



Stuart McMillan MSP
Convener
Delegated Powers and Law Reform Committee

12 January 2024

Dear Stuart,

Agriculture and Rural Communities (Scotland) Bill

I thank the Delegated Powers and Law Reform Committee for their questions on the Agriculture and Rural Communities (Scotland) Bill, the answers to which have been provided below.

Section 3(4): Rural support plan: matters to be considered

This delegated power is linked to the rural support plan, however, as matters stand, no draft plan has been made available. In order to aid the Committee's consideration of the delegated power in section 3(4), can the Scottish Government please explain:

1. what progress has been made in developing the plan, when a draft is expected to be available, and whether it will be available for the Parliament to consider before it votes on the general principles of the Bill; and
2. whether the plan should be subject to a statutory consultation requirement, given its strategic significance.

The Scottish Ministers respond as follows:

1. The rural support plan will be developed with stakeholders as part of Scottish Government's co-development of the specifics of future support and eligibility. My intention is to produce the draft plan in 2025.

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2. It is not therefore thought that a statutory requirement to consult is necessary, but we remain keen to ensure that we have full engagement with those with an interest in the plan.

Section 4(3): Power to provide support

While the Scottish Government has indicated that it does not intend to use this power to make major changes to the purposes in schedule 1 (as stated in the [Delegated Powers Memorandum](#) paragraph 41), this power will be available without limit of time to future governments whose intentions cannot be known.

It could therefore be used to make more significant changes than is currently anticipated. Furthermore, the power is a Henry VIII power, the exercise of which will amend the Act which will result from the Bill.

In light of this, does the Scottish Government consider that the affirmative procedure would be more appropriate?

The Scottish Ministers respond as follows:

The purpose of this power is to provide flexibility and allow for the addition, removal or amendment of a 'payment' purpose specified in schedule 1. It is appropriate that the purposes can be modified in this way to ensure they remain fit for purpose and effective and proportionate over time.

The power does enable the Scottish Ministers to modify one part of the Bill, but for only one purpose, and is therefore analogous in that respect to the power to modify section 153 (payments for environmental purposes) of the Environmental Protection Act 1990. That power is also subject to negative procedure, and the Scottish Ministers remain of the view that it would be proportionate for this power to be subject to negative procedure. We will of course reflect on all comments received during Stage 1, and review as appropriate.

Section 9(1): power to cap support and assistance

The Scottish Government has stated that it does not expect to use this power to make provision in respect of significant sums of money. However, as with section 4(3) above, this power will be available without limit of time to future governments, whose intentions cannot be known.

It could conceivably be used in a way that has a significant impact on individuals who would otherwise be entitled to support. How the power will be used is not yet known and therefore cannot be scrutinised at present.

In light of this, does the Scottish Government consider the affirmative procedure might be more appropriate?

The Scottish Ministers respond as follows:

This power is being taken to allow Scottish Ministers to cap or taper support or assistance to ensure support is proportionate for the purpose which it is given. The power is intended to fine

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tune funding in light of experience, in order to provide the best outcome against the vision whilst ensuring best value for the public purse.

For example the cap for the current basic payment scheme for farmers is currently set at €600k. Individual direct payments that would otherwise be over that amount are capped at that figure. Tapering applies to direct payments over €150K, which are reduced by 5%.

The Scottish Ministers remain of the view that negative procedure is appropriate given the purpose for which the power is sought, and consider that this will ensure that scrutiny is proportionate to the regulations.

Section 13(1): Regulations about support

The above power enables the Scottish Ministers to make regulations about the provision of support, and is intended to be read with sections 14, 15, 16 and 17, which contain further details about particular aspects of how the power to provide support might be used.

This power provides the basis for the creation of the new payment framework which will replace the CAP rules.

In relation to the above power, the Committee asks the Scottish Government:

1. The central purpose of the Bill is to provide a framework that confers on Scottish Ministers extensive powers to make law. Extensive regulation will be required to fill in the details which are not on the face of the Bill. Can the Scottish Government provide an outline or timetable setting out its plans for laying these regulations?
2. Why has the Scottish Government opted for a framework Bill instead of waiting until such time as its policy position is more fully developed before bringing forward primary legislation?
3. Will the Scottish Government be in a position to provide outlines or drafts of any of the regulations which it plans to make?

