

# Agribusiness

*Contributing editors*

Carol VandenHoek and Wendy Baker QC



2018

GETTING THE  
DEAL THROUGH

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*Contributing editors*

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Published by  
Law Business Research Ltd  
87 Lancaster Road  
London, W11 1QQ, UK  
Tel: +44 20 3708 4199  
Fax: +44 20 7229 6910

© Law Business Research Ltd 2017  
No photocopying without a CLA licence.  
First published 2017  
Second edition  
ISSN 2398-5895

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Printed and distributed by  
Encompass Print Solutions  
Tel: 0844 2480 112



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## Overview

### 1 Describe the agriculture and food supply chain in your jurisdiction.

Currently the UK has a well-developed food and drink supply chain in terms of complexity, variety and availability of processed foods. It is the UK's single-largest manufacturing sector and is estimated to be worth £80 billion per year, accounting for 7 per cent of gross domestic product and employing around 3.7 million people in the UK. In 2007, the UK exported approximately £12 billion of food and drink, but is not self-sufficient in food production and imports around 40 per cent of the total food consumed. Since the UK is exporting more than 70 per cent of production in the food and beverage sector to European Union (EU) countries, Brexit poses major challenges for the UK in that sector and the imposition of tariffs on UK-EU trade would be particularly significant for the industry.

From food retailers to farmers, technology and innovation is being implemented throughout the supply chain to reduce waste and increase efficiency. Food retailers yield great influence over the supply chain and use this power to drive performance and improve traceability in the food manufacturing industry through analysing the information flow within the chain.

### 2 What is the regulatory environment for primary agriculture and primary food processors in your jurisdiction?

Both primary food processors and primary agriculture are subject to harmonised EU food hygiene regulations. Within pastoral farming there is a complex web of legislation covering areas such as the health of animals for consumption, cleanliness of animals at slaughter, veterinary medicines permitted, hygiene during milking and controls on raw drinking milk.

For arable farming the Chemicals Regulation Division of the Health and Safety Executive (HSE) is responsible for UK policy on pesticides, which authorises and monitors pesticides. It is responsible for registration and approval of plant protection products, for which harmonised rules have been enacted at EU level as well.

All food business operators including primary food processors are required to put in place appropriate controls that demonstrate they are managing food safety within their business.

The Food Safety and Hygiene (England) Regulations (2013) regulate food business operators, including the food temperature control requirements in the UK.

### 3 What are the main non-governmental organisations and non-profit organisations in the agribusiness sector in your jurisdiction?

The main organisations are as follows:

- The UK Food Group is a network of around 50 development, environment, farmer and academic organisations in the UK working on global food and agriculture issues.
- Feeding the 5,000, a campaign organised by the environmental campaign group Feedback, aims to prevent fruits, vegetables and other food from being wasted. The organisation encourages farmers to allow volunteers to collect aesthetically unattractive produce that would otherwise be wasted for consumption.

- The Soil Association is a charity that campaigns for humane and healthy food through sustainable farming and land use. The organisation works closely with communities to create trust in organic farming methods and to actively engage farmers, growers and permaculturalists in programmes with links to academic institutions.
- The Courtauld Commitment aims to reduce the weight and carbon impact of household food waste, grocery product and packaging waste. It is supported by 53 retailers, including four leading super-market chains.

## Land acquisition and use

### 4 Identify and summarise the legislation addressing agricultural property transactions in your jurisdiction. Outline how farmland is typically held.

Most of UK farmland is owner-occupied. The Agricultural Tenancies Act 1995 and the Agricultural Holdings Act 1986 (the 1986 Act) address Farm Business Tenancies and pre-1 September 1995 tenancies respectively.

Pre-1 September 1995 tenancies usually have lifetime security of tenure and older leases carry potential succession rights, which may mean up to two further generations of farmers can occupy the agricultural holding.

Agricultural property transactions offer generous tax reliefs such as an exemption from inheritance tax after two years and deferred capital gains tax.

There are some land designations including sites of special scientific interest, special areas of conservation and special protection areas that may affect the management or sale of agricultural land.

### 5 Outline any rules related to use of farmland for non-agricultural uses.

Land must be used for agriculture in order to qualify for security of tenure under the 1986 Act. In the appeal of *Howkins v Jardine 1951*, a requirement in the tenancy agreement to use farmland for agricultural purposes only was upheld, meaning it was not sufficient for merely a substantial part of the tenancy to be used for agriculture in order to be protected by the 1986 Act.

