

## **Agriculture Bill**

### **Department for Environment, Food and Rural Affairs**

**RPC Rating: fit for purpose**

#### **Background**

Despite the RPC formally requesting an impact assessment (IA) of the Agriculture Bill for scrutiny (under the requirements of the SBEE Act), Defra did not submit an IA to the RPC or publish one alongside the Bill when it was introduced to Parliament on 16 January 2020. On 20 February 2020, the RPC published a statement<sup>1</sup> noting the lack of IAs for the Agriculture Bill and the Fisheries Bill prior to their introduction in Parliament. On 15 September 2020, members of the House of Lords questioned the absence of an IA for the Agriculture Bill, in response the Government committed to publishing a “narrative assessment”. The RPC has therefore reviewed the Agriculture Bill IA at an unusually late stage in the Bill’s passage. It has rated the IA as fit for purpose.

This opinion is provided in order to inform interested stakeholders, even though it is too late to assist parliamentary scrutiny.

The RPC hopes that in future cases, the Department will ensure that IAs requiring RPC scrutiny are submitted at the earliest possible stage, and in any event sufficiently in advance of being laid before Parliament to allow for proper parliamentary scrutiny of draft legislation.

#### **Description of proposal**

The Bill IA covers provisions on the management of agricultural producers, processors and retailers as a result of the UK leaving the EU and the Common Agricultural Policy (CAP). Since agriculture is a devolved policy area, many of the measures in the Bill relate to England only, except where the devolved administrations are specifically given powers being repatriated from the EU.

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<sup>1</sup> <https://www.gov.uk/government/publications/agriculture-fisheries-bills-ias-statement-from-the-rpc>

The IA explains that leaving the EU provides an opportunity to leave the CAP and design a bespoke English agricultural policy tailored for the country's needs and policy objectives. The Government wish to design a new agriculture policy centred around public money for public goods and encouraging a resilient and productive agriculture sector. The Bill is required to give the Government powers to implement a new agricultural policy and manage the transition away from the CAP.

An agreement has been reached between the UK and the EU on the nature and length of the agricultural transition period, which will last seven years, starting in 2021. Following this period all payments relating to the CAP will end in relation to England.

The Bill explains the main policy objectives being to:

- deliver social health and wellbeing benefits through an enhanced natural environment;
- develop an agriculture sector which is resilient, productive and internationally competitive;
- ensure high standards of animal health and welfare; and
- ensure that rural communities thrive.

The Department explains that the Bill contains mainly enabling powers under which the regulatory changes will be implemented through secondary legislation. There is currently some uncertainty about the details of many of these. More detailed individual impact assessments will, therefore, be produced alongside the secondary legislation. According to the IA, only three small measures will be directly implemented by the Bill upon Royal Assent. The Government also published a more-detailed document alongside the Bill that presents evidence on removal of area-based direct payments and the adoption of new payment schemes. The RPC welcomes the commitment to produce further impact assessments and invites the Department to convene discussions with it prior to implementation of these measures. The IA does not provide details of the provisions that come into force (without the need for secondary legislation) at the end of the period of two months beginning with the day on which the Act is passed.

## **Impacts of proposal**

Although the Department has been unable to quantify the impacts arising from the Bill at this stage it provides an indicative impact of the proposals. The Department

anticipates that secondary legislation is likely to involve “*familiarisation costs for business and time and monetary costs associated with additional requirements resulting from the regulations.*” The IA also states that “*there may be additional costs to government associated with monitoring and enforcement activities associated with the new regulations.*” The RPC expects the opportunity to opine on detailed IAs relating to the secondary legislation. Where there are additional costs to government, the IAs should discuss whether part, or all, of these are expected to be recovered from business.

As with costs, the IA explains that, at this stage, the Department is unable to quantify any direct benefits associated with the enabling powers contained in the Bill. The Department explains that the powers in the Bill are likely to generate benefits for business and the wider environment. The Department identifies broad benefits that may arise from the enactment of these powers, such as increased profit for agricultural producers, supporting farmer confidence and the possibility of creating positive, yet variable, spill over effects. The Bill would also enable the Government to deviate from EU standards and rules, enabling the Government to be more responsive and flexible to market changes.

## Quality of submission

The Department has provided an indication of the likely scale of impacts but is unable to provide a robust assessment for validation until secondary legislation is developed. This is in line with the level of detail that the RPC might expect to see in an IA for primary legislation (Scenario 2 of the [RPC's primary legislation case histories](#)). On this basis the RPC accepts the level of information provided as adequate at this stage.

The IA includes an explanation of the range of elements proposed under the Bill and identifies sectors that, potentially, would be affected by the measures initially. The Department references the evidence document published by the Government alongside the Bill “*which presents the evidence on removal of area-based Direct Payments and the adoption of new payment schemes.*” The RPC welcomes the inclusion of a link, but the IA would have been improved by the inclusion of a summary paragraph on the evidence document to assist in providing the overall picture of the Bill's impacts.

## Equivalent annual net direct cost to business

The IA states that there are a small number of measures that are directly implemented by the Bill upon Royal Assent but have minimal business impact. These are:

- Encourage landlord investment in AHA holdings.
- Amend schedule 3 case A of the AHA, which sets out the age at which a tenant of a council farm can be issued a retirement notice to quit.
- Remove the minimum age of 65 years before which applications to the Tribunal for Succession on Retirement can be made.

