

# **AGRICULTURE AND RURAL COMMUNITIES (SCOTLAND) BILL**

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## **DELEGATED POWERS MEMORANDUM**

### **INTRODUCTION**

1. This Delegated Powers Memorandum has been prepared by the Scottish Government in accordance with Rule 9.3.3B of the Parliament’s Standing Orders in relation to the Agriculture and Rural Communities (Scotland) Bill (“the Bill”). It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers.

2. The following other accompanying documents are published separately:

- Explanatory Notes (SP Bill 33–EN);
- a Financial Memorandum (SP Bill 33–FM);
- a Policy Memorandum (SP Bill 33–PM);
- statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 33–LC).

3. This Memorandum has been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Parliament.

### **OUTLINE OF BILL PROVISIONS**

4. The Bill is a framework bill, and is intended to provide the powers that the Scottish Ministers will use to make provision for and in connection with support for agriculture and rural communities.

5. It also makes a minor change to the powers of the Scottish Ministers to provide for identification of animals.

6. The Bill has five parts and two schedules.

*Part 1 objectives and planning*

7. Section 1 sets out the objectives of agricultural policy for the purposes of the Bill.

8. Section 2 provides that the Scottish Ministers must prepare a rural support plan giving information about the expected use during the plan period of the powers conferred by section 4 of the Bill, and set out their strategic objectives for providing support during that period.

9. Section 3 provides for the matters to which the Scottish Ministers must have regard when preparing the rural support plan, which include the objectives in section 1.

*Part 2 support for agriculture, rural development and related matters*

10. Section 4 sets out that the Scottish Ministers may provide support for and in connection with the purposes described in schedule 1. It also provides for Ministers to be able by regulations to modify that schedule.

11. Support may be provided to third parties (section 5), and in such manner as the Scottish Ministers consider appropriate (section 6). Provision is made for guidance about support (section 7), and for the delegation of support functions (section 8).

12. The Scottish Ministers may provide by regulations for the capping or tapering of support (section 9). They may also provide by regulations for the refusal of support where doing so is in the public interest (section 10).

13. Sections 11 and 12 provide for support where the Scottish Ministers make an exceptional market conditions declaration.

14. Section 13 provides for the Scottish Ministers to be able by regulations to make provision for or in connection with the provision of support or support for a particular purpose. Regulations may for example provide for a subsidy scheme, or for administrative or enforcement matters.

15. Regulations under section 13 may provide in particular for eligibility criteria (section 14), payment entitlements (section 15), and the checking etc. of support (section 16).

16. Section 17 provides for the Scottish Ministers to be able by regulations to make provision for or in connection with the publication of specified information about support that has been provided.

17. Section 18 provides for the Scottish Ministers to be able by regulations to make provision about the processing of information for and in connection with the provision of support, or the

carrying out of functions in relation to continuing professional development functions under the Bill.

*Part 3 powers to modify existing legislation relating to support*

18. Sections 19 to 21 and 23 to 25 extend the powers in the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (“the 2020 Act”) to modify what is currently retained EU law. The applicable retained EU law will become assimilated law from the end of 2023 by virtue of the Retained EU Law (Revocation and Reform) Act 2023.

19. Section 22 repeals section 5 of that Act, which contains provision sunsetting the powers in sections 2, 3 and 4 of the 2020 Act.

20. Section 23 modifies the power in section 6 of the 2020 Act to modify legislation on public intervention and private storage aid. Section 24 inserts a new power into the 2020 Act to modify the legislation governing apiculture.

*Part 4 general*

21. Section 26 provides for the Scottish Ministers to prepare, publish and review a Code of Practice on Sustainable and Regenerative Agriculture.

22. Section 27 provides for the Scottish Ministers to be able by regulations to make provision for and in connection with the continuing professional development of farmers, crofters, land managers, and associated persons.

23. Section 28 modifies the Animal Health Act 1981 so that the power of the Scottish Ministers under section 8(1)(a) of that Act to make orders in respect of the marking of animals becomes a power to prescribe and regulate the means of identifying animals.

*Part 5 final provisions*

24. Sections 30 to 34 provide for the extent of the powers to make regulations under the Bill, for defined terms, for commencement, and for the short title.

*Schedule 2 repeals and minor modifications*

25. Section 29 and schedule 2 provide for further repeals of and minor modifications to agriculture and rural legislation.

