



The Scottish Parliament
Pàrlamaid na h-Alba

Published 3 March 2020
SP Paper 690
3rd Report, 2020 (Session 5)

Rural Economy and Connectivity Committee Comataidh Eaconomaidh Dùthchail is Co- cheangailteachd

Stage 1 Report on the Agriculture (Retained EU Law and Data) (Scotland) Bill



Published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish
Parliament website at:
[http://www.parliament.scot/abouttheparliament/
91279.aspx](http://www.parliament.scot/abouttheparliament/91279.aspx)

For information on the Scottish Parliament contact
Public Information on:
Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@parliament.scot

Contents

Summary of Recommendations	1
Introduction	8
Consideration by the Rural Economy and Connectivity Committee	8
Committee membership changes	8
Consideration by other committees	8
Background to the Bill	10
Relationship with UK Government Policy	11
General views on the Bill	13
Purpose of the Bill	14
Non-regression	15
Proposals for time limitation of powers	16
Part 1 - Retained EU Law	19
Simplification and improvement of CAP legislation	19
Use of negative procedure	20
Less Favoured Area Support Scheme	21
Continued operation of the CAP post-2020	22
Pilots	23
Financial provision in CAP legislation	24
Capping of payments	27
Public intervention and private storage aid	28
Fruit and vegetable aid scheme	30
EU Food Promotion Scheme	31
Marketing standards	32
Carcass classification	34
Part 2 - Collection and processing of data	36
Definition of agricultural activity	36
Additional data collection	37
Environmental impact	39
Reporting to Parliament	41
Long-term rural policy for Scotland	42
Conclusion	44
Annex A: Consideration by other Committees	45
Annex B: Extract of minutes	46
Annex C: Written Evidence	48

Rural Economy and Connectivity Committee

Remit: To consider and report on matters relating to the rural economy within the responsibility of the Cabinet Secretary for the Rural Economy and Tourism and matters falling within the responsibility of the Cabinet Secretary for Transport, Infrastructure and Connectivity.



<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/rural-committee.aspx>



Rec.committee@parliament.scot



0131 348 5244

Committee Membership



Convener
Edward Mountain
Scottish Conservative
and Unionist Party



Deputy Convener
Maureen Watt
Scottish National Party



Peter Chapman
Scottish Conservative
and Unionist Party



John Finnie
Scottish Green Party



Rachael Hamilton
Scottish Conservative
and Unionist Party



Emma Harper
Scottish National Party



Richard Lyle
Scottish National Party



Angus MacDonald
Scottish National Party



Mike Rumbles
Scottish Liberal
Democrats



Colin Smyth
Scottish Labour



Stewart Stevenson
Scottish National Party

Summary of Recommendations

1. This section includes a summary of the recommendations and conclusions made throughout the report by the Rural Economy and Connectivity Committee in its consideration of the Agriculture (Retained EU Law and Data) (Scotland) Bill.

Overall conclusion

The Committee supports the general principles of the Agriculture (Retained EU Law and Data) (Scotland) Bill and recommends to the Parliament that they be agreed to.

Consideration by other committees

The REC Committee draws the attention of the Scottish Government to the specific concerns raised by the ECCLR Committee regarding the constitutional context for the Bill and requests that Scottish Ministers take account of these in the ongoing development of policy in this area.

General views on the Bill

The Committee notes the broad level of stakeholder support for the principles underpinning the Bill and a general desire to see the Bill progress as an important mechanism to facilitate a smooth transition for the agricultural sector as the UK leaves the European Union, reflecting the recommendations set out in the "Stability and Simplicity" consultation.

However, the Committee also acknowledges the views of those stakeholders who are keen to ensure that the development of policy for the sector post-2024 is driven forward by the Scottish Government, with an objective of bringing forward new primary legislation as soon as is reasonably possible.

Purpose of the Bill

The Committee draws the Scottish Government's attention to the views expressed by multiple stakeholders that the Bill lacks an overarching purpose or direction. It recommends that Scottish ministers give further consideration as to how these specific concerns might be addressed during the Bill's passage.

Non-regression

The Committee is reassured by commitments made by the Cabinet Secretary that exercise of the powers conferred by the Bill will not result in any regression in standards. However, the Committee invites the Scottish Government to consider whether the Bill might be amended at Stage 2 to provide those stakeholders expressing concern on the subject of non-regression with further reassurance.

Proposals for the time limitation of powers

The Committee notes the reassurances provided by the Scottish Government that it does not intend to exercise the powers conferred by this Bill any longer than is strictly necessary. However, the Committee is nonetheless concerned that, without additional safeguards, the powers conferred by the Bill as a whole, and section 2 in particular, could be used by future administrations in perpetuity to amend rural policy via secondary legislation.

On this basis, the Committee shares the concern of both stakeholders and the DPLR Committee that it would not be proportionate for the Scottish Government to have the potentially broad power conferred by section 2 of the Bill on an indefinite basis.

The Committee endorses the view expressed by the DPLR Committee, with the exception of its proposal that a sunset clause should be extended to 2030, which it considers to be too far in the future. It therefore calls on the Scottish Government, as the Bill progresses to Stage 2, to bring forward proposals for a sunset clause extended to a date that gives due reference to the planned end of the transition period in 2024. As recommended by the DPLR Committee, the REC Committee believes that, should the Scottish Government wish to continue to retain this power beyond the date of the sunset clause, it should be required to seek the renewed approval of the Scottish Parliament.

Simplification and improvement of CAP legislation

The Committee welcomes the Scottish Government's willingness to consider further the wording of section 2 of the Bill as regards the precise extent of powers conferred to simplify and improve CAP legislation.

Use of negative procedure

The Committee endorses the concerns expressed by the DPLR Committee and some stakeholders regarding the blanket use of the negative procedure for the exercise of powers conferred by section 2 of the Bill. It therefore believes that any measures introduced using these powers that have wider policy implications

should be made subject to the affirmative procedure and calls on the Scottish Government to bring forward amendments at Stage 2 to this effect.

Less Favoured Area Support Scheme

The Committee wishes to draw the Scottish Government's attention to the desire of a number of stakeholders to see the powers conferred by section 2 of the Bill used to reform or replace the existing Less Favoured Area Support Scheme with a view to better targeting and improving support for less favoured areas and delivering positive environmental outcomes.

Continued operation of the CAP post-2020

The Committee welcomes additional clarification provided by the Scottish Government during oral evidence regarding the legal purpose behind the powers conferred by section 3 of the Bill. It also notes the conclusions of the DPLR Committee with respect to section 3 of the Bill that it has been reassured by the Scottish Government that the power conferred by section 3(1) is subject to the affirmative procedure. However, the Committee calls on the Scottish Government to consider whether the wording of section 3 might be further clarified or, if necessary, tightened up at Stage 2.

Pilots

The Committee acknowledges the multiple benefits of trialling policy development via pilots and calls on the Scottish Government to keep it regularly updated regarding the development of policy on pilots to be introduced using the powers conferred by this Bill.

The Committee welcomes the Scottish Government's commitment to a renewed focus on an outcome-based, as opposed to an area-based, approach to the calculation and allocation of farm payments. It looks forward to further updates as to how Scottish ministers intend to consult on, develop and implement this significant shift in approach to the system of farm payments.

Financial provision in CAP legislation

The Committee draws the Scottish Government's attention to concerns raised by a number of stakeholders that the powers conferred by section 4 of the Bill could be used to make radical shifts in funding priorities between the pillars of the CAP. The Committee calls on the Scottish Government to:

- **provide further reassurance that it has no intention to make wholesale shifts in funding between pillars;**
- **give further consideration to providing additional safeguards to ensure that these powers cannot be used in such a way by a future administration; and**
- **provide additional clarity in particular regarding the Scottish Government's ongoing commitment to the financing of environmental schemes.**

The Committee specifically welcomes the Scottish Government's commitment to allow for appropriate consultation prior to exercising the powers conferred by sections 3 and 4 of the Bill.

Capping of payments

The Committee notes the mixed views of stakeholders on the Scottish Government's commitment to introduce a cap on direct payments and to develop substantive measures in this respect to be ready for implementation in 2021.

The Committee requests that Scottish ministers keep it regularly updated concerning the ongoing development of policy on capping and the detail of specific schemes to be supported using the funds freed up as a result of capping individual payments.

Public intervention and private storage aid

The Committee accepts the technical justification for the powers conferred by section 5 of the Bill as enabling Scottish ministers to mirror potential non-intervention in specific agricultural markets elsewhere in the UK in the future.

The Committee also notes widespread industry support for the inclusion of these powers and highlights the possibility that public intervention might yet be required to protect specific agricultural sectors in Scotland against specific exceptional circumstances, for instance in the event of a no-deal exit from the European Union.

Fruit and vegetable aid scheme

The Committee supports the proposed continuation of the fruit and vegetable aid scheme. It also draws the Scottish Government's attention to industry support for further exploration of the potential for rolling out this model to other sectors of

the agricultural industry as a means of strengthening the role of producer organisations in those sectors.

The Committee endorses and draws the Scottish Government's attention to the recommendation of the DPLR Committee that, as for section 2, section 6 of the Bill should be subject to a sunset clause, as outlined earlier in this report.

EU Food Promotion Scheme

The Committee notes the availability of alternative domestic measures to achieve the same objectives as the EU Food Promotion Scheme more effectively and, in that context, fully supports the Scottish Government's stated intention to abolish the EU Food Promotion Scheme using the powers conferred by section 7 of the Bill.

Marketing standards

The Committee highlights the emphasis placed by industry stakeholders on the importance of the rest of the UK as a marketplace for Scottish agricultural products and the need to maintain alignment in marketing standards across the UK internal market, in order to avoid barriers to the movement and sale of these products post-Brexit.

The Committee therefore welcomes the Scottish Government's stated intention to use the powers conferred by sections 8 and 9 of the Bill to ensure there is no divergence in marketing standards between Scotland and the rest of the UK.

In addition, the Committee supports the recommendation of the DPLR Committee that, given the extent of powers it confers, both in terms of modifying marketing standards and in terms of creating associated offences for those who breach those standards, section 8 of the Bill should be subject to the affirmative rather than negative procedure.

The Committee recommends that Scottish ministers should consult further with industry stakeholders regarding the potential merits or otherwise of including sheep and pig meat in section 9 of the Bill.

Carcass Classification

The Committee notes that the powers conferred by section 10 of the Bill would allow the Scottish Government to introduce mandatory sheep carcass classification should it consider it appropriate to do so, and believes that any such move should be subject to further comprehensive pre-consultation with the industry. The Committee calls on the Scottish Government to keep it updated on future development of proposals in this area and on any potential implications for Scotland's sheep farming industry.

As for sections 8 and 9 of the Bill, the Committee reiterates its view that the powers conferred by section 10 of the Bill should be used to maintain alignment with corresponding provisions elsewhere in the UK. It recommends that, in the interests of ensuring the smooth functioning of the UK internal market for agricultural products, potential divergence in carcass classification between Scotland and the rest of the UK should be avoided.

Definition of agricultural activity

The Committee welcomes the data provisions of the Bill as providing an important update to the legal basis for collecting and processing agricultural data in the context of the Data Protection Act 2018. The Committee also notes important clarifications provided in evidence by the Scottish Government with regard to the precise scope of the data provisions of the Bill.

