



The Scottish Parliament  
Pàrlamaid na h-Alba

Edward Mountain MSP  
Convener  
Rural Economy and Connectivity  
Committee

c/o Clerk to the Committee  
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***By email only***

(RNID Typetalk calls welcome)

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29 January 2020

Dear Edward,

### **Agriculture (Retained EU Law and Data) (Scotland) Bill**

As you will be aware, the Environment, Climate Change and Land Reform Committee wrote to the Scottish Government with a number of questions relating to the above Bill, in so far as it relates to our remit. For your information, the Cabinet Secretary for Rural Economy's response is set out in the appendix to this letter. The Committee considered the Cabinet Secretary's response at its meeting yesterday and we draw your attention to a number of questions and concerns for your consideration.

#### *Environmental aspects of agricultural policy*

**The Committee is concerned that insufficient consideration or priority will be given to the environmental impact of those aspects of CAP/agricultural policy that the Scottish Government administers.**

We call on the Cabinet Secretary to give a clear statement of the Scottish Government's policy direction in relation to future agricultural policy, and its environmental impact, as soon as possible. Despite the Cabinet Secretary's references to the Simplification Taskforce's recommendations (to make the improvements to environmental delivery identified in the *Stability and Simplification* consultation), we note the recommendations don't actually touch on environmental delivery. We also note the Cabinet Secretary, in his response, does not acknowledge the widely-held concerns about the EU CAP from an environmental perspective that make the continuation of the current policies and schemes potentially problematic, especially given the need to achieve a 75% reduction in greenhouse gas emissions by 2030. We highlight further information relating to these concerns.<sup>1</sup> We also have concerns about the potential for policy divergence from the EU CAP over the longer term, especially in the event of the anticipated reforms to the EU CAP. Crucially, we are concerned the response does not refer to the Scottish Government's environmental principles or the forthcoming environment

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<sup>1</sup> Climate Change Committee report, [Land use: policies for a net zero UK](#); WWF report, [Keeping it cool – how the UK can end its contribution to climate change](#); and [Aichi biodiversity targets](#).

strategy, both of which we would expect to have a role in setting environmental standards across SG policy.

It is essential that agricultural policy works in harmony with our natural environment. We ask, therefore, that the Rural Economy and Connectivity Committee 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.

We will pursue this issue through our continuing scrutiny of the ECCLR remit, proposed Continuity Bill and the forthcoming environment strategy. We will want to reassure ourselves that the strategy will guide the output of the Simplification Taskforce and Farming and Food Production Future Policy Group. As you will be aware, we have commissioned research, through SPICe, to review the recommendations of the citizens' jury on land management and the natural environment and we will forward this to you as soon as this has been completed.

#### *Constitutional context for the Bill*

**The impact of Brexit poses a significant challenge to the devolution settlement; it is critical the Scottish Parliament recognises this and adapts its scrutiny processes in response.**

Whilst the Scottish Government reiterates its position that agriculture remains fully devolved, the constitutional landscape within the UK has changed. As the Cabinet Secretary states, “we are currently in a complex landscape”; UK Ministers increasingly have secondary powers to legislate in devolved policy areas and, as common frameworks and trade agreements are agreed, they will constrain the Scottish Parliament's devolved competence. We feel the Cabinet Secretary's response could have made the impact of this “complex landscape” more explicit.

**In particular, we note – and are seriously concerned about – the potential impact of policy and funding decisions made at UK level on Scottish Ministers' ability to exercise their powers within the competence of the Scottish Parliament.**

In relation to the impact of policy decisions, the Cabinet Secretary acknowledges this in his statement that “UK Government policy is not fully settled. It may be that future changes they make to CAP rules will impact on the continuation of the current arrangements.” In this regard, we note the [UK Agriculture Bill](#) introduced on 16 January and the UK Government's intention to replace the UK agricultural policy established by the retained EU law with a system based on ‘public money for public goods’, to apply in England only. We have a number of questions around how Scottish Ministers' competence on devolved aspects of the agricultural policy established by the retained EU law would be affected if the UK Government made significant changes to this policy.