## **RATIONALE FOR SUBORDINATE LEGISLATION**

26. The Scottish Government has had regard, when deciding what subordinate legislation powers and respective parliamentary procedures are appropriate for the Bill and whether provisions should be in primary or in subordinate legislation, to the need:

- to set out provision in a coherent way, while providing flexibility to respond to changing circumstances (for example changing priorities or in light of operational experience of the delivery of the future payment framework);
- to strike the right balance between the importance of the issue and providing flexibility to respond to changing circumstances;
- to allow detailed administrative arrangements to be kept up to date with the basic structures and principles set out in the primary legislation;
- to make proper use of valuable parliamentary time; and
- to deal with the unexpected, which might otherwise frustrate the purpose of provision made by the Parliament.

27. The relevant provisions are described in detail below. For each provision, the memorandum sets out:

- the person upon whom the power to make subordinate legislation is conferred and the form in which the power is to be exercised;
- why it is considered appropriate to delegate the power to subordinate legislation and the purpose of each provision; and
- the parliamentary procedure to which the exercise of the power to make subordinate legislation is to be subject, if any.

## **DELEGATED POWERS**

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

<b>Power conferred on:</b>	<b>Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>Regulations made by Scottish statutory instrument</b>
<b>Parliamentary procedure:</b>	<b>Affirmative</b>

### ***Provision***

28. Section 3 provides for the matters that the Scottish Ministers must have regard to when preparing a rural support plan under section 2 of the Bill.

29. It also provides that the Scottish Ministers may by regulations subject to affirmative procedure modify those matters by adding, adjusting or removing a matter.

***Reason for taking power***

30. The powers in the Bill will enable Ministers to deliver their Vision for Agriculture. Support provided for the purposes of the vision will over time replace the current retained EU law common agricultural policy schemes, and that will require a sustained effort over a multi-annual transition period.

31. The rural support plan will play a key role in shaping and explaining the nature of the support that will be provided both during and after that transition.

32. The Scottish Ministers will therefore require to have regard to the matters specified in section 2, with the objective that a plan will properly reflect the strategic priorities most relevant to support needs for each successive 5 year plan period.

33. It is therefore considered necessary that the Scottish Ministers are able to modify the list of matters to which they must have regard when preparing a rural support plan, in order to ensure that the plan process can develop in response to changing needs over time.

***Choice of procedure***

34. It is considered appropriate that regulations made using this power are subject to affirmative procedure. The matters are high level and shape priorities and so it is important that the Parliament is afforded the opportunity to consider and approve the proposed change.

**Section 4(3): Power to provide support**

<b>Power conferred on:</b>	<b>Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>Regulations made by Scottish statutory instrument</b>
<b>Parliamentary procedure:</b>	<b>Negative</b>

***Provision***

35. Section 4 enables the Scottish Ministers to provide support for, or in connection with, the purposes described in schedule 1 of the Bill.

36. It also provides that Ministers may by regulations subject to negative procedure modify schedule 1 by adding, amending or removing a purpose.

***Reason for taking power***

37. The Bill is, to a large extent, a framework bill that enables the Scottish Ministers to make provision by regulations under the Bill for and in connection with support for particular purposes.

38. It is however section 4 and schedule 1 that describe the core purposes for which support may be provided. Support for those purposes will underpin the Vision for Agriculture, but support is not limited to the Vision and will be provided for other reasons.

39. The purposes described in the schedule should therefore be capable of being modified over time as appropriate to ensure that the payment framework in the Bill remains effective and proportionate over time.

40. A fixed list would, in contrast, become less useful. There would be a risk that Ministers would be unable to provide support for new purposes even where doing so was necessary in order (say) to support future changes in agricultural activities, or changes in the needs of rural communities.

### ***Choice of procedure***

41. A change to the description of purposes for which support may be provided is expected to be modest in scope, and not to raise any great issue of principle.

42. The Scottish Ministers consider that negative procedure is appropriate in that it will ensure that Parliament retains oversight of the purposes for which support may be provided, without taking up valuable parliamentary time to debate and approve the proposed modification.

43. The Scottish Ministers note in that respect that the power to modify the list of purposes for which support may be provided under section 153 of the Environmental Protection Act 1990 is also subject to negative procedure, for which see section 160A of that Act.

### **Section 7(1): guidance**

<b>Power conferred on:</b>	<b>Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>Regulations made by Scottish statutory instrument</b>
<b>Parliamentary procedure:</b>	<b>Negative</b>

### ***Provision***

44. Section 7 provides for the Scottish Ministers to be able to make provision by regulations subject to negative procedure in relation to guidance about support, including in respect of the guidance in the proposed Code of Sustainable and Regenerative Agriculture (for which see section 26 of the Bill).

### ***Reason for taking power***

45. This section does not confer a power to prepare guidance, and the Scottish Ministers will therefore continue to prepare such administrative guidance as they consider necessary or appropriate from time to time.