The Committee notes concerns expressed by a number of stakeholders that amendments made to the definition of agricultural activity using the power conferred by section 12 of the Bill could have wider implications beyond data collection, such as determining eligibility to receive farm payments. In this regard, the Committee has been reassured by additional information subsequently provided by the Bill team that the definition of agricultural activity referred to in the Bill is restricted to the data collection provisions of the Bill. As such, the Committee is satisfied that any changes introduced using the powers conferred by the Bill would not affect the definition of agricultural activity in any other context, for example in relation to the calculation and allocation of farm payments.

Additional data collection

The Committee notes that the data provisions of the Bill relate only to the collection of personal data from individual farmers and crofters and that other categories of data collection in the agricultural sector do not fall within the scope of the Bill.

Environmental impact

The REC Committee supports the ECCLR Committee's view that due consideration must be given to the environmental impact of any policy measures introduced using the powers conferred by this Bill. The Committee therefore recommends that all such measures are subject to Environmental Impact Assessment.

Reporting to Parliament

As a result of reassurances provided by the Scottish Government that it intends to report regularly to the Parliament as regards the Bill's implementation, the Committee is satisfied that there is no need for a statutory requirement on periodic reporting to the Parliament to be included in the Bill.

Long-term rural policy for Scotland

The Committee wishes to draw Scottish ministers' attention to a widely expressed view amongst some stakeholders that there is a lack of urgency in the Scottish Government's planned timetable for making the substantial changes to rural policy required. It notes concerns that any substantial delay in the introduction of new policy and associated primary legislation will make it challenging for the Scottish agricultural industry to meet the commitment to achieve a 75% reduction in emissions by 2030 and contribute towards the target of doubling turnover in farming, fishing, food and drink to reach £30 billion by 2030.

The Committee acknowledges the Scottish Government's intention, as part of a phased approach to future rural policy development, that the timetable for a proposed period of simplification and improvement will run until approximately 2024, with the expectation that a long-term agricultural policy for Scotland will not be in place until that date at the earliest.

In these circumstances, the Committee calls on the Scottish Government to set out in greater detail its proposed timeline for development of this new policy. This should include details of how the exercise of the powers in this Bill will contribute to this process and help set the agricultural industry on a realistic path towards meeting the 2030 policy commitments previously outlined.

Introduction

2. The Agriculture (Retained EU Law and Data) (Scotland) Bill was introduced to the Scottish Parliament by Fergus Ewing, Cabinet Secretary for the Rural Economy ("The Cabinet Secretary") on 6 November 2019. The Rural Economy and Connectivity Committee was designated by the Parliamentary Bureau as lead committee at Stage 1.
3. The purpose of the Bill, as set out in the Policy Memorandum, is:
 - From 1 January 2021, to enable the continued operation of current Common Agricultural Policy (CAP) schemes and policies, but also to allow them to be progressively improved and simplified.
 - From 1 January 2021, to enable pilot projects to be run in order to test out new policy approaches, so as to inform the development of longer term future rural policy.
 - To update the legal mechanism by which agricultural data is collected, reinforcing the principles of the General Data Protection Regulation (GDPR) ¹.

Consideration by the Rural Economy and Connectivity Committee

4. The Committee launched a call for evidence on 15 November 2019 which ran to 3 January 2020 and resulted in 14 written submissions. The Committee took oral evidence on the Bill between November 2019 and January 2020 from a range of research and data organisations; rural, agricultural and environmental policy interests; and agricultural industry representatives.

Committee membership changes

5. The membership of the Committee changed during our consideration of this report. Jamie Greene was a member of the Committee until 25 February 2020, when he was replaced by Rachael Hamilton.

Consideration by other committees

6. The Delegated Powers and Law Reform (DPLR) Committee published [a report](#) on its scrutiny of the delegated powers provisions of the Bill on 6 February 2020. The Committee comments on observations made by the Delegated Powers and Law Reform Committee in its report at paragraphs 38, 43, 44, 54, 56, 57, 64, 66, 67, 103, 107, 117, 124, 150 and 153.
7. The Environment, Climate Change and Land Reform (ECCLR) Committee wrote to the Cabinet Secretary for the Rural Economy with a number of questions relating to

the Bill and received a response on 17 January 2020. The ECCLR Committee then wrote to the REC Committee on 29 January drawing to its attention a number of questions and concerns related to the constitutional context for the Bill.

8. The ECCLR Committee raises specific concerns about the potential for policy and funding decisions at UK level to constrain the Scottish Parliament's devolved competence and asks the REC Committee to continue to press the Scottish Government on these matters.
9. The REC Committee comments further on observations made by the ECCLR Committee in its letter at paragraphs 80, 146, 147 and 149.
10. The Finance and Constitution Committee did not report on the Financial Memorandum associated with the Bill.
11. **The REC Committee draws the attention of the Scottish Government to the specific concerns raised by the ECCLR Committee regarding the constitutional context for the Bill and requests that Scottish Ministers take account of these in the ongoing development of policy in this area.**

Background to the Bill

12. The Scottish Government undertook a public consultation entitled "Stability and Simplicity" between 20 June and 15 August 2018. This set out the Scottish Government's proposal to take a phased approach to future rural policy development in the context of the UK's exit from the European Union, moving from the current EU Common Agricultural Policy (CAP) regime to a new rural policy for Scotland through:
 - An initial period of "stability", with little change to the current CAP schemes and policies, until the end of 2020, followed by;
 - A period of "simplicity" from 1 January 2021 to approximately 2024, during which simplifications and improvements would be made to the current CAP schemes and policies and potential new schemes for longer term rural policy could also be piloted.
13. A large body of EU law has applied in Scotland and the UK for many years. In order to be able to ensure that public processes continue to function after the UK leaves the EU, arrangements have been made to bring this body of law over into domestic legislation; this body of law is called 'retained' EU law.
14. For agriculture and rural policy, the transfer of the relevant body of EU law into domestic law means that Scotland will remain subject to the regulations under the Common Agricultural Policy in the short-term, until such time as Scottish Ministers seek to amend it.
15. In this context, the main policy objective of the Bill is to provide Scottish Ministers with regulation-making powers to amend or replace the European Union (EU) Common Agricultural Policy (CAP) elements of retained EU law in Scotland in such a way that these would be simplified or their operation improved. The intention in acquiring these powers is to enable Scottish Ministers to implement changes related to specific CAP schemes that were consulted on in the "Stability and Simplicity" consultation.
16. More specifically, the Bill also allows Scottish Ministers to cap payments made to an individual recipient using powers to amend the financial provisions of the CAP legislation. According to the "Stability and Simplicity" consultation, this mechanism is intended to be used to release funds for piloting new policy approaches.

Relationship with UK Government Policy

17. The UK Government brought forward a new UK Agriculture Bill in September 2018 with the intention of creating powers to design a new long-term agriculture policy for England following EU exit. In addition to these provisions, the UK Agriculture Bill also included a number of other provisions on agricultural supply chains and producer organisations, among others. Wales and Northern Ireland opted to take powers via the UK Agriculture Bill that would enable them to amend certain aspects of retained EU law related to the Common Agriculture Policy. However, Scotland opted not to take these powers as a result of three specific points of contention between the Scottish Government and the UK Government regarding the impact of the UK Agriculture Bill on the devolution settlement, specifically:
 1. The establishment of producers' organisations (POs) and the exemptions for these under competition law. Due to the interaction between POs and competition law, the disagreement surrounds whether the purpose of this clause is the promotion of an effective agricultural market (which is devolved) or the regulation of anti-competitive practices (which is reserved).
 2. Fair dealing obligations to prevent a disparity in bargaining power between primary producers and operators up the supply chain. The disagreement related to whether these provisions were related to unfair contractual terms (which is a devolved matter) or anti-competitive agreements and practices (which is a reserved matter).
 3. Regulations to allow the UK Government to ensure that the UK is compliant with the WTO Agreement on Agriculture. The disagreement related to whether the purpose of this provision is to implement and observe international obligations (which is devolved) or to regulate international trade (which is reserved).
18. Following the announcement of a UK General Election to be held on 12 December 2019, the UK Agriculture Bill, as previously introduced by the UK Government, fell. Following the UK General Election, the newly elected UK Government included a new UK Agriculture Bill in the Queen's Speech, announced on 19 December 2019, and this Bill was subsequently introduced to the UK Parliament on 16 January 2020.²
19. At the time of publication of this report, the Scottish Government has yet to make clear its position to the Scottish Parliament on the provisions contained in the current UK Agriculture Bill.
20. It should be noted that the Cabinet Secretary for the Rural Economy wrote to the UK Secretary of State for Environment, Food and Rural Affairs on 20 February 2020, proposing a set of amendments to the UK Agriculture Bill:

” "...to deal with areas which impinge on the legislative competence of the Scottish Parliament in relation to producer organisations, fair dealing in supply chains and the WTO Agreement on Agriculture".³

21. The scope of the current Bill and that of the UK Agriculture Bill are markedly different. Whereas the Scottish Government's stated intention is that the scope of the current Bill should be limited to simplifying and improving CAP legislation during a transitional period after EU exit, the scope of the UK Agriculture Bill extends to the establishment of a new system of rural support in England based on public money for public goods, including the phase-out of direct payments by 2028.

General views on the Bill

22. The majority of stakeholders responding to the Committee's call for written evidence were generally supportive of the Bill's introduction and viewed it as providing an important element of stability and continuity following the UK's departure from the European Union.

23. For example, commenting on the Bill's introduction, NFU Scotland's submission states:

” Retained EU law relating to the CAP rolls over into domestic (Scottish) law. However, it then becomes 'frozen' unless such legislation provided by this Bill is put in place. As such, NFUS entirely supports the introduction of the Bill.

Source: NFU Scotland, 2019⁴

24. A number of other stakeholders submitting evidence to the Committee have offered more qualified support for the Bill on the understanding that the powers it confers should be time limited to the end of the transition period and a new rural policy for Scotland should be enacted from 2024 via further primary legislation.

25. Meanwhile, certain stakeholders, particularly those representing environmental interests, were more critical of the Bill, characterising it as lacking in ambition and a missed opportunity to establish a long-term policy direction for Scotland's agricultural sector and to address key policy priorities. For instance, Scottish Environment LINK's written submission argues:

” LINK members see the Bill as a missed opportunity to set a clear purpose for the allocation of agricultural funding, to provide a clear direction for farmers and crofters to plan for their activities post-2024 and, perhaps most urgently, it fails to contribute to Scotland's response to the interlinked climate and natural emergencies.⁵

26. The Committee notes the broad level of stakeholder support for the principles underpinning the Bill and a general desire to see the Bill progress as an important mechanism to facilitate a smooth transition for the agricultural sector as the UK leaves the European Union, reflecting the recommendations set out in the "Stability and Simplicity" consultation.

27. However, the Committee also acknowledges the views of those stakeholders who are keen to ensure that the development of policy for the sector post-2024 is driven forward by the Scottish Government, with an objective of bringing forward new primary legislation as soon as is reasonably possible.

Purpose of the Bill

28. Many witnesses and written submissions have suggested that greater clarity around the use of the powers conferred by the Bill could be achieved via the inclusion of a "statement of purpose" or "framework for change". For example, giving oral evidence to the Committee, Pete Ritchie of Nourish Scotland said:

” The bill should have a purposes clause that lists the purposes for which ministers may make grants. ...the purposes should be about supporting a change in culture and helping farmers to do different things. That should be explicit in the bill. It should not just be implicit in that someone can decide that something is an improvement.

Source: Rural Economy and Connectivity Committee 04 December 2019 [Draft], Pete Ritchie, contrib. 29⁶

29. Asked if he would support an amendment that introduces a purpose clause to the Bill, the Cabinet Secretary told the Committee:

” It would be imprudent of me to say whether I approve of an amendment that I have not seen, and I am not going to do that. What I will say is that it is my absolute belief that there is an overwhelming desire among farmers, crofters and the wider rural community for us to simplify and improve the operation of the provisions of the schemes.

