# PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

## Public Bill Committee

# AGRICULTURE BILL

*Eighth Sitting*

*Thursday 1 November 2018*

*(Afternoon)*

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**not later than**

**Monday 5 November 2018**

**The Committee consisted of the following Members:**

*Chairs:* † Sir Roger Gale, Phil Wilson

† Antoniazzi, Tonia *(Gower)* (Lab)
† Brock, Deidre *(Edinburgh North and Leith)* (SNP)
† Chapman, Jenny *(Darlington)* (Lab)
† Clark, Colin *(Gordon)* (Con)
† Davies, Chris *(Brecon and Radnorshire)* (Con)
† Debbonaire, Thangam *(Bristol West)* (Lab)
† Drew, Dr David *(Stroud)* (Lab/Co-op)
† Dunne, Mr Philip *(Ludlow)* (Con)
† Eustice, George *(Minister for Agriculture, Fisheries and Food)*
† Goodwill, Mr Robert *(Scarborough and Whitby)* (Con)
† Harrison, Trudy *(Copeland)* (Con)
† Hoare, Simon *(North Dorset)* (Con)
† Huddleston, Nigel *(Mid Worcestershire)* (Con)
† Lake, Ben *(Ceredigion)* (PC)
† McCarthy, Kerry *(Bristol East)* (Lab)
† Martin, Sandy *(Ipswich)* (Lab)
† Stewart, Iain *(Milton Keynes South)* (Con)
† Tracey, Craig *(North Warwickshire)* (Con)
† Whitfield, Martin *(East Lothian)* (Lab)

Kenneth Fox, Anwen Rees, *Committee Clerks*

**† attended the Committee**

# Public Bill Committee

*Thursday 1 November 2018*

*(Afternoon)*

[Sir Roger Gale *in the Chair*]

## Agriculture Bill

### Clause 2

Financial assistance: forms, conditions, delegation and publication of information

2 pm

*Question (this day) again proposed,* That the clause stand part of the Bill.

**The Chair:** I remind the Committee that with this we are considering new clause 10—*Annual assessment of funding for purposes—*

"(1) The Secretary of State must report on funding for each purpose listed in section 1.

(2) A report under subsection (1) must be made for each financial year and must be laid before both Houses of Parliament no later than 31 October in the financial year following the financial year to which the report relates.

(3) The first report shall be made by 31 October 2019 and shall relate to funding in the 2018-19 financial year.

(4) A report under this section must record, on the basis of best data available—

(a) the total sum of funding allocated to each purpose in section 1,

(b) the source of any element of funding under subparagraph (a) which comes from public funds, and

(c) the sums from each source under subparagraph (b).

(5) The Secretary of State must include in each report under this section—

(a) a statement of their opinion on whether any sum recorded under subsection (4) is sufficient to meet their policy objectives in relation to each purpose; and

(b) a statement of the Secretary of State's intentions if, in their opinion, a sum recorded under subsection (4) was not sufficient to meet their policy objectives in relation to a purpose.

(6) For the purposes of this section, 'funding' includes any payment, grant, loan or guarantee."

*This new clause would require the Secretary of State to report annually on the funding allocated to each of the purposes of the Bill, on its sufficiency to meet policy objectives and on the Secretary of State's intentions if in their opinion funding for any purpose was not sufficient.*

**The Minister for Agriculture, Fisheries and Food (George Eustice):** I turn my attention now to Opposition new clause 10. I recognise that there is a very big issue behind the new clause—funding. We completely understand that. We need to ensure that we have the funding in place to support the purposes we outline in clause 1 in particular. We are absolutely clear about the importance of that. That is why we made a manifesto commitment, which we will honour, to keep the cash totals we spend on agriculture policy the same for the duration of this Parliament—we hope until 2022.

There is also provision in the Bill for a long, seven-year transition. Although we have given no concrete undertaking about the exact quantum of funding after 2022, it is implicit in the Bill and in the nature of the transition that there will be ongoing funding thereafter. We also made a manifesto commitment to introduce new schemes to replace the current common agricultural policy, and that is what the Bill is all about. On 16 October, the Government announced that they will review the intra-UK allocation for domestic support, which will go some way to giving consideration to how we allocate funds within the UK and set the ground rules for allocations after 2022.

At the moment, we spend around £3 billion a year on the CAP. In the scheme of things, compared with the spending of many other Departments, that is a relatively modest sum, particularly if we refocus those resources to delivering public goods—improving the quality of our soils and water, enhancing the beauty of our landscapes, and supporting key Government objectives, such as promoting biodiversity and wildlife on farmland and reducing our climate change emissions to mitigate the impact of climate change.

However, new clause 10 is less about the size of the budget—no doubt we will discuss that later—than about annual reporting on the budget. There are two reasons why it is unnecessary. The first is technical. The new clause would create a legal requirement to list the total funding for each of the purposes outlined in clause 1. As I made clear on Tuesday, the difficulty with that is that many of the interventions we seek will cross multiple purposes. We may have schemes that enhance animal welfare but also the environment, or that enhance the environment but also mitigate the impacts of climate change. It would be difficult to separate those things out and report on the basis of individual purposes.

Strangely enough, it would be far easier to report even more granularly—to report how much money we spent on integrated pest management schemes, catchment-sensitive farming schemes or schemes to enhance farmland birds or pollinators, for instance. We would probably be able to extract that information from individual agreements and aggregate it for reporting purposes far more readily than we would be able to pigeonhole expenditure within the purposes outlined in clause 1.

The second reason—the hon. Member for Stroud may have forgotten this, but he was in the House at the time—is that the last Labour Government introduced the Government Resources and Accounts Act 2000, under which the Department for Environment, Food and Rural Affairs already has a statutory duty to present an annual report and accounts to Parliament, detailing all our expenditure. These days that includes quite a comprehensive list, as well as reporting of the Department's priorities and how it is delivering, for example, on its business plan.

**Mr Robert Goodwill** (Scarborough and Whitby) (Con): Is it not also the case that hon. Members who might have an interest in such things may table parliamentary questions and need not wait for the publication of an annual report?

**George Eustice:** That is absolutely the case, as my right hon. Friend points out. We have scrutiny by the National Audit Office, the Environmental Audit Committee

and the Environment, Food and Rural Affairs Committee, for example, and I always enjoy the many parliamentary questions I receive on every piece of detail about DEFRA's spending priorities.

A statutory requirement to do annual reporting on DEFRA is in place already. However, this is an important point, so at a later stage of the Bill—perhaps on Report—I might be willing to explain to the House in a bit more detail what information we would envisage publishing as part of our requirements under the Government Resources and Accounts Act. In a world in which we want transparency about how we spend money in this area and what it is delivering, it may well be possible for us to decide to adopt a convention on the particular format of these annual accounts. I am more than happy to return to the House on Report to say a little more about that. On that basis, I hope the hon. Gentleman will not press new clause 10.

**Dr David Drew** (Stroud) (Lab/Co-op): That is all very interesting, and I largely concur with what the Minister says. The academic Steven Lukes, in his wonderful little book "Power", always draws a distinction between the "power to" and "power over". The problem with Government and that piece of legislation in 2000 is that it was all about how Government decide to report and to defray their financial considerations. To me, this is "power to"; it is a more consultative arrangement—there is a need to have a reporting mechanism whereby the Government say what they intend to spend.

That is nothing new, and it is exactly what happens every year under the CAP, which has a mechanism whereby the Council of Ministers signs off the budget, which is then reported to not only Parliament but all the farming organisations. The reality of that is that the farmers are either well pleased or start burning their tyres. That is where we are with agricultural politics, which is big on the continent, if not so big here, because our farmer organisations tend to work through the system. That, however, is the point: they are asking for a system to be put in place.

Farmers are very worried that if such a mechanism is not in place, a future Government of whatever colour or persuasion could, in effect, just say, "Well, there isn't enough money, so we're making large cuts, including to all these wonderful schemes that we've talked about." The Minister is very lucid about how all these different organisations could be brought in, but it will not make a jot of difference if there is not any money to run the schemes.

In a sense, the new clause would protect any organisation or any person who clearly wants to obtain funding through the system available. It would give them some security, and all people are asking for is security and certainty. Although we shall not have a vote on the new clause at this stage, I hope that the Minister will reflect on it. It will come back in the Lords, but it is always nice if we can do things in the Commons.

There needs to be some mechanism to say not what the money is but how it will be defrayed. That is important under the CAP, where we had not just pillar 1 but pillar 2. For some of us in rural areas, that pillar 2 money was very important. There is security in knowing in what ways we can go on to make future plans. Otherwise we are subject to the whim of the Government. As has been pointed out before, an urban-centred Government might decide they did not want to farm the country, but wanted to use it for all sorts of other things. I would not want that, and neither, I am sure, would anyone on the Committee. However, it is the danger.

At least there could be a requirement to go on the record and state what was to be spent and how it was intended to keep the different provisions going. We shall not press the matter to a vote at this stage, but we shall keep the right to return to the matter for a vote at an appropriate time.

*Question put and agreed to.*

*Clause 2 accordingly ordered to stand part of the Bill.*

**The Chair:** I suspect that most Members understand the process, but to refresh memories, if anyone is thinking, "Hang on, why are we not voting on new clause 10," the answer is that we vote on all new clauses right at the end of the Committee's proceedings. That is where new clauses are taken. Where amendments are grouped—I should like to be able to say, "By the skill of the Chairman," but actually it is through the skill of the Clerks—some of them, which occur later in the Bill, are taken at that point in the Bill. The fact that something is not voted on now does not necessarily mean it will not be voted on at all. That is not in my gift. It is in the gift of those on the two Front Benches.

## Clause 3

### Financial assistance: checking, enforcing and monitoring

**Dr Drew:** I beg to move amendment 101, in clause 3, page 3, line 25, leave out subsection (h).

*It is disproportionate to create criminal offences for failing to meet the rules of a financial assistance scheme. There are no specific offences for breach of the current CAP scheme rules. Breaches could be sanctioned through the application of penalties without the need for new criminal offences.*

I hope that we shall begin to speed up now, Sir Roger. The amendment relates to the fact that there are certain offences in connection with the Bill. It is more of a probing amendment than one that we intend to press to a vote, and its purpose is to consider the mechanism and methodology by which the Government, through their Ministers, will decide whether funding has been used inappropriately. There is a question as to whether it is proportionate for Ministers to have the power to create a criminal offence for breaching a financial assistance scheme. That is quite an onerous responsibility on the Government.

Under the common agricultural policy there are currently regulations about obstruction of people who come to do inspections, and failure to give appropriate information. Is it intended that the Bill should include such provisions, or are the Government approaching the matter differently? As the Minister said in a previous debate, the Rural Payments Agency and, indeed, trading standards can operate in a quite draconian way when they feel there has been malpractice. Will the powers in question continue? In tabling an amendment that enables us to debate omitting the creation of offences, we are trying to identify the answers to those questions.

*[Dr Drew]*

Obstruction might also happen in the case of someone from the Environment Agency, for example, who wanted to go on to a farm or holding, and who was prevented from carrying out their work. A number of us in the Committee will have had experiences of that happening—landowners barring the Environment Agency in the belief that it intended to do inappropriate work. We want clarity as to whether the approach under the Bill will be the existing one or a different one.

Clause 3(2)(h) gives the Secretary of State the power to create offences in relation to breach of the rules of the financial assistance scheme. There is a view that that may be disproportionate. As always, the matter is subject to interpretation, and one person's breach is another's poor practice, and not necessarily deliberate. Will the Minister give some clarity on paragraph (h) and on some of the repercussions if it goes through as it is?

2.15 pm

**Mr Goodwill:** I echo what the hon. Gentleman said from the Opposition Front Bench. Some farmers and others involved in the management of land have been a little worried that there may be new offences for which very large penalties would be incurred through the money not being made available for support. Having said that, I understand that elsewhere in the European Union over the years, we have had some egregious criminal offences, and the system has been milked by those with criminal intent. We need to be sure that we are not talking about that here in the UK.

For example, in Spain and across a number of southern European countries, the EU ruled that any olive trees planted after 1998 were not eligible for support. The subsidy was based on the amount of olives delivered to the mills, but there was no way of testing those olives to know when trees were planted. That resulted in 40 million new olive trees being planted in 2001 alone, and the widespread criminalisation of the system. Between 1985 and 1998, only 6% of the money that had been unfairly claimed was recovered. That example shows how, when a system is out of control, it can be open to widespread fraud.

**Sandy Martin** (Ipswich) (Lab): Does the right hon. Gentleman agree that where such widespread criminal activity takes place, it would be appropriate for it to be dealt with through existing criminal law or for new criminal law to be created? It would not be appropriate for it to be adjudicated by the Secretary of State in the same way that the Minister said that regulations should be done through existing law.

**Mr Goodwill:** That is precisely the point I was coming to. The European Union instructed OLAF, its own anti-fraud body, to look at that sort of thing. Even this year, in Slovakia, journalist Ján Kuciak was murdered along with his fiancée after he exposed widespread fraud involving the Italian mafia, Slovak business and politicians in Slovakia. That resulted in the fall of that Government, so widespread was that fraud. We have seen similar problems in Bulgaria, where, rather surprisingly, a farmer wanting to get agricultural support must first register to pay health and pension insurance, so the very smallest farmers, who we would want to help in this country, do not get help in that country.