46. The nature of such guidance varies widely. Current guidance covers for example the greening rules that form part of the basic payments scheme (area based direct payments to farmers), and meeting the good agricultural and environmental condition (GAEC) requirements that apply for the purposes of common agricultural cross-compliance rules.

47. Guidance may be for different purposes, and may reasonably require to bear more weight in some circumstances than others. For example, it may be appropriate for the Scottish Ministers to take account of the extent to which an applicant has complied with relevant guidance when considering whether an environmental condition applying to future support has been met.

48. It may in order to ensure clarity or transparency in respect of decisions of that kind be necessary or appropriate to provide for such matters in regulations made under this section.

49. The Code of Practice on Sustainable and Regenerative Agriculture will be guidance, and the Scottish Ministers should therefore be able to make similar provision in that respect.

### ***Choice of procedure***

50. Regulations made under this power will make provision in respect of administrative matters (for example, concerning essential standards of agricultural practice), and will not relate to matters of principle or great significance. The Scottish Ministers consider therefore that negative procedure is appropriate and as that will provide an appropriate level of scrutiny in respect of regulations made under this power.

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

<b>Power conferred on:</b>	<b>Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>Regulations made by Scottish statutory instrument</b>
<b>Parliamentary procedure:</b>	<b>Negative</b>

### ***Provision***

51. Section 9 provides for the Scottish Ministers to be able to make provision by regulations subject to negative procedure to limit or progressively reduce the amount of support or relevant assistance that a person may receive.

### ***Reason for taking power***

52. This power enables the Scottish Ministers to cap or taper support or assistance that might otherwise be given, and by doing so to ensure that support or assistance is proportionate to the purpose for which it is given, and adapted to the funds available for that purpose.

### ***Choice of procedure***

53. Regulations made under this power will be used to adjust support in payment as needed from time to time. It is not expected to relate to matters of principle or great significance, or make provision in respect of significant sums of money. Instead, this power will be used in respect of matters of detail and may often be used to fine tune the power in light of experience.

54. The Scottish Ministers consider that negative procedure is appropriate since that will provide an appropriate level of scrutiny for such detailed material that makes best use of available parliamentary time.

### **Section 10(2): Refusal or recovery of support where in the public interest**

<b>Power conferred on:</b>	<b>Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>Regulations made by Scottish statutory instrument</b>
<b>Parliamentary procedure:</b>	<b>Negative</b>

### ***Provision***

55. Section 10 provides for the Scottish Ministers to be able to make provision in connection with the exercise of the powers in section 10(1) to refuse or recover support where that is in the public interest.

### ***Reason for taking power***

56. Support [or financial assistance] is provided where doing helps contribute to an activity or outcome with a public benefit. Financial assistance may be of considerable value. It is important therefore that support or assistance may be refused, or if paid recovered, there that is in the public interest.

57. The circumstances in which it might be appropriate to refuse or recover support vary widely. It may for example be appropriate to refuse support to a person with a relevant conviction, say in respect of support for livestock activities where the person has been convicted of an animal cruelty offence.

58. The Scottish Ministers consider therefore that the Bill should provide for powers to refuse or recover support, but the circumstances in which say support is recovered from a person or persons should be specified in secondary legislation. That will provide both flexibility, and Parliamentary oversight in respect of those circumstances.

### ***Choice of procedure***

59. The provision setting out the circumstances for when refusal or recovery of support is appropriate relates to matters of detail rather than principle, and the Scottish Ministers consider therefore that negative procedure is appropriate.



### **Section 13(1): Regulations about support**

<b>Power conferred on:</b>	<b>Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>Regulations made by Scottish statutory instrument</b>
<b>Parliamentary procedure:</b>	<b>Affirmative if regulations make significant provision, otherwise negative</b>

#### ***Provision***

60. Section 13 provides for the Scottish Ministers to be able to make provision for and in connection with the provision of support or support for a particular purpose.

61. It should be read together with sections 14 (eligibility criteria), 15 (payment entitlements), 16 (checking, enforcing and monitoring), and 17 (publication of information about support). Those sections make further provision in respect of the power in section 13.

#### ***Reason for taking power***

62. Sections 13 to 17 taken together are the main power in the Bill, and are to a large extent what makes this a ‘framework’ bill.

63. They provide a power with wide application across all payment purposes as described in schedule 1. It may be used to make provision for particular types of support (subsidy schemes), or more general provision in respect of support generally such as regulations that provide for the consideration of applications for several types of support such as different schemes for area-based support.

64. The Vision for Agriculture will, when delivered, transform support for agriculture and rural communities. In particular, future support under the Bill will in due course replace the support provided under the relevant CAP legislation (for which see section 1 of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 as amended by Part 3 of the Bill).