Unfortunately, 'open farm' activities, such as school visits, are not considered to be agricultural use. This makes diversification problematic and so it is always necessary to carefully consider the scope of any agricultural tenancy.

### 6 How is lending secured by farmland addressed in your jurisdiction? Do special rules apply for farm lending?

In addition to mortgages and debentures, farmers trading as a sole trader or partnership can create agricultural charges over farming stock and other agricultural assets under the Agricultural Credits Act 1928 (ACA 1928). Other agricultural assets include machinery, certain livestock and crops but not a farmer's bank account, entitlement to agricultural subsidies, land, leased assets or debts owed to the farmer. These are further defined under section 5(7) of the ACA 1928.

A farmer may only grant this unique charge to a registered deposit-taking bank.

All agricultural charges must be registered with the Agricultural Credits Department in Plymouth within seven days of creation,

otherwise it is void against any third party but still enforceable by the bank against the farmer.

### 7 Are there provisions relating to creditors' rights on default by farmers that apply in your jurisdiction?

Section 6(4) of the ACA 1928 limits a bank's recourse with regards to a farmer improperly selling a charged asset. A bank does, however, retain common law rights to a trust or personal claim for repayment if the proceeds cannot be identified.

As a farmer's bank account is not subject to an agricultural charge, it is important for creditors to retain a right of set-off with regard to any account containing cash. Furthermore, it is imperative to appoint a receiver immediately following default because assets acquired by the farmer after crystallisation will not fall within remit of the security.

As of 6 April 2014, the procedure for commercial rent arrears must be used for commercial property, which includes agricultural land. This supersedes the previous procedure of 'distress' that afforded fewer barriers to creditors.

### 8 Describe any rules relating to public control of farm property in your jurisdiction. What legislation governs them?

The government has the right to make a compulsory purchase orders over agricultural land, usually because of a need for increased housing or infrastructure development. In most cases, but not all, the Acquisition of Land Act 1981 as amended by the Planning and Compulsory Purchase Act 2004 governs the procedure for compulsory purchase of land and acquiring authorities should be able to demonstrate close compliance with the compulsory purchase process and the Crichel Down Rules guidance for the best chances of success.

Compensation is not limited to the open market value of the land but may also include compensation for 'disturbance' or 'injurious affection'. 'Disturbance' is based on the principle of equivalence (ie, an owner should be left no worse off than if his or her land had not been acquired). 'Injurious affection' claims occur where land has been injuriously affected (ie, its value has been affected or physical damage caused).

### 9 Are there any restrictions on foreign ownership of farm property in your jurisdiction? What legislation governs them?

There are no restrictions on foreign ownership of farm property in the UK.

## Government programmes

### 10 Does the government provide agriculture support programmes to producers, processors or agriculture-related businesses and organisations? Outline the programmes and how they are generally accessed.

The EU's Common Agricultural Policy (CAP) programme is implemented in the UK by the Department for Environment, Food and Rural Affairs, primarily by subsidising farmers through the Basic Payment Scheme (BPS). The BPS assists active farmers carrying out agricultural activity on 'eligible' land, with payments varying according to the uses of the land and the area. Farmers (and other producers) can make BPS applications through the government's online Rural Payments Service.

Additionally, there are a number of schemes run under the umbrella of the Rural Development Programme, which provides funding for a wider range of agricultural businesses in order to incentivise various activities. For example, the Countryside Stewardship scheme rewards farmers for taking part in environmental projects and the Growth Programme supports rural businesses that provide jobs and growth in rural communities. A number of these schemes are county-specific.

### 11 Are there any programmes addressing assistance or government incentives for investment by foreign ownership in agribusiness?

The Department for Business, Innovation and Skills, the Department for Environment, Food and Rural Affairs (Defra) and the Department for International Development have jointly implemented the UK Strategy for Agricultural Technologies. As part of this programme, £70 million has been put towards the Agri-Tech Catalyst programme, which provides funding and support to help agricultural businesses get to market

in the UK. Additionally, £90 million has been invested into Centres for Agricultural Innovation, which connects investors (including foreign investors) with academics to facilitate research becoming business.

The Department for International Trade aims to encourage foreign direct investment in the UK's agricultural sector. Its activities include using government influence to address trade barriers in order to accelerate routes to market, facilitating foreign investment in agri-tech through a dedicated body known as the Agri-Tech Organisation, promoting UK agri-tech overseas and introducing UK companies to potential partners to access new markets.

