament and then by the House of Lords before finally being granted Royal Assent and becoming an Act of Parliament. During the review stages a draft Act is known as a Bill.

One such Bill currently being considered for approval is the Agriculture Bill, which is important for landholders, farmers, estate managers and anyone working within or beside agriculture in England because it seeks to address in UK law – in one place – things previously legislated at EU level, including financial assistance and direct payments, market conditions, classification of foodstuffs and the import

and export of farmed goods. The Bill in its current form gives us a good idea of what the government's plans are regarding how English agriculture will look in the future. Separate provisions will apply for Wales, Northern Ireland and Scotland, and are not covered in this article.

Financial assistance and direct payments

Under the current system, financial assistance is principally based on the size of farmed land. The effect is that the largest farms receive the largest pay-outs – regardless of how much is actually produced and regardless of how that farm benefits the taxpayer. For many farms the direct payments are a large portion of their incomes, which are payable whatever the output, and so there is little incentive for a farmer or landholder to innovate or to improve.

Therefore, the main aim of the Bill is to phase out the direct payment system

altogether and create a new system based on “paying public money for public goods”. It is proposed that payments will no longer be linked to land, and will require farmers to earn financial rewards by doing things which benefit society; for example, financial assistance may be provided for planting trees to improve air quality, or to open up new Public Rights of Way. Under the proposal, farmers and landholders will have to demonstrate that they are participating in schemes that improve the health of the population and the environment, as well as schemes that restore or enhance cultural heritage and biodiversity.

The intention is for farmers and landholders to bear more responsibility for proper and effective land management in order to access government funding, which is necessary for a large proportion



of farmers to supplement income from agriculture. Grants and loans will be available to farms to increase productivity, and so the government's vision is clear – it wants to see greener, cleaner and more productive land management and there will be no more funding to those unwilling or unable to provide this after 2027.

It is proposed that there will be a transitional seven-year period beginning in 2021, during which the direct payments scheme will be phased out gradually, with the last direct payments made in 2027. During the transitional period any farmer receiving funds under the direct payment scheme can opt to take a single lump sum payment in lieu of continued direct payments. It is likely that as time passes incentives and deterrents will be introduced to wean farmers off their reliance on direct payments.

Data collection

In addition to the funding changes, the Agriculture Bill also proposes to grant increased powers to the Secretary of State for the collection and processing of data from any persons within, or closely connected to, the agri-food supply chain taking place in England (excluding the end consumer). There will be a requirement for anyone within the agri-food chain to provide prescribed information. Such data will be used to improve productivity, manage risks and market volatility, promote transparency and fairness, improve animal and plant health, minimise adverse environmental effects, minimise waste, analyse markets and trends and combat fraud or bad trading practices.

These powers are far-reaching and not only cover farmers, distributors and retailers but also veterinarians, gamekeepers and even owners of petting zoos or hobby animals (on the basis that a disease in those animals could cause an outbreak of disease in the food chain). It will therefore be necessary for all individuals, organisations and businesses associated with the agri-food chain to maintain accurate records in respect of all of these areas. It is intended that failure to supply data when requested will constitute a criminal offence, could give rise to fines and may well lead to closing down the business.

Marketing standards

At present, agricultural products sold to the EU have to conform to certain standards

KNIGHTS SOLICITORS

Jonathan Manser is a partner at Knights Solicitors. He graduated from the University of Portsmouth in 2009 and qualified as a Fellow of the Chartered Institute of Legal Executives in 2019. Jonathan is largely responsible for Contractual Disputes and Commercial Litigation and is frequently instructed by game and poultry farmers. Knights Solicitors is a specialist litigation practice well-known for representing clients with animal and countryside interests on a national level. Knights Solicitors provides the NGO with a legal helpline service (see below). Tel: 01892 537311, www.knights-solicitors.co.uk. Ask for Matthew Knight, Richard Atkins or Jonathan Manser.

NGO free legal Helpline

NGO members in need of emergency legal advice relating to gamekeeping and fieldsports can call the helplines below. Up to 30 minutes telephone advice is available free of charge as a benefit of your NGO membership.

For those in the South: Matthew Knight, Richard Atkins and Jonathan Manser, Knights Solicitors (Tunbridge Wells), 01892 537311 (24hr line).

For those in the North, Scotland and Wales:

Michael Kenyon, Solicitor (Macclesfield), 01625 422275 or 07798 636460.



in respect of how they are labelled or advertised. Most of these are based on existing international standards to allow for simplicity of import and export, and the European Commission currently has the power to set or amend those standards. The Bill will move that power to the Secretary of State in respect of products sold in England. Any goods being sold from England into the EU will still have to comply with the EU's own marketing standards, and so it is likely that the marketing standards within England will remain largely comparable with the EU standards so as not to inhibit the import and export of agricultural produce. However, standards may be amended to conform more closely with other countries' standards (for instance the United States) depending on which country is the target for trade.

Fair dealing

Given that most agricultural producers in the UK tend to be small, individual (often family run) businesses whereas the retailers tend to be larger, consolidated businesses, producers are at a disadvantage in terms of negotiating ability, and may well be subjected to unfair trading practices. Whereas the Groceries Code Adjudicator (GCA) has gone some way to level the playing field, the GCA only applies to producers who sell direct to supermarkets. In reality, most sales tend to be to middle-men who then sell on to the supermarkets. The Bill intends to remedy this by granting the Secretary of State

the power to impose regulations aimed at promoting fair contractual dealings for all contracts between producers and any first purchaser. Such regulations may foreseeably require the use of written contracts which include specified terms, for example regarding notice periods.

Summary

With direct payments being phased out, the future for farmers and landholders is clear – innovate and adapt or perish. To incentivise innovation the government is offering loans, grants and the ability to take a lump sum payment in lieu of direct payments. This might give farms and estates a fighting chance, but those most likely to thrive will be the ones taking early action.

There is also a clear indication that the government will expect anyone linked to the agri-food chain, including gamekeepers and shoot managers, to manage land more efficiently and ecologically and to maintain detailed records of all their activities (and to be held to account for any failures). The government will keep a closer eye on farming and land management in the future and so all relevant businesses, including commercial and recreational shooting, need to improve their record keeping and procedures now.

The Bill is not all bad news for shooting and farming: the government is championing British produce and seems willing to give generously to those who are able to adapt to the new priorities and that may help shooting because of its environmental benefits. ●