Source: Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 106⁷

30. The Committee draws the Scottish Government's attention to the views expressed by multiple stakeholders that the Bill lacks an overarching purpose or direction. It recommends that Scottish ministers give further consideration as to how these specific concerns might be addressed during the Bill's passage.

Non-regression

31. A number of organisations representing environmental interests and submitting evidence have argued the case for a "non-regression clause" to be included in the Bill in relation to the powers to simplify CAP legislation. For example, RSPB Scotland warns of the danger that responding to calls from farmers to relax 'rules and red tape' could result in environmental and other protections being weakened. To avoid this from happening, RSPB Scotland concludes:

” ...A non-regression clause in the Bill and a commitment to continue with important EU principles, including the 'polluter pays principle' and the 'precautionary principle' should be included.⁸

32. Responding to questions about the potential inclusion in the Bill of a non-regression clause, the Cabinet Secretary said:

” ... Parliament has passed legislation in respect of climate change and the environment, that we are bound by that legislation and that, therefore, nothing in the bill can regress from that. We have to comply with it.

Source: Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 108⁹

33. The Cabinet Secretary indicated that whilst he did not accept that the Bill creates a risk that there will be any diminution in the high existing EU standards of animal hygiene and welfare, he would be content to consider this matter further during the Bill's parliamentary passage. He also said that the potential for departures to be made from the existing EU standards in these areas following Brexit was an issue that the Scottish Parliament may wish to take up with the UK Government.¹⁰

- 34. The Committee is reassured by commitments made by the Cabinet Secretary that exercise of the powers conferred by the Bill will not result in any regression in standards. However, the Committee invites the Scottish Government to consider whether the Bill might be amended at Stage 2 to provide those stakeholders expressing concern on the subject of non-regression with further reassurance.**

Proposals for time limitation of powers

35. It should be noted that, according to the Policy Memorandum accompanying the current Bill, while the Scottish Government intends that the powers provided by the Bill "will be used during a transitional period following EU exit", these powers are not time limited.¹¹

36. The Committee has heard arguments from a number of witnesses that certain if not all powers conferred by the Bill should be time-limited. For instance, the Law Society of Scotland's written submission states:

” Given the stated intentions of the Scottish Government that this is a transition Bill with work ongoing in relation to future policy¹², we question whether the powers under the sections in this part, in particular those powers in sections 2-4, should be time-limited by the introduction of sunset provisions. The powers in the Bill could be used by any future Government and may not be done in line with the intentions of the current Government.¹³

37. Jonnie Hall, Director of Policy at NFU Scotland, gave a cautious welcome to the idea of introducing a "sunset clause" to the legislation, but also urged special care in the development of such an approach:

” Some sort of sunset clause, which is what we are talking about here, would be advantageous, but the time limit needs to be thought out very carefully...We would not want the continuity and certainty of the bill's provisions to end and find that future schemes and so on are not ready to operate in practice. That would leave us in a very tricky situation indeed.

Source: Rural Economy and Connectivity Committee 18 December 2019 [Draft], Jonnie Hall, contrib. 23¹⁴

38. The DPLR Committee also considered the appropriateness of introducing a sunset provision, specifically in relation to section 2(1) of the Bill, and its report concludes that, in light of repeated assertions from the Scottish Government that it intends to use the power in section 2(1) no longer than strictly necessary, a sunset provision would be appropriate. Acknowledging the importance of striking an appropriate balance between Parliament's role as the legislature and the need for the Scottish Government to be able to act quickly during a period of uncertainty, the Committee recommends a sunset provision extending to no later than 2030. It further concludes that, should the Scottish Government wish to continue to have such a power beyond this date, it would be proportionate for it to seek the renewed approval of Parliament.

39. While giving evidence to the Committee, the Bill team confirmed that the powers conferred on Scottish Ministers by the Bill are not time limited and outlined the rationale for not including a time limit:

- ” It is very difficult for officials and legal colleagues to come up with a robust point at which we can safely say that we will not need the powers in the bill, and particularly the provisions that you mentioned. We have not taken the step that you suggest and included an end date because we do not yet know when we will be in a position to have our new primary legislation in place.

Source: Rural Economy and Connectivity Committee 20 November 2019 [Draft], Dr Kerr, contrib. 23¹⁵

40. Responding to questions about the potential inclusion of a sunset clause that would necessitate the introduction of additional primary legislation within a defined timeframe to enact a long-term rural policy for Scotland, the Cabinet Secretary said:

- ” ...Governments must be able to act and respond swiftly. If primary legislation constrains that, we must come back to Parliament to amend that primary legislation...It can be argued that the need to go back to get primary legislation could be used by a future Government as a pretext for not doing things that some members would like us to do.

Source: Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 116¹⁶

41. The Cabinet Secretary concluded that, whilst the Scottish Government was not attracted to the arguments put forward for the inclusion of a sunset clause, it acknowledged that further consideration of this matter could take place at Stage 2.
10

42. **The Committee notes the reassurances provided by the Scottish Government that it does not intend to exercise the powers conferred by this Bill any longer than is strictly necessary. However, the Committee is nonetheless concerned that, without additional safeguards, the powers conferred by the Bill as a whole, and section 2 in particular, could be used by future administrations in perpetuity to amend rural policy via secondary legislation.**

43. **On this basis, the Committee shares the concern of both stakeholders and the DPLR Committee that it would not be proportionate for the Scottish Government to have the potentially broad power conferred by section 2 of the Bill on an indefinite basis.**

44. **The Committee endorses the view expressed by the DPLR Committee, with the exception of its proposal that a sunset clause should be extended to 2030, which it considers to be too far in the future. It therefore calls on the Scottish Government, as the Bill progresses to Stage 2, to bring forward proposals for a sunset clause extended to a date that gives due reference to the planned end of the transition period in 2024. As recommended by the DPLR Committee, the REC Committee believes that, should the Scottish Government wish to continue to retain this power beyond the date of the**

sunset clause, it should be required to seek the renewed approval of the Scottish Parliament.

Part 1 - Retained EU Law

45. The Scottish Government sets out the main policy objective of Part 1 of the Bill as being to maintain the operation of current CAP schemes, while also enabling the Scottish Ministers to make simplifications and improvements where possible to those schemes, for a transition period of approximately five years.

Simplification and improvement of CAP legislation

46. Section 2 of the Bill gives the Scottish Ministers powers by regulations to modify the main CAP legislation. Under these provisions, such modifications may only be made to the extent that the Scottish Ministers consider that these would simplify or improve the operation of the main CAP legislation.

47. The Committee has heard evidence from a number of sources expressing concern as to the subjective nature of the terms "simplify and improve". For instance, giving evidence on behalf of Scottish Environment LINK, Vicki Swales of RSPB Scotland said:

” The bill says that its purposes are the simplification and improvement of the CAP legislation, but, arguably, one person’s definition of simplification and improvement might be another’s nightmare. Therefore, we need to be clearer about why we want to change things and the direction of travel that we will take.

Source: Rural Economy and Connectivity Committee 04 December 2019 [Draft], Vicki Swales (Scottish Environment LINK), contrib. 7¹⁷

48. Giving oral evidence to the Committee, Jonnie Hall from NFU Scotland highlighted the potential for the terms "simplify" and "improve" to be interpreted differently from one another, arguing that while "simplification" was likely to be restricted to making changes to the *operation* of existing schemes, "improvement" could have more significant implications by introducing a change of policy. ¹⁸
49. Giving oral evidence to the Committee on 15 January 2020, the Cabinet Secretary for the Rural Economy highlighted the recommendations contained in the Report of the Simplification Taskforce, published on 13 January 2020, as providing specific examples of the nature of simplifications and improvements to be made using the powers conferred by the Bill. These are as follows:
- improved mapping;
 - mapping stability during the single application form process;
 - penalties;
 - an inspections charter;
 - the standardisation of capital grant rates;
 - the improvement of EU, or post-EU, appeals processing performance; and

- the improvement of understanding, communication and education. ¹⁰
50. Responding directly to the points raised by NFU Scotland on the terms "simplify" and "improve", the Cabinet Secretary offered further clarification on the extent of modifications to be introduced using the powers conferred by Sections 2 and 6 of the Bill:
- ” The words “simplify or improve” must be read in the light of the fact that they are qualified by what they are designed to simplify or improve. In this case, it is “the operation of the provisions of the legislation.”
- my reading of the bill’s wording is that [NFU] concerns do not apply, because the particular mode of drafting makes it clear that “improvement” refers to improving how the process works, not what it does.
- Source: Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 100¹⁹
51. The Cabinet Secretary went on to indicate his willingness to explore this particular matter further at later stages of the Bill's consideration. ¹⁰

52. The Committee welcomes the Scottish Government's willingness to consider further the wording of section 2 of the Bill as regards the precise extent of powers conferred to simplify and improve CAP legislation.

Use of negative procedure

53. Regulations introduced under section 2 of the Bill are subject to the negative procedure.
54. While hearing evidence on the Bill, the DPLR Committee explored whether, in view of the breadth of the power conferred, it would be more appropriate for section 2(1) of the Bill to be subject to the affirmative rather than negative procedure.
55. When questioned by the REC Committee about the extent of the powers to simplify and improve set out in section 2 of the Bill and the use of the negative procedure, Dr John Kerr, head of the Scottish Government's agricultural policy division responded:
- ” We have indicated that they should be subject to the negative procedure because we envisage that they will involve simplifications and improvements that are not major in nature. It is a matter for consideration, but that is our recommendation, given the magnitude of the change that is involved.
- Source: Rural Economy and Connectivity Committee 20 November 2019 [Draft], Dr Kerr, contrib. 107²⁰
56. Similar to the approach taken in relation to the current powers to implement EU law in this area in the European Communities Act 1972, the DPLR Committee recommends having a choice of procedure available in relation to the power conferred by section 2 of the Bill, whereby the negative procedure would be used

for matters of a "housekeeping" nature and the affirmative procedure is used when actions taken using this power have policy implications.

