

**This document represents early policy development for “supply chain fairness Regulations” to be introduced covering the UK fresh produce sector.**

## **Proposals for Fair Dealings Regulations in the Fresh Produce Sector**

We’re looking to introduce new regulations for the fresh produce sector that will improve transparency within contractual agreements and tackle unfairness where it exists. This document details the initial proposals for the Fair Dealings Regulations in the Fresh Produce sector. We would welcome your feedback by **Friday 18<sup>th</sup> April**. Please provide this via email to: [freshproducecontractconsultation@defra.gov.uk](mailto:freshproducecontractconsultation@defra.gov.uk)

1. Would these regulations tackle the issues of unfairness that you are aware of in the supply chain?
2. Would any further measures help promote fairness and transparency in the supply chain? Have we missed anything substantive or impactful?
3. Could any of the measures here create issues or unintended consequences that may not have been considered?

This document sets out the policy proposals for Regulations made using the powers under section 29 (the fair dealings provisions) of the Agriculture Act 2020 which will apply to the sale of fresh produce in the UK.

In December 2023, Defra launched a public consultation exploring contractual practice in the UK fresh produce sector. We received 134 responses to the consultation, with views shared from across the supply chain. The analysis of all responses is the basis for the proposals contained herein.

The proposed Regulations will impose obligations on any businesses (“business purchasers”) purchasing fresh produce from sellers for the purpose of providing greater certainty and transparency for both parties. This document sets out, for stakeholder comment, proposals for obligations the proposed Regulations may introduce to address unfair contractual practices in the fresh produce sector. We plan to practise open and transparent engagement with those across industry covering the whole supply chain and are happy to speak with any interested parties through emails, meetings or workshops. The exact duration of engagement on these proposals will depend on what arises from them, but we will ensure sufficient time for engagement on all major versions of these proposals.

### **Regulating behaviours**

We have been made aware from the [review of the UK fresh produce sector](#) that unfair practice can occur as a result of the timing in which negotiations take place, prior to contractual agreements being made. The next version of the proposed Regulations is therefore likely to include a section on regulating these behaviours. We're looking for industry input to help us evidence the need for this, and inform if and what interventions are necessary.

In particular, we are looking to gain a more detailed understanding of the process and timeline for growing different crops and how the commercial negotiations and arrangements overlap with this. We would welcome feedback on the following:

1. At what stage of the growing timeline (OR from a purchasing perspective how close to the delivery of the fresh produce) is optimal for purchase agreements to be initiated and finalised?
2. What are the impacts on your business from purchase agreements being finalised outside of this optimal period?

### 1. Extent

The proposed Regulations will apply to all UK business purchasers who purchase fresh produce from a seller (a primary producer, a recognised producer organisation or a recognised association of producer organisations, including those located outside the UK – see glossary at end of document for more details).

### **Notice to disapply the Regulations**

We have been made aware about the value of the 'fresh buyers'/'spot purchase' market (both as a commercial outlet for producers and supply balancing mechanism for purchasers) and recognise that the blanket requirement for written agreements would have implications for the continuation of this market.

The Pigs Fair Dealing sector similarly has a spot market which holds value for both producers and processors, whereby the regulations now place the onus on the producer to decide whether they want a compliant contract. Where one is requested, it must satisfy the regulatory requirements, but where a producer and processor are content with an arrangement on informal terms, this can continue.

We are looking to understand how this 'fresh buyers' market operates further and how our proposed Regulations will seek to support this. We would therefore welcome feedback on the following:

1. How does this 'fresh buyers' market currently operate? How might be the impacts of these current proposals on this market?
2. Would taking the 'notice to disapply' approach taken in the Pigs sector impact this 'fresh buyers' market? Would this approach have any broader impacts on how these regulations apply to agreements outside the 'fresh buyers' market?
3. Should there be any limitations on when a notice to disapply can be issued? For instance, should it only be permitted when goods can be delivered within a short timeframe?

## 2. Implementation period

We recognise the need for all businesses to review their current purchase agreements and make any relevant changes. To allow for this, we will include a grace period for all business purchasers to become compliant. This period would be 6 months (from the date of commencement for the proposed Regulations) for all new purchase agreements and 18 months (from the date of commencement for the proposed Regulations) for existing purchase agreements.

## 3. Requirement to use a written purchase agreement and general provisions

A business purchaser may not purchase fresh produce from a seller unless the purchase is made under a written purchase agreement that complies with the requirements of the proposed Regulations. A purchase agreement must contain a term that requires the business purchaser to act in good faith in relation to the purchase agreement. A purchase agreement may not contain any terms that are contrary to the provisions of the proposed Regulations.

## 4. Express terms

The purchase agreement must contain all express terms that apply to fresh produce purchases. Express terms cannot be contained in any other documents or articles, without also appearing within the purchase agreement.

The purchase agreement must be compliant with all the provisions for purchase agreements contained in the proposed Regulations.

