

## SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM

### UK AGRICULTURE BILL

1. This supplementary Legislative Consent Memorandum (LCM) has been lodged by Fergus Ewing MSP, Cabinet Secretary for Rural Economy and Tourism. This supplementary LCM augments the original LCM on the UK Agriculture Bill which was lodged on 4 May 2020<sup>1</sup>. That LCM identified a number of provisions contained within the Bill that alter the executive competence of the Scottish Ministers and/or which fall within the legislative competence of the Scottish Parliament for which the Scottish Ministers sought the Scottish Parliament's consent. Those provisions related to:

- Food security;
- Fertilisers; and
- Red meat levy.

2. The original LCM confirmed the Scottish Government's intention to pursue further discussions with the UK Government regarding the requirement for the Scottish Ministers' consent to provisions within the Bill relating to organic products and animal identification and traceability.

3. The latest version of Bill and the previous LCM can be accessed via the following links:

Bill <https://publications.parliament.uk/pa/bills/lbill/58-01/130/5801130.pdf>

LCM <https://www.parliament.scot/parliamentarybusiness/Bills/115054.aspx>

#### **Need for a supplementary LCM**

4. The Scottish and UK Governments have been working together on refining both the organic products and animal identification and traceability provisions of the Bill to make them as effective as possible for the Scottish interest. The UK Government agreed to lodge further amendments to the Bill for these provisions and these were tabled on 29 June 2020<sup>2</sup> and have now been agreed to in Committee. These meet the Scottish Government's concerns in relation to organic products and animal identification and traceability. They go some way to meeting the Scottish Government's concerns on the WTO Agreement on Agriculture.

5. Where these amendments are not covered by the scope of the original LCM (as set out in paragraph 1 above), and where they fall within the legislative competence of the Scottish Parliament or alter the executive competence of the Scottish Ministers, then a supplementary LCM is required. Previously the Scottish Government did not recommend consent for the provisions on organics products, or animal identification

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<sup>1</sup> <https://www.parliament.scot/parliamentarybusiness/Bills/115054.aspx>

<sup>2</sup> <https://publications.parliament.uk/pa/bills/lbill/58-01/112/5801112-l.pdf>

Clause 32 – Amendment 209

Clause 37 – Amendment 262

Clause 42 – Amendment 268

and traceability. Now these provisions have been amended by the UK Government, the Scottish Government is happy to recommend consent to the provisions on organics products, and identification and traceability of animals

## **Organic products**

6. Provisions in clauses 36 and 37 of the Bill provide the Secretary of State, and where the provisions relate to devolved matters, the Scottish Ministers, Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland (DAERA-NI) with powers to make regulations relating to the certification, import and export of organic products and the enforcement of organic regulations.

7. Clause 37(1)(a) of the Bill as introduced gave the Secretary of State powers to make regulations on matters relating to devolved aspects of organics regulations without securing the consent of the Scottish Ministers (and of the Welsh Ministers and DAERA-NI as appropriate) as a pre-requisite to making such regulations.

8. An amendment<sup>3</sup> tabled by Lord Gardiner of Kimble, Parliamentary Under-Secretary of State, on 29 June 2020, which was agreed to in Committee, now specifies that the Secretary of State may only make regulations on matters relating to devolved aspects with the consent of the Scottish Ministers (and of the Welsh Ministers and DAERA-NI as appropriate).

9. The Scottish Government is satisfied that this will give robust assurance with regard to future operation of these organics provisions. The Scottish Parliament will be able to consider decisions by the Scottish Ministers to consent to the making of regulations by the Secretary of State under clause 37, under the arrangements agreed between the Scottish Government and the Parliament for scrutiny of such decisions. Scottish Parliament and Scottish Government officials have been discussing the terms of a new Protocol setting out those scrutiny arrangements.

10. Under the proposed new Protocol, Scottish Ministers would notify the Parliament of any proposal to consent to proposed UK regulations on a matter that was within the competence of the EU immediately before exit day and would fall within devolved competence; which would include regulations under these provisions of the bill. The Parliament would have at least 28 days to approve any such proposal, except that Scottish Ministers would be able to notify the Parliament retrospectively of having given consent to regulations of a purely technical nature, as is currently the case for regulations under section 2(2) of the European Communities Act 1972 to implement EU law. Scottish Parliament and Scottish Government officials have jointly produced a text of the proposed new Protocol that is with the Parliament for consideration. Until the new Protocol is in place, Scottish Ministers would notify the Parliament of any proposal to consent to regulations proposed to be made under the Bill, in accordance with the existing Protocol on scrutiny of proposals to consent to regulations made under the European Union (Withdrawal) Act 2018 that has been in place since September 2018.