65. CAP legislation is extensive and technical, and it is neither realistic nor desirable to replace those schemes by measures in primary legislation. The combination of the significant scale of that task of replacing the legislation and the unfixed nature of scientific advice concerning climate adaptation and mitigation measures and nature restoration measures, is such that flexibility is necessary to effectively deliver the replacement in a way that is effective long-term. The framework is expected to support farming and rural communities in the long term, including in respect of any new strategy that in due course replaces the Vision. The power in section 13 is therefore both necessary and appropriate.

66. The power in section 13 is wide, particularly when read when read together with sections 14 to 17 of the Bill. That again is both necessary and appropriate, as the Vision requires a sustained effort over several years, and both the Vision and any replacement will require to be

flexible enough to enable the Scottish Ministers to respond in an effective manner to the great challenges of climate change, biodiversity loss, and ensuring that agricultural activities (including food production) are both sustainable and regenerative.

### ***Choice of procedure***

67. Regulations under section 13 are subject to the affirmative procedure if the regulations in question in the opinion of the Scottish Ministers would make significant provision, and otherwise are subject to the negative procedure.

68. This is an ‘either way’ power, and the Scottish Ministers would in principle be able to choose in each case whether regulations are to be subject to affirmative or negative procedure. Section 13(5) of the Bill however specifies cases where provision would be significant, and therefore subject to affirmative procedure.

69. Before making regulations under this section, the Scottish Ministers must consult such persons as they consider appropriate.

70. The Scottish Ministers consider that such an ‘either way’ procedure is only appropriate where, as here, the power may be used in a wide range of cases to make both ‘significant’ or technical/minor provision.

71. This approach is considered to make the most effective use of valuable parliamentary time, and the Scottish Ministers note in that respect that the similar powers in section 2 of the 2020 Act and section 2 of the European Communities Act 1972 (since repealed) are or were ‘either way’ powers.

### **Section 18(1): Processing of information**

<b>Power conferred on:</b>	<b>Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>Regulations made by Scottish statutory instrument</b>
<b>Parliamentary procedure:</b>	<b>Negative</b>

### ***Provision***

72. Section 18 provides for the Scottish Ministers to be able, by regulations subject to negative procedure, to make provision about the processing of information for and in connection with the provision of support under the Bill or other relevant assistance, or the carrying out of functions in relation to continuing professional development activities under the Bill.

73. Section 18(4) defines relevant assistance for the purposes of this section, with the effect that provision may be made in connection with the provision of support under the REUL CAP legislation.

### ***Reason for taking power***

74. The Bill is intended to be a long term framework for support for agriculture and rural communities.

75. The Scottish Ministers will continue to require to process personal data for purposes connected with the administration of claims for and payment of support, and should be able to share that data in other cases where it is in the public interest to do so including for example sharing farm data for the purposes of disease control.

76. All such processing must comply with the applicable legislation, including the General Data Protection Regulation. A power is therefore necessary in order to ensure that any proposed processing is lawful.

77. The Scottish Ministers would consult with the Information Commissioner under Article 36(4) of the GDPR in respect of any proposal for regulations made under this section.

### **Choice of procedure**

78. The power in this section will be exercised for the purpose of ensuring that information used for administrative purposes, and information shared where there is a public interest in doing so, is processed lawfully.

79. The appropriate privacy impact assessments will be carried out, and there will in particular be consultation with the Office of the Information Commissioner.

80. The Scottish Ministers consider therefore that negative procedure is appropriate as that will provide a suitable level of scrutiny in respect of regulations made under this power.

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

<b>Power conferred on:</b>	<b>Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>Regulations made by Scottish statutory instrument</b>
<b>Parliamentary procedure:</b>	<b>Affirmative, if not subject to negative</b>

### ***Provision***

81. Section 19 modifies sections 1 and 2 of the 2020 Act.

82. It amends section 1 of the 2020 Act with the effect that the definition of ‘main CAP legislation’ in that section becomes ‘relevant CAP legislation’, and that relevant CAP legislation now includes the CMO Regulation (for which see section 1(5) of that Act).

83. It amends section 2 of the 2020 Act with the effect that the power in that section to simplify or improve the main CAP legislation applies instead to the relevant CAP legislation as described above.

84. It also extends the power in that section to simplify or improve the legislation so it also covers:

- (a) restating the relevant CAP legislation (for which see new section 2(2A) and (2B) of the 2020 act, and
- (b) making such changes as the Scottish Ministers consider appropriate to take account of changes in technology, or developments in scientific understanding.

