



The Scottish Parliament  
Pàrlamaid na h-Alba

## Delegated Powers and Law Reform Committee

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*Via email*

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Dear Cabinet Secretary,

### **Agriculture and Rural Communities (Scotland) Bill**

The Delegated Powers and Law Reform Committee considered the above Bill at its meeting of Tuesday 19 December, and agreed to write to ask the following questions in relation to delegated powers contained in the Bill.

#### **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.

#### **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?

### **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?

### **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?

### **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 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?

### **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:

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?

### **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?

### **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?

## **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?
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?

### **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.

### **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?

To allow the Committee to take the Scottish Government’s response into account and report to the lead committee, the Committee requests a **response by Monday 15 January 2024**.

Yours sincerely

Stuart McMillan MSP  
Convener of the Delegated Powers and Law Reform Committee