If we have that type of fraud in this country, even though there has been no evidence and no cases of widespread manipulation and fraud in the system, there is already criminal and environmental law under which farmers could be prosecuted. The worry among many farmers—I hope the Minister will reassure us and perhaps even clarify this on Report—is that this could be an opportunity to create lots of new criminal offences and punitive financial penalties for farmers who are trying their best. The Minister mentioned the farmer who accidently ploughed an extra 20 cm on his headland margin. Indeed, when I spoke to the Department for Environment, Food and Rural Affairs, I was told that if my daughter rode her pony on the field margin strip, that would be against the rules and, therefore, that we could have been penalised.

We have no similar cases of widespread fraud in the UK. This type of offence is already covered by existing anti-fraud or environmental legislation. There is some worry that trivial offences or mistakes could be penalised and that farmers could be unnecessarily criminalised. I hope that the Minister will give us some reassurance that that is not the intention of clause 3(2)(h), and that he will give further clarification to ensure that some future Government could not use the clause in a way that was not intended.

**Mr Philip Dunne** (Ludlow) (Con): I will not detain the Committee for long. I endorse the comments of my right hon. Friend the Member for Scarborough and Whitby. I note that the hon. Member for Stroud does not intend to press the amendment at this stage, but it is important to reflect on the spirit of what my hon. Friend the Minister said in this morning's debate when he outlined the Government's intent in devising the new schemes: they are intended to be less onerous on the recipients of financial support than the schemes that they replace under the CAP.

In the same spirit, I hope my hon. Friend the Minister will be able to enlighten the Committee that this power to create offences is designed primarily not to create a mass of further offences that would allow people to be criminalised if they made inadvertent errors in the receipt of their financial assistance, but to—as I understand it—replicate existing Government powers. Anything he can do to reassure us that there will not be an extension of the kind we have described will be very helpful.

**Simon Hoare** (North Dorset) (Con): I think there are two things that taxpayers would presume to be inherent to this, and which they would require. First, the hon. Member for Stroud alluded to the need for transparency and to know that moneys being provided by the Exchequer through DEFRA to support any public good or food production scheme are being spent wisely. There must be public confidence in this, and I go back to a point I made in Tuesday's debates: in the increasingly urbanised country we live in, which is less interested in rural life, it is imperative that the public know that, just as we insist on transparency, fairness and rectitude in, for example, the welfare system or other things.

The balance that I detect, certainly from my right hon. Friend the Member for Scarborough and Whitby and my hon. Friend the Member for Ludlow, and which I echo, is that while we must have these powers to allow public confidence to set in, be fostered and flourish, we

must also have proportionality and discretion. It would be frankly bonkers to trot somebody off to the magistrates court, the Crown court or indeed the High Court over somebody's daughter riding a pony on a bit of set-aside, as my right hon. Friend the Member for Scarborough and Whitby has said, or other such small things.

We need within the Bill—I think it is referred to in other subsections of the clause—the discretion to say, "Right, we have overpaid you for that, or you haven't done this in-year, so we will roll over," and so on, which provides the transparency and accountability.

However, we must remember that a lot of our farms and farmers are small businesses, where people do not have time and space to go off and instruct a solicitor, get their defence ready and take those two or three days off to go to court—only to find that the court hearing has been adjourned because the judge is not available or the chief usher has a heavy head cold. In many of our smaller courts, which are also constrained in terms of manpower, there is a huge delay in the delivery of justice.

I hope my hon. Friend the Minister will reflect on what I appreciate are often competing demands, namely for transparency and discretion. The heavy hand can often fall on, "Let's go really big on the criminal stuff," and we have a pretty crowded statute book at the moment. I think that is why lawyers are able to charge so much money, because there is a hell of a lot of reading involved even in making a case for a minor or small point.

Let us not overcrowd the statute book with statute law and criminal offences if we do not need to. We should ensure that the robustness is there, as in those other clauses, but I urge my hon. Friend the Minister—not today, but either in the other place or on Report—to reflect on the considered and informed remarks of my right hon. Friend the Member for Scarborough and Whitby and my hon. Friend the Member for Ludlow, and on my small and amateurish contribution.

**George Eustice:** I confess that when the Bill was drafted that particular bit about creating offences jumped out at me too, and I discussed it at some length with our legal advisers and officials. I can confirm that we seek only to replicate powers that already exist.

The Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 already provide for offences, and there has always been the ability to provide for criminal offences under EU regulation and the enforcement regulations, which are in secondary legislation.

The idea was always that those offences could include such things as intentional obstruction, the deliberate failure to give required assistance or information or knowingly to provide false or misleading information. I reassure the Committee that, during the time we have had those powers, the RPA has never brought criminal sanctions. It has never needed to, because other interventions have been sufficient.

A number of important points have been made, and I listened carefully to those raised by my right hon. Friend the Member for Scarborough and Whitby and my hon. Friends the Members for Ludlow and for North Dorset. The hon. Member for Ipswich also raised the legitimate point that there is already alternative legislation to deal with fraud. I am grateful to the shadow Minister, the hon. Member for Stroud, for not pushing the amendment to a Division today.

Given the representations from my hon. Friends behind me and from others, I am certainly willing further to discuss this issue with Government colleagues, and perhaps to come back to Parliament on Report to give it further consideration. We are clearly going into a changing world and a changing situation, and it might not be necessary to bring across all the sanctions available to us under the CAP scheme. It might be that the many other provisions—including being able to disqualify people from entering schemes in the future, penalties, an ability to recover or withhold moneys and so on—alongside existing criminal powers, are sufficient. We will undertake to look at that.

**Ben Lake** (Ceredigion) (PC): On that point, will the Minister clarify, either today or on Report, the status of the power to create offences granted to Welsh Ministers under paragraph 3(2)(h) of schedule 3? Does that also mean amending criminal offences and creating new ones?

**George Eustice:** The power to create new offences is in the Welsh schedule. It is a decision for the Welsh Government whether they wish to change that as the Bill progresses. That is clearly a decision for them, and I will not give any indication about what they might do.

**Chris Davies** (Brecon and Radnorshire) (Con): I find it quite strange to be in great sympathy with the hon. Member for Stroud, but, after that direct answer from the Minister, which I thank him for, I urge him to have another look at the clause. We look forward to discussing it on Report. We have concerns.

**George Eustice:** I very much look forward to discussing the issue further on Report. As I said, in considering the mood and sentiment of the Committee, I undertake further to discuss the issue with Government colleagues and to report back to the House on Report. I hope that, on that basis, the hon. Member for Stroud will agree to withdraw his amendment and keep his powder dry for another day.

**Dr Drew:** I certainly agree. A report by the House of Lords Delegated Powers and Regulatory Reform Committee identified some concerning inconsistency between clause 16, which contains an extended treatment in respect of monetary penalties, and clause 3, which does not. However, so long as the Minister looks at that, I will withdraw the amendment without further ado. I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Clause 3 ordered to stand part of the Bill.*

*Clause 4 ordered to stand part of the Bill.*

2.30 pm

**Clause 5**

THE AGRICULTURAL TRANSITION PERIOD FOR ENGLAND

**Dr Drew:** I beg to move amendment 102, in clause 5, page 4, line 41, at end insert—

*[Dr Drew]*

"(5) The power under subsection (2) includes the power to vary and increase direct payments during the agricultural transition period.".

**The Chair:** With this it will be convenient to discuss amendment 104, in clause 7, page 5, line 18, at end insert—

"(c) increasing or varying direct payments in relation to England over the whole or part of the agricultural transition period for England.".

*This amendment would ensure that the Secretary of State is empowered to increase payments during the transition period if that is necessary in the circumstances, for example to utilise any unspent monies or to protect the industry from harm.*

**Dr Drew:** Again, I do not intend to delay the Committee for long. There are some concerns—dare I say, on both sides—about whether this is the appropriate way to look at the powers. Greener UK feels that there are some issues with what the provision might mean for the direct payment system. The amendment in effect looks at the ability of the Minister to pause or delay the scheme, as operated. The question is, what happens after the agricultural transition period, because it relates to the end of one scheme—the direct payment one—and the introduction of another, the environmental payment?

Amendment 104 is about how to manage the agricultural transition. If things are not working as we want them to, what do the Government do? Do they pause, extend or even reverse the reduction in the direct payments? We know what the Government intend, which is, come 2021, the percentage reduction in the direct payment. That sounds straightforward, but such things are never as straightforward as they sound. Will the Minister tell us exactly how the scheme will come into operation? It needs to be about certainty and fairness.

The danger of uncertainty for, or the potential removal of important sums of money from, farms that are already struggling could have a very deleterious effect on their ability to continue. That matters because we are, potentially, changing the landscape dramatically. If certain small farms go out of business, tenant farms in particular, that will have a major impact on what our landscape looks like.

I accept that the amendment is probing, but were it adopted some people might worry that we could say, "Okay, let's just go back to direct payments, delay it a few more years." On the one hand, we need to know for those who are losing payments what happens if the system does not quite work out, and, on the other hand, we need to see for those who are very inclined to see the changes what confidence they can have in the Government that those changes will happen as they should. There is concern on both sides: one wants the certainty that some payment system will be in place while the other believes that this is the wrong system, which is the reason for supporting the move towards environmental payments. I am interested to hear the Minister's thoughts.

We are discussing everything to do with delinking the payments, moving from a system in which, in effect, we pay farmers to do what they have done to a system in which we pay farmers and others to do things that we want them to do. It is important for the Minister to identify how that is going to work.

**George Eustice:** I oppose this probing amendment for reasons that I shall set out. The shadow Minister made the good point that people want certainty. In the Bill, we have tried to give a clear direction of travel—that is to say, we believe that the end state should be a system in which we reward farmers based on the delivery of public goods, be that animal welfare or higher environmental outcomes, and in which we tackle the causes of low profitability in farming by improving transparency and fairness in the supply chain and making grant support available to farmers to invest in the future.

The difficulty I have with this amendment is that it would largely undermine the purpose of a transition, if the idea is that we would increase direct payments during the transition. If there were a particular problem that meant that a future Government decided they had to pause the transition, it would be open to them under clause 5(2) to extend the transition period. Provided that they brought those regulations in during the transition period, they could extend it for as many years as they liked, and if a future Government so decided, they would have the ability to say that they would not pursue what we have outlined, which is a phasing down of direct payments. It would be open to a future Government, if they deemed it the right thing, to pause that process, extend the transition and slow or halt the rate of decline. That option and that power are already in the Bill.

The issue I have with saying that a future Government could also increase direct payments during that time is that that would effectively undermine the direction of travel we have set out. It would mean that there was less money—potentially no money—to do the pilots we talked about earlier for the new environmental land management scheme that we want to roll out. It would mean that there could be less money, or no money, to make available to support new entrants to the industry or to help farm enterprises to invest for the future.

Of course, in addition to having the power already to pause and slow the taper on the single farm payment and to extend the transition period, later parts of the Bill, which we will come to at a future date, also contain intervention powers. Those are powers, in a severe market disruption, for the Secretary of State to declare exceptional circumstances in the market and intervene directly at that point to provide income support or market stabilisation measures. I believe the Bill strikes the right balance and sets a clear direction of travel, and my objection to this amendment is that it would largely undermine the purpose of the transition period.

If people want certainty, they need the certainty of a seven-year transition, but also an understanding that in all normal circumstances it is the Government's intention to reach an end state at the end of those seven years. If we introduced the uncertainty that it might all be changed and that we might pay even more via direct payments, people frankly would not know where they stood, and I think that would send a mixed message. I hope that, on that basis, the hon. Member for Stroud will withdraw amendment 102 and not press amendment 104.

**Dr Drew:** I am happy to do so. Again, these amendments are just teasing out how the process will work in practice. It will be a difficult process; we are, in effect, asking people to change their business orientation completely in a relatively short time. They will have to learn to do very different things. That is why it is important to

know, if those things do not work out, what the Government's response will be. I think the Minister has said what the Government's intention is. Only time will tell whether it works in practice. I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Clause 5 ordered to stand part of the Bill.*

**Clause 6**

POWER TO MODIFY LEGISLATION GOVERNING THE BASIC PAYMENT SCHEME

**Dr Drew:** I beg to move amendment 105, in clause 6, page 5, line 6, leave out subsection (2).

**The Chair:** With this it will be convenient to discuss amendment 106, in clause 7, page 6, line 13, leave out subsection (8).

*This is unnecessary as it can be done as part of the phasing out under Clause 7, the greening rules can be simplified but the payment itself can continue. If this clause remains then there is nothing to prevent the ceasing of greening payments altogether, even though the explanatory notes suggest that the intention is to remove greening requirements but pay the greening monies as part of the direct payment.*

**Dr Drew:** I should say in passing that there was a Henry VIII power in clause 5 that we allowed to slip through. It is one of the powers that no doubt the House of Lords will have great joy in pointing out to the Government, when and if the Bill gets there.

We are now considering clause 6 and two straightforward amendments, looking at the powers to modify from one system to another. The question is what the clause really adds to the Bill, given that clause 7 tells us that it will phase out direct payments and de-linked payments. One wonders why this power is in there at all and what the Government are doing by keeping the clause there. We would question why clause 6(2) and clause 7(8) are there and whether they are necessary. As the Minister has just said, either we have the strength of our convictions and we are going towards the greening of the farm, food and environmental system, or we will always be thinking that we could go back to a basic payment arrangement if all else fails.