## Food safety, certification programmes, animal safety and disease

### 12 Outline the applicable legislation for primary processors of live animals. Is any distinction made between meat for domestic consumption and meat for export?

Goods derived from animals are referred to as 'products of animal origin' (POAO), which include certain live animals for direct human consumption, foodstuffs, by-products and goods that may have come into contact with animals, such as hay and straw. POAO are subject to animal feed and food hygiene legislation. The Meat Industry Guide is published by the Food Standards Agency (FSA) to assist UK meat plant operators with compliance.

Unless there is a major outbreak of disease, intra-EU transactions of POAO are relatively simple. Here again, the repercussions of Brexit will need to be monitored closely. When exporting POAO to a non-EU country (a 'third country') from the UK, it is the exporter's responsibility to ensure that they are aware of any restrictions and what export conditions apply in advance. Advice can be provided by Defra.

### 13 Describe the food safety regime in your jurisdiction, including applicable legislation and regulations.

The FSA is responsible for food safety and hygiene across the UK. It works with local authorities to enforce food safety regulations and its staff work in UK plants to check the standards are being met. The FSA regularly issues guidance to the food industry, often as a result of new regulations coming into force.

The General Food Law Regulation is directly applicable EU legislation and sets out principles of food safety, which include food traceability requirements and the obligation to only place safe food on the market, with prompt withdrawal or recall of unsafe food. The Food Safety and Hygiene (England) Regulations (2013) (as amended) provide for the enforcement (including imposing penalties) of certain provisions. The Food Safety Act (1990) (as amended) also provides the framework for all food legislation in UK.

### 14 What enforcement can take place in relation to food supply chain safety? What penalties may apply?

Regulation 4 of the General Food Regulations (2004) creates a criminal offence for breaches of the provisions relating to food safety requirements, presentation or traceability. The penalties include a fine or imprisonment for a term not exceeding two years, or both.

### 15 Describe any certification programmes and rules for genetically modified foods, organic foods or other differentiated products.

Each application for the introduction of a new genetically modified (GM) food to the market is reviewed on a case-by-case basis, including a detailed consideration of the potential for toxic, nutritional and allergenic effects, by the European Food Safety Authority in conjunction with the FSA in the UK. In evaluating the application, the FSA seeks expert advice on GM foods from the independent Advisory Committee on Novel Foods and Processes as appropriate.

GM foods may only be authorised for sale if they are judged not to present a risk to health, not to mislead consumers and not to be of less nutritional value than the foods they are intended to replace.

The Novel Foods Regulation (Regulation (EC) No. 258/97, which will be repealed and replaced by Regulation (EU) No. 2015/2283 as from 1 January 2018) lays out detailed rules for the authorisation of novel foods, ingredients and processes. Organic products are notably subject to compliance with the requirements defined under Regulation (EC) No. 834/2007 on organic production and labelling of organic products.



The new Regulations effective from 2018 will bring significant amendments for business operators in the sectors, including clarification on the definition and scope of novel foods regulations, a centralised approval procedure at EU level through the European Food Safety Authority, and a five-year period of data protection for applicants in gathering information and data on a novel food application. Whether and to what extent the UK will implement equivalent changes in spite of Brexit remains to be seen.

#### **16 What are the food labelling requirements, including the applicable legislation, enforcement and penalties?**

Regulation (EU) No. 1169/2011 on the provision of food information to consumers (FIC) provides general rules on food and nutrition labelling. It applies to pre-packed foods from 13 December 2014, with mandatory nutrition declarations coming into force on 13 December 2016.

The Food Information Regulations 2014 (FIR) transpose the FIC into national legislation, incorporating national derogations permitted by the FIC. In England, the FSA leads on food safety aspects of food labelling and liaises with food authorities concerning enforcement.

The FIR enforcement regime uses a system of improvement notices. Failure to comply with an improvement notice will result in a criminal offence (summary conviction, or fine not exceeding £5,000). Criminal offences exist for the contravention of certain provisions, for example, mislabelling of foods containing allergens (as this may result in a risk to consumer health and safety).

Specific categories of products are subject to more detailed requirements. Examples include chocolate and honey. Furthermore, specific labelling requirements are laid down in other legislation such as EU Regulation (EC) No. 1924/2006 on nutrition and health claims.