The Scottish Ministers respond as follows:

1. The [Route Map](#) outlines what information and guidance the sector can expect from 2023-2025 and when it will be available. Further information will depend on development of details with stakeholders, in advance of changes being implemented from 2026 onwards.
2. A framework approach has been taken as the Bill must enable a multi-year transformation in support for farming and rural communities. This will be a complex process, and will include a transition over time from the complex and expansive assimilated law scheme rules.

The Scottish Ministers consider that it would not be practicable to attempt to replace all the current scheme rules in one Bill. An approach of that kind would also be inflexible.

The framework Bill approach is required to ensure flexibility and adaptivity to mitigate possible future challenges, as recent history has shown us, including on geopolitical,

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economic and climatic fronts. This enables specific targeted support to be adaptable responding to the future challenges and uncertainties, including climate impacts and market changes, whilst reinforcing our commitment to support the agricultural industry. This will help ensure that the Scottish Ministers are able to deliver on our commitment to support the agricultural industry.

This approach also enables tailored provisions and support to be implemented through secondary legislation and further adapted on a regular basis as required.

The detailed and technical nature of support schemes and the requirement for regular updating is better suited to secondary legislation and will allow for schemes to be brought into operation as and when it is appropriate to do so. Should the Bill be delayed until all areas (or a substantial number of them) are ready it would mean delaying the transition to the future support model and would extend the period of uncertainty further. In addition a framework bill provides the flexibility to implement changes as required to respond to changes mentioned but also remain aligned to future EU developments and potential future CAPs.

It is also right that we take the time necessary develop the detail of our policy with the people directly affected by it, which is important if we are to deliver on our commitment to no cliff edges for our farmers and crofters.

3. The Scottish Government is committed to a service design approach to policy making involving user-centred co-development and specific detail is subject to ongoing co-development with stakeholders.

The route map sets out the proposed timescales for information and interaction with the agricultural industry and we expect to provide further details in June 2024. For capacity reasons we do not therefore expect to be able to produce either drafts or outlines of future regulations.

We do however intend to produce a first draft of the rural support plan in 2025.

Section 19(3): Power to simplify, improve or update relevant CAP legislation

In relation to the above power, the Committee asks:

1. The existing powers in sections 2, 3 and 4 of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (“the 2020 Act”) were conferred when it was unknown whether the UK would be leaving the EU with a withdrawal agreement, and on the basis that these powers were needed during a period of uncertainty. At that time, the stated policy intention was for the “simplify or improve” period to be from 1 January 2021 until approximately 2024 (from the [Policy Memorandum for that bill](#), paragraph 31). The then Cabinet Secretary told the Session 5 DPLR Committee that there was no intention to use the powers after 2024 but that he could not eliminate the possibility that such an eventuality will arise (Session 5 DPLR Committee evidence session with Cabinet Secretary for the Rural Economy, 21 January 2020, [Official Report](#), col 5). Could an

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explanation be provided of what the change in circumstances has been that means the powers now need to be used beyond 2024?

2. The Scottish Government agreed, even in the context of the uncertainty in 2020, that the powers should be time limited. We are now in significantly different circumstances. Further explanation would be welcome of (i) why the power is now required beyond May 2026 and (ii) why is it considered that it should now have no expiry date at all?
3. What consideration has been given to extending the sunset date to a later point, rather than removing it altogether?
4. When considering the original “simplify or improve” power, the session 5 DPLR Committee had reservations about its width. The Scottish Government told that Committee that the power would be used to make moderate changes that were “predominantly minor in nature”. The Minister at the time stressed that the power would be used to improve the process set out in the legislation, rather than the policy (Session 5 DLPR Committee Stage 1 [report on the Agriculture \(Retained EU Law and Data\) \(Scotland\) Bill](#), 6 February 2020). Does the Scottish Government’s policy intention remain the same (that the powers will be used to make moderate changes that are predominantly minor in nature and will be used to improve processes rather than to change policy)? If so, given that the power is now being made permanent, would it be appropriate to draft the power more narrowly to reflect this policy intention? If the policy intention is no longer the same, could further information be provided on what has changed and what the new policy intention is in this regard?
5. Section 19 of the Bill amends the “simplify or improve” power by adding on the power (i) to restate and (ii) to update relevant CAP legislation. These extensions to the power appear to be modelled on the restate and update powers in the Retained EU Law (Revocation and Reform) Act 2023 (“REUL Act”). Given that the Scottish Ministers already have power under the REUL Act to restate and update retained EU law, please advise:
 - (a) do you consider that the new power will enable the Scottish Ministers to make any restatement or updating that they do not already have power to do under the REUL Act, and if so, what?
 - (b) why you consider that a duplicate power is necessary?
6. The equivalent power in the REUL Act to “restate” is time limited, expiring on 23 June 2026. Why is it considered appropriate that the new power in the Bill should be permanent when the power on which it is modelled is time limited?