Will the Minister explain what the clause does? The reality is that, if it remains, in extremis there is nothing to stop the Government going away from a greening payments system altogether and looking at other arrangements, as the explanatory notes highlight. Although we question whether the clause adds anything, if it was used inappropriately it could be quite dangerous.

**George Eustice:** I am grateful for the opportunity to address why there is a need for this subsection of clause 6. The greening provisions in the CAP, by the admission of the European Commission and the EU auditors, have achieved next to nothing in environmental outcomes.

The genesis of the subsection was the fact that in the last CAP reform voices in the European Parliament pressed for a move away from pillar 1 direct payments and for greater emphasis to be placed on pillar 2 agri-environmental schemes, while the Council of Ministers and member states resisted that and clung to the idea of direct payments. The outcome was a classic EU fudge, which attempted to put greening conditions on to the direct payments in a way that has not been effective.

We have ended up with rather ludicrous rules, such as there being one window in which land must be made fallow for the purposes of the ecological focus area rule and a separate window for the purposes of the three-crop rule. There is all sorts of confusion because people have fallow land and they have to work out whether it is fallow for the purposes of the EFA rule or for the purposes of the three-crop rule.

There are also lots of unintended consequences of the three-crop rule and problems with different species being treated as the same. I remember having a long argument with our officials some years ago about whether a cabbage and a cauliflower were the same or a different species, whether a winter cauliflower was different from a summer cauliflower, and whether spring wheat was different from winter wheat. Our contention is that introducing rules of that sort to the direct payment scheme has ultimately failed, as even the EU admits.

The inclusion of these powers gives us the ability to switch off the greening provisions. As things stand, 30% of the single farm payment is linked to the greening conditions. One of the National Farmers Union's concerns is that we have a secret plan to remove the greening conditions and take 30% of the single farm payment at the same time. I reassure the NFU that that will not happen, because the way the wiring of the scheme's funding works means that if we remove the greening requirements, the payments linked to them automatically go back into what is called the national ceiling—the budget allocation—and are reflected in the remainder of the basic payment scheme payments. This will not affect farmers' payments, but it will enable us to remove a lot of the unnecessary administration and checking around the greening requirements, which have achieved very little.

2.45 pm

My point about the clause on the power to modify legislation governing the basic payment scheme, and about many other clauses in this part, is that the transition period will be seven years. The hon. Member for Stroud is right that there is a provision here for us to de-link payments altogether, but there is not an obligation to do that and we may de-link payments in the later years of the transition; we may not de-link payments for the entire period of the transition.

I want farmers to feel early benefits and gains as a result of the fact that, because we are leaving the EU, we will be able to sweep away some of the pointless rules and unnecessary administration, and make the scheme we have work that little bit better. In that way, they will feel a difference from year one of the transition period and will not have to wait all the way to the end of the transition period before we can get rid of some of the legacy of the CAP.

This provision is important for us to be able to tackle some of the inadequacies in the retained scheme for the period that it might last, which could indeed be the full length of the transition period. It is not inevitable that we would use the de-linked payments, but we want the option to be able to do so, because we think that in some circumstances it would be powerful.

I hope I have been able to reassure the hon. Gentleman about the intention and purpose, and the need for us to be able to do this and to have this power. I hope I can

also reassure stakeholders such as the NFU, which is concerned about whether it would have a knock-on impact on its members' payments. It will not.

**Dr Drew:** I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

**Jenny Chapman** (Darlington) (Lab): I beg to move amendment 76, in clause 6, page 5, line 9, leave out "negative" and insert "affirmative".

**The Chair:** With this, it will be convenient to discuss the following Government amendments: 2, 3, 4, 5, 7, 8, 18, 12, 13 and 14.

**Jenny Chapman:** It is a real pleasure to serve under your chairmanship, Sir Roger. We have heard so much from my hon. Friend the Member for Stroud this morning and afternoon: I will now give him a break. Part of the reason for that is that my hon. Friend deals with the pure farming and agriculture issues, while I seem to be doing the really boring "techy" and legalistic stuff. *[Interruption.]* I will try not to make it boring.

However, when it comes to the text of amendment 76—leave out "negative" and insert "affirmative"—I would forgive Committee members for returning to their online shopping or whatever it is they are doing. Nevertheless, this is quite an important issue. It occurs in several places throughout the Bill. We were concerned about it during the passage of the European Union (Withdrawal) Bill and we have not stopped being worried about it now.

I notice that the Minister has a series of amendments in the same grouping. I hope that he will confirm that they deal with the concerns that I have raised by tabling amendment 76 and various other amendments to later parts of the Bill; it seems to me that the Government may have taken our point. However, I need to hear the Minister confirm that.

Amendment 76 is to clause 6. As my hon. Friend explained, under clause 6 the Secretary of State would have the power to modify the legislation governing the basic payment scheme. The problem for us is twofold. First, the Secretary of State has that power by regulation. I will expand on these arguments now, because they relate to other parts of the Bill; if I explain them fully this time, that might avert the need to do so on absolutely every occasion when this issue arises. I see that the hon. Member for Gordon is nodding furiously.

The problem is that the Secretary of State is attempting to give himself the power to change the legislation by regulation, but he seeks to do that—as the Bill is currently drafted—through the negative procedure. I will forgive Members for not being entirely au fait with the difference between the negative and the affirmative procedure, although Sir Roger and I served together on the Select Committee on Procedure for about five years. *[Interruption.]* And the hon. Member for North Dorset serves on it now, so I expect he will know exactly what I am talking about. The Procedure Committee spent a great deal of time bending its head around that matter, but Members can be here for a large number of years and still have no clue what the difference is. In the interest of teaching grannies to suck eggs, I will attempt to explain what the difference is and why it matters.

Members will have heard the power that the Secretary of State wishes to have referred to as "Henry VIII clauses". That phrase came up a lot during the passage of the European Union (Withdrawal) Act 2018: the Opposition were concerned about the extent of the use of Henry VIII powers. Those powers are not unheard of, but it is very concerning when Bills have so many. We are equally concerned that this Bill contains a large number of those powers. A Henry VIII clause enables Ministers to amend or repeal provisions in an Act of Parliament using secondary legislation that is subject to varying degrees of parliamentary scrutiny. We need to pay particular attention to those clauses, because they enable a law to be changed without what most of us would understand as a normal level of scrutiny in this House. A helpful guide about the use of statutory instruments has been produced by the House of Commons Library, if Members are sufficiently interested: it is factsheet L7—"Statutory Instruments".

The most important thing to understand is the difference between the negative and the affirmative procedure. The negative procedure is what, in this Bill, the Government say they wish the Secretary of State to be able to use when modifying the law. What happens is this:

> "The instrument is laid in draft and cannot be made if the draft is disapproved within 40 days (draft instruments subject to the negative resolution are few and far between)…The instrument is laid after making, subject to annulment if a motion to annul (known as a 'prayer') is passed within 40 days."

Unless something happens—it is usually the Opposition who make that prayer, which nowadays often takes the form of an early-day motion—that change to legislation will happen. That is the negative procedure.

Under the affirmative procedure, however, an instrument cannot become law unless it is approved by both Houses. Should the Secretary of State feel that he needs all these powers—although it is regrettable that he feels he needs them, in the absence of being able to put into the Bill the schemes and schedules that we would like to see—it is far better for them to be exercised according to the affirmative procedure. Under that procedure, the instrument is laid after making, but cannot come into force unless and until it is approved, so there is a far stronger role for Parliament.

When a Bill seeks to confer so much power on the Executive, we as parliamentarians have to be very careful about giving that power away. We would be enabling the Secretary of State to make substantial changes to the measures that we are being asked to agree—and this comes up throughout the Bill, not just in this clause. That is not something we can do lightly. Parliament needs to consider the issue carefully, because we are talking about an awful lot of power in the hands of one individual, subject to precious little scrutiny. That is not something that we can be relaxed about.

**Simon Hoare:** The hon. Lady is making a point that is incredibly important for us all, as parliamentarians. Does she agree that the nub is not whether it is by the positive or negative procedure that these changes could be made, but to have the discretion of Ministers —I appreciate for some that might be a leap of faith—to opine on the scale of the change? Thus, for big changes the affirmative procedure could be used, and for small, housekeeping, tidying-up exercises, the negative could be used. One would not want to go through the whole of the positive SI procedure to

change a word or a letter here or there. Might that be a way of addressing the perfectly legitimate concern that she raises?

**Jenny Chapman:** The hon. Gentleman makes perfect sense. Our concern, though, is that the changes that Ministers seek the power to make are not small or technical—they are quite significant, and go to the heart of what the Bill is about. For that reason, we are not inclined to allow the issue just to go through unchallenged.

At the time of the withdrawal Act, we were assured that the negative procedure would be used only in such circumstances as the hon. Member for North Dorset describes, but many would agree that with all the SIs, and there will be a lot, there is a danger that Ministers—through a desire to get things done, perhaps, or just to get to the next stage of the process—will overuse that negative procedure. I am sure there is no ill intent here and that they are not trying to do things behind Parliament's back, but we need to be incredibly cautious about the extent of the power being held by the Secretary of State.

**Simon Hoare:** I ask this sincerely, to try to get to the answer: what I do not know, but the hon. Lady might, is whether we are aware of a trigger, either in the committee chaired by, I think, the Leader of the House or in inter-ministerial discussions, where somebody turns around and says, "No, that is an affirmative; no, that is a negative." Is it the usual channels who say that? Or is it purely at the discretion of the individual Minister of the Crown charged with the powers in a statute? Is there some offline discussion of, or weighing of the balance of, the argument? I do not know the answer.

**Jenny Chapman:** Unfortunately not. In the case we are looking at now, it is laid down in the Bill—well, it is at the moment, but I am optimistic that the Minister will reassure me—that it will be the negative procedure. Most often, when a Minister has these powers, it is specified, alongside where that power lies in the Act, how it should be exercised. I do not know whether that is challengeable later, although I am happy to take advice on that; I am not sure that it is, and I cannot think off the top of my head of any occasions when that has happened.

**Mr Goodwill:** The sorts of policies we are talking about have previously been EU policies, and the decision on whether to scrutinise them has been down to the European Scrutiny Committee. However, I cannot think of a single case where the Committee has called one in for debate and it was not all done and dusted and agreed before it even got to this place.

**Jenny Chapman:** That is an argument we often hear. The challenge to me is, "Why are you so worried about this now? This was all done in Brussels before." To an extent, I take that point, but the point of this exercise is that we now, for the first time in a very long time, have the opportunity to develop our own agricultural policy. If we are going to do that, let us do it right. Let us do it really well. Let us ensure that, just because Ministers cannot quite decide exactly what they want to do at this stage—I think that is what underlies a lot of the vagaries of the Bill—we do not give them too many powers or give them those powers in a way that does not enable the fullest scrutiny by Parliament.

These are important issues that are subject to amendment by Ministers, and it would be much better if today we were debating exactly what they intended to do with the powers, rather than which mechanism should apply and whether they should have the powers at all, because what people are really interested in is what will happen. What support will be available? How will it be administered? What is their right to challenge? It would be better for us to be debating that, but insufficient work of that nature seems to have been done as yet. That is a theme that we keep coming back to.

3 pm

To return to discussing the negative procedure, what happens is that in the House of Commons any Member can table a motion to annul a statutory instrument subject to the negative procedure. That sounds quite open, but in practice such motions are now pretty rarely tabled by any Member. They are generally tabled as early-day motions, and those are motions for which, as we all know, no time has been fixed and, in the vast majority of cases, no time ever becomes available. It is true that a motion tabled by the official Opposition will often be accommodated, although there is no certainty of that, because as we also know the Government essentially control the time in the House of Commons and are able to control, to a very large extent, what we spend our time debating.

We really get only one chance to get this right, because, as we just discussed, what is referred to as the parent Act—in this case, the Agriculture Act, as I hope it will become—is the enabling Act. That indicates which procedure will apply to an SI, so unless anyone knows better than me and thinks that there is an opportunity to challenge that in the future and apply a different procedure, I think that this is our only opportunity to determine whether a negative or an affirmative procedure applies to these powers.

I cannot repeat it often enough that the powers under discussion are not minor. They are significant powers to create offences, as we were just discussing. I feel very uncomfortable about giving a Secretary of State the power to create an offence, determine the appeal procedure and determine fines.

I notice that in relation to the other clause, the Government have said that the affirmative procedure will apply. That does not make it okay; it does not make us relaxed about this. It is still a problem, but at least in that instance the Government have accepted that, at the very least, there should be some availability of scrutiny by Parliament, and, to that extent, it is welcome. But I say again that what ought to be happening here is this: if the Government want to create an offence, they need to say what that offence is and what the consequences of the offence will be. The provision is so vague that it is very difficult to see any Opposition waving it through and not challenging it. I think that after this measure gets to the Lords, it will probably return here pretty much unrecognisable, hence the Minister's comments, because I think he does take the points that have been made.

**Nigel Huddleston** (Mid Worcestershire) (Con): I defer to the hon. Lady's knowledge of parliamentary process, which is far superior to mine. I have heard many such debates before and I have a lot of sympathy with them,

*[Nigel Huddleston]*

because as Back Benchers, it is really important that we ensure we respect parliamentary scrutiny. However, I am also the kind of person who likes to see speed, and I have also seen a lot of parliamentary scrutiny become parliamentary process that has bogged things down and meant that we have taken much longer to come to a decision that we could have made very quickly. That worries me as well, so does she not think that we have to strike the right balance?