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<sup>3</sup> Amendment 262 at <https://publications.parliament.uk/pa/bills/lbill/58-01/112/5801112-l.pdf>

## **Animal Identification and Traceability**

11. Clause 32(1) of the Bill amends the Natural Environment and Rural Communities Act 2006 (NERC Act). The amendment to the 2006 Act gives the Secretary of State powers to assign, by order, to an agricultural board established by the Secretary of State under that Act, functions exercisable in Scotland (or Wales and Northern Ireland) that relate to a) collecting, managing and making available information regarding the identification, movement and health of animals and b) the means of identifying animals.

12. As introduced, clause 32 did not follow the existing arrangements provided for in the NERC Act. The power to assign these functions by order was not conferred on “the appropriate authority”: it was instead conferred on the Secretary of State. As such it was not apparent that the approval of the Scottish Ministers (or other devolved administrations) was required before such an order may be made.

13. An amendment<sup>4</sup> tabled by Lord Gardiner of Kimble on 29 June 2020, which was agreed to in Committee, now corrects this deficit. It specifies that the Secretary of State may only use powers under clause 32 to make an order under the NERC Act to assign the above functions to a board with the approval of the Scottish Ministers, the Welsh Ministers, and the Department of Agriculture, Environment and Rural Affairs where those functions are exercisable in relation to Scotland, Wales or Northern Ireland respectively.

14. The Scottish Government is satisfied that this amendment ensures alignment with the devolved responsibilities of the Scottish Ministers and allows livestock identification and traceability to operate across the UK. The Scottish Parliament will be able to consider decisions by the Scottish Ministers to consent to the making of regulations by the Secretary of State under clause 32, under the arrangements agreed between the Scottish Government and the Parliament for scrutiny of such decisions.

## **World Trade Organisation Agreement on Agriculture**

15. As indicated in the original LCM, Part 6 (clauses 40 to 42) of the Bill required the Scottish Parliament’s consent as it concerned the implementation of international obligations (namely those arising from the WTO Agreement on Agriculture) as regards matters (agriculture support) which are not reserved. The UK Government indicated that it considered that consent was required, but only to the extent that the provisions affect the executive competence of the Scottish Ministers.

16. An amendment<sup>5</sup> tabled by Lord Gardiner of Kimble on 29 June 2020, which was agreed to in Committee, removed subsections (4) and (5) of section 42, which would have allowed the Secretary of State to impose requirements on the Scottish Ministers to provide information. These were the provisions which the UK Government conceded as requiring the consent of the Scottish Parliament.

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<sup>4</sup> Amendment 209 at <https://publications.parliament.uk/pa/bills/lbill/58-01/112/5801112-l.pdf>

<sup>5</sup> Amendment 268 at <https://publications.parliament.uk/pa/bills/lbill/58-01/112/5801112-l.pdf>

17. The Scottish Government is content with the amendment to clause 42, but it does not affect the need for the Scottish Parliament's consent to Part 6 as a whole. As no further amendments to that Part have been proposed, the Scottish Government's position remains unchanged and consent is not recommended.

### **Financial Implications**

18. The amendments made to the Bill have no effect on the financial implications set out in the previous LCM.

### **Common Frameworks**

19. As noted in the original Legislative Consent Memorandum, non-statutory frameworks have been proposed in relation to, among other things, organic products. The amendment that has been made to clause 37 will assist with this. The amendment to clause 42 will also assist with the development of the statutory framework on the WTO Agreement on Agriculture being established by Part 6 of the Bill.

### **Conclusion**

20. It remains a matter of regret to the Scottish Government that the UK is withdrawing from the EU. The Scottish Government considers this will have widespread detrimental effects on the UK and Scotland, and has deep concerns over the harm that will be inflicted on Scotland by withdrawal from the European Union.

21. Whilst the Scottish Government can accept the main purpose of the Agriculture Bill, as replacement legislative underpinning is required in a number of the areas covered by the Bill, it does not support all detailed aspects of the Bill's provisions and does not accept that the approach taken to this Bill is entirely consistent with devolved responsibilities. The Scottish Government therefore recommends that the Parliament be invited to grant consent to the UK Parliament legislating in devolved matters in relation to organic products and animal identification and traceability in addition to the recommendations in the previous LCM.

### **Draft Legislative Consent Motion**

22. The revised draft motion, which will be lodged by the Cabinet Secretary for Rural Economy and Tourism is:

"That the Scottish Parliament agrees that the provisions related to food security organic products, animal identification and traceability, fertilisers, and the red meat levy in the Agriculture Bill, introduced into the House of Commons on 16 January 2020, so far as these matters fall within the legislative competence of the Scottish Parliament and alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament."

**Scottish Government**  
August 2020



*This Supplementary Legislative Consent Memorandum relates to the Agriculture Bill (UK legislation) and was lodged with the Scottish Parliament on 18 August 2020*

## **AGRICULTURE BILL – SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM**

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