The Scottish Ministers respond as follows:

1. The 2020 Act was passed when the UK had only recently left the EU.

The Scottish Ministers had not then had an opportunity to consider the extent to which future schemes under Scottish legislation should replace the then newly retained EU

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law support schemes (now assimilated law schemes). It was however thought that such new schemes that were wanted could be ready by 2024.

It has taken a bit longer to bring forward that legislation, which is done in this Bill, in part, due to the impacts of COVID. That reflects our extensive engagement with the sector, including the continuing co-development of our proposals with industry partners. As the Committee notes, the then Cabinet Secretary noted the possibility that legacy schemes would continue to operate after 2024.

The change in circumstances is that we are now able to set out in much more detail our plans for transforming support for farming and rural communities. Those plans include a longer transition from some legacy schemes, with the consequent need to be able to adapt those scheme rules after 2024 using the powers in the 2020 Act as modified by the Bill.

2. The power in the 2020 Act is needed after May 2026 for the reason set out in the previous paragraph.

The Scottish Ministers note that it is unusual to subject enabling powers to a sunset clause. The 2020 Act was passed in response to highly unusual, indeed unique, events.

In those particular circumstances it was thought appropriate to provide some assurance that more developed proposals for new support schemes would be brought forward, and that was done by agreeing to proposals from stakeholders that the new enabling powers should be time limited.

We are now in a very different position, and there is no longer any reason why the enabling powers should be subject to a particular time limit. Indeed until the new payment framework is fully developed which can be done once the powers of this bill are passed, we require to maintain the existing powers to continue existing payment schemes to deliver on the commitment to no cliff edges in support. For this reason the powers should in our view be framed in the same way as any other enabling powers.

That approach will also avoid creating a new 'cliff edge' that would likely need to be removed or replaced by further primary legislation which would not otherwise have been needed.

3. The Scottish Ministers have not considered extending the sunset clause for the reasons set out in the previous paragraph. Any date chosen would necessarily be arbitrary and might prove unsuitable.
4. The policy objectives around 'simplify and improve' remain the same, and the Scottish Ministers consider that the power has indeed been used to make moderate changes of the kind referred to during the consideration of the Bill for the 2020 Act.

For example, regulations have replaced a 5 tier penalty regime with a simpler single tier system, they have improved direct payment rules by enabling earlier payments, and

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they have improved direct payment rules by enabling small areas of farm woodland to be used as ecological focus areas.

We do not therefore consider that it is either necessary or appropriate to draft the power more narrowly. Rather, our view is that it is appropriate to extend the powers in the 2020 Act as proposed in the Bill in order to enable legacy scheme rules to be modified in other proportionate ways (restating/updating). That will enable Ministers to ensure that the scheme rules remain fit for purpose during the planned transition to future support schemes.

5. The Scottish Ministers consider that devolved legislation should make provision in respect of devolved matters, such as agriculture and support for rural communities. This helps ensure proper scrutiny of and accountability in respect of legislation on devolved matters, and defends and supports the devolved settlement.

The Scottish Government acknowledges that Bill provisions have been modelled on REUL Act powers which, under that Act, may be used in substantive ways that affect policy, or in technical ways that may be necessary to ensure assimilated law continues to operate effectively. Thus, whilst the Scottish Government's opposition to the REUL Act and commitment to not use REUL Act powers to alter policy remain in place, on a purely technical level its provisions were considered to be a relevant precedent for the development of the Bill and the framing of powers to ensure assimilated law continues to operate effectively.