## 5. Supply period and purchase agreement terms

The purchase agreement must include provisions which outline its duration for the purchase of fresh produce and the first date of supply. Purchase agreements can be either fixed-term or rolling purchase agreements. The purchase agreement must state whether it is a fixed-term or rolling contract.

Fixed-term purchase agreements are permitted and must be set to expire on a particular named date or on the expiry of a specific period.

Rolling purchase agreements can remain in place and be entered into, providing that they comply with the rules around termination. A rolling contract is a purchase agreement that will continue until one of the parties terminates it.

## 6. Supply volumes

A purchase agreement must include provisions which cover the volume of fresh produce to be covered by the purchase agreement and over what time periods.

We appreciate that predicting supply volumes can never be done precisely, and so the proposed Regulations would allow for both parties to agree an approach to managing supply volumes, although this should be done in a quantifiable way. This can include

pre-agreed tolerances, where an acceptable level of over- or under-supply is permitted without breaching the purchase agreement terms, or a more flexible and dynamic approach that considers factors impacting production such as weather, pests, and disease.

The purchase agreement must also set out the consequences of breaching these tolerances and the remedies available to either party.

#### 7. Price and pricing mechanism

All purchase agreements must include information about the price that the business purchaser will pay, or the means by which the price to be paid is determined, for fresh produce supplied.

The proposed Regulations will set clear terms around pricing. Purchase agreements must offer fixed prices that a seller can expect to be paid or more details on the ways that a variable price will be determined, and must set out the factors that the parties will have due regard to when setting a price.

To support this, the proposed Regulations will allow sellers a way to request a written explanation of how the price was determined. This only applies where **a purchase agreement uses a variable price model** for either or part of the full duration of the purchase agreement and the business purchaser has clearly set out the factors that it will have due regard to when setting a price. This may include factors such as input costs, and other factors such as fresh produce quality and size.

The seller must make the request for the written explanation in writing to the business purchaser. The business purchaser must provide the explanation within seven days of the day that the request was given. Sellers can only request this written explanation once for every time the price is determined.

#### 8. Method and frequency of payment

Purchase agreements must also outline all terms and conditions related to how and when payments will be made to the seller.

#### 9. Referral of a variable price to an independent third party

If a factor used to calculate a variable price relates to confidential data and is derived from the business purchaser, the purchase agreement must set out the procedure by which the seller can refer the explanation of how price was determined to a third party. The third party can verify the confidential information is accurate and supports the explanation of the price given. The third party can be any individual or organisation agreed by both parties and the name of this independent third party must be included within the purchase agreement. The independent third party should be suitably professionally qualified and able to analyse business data and provide analytical financial advice. The purchase agreement must also set out how the costs of the independent person will be apportioned between the parties. But the purchase agreement must provide that the producer may not be apportioned a greater share of

the costs of engaging the independent person than is apportioned to the business purchaser.

#### 10. Specification

The purchase agreement must explicitly specify the minimum specifications (e.g. size, class, colour, presentation, marking etc) that will be utilised when valuing fresh produce.

We appreciate that controlling specifications is not always possible, and so the proposed Regulations allow for both parties to agree an approach to managing differing standards, although this must be done in an objective or quantifiable way. This can include pre-agreed tolerances, where an acceptable level of variations can be permitted without breaching the purchase agreement terms or a more flexible and dynamic approach that considers factors impacting production such as uncontrollable factors like weather, pests, and disease that impact supply nationally and globally. Risks arising as a result of uncontrollable factors should be shared by businesses throughout the supply chain.

#### 11. Charges and deductions

The purchase agreement must specify all possible charges, deductions and possible bonuses related to the payments, including haulage and collection charges. It must include all information relating to these payments, including the reasoning behind them and date of payments.

#### 12. Force Majeure

A purchase agreement must include provision for force majeure. The provision must set out what constitutes a force majeure scenario and what action can be taken by both the business purchaser and the seller in such a situation.

Force majeure is not to be used in the case of a foreseeable event, an event in one party's control, or to be used because of changed market conditions. Instead, it is usually defined as 'certain acts, events or circumstances outside of either party's control, that prevent a party from fulfilling their obligations under the purchase agreement'. Each purchase agreement must describe its own force majeure provision, but a non-exhaustive list of such circumstances which could be specified includes extreme weather events, a disease outbreak on a farm, and emergency government interventions that lead to a cessation in trading. Financial difficulty cannot by itself be grounds for force majeure.

#### 13. Cooling off period

A purchase agreement must provide that the producer may, at any time before the expiry of the cooling off period, terminate the contract without any penalty or liability. The purchase agreement must provide that the termination is to have immediate effect. The purchase agreement must provide that a producer is not required to give any reason for terminating the purchase agreement before the expiry

of the cooling off period. The “cooling off period” is a period of 21 days beginning with the date on which the contract was made.