**Jenny Chapman:** Absolutely; I completely agree. I have sat through some of these so-called line-by-line considerations, and that can be a very underwhelming experience. The feeling is that the scrutiny of the legislation is—well, where is it? It is just a to-and-fro across the room. But if I may say so, I think that this Committee is doing a reasonable job. [Hon. Members: "Hear, hear!"]

**Dr Drew:** No self-congratulation there, then.

**Jenny Chapman:** We are excellent, aren't we? We seem to have a Minister who is willing to accept that there are problems with his Bill, and we do not always get that. I hope that this will be a rather better experience than the one that the hon. Member for Mid Worcestershire and I had previously.

In reply to the hon. Gentleman's point about balancing speed with being thorough, I would say that the Government have had quite a long time to come up with something fuller than this. The Bill is rather empty, and there is lots of detail that could have been included. The Government have had sufficient time to do that, so to turn up and say, "Actually, we just want some powers and we'll decide what to do with them at a later date," is not good enough. We will continue to make that point.

Some people get very anxious about the overuse of delegated legislation. I have never been a Minister, and probably never will be, but I understand the attraction of it.

**Simon Hoare:** Cross the Floor!

**Jenny Chapman:** I didn't catch what the hon. Gentleman said. *[Laughter.]*

I understand that Ministers will want, as the hon. Member for Mid Worcestershire said, the ease to get on with things and not have to bother with troublesome MPs, and subject themselves to hours and hours of process. However, sometimes Parliament needs to say to Ministers, "Sorry, but in the kind of democracy that we have we can't allow you to proceed in a way that does not allow parliamentary scrutiny." Some people get very anxious about the overuse of delegated legislation. I used to feel that they were sometimes over-fixating on it, but having looked at the Bill more closely and gone through the withdrawal Act process, I am becoming one of those people who is inclined to worry about the extent to which Ministers are gathering up powers, and how they could be used in future.

This is not just about the current Secretary of State and Minister; it is about the future. I do not think that whether people are urban or not is the point. Governments will have competing priorities in the future, and they will not be the same ones that we have now, but I want to ensure that farming and agriculture are properly supported in a stable way that allows for certainty, long-term planning, greater food security and all the good things that we have discussed.

**Deidre Brock** (Edinburgh North and Leith) (SNP): I am interested in what the hon. Lady is saying about the affirmative procedure. I wonder whether she thinks that in at least some cases the super-affirmative procedure would be appropriate.

**Jenny Chapman:** We need to have a procedure that is appropriate for what we are trying to do. I think the best procedure on this issue would be to put something in the Bill—I do not know how much more super-affirmative we can get than that. We want to see what Ministers will do with the powers. That is all we are asking for. At the moment, the Government are asking us to take a leap of faith, and we are not prepared to do that.

We were told during the passage of the withdrawal Act that statutory instruments will not be used to make policy, but I would argue that that is exactly what they are being used to do in the Bill. Joelle Grogan from the London School of Economics puts it quite well. She said that delegated powers should not be used for policy-making, and that the former Secretary of State for Exiting the European Union, the right hon. Member for Haltemprice and Howden (Mr Davis), during the withdrawal Act process, explicitly mentioned in the foreword to his White Paper that they will not be used as

> "a vehicle for policy changes—but…will give the Government the necessary power to correct or remove the laws that would otherwise not function properly once we have left the EU."

The measures in the Bill clearly exceed that commitment, which was made by the former Secretary of State as we considered the European Union (Withdrawal) Bill. This is serious. We did not really believe that assurance—I think we have been proved right—and I am not inclined to believe the assurances being given now either. Parliament needs to hold the Government to account much better.

**Sandy Martin:** Is not one of the issues that the negative procedure gives very little opportunity for people outside the House to raise concerns with us? A lot of issues we have been able to raise during this process have actually been fed to us by people who know about them and have faced them on the ground.

**Jenny Chapman:** That is a good point. If there is any purpose to our being in Committee two days a week for however many weeks is necessary, it is that we want to improve the Bill.

The process we have followed, including our taking evidence, has enabled us to make suggestions, many of which—although not all—came from third-sector organisations, interest groups or the National Farmers Union, for example. We have really gained from their expertise. The Bill will clearly be amended—it will not be the same as it is now by the end of the process—and I genuinely think that we have benefited from that input. Input is welcome, and it ought to be available to the Government if they intend to make substantive changes to any other measures as well.

The only other thing I say to that is that we will come later to amendments that address consultation and how we might better involve other organisations in shaping our future policy. It is important to note that, by using these affirmative or negative procedures, we cut out from the process not only expertise from organisations but most MPs as well. Let us not forget that Members do not just stick their hand up and get on one of those Committees. There are filters that sometimes enable and sometimes prevent Members from exercising the privilege of taking part in the consideration of measures.

There are many reasons to be concerned about the extensive use of regulations to amend the very legislation in which those regulations are contained. I have deep reservations about the overuse of the negative procedure. I hope that the Minister will confirm that his amendments, which are grouped with my amendment 76, have been tabled to address some of those concerns. Although they will not address my concerns about the use of regulations, he might at least assure me that he intends to use the affirmative procedure, rather than the negative.

**George Eustice:** I will also speak to a large clutch of Government amendment—amendments 2 to 5, 7, 8 and 12 to 14—in this group. To reassure Committee members, most of them are identical, so I can deal with them quite quickly.

I begin by addressing the points raised by the hon. Member for Darlington regarding her amendment 76. The amendments we have tabled will not achieve exactly what she is trying to achieve with her amendment. However, they will achieve something important, which is to establish that the affirmative procedure will be used if consequential amendments need to be made to primary legislation. I will explain that in more detail later. It is a technical point, but having been on certain Committees, she is clearly familiar with it.

3.15 pm

On the hon. Lady's amendment, we believe that the appropriate procedure under clause 6 is the negative procedure, for a number of reasons. We are not altering any primary legislation; we are modifying a legacy scheme that will expire during the transition period anyway. The clause relates to the exercise of powers to remove certain requirements, simplify the schemes and switch off certain bits that are not working, but that is all in the context of the fact that the schemes will end anyway during the transition period. That is where clause 6 is fundamentally different from clause 3, which is about enforcement powers, checking powers and a scheme that has a long-term future, and that will be dealt with under the affirmative procedure.

Clause 6 is also different from clause 7, which is about powers to modify and change the way payments are made, and more substantive things such as changes to the scale of payments and decisions on de-linking. We recognise that they are a different order of magnitude, which is why we have chosen to make that clause subject to the affirmative procedure. For the powers in clause 6, however, which are simply about modifying and simplifying a legacy scheme, the negative procedure is the appropriate tool.

The hon. Lady asked about comments made during the passage of the European Union (Withdrawal) Act 2018 through Parliament that statutory instruments would not be used to make policy. That is true, and I think she has perhaps confused two things. That Act will not use secondary legislation to make policy, but this is not that Act—this will be the Agriculture Act. In common with pretty much every other Act of Parliament, the Bill will create powers to change policy through secondary legislation. We do that all the time. A few months ago, with support from both sides of the House, we introduced new policies and regulations on CCTV in slaughterhouses by an affirmative resolution under the Animal Welfare Act 2006. It is very common to introduce Acts of Parliament that give us powers in secondary legislation to implement policy changes, and the Bill is no different in that regard. As I said, for clause 6, the negative procedure is appropriate.

I turn now to the Government amendments 2, 3, 4, 5, 7, 8, 12 and 13, which simply insert a pointer to new subsection (4A) in clause 29. That new subsection is introduced by amendment 14, which is the critical one. It states that regulations that modify primary legislation are now subject to the affirmative procedure. That is a technical issue. Subsection (4A) sets a further constraint on regulation-making powers by requiring the affirmative procedure to be used in cases where the power in clause 29(3)(c) is used as a Henry VIII power to modify primary legislation. We do not believe that that will be needed very often, but let me give hon. Members some examples.

Clause 29(3)(c) extends the powers in the Bill so that, where required, we can make all the necessary provisions when we exercise those powers. Those provisions may cover matters that are consequential, supplementary, incidental or transitional in terms of the main exercise of the powers, or may be savings provisions. For example, if we exercise the power in clause 6(2) to terminate greening payments from a particular scheme year, we may use the savings power in clause 29 to ensure that we can still make any remaining payments to farmers who claimed in the preceding year. It is a narrow, technical point, but if we were to simply strike down the greening payments and there was an outstanding payment, as my hon. Friend the Member for Ludlow pointed out happens quite often, we would need to ensure that we had the savings provisions to be able to tie off the loose ends on those existing payments. There may also be a need to use this power to modify primary legislation—for example, to correct cross-references, although we do not expect that to happen very often either.

The Government are proposing the amendment to enhance parliamentary scrutiny—if we need to use the power in that way—and for reasons I think the hon. Member for Darlington will support. It does not deliver everything that she sought to achieve with amendment 76, because we believe that the negative resolution procedure is the correct one, but it does mean that if any other consequential amendments require changes to primary legislation, the affirmative resolution procedure would kick in. That is what amendment 14 delivers.

**Jenny Chapman:** I am not as reassured as I was hoping to be, I am afraid. I was ready to withdraw amendment 76, but I have to disagree with the Minister about the appropriateness of the use of the negative procedure in clause 6. Although he says that it is not really that important and that this is a legacy scheme, we could end up with this legacy scheme for quite a

*[Jenny Chapman]*

while, and it is very important to the livelihoods of many people. We cannot accept that procedure, and I would like to test the view of the Committee.

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 7, Noes 10.

**Division No. 6]**

**AYES**

| | |
|---|---|
| Antoniazzi, Tonia | McCarthy, Kerry |
| Chapman, Jenny | Martin, Sandy |
| Debbonaire, Thangam | |
| Drew, Dr David | Whitfield, Martin |

**NOES**

| | |
|---|---|
| Clark, Colin | Harrison, Trudy |
| Davies, Chris | Hoare, Simon |
| Dunne, Mr Philip | Huddleston, Nigel |
| Eustice, George | Stewart, Iain |
| Goodwill, rh Mr Robert | Tracey, Craig |

*Question accordingly negatived.*

*Amendment made:* 2, in clause 6, page 5, line 9, at end insert "(unless section 29(4A) applies)".*—(George Eustice.)*

*This amendment and Amendments 3, 4, 5, 7, 8, 12, 13, 18, 19, 22, 23, 26, 27, 39 and 40 insert pointers into provisions of the Bill which require regulations to be made using the negative resolution procedure. The pointers are to the requirement (as inserted by Amendment 14) to use the affirmative resolution procedure instead, if the regulations make (by virtue of Clause 29(3)(c)) supplementary, incidental, consequential, transitional or saving provision modifying primary legislation.*

*Question proposed*, That the clause, as amended, stand part of the Bill.

**The Chair:** With this it will be convenient to discuss the following:

Government new clause 2—*Power to reduce the direct payments ceilings for England in 2020 by up to 15%.*

Government new clause 3—*Power to provide for the continuation of the basic payment scheme beyond 2020.*

**George Eustice:** I will speak to new clauses 2 and 3, which are largely technical amendments. New clause 2 relates to the ability to have an inter-pillar transfer. It allows us to modify retained EU regulations to provide for a smooth transition from the current direct payments scheme to our future arrangement, in line with our stated plans. We have said that we plan to allocate the money paid in direct payments for 2020 in England in much the same way as we do now. We have also committed to uphold the current level of agricultural funding under pillar 2 until 2020, as part of the transition to new domestic arrangements.

The new clause will allow the UK Government to maintain the direct payments budget in England in line with preceding years. It is modelled on existing powers to reduce the direct payments budget, which allows member states to make a reduction of up to 15% in each year up to 2019. Up to and including 2019, we have chosen to redirect 12% of the overall pillar 1 budget to rural development schemes in England. The direct payments regulation does not allow for a similar reduction in the direct payments budget for 2020, but the new clause will correct that and allow us to make that reduction. Without the new clause, the direct payments budget would increase in 2020, which would not be in line with our stated commitment and would go against our aims for a smooth transition.

Regulations made under new clause 2 will be subject to the affirmative resolution procedure. They will affect a large number of recipients and entail a significant spending decision, so we feel it is right that they receive full parliamentary scrutiny. However, our intention is ultimately to maintain the status quo in terms of the current arrangements for inter-pillar transfer.

New clause 3, which is also a technical amendment, will ensure that we are ready for all eventualities. It has been tabled with due concern for providing a smooth transition for farmers from direct payments to the future scheme. As I said, it is our intention to de-link direct payments at some point during the transition period, but first we will stop making payments under the basic payment scheme. In other words, the basic payment scheme will not operate after we have begun making de-linked payments.

Clause 7 provides the powers to de-link payments, either at the start of the transition period in 2021 or part of the way through the transition period. However, the CAP regulations, as retained, do not allow us to make basic payment scheme direct payments beyond 2020. Financial amounts are specified in the annexes only up to and including 2020; to continue making basic payments after that, it is necessary to provide a means to determine a financial amount beyond 2020. New clause 3 does not change our intentions for de-linking, but it gives us the powers that we need to set a national ceiling to enable payments to take place.

The hon. Member for Darlington will be pleased to know that regulations made under new clause 3 will be subject to the affirmative resolution procedure. The regulations may specify the method of calculation for a ceiling, rather than an actual financial amount. We have chosen that approach because the regulations will have an effect on a large number of farmers. I beg to move the two new clauses in the name of the Government.