#### **17 Outline any applicable legislation regarding health of food animals, including transportation and disease outbreak and management.**

The welfare of farmed animals (and prevention of unnecessary suffering) is governed by the Animal Welfare Act 2006 and the Welfare of Farmed Animals (England) Regulations 2007 (as amended, 2010). Requirements include providing a suitable living environment and diet, ensuring normal behaviour patterns and protection from pain, injury, suffering and disease. Anyone who is cruel to an animal, or does not provide for its welfare needs, may be banned from owning animals, fined up to £20,000 and/or sent to prison.

Biosecurity measures prevent the spread of farmed diseases and protect agricultural workers. During an outbreak, Defra will impose restrictions on animal movements and suspend agricultural markets and shows.

Regulation (EC) No. 1/2005 on the protection of animals during transport applies to the transport of live vertebrate animals in connection with an economic activity. The Regulation is implemented by the Welfare of Animals (Transport) (England) Order 2006. Enforcement is carried out by local councils and the Animal and Plant Health Agency (APHA) at markets, ports and roadside, and at supervised loadings of export consignments. Under the foregoing, those that transport animals over 65km (kilometres) in connection with an economic activity are required to hold a Defra transporter authorisation.

#### **18 What are the restrictions on the movement of animals within your country?**

Regulatory restrictions on the transport of animals are covered by question 17 above. Animal movement licences under the Animal Health Act 1981 and the Disease Control (England) Order 2003 (as amended) control livestock movement and ensure the location of animals can be easily identified. There are four general licences, each setting out mandatory rules on cleansing and disinfection, scheduled stops, animal identification and marking, the movement standstill period and exemptions. Livestock-specific movement recording protocols are also required.

All licences stipulate that:

- foot-and-mouth disease checks must be done before moving animals, with positive identifications notified to the local Animal Health and Veterinary Laboratories Agency office;
- animal transport vehicles must be cleaned and disinfected as per animal transport regulations;
- multiple animal pick-ups and drop-offs are permitted;
- transport of more than one species is permitted; and

- animal identification must comply with the relevant identification regulations.

The movement of female livestock or animals that are in the final 10 per cent of their gestation period, or that have calved within the previous week, is not permitted.

#### **19 Describe any restrictions on import of food animals.**

The import of POAO from non-EU countries into England (they do not apply to other members of the United Kingdom) is governed by the Trade in Animals and Related Products Regulations 2011, under the responsibility of the APHA. Importers may require import licences dependent on the type of product being imported. General EU food safety and hygiene requirements will also apply (eg, Regulation (EC) No. 178/2002). The import of POAO from within the EU requires the relevant health certification and product-marking requirements specific to each type of product, standardised across the EU. If the goods are rejected, they must be either re-exported or destroyed.

Animal products include dairy products, eggs and egg products, honey, red meat, poultry, farmed and wild game, and foods containing these, and gelatine (other than capsules for food supplements for human consumption).

Each consignment of animal products must:

- come from EU-approved premises, except for egg products and honey;
- be accompanied by animal health and public health certification (certifications found in Regulation (EU) No. 215/2010); and
- enter the EU through a border inspection post (with veterinary checks).

#### **20 What are the regulations related to livestock slaughtering?**

Regulation (EC) No. 1099/2009 on the protection of animals at the time of killing lays down rules for the killing of animals bred or kept for the production of food, wool, skin, fur or other products, and the killing of animals for depopulation. The Regulation introduces a series of new, directly applicable operational requirements, and requirements for the construction, layout and equipment of slaughterhouses.

The Regulation also permits EU member states to maintain existing national rules in force at the time the Regulation came into force, where they provide greater protection for animals at the time of killing than those in the Regulation, and provides a derogation to allow religious slaughter without prior stunning.

The Welfare of Animals at the Time of Killing (England) Regulations 2015 (WATOK) enforces the requirements of Regulation 1099/2009 and maintains national rules. Anyone carrying out (certain) slaughter operations must hold a certificate of competence (issued by the FSA), under the WATOK Regulations. The FSA issues certificates for slaughterers and other animal operatives such as handlers or shacklers, making sure they have the right training and competence for the types of animals they are handling and the duties they are carrying out.

#### **21 Outline the regulatory regime relating to pest control and pesticides, and other management regimes in relation to disease and pests in plants and animals.**

Biocides control viruses, bacteria, fungi, insects and animals. Safeguards are crucial to ensure safety to people, the environment or animals. The HSE is the UK competent authority.