In relation to the Scottish Government's decisions to consent to the UK Government making secondary legislation in devolved areas, the Cabinet Secretary emphasises that Scottish Ministers would only consent depending “on the precise terms of any such agreement” and that the Scottish Government would “resist vigorously any such measures in any such deal which are detrimental to Scotland's interests”. The Cabinet Secretary also states, however, that “our lived experience has been that the UK Government has thus far failed to live up to their commitments [to involve the devolved administrations as per the terms of reference of the Joint Ministerial

Committee (EU Negotiations)] and that the Scottish Government, alongside the Scottish Parliament, has not been engaged meaningfully". The Committee is extremely concerned, therefore, that Scottish Ministers are not being effectively included in policy and funding decisions which relate to Scottish interests and devolved competence.

In relation to the impact of funding decisions, the Cabinet Secretary acknowledges this when he states that "the *main issue* [our emphasis] potentially impacting on our ability to use our powers effectively ... is entirely financial and depending" on the UK Government providing replacement funding. Furthermore, the Cabinet Secretary refers to the UK Government's decision to ring-fence the money provided for 2020 direct payments and states it would be "a significant risk to the integrity of devolution should such ring-fencing continue beyond this year and into other areas currently supported by significant amounts of EU funding". We note the Scottish Government states it would move money from existing budgets to make up any deficit, but this would clearly have a detrimental impact on other budgets. 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.

We ask the Rural Economy and Connectivity Committee to continue to press the Scottish Government on how UK Government policy and funding decisions would impact on Scottish Ministers' powers in this area.

We are copying in the Convener of the Finance and Constitution Committee (in relation to our comments about parliamentary scrutiny), the Cabinet Secretary for Environment, Climate Change and Land Reform and the Cabinet Secretary for Rural Economy for information.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Gillian Martin', with a stylized flourish at the end.

Gillian Martin MSP  
Convener  
Environment, Climate Change and Land Reform Committee

## **LETTER FROM THE CABINET SECRETARY FOR RURAL ECONOMY, DATED 17 JANUARY 2020**

### **AGRICULTURE (RETAINED EU LAW AND DATA) (SCOTLAND) BILL**

Thank you for your letter on behalf of the Environment, Climate Change and Land Reform Committee, dated 11 December 2019, which was addressed to myself and Roseanna Cunningham, Cabinet Secretary for the Environment, Climate Change and Land Reform, and sought further information in relation to the above Bill as introduced. I am replying as lead Minister with responsibility for the Bill, a response to each of the Committee's questions is set out below.

#### **Questions from ECCLR Committee**

##### **1. Has the UKG committed to continuing this regionalised approach whereby, post-exit, the SG will administer the UK CAP as much as it relates to devolved competence?**

It is important to make clear that agriculture is wholly devolved and that Scotland's national government and national Parliament will make decisions on policy and the administration of support payments to farmers, crofters and the wider rural economy. It is for this Parliament and this Government to determine at any point whether it wishes to give consent to the UK Government to allow it to make any decisions on any aspect of policy in this area on our behalf.

I am also clear that it is for this government and Parliament to determine for how long we keep CAP schemes and to what extent we decide to make changes to any CAP scheme. The Scottish Government has set out its position with regard to CAP and future policy on farming and food production in the event of leaving the EU. We will maintain stability with current schemes until 2021. Thereafter, the Scottish Government may wish to simplify certain schemes, or enable pilots to inform future policy as part of a transition period from 2021 to 2024. From that point, we will be in a position to put into effect the support needed to give effect to future policy aims and objectives.

There is no doubt that due to the UK leaving the EU, we are currently in a complex landscape. EU legislation will roll over into national law on 31 January 2020 (in respect of direct payments) and at the end of the transition period, currently 31 December 2020, (in respect of all other CAP schemes).