#### 14. Termination

All purchase agreements must include a termination process. The termination process must include a requirement for notice of termination of the purchase agreement to be made in writing to persons nominated by the business purchaser and seller.

The purchase agreement must also set out all scenarios where the purchase agreement can be terminated immediately by the seller without mutual consent through a written notice. This must include:

- a) Where the business purchaser is insolvent.
- b) Within 14 days of the seller becoming aware of the business purchaser materially breaching the purchase agreement.
- c) Where the business purchaser fails to make a payment in accordance with the purchase agreement and the seller gives notice to the business purchaser about that failure; within 21 days of that notice being given if the payment was not made within 7 days of that same notice.
- d) Within 14 days of the third occasion on which the business purchaser fails to make a payment in accordance with the purchase agreement.
- e) Within 14 days of the death of a relevant person named in the purchase agreement.
- f) Within 14 days of a requirement to pay a civil penalty or compensation being imposed on the business purchaser under the proposed Regulations

#### 15. Variations to the purchase agreement terms

A purchase agreement must not be varied by either party without the proposed variation having been agreed, in writing, by both business purchaser and seller.

#### 16. Dispute Resolution

A purchase agreement must set out a procedure whereby the seller can make a complaint to, the business purchaser in respect of the business purchaser’s compliance with the proposed Regulations (or any general concerns related to the purchase agreement).

It is permissible for a representative organisation to raise a complaint on behalf of their member(s).

The specific details of the procedure can be agreed between the parties, although the procedure must include the following, at a minimum:

- a) that the seller or their representative organisation must make the complaint by giving a notice to the business purchaser;
- b) the contact details of a person to whom the seller or their representative organisation may give the notice; and

- c) that, upon receiving the notice, the business purchaser must investigate, and take all reasonable steps to resolve, the complaint.

## 17. Enforcement and penalties

### **Agricultural Supply Chain Adjudicator (ASCA)**

For more information on the ASCA, please visit [The Agricultural Supply Chain Adjudicator \(ASCA\): making a complaint - GOV.UK](#)

The enforcement procedure under the proposed Regulations will set out how complaints relating to a business purchaser's alleged non-compliance with the proposed Regulations can be made and how complaints will be investigated and determined.

An enforcement regime has been created to oversee regulatory compliance. This responsibility will sit with the Agricultural Supply Chain Adjudicator (ASCA), which is already established to conduct enforcement activity relating to the Fair Dealing Obligations (Milk) Regulations 2024, on behalf of the Secretary of State for Defra. The ASCA will also be responsible for any other sectors where supply chain fairness Regulations are subsequently introduced.

All sellers who enter into a purchase agreement with a business purchaser will be able to approach the ASCA with an allegation of regulatory non-compliance (i.e. a complaint), so long as they have previously undertaken the dispute resolution procedure set out in their purchase agreement.

If a business purchaser is found to have breached the proposed Regulations, a monetary penalty (the maximum amount is 1% of the business purchaser's turnover) or requirement to pay compensation, or both, may be imposed on the business purchaser. Statutory guidance on the imposition by the ASCA, acting on behalf of the Secretary of State, of a civil penalty and/or compensation will be published by Defra prior to the proposed Regulations coming into force.

## Glossary of terms

Terms to define:

- **“Fresh produce”** refers broadly to edible fruits and vegetables, including potatoes and excluding ornamentals. We will discuss with stakeholders for input into an exhaustive list.
- **“seller”** means, in relation to the purchase of fresh produce, a primary producer, a recognised producer organisation (under s.30 of the Agriculture Act 2020) or a recognised association of producer organisations (under s.30 of the Agriculture Act 2020) including those located outside the UK.
- **“primary producer”** means, in relation to the purchase of fresh produce, a person carrying on an agricultural activity for the production of fresh produce or otherwise in connection with their production.
- **“business purchaser”** means, in relation to the purchase of fresh produce, a person who purchases fresh produce in the course of carrying on a business that includes purchasing products of that kind.
- **“purchase agreement”** means a contract made by a business purchaser for the purchase of fresh produce from a seller;
- **“fixed-term purchase agreement”** is a purchase agreement that will terminate on the expiry of a specific period or on a specified date.
- **“rolling purchase agreement”** is a purchase agreement that will continue until one of the parties terminates it.
- **“fixed price”** is a price, set out in the purchase agreement, that is expressed per unit of fresh produce and will be paid by the business purchaser to the seller for fresh produce supplied under the purchase agreement.
- **“variable price”** is a price per unit of fresh produce that is not fixed at the point that the purchase agreement is made but is determined in accordance with, or by the business purchaser, with reference to factors set out in the purchase agreement.
- **“representative organisation”** means—
  - a producer organisation or an association of producer organisations recognised under Chapter 3 of Title 2 of Part 2 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products; or
  - a pre-commencement society, within the meaning of section 150 of the Cooperative and Community Benefit Societies Act 2014, that does not carry out processing activities