Two regulatory schemes assess the safety of biocides and active substances within them:

- Biocidal Product Regulation (Regulation (EU) No. 528/2012) (BPR), and its supporting legislation such as the Biocides Review Regulation (EU Regulation 1062/2014), cover a diverse group of products, including disinfectants, pest control products and preservatives; and
- the Control of Pesticides Regulations 1986 (COPR) is a UK scheme covering various pest control products that contain active substances which are not yet regulated under the EU BPR. These products are commonly referred to as 'non-agricultural pesticides' such as wood preservatives, insecticides for public hygiene use, rodenticides and insect repellents, including those applied to animals.

The EU BPR are enforced under the Health and Safety at Work etc. Act 1974 (HSWA), in line with the Health and Safety (Enforcing Authority)

Regulations 1998 (SI 1998 No. 494), by virtue of Regulation 8(1) of the Biocidal Products and Chemicals (Appointment of Authorities and Enforcement) Regulations 2013.

### Business organisation

#### 22 How are agricultural operations typically organised in your jurisdiction?

There is no specific type of legal form that must be used in the agricultural sector. Depending on their size and complexity, agricultural operations may be structured as companies, partnerships, joint ventures, 'branches' of overseas companies or cooperatives (which must be registered in one of several legal forms).

Farming operations, specifically, are generally run in one of the following ways:

- partnerships, where two or more persons operate a single farming business together for profit;
- contract farming agreements, in which the landowner owns a farming business and employs contractors to carry out various farming activities;
- share farming agreements, under which the landowner and share farmer share the land but run separate farming businesses on it;
- farming business tenancies, whereby the landowner leases land to a tenant who carries on a farming business; or
- cooperatives, within which farmers cooperate across production, collection or processing products.

#### 23 Outline any restrictions on foreign ownership of agricultural operations or businesses other than farming operations.

The acquisition of or investment in agricultural operations or businesses by foreign companies is not subject to governmental approval, although mergers with foreign corporations will be subject to review from a competition perspective. Approval is not required for foreign companies setting up agricultural research and development centres or acquiring agricultural land.

Agricultural operations or businesses will be subject to general governmental restrictions on foreign ownership or investment, (eg, restrictions on the provision of funds to or dealing with the assets of sanctioned individuals and entities). General restrictions on mergers that threaten specified public interest concerns or that lessen competition also apply.

### Agricultural workers, immigration, and health and safety

#### 24 Describe any specific rules or laws governing the rights of workers or employees for agricultural operations.

Those who work in agricultural operations will be covered by any rules and laws that govern the rights of workers and employees generally in the UK (eg, the right not to be subjected to unlawful discrimination and, if they have sufficient continuous employment, the right not to be unfairly dismissed). In particular, agricultural workers must receive at least the applicable UK national minimum wage (or national living wage for workers over 25 years old), minimum paid holiday entitlements and statutory sick pay (subject to eligibility criteria).

Agricultural workers in England who are still engaged on a contract entered into before 1 October 2013 may be entitled to enhanced levels of pay (depending on grade), particular terms dealing with allowances, grants and supplements (eg, dog allowances and night work supplements) and more favourable terms dealing with holiday and agricultural sick pay (as were provided for under the Agricultural Wages (England and Wales) Order 2012). Such additional entitlements will continue until the relevant employment contract is changed by mutual agreement or is terminated.

However, all agricultural workers in the rest of the UK are entitled to enhanced, industry-specific terms and conditions (including an 'Agricultural Minimum Wage' where this exceeds the minimum wage applicable to workers more generally). In this regard:

- in Wales, current minimum requirements are set out in the Agricultural Wages (Wales) Order 2016;
- in Scotland, equivalent protections are currently detailed in the Agricultural Wages (Scotland) Order (No. 64); and
- in Northern Ireland, the Agricultural Wages (Amendment) Order 2017 represents the current position.

#### 25 How is farmworker immigration regulated in your jurisdiction?

Following the closure of the Seasonal Agricultural Workers Scheme – which permitted fruit and vegetable growers to employ migrant workers – at end of 2013, there are no longer any immigration schemes that are focused on farm or agricultural work, and employers in these industries are required to comply with the requirements of UK immigration law that apply to all other industries. In particular, companies are required to undertake document checks on all employees to ensure that they have the right to live and work in the UK.