**The Chair:** You cannot move them yet.

**George Eustice:** I will move them later.

**Dr Drew:** We all make slight errors from time to time.

I have some questions for the Minister. I agree that the new clauses look like technical amendments, but I do not quite understand how new clause 2 relates to the Government's policy document "Health and Harmony", which sets out very different percentages for the gradual reduction of the basic payment. I presume that the new clause supersedes that document—or does it?

The policy document gives very clear figures for the direct payment bands: a 5% reduction for up to £30,000, a 10% reduction between £30,000 and £50,000, a 20% reduction between £50,000 and £150,000, and a 25% reduction for more than £150,000. That clearly implies that larger holdings would have more than 15%, so I do not understand how that relates to the figure of "up to 15%" in new clause 2. Does the new clause supersede the policy document? If not, what is the status of the policy document? Perhaps the Minister might like to start by answering that point.

**George Eustice:** May I intervene to point out the policy context? The UK Government took a decision in 2014, under the powers available to us under EU law, to modulate up to 12%—in other words, to take 12% out of the pillar 1 budget, reducing farmers' overall BPS payment, and move it into the pillar 2 budget to support agro-environment schemes or the rural development programme. All we seek to achieve with this power is the roll-over of the legal underpinning that supported that modulation rate. Our proposed taper on the basic payment scheme will be on the existing payment; it is a taper on the payment after 12% has been modulated to pillar 2.

**Dr Drew:** I think I understand that, but I will clearly have to read it back quite carefully, because I am not sure that I totally understand it. I will see if I can get this right: we have taken 12.5% out, which might well have been the pillar 2 moneys, and we are now looking at a scheme, for what remains, that moves from the basic payment, through a de-linked mechanism, to some environmental payments. Is that largely right?

3.30 pm

**George Eustice:** That is broadly right. Farmers currently receive a BPS payment, which is an allocation from the pillar 1 budget minus the 12% that was moved across in 2014. We reviewed that decision in 2016 and said that we would keep it the same until 2019. All we want is continuity for 2020, and this gives us the legal underpinning that we need to maintain the modulation decision taken in 2014. Any future taper and phasing down of the single farm payment, as outlined here, will be based on the BPS payment that farmers have become accustomed to receiving since 2014.

**Dr Drew:** I will read this interchange back very carefully to see whether it has been about what I think or whether I have misunderstood. This matters because, at the end of the day, farmers need to plan ahead, and 2021 is not that far in the future. Some farmers will lose a considerable amount of money, which they will have to replenish by moving into the new scheme, which we do not quite have yet.

**Mr Goodwill:** Will the hon. Gentleman give way?

**Dr Drew:** I give way to the right hon. Gentleman, who will help me out.

**Mr Goodwill:** The hon. Gentleman will be aware that many farmers have already entered into multi-annual environmental schemes. They need the security that the support will be there for them to deliver the plans they already have.

**Dr Drew:** That is very helpful. A lot of farmers have obviously entered the countryside stewardship scheme, but a lot of farmers have chosen to come out of it because they are very unhappy with it. We have to put that right very quickly, because if farmers are to have any certainty in the payment system, they have to know that the scheme to which they are applying exists, is capable of doing what they think and rewards them appropriately, otherwise they will feel short-changed.

I see this as largely technical, but again, it is very complicated. We are moving from a scheme that pays farmers for being farmers to not paying them at all. We will pay people—they may not be farmers—to do things with the land. We therefore have to be very clear that they will not be paid anymore for being farmers; the basic payment is going. Yes, there is a taper, as the Minister says, but it rolls through quite quickly. People need to understand that they will no longer be able to do what they were used to doing and be paid for.

We will not vote against this measure, because it is a technical change. However, I ask the Minister to communicate what is involved to as many people as possible. There will be a modulation, and it was never going to be a straightforward process—when I was on the Environment, Food and Rural Affairs Committee, we struggled to understand exactly how it worked in practice. The Minister will need a proper communication strategy, so people know that, when their money goes, on the one hand, they will have other ways in which to earn it, on the other.

*Question put and agreed to.*

*Clause 6, as amended, accordingly ordered to stand part of the Bill.*

## Clause 7

### Power to provide for phasing out direct payments and delinked payments

**Dr Drew:** I beg to move amendment 103, in clause 7, page 5, line 12, leave out "either or both of".

**The Chair:** With this it will be convenient to discuss Government amendment 91.

**Dr Drew:** Again, this is fairly technical stuff, but there will be some genuine repercussions if we do not get it right. I spoke previously, and I might say more about it when we get to the next group, about this relationship between the current system and what we are moving towards. It makes eminent sense that the de-linking happens pretty speedily through the transition process. Again, it has to happen in an ordered manner, with the regulations that the Secretary of State may make—we want that to be as clear as possible—fully understood by those upon whom the new system will be imposed.

Our amendment, which would clarify things by leaving out "either or both of", is probing. The Minister has his own amendment, which will rephrase paragraph (b), but will he explain clearly how he understands the de-linked payments will be introduced in place of the direct payments? How will things operate over time?

The worry is that the new scheme will not necessarily be as accessible as the basic payments scheme. There will understandably be some losers, and the earlier they know that they will have to try to save some of the money, the better. The Government have made a big play of the advice that will be made available, but we still question who that advice will come from and who will pay for it. The more the situation is clarified at this stage, the better it will be for those who are being asked to pay an enormous amount.

The Minister has made a point about lots of people already having environmental schemes, but many do not. Those who have not got those schemes will have to quickly get someone to advise them on how they can fundamentally change their business operation. That is going to test smaller and tenant farmers.

**George Eustice:** This debate links to a discussion we had earlier about setting a clear direction during the transition period. I understand that the purpose behind the amendment is to try to tease out a bit more what we have in mind when it comes to the de-linking of payments.

We believe that many farmers—sometimes they are in upland areas, sometimes they are on tenancies; often they are in their 70s, sometimes they are even older—who probably should face the decision to retire should have support in doing so, but it is not always easy for them. Sometimes they will have some residual debt or an overdraft and always be hoping that next year might be the good year that will put them in a better position.

If we want to have a vibrant, profitable farming industry in the future, we think it is right to support new entrants and put in place the right schemes that will help some farmers retire with dignity. We will de-link the payment from the need to farm the land and for it to be connected to the land. There is provision in a separate part of the Bill for us to bundle up several years of payments into one lump sum. Through those measures, that 70-something farmer who probably should retire, or would retire if he felt he was financially able to, may take a lump sum as a voluntary exit package to sort out some of his liabilities, pay off his creditors and take that decision to retire with dignity. In doing that, we will create an opportunity for new entrants who are coming in while, equally, helping to safeguard good retirements for those farmers for whom it is right to step back. That is one of the thoughts behind de-linking.

Also, in the final stages of the transition period it might be the right thing to de-link everyone's payments from needing to be linked to the land. Through that, people can have complete freedom over what they do with that money, whether they invest it in new equipment, choose to retire or put it into some crisis reserve to give them a buffer. We want to free them up to do that as we prepare for the move to a new system.

**Mr Goodwill:** On the point the Minister raised regarding the farmer who might want to retire and take three years' payments, one question we tried to explore during the evidence sessions was what would happen to the new entrant coming on to that farm, who perhaps for the first two years on that farm would not receive any support, which might make it difficult for him to establish that business.

**George Eustice:** I understand my right hon. Friend's point, but of course we must view all this in the context of a seven-year transition period, at the end of which it is our objective and our vision that there will be no basic payment scheme as it is known today. What we would envisage happening in those scenarios is that we would free up land for new entrants to come in, who would get used to working in a different way from the start.

It would be quite possible, for instance, to prioritise the roll-out of a new scheme to those new entrants coming on to land that had been exited and was no longer eligible for the BPS payment. I would also envisage that some of those new entrants coming on to that land would also be likely to qualify for the productivity support. We have to see all this in the context of the fact that we do not want a single farm payment to be carrying on forever. We have set a clear pathway to move to a different approach over a seven-year transition period.

**Martin Whitfield** (East Lothian) (Lab): Is not the situation that the Government envisaged one where, by using this de-linking, some farmers may release themselves from land that they see as being less profitable in the future, take advantage of the de-linking, retain land that is more profitable and then continue to claim for that—in other words, make a profit by reducing their business to shape it for what will make money for them again in the future?

**George Eustice:** Broadly speaking, although, as I said, one of our key thoughts behind the concept of de-linking is that it will be a tool to assist people with retirement. Because we do not want multiple systems—a new system emerging, a legacy system and a de-linked system—we have drafted this in such a way that, once someone takes the decision to de-link, it will apply to everyone and we will not have that problem. It will be a bold policy to help to support structural change and give farmers the freedom to invest that money as they deem right.

Government amendment 91 is another technical amendment that simply reflects the way the current direct payment regulations operate. There has been no change to our policy of trying to de-link payments, but the current direct payment regulation only contains financial provisions known as "ceilings" until the end of the 2020 scheme year. Introducing de-linking in 2021 means that ceilings under the direct payments will not be set for 2021. The existing basic payments will therefore automatically end in 2020 and we will not need to terminate such payments. The amendment reflects that. Other than that, the intent is exactly the same as originally drafted, but the amendment makes it clear, crucially, that de-linked payments cannot be made alongside the direct payments under the basic payment scheme, in line with clause 7(3)(b).

This is a technical amendment simply to deal with a similar point to the one I addressed with respect to one of the new clauses, which is that the ceilings expire and we might want to be able to make those de-linked payments based on a direct payment and not necessarily on the old BPS payment. Again, this is a technical issue that has its genesis in the way that EU payment ceilings and budgets are wired. I hope I have given the Committee a good explanation of what we seek to achieve through the amendment.

**Dr Drew:** I do not think farmers need agronomists; they need lawyers to go through some of this and work out whether they are entitled to various payments. It is a wee bit complicated, but maybe it will all be clearer when it comes out in the wash. As I have said to the Minister, I have always supported a retirement scheme for farmers. For too long, too many people have tried to stay farming when it is really not good for them or for their holdings. I welcome the fact that there is now a mechanism by which they can leave the land, by managing to take the payments over time.

**Sandy Martin:** The mechanism might exist for farmers who have been in farming for a long time and own their own land and want to come out of it, but how will that

operate for tenant farmers? Will there be any complications for the relationship between the tenant farmer and landowner?

3.45 pm

**Dr Drew:** That is a very pertinent point. In a sense, we are talking about trying to balance what the state might provide in support payments against the farm business tenancy. For a lot of farmers, trying to make that judgment is going to be quite difficult. One wants people to go out with dignity, and that means that we want them to go out with a sum that they can invest, which may be in other uses of the land or may be to buy themselves a cottage, or more probably, to rent a cottage in view of their impecunious state. These are real personal stories and we have to be careful that we are not just rushing through and making things unduly complicated, so that people do not really understand what they are entitled to.

I understand where the Minister is trying to get to, but I think this will have to be explained in a much more simplistic way, so that people can take advantage of it. There is no point having a de-linking scheme to enable people to leave the land and get new entrants if people do not see that it is appropriate for them, or do not understand it or think that they will lose out financially. My hon. Friend the Member for Ipswich is absolutely right about the farm business tenancies. We need to look at the links and we have to have a debate on some of the Tenant Reform Industry Group recommendations, which sadly do not feature in this legislation. We very strongly think that they should, given that a third of our farms are tenant farms. It is an important part of our farm economy, yet it does not feature in the Bill, which we think is a lacuna.

I worry that there is potential for policy drift here. We start with the de-linking process for one reason, but it ends up doing something that is not intended—it is the law of unintended consequences. I can see people wanting to access the money without necessarily pursuing what we want them to do, which is to improve their land; the danger is that they will take the money and then new entrants will not be able to take over the holding because it is in a poor state.

These are real-life questions, and I worry about some of my tenant farmers. The quality of the farms they are holding is not good due to generations of underinvestment. This is all well and good, and we are potentially paying less money to do the things that we used to pay out to do, yet farmers are expected to make good with other environmental schemes, which is obviously going to be difficult given that they have limited time, and we are expecting them to improve the quality of the land. There is a bit of a question mark against that.

This is a probing amendment. I am sure will we have more definitive things to say in the next stage. The Minister needs to be aware that this debate is fine at one level, but when the schemes get out there and are interpreted by people, there could be some difficulties. I put him on notice that we will look at this again, and I hope he will reflect on some of the things that have been said. I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Amendment made:* 91, in clause 7, page 5, line 16, leave out paragraph (b) and insert—

"(b) making delinked payments in relation to England with respect to the whole or part of that period (in place of direct payments under the basic payment scheme in relation to England)."—*(George Eustice.)*

*Clause 7(1)(b) enables regulations to introduce delinked payments in place of direct payments under the basic payment scheme for the whole or part of the agricultural transition period for England. This drafting amendment ensures that clause 7(1)(b) works as intended even if those direct payments have terminated otherwise than by virtue of the regulations introducing delinked payments. In that case the regulations would not need to make provision for the termination of those direct payments, as suggested by the current text. They would however be able to revoke the spent legislation about the basic payment scheme.*

**Dr Drew:** I beg to move amendment 107, in clause 7, page 5, line 36, at end insert—

"(e) make provision setting out rules for determining the status in relation to those persons who have received delinked payments where the agricultural transition period has been extended in accordance with section 5(2).".