The EU CAP legislation will be modified ('deficiency fixed') in order to ensure that it will operate effectively when the UK is no longer a member state. That work had already been completed and the necessary Statutory instruments for all of the UK and Scottish Statutory Instruments passed for the eventuality of leaving without a deal in place. That is no longer the case and the Scottish Government is now working with UK Government on the necessary subordinate legislation to fix these deficiencies. To date no changes have been identified that will affect our ability to administer CAP schemes. We would seek to remove or remedy any such changes.

That being said, UK Government policy is not fully settled. It may be that future changes they make to CAP rules will impact on the continuation of the current arrangements. Again, we would seek to remove or remedy any such changes and would seek the support of this Parliament to do so, given the impact on devolved powers.

## **2. To what extent is Scottish Ministers' scope to use the powers set out in the Bill dependent on this regionalised approach?**

The main issue potentially impacting on our ability to use our powers effectively to continue to support the rural economy is entirely financial and dependent on the willingness or otherwise of the UK Government to provide funding to replace that which is provided by the EU, which at least allows us to maintain the current levels of support.

We have sought absolute clarity since 2016 on the nature and extent of any funding guarantee and have still to be assured that the current guarantee for the lifetime of this UK Parliament will cover all Pillar 1 and Pillar 2 funding.

## **3. What options would the SG have if the UKG does not provide a comparative level of funding for UK CAP?**

Scottish Ministers have made it clear that Scotland should not lose out on any funding as a result of the UK Government's decision to leave the EU and in fact following the findings of the review of intra-UK funding allocations led by Lord Bew we would expect to see an increase in our CAP allocation. We would fight to retain as much funding as we can. If we cannot achieve that, we would look at all available options from funding the difference from existing budgets to prioritising and targeting investment or shifting funding and support more quickly into pilot areas that signal intent towards future policy objectives.

## **4. Has the UKG indicated whether funding for UK CAP would continue to be allocated on the same basis as the current arrangements or whether it may be included in the block grant?**

It is not clear whether the UK Government would include future funding in the block grant in future or if Barnett would be used to calculate any adjustments to these budget lines after EU exit.

On 30 December, the Chancellor announced nearly £3 billion of funding to maintain the level of funding for Direct Payments for scheme year 2020 at the 2019 rate. Scotland will receive up to £472 million in resource funding in 2020; £449 million of this will be provided at the 2020-21 Main Estimate, with the remainder to be provided at either the 2020-21 Supplementary Estimate or 2021-22 Main Estimate. This equates to an approximate 16% share for Scotland. The UK Government has ringfenced this spend for Direct Payments, though no further controls have been set out. While this is clearly welcome for the purposes of providing stability to the rural economy, it represents a significant risk to the integrity of devolution should such ringfencing continue beyond this year and into other areas currently supported by significant amounts of EU funding. We maintain that the appropriate approach for funding allocations from the UK Government to the Scottish Government is through the Scottish block grant and without applying any ring fence.

Notwithstanding this wider concern, we have a specific concern about this funding allocation in that the decision concerns Direct Payments for 2020 only. It is therefore not clear how much money will be provided overall and whether Barnett will be applied to this in future years. Future funding after scheme year 2020 will be considered as part of the Spending Review. We will continue to press the UK Government to ensure the Scottish Government is fully involved in the design of future funding arrangements, however at present no firm commitments have been given.

We expect CAP Pillar 2 payments under the EU's 2014-20 Multi annual financial framework to be covered under the terms of the Withdrawal Agreement.

This announcement does not cover funding recommended by the Bew Review into EU external convergence funding. Treasury confirmed their agreement to provide the recommended funding of £25.7 million in each of 2020-21 and 2021-22 on 7 October 2019, and this was not covered in the announcement of 30 December. We are pressing for clarity on this matter.

#### **5. What is the SG's preferred position for the funding arrangements for the UK CAP?**

The Scottish Government is clear that all EU funding must be replaced in full by the UK Government, with spending decisions on devolved matters staying wholly with Scottish Ministers.

#### **6. If the UK leaves on 31 January 2020 with a deal, how would the SG intend to use the powers set out in the Bill?**

If as expected the UK leaves the EU on the basis of the 2019 Withdrawal Agreement then the CAP rules will roll over into EU law in 2 stages (see our answer to Question 1).