Farm and agricultural workers who are nationals from outside the European Economic Area (EEA) require a specific immigration permission to work in the UK, which may require them to be sponsored under Tier 2 of the points-based system. The majority of roles in the farm and agricultural sectors – such as farmers, horticultural trades, certain agricultural and fishing trades and managers and proprietors in agriculture and horticulture and forestry, fishing and related services – are only capable of sponsorship in certain limited circumstances.

The position on EEA nationals working in agricultural jobs is likely to be impacted by the immigration regime that is implemented post-Brexit, the exact details of which are yet to be announced.

#### 26 Outline the health and safety regulations relating to farmworkers in your jurisdiction.

The HSWA and the Management of Health and Safety at Work Regulations 1999 (MHSWR) require companies and individuals to ensure that adequate provision is made for health and safety at work. Under the HSWA and MHSWR, employers – including those in the agricultural sector – must ensure the health, safety and welfare of employees and any other potentially affected individuals. This includes making a suitable and sufficient assessment of health and safety risks and providing the necessary information, training, instruction and supervision in light of those risks.

There are a number of further regulations made pursuant to the HSWA and MHSWR that deal with specific health and safety issues (eg, the Health and Safety (First-Aid) Regulations 1981, which require employers to have adequate arrangements for first aid). The HSE has responsibility for enforcing the HSWA and MHSWR and has identified the agricultural sector as one of particular focus given that studies have demonstrated a high incidence of injuries and fatalities in the sector. The HSE has a website dedicated to promoting health and safety in the agricultural sector, which contains numerous helpful resources from FAQs to a bespoke guidance manual, *Farmwise*.

### International trade

#### 27 How are the export and import of agricultural products (animal and non-animal) regulated in your jurisdiction?

The EU has created a CAP aimed at, among other things, stabilising markets and assuring the availability of supplies at reasonable prices while ensuring a fair standard of living for the EU agricultural community. The EU has enacted various regulations in view of the requirements for the proper operation (including import and export) of the CAP that are directly applicable in all EU member states.

The CAP covers a broad scope of agricultural products, ranging from basic to processed food and drink products. By using the applicable commodity code (ie, Combined Nomenclature code for customs purposes) of the agricultural product, the business operator can determine: whether the relevant agricultural product falls under a CAP scheme; and the applicable requirements (eg, registration, licence, refunds and quotas) in relation to the importation or exportation of the relevant agricultural product.

Defra is responsible for the agricultural policy (including licences for animal health imports) and the Rural Payment Agency is responsible for any registration, import and export licensing, and export refunds in UK.

#### 28 May tariffs, quotas or similar measures be put in place?

The EU can impose autonomous and preferential tariff import quotas that have direct effect in all EU member states (including the UK). Such import quotas can allow the import of specific agricultural products to be made at a reduced or nil rate of import duty and may be subject to import licences and security in the EU member state of importation.

## Update and trends

### Trade secrets and competitive intelligence

For many agricultural businesses, the most difficult intellectual property to protect is trade secrets and know-how, such as financial data and valuable information relating to unique manufacturing methods. The only way to protect these assets has traditionally been by way of contract; however, a pending change in law means this will no longer be the case. The new law presents both a sword and a shield, not only enabling agribusinesses to better protect their own trade secrets, but also providing an opportunity to legally access those of their competitors.

### Brexit

Brexit has created a number of uncertainties for agribusinesses, including:

- the status of direct farm subsidies outside the CAP;
- access to foreign unskilled labour;
- changes to import regulations;
- supply and distribution contract compliance; and
- the implications for valuable EU-protected food names.

### Big data

Like many economic sectors, the agribusiness sector can benefit from the potentialities of 'big data', which can notably improve forecast accuracy

and support decision-making at many levels, from logistics management along the supply chain to pricing or crop production planning. The sector will thus be sooner or later confronted with the legal questions that the use of big data raises, including the need to comply with data protection legislation where personal data is involved.

### Focus on food safety and official controls

Consumers are increasingly concerned about the safety aspects of their food products. Regulatory requirements surrounding traceability and origin, nutritional information and labelling have a huge impact on agribusinesses. Regulators are becoming increasingly strict. In the aftermath of widespread fraud and shortcomings identified in the sector, such as the horse meat scandal in 2013 and the Fipronil eggs scandal that emerged in 2017, a recast set of EU rules on official controls and enforcement has been enacted, that will gradually be implemented in the coming years.