*This amendment would clarify the status of claimants (in terms of whether they would be entitled to return to receiving direct payment) if the direct payments scheme is extended and therefore creating the possibility (under such regulation) to enable those who have opted to take delinked payments to return, or otherwise.*

**The Chair:** With this it will be convenient to discuss amendment 108, in clause 7, page 6, line 16, at end insert—

"(8A) Regulations under this section must set out explicit timescales for the payment of the direct payments or delinked payments that are due to entitled persons.".

*This amendment would ensure that those entitled to payments received those payments within guaranteed timescales to help ensure certainty of cash flow.*

**Dr Drew:** With your forbearance, Sir Roger, I will link this discussion to the clause stand part debate. They are contingent and, with your agreement, I will talk to clause stand part as well.

**The Chair:** Yes.

**Dr Drew:** The amendment is really a probing amendment, to consider where we are in relation to setting rules for the de-linking process. The Minister has already talked about that. I have just asked how this will work in practice. It is unclear, at least in my mind; maybe people are ahead of me on that. However, I think there is a need for further work in that regard.

What would happen if the Minister introduced a de-linked payment, but then made use of the powers to extend the transition period in accordance with clause 5(2)? The status of the farmer who has taken a de-linked payment is uncertain—we have identified that. He may be locked out of the system for longer than envisaged. This is really contingent on our previous debate. So, in taking the money—what? They then can use their opportunity on the land? The status of the person will be defined in law, but again it is a matter of how the process works in practice.

Under the CAP, there are payment windows, and—dare I say it?—this is all laid down for those who receive payments for work they have done. So things are not as clear in this new proposal. All of us who have rural constituencies know that the Rural Payments Agency is not very good at making the payments on time, for the right reasons or in the right amounts. So there are some question marks about the extant process and where we are now going to. If anything, it is going to be quite a

*[Dr Drew]*

complicated change. So it is really about whether farmers will be entitled to payments on guaranteed timescales, because again—dare I say it?—we do not have a good history.

**Mr Goodwill:** It strikes me as well, of course, that the farmer could take the payment but then his wife could establish a new business, in which case perhaps there would not really be a fundamental change; it was just a mechanism. I wonder if the hon. Gentleman shares my concerns and whether the Minister could comment on that situation.

**Dr Drew:** This did come up quite a lot on Second Reading. I think my hon. Friend the Member for Bristol East had something to say on it, or somebody else referred to succession planning. Farmers could take the money and then another member of the family could decide to carry on with the holding.

**Jenny Chapman:** It is an irritant for me that every time farmers have been referred to in this Committee so far—I have not mentioned this so far—they have been referred to as "he". But the right hon. Member for Scarborough and Whitby went an extra stage and said, "The farmer and his wife"—*[Laughter.]* There is a line. I just think we can do a little bit better than that.

**Dr Drew:** I stand suitably admonished and we will be hit by the towels later.

**Mr Goodwill** *rose—*

**Dr Drew:** The right hon. Gentleman can dig himself out of that hole now.

**Mr Goodwill:** It is particularly difficult, because as I am down here doing this job, my wife is minding the farm, although I am the one who signs the forms when I make claims, so it is often difficult to distinguish the person who is farming from the person who signs the form—*[Interruption.]*

**Dr Drew:** I am not sure whether that helped or hindered. *[Laughter.]* We will move on.

Amendments 107 and 108 really try to tease out how this process is going to work in practice. I do want to say some things that are effectively for the stand part debate, but they link in directly with the clause. The issue is the way in which this phasing-out of direct payments and the de-linked payments will work. This is the clause that, if you like, executes that, so we need to look at it quite carefully.

A number of important issues arise, some of which have already been identified through the EFRA Committee, where I gather the Minister had quite a difficult time in answering questions about exactly how this process was going to work. It is important that he puts on the record again how he thinks it is going to work.

We are talking about considerable sums of money. If three years' worth of payments for a reasonably sized holding are wrapped up into one, we are talking about tens of thousands of pounds, so we have to get the accountability of the process right. The average direct payment in 2016 was £20,000, but 10% of recipients received something in the order of £6.5 billion. The bigger landholders have traditionally received quite large sums of money through the single area payment scheme, so the mechanism through which we make that change is very important. Multiplying that over seven years, which is what the transition period will be, we are talking about large sums of money. It would be useful to know that in accepting this use of public money, the Minister can justify the larger sums involved.

As I referred to, the policy statement explains how the tapering down will operate. It would be good to know that there will be some further explanation of what that means for particular holdings. Let us look at some figures from real holdings, rather than the rather abstract figure that we have at the moment. What can those lump sum payments be used for? One can understand a tenant needing to acquire property, or to have sufficient money to pay the rent. Will recipients be limited to some use or reuse of the land, or will they basically have a free choice about what they do with that money? My notes refer to Lib Dem pensions Ministers and Maseratis; I think Steve Webb will always regret having made that point.

I have quite a lot of interesting evidence from the Landworkers Alliance and from the Tenant Farmers Association. Those are the people who represent smaller farmers and new entrants. The Landworkers Alliance is keen to know what that lump sum can be used for, how much flexibility there will be in the purposes outlined in clause 1(1), and whether—dare I say it?—the payments will be linked to the productivity of the farm or farmland. Could farmers, for example, put that money into a community land trust and collectivise those payments? That is an interesting point, because there are those who do not want to farm a holding in isolation, but want to do so on a more collective basis. Is the scheme flexible enough to allow that to take place?

The Tenant Farmers Association has written to me to support the concept of de-linking, because it thinks that farmers should be able to retire. However, although the money is of significant assistance to farmers who wish to retire, the question of what subsequently happens to that money, and any bar on what they can do if they have taken the money, are of keen interest. Those farmers might want to re-invest that money in another holding, or enable another member of the family to take that money and start a new holding. These things matter, because people have to start planning their businesses now. I know that I have stretched the Chair's patience by moving away from the amendments, but my comments are part of our stand part contribution. We are asking the Minister to spell out in a little more detail what, in practice, these de-linked payments are and are not available for, because people are going to have to plan for that.

**The Chair:** Before we continue, let me make it clear that I am very relaxed about the manner in which stand part debates are conducted. They can be contained within the debate, or they can take place at the end of the debate. I am also clear that Members cannot have both.

4 pm

**Mr Dunne:** Thank you for the clarity of your guidance, Sir Roger. I rise to speak to clause stand part and to pose some questions to the Minister following the comments

of the hon. Member for Stroud. The proposal is very complex and the explanatory notes make it clear that this is a novel system. The concept of de-linking payments is welcome, but because it does not exist at the moment, it is hard for us to get our minds around it, so when the Minister responds, I encourage him to give us as much clarity as he can about the intent of how the de-linking scheme might work.

First, hon. Members have raised several challenges about how the structure of ownership and tenure of land might be affected by such a de-linking payment, which is designed to facilitate the transfer between one generation of a farming family or of a farming business and another. Farming businesses are very diverse, however, as is the nature of all businesses in this country, so it is difficult to assume that they will all fit in a neatly prescribed and, dare I say, bureaucratically designed structure.

My right hon. Friend the Member for Scarborough and Whitby referred to his farming business with his wife. My farming business is in partnership with my wife too, but I was previously a partner with my father. The advantage of a partnership structure is that it allows generations to come in and to retire in the same business. If the scheme is not capable of coping with that kind of structure, it will not apply to several family-run farming businesses. We need clarity about how the scheme will be designed to cope with the business structure.

Secondly, it is unclear to me, although I might not have picked it up in the drafting, whether the de-linking payments will cover the entire transitionary period or just a number of years that are yet to be determined and spelt out through the regulations. Any clarity about whether they are likely to be for a limited number of years or the entire period would be helpful.

Thirdly, it would be helpful to understand whether, when the regulations are proposed, the way the transition payments are reduced over the period will be determined through regulation and fixed, or whether they will be capable of adjustment. If they are adjustable payments, that will not provide the clarity that would help somebody to make a decision about whether to accept the de-linking payment at the beginning of the period, or whenever it is first allowable, because they will not know whether that is the right judgment to make.

Fourthly, if a payment is made in relation to a farming business, does that make the land to which it relates sterile in relation to other payments in future? Does that land become eligible only for public goods payments under the new scheme, or is there flexibility? If a business is sold, and the land is sold to an existing or neighbouring farmer, will that preclude them having any access to the transition payments? Those are my main points and I look forward to hearing what the Minister has to say.

**Sandy Martin:** I do not particularly want to address the amendments or the whole de-linking scheme in detail, but we need to bear in mind one or two basic principles. Obviously, if we support the movement to payment for public goods, and a tricky transition, people who have farm businesses that will be involved in that transition need to understand what will happen to them before they get there.

We do not want large numbers of farmers to move out of the business involuntarily. Subsection (7) provides the opportunity for support for somebody who has voluntarily decided to leave the business. However, there is a problem with small farmers in particular, who might have extremely delicate finances. They need to know before they get to the year in which they might find themselves unable to continue financially—indeed, they would need to know three or four years before—whether they are going to get there. They need to know that before deciding whether to take the lump sum payments under subsection (7). If they do not know whether they will be financially viable under the new payments regime more than three years before, that might become a fatal position for them. They might take the payment and go anyway, even though it might turn out that they would have been better off and happier continuing to farm under the new payment for public goods system, rather than the current system.

**Martin Whitfield:** To return to a point mentioned in evidence that we have raised a number of times, this is very much a situation where we see scaffolding but nothing underneath it. The problem for the farmers is that they have no certainty about what is coming down the line. We are approaching the transition period very quickly and they need the time to decide.

**Sandy Martin:** I totally agree. Whether or not we can see what will go around the scaffolding might be annoying to us, or it might feed our fears that an awful lot of work will be done without any democratic control or oversight, but it is far more important for those involved in farming to know what will be put on that scaffolding, because they might well be making decisions without knowing.

Subsection (7) is like an offer that those farmers cannot refuse—not because they know that the consequences of refusal will be dire, but because they do not know and will therefore just go for the easy option. We do not want large numbers of smaller farmers to face going out of business or choosing to take payments under subsection (7), leaving the field clear for those with more money and resources and a better understanding of the complicated regime that the Government are thinking of introducing.

**Mr Goodwill:** I want to raise one point with the Minister, which I hope he will be able to cover. We have heard already that about a third of the farm land in this country is farmed through tenancies. Indeed, a tenancy is probably the only way that many new applicants can get into the industry, other than marrying into money or winning the lottery. However, there may be situations where taking these payments is attractive to the tenant, but where the landlord is unwilling for that to happen, particularly as the basic payments underwrote the rent in many cases, as we heard in evidence. Indeed, we heard that in many cases the rent was basically dictated by the basic payments.

My question for the Minister is, will the consent of the landlord be required before a tenant can take one of these multi-annual exit schemes? If not, might we then have the landlord looking at the small print of the tenancy agreement and going into the whole dilapidations situation? Many people leaving a tenancy can find clauses requiring the guttering to be painted or the

*[Mr Goodwill]*

gateposts to be straightened. Often, tenants find that they cannot leave because of the dilapidations. Where the landlord wants a tenant to leave, he will waive the dilapidations, so a lot of these payments might get mopped up by angry landlords demanding dilapidations at the end of tenancies.

**Chris Davies:** I have a query, which I am sure the Minister will be able to answer easily, relating to the decoupling of cross-border farms. There are many on the Welsh-English border, as there are on the English-Scottish border, that will own land in both England and Wales, or both England and Scotland. I can give many examples of farmers in my constituency who own land in Herefordshire or Shropshire—well, not much of Shropshire, because my hon. Friend the Member for Ludlow owns most of Shropshire.

**Mr Dunne:** None in Shropshire.

**Chris Davies:** None in Shropshire, all in Herefordshire—all in Wales.

**Simon Hoare:** He just owns Wales.

**Chris Davies:** There are many farmers in Herefordshire and Shropshire who will own land 30, 40 or 50 miles into Wales, so does Minister foresee any difficulty with decoupling in cross-border schemes if both devolved areas end up with different schemes?

**George Eustice:** We have had a comprehensive debate, and I want to pick up on some of the points that were made.

The Opposition's amendment 107 is about making provisions for determining the status of those persons who have received de-linked payments where the agricultural transition period has been extended. That links to the point that I addressed earlier. We are setting a clear course here, and if a decision is made under clause 7 to de-link all payments, as far as we are concerned there will be no turning back at that point. It will be possible, under subsection (1)(a), to continue with the basic payment scheme and make a decision to extend, but if at a later stage of the transition period a decision is taken to de-link all payments, from our point of view it is not possible at that point to turn back, nor would we want to do so. If at that point we decided that we still wanted an old-style subsidy system, the right thing to do would be to pass new primary legislation because that would be a major departure from what we envisage in the Bill.

I was asked about de-linking and about what will happen at the end and whether we will put conditions on what people can spend the payment on. During the transition, we envisage there being a progressive, year-on-year phasing down of the BPS payment. Alongside that, we will roll out new grants for such things as productivity, and we will roll out the new environmental land management scheme.