Indeed, the Scottish Ministers do not intend to use the REUL Act powers. The powers in the Bill are the powers that Ministers intend to make such changes as might be made under the UK legislation.

We agree that the powers we seek to enable further modifications of legacy scheme rules do overlap to an extent with the UK REUL Act powers, but that is not for those reasons an argument against taking devolved powers for agriculture. In this policy context, the Scottish Government considers it is preferable to legislate bespoke powers made in and tailored for Scotland, that build on provisions in the Agriculture (Retained EU Law and Data) (Scotland) Act 2020. We would hope that all members, including those on the DPLR committee, might agree and support such an approach.

The 'UK' powers are in any event subject to a sunset clause, and the Scottish Ministers do not consider that such a limitation is either necessary or appropriate in respect of the devolved powers in the Bill for the reasons set out above.

6. The Scottish Ministers consider that the powers we are seeking should be permanent for the reasons set out above.

Section 20(2): Power to continue or end the operation of relevant CAP legislation

In relation to the above section, the Committee asks the Scottish Government:

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1. Section 20 of the Bill amends section 3 of the 2020 Act (which enables the CAP legislation to be kept going beyond 2020) by adding power to suspend or cease that legislation. The Delegated Powers Memorandum envisages that this power will be used by the present administration to disapply rules as and when they are replaced and become redundant, but the power in section 20 is not limited in this way. Could the power be more narrowly drawn to restrict its use to disapplying CAP rules where they have been replaced by future support and are considered by Ministers to be redundant, in line with the policy intention?
2. It is already available to Scottish Ministers under section 14 of the REUL Act to cease (revoke) any devolved secondary retained EU law. That power is, however, exercisable only until 23 June 2026. Please advise:
 - (a) Given the existence of the REUL Act powers (including section 14), why is it considered that this new power to suspend or cease CAP legislation is necessary?
 - (b) How long is it anticipated that the power will be required for? Was consideration given to setting an expiry date?
3. As regards the parliamentary procedure:
 - (a) Would the affirmative procedure be more appropriate given that, in proceeding with this reform by way of a framework bill, Parliament is not given the usual opportunity to scrutinise, up front, the full picture of the new regime; the detail of the new provisions; and to see which provisions will be revoked and/or replaced?
 - (b) Noting the Scottish Government's explanation in the Delegated Powers Memorandum that the significance and extent of the amendments being proposed will vary considerably, is it possible that the more minor of these amendments could be made under the "simplify or improve" power (which is "either way") leaving the more significant amendments for which the present power is required to be subject to the affirmative procedure?

The Scottish Ministers respond as follows:

1. Scottish Ministers consider that a power as amended is highly desirable, given the complexity of the legacy CAP scheme rules, and the corresponding challenge of implementing future support schemes.

It may be appropriate to cease some current CAP rules either because the applicable scheme has served its purpose and no replacement is necessary, or because it is appropriate to leave a gap between ceasing one scheme and commencing another under the powers in the Bill. It may be advantageous to suspend the application of some CAP rules for the purposes of piloting new interventions that may or may not become permanent.

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The Scottish Ministers do not therefore consider that the power should be drawn more narrowly, and note that all exercises of the power will be subject to scrutiny by the Parliament.

2. We refer the Committee to our comments above on why it is appropriate to take a devolved power for devolved matters, and in particular to our comments on the sunset clause in the UK REUL legislation.
3. If a framework Bill is appropriate, as is the case here for the reasons set out above, then it does not in our view follow that enabling powers in the Bill should for that reason be subject to affirmative procedure.

The Scottish Ministers agree however that it is appropriate to provide the Scottish Parliament and wider stakeholders with information about the purpose and content of future support policies, and it is for that reason that we intend to prepare statutory rural support plans under the Bill.

In respect of this particular power, our view is that ‘turning off’ legacy CAP rules will be in most cases a minor and technical exercise of the power for which negative scrutiny is appropriate. Affirmative would be appropriate in those case where the regulations would have a significant effect, and it is for that reason that we consider that an ‘either way’ power is appropriate.