57. **The Committee endorses the concerns expressed by the DPLR Committee and some stakeholders regarding the blanket use of the negative procedure for the exercise of powers conferred by section 2 of the Bill. It therefore believes that any measures introduced using these powers that have wider policy implications should be made subject to the affirmative procedure and calls on the Scottish Government to bring forward amendments at Stage 2 to this effect.**

Less Favoured Area Support Scheme

58. The Policy Memorandum cites future adjustments to the Less Favoured Area Support Scheme (LFASS) as a specific example of the type of simplification or improvement that could be made using the power under section 2 of the Bill. It suggests that, compared to the existing option of continuing with significantly reduced LFASS payments in 2020 and moving to a replacement "Areas of Natural Constraint" (ANC) scheme from 2021, this power offers the Scottish Government an alternative option of modifying the retained CAP legislation so that farmers who currently receive payments under LFASS, can continue to receive support.¹¹
59. Giving oral evidence to the committee on behalf of NFU Scotland, Jonnie Hall outlined the importance of LFASS while also arguing for the scheme to be redesigned as a matter of urgency to improve its effectiveness by moving away from an area-based payment approach to an approach that supports activity (a view which was also supported by a number of witnesses participating in the same panel).¹⁸
60. In its written submission, Scottish Environment LINK also recommended a revised approach to LFASS in the future:
- ” Despite its wide scope, LFASS remains unconnected from environmental conditionality. We would strongly encourage a greater focus on positive environmental outcomes in the allocation of public money. For the sake of policy coherence, the Bill should demonstrate compliance with the patchwork of climate and biodiversity strategies, including demonstrating explicit commitment to the Land Use Strategy, its objectives and principles, and future Regional Land Use Frameworks (as mentioned in the 2019-20 Programme for Government).⁵

61. **The Committee wishes to draw the Scottish Government's attention to the desire of a number of stakeholders to see the powers conferred by section 2 of the Bill used to reform or replace the existing Less Favoured Area Support Scheme with a view to better targeting and improving support for less favoured areas and delivering positive environmental outcomes.**

Continued operation of the CAP post-2020

62. Section 3 of the Bill gives the Scottish Ministers powers, by regulations, to modify the main CAP legislation for the purpose of ensuring that the provisions of the legislation continue to operate in relation to Scotland for one or more years beyond 2020. These regulations are subject to the affirmative procedure.
63. The Policy Memorandum states that the additional powers set out in section 3 are needed to ensure that CAP schemes remain fully operable for as long as required. Specifically, they are required to ensure that Direct Payments can be made after 2020, and to provide a means to determine a limit or "ceiling" on those payments, and that these powers are separate from the powers conferred by section 2 because such modification would go beyond simplifying and improving the current CAP after exit.¹¹
64. The DPLR Committee sought clarification regarding the powers conferred by section 3 of the Bill and, in particular, the provisions of section 3(3)(b) which allow Scottish Ministers, by regulations, to confer functions on any person in connection with, or in connection with the making of, a determination of the annual national ceiling. The DPLR Committee specifically asked the Scottish Government on whom functions might be conferred in connection with, or with the making of, a determination and what those functions might be. In response, the Scottish Government indicated that new bodies may be created to carry out functions currently exercised by EU bodies and that these bodies may be given an ancillary duty to provide advice to Scottish Ministers regarding a proposed determination. The Scottish Government concluded by emphasising that "no new decisions have been made on any of those matters".
65. Giving oral evidence to the REC Committee, David Maclennan of the Scottish Government's legal directorate provided important clarification as to the purpose behind the powers conferred by section 3 of the Bill:
- ” The CAP legislation, as it exists, does not function properly after 2020. There are some things that it was not intended to do after that time, so the power in section 3 simply allows us to make the modifications that we require to make the CAP legislation work after 2020.
- Source: Rural Economy and Connectivity Committee 15 January 2020 [Draft], David Maclennan, contrib. 119²¹
66. Based on the response received from the Scottish Government with respect to section 3 of the Bill, the DPLR Committee report concludes:
- ” The Committee welcomes this further information and is reassured that the power in section 3(1) is subject to the affirmative procedure. The Committee is therefore content with the Scottish Government's response on this issue.²²
- 67. The Committee welcomes additional clarification provided by the Scottish Government during oral evidence regarding the legal purpose behind the powers conferred by section 3 of the Bill. It also notes the conclusions of the DPLR Committee with respect to section 3 of the Bill that it has been**

reassured by the Scottish Government that the power conferred by section 3(1) is subject to the affirmative procedure. However, the Committee calls on the Scottish Government to consider whether the wording of section 3 might be further clarified or, if necessary, tightened up at Stage 2.

Pilots

68. The Policy Memorandum indicates that the transition period would provide an opportunity for potential new schemes for longer term rural policy to be piloted, presumably via exercise of powers either under section 2 or section 3 of the Bill. ¹¹

69. A level of frustration was expressed by a significant number of organisations submitting evidence over a general lack of clarity regarding pilots. Representing Scottish Land and Estates, Eleanor Kay said:

” Although we know that the bill enables pilot schemes to be run, we have no clear, defining guide to what it is that we need to be testing and trying out, and we do not know where we are going.

Source: Rural Economy and Connectivity Committee 18 December 2019 [Draft], Eleanor Kay (Scottish Land & Estates), contrib. 11²³

70. Related to discussions on the development of pilots, a number of stakeholders providing evidence to the Committee were broadly supportive of a move away from area-based payments towards activity-based payments. For instance, on behalf of the Scottish Tenant Farmers' Association, Christopher Nicholson said:

” The current support framework, which is based on area payments, is not helpful for the tenanted sector. At the moment, a landowner can access area payments with very little activity. We would like a change so that there is a focus on activity rather than on area payments.

Source: Rural Economy and Connectivity Committee 18 December 2019 [Draft], Christopher Nicholson, contrib. 98²⁴

71. Giving evidence to the Committee, the Cabinet Secretary set out his views regarding what he perceived to be three key benefits of testing future policy via pilots, namely:

1. allowing new approaches to be trialled in a controlled fashion, on a limited basis and to be monitored for their efficacy;
2. avoiding a situation where a brand new scheme is introduced without trial and found not to work; and
3. avoiding the long lead-in times normally required for substantially changing a policy or introducing a brand-new policy.

72. The Cabinet Secretary also provided an indication of the types of measures to be trialled using pilot schemes, including the following:

- improved culture of grass;
- better use of rotations for better production of silage;
- use of hydrogen to provide renewable energy on the farm;
- use of different cattle feedstuffs to reduce methane and improve digestion;
- improvements in electronic identification, particularly to improve safety and reduce risk of injury in close proximity handling of cattle; and
- substantially improve best practice in farming for climate change.

10

73. Asked whether he supported moving towards an activity rather than area-based approach to farm payments, the Cabinet Secretary responded:

” ...the existing direct support payments are conditional on a certain minimum level of activity, so it is not as if the system says that people get the money for not doing anything—it is not as simple as that... However, there is a case for moving to a system in which there is a better linkage between the provision of direct financial support and outcomes.

Source: Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 134²⁵

74. The Committee acknowledges the multiple benefits of trialling policy development via pilots and calls on the Scottish Government to keep it regularly updated regarding the development of policy on pilots to be introduced using the powers conferred by this Bill.

75. The Committee welcomes the Scottish Government's commitment to a renewed focus on an outcome-based, as opposed to an area-based, approach to the calculation and allocation of farm payments. It looks forward to further updates as to how Scottish ministers intend to consult on, develop and implement this significant shift in approach to the system of farm payments.

Financial provision in CAP legislation

76. Section 4 of the Bill gives the Scottish Ministers powers, by regulations, to modify financial provision in the main CAP legislation. This includes amending the distribution of funds between Pillars and schemes as well as placing a cap on individual payments in schemes. These regulations are subject to the affirmative procedure.

77. Submissions from a number of environmental organisations raise concerns about the potential for the powers conferred by section 4 of the Bill to be used to transfer funds from Pillar 2 to Pillar 1 and for funding for environmental schemes to be reduced. For instance, the written submission from Scottish Environment LINK states:
- ” We are concerned that, as worded, the modulation between Pillars 1 and 2 would allow for the funds to flow either way. We would strongly support a limit on this modulation so that the Pillar 2 provisions cannot be decreased whilst the overall system remains in place. LINK believes the Bill should ensure that the proportion of Pillar 1 funding allocated to greening should be maintained as a minimum. Ideally, however, we wish to see increased funding for activities that achieve nature and climate objectives.⁵
78. With respect to the funding of agri-environment schemes, a number of witnesses and written submissions highlighted the competitive nature of these schemes and the negative impact this has arguably had by restricting the overall impact and effectiveness of these schemes. Jonnie Hall of NFU Scotland recommended an alternative non-competitive approach to the implementation of such schemes in the future:
- ” An alternative approach would be to take some funding out of that scheme, or provide additional funding, to operate a non-competitive approach whereby every farm and croft could choose activities from a list of options, such as soil testing nutrient management work to help improve carbon storage, nutrient budgeting or looking at extensive grazing management plans for common grazing and upland areas, which would benefit habitats and biodiversity, and carbon storage.
- Source: Rural Economy and Connectivity Committee 18 December 2019 [Draft], Jonnie Hall, contrib. 173²⁶
79. With respect to sections 3 and 4, the Law Society for Scotland underlines the importance "that businesses can plan ahead and guide their conduct in the knowledge of the legal framework within which they are operating" and argues that "It would be appropriate therefore for any regulations under sections 3 and 4 to be made well in advance of any changes".¹³
80. In its letter to the REC Committee of 29 January, the ECCLR Committee also raises concerns about future funding and, in particular, the inter-relationship between UK Government and Scottish Government decisions on funding:
- ” We are concerned about Scottish Ministers’ ability to make decisions about Scottish agri-environmental policies and projects if they have limited – or no – role in determining funding for support.²⁷
81. While giving evidence to the Committee, the Bill team was asked if, using these powers, Scottish Ministers could theoretically transfer all funding from one Pillar of the CAP to the other. Responding on behalf of the Scottish Government, Dr John Kerr said:

” One of the reasons why we need to take these powers is to allow us to make changes such as the one that you are envisaging, although we have no plans to do something as radical as that. I do not think that that would count as a simplification or an improvement... That is not what is proposed and it certainly would not be our intention to do that without bringing forward the powers.

Source: Rural Economy and Connectivity Committee 20 November 2019 [Draft], Dr Kerr, contrib. 65²⁸

82. The Committee went on to explore the potential extent of powers to modify financial provision in main CAP legislation under section 4 of the Bill. During follow-up questioning, Dr Kerr said:

” With some of the processes that we are currently replacing by bringing the legislation into domestic law, some of the functions of the Commission are also being replaced. In order to make pillar-to-pillar transfers, we have to notify the Commission of our intention to do so, and there are limits, which are set out. We would have to follow the required process within the European framework that will have been retained.

Source: Rural Economy and Connectivity Committee 20 November 2019 [Draft], Dr Kerr, contrib. 72²⁹

83. In follow-up correspondence, the Bill team provided further clarification concerning the process to be followed in using the powers conferred on Scottish Ministers by sections 3 and 4 of the Bill to make pillar-to-pillar transfers:

” Any such change would be subject to consultation, and to various impact assessments (including of course consideration of the impact on businesses). The regulations giving effect to any change would be subject to affirmative procedure, and so the Scottish Parliament would need to agree with what was proposed.³⁰

84. Asked if there were plans to transfer funds between pillars using powers conferred by the Bill, the Cabinet Secretary responded:

” That happens at the moment; I think that the transfer from pillar 1 to pillar 2 is 9.5 per cent. Different levels of depression—I think that that is the right word—from pillar 1 to pillar 2 are applicable throughout the UK. That is an area in which flexibility is an advantage, as it allows us to act swiftly.

Source: Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 128³¹

85. Asked what level of preparatory consultation Scottish ministers planned to undertake prior to exercising the powers conferred by section 3 and 4 of the Bill, the Cabinet Secretary responded:

” As a matter of practice, we always wish to have appropriate consultation, depending on how significant what we are proposing is. We always do that, and I undertake that that will continue to be the case.