There is already a huge amount of bureaucracy, inspection and tedious form filling behind the BPS payment. If in year three, four or five the BPS payment is considerably smaller than it is now, farmers will rightly say, "Isn't this a sledgehammer to crack a nut? Our BPS payment is much smaller, yet we still have this extraordinary inspection regime, we still have to employ agents to fill out all the forms, and we still have to have someone from the Rural Payments Agency come to walk our fields and inspect everything." At that point, people will rightly ask whether the enforcement architecture surrounding the BPS payment fits the size of the payment, given that it is necessarily being phased out.

That is why our view is that if we de-link the payment we will not attempt to put conditions on that, because it will be a diminishing sum of money anyway towards the latter part of transition. We have not decided when to de-link. That might come later; it could be at the beginning—that is provided for. We would consult on that, but my expectation is that for a period we would phase down the existing BPS payment. A point would then come when, frankly, having all the architecture that we have now to enforce it would cease to be justifiable, and simply de-linking to get the system closed down would be the right thing to do.

The answer to the Landworkers Alliance, the members of which generally complain to me that they are ineligible for the BPS payment at the moment anyway, is that in so far as some of them might be eligible, if they took a de-linked payment they would be able to spend it on anything they wanted, as would any other farm.

A slightly separate provision—although it is linked, and they overlap in some respects—is clause 7(7), which creates a parallel power for us effectively to do what I described earlier: make a rolled-up payment of several years to a farmer who might be deciding to leave the land. We may exercise that whether or not we had de-linked. It will be open to us to run a scheme basically to make an exit payment to farmers, with several years rolled up in one, even if we are proceeding on the basis of clause 7(1)(a)—that is the phase-down. It will also be open to us to do it under subsection (1)(b), but if we were using subsection (1)(b) towards the end of the process to free everyone from the need to have their payment linked to the land, it might be less attractive at that point as an exit package.

**Dr Drew:** I have some fairly basic questions. Who makes the decision, and is it capped? Lots of farmers might say, "Great—we'll take the money now. We've always wanted to retire." The average age is somewhere between 60 and 65. Is the figure capped or could, effectively, thousands of farmers decide that now is the time to go?

**George Eustice:** Any regulations will be under the affirmative resolution procedure. We will work with industry and others on the precise scheme designs. We will not do it in a hurry. We think there is a great logic to de-linking payments towards the end of the scheme. We also think that having a scheme that supports retirement with dignity and voluntary exit is useful. That is why we have provided for that to be done under subsection 7(7).

4.15 pm

I turn to the point raised by my hon. Friend the Member for Ludlow, who also asked about the timing of de-linking. The Bill provides for us to de-link at any point during the transition period. As I have said, my expectation is that it would be run under subsection 1(a) in a phasing down of the basic payment scheme in the early years, but we would probably deploy de-linking in

the closing stages once we were confident that all the successor policies were in place and we were ready to go for the try line, as it were, and reach the end of that transition. We have the option and the flexibility to do both—to go early or to go late—and that will be determined in future regulations.

My hon. Friend also asked who would be eligible for the new scheme. Again, that could be defined in the regulations. To answer the shadow Minister's point, if we were worried that every single farmer in the country was going to retire, we could impose some conditionality to ensure that we targeted that option to people over retirement age for whom it made most sense, in order to keep a dynamic flow of new entrants coming into the land.

My hon. Friend and my right hon. Friend the Member for Scarborough and Whitby raised a concern, which the NFU and the Tenant Farmers Association have also raised, about tenants. There are sometimes agreements—somewhat extraordinarily—that require the tenant to pay their BPS payment direct to the landlord as a condition of their tenancy. One concern is this: if somebody were to take either a lump sum payment or a de-linked payment, would it have to go to the landlord? Under subsection 3(c), we will be able to specify who is entitled to the de-linked payment, and we can specify that it would be a tenant. In so far as there are some tenancy agreements that require the BPS payment to go to the landlord, they would not apply in these situations, since the payments would be in lieu of the BPS payment; they would not be the BPS payment. Therefore, we can design the regulations in such a way as to ensure that the payment goes to the intended recipient.

**Dr Drew:** I think the Minister has answered the hon. Member for Ludlow well, but the trouble is that that is just the theory. My tenant may suddenly get tens of thousands of pounds. If he has left the farm in a very poor state, he may leave the holding. That is a potential legal minefield, which the Government need to look at. The general view is that rents will decrease after the area payments scheme goes. I was at a farm on Friday, however, and the farmer I spoke to was very clear that once the area payments scheme goes, the landowner will want to put the rents up because they will believe that they are losing out and the tenant could pay more. There are some complications here.

**George Eustice:** I would almost say the opposite. If the market is such that a number of people choose to retire and there is no longer the inflationary pressure of a BPS payment driving up rents, rents might decline in some areas. That is not necessarily a bad thing. If rents go down, it is not great for landlords, but it creates opportunities for new entrants to come in with lower overheads and produce food for the country. There is a problem with the BPS scheme, which has inflated rents and made it difficult for entrepreneurs to get on to the land and make a sensible living.

Amendment 108, which was also tabled by the shadow Minister, puts explicit timescales on payments. I understand the frustration of many hon. Members who have had farmers coming to them in recent years and complaining that they have been unable to get the payment. We address the issue in a number of ways. First, under retained EU law, the existing timescales already set out in EU law would come across. I know that farmers will generally take the view that unless they are paid in December their BPS payment is late. In fact, the payment window opens at the beginning of December and closes in June, so there is quite a wide payment window under EU law. That will come across through retained EU law, but we have made some improvements in recent years in terms of getting money to farmers as quickly as possible. Last year more than 90% got to farmers by the end of December.

**Mr Goodwill:** Of course, in the past when payments have been delayed, fines have been payable to the European Commission. Under the new scheme, presumably there would be nobody to pay a fine to.

**George Eustice:** That is absolutely correct, but the scrutiny of Parliament will demand action. I was going to say that one of the strong features of the Bill is the fact that it gives the Government the power to act to sort out the dysfunctional EU auditing processes that create late payments.

Clause 9 gives us powers to sort out what is called the horizontal regulation. That is the regulation that sets out all the conditions on payment and the plethora of audit requirements, which often duplicate one another and are unnecessary. The primary cause of the problem we had last year in the BPS system was that under EU law we were forced to remap 2 million fields in one go, to try to get their area accurate to four decimal places. If we had not done, that we would have had a fine from the European Commission of more than £100 million, so we had to attempt the exercise. However, it inevitably caused problems on some farms. Many hon. Members will have had farmers reporting to them that fields had disappeared, or, in some cases, their neighbour's fields had ended up on their holding. That is what happens when we try to remap 2 million fields. We would not have had to do that, had we had the powers to strike down those requirements.

Secondly, the issues we have at the moment with the countryside stewardship scheme are largely due to the fact that the EU, under horizontal regulation, introduced a new requirement that every single agreement must commence on the same date; so whereas we used to spread the burden of administration across the year, with people able to start in any month, everyone had to start in January. That meant a huge pile of application forms coming in at the same time. Our agencies had to employ lots of temps to try to process the work; and we all know what happens if there is a surge of temporary agency workers to process work. There were inevitably errors and problems. Again, we could remove those rather ludicrous requirements that the European Union imposes on us—in that case under clause 11.

I hope that I have been able to provide some further information about how we would intend to use the clause 7 powers, both to de-link and to make lump sum payments available. I hope I have also reassured hon. Members that the answer to the problem of late payments lies in clauses 9 and 11, not in an amendment to clause 7.

**Dr Drew:** I do not intend to press the amendment to a vote. I just urge the Minister yet again to look at how the measure will work in practice, and really deliberate on ways in which we can at least look at pilot schemes to see how it will work.

**Chris Davies:** As the Minister has had a very busy day and has overlooked answering my question, I wonder whether the hon. Gentleman—whose constituency is, of course, not far from the border—shares my concerns about cross-border land ownership, and areas where there are devolved Governments, where decoupling could cause a problem.

**Dr Drew:** We need some lawyers in England, but we will need some multilingual lawyers when it is a matter of England and Wales. That is an absolutely fair point, and perhaps the Minister will want to intervene on me to give clarity—or not, as the case may be.

**George Eustice:** I must apologise for missing my hon. Friend's important point, which links to a number of others that have been made about how we treat cross-border applications. In effect, what we will be doing is putting in place administrative agreements with Wales and the other devolved Administrations to ensure that where we have cross-border farms—we have similar arrangements in place now—we will have an agreement about how to approach these things to make sense of them and to ensure that things are done in a joined-up way.

**Dr Drew:** Whatever is happening with England and Wales, we have Scotland and Northern Ireland. This is going to be quite a complicated issue. There will be farmers in Northern Ireland who farm on both sides of the border; they will have whatever the common agricultural policy is and whatever the Northern Ireland policy is within the framework of the United Kingdom policy. That will greatly determine what they intend to farm, how they intend to farm and whether they wish to stay in farming.

**Martin Whitfield:** Obviously, in the schedule for Wales, de-linking is discussed, but we do not have a schedule for Scotland.

**Dr Drew:** That is absolutely true, but I am not sure that that helps me.

**Deidre Brock:** I am sure the hon. Gentleman will be aware of the fact that different schemes already operate across the UK in the different jurisdictions, so I am sure that dealing with this is not beyond the wit of man or woman. I am assured by the Minister's reference to administrative agreements. I am sure that something could be found along those lines to help to sort out the whole issue.

**Dr Drew:** I am now assured, I think.

**Mr Goodwill:** As a member of the Northern Ireland Affairs Committee, I can say that this is not just a problem in agriculture. There is no devolved Government there and it is very difficult for civil servants to second-guess what might be done, because it has been a long time since decisions were made on which they could base their activities. For those in Scotland, the policy seems to be to stick their fingers in their ears, sing "la la la la" and pretend that it is not going to happen.

**Dr Drew:** I will not go down that line. The Chairman will be relieved to hear that I am not going to get involved in devolved politics. I think this has been a very useful debate that has been far and wide in scope. It has not really been about the amendments, but the stand part has allowed us to look at some of the possibilities of what will happen—2021 is not very far in the future. People will be doing their planning now, particularly if they have it in mind to leave their holding, and they will need security, certainty and some very good advice on whether that is the right thing to do. I beg leave to withdraw the amendment, but I am grateful for the discretion of the Chair, which has allowed us to get through this issue.

*Amendment, by leave, withdrawn.*

*Clause 7, as amended, ordered to stand part of the Bill.*

*Clause 8 ordered to stand part of the Bill.*

## Clause 9

### General provision connected with payments to farmers and other beneficiaries

**Jenny Chapman:** I beg to move amendment 77, in clause 9, page 7, line 10, leave out "negative" and insert "affirmative".

**The Chair:** With this it will be convenient to discuss amendment 78, in clause 9, page 7, line 10, at end insert—

"(6) Before making regulations modifying legislation under this section, the Secretary of State must consult persons who, in his or her opinion, are representative of the sector to which the regulations will apply, or who may otherwise be affected."

*This amendment would ensure there are checks and balances on the use of Ministerial powers.*

**Jenny Chapman:** Amendment 77 again raises the issue of the negative and affirmative procedures. I will not test the Committee's patience by going through all of that again.

**Thangam Debbonaire** (Bristol West) (Lab): Aw!

**Jenny Chapman:** I will resist the temptation of the Whip. If Members look at page 7 of the Bill and see where that is included, they can probably get the gist of what I am trying to achieve with amendment 77. It is worth asking the Government to consider this because clause 9(2)(b) says that the Secretary of State can by regulations make modifications.

To be fair to the Minister, he does attempt to put parameters on what the Secretary of State would be able to do, but he talks about simplifying or modifying the operation of any provision. "Simplifying" and "modifying" are quite subjective terms: what he considers a simplification of a measure, I might consider a drastic change or something that would do harm to those subject to it.

Again, the power in the clause is slightly wider than it ought to be to justify the negative procedure. I would be interested to hear the Minister's response to that point and whether he might consider, at later stages, amending the "simplifying or improving" terminology to justify his desire for the negative procedure and, if not, whether he might consider making an alteration to allow use of the affirmative procedure.

4.30 pm

I come now to amendment 78. What we are trying, in various ways, to do with the Bill is to get some grip on the Government's intentions and to find ways of influencing what the Government might wish to do with the new powers that they are seeking to gain for themselves. We have tried to do that by asking them to use different procedures. My hon. Friend the Member for Stroud has asked whether the Government might be interested in using piloting, to get greater input into the new powers. It is quite undemocratic and worrying for many of us to see such power being retained by Ministers in the absence of sufficient scrutiny.

Another way in which we think that we might be able to have some oversight, grip and input is through the use of consultation. I tabled this amendment just to find out whether the Government are interested in that approach and whether it is something that they have already decided to do in relation to this clause, although similar arguments could be applied to many of the other clauses, which will have a very direct, severe and long-term impact on those people subject to the measures in the Bill.

We have just been discussing the huge life decisions that farmers will be making after the Bill becomes an Act. It seems to me that there is a need for consultation. When we look at some of the other consultations that the Government take it upon themselves to conduct, we see that there is a very strong argument for requiring the Secretary of State to engage in some sort of consultative process before some of these measures are implemented. I had a look at what kinds of issues the Government think are important enough to consult on at the moment, and it is quite a long list. I found that, this year alone, the Government have launched 774 consultations. That is rather a lot.

**Dr Drew:** Can the Minister name them all?

**Jenny Chapman:** I hope that the Minister can name at least 70 of them, because the Department for Environment, Food and Rural Affairs has launched 70 consultations in 2018 so far. They are all on really important things, of course, but I would say that this measure, in clause 9, is as important as some of the things.