***Reason for taking power***

85. What is now retained EU CAP law was subject to operability changes after exit day (in respect of direct payments) or IP completion day (in respect of the remaining former CAP rules) (see sections 20 and 39 of the European Union (Withdrawal) Act 2018 for the meanings of exit day and IP completion day respectively).

86. The Scottish Ministers considered it necessary to ensure that retained EU CAP legislation could be further modified after exit day, and the Scottish Parliament approved the powers to simplify and improve that legislation in Part 1 of the 2020 Act.

87. The powers in the 2020 Act were enacted before it was known how long support would require to be provided under retained EU law CAP rules, and therefore the extent to which it would be necessary or appropriate to modify those rules to ensure that they remain effective after the UK exit from the EU.

88. The scope of the existing powers were suitable for the objectives of ensuring that there would be a period of stability after exit, but support under the Bill will now help deliver the Vision for Agriculture.

89. There will now be a transition from support under the current CAP rules to support under the powers in the Bill, and that transition is expected to extend over a number of years for at least some current schemes and payments. The extended powers under this section are therefore considered necessary if the Scottish Ministers are to ensure that retained EU law CAP rules so far as still in force remain effective in a changing world.

90. For example, it may be appropriate to provide support under both a current CAP scheme and a new scheme under the Bill. The power to restate CAP rules might therefore be used to consolidate the current and the new rules in a single instrument, which could improve the clarity of the law.

### ***Choice of procedure***

91. The choice of procedure remains unchanged, for which see section 2(3) of the 2020 Act. This is because the aim of the relevant 2020 Act powers will continue to be the effectiveness and continuity of the retained EU law CAP rules, and to facilitate the transition from those rules to new support delivered under the Bill.

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

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations made by Scottish statutory instrument  
**Parliamentary procedure:** Affirmative, if not subject to negative

### ***Provision***

92. Section 20 amends section 3 of the 2020 Act with the effect that the power in that section to modify the main CAP legislation applies instead to the relevant CAP legislation, as described above.

93. This is for the purposes of securing that it:

- (a) continues to operate in relation to Scotland (without express reference to one or more years beyond 2020),
- (b) ceases to apply for a period, or
- (c) ceases to have effect in Scotland.

94. It also amends that section to change affirmative procedure to ‘either way’ procedure where affirmative procedure is used if the changes being made are significant, or negative procedure is used if the changes being made are technical and administrative.

### ***Reason for taking power***

95. The power in section 3 of the 2020 Act was necessary in order to ensure that CAP rules that would otherwise expire under retained EU CAP legislation could continue to have effect where that was necessary or appropriate. That power is still necessary, but can be simplified as proposed by these amendments.

96. The powers to provide that retained EU CAP legislation will cease to apply for a period or cease to have effect are considered necessary in order for the Scottish Ministers to ‘switch off’ CAP rules when they are replaced by future support and become redundant.

***Choice of procedure***

97. The Scottish Ministers consider it appropriate that regulations made using this power are subject to either negative or affirmative procedure, as that will enable them to take into account the significance and extent of the amendments being proposed which will vary considerably.

98. Moving to ‘either way’ procedure will also align the scrutiny for section 3 of the 2020 Act with that in section 2 of that Act, where the same considerations apply.

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

<b>Power conferred on:</b>	<b>Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>Regulations made by Scottish statutory instrument</b>
<b>Parliamentary procedure:</b>	<b>Affirmative, if not subject to negative</b>

***Provision***

99. Section 21 amends section 4 of the 2020 Act with the effect that the power in that section to modify the main CAP legislation applies instead to the relevant CAP legislation as described above.

100. It amends that section by repealing subsection (2), which provides an illustrative list of the provisions of the main CAP legislation which may be modified so far as relating to the setting or determining of ceilings, or the reallocation or transfer of amounts or purposes of such ceilings between and amongst different purposes under that legislation.

101. It also amends that section to change affirmative procedure to ‘either way’ procedure where affirmative procedure is used if the changes being made are significant, or negative procedure is used if the changes being made are technical and administrative.

***Reason for taking power***

102. The enabling power in section 4 of the 2020 Act remains the same, other than in respect of being extended to cover relevant CAP legislation.

***Choice of procedure***

103. The Scottish Ministers consider it appropriate that regulations made using this power are subject to either negative or affirmative procedure, as that will enable them to take into account the significance and extent of the amendments being proposed which will vary considerably.

104. Moving to ‘either way’ procedure will also align the scrutiny for section 4 of the 2020 Act with that in section 2 of that Act, where the same considerations apply.

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

<b>Power conferred on:</b>	<b>Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>Regulations made by Scottish statutory instrument</b>
<b>Parliamentary procedure:</b>	<b>Affirmative, if not subject to negative</b>

### ***Provision***

105. Section 23 amends section 6 of the 2020 Act, which confers power on the Scottish Ministers to modify by either way regulations specific retained EU law relating to public intervention and aid for private storage as defined in that section.