Source: Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 130³²

86. **The Committee draws the Scottish Government's attention to concerns raised by a number of stakeholders that the powers conferred by section 4 of the Bill could be used to make radical shifts in funding priorities between the pillars of the CAP. The Committee calls on the Scottish Government to:**
- **provide further reassurance that it has no intention to make wholesale shifts in funding between pillars;**
 - **give further consideration to providing additional safeguards to ensure that these powers cannot be used in such a way by a future administration; and**
 - **provide additional clarity in particular regarding the Scottish Government's ongoing commitment to the financing of environmental schemes.**

87. **The Committee specifically welcomes the Scottish Government's commitment to allow for appropriate consultation prior to exercising the powers conferred by sections 3 and 4 of the Bill.**

Capping of payments

88. The Committee heard evidence from the Bill team concerning the potential introduction of a cap on individual payments. The "Stability and Simplicity" consultation carried out by the Scottish Government in summer 2018 included questions about the level at which payments should be capped with a view to releasing funds to test new policy priorities via pilots, which the current Bill is intended to provide powers for Scottish Ministers to introduce.
89. The Committee has received a range of views on the issue of capping. Giving oral evidence on behalf of the Scottish Tenant Farmers' Association, Christopher Nicholson was strongly supportive of capping and pointed to a link with land reform:
- ” Capping needs to fit in with the land reform aims. If we continue to reward very large holdings with uncapped funds, that will have a big influence on the size of holdings.
- Source: Rural Economy and Connectivity Committee 18 December 2019 [Draft], Christopher Nicholson, contrib. 147³³
90. Speaking on behalf of NFU Scotland, Jonnie Hall highlighted potential unintended consequences from capping, depending on how the policy were to be designed:

” ...although we often cite the fact that Scotland has the lowest payment rate per hectare in the EU, we have the highest payment rate per business, because we operate on a big scale...

Larger businesses can operate with economies of scale. ...The notion that big is bad and small is beautiful is often misplaced. The management of a cap, where that cap would be set and how the funding from capping would be recycled would have to be handled extremely carefully.

Source: Rural Economy and Connectivity Committee 18 December 2019 [Draft], Jonnie Hall, contrib. 143³⁴

91. Meanwhile, the written submission from the Agricultural Industries Confederation was unequivocal in its opposition to capping:

” In line with our submission to the Stability and Simplicity consultation we are opposed to the capping of support payments to larger rural businesses.... One of the consequences of capping is that it would potentially remove money from producers on the arbitrary criteria of size rather than the contribution that the producer may make to environmental enhancement, provision of public goods including food and provision of local employment.³⁵

92. Giving oral evidence to the Committee, the Cabinet Secretary confirmed the Scottish Government's intention to introduce a cap on payments and to introduce substantive measures in this respect that would be ready for implementation in 2021.¹⁰

93. The Committee notes the mixed views of stakeholders on the Scottish Government's commitment to introduce a cap on direct payments and to develop substantive measures in this respect to be ready for implementation in 2021.

94. The Committee requests that Scottish ministers keep it regularly updated concerning the ongoing development of policy on capping and the detail of specific schemes to be supported using the funds freed up as a result of capping individual payments.

Public intervention and private storage aid

95. Section 5 of the Bill gives the Scottish Ministers powers to disapply either temporarily or permanently or otherwise simplify or improve provisions in the CAP legislation relating to the purchase of product by public authorities and its removal from the market (known as "intervention purchasing") or paying private companies to store product rather than placing it immediately on the market ("private storage aid"). These provisions are designed to enable public authorities to manage prices in agricultural markets during periods of market volatility. Regulations introduced under this section are subject to the negative procedure.

96. Evidence submitted to the Committee has been generally supportive of the provisions set out in section 5 of the Bill. For example, Steven Thomson, Policy Adviser at Scotland's Rural College, commented:

” There also needs to be scope to maintain intervention. The EU has that potential, and America uses it in emergencies. We need to have the scope for storage and intervention in the markets in exceptional circumstances. A hard Brexit or a no-deal Brexit may be such an exceptional circumstance in which we might need scope for that far sooner than we think.

Source: Rural Economy and Connectivity Committee 27 November 2019 [Draft], Steven Thomson, contrib. 72³⁶

97. During the evidence session with the Bill team, Dr George Burgess, Deputy Director of Food and Drink at the Scottish Government, outlined the rationale behind the provisions set out in section 5 of the Bill. He emphasised that these provisions are now only used in market crisis situations. While outlining the UK Government's approach as being to remove these provisions entirely via the UK Agriculture Bill, Dr Burgess explained that the Scottish Government's approach was to retain the provisions so as to enable their operation to be suspended in cases where it would be otherwise required to intervene in an agricultural market while administrations elsewhere in the UK were not intervening. He further indicated that a decision on the long term future of these provisions would be taken at a later date.³⁷

98. In oral evidence to the Committee, the Cabinet Secretary was asked whether the Brexit process in itself might constitute an "exceptional circumstance" requiring intervention using the powers conferred by section 5 of the Bill. He responded by citing preparations that were previously made to create a compensation scheme for sheep meat in the event of the UK leaving the EU without a deal, which would have resulted in the introduction of significant tariffs on sheep meat exports. He concluded:

” That is an example of a response that would have been appropriate, albeit that many people think that compensation schemes have two facets—too little and too late.

Source: Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 159³⁸

- 99. The Committee accepts the technical justification for the powers conferred by section 5 of the Bill as enabling Scottish ministers to mirror potential non-intervention in specific agricultural markets elsewhere in the UK in the future.**

- 100. The Committee also notes widespread industry support for the inclusion of these powers and highlights the possibility that public intervention might yet be required to protect specific agricultural sectors in Scotland against specific exceptional circumstances, for instance in the event of a no-deal exit from the European Union.**

Fruit and vegetable aid scheme

101. Section 6 of the Bill gives the Scottish Ministers powers to simplify and improve the operation of the Fruit and Vegetables Aid Scheme, if considered necessary, by making amendments to retained EU law during the proposed transition period. The Scheme currently provides financial assistance to officially recognised producer organisations (POs) to help increase their competitiveness in the supply chain. Regulations introduced under this section are subject to the negative procedure.

102. Certain stakeholders expressed support for the role of producer organisations and advanced arguments in favour of the fruit and vegetable aid scheme model being extended to other sectors of the agricultural industry. For instance, on behalf of NFU Scotland, Jonnie Hall said:

” NFU Scotland would like producer organisations to be developed in other sectors, such as the beef sector, which is facing challenges... Having that power and developing it in sectors other than fruit and veg—which is where it has operated so far—is important.

Source: Rural Economy and Connectivity Committee 18 December 2019 [Draft], Jonnie Hall, contrib. 181³⁹

103. The DPLR Committee report raises concerns, similar to those expressed in relation to section 2(1) of the Bill, that the power conferred by section 6 of the Bill is not time limited, despite the Policy Memorandum stating that the Scottish Government's intention is only to exercise these powers until the end of the planned transition period in around 2024. In these circumstances, the DPLR Committee concludes that, as for the power conferred by section 2(1) of the Bill, a sunset clause extending beyond 2024 would give the Scottish Government suitable flexibility while not leaving the power available for an indefinite period.

104. The current UK Agriculture Bill proposes to close down the Fruit and Vegetables Aid Scheme in England. While giving evidence to the Committee on behalf of the Scottish Government, Dr George Burgess explained the rationale for the different approach being taken in Scotland:

” The immediate intention is not to do away with the fruit and veg aid scheme, which in our view has been a valuable way of supporting a sector that is generally unsupported in the CAP scheme.

Source: Rural Economy and Connectivity Committee 20 November 2019 [Draft], Dr Burgess, contrib. 137⁴⁰

105. Asked whether he would support extension of the fruit and vegetable aid scheme model to producer organisations in other sectors of the agricultural industry, the Cabinet Secretary responded:

” We are happy to work with the farming community and others to explore whether we should pursue such a model. If so, we would start off with a favourable approach to that, and we would desire to be helpful as far as possible.

Source: Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 163⁴¹

106. **The Committee supports the proposed continuation of the fruit and vegetable aid scheme. It also draws the Scottish Government's attention to industry support for further exploration of the potential for rolling out this model to other sectors of the agricultural industry as a means of strengthening the role of producer organisations in those sectors.**

107. **The Committee endorses and draws the Scottish Government's attention to the recommendation of the DPLR Committee that, as for section 2, section 6 of the Bill should be subject to a sunset clause, as outlined earlier in this report.**

EU Food Promotion Scheme

108. Section 7 of the Bill contains a power to abolish the EU Food Promotion Scheme in retained EU law. Regulations introduced under this section are subject to the negative procedure.

109. Explaining the rationale for abolishing the EU Food Promotion Scheme, the Policy Memorandum accompanying the Bill states that:

” ...it is the intention of the Scottish Ministers instead to rely on more straightforward existing domestic powers, such as those in section 94 of the Natural Environment and Rural Communities Act 2006,⁴² to pay grants to bodies established under the Act, including Quality Meat Scotland and the Agriculture and Horticulture Development Board.⁴³

110. Giving evidence to the Committee, Sarah Millar of Quality Meat Scotland was supportive of the power provided by section 7 of the Bill to abolish the EU Food Promotion Scheme, arguing:

” The evidence suggests that support can be provided without that EU scheme.

Source: Rural Economy and Connectivity Committee 04 December 2019 [Draft], Sarah Millar, contrib. 235⁴⁴

111. **The Committee notes the availability of alternative domestic measures to achieve the same objectives as the EU Food Promotion Scheme more effectively and, in that context, fully supports the Scottish Government's stated intention to abolish the EU Food Promotion Scheme using the powers conferred by section 7 of the Bill.**

Marketing standards

112. Sections 8 and 9 of the Bill provide powers for the Scottish Ministers to make changes to marketing standards set out in the CMO Regulation, part of the main CAP legislation which is part of retained EU law. Marketing standards are product descriptions designed to give businesses and customers certainty about the quality of products they are buying without having to inspect them physically. Regulations introduced under these sections of the Bill are subject to the negative procedure.
113. The Policy Memorandum notes that the UK Government, Welsh Government and the Department of Agriculture, Environment and Rural Affairs (DAERA) (due to the suspension, until very recently, of the Northern Ireland Assembly) planned to take similar powers through the UK Agriculture Bill. While emphasising that there is no intention by Scottish Ministers to make any radical changes, the Policy Memorandum also states:
- ” The power being taken here is to ensure that the Scottish Ministers have the ability to replicate changes made elsewhere in the UK, in order to avoid barriers to the movement and sale of goods within the UK after EU exit. ⁴³
114. The Policy Memorandum goes on to say:
- ” Such decisions can be taken on a case-by-case basis regarding whether to follow any changes introduced in, or under, a UK Agriculture Bill, or whether to retain alignment with EU law. ⁴³
115. A number of stakeholders have expressed concerns about the potential risk of divergence in marketing standards between Scotland and the rest of the UK as a result of exercise of the powers conferred by sections 8 and 9 of the Bill. For example, Eleanor Kay of Scottish Land and Estates commented:
- ” It is important to consider the primary markets for our produce. I do not have the exact figures to hand, but I know that a lot of our beef and sheep meat ends up in England. It is not that we cannot diverge from UK and EU standards, and there will probably be some similarity in relation to the standards that are set out in trade agreements, but it is important that we do not end up distorting the UK market. That is not to say that we cannot be slightly different, but we must not change standards for the sake of changing them.
- Source: Rural Economy and Connectivity Committee 18 December 2019 [Draft], Eleanor Kay, contrib. 185⁴⁵
116. A number of organisations submitting evidence have noted the exclusion of sheep and pig meat from section 9 of the Bill and, on this subject, the Law Society of Scotland comments:
- ” If there is a desire to include these sectors, it would be preferable for them to be included on the face of the Bill rather than added by regulation at a later stage. ¹³
117. The DPLR Committee report expresses concern that, whilst acknowledging that this was not the present Government's intention, the use of the power conferred by section 8 of the Bill could theoretically be used to make radical changes to

marketing standards in Scotland. The report also expresses concern that this power would enable the creation of offences with a penalty of up to 5 years imprisonment. On this basis, the DPLR Committee report concludes that it would be more appropriate for the power conferred by this section of the Bill to be subject to the affirmative rather than negative procedure.