Section 21(2): Power to modify financial provision in relevant CAP legislation

It appears that that Section 21 of the Bill would significantly expand the power in section 4 of the 2020 Act, while downgrading the procedure from affirmative to “either way”.

The power is relatively wide, allowing modifications to be made to financial ceilings etc. across the whole of the CAP legislation, without any restrictions on what those modifications may do. The existing power has only been exercised twice to date, in both cases in 2020, so it would not appear that the power is frequently used such that retaining the affirmative procedure would take up unnecessary Parliamentary time with multiple instruments.

As above in relation to the new section 3 power of the 2020 Act, could it be that the more minor of these amendments could be made under the “simplify or improve” power (which is “either way”) leaving the more significant amendments for which the present power is required to be subject to the affirmative procedure?

The Scottish Ministers respond as follows:

The Committee is right to identify that section 21 effectively expands the power in section 4 of the 2020 Act, but to reassure members, it is for a defined purpose only. The expansion will only cover applicable assimilated law. CMO regulation is the remaining part of the basic CAP legislation which is assimilated law.

The Scottish Ministers do not consider that section 21 will significantly expand the power. We draw the Committee’s attention to the fact that the list of Articles in subsection (2) is illustrative

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only. Our view is that the change improves the transparency of the power, which applies to all relevant assimilated law and not just the listed Articles.

Our intention with the Bill's measures is to allow for particular regulations to be scrutinised in the manner appropriate to the subject matter of those regulations. In some cases that will mean affirmative procedure. Thus, we have included a range of scrutiny processes in the bill as introduced. We do not share your suggested assessment that changing the scrutiny procedure amounts to a downgrading. We would suggest that flexibility and responding to evidence is a key consideration here to allow for the appropriate scrutiny of as yet undrafted and unspecified future regulations by future Parliaments.

We do not consider that the 'simplify or improve' powers will cover all the modifications that might be appropriate under the power in section 2, and that is indeed the reason why a separate power was taken in section 4 of that Act.

Section 23(2): Public intervention and private storage aid

In relation to this power, the Committee asks the Scottish Government:

1. As the Delegated Powers Memorandum points out at paragraph 107, the public intervention and private storage aid ("PIPSA") legislation can be modified already under sections 2 to 4 of the 2020 Act as amended by the Bill, because it is part of the relevant CAP legislation. Accordingly there is already power elsewhere in the Bill to simplify, improve, restate, update, continue, suspend, cease and modify the financial provision in relation to PIPSA. The power in section 6 of the 2020 Act, as amended by the Bill, will be in addition to these. What use does the Scottish Government anticipate making of the section 6 power that could not be done under these other powers?
2. There appears to be some overlap in particular between the new section 3 power to cease (any) CAP legislation and the power in the new section 6(2)(b) to cease provisions of the PIPSA legislation otherwise than in connection with exceptional market conditions which are the subject of a declaration. What is the difference between these powers intended to be and why is the more specific power in section 6(2)(b) necessary?
3. Regarding the policy intention and drafting of section 6:
 - (a) The Bill changes section 6(1) from a power which is subject to restrictions to a power which is not subject to any restrictions (subsection (2) currently provides that the Scottish Ministers may only make modifications under this power for listed purposes (a), (b) and (c); whereas new section 6(2) states only that the power includes the power to make provision for listed purposes (a), (b) and (c)). However the Delegated Powers Memorandum is not abundantly clear on this point, particularly as it uses the word "only" in paragraph 110:

"The power to modify the legislation is updated to allow for its use in connection with exceptional market conditions, to provide that the powers are only to be

used in connection with exceptional market conditions, or to otherwise modify the operation of the provisions.” (emphasis added)

Could clarity be provided on the policy intention in this regard?

- (b) Is “otherwise than” in new subsections (2)(b) and (c) intended to act as a restriction on the section 6(1) power, as it does in the equivalent provision for England & Wales in section 22(2)(a) and (b) of the Agriculture Act 2020, and if so, does the drafting achieve this now that section 6(2) has changed from containing restrictions to containing illustrations?
- (c) What is the distinction intended to be between “altering the operation of the legislation” in section 6(2)(a) and “altering the operation of the provisions of the legislation” in 6(2)(c)?
- (d) Sections 6, 7 and 7A of the 2020 Act, as amended/inserted by sections 23, 24 and 25 of the bill, each appear to have the same effect: to confer a wide, general power to modify the legislation in the subject area in question, without any restriction. Of these, only section 6 contains additional detail (in section 6(2)) as to the provision that can be made under it. Could information be provided on why the drafting approach to these three provisions differs?