We will review the powers in the Bill in the light of measures in the current and pending UK legislation that will give effect to the Withdrawal Agreement, and will consider whether or not any consequential amendments might be required to this Bill.

We would expect to exercise the powers in the period from 2021 onwards as set out in the Policy Memorandum, in particular.

#### **7. How would an agreement on the future relationship with the EU at the end of the transition period impact on how Scottish Ministers could use the powers in the Bill?**

The future relationship between the UK and the EU has yet to be determined.

If the transition period were to be extended, we would not for example be able to use the powers to modify any pillar 2 scheme or common market organisation rules during that time.

If the transition period comes to an end on 31 December 2020 with no agreement in place, we would be able to make full use of the powers in the Bill from then on.

If the UK and the EU enter into a trade agreement that applies to agriculture, then we would need to assess what impact such a deal might have on the powers in the Bill. If it were agreed that EU law would apply in the UK, then our ability to use the powers would likely be curtailed.

#### **8. What consideration has the SG given to the impact on this Bill if the next UKG was to introduce a new Agriculture Bill and Environment Bill?**

We have given full consideration to such impacts in developing this Bill. The terms of the new UK Agriculture Bill, which was introduced to the UK Parliament on the 16 January 2020, will be considered carefully to establish whether any changes are

required to the Scottish Bill but the Scottish Bill already makes equivalent or similar provision to that in the UK Bill on marketing standards and crisis intervention.

We have undertaken significant discussions with Defra about the development of the UK Environment Bill, which we expect to be reintroduced soon in largely similar form to the version published last October. We are not aware of any substantive impacts arising from the UK bill as we understand it is currently drafted on this Scottish Bill but we will of course keep that under careful review during the UK environment Bill process.

**9. To what extent would Scottish Ministers' ability to exercise the powers proposed in the Bill be constrained by a UK common framework for agricultural support?**

No UK common framework for agricultural support has been agreed, and it is not known whether there will be one.

Frameworks, in whatever form they take, will not alter or constrain devolution in any way and will not prevent the Scottish Ministers and the Scottish Parliament from making alternative arrangements in these areas should they judge that necessary in the future.

The CAP already allows the different parts of the UK to tailor its implementation of the rules (payments rates and regions, voluntary coupled support (VCS), Greening, etc.), so some level of divergence within the UK is nothing new.

The Scottish Government remains committed to continue working collaboratively on developing common frameworks in specific policy areas, but only where they are in Scotland's interests, on the basis of consensus, and in line with JMC(EN) principles.

We have made it clear that the process of agreeing frameworks must be transparent and that the Scottish Parliament should have the opportunity to properly scrutinise all frameworks.

**10. What role does the SG expect to have in relation to international agreements/trade deals and the UK internal market?**

The Scottish Government set out its proposals in "Scotland's Role in the Development of Future UK Trade Arrangements", published in August 2018. We await a response from the UK Government.

The Scottish Government continues to engage with the UK Government through forums such as the Inter-Ministerial Group with Defra, but there is as yet little clarity on how future trade arrangements that the UK might enter into with the EU and other continents and countries will impact on Scottish interests.

In relation to the UK's exit from the EU, specifically the Article 50 negotiations, the UK Government made a commitment to involve the devolved administrations as per the terms of reference of Joint Ministerial Committee (EU Negotiations). Our lived experience has been that the UK Government have thus far failed to live up to their commitments and that the Scottish Government, alongside the Scottish Parliament, has not been engaged meaningfully. Going forward it is essential that the Scottish Government and Scottish Parliament are meaningfully involved in the negotiations, at all stages, especially in areas of specific Scottish interest.

**11. What arrangements should be put in place to enable the Scottish Parliament to scrutinise these discussions and their outcome?**

Our proposals set out in “Scotland’s Role in the Development of Future UK Trade Arrangements” included the role of the Scottish Parliament, stressing that both the Scottish Government and Scottish Parliament must be meaningfully involved the setting of negotiating mandates and in the ratification and implementation of trade agreements. As noted above, we await a response from the UK Government.