106. It removes the requirement that amendments could only be made to secure that these provisions cease to apply temporarily, cease to have effect or to simply or improve the operation of the legislation.

107. The legislation governing public intervention and aid for private storage is however part of the relevant CAP legislation as described above, and may therefore be modified under the general powers in sections 2 to 4 of the 2020 Act, for the purposes set out there, as amended by the Bill.

108. This section has the effect that the power in section 6 of that Act will be amended to confer powers, additional to those in sections 2 to 4 of the 2020 Act, for the Scottish Ministers to be able to:

- (a) alter the operation of the legislation governing public intervention and aid for private storage so far as it has effect in connection with exceptional market conditions which are the subject of a declaration under section 12 of the Bill,
- (b) secure that the provisions of the legislation cease to have effect otherwise than in connection with exceptional market conditions, and
- (c) alter the operation of provisions of the legislation otherwise than in connection with exceptional market conditions.

### ***Reason for taking power***

109. The Scottish Government's experience since EU exit, especially in the context of EU exit and the Covid-19 pandemic, are that these market intervention powers remain useful tools to provide support to the food and drink sector.

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. These

powers will allow Ministers to make any provision they consider necessary or appropriate to respond to Scottish specific circumstances and will 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. A similar power (to modify legislation relating to public market intervention or aid for private storage for the purpose of altering those provisions in connection with an exceptional market conditions declaration) is conferred upon the Secretary of State by section 22(1) of the Agriculture Act 2020. Similar powers to those conferred by the modified section 6(2A)(b) and (c) are conferred on the Secretary of State by section 22(2) of the Agriculture Act 2020.

### ***Choice of procedure***

111. The choice of procedure remains unchanged, for which see section 6(4) of the 2020 Act. The Scottish Ministers consider it appropriate that regulations made using the modified power remain subject to either negative or affirmative procedure, as that will enable them to take into account the significance and extent of the amendments being proposed which will vary considerably.

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

<b>Power conferred on:</b>	<b>Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>Regulations made by Scottish statutory instrument</b>
<b>Parliamentary procedure:</b>	<b>Affirmative, if not subject to negative</b>

### ***Provision***

112. Section 24 amends section 7 of the 2020 Act, which confers power on the Scottish Ministers to modify the legislation governing aid for fruit and vegetable producer organisations (as defined in that section).

113. It removes the requirement that amendments could only be made to simply or improve the operation of the provisions of the legislation.

### ***Reason for taking power***

114. The Scottish Government provides support to Scotland's fruit and vegetable producers under the specified legislation governing aid for fruit and vegetable producer organisations.

115. This amended power although wider in scope than the powers in sections 2 to 4 of the 2020 Act as amended by the Bill, remains focused on one sector.

116. It provides the Scottish Ministers with appropriate and flexible powers to provide support to the sector in the future, 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.

### ***Choice of procedure***

117. The choice of procedure remains unchanged, for which see section 7(4) of the 2020 Act. The Scottish Ministers consider it appropriate that regulations made using this power remain subject to either negative or affirmative procedure, as that will enable them to take into account the significance and extent of the amendments being proposed which will vary considerably.

### **Section 25: Apiculture**

<b>Power conferred on:</b>	<b>Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>Regulations made by Scottish statutory instrument</b>
<b>Parliamentary procedure:</b>	<b>Affirmative, if not subject to negative</b>

### ***Provision***

118. Section 25 inserts a new section 7A into the 2020 Act, which confers a power on the Scottish Ministers by regulations subject to either way procedure to modify specified legislation governing apiculture. Either way procedure is where affirmative procedure is used if the changes being made are significant, or negative procedure is used if the changes being made are technical and administrative.

119. Equivalent powers are conferred on Welsh Ministers by paragraph 5 of schedule 5 of the Agriculture Act 2020 and on the Northern Ireland Department of Agriculture, Environment and Rural Affairs by paragraph 6 of schedule 6 of the Agriculture Act 2020. Those powers are subject to the negative resolution procedure, unless used to make supplementary, incidental, consequential, transitional, transitory or saving provision which modifies primary legislation.

### ***Reason for taking power***

120. The Scottish Government provides support to Scotland's apiculture sector under the retained EU law CAP legislation specified in the new section.

121. This amended power although wider in scope than the powers in sections 2 to 4 of the 2020 Act as amended by the Bill, remains focused on one sector.

122. It provides the Scottish Ministers with appropriate and flexible powers to provide future support to the sector in the future, 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.