The Scottish Ministers respond as follows:

1. The Committee is correct that the Bill will modify sections 2 to 4 of the 2020 Act to provide for a power which will include power to modify or restate the PIPSA legislation for the purposes set out there. However, the powers to modify or restate the legislation are for specific and limited purposes. The power provided for in section 23(2) is intended to provide for, in addition to those powers to modify or restate, the making of new policy. As set out in the Delegated Powers Memorandum, these powers are required to ensure that the Scottish Ministers have the power to tailor the operation of these provisions of legislation to provide an appropriate response to events requiring a market intervention, which may not necessarily fall within the scope of the power to modify for the purposes set out in the amended section 2 of the 2020 Act.
2. The power in the new section 3 is a power to modify the provisions of the relevant CAP legislation so that it ceases to apply for a period or ceases to have effect in Scotland. The power in the new section 6(1) is simply a power to modify the PIPSA legislation, with a non-exhaustive list of purposes for which the power may be used listed in subsection (2), one of which is that the power may be used to secure that the PIPSA legislation ceases to have effect other than in connection with exceptional market conditions. We accept that there is an element of repetition in the Bill provisions, but the Scottish Ministers consider that even if the new subsection (2)(b) were removed, then the scope of the power in the new section 6(1) of the 2020 Act would remain the same. The Scottish Ministers consider that the new section 6(2) provides clarity as to the type of provision which may be made under the new section 6(1) power and avoids

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any implication, given section 22(2)(a) of the Agriculture Act 2020 in particular, that these purposes are not intended to be included within the new section 6(1) power.

3.

- a. The policy intention is that the power is not subject to restriction and that the new section 6(2) provides a non-exhaustive list of purposes for which the power in the new section 6(1) may be used.
- b. The Scottish Ministers do not intend “otherwise than” to act as a restriction on the section 6(1) power and do not consider that it does. The new subsections (2)(b) and (c) provide examples of the purposes for which the new section 6(1) power may be used. In subsection (2)(b), the “otherwise than” illustrates that the power may be used to secure that the legislation partially ceases to have effect. The new subsection (2) provides that the list of purposes is inclusive, so the new subsection (1) power would also be capable of securing that the provisions cease to have effect for all purposes. We will consider whether any amendments are required to ensure that the provision is sufficiently clear.
- c. There is no distinction intended between “altering the operation of the legislation” in section 6(2)(a) and “altering the operation of the provisions of the legislation” in 6(2)(c). We will consider whether any amendments are required to ensure that the provision is sufficiently clear.
- d. The amendments in sections 24 and 25 relate to very specific policy areas and powers to give financial support to specific sectors. As explained in the Delegated Powers Memorandum, the Scottish Ministers consider that the provisions provide appropriate flexibility for provision of future support to these sectors taking into account the post EU exit landscape, the Scottish Ministers’ EU alignment policy, support provided to the sector elsewhere in Great Britain, and Scottish specific requirements. Schedules 5 and 6 of the Agriculture Act 2020 provide equivalent unconstrained apiculture powers to Welsh Ministers and the Northern Irish Department of Agriculture, Environment and Rural Affairs. The Scottish Ministers were able to provide some additional detail as regards section 23 given experience of PIPSA scheme legislation since EU exit.

Section 24: Power to modify CAP legislation on aid for fruit and vegetable producer organisations

In relation to this section, the Committee asks the Scottish Government:

1. The same question arises here as in relation to section 6 of the 2020 Act (as amended by section 23 of the Bill): as the Delegated Powers Memorandum points out, this legislation can be modified already under sections 2 to 4 of the 2020 Act, as amended by the Bill, because it is part of the relevant CAP legislation. Accordingly there is already power elsewhere in the Bill to simplify, improve, restate, update, continue, suspend, cease and modify the financial provision in relation to aid for fruit and vegetable producer organisations. What use does the Scottish Government anticipate making of this power that could not be done under these other powers?