**12. To what extent do Scottish Ministers expect the UK internal market and trade deals agreed by the UKG to impact on their ability to exercise powers under the Bill?**

It is possible that trade agreements may constrain to some extent the exercise of the powers in sections 8-11 (marketing standards and carcass classification). That would, of course, depend on the precise terms of any such agreement and we will of course resist vigorously any such measures in any such deal which are detrimental to Scotland’s interests. At the same time, these powers will allow the Scottish Government to determine if it wishes to maintain consistency of approach across the UK should changes be made in other parts of the UK (see paragraph 49 of the Policy Memorandum), should that be desirable for Scottish interests.

**13. Given the uncertainty about all these external factors, why has the SG decided to proceed with introducing the Bill at this time?**

As members will be aware, developing, passing and implementing legislation takes time. The Scottish Government has previously made clear its intention, should we leave the EU, to maintain stability for our rural economy until 2024 while also creating suitable opportunities to simplify existing CAP schemes and to pilot new approaches. This Bill, which is a framework bill to enable such changes to existing CAP schemes through appropriate legislation, needs to be taken through the legislative process now, to allow time to pass any regulations in 2021 and also to ensure that we can make changes to CAP from the point at which we have to leave the EU.

The timing of the Bill’s introduction was also influenced by a very real possibility of a ‘no deal’ exit on 31 January 2020.

It now seems that the UK will leave the EU on that date under the transitional deal agreed in the 2019 Withdrawal Agreement. However, we do not know what the situation will be after 2020. Events continue to move quickly and change rapidly. This Bill will make it possible to respond in a quick and flexible manner to changing events.

The powers in Part 1 of this Bill will allow us to ensure that the CAP rules remain fit for purpose in whatever circumstance we find ourselves in. They will also allow us to simplify and improve the CAP, which, as our consultation showed, would be highly desirable for Scotland’s farmers and crofters.

Separately, Part 2 of the Bill also provides for reform of information collection powers. Those changes are not connected to EU exit but will still deliver desirable and valuable improvements to the collation of important information in the rural economy.



**14. What modifications did the Stability and Simplicity consultation suggest should be made to improve environmental delivery, e.g. by changes to Greening payments and the AECS? Will the SG make these modifications – and, if not, why?**

There were a variety of responses to the Stability and Simplicity consultation regarding improvements that could be made to improve environmental delivery. Analysis of the responses was undertaken and is available here: <https://consult.gov.scot/agricultureand-rural-communities/economy-post-brex-it-transition/>.

The Simplification Taskforce, which published its report on 13 January 2020, identified a range of ideas for simplification and improvement in the short term, including for schemes such as AECS. These are being considered currently to determine what might be proportionate, desirable and affordable to undertake between 2021 and 2024.

**15. Given the current challenges with carrying on the AECS – as outlined by Fergus Ewing MSP on 24 October 2019 – would this Bill enable the continuation of environmental incentives in the short-to-medium term?**

As explained in the answer to question 6, the Bill will allow for the extension of the Scottish Rural Development Programme (SRDP), which would allow the Scottish Ministers to extend any SRDP scheme in the short-to-medium term subject to the UK Government providing the required clarity and certainty over the future funding envelope to replace the SRDP beyond 2020.

It would also allow for the continuation of Greening provisions in Pillar 1 direct payments.

This Government is already committed through the Programme for Government to develop a new agricultural transformation programme and this Bill will also allow for us to reconsider these environmental schemes with the potential to both improve existing schemes and pilot new approaches. It is important to review our approach to ensure that support is constructed in the best way possible to deliver environmental outcomes, particularly in view of the climate emergency.

**16. What other elements of CAP in the ECCLR remit would be impacted by this Bill?**

Part 1 of the Bill has no direct impact on any legislation other than the EU Regulations defined in section 1. The data collection powers in Part 2 may impact the Committee's remit as the information collected may be used to develop the Scottish Government's policy in areas where the Committee has an interest.