Given the estimated scale of these impacts, assessments for these measures have been produced and verified through a Defra internal assurance process. The RPC has had sight of these assessments and agrees that, collectively, they fall below the *de minimis* threshold. While this approach is accepted on this occasion, the assessment of these measures should be included in the main IA, which should be a full assessment of the impacts of the policy as a whole. The IA should not exclude measures that, individually, fall below the *de minimis* threshold.

The IA fails to explicitly mention, and does not appear to assess the impacts of, the provisions that will come into force at the end of a period of two months after Royal Assent, as referred to in the Bill<sup>2</sup>. The Department should, at this late stage, assess, in an enactment stage IA, the impacts of these provisions as well as any accepted amendments made to the Bill. The RPC expects an enactment stage IA to be submitted for independent scrutiny.

Further to the point above, in its monitoring and evaluation section, the IA states that a challenge in assessing policy impact will be “...*potential interactions between policies leading to additional impacts*”. This supports the RPC’s recommendation that the impacts of the policy should be assessed as a whole. The RPC would, therefore, expect the opportunity to scrutinise any assessments of measures enacted, so that a cumulative total of the impacts deriving from the Bill is captured.

The RPC expects IAs to be produced alongside secondary legislation for the following measures:

- Provisions to strengthen fairness and transparency in the supply chain.
- Provisions to enable continued collaboration between farmers and growers.

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<sup>2</sup> <https://publications.parliament.uk/pa/bills/lbill/58-01/134/5801134.pdf>

- Provisions to amend the remit of the Agriculture & Horticulture Development Board to cover disease control and involvement in the Livestock Information Service.
- Design a fertilisers regulatory framework fit for modern farming, incorporating environment and societal aims.
- Provide for common marketing standards and carcass classification.
- Introduce a new domestic regime for organic production.
- Amend the Agricultural Holdings Act (AHA) 1986 to enable the tenant to refer to dispute resolution any clause in their lease which restricts their ability to access future financial assistance schemes governed by the Bill or which prevents them from meeting a regulatory requirement.

The Department states its intention is to produce proportionate IAs for *de minimis* measures, which will be subject to internal Defra assurance. The RPC encourages the Department's officials to seek assistance from the RPC when producing these assessments and submit them for scrutiny. Based on the Department's initial assessment, this is expected to apply to the following measures:

- Provisions to strengthen data collection and data-sharing powers.
- Repeal the Commercial Unit Test and replace it with an improved suitability test.

The Department also states that proportionate analysis will be developed for the grants and financial schemes that are excluded from the Better Regulation Framework. This refers to the following measures:

- Provisions to implement future schemes for public goods.
- Provisions to enforce compliance with conditions attached to payments to farmers and land managers.
- Provisions to phase out, delink and simplify direct payments.
- Provisions to continue to honour rural development and Fruit and Vegetable Aid Scheme (Pillar 2) legacy schemes.
- Provisions to intervene in times of extreme market disturbance.
- Provisions to amend market intervention powers.

In paragraph 19 the IA states that the Department will consider submitting an IA for the Environmental Land Management Scheme for independent review, in advance of

the full scheme launch, due to its significant impacts on the farming sector. The RPC would welcome the opportunity to provide an opinion on this IA.

### **Small and micro business assessment (SaMBA)**

The IA includes a sufficient, though brief, SaMBA. The estimated proportion of the market that is made up by small and micro businesses is clearly stated and the Department has committed to providing thorough SaMBAs within the IAs produced for secondary legislation. The IA considers the benefits to small and micro businesses (SMBs), as certain policy measures are expected to improve their market positions in supply chains, and states that the Department will investigate mitigation options for cost impacts prior to secondary legislation. The Department could improve the SaMBA by including details of the nature of the cost impacts and how they might arise. The IA should also discuss the proportion of SMBs in other affected sectors, including processors and retailers of agricultural produce.

### **Monitoring and evaluation plan**

The RPC commends the Department for considering monitoring and evaluation at this stage, but the IA would be improved by including more detail. For example, the IA fails to commit to a timeline. The IA clearly sets out what plans are in place to monitor the effects of the Bill but should also define when each part of the plan is expected to be carried out. Monitoring and evaluation should begin when a measure is being implemented so that the Department has a clear understanding of the baseline. IAs produced for the secondary legislation should also include clear post-implementation review plans for the particular measures being assessed.

### **Wider impacts**

The IA briefly mentions international trade, when discussing particular measures, but would benefit from a more-detailed assessment of the impacts on trade. The RPC would expect to see this in all final stage impact assessments that answer 'yes' to the trade question on the summary page of the IA.

### Departmental assessment

Classification	Qualifying provision
Equivalent annual net direct cost to business (EANDCB)	Unquantified at this stage
Business net present value	Unquantified at this stage
Overall net present value	Unquantified at this stage

### RPC assessment

Classification	Under the framework rules for the 2017-19 parliament: qualifying regulatory provision <sup>3</sup> To be determined once the framework rules for the current parliament are set.
Small and micro business assessment	Sufficient

### Regulatory Policy Committee

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<sup>3</sup> The Government are yet to set the better regulation framework for the current parliament. This includes the setting of a business impact target, its scope and metric, and the appointment of an independent verification body. The RPC is, therefore, unable to confirm the BIT classification, or validate the estimated business impact figures, for any regulatory proposal at present.