

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM

UK AGRICULTURE BILL

1. This further 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 and supplementary LCMs on the UK Agriculture Bill which were lodged on 4 May 2020 and 18 August 2020. Both LCMs 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
- red meat levy
- organics
- identification and traceability of animals

2. The latest version of Bill and previous versions of the LCMs can be accessed via the following links:

<https://publications.parliament.uk/pa/bills/lbill/58-01/134/5801134.pdf>

https://www.parliament.scot/S5_Bills/SPLCM-S05-38.pdf

https://www.parliament.scot/S5_Bills/SPLCM-S05-38a.pdf

Retained direct EU legislation – Requirement for a further supplementary LCM

3. The effect of Article 138 of the Withdrawal Agreement, as incorporated into domestic law by section 7A of the European Union (Withdrawal) Agreement Act 2018, is that EU law as it has effect from time to time (also called 'EU law proper') will continue to apply to ongoing programmes and activities committed under the 2014 to 2020 Multi-annual Financial Framework until closure or earlier termination.

4. The EUWA was amended in 2020 to carve out relevant separation agreement from the EU law rolled into retained EU law by section 3 EUWA. The effect is that there will for a time be two parallel regimes in domestic law i.e. retained EU law under section 3 EUWA, and 'relevant separation agreement law' under section 7A EUWA.

5. The UK Government has been considering the effect of the incorporation of Article 138 into domestic law on section on the EU Withdrawal Agreement Act.

6. The UK Government wishes to ensure that the EU rules that will become relevant separation agreement law (which is in essence transitional law) will still be retained EU law, and therefore capable of being modified when EU law proper no longer applies to them.

7. The UK Government also wishes to remove any doubt that national authorities are able to add domestic funding to programmes and activities subject to EU law

proper after EU funding ceases. This is because it is not normally lawful under EU rules for a Member State to add additional funds to programmes and activities regulated by EU law. The UK is no longer a Member State, but EU rules will still apply after Implementation Period completion date for the limited purposes set out in Article 138.

8. The UK Government therefore intends to clarify that relevant separation agreement law is to become retained EU law under section 3 EUWA. It is necessary that it does in order for 'legacy' commitments to be properly regulated under domestic law when (for example) EU funding dries up.

9. Two new clauses (now clauses 16 and 17) have therefore been inserted. Clause 16 provides for an express power to 'top up' aid programmes that are subject to EU law proper, and clause 17 amends section 3 EUWA to make it clear that the relevant EU legislation does indeed roll over under that section regardless of the effect of section 7A EUWA. These provide for agriculture and related matters, which are devolved.

10. The Scottish Government is satisfied that it is appropriate to remove any doubt on these two key issues, which fall within the legislative competence of the Scottish Parliament. The amendments, and the rollover amendment in particular, are not covered by the scope of the original or supplementary LCM so a further supplementary LCM is required. The Scottish Government understands that further minor amendments may need to be made to these clauses at Third Reading.

Other Amendments

11. New Clause "Trade and Agriculture Commission"¹ provides for the establishment of a statutory Commission with responsibility to make recommendations to the Secretary of State to promote, maintain and safeguard current standards of food production through international trade policy, including standards related to food safety, the environment and animal welfare. It also requires the Commission to report on any draft trade agreement prior to its signing. The clause makes provision for the reports to be laid before and considered by the UK Parliament. As the clause relates to standards for food safety, the environment and animal welfare, all matters within the legislative competence of the Scottish Parliament, the requirement for legislative consent is triggered.

12. The Scottish Government notes that the UK Government has already set up a short-life Trade & Agriculture Commission on a non-statutory basis. While the new clause would place the Commission on a statutory basis, and give it permanence, the Scottish Government remains concerned that preparing and laying reports containing recommendations alone does little to ensure standards, although the Scottish Government recognises that subsections (10) to (12) do require a response from the UK Government and provide some UK Parliamentary oversight. More fundamentally, the new clause fails to recognise the responsibility of the Scottish Government and Scottish Parliament, and bodies in Wales and NI, for food safety, environment and animal welfare. Accordingly, the Scottish Government is not proposing consent in

¹ [https://publications.parliament.uk/pa/bills/lbill/58-01/130/5801130-II\(Provisional\).pdf](https://publications.parliament.uk/pa/bills/lbill/58-01/130/5801130-II(Provisional).pdf)

respect of this clause. The Scottish Government note that the UK Government intends to reverse the amendment when the Bill returns to the House of Commons.