**17. What is the SG's response to possible concerns that the powers under the Bill would allow this, or a future, SG to make significant changes to the CAP via secondary legislation?**

Any changes to the CAP legislation made through secondary legislation under Part 1 of this Bill, whether it be brought forward by this Government or a future Government, will be subject to Parliamentary scrutiny.

These powers will enable us to provide a degree of stability at a time of great change by adapting the current CAP schemes as needed. It is the Scottish Government's

intention to use those powers to ensure that the CAP can continue after 2020, to make it easier to understand and use by simplifying and improving the CAP rules, and to adapt marketing and classification rules as needed. The answer to question 19 below, sets out the work that is on-going to develop future policy.

**18. In terms of environmental policy, what would be the impact of the proposed five-year period of stability and simplicity?**

I refer to the answer given to question 15.

**19. What consideration has the SG given to a more ambitious response?**

The Scottish Government has already set out its approach to developing future policy on farming and food production. The Farming and Food Production Future Policy Group has been established to provide advice and information on proposals for future policy beyond 2024. The group is due to make recommendations to Ministers by summer 2020.

As mentioned at question 14 we have recently published the recommendations of the Simplification Taskforce, which identified short term opportunities for change to streamline current CAP schemes and processes as well as setting out proposals for pilot projects and initiatives.

We have also commenced the development of an Agricultural Transformation Programme for farming and food production focused on sustainability, simplicity, profitability, innovation, inclusion and productivity, while also focusing on greenhouse gas emissions.

**20. Is there a risk that powers exercised under the Bill to address agricultural policy could negatively impact on environmental policy?**

No. This government has made clear it remains committed to keeping pace with EU environmental standards and regulation. We have set out our concerns at the recent actions of the UK Government in resiling from its previous position.

**21. Why doesn't the Bill set out some overarching principles to guide the direction of travel of any modifications made?**

This Bill, if passed, will provide a mechanism to deliver the principles set out in the Stability and Simplicity Consultation. The legislation brought forward under the powers of the Bill will have to address the prevailing circumstance during the period after which we have left the European Union.

It is currently not possible to determine what those circumstances will be, in particular our trading relationship with Europe and the rest of the world. For this reason, it is prudent to avoid constraining future policy choices on the face of the Bill.

**22. To what extent does the remit of the farming and food production future policy group require it to consider the environmental impact of farming and food production?**

Sustainability is one of the six key themes given to the farming and food production future policy group by the Scottish Parliament in the motion establishing it. This is a core priority of the group. The remit explicitly requires the group to take on board policy priorities including the low carbon economy, the global climate emergency

and moving to net zero emissions faster. Members were not appointed to represent their organisation, but the group does include the Director of Soil Association Scotland, the Director of RSPB Scotland and the Chief Officer of Scottish Environment LINK.

### **23. Why does the Bill not include a ‘sunset’ clause for these powers?**

The Committee will no doubt have seen the letter of 19 December 2019 to the Delegated Powers and Law Reform Committee in respect to a ‘sunset’ clause for these powers.

There remains considerable uncertainty about the landscape following the UK’s withdrawal from the EU. Key factors such as the length of any transitional period for the purposes of the Withdrawal Agreement, what any future relationship with the EU may look like and what rules we may have to follow are completely unknown.

It is not the Scottish Government’s intention to rely on the powers conferred by Part 1 of this Bill any longer than is necessary. However, the continued uncertainty could impact the timing and ability for bringing forward the longer term policy. There need to be flexibility to adapt; as such, an end date for these powers has not been included in the Bill.

We would also stress that the data collection powers in Part 2 of the Bill are intended to be the basis for the collection of agricultural data in the medium to long term. They have been specifically designed to be future proofed and adaptable to the changes that lie ahead.

I am copying this letter to Roseanna Cunningham, Cabinet Secretary for the Environment, Climate Change and Land Reform, Mairi Gougeon, Minister for Rural Affairs and the Natural Environment, and the Rural Economy and Connectivity Committee