118. It is also notable that the corresponding provisions in the UK Agriculture Bill (namely those pertaining to marketing standards and also carcass classification) are subject to the affirmative procedure.²

119. In oral evidence to the Committee, the Cabinet Secretary reiterated Scottish ministers' policy intention behind inclusion of the powers conferred by sections 8 and 9 of the Bill:

” ...it is not our intention to make any radical changes to marketing standards... The power that is being taken here is to make sure that we have the ability to replicate changes that are made elsewhere in the UK, in order to avoid barriers to the movement and sale of goods within the UK after EU exit.

Source: Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 167⁴⁶

120. Dr George Burgess, Deputy Director of Food and Drink at the Scottish Government, provided further clarification of potential circumstances where these powers would help to avoid divergence in marketing standards between the different devolved jurisdictions of the United Kingdom, arguing that, without them, alterations to marketing standards could be introduced elsewhere in the UK which the Scottish Government would have no power to replicate.¹⁰

121. Asked why sheep and pig meat had not been included in section 9 of the Bill, Dr George Burgess explained that these provisions directly mirror the coverage of the existing EU standards and suggested that the potential inclusion of other categories of meat under the marketing standards provisions of the Bill would be a matter for consultation with stakeholders.¹⁰

122. The Committee highlights the emphasis placed by industry stakeholders on the importance of the rest of the UK as a marketplace for Scottish agricultural products and the need to maintain alignment in marketing standards across the UK internal market, in order to avoid barriers to the movement and sale of these products post-Brexit.

123. The Committee therefore welcomes the Scottish Government's stated intention to use the powers conferred by sections 8 and 9 of the Bill to ensure there is no divergence in marketing standards between Scotland and the rest of the UK.

124. In addition, the Committee supports the recommendation of the DPLR Committee that, given the extent of powers it confers, both in terms of

modifying marketing standards and in terms of creating associated offences for those who breach those standards, section 8 of the Bill should be subject to the affirmative rather than negative procedure.

125. **The Committee recommends that Scottish ministers should consult further with industry stakeholders regarding the potential merits or otherwise of including sheep and pig meat in section 9 of the Bill.**

Carcass classification

126. The power in section 10 enables Scottish Ministers to make changes to scales for the classification of carcasses, which are used to calculate the payment due to the producer from the slaughterhouse. Regulations introduced under this section are subject to the negative procedure.
127. The Policy Memorandum indicates that this section would provide powers in particular to introduce mandatory sheep carcass classification, should there be a decision so to do in Scotland following further industry engagement on the matter.
128. Giving evidence to the Committee, Nigel Miller of Farming for 1.5 Degrees raised concerns about efficiencies in the current carcass classification system:

” Our present classification system does not necessarily produce carcasses that are ideal for the consumer and the retailer. The higher cost grades of sheep do not fit with supermarket specifications. Reviewing that classification makes sense, and reviewing the classification of veal and young bulls is important if we are to have efficiency in our livestock systems and to produce a pathway for bull dairy calves to be fed. At the moment, we have real restrictions through the EU on how those products are marketed.

Source: Rural Economy and Connectivity Committee 04 December 2019 [Draft], Nigel Miller, contrib. 63⁴⁷

129. Giving oral evidence to the Committee on behalf of the Scottish Government, Dr George Burgess made the following comments on the subject of carcass classification:

” I stress that we are not aware of any active plan by another part of the UK, including by DEFRA, for a specific change to the carcass classification standards. They are of pretty long standing in Europe and it is not immediately obvious that we need to change them.

Source: Rural Economy and Connectivity Committee 15 January 2020 [Draft], George Burgess, contrib. 186⁴⁸

130. **The Committee notes that the powers conferred by section 10 of the Bill would allow the Scottish Government to introduce mandatory sheep carcass classification should it consider it appropriate to do so, and believes that any such move should be subject to further comprehensive**

pre-consultation with the industry. The Committee calls on the Scottish Government to keep it updated on future development of proposals in this area and on any potential implications for Scotland's sheep farming industry.

131. **As for sections 8 and 9 of the Bill, the Committee reiterates its view that the powers conferred by section 10 of the Bill should be used to maintain alignment with corresponding provisions elsewhere in the UK. It recommends that, in the interests of ensuring the smooth functioning of the UK internal market for agricultural products, potential divergence in carcass classification between Scotland and the rest of the UK should be avoided.**

Part 2 - Collection and processing of data

132. Part 2 of the Bill provides powers to Scottish Ministers for the collection and processing of agricultural data. The stated policy objective of these powers is to improve the Scottish Government's understanding of the agricultural sector, whilst modernising and improving the legal basis for collecting data and providing further expert advice. Regulations exercising the power to require the provision of information by persons in or closely connected to the agri-food supply chain or who carry out agricultural activity, set out in sections 13 and 14 of the Bill, are subject to the affirmative procedure.

Definition of agricultural activity

133. Section 12 of the Bill gives Scottish Ministers the power, by regulations, to amend the definition of "agricultural activity" for the purposes of data collection and processing. Such regulations are subject to the affirmative procedure.

134. A number of stakeholders giving evidence to the Committee raised concerns that the definition of agricultural activity might be amended using the power conferred by section 12 of the Bill and that this could have wider implications, for instance in terms of determining eligibility to receive farm payments.

135. When giving evidence to the Committee, the Bill team was asked if there were any plans to amend the definition of agricultural activity using the powers set out in section 12 of the Bill. Responding on behalf of the Scottish Government, Ally McAlpine, senior statistician, said:

” At the moment, we do not want to change anything that is defined. In fact, the legislation relates to the EU law definition of agriculture as it stands. The answer is, no, we do not want to change the definition, but considering that we rely on the Agriculture Act 1947, by putting the power in the bill, we are hoping that it will have the same longevity in relation to the Data Protection Act 2018.

Source: Rural Economy and Connectivity Committee 20 November 2019 [Draft], Ally McAlpine (Scottish Government), contrib. 147⁴⁹

136. The Bill team was subsequently asked whether any amendments potentially made to the definition of agricultural activity in the future using the powers in section 12 of the Bill would have an impact on policy beyond the collection and processing of data. In follow-up correspondence with the Committee, Vicky Dunlop responded on behalf of the Scottish Government:

” The definition of 'agricultural activity' (Section 12(2) of the Bill) is borrowed from EU Regulation 1307/2013, and is only relevant to the scope of the information collection powers in Part 2 of the Bill. It has a one-way effect in that Part and does not, and cannot, affect the meaning of the terms in other contexts...³⁰

137. The Committee welcomes the data provisions of the Bill as providing an important update to the legal basis for collecting and processing agricultural data in the context of the Data Protection Act 2018. The

Committee also notes important clarifications provided in evidence by the Scottish Government with regard to the precise scope of the data provisions of the Bill.

138. **The Committee notes concerns expressed by a number of stakeholders that amendments made to the definition of agricultural activity using the power conferred by section 12 of the Bill could have wider implications beyond data collection, such as determining eligibility to receive farm payments. In this regard, the Committee has been reassured by additional information subsequently provided by the Bill team that the definition of agricultural activity referred to in the Bill is restricted to the data collection provisions of the Bill. As such, the Committee is satisfied that any changes introduced using the powers conferred by the Bill would not affect the definition of agricultural activity in any other context, for example in relation to the calculation and allocation of farm payments.**

Additional data collection

139. Providing evidence to the Committee, certain stakeholders have highlighted the importance of being able to collect additional categories of data in the future to address specific policy areas such as climate change.
140. Asked whether data protection would prohibit further processing of data to address other policy requirements than originally intended, Maureen Falconer, regional manager for Scotland for the Information Commissioner's Office indicated that further processing of data would be permissible, provided that processing was for a purpose that was not incompatible with the original purpose. She concluded:
- ” Some of the purposes in section 16 are so broad that I could well imagine the data being used for further purposes that are aligned with the purposes in the bill. From a data protection perspective, that would be fine.
- Source: Rural Economy and Connectivity Committee 27 November 2019 [Draft], Maureen Falconer, contrib. 124⁵⁰
141. Giving oral evidence to the Committee, the Cabinet Secretary acknowledged the importance of ensuring that data collection provisions are kept updated to reflect changing policy requirements:

” We need to ensure that, if our sustainable development goals change in future, we will have the power to require and compel the gathering of data that is germane to the pursuit of those objectives. As a general principle, I agree that that might require further attention in future. Although we do not intend to change the data that we collect at present, the powers that are set out in the bill are important because they will allow us to respond to and meet potential changes in international requirements. Without those powers, we might not be able to do that.

Source: Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 191⁵¹

142. Giving oral evidence to the Committee, Ally McAlpine, Senior Statistician at the Scottish Government, emphasised that the data provisions of the Bill relate specifically to the collection of personal data from individual farmers via survey and concluded:

” Things such as soil and earth observation are outwith the scope of the bill. We can do that through other routes.

Source: Rural Economy and Connectivity Committee 15 January 2020 [Draft], Ally McAlpine (Scottish Government), contrib. 192⁵²

143. **The Committee notes that the data provisions of the Bill relate only to the collection of personal data from individual farmers and crofters and that other categories of data collection in the agricultural sector do not fall within the scope of the Bill.**

Environmental impact

144. Regarding consideration of a Strategic Environmental Assessment of the Bill, the Policy Memorandum reaches the following conclusion:

” The Scottish Government has reached the view that as the Bill is likely to have no or minimum effect in relation to the environment, as per section 7 of the Environmental Assessment (Scotland) Act 2005, and can therefore be considered exempt. A pre-screening report⁵³ outlining this view and the relevant information has been prepared and submitted to the consultation authorities via the SEA Gateway as per the requirements of the 2005 Act.⁴³

145. In written evidence to the Committee, the Scottish Wildlife Trust was highly critical of the conclusion reached by the Strategic Environmental Assessment (SEA) for the Bill that the Bill will have no impact on the environment. It went on to highlight the significant contribution the agricultural sector makes to Scotland's territorial greenhouse gas emissions and its substantial impact on biodiversity decline, concluding:

” Given these impacts, at a time when Scottish land must be managed to tackle the pressing issues of biodiversity loss and climate breakdown rather than exacerbate them,... the Trust would assert that an SEA is necessary.⁵⁴

146. In its letter to the REC Committee of 29 January 2020, the ECCLR Committee also raises concerns that insufficient priority is given to the environmental impact of the Bill and agricultural policy more generally and urges the REC Committee to:

” ...consider the environmental impact of any proposed modifications to future agricultural policy or pilot projects, whether made by powers in this Bill or not, as part of its parliamentary scrutiny.⁵⁵

147. Asked by the REC Committee to address a range of issues raised in relation to the Bill by the ECCLR Committee, including the Bill's potential impact on the environment, the Cabinet Secretary responded:

” The bill will not have any impact on the environment per se. I tried to make it clear in my opening statement that we are—rightly—bound by existing environmental legislation, and I think that you have taken that point. That is the legal framework. The bill allows us to make changes, but there is no way that such changes would be used to diminish the environmental standards that apply.

Source: Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 206⁵⁶

148. The Cabinet Secretary went on to assert:

” ...that the bill is in no way intended to downgrade our commitment to high environmental standards—quite the opposite.

Source: Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 208⁵⁷

149. **The REC Committee supports the ECCLR Committee's view that due consideration must be given to the environmental impact of any policy measures introduced using the powers conferred by this Bill. The Committee therefore recommends that all such measures are subject to Environmental Impact Assessment.**

Reporting to Parliament

150. As part of its scrutiny of the Bill, the DPLR Committee raised the prospect of introducing a statutory requirement for the Scottish Government to report periodically to the Parliament regarding the exercise of the powers conferred by the Bill.