13. New clause “Application of pesticides: limitations on use to protect human health²” attempts to protect members of the public from hazardous health impacts from the application of chemical pesticides near buildings and spaces used by residents and members of the public. It fails to recognise that there is a rigorous pesticides regulatory system in place, derived from EU law, with the primary purpose of ensuring the safety of people and the environment. The use of pesticides products is allowed only once those products have been authorised for use by the Chemicals Regulation Division of the Health and Safety Executive. The authorisation process takes into account how a product will be used and possible exposure risks. Products found to have an unacceptable risk are not authorised. The amendment seeks to prohibit the use of any pesticide near any building or open space used for work or recreation which would have undesirable and disproportionate effects. The Scottish Government notes that the UK Government intends to reverse the amendment when the Bill returns to the House of Commons.

14. New clause “Contribution of agriculture and associated land use to climate change targets³” requires the Secretary of State to bring forward regulations within six months of the Act passing to set an interim climate change target for 2030 for agriculture and land use “to reduce and sequester climate change emissions in a manner commensurate with meeting the 2050 target in the UK Climate Change Act”, and then within 12 months of the Act passing the Secretary of State must lay before Parliament a strategy outlining the policies to meet the interim target for 2030.

15. Control of pollution and protection of the environment are established as being within devolved competence, and the setting of emissions reduction targets is something the Scottish Parliament has legislated for under the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 and the Climate Change (Scotland) Act 2009. Agricultural policy is also devolved and work is underway through the Farming and Food Production Future Policy Group, Suckler Beef Climate Group, and proposed other sector-led groups, to inform future agricultural policy in Scotland following a period of stability and simplicity.

16. Therefore, there are clearly aspects of this provision that relate to, and risk cutting across, devolved matters. Accordingly the Scottish Government is not proposing consent to this clause. The UK Government have confirmed that it is their intention to remove this provision from the Bill.

Amendments to food security clause

17. There have been UK Government amendments to the food security reporting clause⁴, so that the first report would be due by Christmas in 2021 and then the frequency of these reports would change from five to three years. The Scottish Government consider these to be acceptable changes. These amendments are already covered by the supplementary Legislative Consent Motion agreed on 1

² [https://publications.parliament.uk/pa/bills/1bill/58-01/130/5801130-II\(Provisional\).pdf](https://publications.parliament.uk/pa/bills/1bill/58-01/130/5801130-II(Provisional).pdf)

³ As above

⁴ As above

September as that covers not just the principal clauses but also any “provisions related to” the various subjects.

Amendments to general and final provisions

18. There has been a number of UK Government amendments ⁵to the general and final provisions, including to the powers to make consequential etc. provision. They are intended to ensure that the Scottish Ministers and other devolved administrations have the necessary powers to make consequential provision, as currently the Bill only confers powers on the Secretary of State.

19. The amendments provide a power for the Scottish Ministers by regulations to make supplementary, consequential, incidental, consequential and transitional provision, so far as relating to Scotland in connection with fertilisers, identification and traceability of animals, the red meat levy, and organic products. These amendments are already covered by the supplementary Legislative Consent Motion agreed on 1 September as that covers not just the principal clauses but also any “provisions related to” the various subjects.

Financial Implications

20. It would be beneficial for the UK Government to agree to extend the ‘top up’ to Scotland in order to remove any doubt about the legal power to pay legacy payments from the 2014 to 2020 Multi-annual Financial Framework, which are currently estimated at a cost of circa. £115m.

Conclusion

21. 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.

22. The Scottish Government acknowledges that the main purpose of the Agriculture Bill is to provide a legal basis after Implementation Period completion day for a range of activities currently subject to EU rules.

23. The Scottish Government does not accept that the inclusion of some matters in the Bill is consistent with devolved responsibilities

24. The Scottish Government has however agreed that is appropriate for the UK government to legislate on a number of devolved matters, as set out in the first and supplementary LCMs. The Scottish Government considers that the same is true for the latest amendments relating to the implementation of Article 138 of the Withdrawal Agreement.

⁵ [https://publications.parliament.uk/pa/bills/lbill/58-01/130/5801130-IV\(Provisional\).pdf](https://publications.parliament.uk/pa/bills/lbill/58-01/130/5801130-IV(Provisional).pdf)

Draft Legislative Consent Motion

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

“That the Scottish Parliament agrees that any provisions in the UK Agriculture Bill, introduced into the House of Commons on 16 January 2020, related to the effect of section 3 of the European Union (Withdrawal) Act 2018, and the provision of financial assistance in respect of continuing EU programmes, so far as these matters fall within the legislative competence of the Scottish Parliament and alter the executive competence of the Scottish Ministers, be considered by the UK Parliament.”

Scottish Government

September 2020

This Supplementary Legislative Consent Memorandum relates to the Agriculture Bill (UK legislation) and was lodged with the Scottish Parliament on 28 September 2020

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