### ***Choice of procedure***

123. The Scottish Ministers consider it appropriate that regulations made using this power are subject to either negative or affirmative procedure, as that will enable them to take into account the significance and extent of the amendments being proposed which will vary considerably.

124. Moving to ‘either way’ procedure will also align the scrutiny for new section 7A of the 2020 Act with that in section 2 of that Act, where the same considerations apply.

### **Section 26: Code of Practice on Sustainable and Regenerative Agriculture**

**Power conferred on:** Scottish Ministers  
**Parliamentary procedure:** Laid, no procedure

### ***Provision***

125. Section 26 of the Bill provides for the Scottish Ministers to prepare and publish a Code of Practice on Sustainable and Regenerative Agriculture (see also the power in section 7 of the Bill).

126. The code or any revised code must be laid before the Scottish Parliament before being published.

### ***Reason for taking power***

127. A move to sustainable and regenerative agriculture is necessary if farming in Scotland is to promote high quality food production and make the changes needed to address the climate change and nature crises.

128. The code will set out how Ministers consider that sustainable and regenerative farming methods and practices can be delivered and sustained, and will be essential guidance for Scotland’s producers.

129. It is important therefore that the code is widely publicised, and that the Scottish Parliament can easily access the code and if it chooses to consider the implications of the advice set out in the code.

### ***Choice of procedure***

130. The code (or revised code) is laid only, and not subject to any specific process for scrutiny of or approval by the Scottish Parliament.

## **Section 27(1): Continuing professional development**

<b>Power conferred on:</b>	<b>Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>Regulations made by Scottish statutory instrument</b>
<b>Parliamentary procedure:</b>	<b>Negative</b>

131. Section 27 provides for the Scottish Ministers to be able by regulations subject to negative procedure to make provision for or in connection with the provision of continuing professional development of farmers, crofters, land managers, and persons that provide relevant advice or services to such persons.

132. Subsection (1)(e) also allows the Scottish Ministers to specify other categories of persons in respect of whom continuing professional development regulations apply.

133. Subsection (3) sets out a non-exhaustive list of the types of matter which regulations made under subsection (1) may include in relation to CPD activities that may or must be undertaken.

134. Subsection (4)(a) sets out that regulations made under subsection (1) may include provision for the carrying out of functions relating to CPD activities by persons other than the Scottish Ministers. Paragraph (b) of that subsection also specifies that regulations under subsection (1) are subject to negative procedure.

135. See also the separate power in respect of data processing in section 18 of the Bill.

### ***Reason for taking power***

136. The Scottish Ministers do not currently have a power that enables them to establish such a CPD regime.

137. Such a CPD regime will be an important tool for achieving the vision for Agriculture, particularly in respect of skills, knowledge and environmental aims.

138. It is considered necessary for the Scottish Ministers to be able to specify requirements in relation to professional development, as that will ensure that the CPD regime will remain responsive to training and development needs as they change over time.

139. The flexibility to incorporate minimum mandatory CPD requirements will also provide the Scottish Ministers with a powerful standard that can be used to further the delivery of key policy aims, by ensuring that relevant actors undertake relevant training and professional development activities.

### ***Choice of procedure***

140. Regulations made under this power will not make provision with significant consequences of an economic, budgetary, or principle nature. The Scottish Ministers consider therefore that negative procedure is appropriate, as that will provide an appropriate level of scrutiny in respect of regulations made under this power.

### **Section 28(2): Prescribing and regulating means of identifying animals**

<b>Power conferred on:</b>	<b>Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>Regulations made by Scottish statutory instrument</b>
<b>Parliamentary procedure:</b>	<b>Laid, no procedure</b>

### ***Provision***

141. Section 28 amends section 8(1)(a) of the Animal Health and Welfare Act 1981 (“the 1981 Act”) to provide that Ministers may make such orders as they think fit prescribing and regulating the means of identifying animals. The power will replace the existing power in section 8(1)(a) of that Act which relates to the “marking” of animals.

142. “Animals” has the existing meaning provided for in section 88 of the 1981 Act (cattle, sheep, goats, all other ruminating animals and swine). The definition may also be extended to comprise any kind of animal except man, any kind of four-footed beast which is not a mammal and fish, reptiles, crustaceans or other cold-blooded creatures.

### ***Reason for taking power***

143. The existing power in section 8(1)(a) of the 1981 Act provides only for the marking of animals. This reflects an historical view of the means of identifying animals by means of branding, cutting horns or ear notching. Current practice is to use plastic tags for cattle and sheep. New technology involving electronic radio frequency identification devices (RFID transponders) is now available and is described as electronic identification.