151. On the subject of periodic reporting to the Scottish Parliament, the Cabinet Secretary told the REC Committee:

” ...as a matter of general practice, we are happy to continue to provide the committee with regular reports on all matters of importance as they develop.

Source: Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 199⁵⁸

152. During the same evidence session, the Cabinet Secretary went on to warn of potential unintended consequences of imposing a statutory requirement on the Scottish Government to report periodically to the Parliament regarding implementation of the Bill:

” The committee should be aware of what it seeks. If it wants to have statutory provisions for reporting on everything then, by definition, a future minister might take the view that, on certain areas, they will not be statutorily obliged to report the information that I currently provide to the committee gratis...in a desire to show respect to Parliament.

Source: Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 203⁵⁹

153. Having further considered the possible inclusion of a statutory requirement for the Scottish Government to report periodically to the Parliament, the DPLR Committee report concludes:

” The Committee is content with the Scottish Government's response and its intention to keep the Parliament informed as it requests through the usual processes. ²²

154. As a result of reassurances provided by the Scottish Government that it intends to report regularly to the Parliament as regards the Bill's implementation, the Committee is satisfied that there is no need for a statutory requirement on periodic reporting to the Parliament to be included in the Bill.

Long-term rural policy for Scotland

155. The Policy Memorandum accompanying the Bill outlines a variety of alternative approaches which were considered to achieve the stated policy goals during the Bill's inception and development. One of the alternative approaches considered was to use this Bill to create powers relating to long term future rural policy, similar to the approach taken for England in the UK Agriculture Bill. The Policy Memorandum goes on to explain the reasons why this approach was ultimately not pursued:

” The ongoing uncertainty surrounding the UK's exit from the EU means that the future environment in which long term rural policy will need to operate is still relatively unknown, even in broad terms. Until there is greater clarity around issues which could constrain or affect future Scottish rural policy, such as the UK Government plans for future funding, and the future trading relationship with the EU (and beyond), etc., any development of long term future policy would either need to be very general, or would need to be heavily caveated, either of which would negate the advantage of providing farmers, crofters and land managers with longer term certainty. As such, especially with regard to the current uncertainty around future funding from the UK Government, it was considered that setting out longer term rural policy in legislation at this stage would be inadvisable. ⁴³

156. The majority of stakeholders providing evidence to the Committee have argued, in one form or another, for a long-term rural policy for Scotland to be brought forward through separate primary legislation. For instance, particularly in light of commitments made, by 2030, to double turnover from Scotland's farming, fishing, food and drinks sector and to achieve a 75 per cent reduction in emissions from agriculture, the written submission from NFU Scotland argues the case for such legislation to be brought forward as a matter of relative urgency. ⁴

157. Concerning a potential timetable for the introduction of a long-term rural policy for Scotland, the Cabinet Secretary reiterated the planned timetable for the farming and food production future policy group to report on a future direction for rural policy during summer 2020. At the same time, he indicated that, as a result of ongoing engagement with stakeholders, the work of this group might have to be supplemented, in particular to determine how to meet the climate change challenge. ¹⁰

158. Pressed on the timetable for the introduction of new primary legislation to implement a long-term rural policy for Scotland, the Cabinet Secretary said:

” For the reasons of Brexit uncertainty that I mentioned earlier, it would be imprudent and wrong for us to seek to implement sets of new policies when we do not know what the facts are. However, our preparatory work continues, and it will inform the timetable for any future legislative measures that are necessary, be they in primary or secondary legislation or an admixture of the two.

Source: Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 197⁶⁰

159. **The Committee wishes to draw Scottish ministers' attention to a widely expressed view amongst some stakeholders that there is a lack of urgency in the Scottish Government's planned timetable for making the substantial changes to rural policy required. It notes concerns that any substantial delay in the introduction of new policy and associated primary legislation will make it challenging for the Scottish agricultural industry to meet the commitment to achieve a 75% reduction in emissions by 2030 and contribute towards the target of doubling turnover in farming, fishing, food and drink to reach £30 billion by 2030.**

160. **The Committee acknowledges the Scottish Government's intention, as part of a phased approach to future rural policy development, that the timetable for a proposed period of simplification and improvement will run until approximately 2024, with the expectation that a long-term agricultural policy for Scotland will not be in place until that date at the earliest.**

161. **In these circumstances, the Committee calls on the Scottish Government to set out in greater detail its proposed timeline for development of this new policy. This should include details of how the exercise of the powers in this Bill will contribute to this process and help set the agricultural industry on a realistic path towards meeting the 2030 policy commitments previously outlined.**

Conclusion

162. Under rule 9.6.1 of Standing Order, the lead committee is required to report to the Parliament on the general principles of the Bill. In doing so, the Rural Economy and Connectivity Committee has taken into consideration the evidence from a wide range of stakeholders.
163. The Committee has made a number of recommendations for improvement and calls for clarification in relation to the Agriculture (Retained EU Law and Data) (Scotland) Bill. It looks forward to receiving the Scottish Government's response on these points.
- 164. In conclusion, the Committee supports the general principles of the Agriculture (Retained EU Law and Data) (Scotland) Bill and recommends to the Parliament that they be agreed to.**

Annex A: Consideration by other Committees

On 19 December 2019, the Delegated Powers and Law Reform Committee received a response from the Scottish Government in answer to that Committee's questions on the Bill: [https://parliament.scot/S5_Delegated_Powers/General%20Documents/Agriculture_\(Retained_EU_Law_and_Data\)__\(Scotland\)_Bill_answers.pdf](https://parliament.scot/S5_Delegated_Powers/General%20Documents/Agriculture_(Retained_EU_Law_and_Data)__(Scotland)_Bill_answers.pdf)

On 29 January 2020, the Convener of the Environment, Climate Change and Land Reform Committee wrote to the Rural Economy and Connectivity Committee regarding the Agriculture (Retained EU Law and Data) (Scotland) Bill:

[https://www.parliament.scot/S5_Rural/General%20Documents/20200129_RECC_Agriculture_\(Retained_EU_Law_and_Data\)\(Scotland\)_Bill\(1\).pdf](https://www.parliament.scot/S5_Rural/General%20Documents/20200129_RECC_Agriculture_(Retained_EU_Law_and_Data)(Scotland)_Bill(1).pdf)

On 6 February 2020, the Delegated Powers and Law Reform Committee published its report on the Agriculture (Retained EU Law and Data) (Scotland) Bill at Stage 1:

<https://sp-bpr-en-prod-cdnep.azureedge.net/published/DPLR/2020/2/6/Agriculture--Retained-EU-Law-and-Data---Scotland--Bill--Stage-1/DPLRS052020R11.pdf>

Annex B: Extract of minutes

31st Meeting, 2019 (Session 5), Wednesday 13 November 2019

5. Agriculture (Retained EU Law and Data) (Scotland) Bill (in private): The Committee agreed its approach to the scrutiny of the Bill at Stage 1.

32nd Meeting, 2019 (Session 5), Wednesday 20 November 2019

2. Agriculture (Retained EU Law and Data) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from— Dr John Kerr, Head of Agriculture Policy Division, Dr George Burgess, Deputy Director of Food and Drink, Ally McAlpine, Senior Statistician, Rural and Environment Science and Analytical Services (RESAS), Vicky Dunlop, Branch Head/Team Leader, Agriculture (Retained EU Law and Data) (Scotland) Bill, and Andy Crawley, Lawyer, Scottish Government Legal Directorate (SGLD), Scottish Government.

Edward Mountain declared an interest as a farmer.

Peter Chapman declared an interest as a farmer.

Stewart Stevenson declared an interest as an owner of a small agricultural holding.

5. Agriculture (Retained EU Law and Data) (Scotland) Bill (in private): The Committee reviewed the evidence heard at agenda item 2.

33rd Meeting, 2019 (Session 5), Wednesday 27 November 2019

1. Agriculture (Retained EU Law and Data) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from— Maureen Falconer, Regional Manager – Scotland, the Information Commissioner’s Office; Steven Thomson, Senior Agricultural Economist and Policy Advisor, Scotland’s Rural College; Professor Julie Fitzpatrick, CEO of the Moredun Foundation and Scientific Director, Moredun Research Institute; Ellen Wilson, Chair, Scottish Biodiversity Information Forum.

Edward Mountain declared an interest as a farmer.

Peter Chapman declared an interest as a farmer.

Stewart Stevenson declared an interest as an owner of a small agricultural holding.

3. Agriculture (Retained EU Law and Data) (Scotland) Bill (in private): The Committee reviewed the evidence heard at agenda item 1.

34th Meeting, 2019 (Session 5), Wednesday 4 December 2019

1. Agriculture (Retained EU Law and Data) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from— Pete Ritchie, Executive Director, Nourish Scotland, and Vicki Swales, Head of Land Use Policy, RSPB Scotland, on behalf of Scottish Environment LINK; Nigel Miller, Co-Chair, Farming for 1.5 Degrees; Professor Michael Keating, Fellow, Royal Society of Edinburgh; Rachel Hunter, Director of Service Delivery, Highlands and Islands Enterprise; Martin Morgan, Executive Manager, Scottish Association of Meat Wholesalers; David Michie, Deputy Director, Soil Association Scotland; Sarah Millar, Head of Industry Development, Quality Meat Scotland.

Edward Mountain declared an interest as a farmer.

Peter Chapman declared an interest as a farmer.

Stewart Stevenson declared an interest as an owner of a small agricultural holding.

2. Agriculture (Retained EU Law and Data) (Scotland) Bill (in private): The Committee reviewed the evidence heard at agenda item 1.

[35th Meeting, 2019 \(Session 5\) Wednesday 18 December 2019](#)

1. Agriculture (Retained EU Law and Data) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from— Jonnie Hall, Director of Policy, NFU Scotland; Lizzy Baxter, NFU Scotland Next Generation Representative, NFUS Next Generation Committee; Yvonne White, Chair, Scottish Crofting Federation; Christopher Nicholson, Chairman, Scottish Tenant Farmers Association; Eleanor Kay, Policy Adviser (Agriculture & Forestry), Scottish Land & Estates. Edward Mountain declared an interest as a farmer. Peter Chapman declared an interest as a farmer. Stewart Stevenson declared an interest as an owner of a small agricultural holding.

3. Agriculture (Retained EU Law and Data) (Scotland) Bill (in private): The Committee reviewed the evidence heard at agenda item 1.

[2nd Meeting, 2020 \(Session 5\) Wednesday 15 January 2020](#)

2. Agriculture (Retained EU Law and Data) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from— Fergus Ewing, Cabinet Secretary for the Rural Economy, John Kerr, Head of Agricultural Policy Division, George Burgess, Deputy Director of Food and Drink, Ally McAlpine, Senior Statistician, Rural and Environment Science and Analytical Services (RESAS), Vicky Dunlop, Bill Team Leader, and David MacLennan, Scottish Government Legal Directorate (SGLD), Scottish Government.

5. Agriculture (Retained EU Law and Data) (Scotland) Bill (in private): The Committee reviewed the evidence heard at agenda item 2.

[6th Meeting, 2020 \(Session 5\) Wednesday 19 February 2020](#)

1. Agriculture (Retained EU Law and Data) (Scotland) Bill (in private): The Committee considered a draft Stage 1 report and agreed to consider a revised draft, in private, at its next meeting.