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2. The Delegated Powers Memorandum states that “[t]his amended power although wider in scope than the powers in sections 2 to 4... remains focused on one sector” (paragraph 115). Could further explanation be provided for why it is considered that wider powers are appropriate in relation to this particular sector (and in relation to public intervention and private storage aid, and to apiculture) than the rest of the CAP legislation?

The Scottish Ministers respond as follows:

1. As set out above, the powers in the amended sections 2 and 3 of the 2020 Act provide for modification for specific purposes, restatement, or for securing that legislation ceases to have effect. The power provided for in section 24 is intentionally wider and is envisaged to provide for, in addition to those other powers, the making of new policy. As set out in the Delegated Powers Memorandum, these powers are required to ensure that the Scottish Ministers have the power to provide support to the sector in the future, which may not necessarily fall within the scope of the power to modify for the purposes set out in the amended section 2 of the 2020 Act.
2. The Scottish Ministers are not intending to introduce wider powers here for this particular sector and while the power is broad in scope, its application, given it applies to the fruit and vegetable sector specifically and only that sector, will be limited. We will however consider the drafting here further to see what, if any, improvement or tightening might be helpful to avoid others misinterpreting the purpose and effect of the clause.

Section 25: Apiculture Power

In relation to this section, the Committee asks the Scottish Government to list the delegated or implementing Regulations and subordinate legislation referred to in new section 7A(2)(b) and (c), to give the Committee an indication of the extent and nature of the legislation other than the CMO Regulation which this power could be used to modify.

The Scottish Ministers respond as follows:

We consider the delegated or implementing Regulations and subordinate legislation referred to in new section 7A(2)(b) and (c) to be:-

1. Commission Delegated Regulation (EU) 2015/1366 of 11 May 2015 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to aid in the apiculture sector.
2. Commission Implementing Regulation (EU) 2015/1368 of 6 August 2015 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to aid in the apiculture sector.

For completeness, we are also aware of the following instruments which amend either those Regulations or Articles 55 to 57 of the CMO Regulation:

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1. The Common Organisation of the Markets in Agricultural Products Framework (Miscellaneous Amendments, etc.) (EU Exit) Regulations 2019/821.
2. The Agriculture (Legislative Functions) (EU Exit) (No. 2) Regulations 2019/831.
3. The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments etc.) (EU Exit) (No. 2) Regulations 2019/ 1422.
4. The Common Agricultural Policy (Cross-Compliance Exemptions and Transitional Regulation) (Amendment) (EU Exit) Regulations 2022/861.

Section 27(1): Continuing professional development

In relation to this section, the Committee notes that the Government has stated that regulations made under this power will not make provision with significant economic or budgetary consequences. However, there is nothing on the face of the Bill which would prevent the imposition of an onerous CPD regime which did have such consequences. Has the Government considered how this power might be circumscribed so that it better reflects the stated intention, perhaps by means of an upper limit on the number of CPD hours that can be imposed in a given timeframe?

The Scottish Ministers respond as follows:

The DPLR committee's wider interest in the policy intent of the bill and its measures is appreciated. You will of course be aware that section 27(3)(a) sets out that the regulations made under section 27(1) for, or in connection with, CPD *may* contain provision about requiring persons to undertake particular, or a particular amount of CPD.

Requiring and enabling CPD is something that the agricultural industry and other organisations are keen for the Bill to provide for, hence the inclusion of this section in the Bill and our intention to set out in regulations how this will work in practice. The extent of CPD will be co-designed with relevant stakeholders to ensure it is proportionate and appropriate and thereafter be provided for in relevant regulations. We will of course continue to listen to the Stage 1 evidence on this, and consider carefully any views from the RAI committee in its Stage 1 report.

There is currently an informal consultation being undertaken on a wide range of topics falling with the Agricultural Knowledge and Innovation System in Tier 4 of the Vision of Agriculture Support Package post-2025, which includes CPD. The evidence gained during this stakeholder engagement will, in addition to the views received as part of the parliamentary bill process, help inform policy development in respect of (in addition to other knowledge and innovation matters) CPD and a CPD regime design.

Yours sincerely,

MAIRI GOUGEON

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