### Innovation in farming and production methods

Continuous innovation in farming and manufacturing methods, processing, packaging and chemical substances used as pesticides and biocides will be accompanied by new regulatory requirements. New developments in agri-tech (or 'ag-tech') are driving disruptive change in the sector, and will have a huge impact on how agri-businesses are managed.

In practice, most import quotas work on a first-come, first-served basis irrespective of where the goods are imported into the EU.

## 29 What treaties apply to the import and export of agricultural products in your jurisdiction?

The Treaty of Rome, creating the European Economic Community, was the founding legal basis for the CAP. Currently, the Treaty on the Functioning of the European Union sets out the objectives of CAP that are further shaped and effectuated by various EU regulations.

In addition, free trade agreements (FTAs) that the EU has concluded with various third countries can be applicable and have effect in relation to the importation and exportation of agricultural products.

The UK, by virtue of the European Communities Act 1972, is legally bound to the EU Treaties (eg, Treaty on European Union and Treaty on the Functioning of the European Union) and enacted regulations and concluded FTAs by the EU.

Following the referendum on 23 June 2016, the UK government has formally announced on 29 March 2017 that the country will leave the EU. As from 29 March 2017, a two-year period was started following Article 50 of the Treaty on European Union to negotiate future relations between the EU and the UK. During this period, EU law will continue to apply. After this period, and possibly after an agreed transition period (agreed between the UK and the remaining 27 EU member states) in which EU law may continue to apply, the UK will not be part of the EU anymore, and thus will most likely no longer be part of - among others - the CAP and the Common Commercial Policy (ie, EU FTAs). As negotiations are still pending, it is, however, unclear how future relations between the EU and the UK will look like when the two-year period will end, which will currently be on 29 March 2019.

## Intellectual property

### 30 How are plant breeders' property rights protected in your jurisdiction?

In the UK, plant breeders' property rights are protected by the Plant Varieties Act 1997. The duration of these rights is 30 years from the date of grant for potatoes, trees and vines varieties and 25 years for other plant varieties. In order to qualify, the plant variety must be distinct, uniform, stable and new. The plant breeders' rights entitle the holder to prevent others from using the protected plant variety for production or reproduction, conditioning for the purpose of propagation, selling, offering for sale or other marketing, exporting, importing, or stocking the protected plant variety for any prohibited purpose.

A notable exception is the 'breeder's privilege', which allows the use of the protected plant variety as a starting point for breeding a further plant variety. The plant breeders' rights also do not extend to plant varieties used for private and non-commercial, or experimental purposes. Plant varieties will not be deemed new if sold or disposed for the purpose of exploiting the variety in the UK more than one year before the

application or, for elsewhere than in the UK, more than four years (or six years for trees and vines) before the application. After two years of plant breeders' protection, any person can apply for a compulsory licence, upon fulfilment of certain criteria, if the rights holder unreasonably refused the grant of such licence or imposed unreasonable terms of such licence.

A similar regime is available at EU level through the Regulation (EC) No. 2100/94 of 27 July 1994 on Community plant variety rights. The Community rights are granted for the entire territory of the European Community (ie, 28 member states). The term of the Community rights is 25 years, and 30 years for vine and tree species. However, a plant breeder must surrender its national plant breeder's rights upon grant of Community plant variety rights.

According to patent law in the UK and the European Patent Convention, plant breeders may to some extent benefit from patent protection. Plant and plant material are patentable; however, plant varieties are excluded from patentability irrespective of the way they were produced. Processes, which are not essentially biological processes used for the production of plants (ie, crossing or selection breeding), are patentable and this protection extends to products directly obtained by such processes. Products and products-by-process, which are not plant varieties but result from essentially biological processes, are also patentable. Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions also establishes that a new plant variety bred as a result of genetically modifying a particular plant variety is excluded from patent protection, even if the genetic modification is the result of a biotechnological process, but biotechnological inventions relating to plants are patentable if the technical feasibility of the invention is not confined to a particular plant variety.

### 31 How is farmers' access to crop varieties and plant technologies addressed in your jurisdiction?

Farmers have access to protected plant varieties through 'farmer's privilege', which allows them to use for propagating purposes and on their own holdings the product of the harvest obtained by planting propagating material of the protected variety or of a variety essentially derived from it.