[7th Meeting, 2020 \(Session 5\) Wednesday 26 February 2020](#)

1. Agriculture (Retained EU Law and Data) (Scotland) Bill (in private): The Committee considered and agreed a draft report.

Annex C: Written Evidence

- [NFU Scotland \(98 KB pdf\)](#)
- [The Vegan Society \(144 KB pdf\)](#)
- [WWF Scotland \(169 KB pdf\)](#)
- [RSPB Scotland \(172 KB pdf\)](#)
- [Soil Association Scotland \(166 KB pdf\)](#)
- [Scottish Wildlife Trust \(199 KB pdf\)](#)
- [Law and Society of Scotland \(270 KB pdf\)](#)
- [Quality Meat Scotland \(104 KB pdf\)](#)
- [Scottish Environmental Link \(158 KB pdf\)](#)
- [Farming for 1.5 Degrees Independent Inquiry on Farming and Climate Change in Scotland \(88.7 KB pdf\)](#)
- [AIC Scotland \(116 KB pdf\)](#)
- [Game and Wildlife Trust \(198 KB pdf\)](#)
- [Scottish Land and Estates \(85.5 KB pdf\)](#)
- [Scottish Land Tenant Farmers Association \(78.9 KB pdf\)](#)

- [1] European Union. (2016). Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016. *on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance)*.
- [2] UK Parliament. (2020, January 16). Agriculture Bill 2019-20. Retrieved from <https://publications.parliament.uk/pa/bills/cbill/58-01/0007/20007.pdf>
- [3] Letter from the Cabinet Secretary for Rural Economy & Tourism to the Secretary of State for Environment, Food and Rural Affairs. (2020, February 20). Retrieved from <https://www.gov.scot/binaries/content/documents/govscot/publications/correspondence/2018/10/proposed-amendments-to-the-uk-agriculture-bill/documents/letter-from-mr-ewing-to-mr-eustice-20-feb-2020/letter-from-mr-ewing-to-mr-eustice-20-feb-2020/govscot%3Adocument/UK%2BAgriculture%2BBill%2B-%2Bletter%2BMr%2BEwing%2Bto%2BDefra%2BFeb%2B2020.pdf>
- [4] NFU Scotland. (2019, December). NFU Scotland Written Evidence. Retrieved from https://www.parliament.scot/S5_Rural/RECC_NFU_Scotland_AB.pdf
- [5] Scottish Environment LINK. (2020, January). Scottish Environment LINK Written Evidence. Retrieved from https://www.parliament.scot/S5_Rural/General%20Documents/RECC_Scottish_Environmental_Link_AB.pdf
- [6] Rural Economy and Connectivity Committee 04 December 2019 [Draft], Pete Ritchie, contrib. 29, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12414&c=2223251>
- [7] Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 106, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12465&c=2231247>
- [8] RSPB Scotland. (2020, January). RSPB Scotland Written Evidence. Retrieved from https://www.parliament.scot/S5_Rural/RECC_RSPB_Scotland_AB.pdf
- [9] Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 108, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12465&c=2231249>
- [10] Scottish Parliament. (2020, January). Rural Economy and Connectivity Committee: Official Report, 15 January 2020. Retrieved from <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12465&i=112683>
- [11] Scottish Government. (2019, November 6). Agriculture (Retained EU Law and Data) (Scotland) Bill: Policy Memorandum. Retrieved from [https://www.parliament.scot/S5_Bills/Agriculture%20\(Retained%20EU%20Law%20and%20Data\)%20\(Scotland\)%20Bill/SPBill59PMS052019.pdf](https://www.parliament.scot/S5_Bills/Agriculture%20(Retained%20EU%20Law%20and%20Data)%20(Scotland)%20Bill/SPBill59PMS052019.pdf) [accessed 17 February 2020]
- [12] Policy Memorandum. (n.d.) *Paragraphs 35-38*.
- [13] Law Society of Scotland. (2020, January). Law Society of Scotland Written Evidence. Retrieved from https://www.parliament.scot/S5_Rural/General%20Documents/RECC_LAW_SOCIETY_OF_SCOTLAND_AB.pdf [accessed January 2020]

- [14] Rural Economy and Connectivity Committee 18 December 2019 [Draft], Jonnie Hall, contrib. 23, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12441&c=2227533>
- [15] Rural Economy and Connectivity Committee 20 November 2019 [Draft], Dr Kerr, contrib. 23, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12386&c=2219446>
- [16] Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 116, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12465&c=2231257>
- [17] Rural Economy and Connectivity Committee 04 December 2019 [Draft], Vicki Swales (Scottish Environment LINK), contrib. 7, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12414&c=2223229>
- [18] Scottish Parliament. (2020, January). Rural Economy and Connectivity Committee: Official Report, 18 December 2019. Retrieved from <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12441&c=2227653>
- [19] Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 100, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12465&c=2231241>
- [20] Rural Economy and Connectivity Committee 20 November 2019 [Draft], Dr Kerr, contrib. 107, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12386&c=2219530>
- [21] Rural Economy and Connectivity Committee 15 January 2020 [Draft], David MacLennan, contrib. 119, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12465&c=2231260>
- [22] Scottish Parliament. (2020, February 6). DPLR report: Agriculture (Retained EU Law and Data) (Scotland) Bill Stage 1. Retrieved from <https://digitalpublications.parliament.scot/Committees/Report/DPLR/2020/2/6/Agriculture--Retained-EU-Law-and-Data---Scotland--Bill--Stage-1#Introduction> [accessed 6 February 2020]
- [23] Rural Economy and Connectivity Committee 18 December 2019 [Draft], Eleanor Kay (Scottish Land & Estates), contrib. 11, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12441&c=2227521>
- [24] Rural Economy and Connectivity Committee 18 December 2019 [Draft], Christopher Nicholson, contrib. 98, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12441&c=2227608>
- [25] Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 134, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12465&c=2231275>
- [26] Rural Economy and Connectivity Committee 18 December 2019 [Draft], Jonnie Hall, contrib. 173, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12441&c=2227683>

- [27] ECCLR Letter to REC Committee: Agriculture (Retained EU Law and Data) (Scotland) Bill. (2020, January 29). Retrieved from [https://www.parliament.scot/S5_Rural/General%20Documents/20200129_RECC_Agriculture_\(Retained_EU_Law_and_Data\)\(Scotland\)_Bill\(1\).pdf](https://www.parliament.scot/S5_Rural/General%20Documents/20200129_RECC_Agriculture_(Retained_EU_Law_and_Data)(Scotland)_Bill(1).pdf) [accessed February 2020]
- [28] Rural Economy and Connectivity Committee 20 November 2019 [Draft], Dr Kerr, contrib. 65, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12386&c=2219488>
- [29] Rural Economy and Connectivity Committee 20 November 2019 [Draft], Dr Kerr, contrib. 72, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12386&c=2219495>
- [30] Scottish Government. (2019, December 6). Letter from the Scottish Government Bill Team to the Committee regarding the follow up information from the Committee's meeting of 20 November 2019. Retrieved from https://www.parliament.scot/S5_Social_Security/General%20Documents/Letter_to_Convener_-_RECC_Follow_up_Response__06_December_2019.pdf
- [31] Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 128, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12465&c=2231269>
- [32] Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 130, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12465&c=2231271>
- [33] Rural Economy and Connectivity Committee 18 December 2019 [Draft], Christopher Nicholson, contrib. 147, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12441&c=2227657>
- [34] Rural Economy and Connectivity Committee 18 December 2019 [Draft], Jonnie Hall, contrib. 143, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12441&c=2227653>
- [35] AIC Scotland. (2020, January). AIC Scotland Written Evidence. Retrieved from https://www.parliament.scot/S5_Social_Security/General%20Documents/RECC_AIC_Scotland_AB.pdf
- [36] Rural Economy and Connectivity Committee 27 November 2019 [Draft], Steven Thomson, contrib. 72, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12403&c=2221878>
- [37] Scottish Parliament. (2019, November). Rural Economy and Connectivity Committee: Official Report, 20 November 2019. Retrieved from <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12386&i=111942>
- [38] Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 159, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12465&c=2231300>

- [39] Rural Economy and Connectivity Committee 18 December 2019 [Draft], Jonnie Hall, contrib. 181, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12441&c=2227691>
- [40] Rural Economy and Connectivity Committee 20 November 2019 [Draft], Dr Burgess, contrib. 137, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12386&c=2219560>
- [41] Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 163, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12465&c=2231304>
- [42] Natural Environment and Rural Communities Act 2006. (2006, undefined). Retrieved from <http://www.legislation.gov.uk/ukpga/2006/16/section/94> [accessed February 2020]
- [43] Scottish Government. (2019, November 6). Agriculture (Retained EU Law and Data) (Scotland) Bill Policy Memorandum. Retrieved from [https://www.parliament.scot/S5_Bills/Agriculture%20\(Retained%20EU%20Law%20and%20Data\)%20\(Scotland\)%20Bill/SPBill59PMS052019.pdf](https://www.parliament.scot/S5_Bills/Agriculture%20(Retained%20EU%20Law%20and%20Data)%20(Scotland)%20Bill/SPBill59PMS052019.pdf)
- [44] Rural Economy and Connectivity Committee 04 December 2019 [Draft], Sarah Millar, contrib. 235, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12414&c=2223457>
- [45] Rural Economy and Connectivity Committee 18 December 2019 [Draft], Eleanor Kay, contrib. 185, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12441&c=2227695>
- [46] Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 167, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12465&c=2231308>
- [47] Rural Economy and Connectivity Committee 04 December 2019 [Draft], Nigel Miller, contrib. 63, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12414&c=2223285>
- [48] Rural Economy and Connectivity Committee 15 January 2020 [Draft], George Burgess, contrib. 186, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12465&c=2231327>
- [49] Rural Economy and Connectivity Committee 20 November 2019 [Draft], Ally McAlpine (Scottish Government), contrib. 147, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12386&c=2219570>
- [50] Rural Economy and Connectivity Committee 27 November 2019 [Draft], Maureen Falconer, contrib. 124, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12403&c=2221930>
- [51] Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 191, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12465&c=2231332>

- [52] Rural Economy and Connectivity Committee 15 January 2020 [Draft], Ally McAlpine (Scottish Government), contrib. 192, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12465&c=2231333>
- [53] Pre-screening report. (n.d.) Retrieved from <https://www2.gov.scot/seag/publicsearch.aspx> [accessed February 2020]
- [54] Scottish Wildlife Trust. (2020, January). Scottish Wildlife Trust Written Evidence. Retrieved from https://www.parliament.scot/S5_Rural/General%20Documents/RECC_SCOTTISH_WILDLIFE_TRUST_AB.pdf
- [55] Scottish Parliament. (2020, January 29). Letter from the Convener of the ECCLR Committee regarding Agriculture (Retained EU Law and Data) (Scotland) Bill. Retrieved from [https://www.parliament.scot/S5_Rural/General%20Documents/20200129_RECC_Agriculture_\(Retained_EU_Law_and_Data\)\(Scotland\)_Bill\(1\).pdf](https://www.parliament.scot/S5_Rural/General%20Documents/20200129_RECC_Agriculture_(Retained_EU_Law_and_Data)(Scotland)_Bill(1).pdf) [accessed 4 February 2020]
- [56] Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 206, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12465&c=2231347>
- [57] Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 208, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12465&c=2231349>
- [58] Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 199, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12465&c=2231340>
- [59] Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 203, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12465&c=2231344>
- [60] Rural Economy and Connectivity Committee 15 January 2020 [Draft], Fergus Ewing, contrib. 197, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12465&c=2231338>