144. In addition, modern systems for identification now include the keeping of electronic records in farm software, procedures for scanning RFID transponders in the supply chain and searchable multispecies relational databases such as the recently completed ScotEID system.

145. The amended power is needed to enable the Scottish Ministers to make provision prescribing and regulating the means of identifying animals generally. The amended power may be first used in relation to proposals to require identification of cattle by means of RFID transponder and other changes to current rules regarding identification of cattle.

146. This section also amends section 8 of the 1981 Act to provide that provision made under section 8(1)(a) may bind the Crown. This will ensure that secondary legislation may apply to the

various capacities of the Crown, such as requirements to apply means of identification to animals and duties relating to administration of identification systems.

### ***Choice of procedure***

147. The choice of procedure remains unchanged.

148. The existing powers in section 8 of the 1981 Act, and most of the other powers to make orders under the 1981 Act, are not subject to parliamentary procedure. The amended power will similarly not be subject to parliamentary procedure.

149. This is considered appropriate because orders made under the power may be required at short notice in order to respond to changing circumstances such as animal disease outbreaks.

150. Any Order made by the Scottish Ministers under the amended power will require to be laid in the Scottish Parliament after it has been made, in accordance with section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

### **Section 31(1): Ancillary provision**

<b>Power conferred on:</b>	<b>Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>Regulations made by Scottish statutory instrument</b>
<b>Parliamentary procedure:</b>	<b>Affirmative, if not subject to negative</b>

### ***Provision***

151. Section 31 enables the Scottish Ministers, by regulations, to make incidental, supplementary, consequential, transitional, transitory or savings provision for the purposes of, in connection with, or for giving full effect to the Bill.

152. This is a standalone power enabling ancillary provision to be made where the Scottish Ministers consider it appropriate to ensure the Bill can be given its full effect. Similar provision may be made under sections 30 the Bill when regulations are made under other enabling powers in the Bill (typically in order to provide for the implementation of such regulations) and a more limited range of transitional, transitory or saving provision may be made in connection with commencement regulations under section 33.

### ***Reason for taking power***

153. As with any new body of law, the Bill may give rise to a need for further provision to ensure that policy objectives can be achieved.

154. Whilst the Scottish Government has given careful consideration to the provisions of the Bill, this power is considered necessary to ensure that any unexpected issues which require

further changes can be dealt with effectively and that the purpose of the Bill is not inadvertently obstructed.

155. The power to make such provision is common in Bills to provide flexibility to make any adjustments in light of experience in relation to the operation of the Act as timeously as possible. It would not be an effective use of Parliament's time, or the Scottish Government's resources to deal with such matters through primary legislation.

### ***Choice of procedure***

156. Section 31(3) provides that regulations made in exercise of this power are subject to the affirmative procedure if those regulations add to, replace or omit any part of an Act. Otherwise, such regulations will be subject to the negative procedure.

157. This formulation is standard in connection with such powers and recognises the particular interest Parliament has in provisions which modify primary legislation. Changes to subordinate legislation are likely to be more technical in nature, and so merit a lesser degree of parliamentary scrutiny.

### **Section 33(2): Commencement**

<b>Power conferred on:</b>	<b>Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>Regulations made by Scottish statutory instrument</b>
<b>Parliamentary procedure:</b>	<b>Laid, no procedure</b>

### ***Provision***

158. Section 33 sets out when the provisions of the Bill will come into force (i.e. begin to have effect). Sections 30, 31, 32 and 34 will come into force on the day after Royal Assent. However, for the most part, commencement will take place on the day appointed by the Scottish Ministers in regulations.

159. Regulations under this section will be laid before the Scottish Parliament but will not otherwise be subject to any parliamentary procedure (see section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010).

160. In addition, this section provides that commencement regulations may include transitional, transitory or saving provision and may make different provision for different purposes. In particular, this allows different sections of the Bill to be commenced on different days.

### ***Reason for taking power***

161. It is standard for Ministers to have powers over the commencement of Acts. It is considered appropriate for the substantive provisions of the Bill to be commenced at such time as

the Scottish Ministers consider to be suitable. Such provisions may require to make transitional or transitory provision, or the saving of repealed or amended provisions.

***Choice of procedure***

162. As is usual for commencement regulations, the default laying requirement in section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 applies.

163. Commencement regulations bring into force provisions, the substance of which have already been considered by the Parliament during the passage of the Bill. Any regulations under this section will be laid before the Parliament as soon as practicable after being made (and in any event before the legislation is due to come into force).

*This document relates to the Agriculture and Rural Communities (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 28 September 2023*

# **AGRICULTURE AND RURAL COMMUNITIES (SCOTLAND) BILL**

## **DELEGATED POWERS MEMORANDUM**

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