The UK Patent Acts 1977 also provides for an exception to patent infringement for any act that consists of the use by a farmer of the product of his or her harvest for propagation or multiplication by him or her on his or her own holding, where there has been a sale of plant propagating material to the farmer by the proprietor of the patent or with his or her consent for agricultural use. This exception only applies to specific plant species and groups listed in Schedule A1(2) of the Patents Act. The farmer is still liable to pay the rights holder an equitable remuneration for that authorised use unless the farmer is a 'small farmer' as defined in the same Schedule.



**32 What other intellectual property considerations apply to agribusiness in your jurisdiction?**

In the UK, the Plant Varieties Act 1997 provides for the registration of the name of the protected plant variety. This registered name must be used when selling, offering for sale or otherwise marketing propagating material of the variety. This duty to use the registered name continues after the expiry of the plant breeders' rights. The name of a plant variety can also be protected by trademark rights, but the trademark or trade name, whether registered or not, can only be used if it is juxtaposed with the registered name and if the latter is easily recognisable.

A similar rule exists for plant varieties protected under the Community regime. In this case, the designated plant variety denomination must be easily recognisable as such, when used with a trademark or trade name associated with it. This also extends beyond the termination of the Community plant variety right.

**Environmental issues****33 Describe the regulatory agencies that have a role in managing the environmental impact of agricultural production in your jurisdiction.**

Defra is the government department responsible for protecting the UK's natural environment and supporting its food, agriculture and fisheries industries. In particular, Defra is in charge of implementing CAP reform as well as of monitoring environmental quality relating to agriculture (eg, by monitoring pesticide use).

Defra works closely with other executive non-departmental public bodies (including the Environment Agency) and executive agencies (such as the APHA). The Environment Agency is an important body, responsible for regulating major industry and waste operations, water quality and fisheries, among others. Agricultural businesses in need of environmental permits relating to waste, water or other activities must obtain their permit from the Environment Agency (or sometimes the local council; see question 35). Other bodies that may be involved with the environmental impact of farming include Natural England (it manages the Countryside Stewardship scheme) and local planning authorities (who manage general planning permission issues).

**34 Describe how water and air pollution is regulated in relation to primary agriculture in your jurisdiction.**

Water and air pollution stemming from agricultural activity is regulated through EU directives that are transposed into national law (such as the Nitrates Directive), as well as national regulations, policies and initiatives.

Air pollution is tackled in a variety of ways. For example, businesses that emit potentially harmful substances (such as large chicken farms) are required to obtain an environmental permit, which sets limits or controls on emissions to air or water. In addition, several farming sectors participate in voluntary agreements made by UK industry and the Environment Agency to reduce energy use and carbon dioxide emissions.

Water pollution is subject to similar restrictions – an environmental permit issued by the Environment Agency may be required if an activity involves discharging liquid effluent or wastewater into surface or groundwater. In addition, the use of nitrates is controlled through the Nitrate Vulnerable Zone rules, enforced by the Environment Agency. Another example of water pollution regulation is the controls on use of pesticides, whereby farmers may need to obtain a certificate of competence before spraying pesticides and follow a code of practice issued by Defra and the Health and Safety Executive.

**35 Describe how liquid and other waste is regulated in relation to primary agriculture in your jurisdiction.**

Agricultural businesses must normally apply to the Environment Agency (or possibly the local council, depending on the type of activity and the pollution risk) for an environmental permit if they use, recycle, treat, store or dispose of waste. This includes farms running small waste incineration plants or solvent emission activities (releasing organic solvents into the air). Environmental permits must also be obtained if an entity carries out a standalone water discharge activity or standalone groundwater activity.

Some waste operations are exempt from needing a permit and can instead operate under a waste exemption, subject to certain criteria, such as storing sewage sludge at a farm before it is spread on land (the sludge must then be used in accordance with the Sludge (Use in Agriculture) Regulations 1989), or burning certain waste products on bonfires. Furthermore, the Environment Agency is not enforcing the requirement for an environmental permit in specific cases for certain activities – Regulatory Position Statements explain the circumstances when you do not need to apply for a permit for these activities.

Planning permission for a waste operation may also be required. If a business produces, holds or stores hazardous waste, that hazardous waste must be collected and recycled or disposed of by an authorised business. Finally, waste transporters, buyers, sellers, brokers or dealers should register with the Environment Agency as a waste carrier.

\* *The authors would like to thank Marjolaine Viret, Delicia Clarke, Alexandrine Ananou, Emma Cordiner, Simon Fielder, Robert Williams, Brian Mulier, Veronica Webster and Jonathan Goldsworthy for their assistance with this chapter.*

# Bird & Bird

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