**Sandy Martin:** Does my hon. Friend agree that although a general consultation might be done on an area of Government policy, specific consultations about specific regulations can very often achieve far more and elicit very specific objections and reasons for modifying or, indeed, dropping those regulations?

**Jenny Chapman:** I think they can. There is no doubt that there are some very poor examples of consultation—consultations undertaken not just by the Government, but by councils and other public bodies—but consultation can also be an incredibly positive thing to do.

I think that I recall Jacqui Smith, a former Member for Redditch, saying, when she was a junior Health Minister, that she feared that consultation was regarded as just a period of time between having an idea and putting it into practice. That is certainly not what we advocate in any way, but as my hon. Friend the Member for Ipswich says, if consultation is done correctly—if it is on the right issues and involves the right stakeholders—it can have a very beneficial impact.

**Simon Hoare:** One of the purposes of consultation that is often overlooked, particularly when dealing with industries or sectors, is to allow input into the process of public policy. Failure to allow that input will often lead to judicial review, particularly if businesses or organisations face a significant loss or disadvantage in the marketplace. The power of the courts is often a stimulus for consultation, which is needed so that any Government can have something to rely on and rest their case on.

**Jenny Chapman:** I am not sure that I completely understand what the hon. Gentleman is getting at, but where there is a statutory duty to consult, the basis for challenge often rests on how well that consultation took place. To assist public bodies in carrying out consultations, the Cabinet Office has issued guidance on when they are appropriate, who ought to be consulted and how it all ought to be done, which is helpful in addressing that challenge.

My amendment is probing, and I do not necessarily seek to get it into the Bill, but we need to understand the Government's intended approach to involving sector bodies. The Minister clearly intends to rely on the expertise of various sectors as he goes about implementing the measures in the Bill or—perhaps more accurately—deciding which measures he wishes to implement. He has signalled that there will be a role for third sector organisations in particular. I see that as a very good thing, but we need to better understand how, and on what basis, the Government intend to achieve it. These are not passive bystanders, but people who want to be actively engaged and make a difference to the areas that many of them have spent their whole lives championing.

It is important that we get this right. So far this year, the Government have seen fit to consult on some really important things. To read out a few at random, there has been a very broad consultation on the future of food, farming and the environment, as well as consultations on bovine tuberculosis, on banning third-party sales of pets in England, on air quality and on using cleaner fuels for domestic burning. The measures in clause 9, and indeed elsewhere in the Bill, are equally worthy of engagement with a wider range of voices than seems likely at the moment.

I have therefore tabled a consultation amendment to clause 9 and, I think, to one other clause in the Bill. I chose clause 9 in particular because, as the explanatory notes state, it

"empowers the Secretary of State to make regulations which modify the 'horizontal basic act'"—

which the Minister has helpfully explained to us—

"as incorporated into domestic law carried forward and modified according to the EU (Withdrawal) Act 2018…in relation to England…The horizontal regulations…include rules on application procedures, calculation of aid and penalties, payment windows and payment recovery. They include rules on checks to be carried out, including databases used to check compliance, audits and farm checks and administrative checks. They also include rules for the implementation of the farm advisory system, calculating the funds for public intervention purchase and the establishment of a single beneficiary website".

Those are all things on which the sector would like a say, because it will have opinions about them.

**Sandy Martin:** We have already heard from the Minister on numerous occasions about how the Secretary of State will be speaking to various people in various

*[Sandy Martin]*

sectors about what is going to happen, but does she agree that we need something statutory? People need to be certain that they will be consulted, when that will be and that they will be consulted on the precise details of the regulations coming in that will affect them, because they are the ones who know most about these sectors.

**Jenny Chapman:** I am persuaded by what my hon. Friend says, and he tempts me to insist further upon a duty to consult. I had not intended to do that at this stage, but it might be something that we return to. We need to listen to what the Minister has to say in response.

A lot of the problems rest with "improving", "simplifying" and "modifying", because who is to say what those things really mean? It is highly contestable, and challenge could come from a number of quarters. The Minister needs to be far clearer at this stage exactly what he means when he says, "We'll be talking to—" or, "We'll be involving—". It seems very casual and quite loose. It is great that the Minister has good relationships with the sector—that is healthy, and I am in no way critical of it. However, I would like a way of ensuring that that good, healthy relationship can be enjoyed by his successors too. The Bill leaves things far too loose, with the potential for voices outside Government to be ignored entirely. Nowhere does it say that the Secretary of State must do many of the things in the Bill, as we have said at length.

I do not want to insist on that as a way of being burdensome to the Government. I understand that it means an extra process, that there is a cost attached and that it requires time; and, as we have discussed, there is a real desire to get on with this, which I share. However, the Cabinet Office guidance on consultations, which was revised only this year and which is therefore something that the Government have a commitment to more broadly—which is a good thing—says that consultations should

"Give enough information to ensure that those consulted understand the issues and can give informed responses",

and should

"Include validated impact assessments of the costs and benefits of the options being considered when possible; this might be required where proposals have an impact on business."

The measures we are discussing absolutely have an impact on business—a very direct and immediate one—so I see no justification for not having a way of ensuring that the needs of those who represent the various sectors can be heard.

The Cabinet Office guidance also says that

"Consultations should last for a proportionate amount of time"—

they do not have to take forever—and that

"Consulting for too long will unnecessarily delay policy development."

Responses should be published quickly,

"within 12 weeks of the consultation or provide an explanation why this is not possible."

The consultation continues:

"Where consultation concerns a statutory instrument"

the Government should

"publish responses before or at the same time as the instrument is laid, except in very exceptional circumstances."

I would like to know what is so exceptional about what the Minister is doing that means it needs to be done so quickly that it leaves no time to undertake some form of consultation. The evidence sessions were great, but that is not the same thing, and the lobbying that is happening is not really adequate and is no replacement for a decent process.

4.45 pm

It is slightly different when there is a duty to consult, which is why I am holding back, for the moment, from attempting to persuade the Government that they need to put a duty in the Bill. I wonder whether the Government ought to agree to a duty to consult, and that the Bill ought to say how that consultation should be done. At this stage, this is a probing amendment, but I wonder how aspects of our deliberations might develop, because we might find that there is a stronger desire as the Bill proceeds to hold the Government more firmly to any commitments that they might make.

I checked some legal advice on the duty to consult, because I was mindful of the issues raised by the hon. Member for North Dorset. We need to use these things sparingly, but it may be that it is appropriate in the Bill. That advice says:

"Where the duty to consult is imposed by statute, then the procedure to be adopted is also likely to be prescribed by the legislation."

If we were to take the path advocated by my hon. Friend the Member for Ipswich, we would need to consider exactly how that ought to be conducted. There are principles that need to be applied in the unlikely event that the Government should voluntarily seek to follow that path, although they may find themselves required to do so. The advice goes on:

"The demands of fairness are likely to be higher when the consultation relates to a decision which is likely to deprive someone of an existing benefit."

It is quite easy to see how the measures in clause 9 could arguably deprive someone of a benefit that they have enjoyed.

It concerns me that the Government are proceeding in a way that lacks detail and is so vague and woolly that it is difficult for people to see exactly what their situation will be after the Bill comes into force. Better engagement and more interaction now could assist the Government in avoiding making unforeseen mistakes, as hinted at in our discussions on the Bill this week.

I think I have made the points I wanted to make at this stage. I will listen to what the Minister has to say. I do not anticipate that I will put amendment 78 to a vote, but I might want to put amendment 77—about the negative and affirmative procedure—to a vote.

**The Chair:** Before we proceed—I am entirely in the Committee's hands on this—I should say that there may be multiple Divisions on the Budget resolutions. Once a Division is called, I have no power other than to recall the Committee 10 minutes after the last Division. [Hon. Members: "No!"] I think the expression is, "Those who have no stomach for this fight." There we are. The Government Whip has the opportunity to move the Adjournment motion now or to take his chances, but he cannot move it in the middle of the Minister's speech.

**George Eustice:** I will try to be as brief as possible. Amendment 77 repeats the earlier debate on clause 6, which also proposes a negative resolution. For the same reasons, we believe that a negative resolution is appropriate in this case, because it deals with technical issues and the switching off of certain requirements that currently sit in the scheme to try to improve it, simplify it and remove some of the frustrations that we have at the moment. That should be seen in the context that this is a time-limited scheme anyway, which will expire at the end of the transition.

I note what the hon. Member for Darlington says about the term "simplifying" or "improving"; I know the Lords Committee that looked at this also raised that point. We have not quoted the Agricultural Act 1947 today, but I know many hon. Members like it, so let us look at section 1, which talks about the importance of

"a stable and efficient agricultural industry capable of producing such part of the nation's food and other agricultural produce",

as it is deemed "desirable to produce". Now, if I had drafted a clause along those lines and put it in, everyone would have said, "What does 'desirable' mean? What does 'stable' mean? What does 'efficient' mean?" The truth is that we can have false precision on these things. It is clear what we mean by "simplifying" and "improving".

We should also view this in the context of subsection (2)(a), which is simply the power to switch off certain provisions altogether. It is very clear in the context of subsection (2) that our preference will be to switch off things altogether where they serve no purpose or we think we can do without them, but where we think they serve some purpose we can simplify and improve them. That is understood.

I should also say that we have to understand that at the moment, the best that Parliament will get on things such as this is an explanatory memorandum, explaining the latest thing that the EU has done to us. Most of these sorts of decisions are made by EU delegated acts. There is literally no democratic input at all on some of those requirements, and often things get made up on the hoof by EU auditors working for the Commission, who create all sorts of new processes that have not been discussed or agreed at any level within the European Union.

This is an approach that I believe is right. To explain the types of things that we want to deal with here, I have to deal as Farming Minister with something called RPA appeals. Every month I get a bundle of cases in my box that are farmers who maybe missed a deadline because something got lost in the post or there was a problem with their application form. The system is hideous; I have spent hundreds and hundreds of hours wrestling with lawyers in our Department to try to find a way of doing what is just and fair and finding in favour of farmers, only to find, all too often, with deep frustration, that EU law does indeed require me to find against them. The system we have in the so-called horizontal regulation is manifestly unjust and unfair, and we must resolve to improve it.

I turn now to the hon. Lady's amendment 78. She explained her approach in great detail, but let me just say that she rather undermined her own argument by pointing out that DEFRA, without any statutory requirement necessarily to do so, is quite capable of churning out a great many consultations. I can tell her that, more often than not, the conversation I have with our officials is, "Do we really need a consultation on something as small as this?" and the answer is invariably, "Yes, because that is what Cabinet Office guidelines require."

I do not believe that we need a statutory requirement to have a consultation on this. The only area where we have a statutory requirement for a consultation in the DEFRA field is on issues of food safety, where there is a written statutory requirement always to consult, but that does not stop us consulting. We consult on everything, and if it would give the hon. Lady some reassurance, I can give her an assurance, here on the Floor of the Committee, that we would consult on the changes that we intended to make under clause 9.

I would envisage our having a single strike at improving the system and probably not changing it much beyond that. It is inevitable that we would issue a consultation on all the changes that we would seek to make, and we would try as far as possible to do everything in that one go. It might be the case that there was something we missed and at a later date we might want to do a less formal type of consultation, but I take the opportunity here in this Committee to give the hon. Lady an assurance that we would consult on that first major batch of changes that we would seek to make, but we do not need to be forced to do so by a statutory requirement—as I said, we are quite capable of doing that anyway. I hope on that basis that the hon. Lady will withdraw amendment 77 and we can prepare to adjourn.

**Jenny Chapman:** I have listened carefully to what the Minister has said on amendment 78 and I accept, I think, what he is trying to say. I think he has tried to assure the Committee that there will be some kind of process put in place, so I will ponder that. I might return to that, but what he said was very helpful. In the interest of consistency, I feel I need to press amendment 77.

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 7, Noes 10.

**Division No. 7]**

**AYES**

| | |
|---|---|
| Antoniazzi, Tonia | McCarthy, Kerry |
| Chapman, Jenny | Martin, Sandy |
| Debbonaire, Thangam | |
| Drew, Dr David | Whitfield, Martin |

**NOES**

| | |
|---|---|
| Clark, Colin | Harrison, Trudy |
| Davies, Chris | Hoare, Simon |
| Dunne, Mr Philip | Huddleston, Nigel |
| Eustice, George | Stewart, Iain |
| Goodwill, rh Mr Robert | Tracey, Craig |

*Question accordingly negatived.*

*Amendment made:* 3, in clause 9, page 7, line 10, at end insert "(unless section 29(4A) applies)".—*(George Eustice.)*

*See the Explanatory Statement for Amendment 2.*

*Clause 9, as amended, ordered to stand part of the Bill.*

**Clause 10**

AID FOR FRUIT AND VEGETABLE PRODUCER ORGANISATIONS

*Amendment made:* 4, in clause 10, page 7, line 26, at end insert "(unless section 29(4A) applies)".—*(George Eustice.)*

*See the Explanatory Statement for Amendment 2.*

*Clause 10, as amended, ordered to stand part of the Bill.*

*Ordered,* That further consideration be now adjourned. —*(Iain Stewart.)*

4.56 pm

*Adjourned till Tuesday 13 November at twenty-five minutes past Nine o'clock.*

## Written evidence to be reported to the House

AB44 City of London Corporation
AB45 EcoNexus
AB46 British Poultry Council