

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

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## **POLICY MEMORANDUM**

### **INTRODUCTION**

1. As required under Rule 9.3.3 of the Parliament's Standing Orders, this Policy Memorandum is published to accompany the Agriculture and Rural Communities (Scotland) Bill introduced in the Scottish Parliament on 28 September 2023.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 33–EN);
  - a Financial Memorandum (SP Bill 33–FM);
  - a Delegated Powers Memorandum (SP Bill 33–DPM);
  - statements on legislative competence by the Presiding Officer and the Scottish Government (SP 33–LC).
3. This Policy Memorandum has been prepared by the Scottish Government to set out the Government's policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

### **BILL CONTENT**

4. The Bill is structured in the following parts:
  - Objectives and Planning,
  - Support for Agriculture, Rural Development and Related Matters,
  - Modifying Existing Legislation Relating to Support,
  - General (including the Code of Practice on Sustainable and Regenerative Agriculture, and Repeals), and
  - Final Provisions.

## **OVERVIEW**

5. The Bill is the framework for the measures the Scottish Ministers will use to develop the support that farming and rural communities need in order to adapt to new opportunities and new challenges, and to prosper in a changing world.

6. It will be the platform for measures focused on the Scottish Government key outcomes: high quality food production; climate mitigation and adaptation; nature restoration; and wider rural development.

7. The Bill therefore enables Ministers to provide financial support for measures and schemes set up using the ‘framework’, and to set eligibility criteria and conditions for receiving the support. It provides the powers that are needed to allow a smooth transition from current support measures, which are based on the former EU common agricultural policy scheme.

8. The challenges faced are considerable. Scotland needs to move away from the current EU CAP schemes, while staying aligned with the EU on outcomes. There is a need to ensure a just transition to net zero farming. Every effort must be made to mitigate the nature crisis. Rural communities must be helped to thrive, and there is a need to protect the rural economy. All of this will require a sustained and flexible effort over many years. It is not practical to lay out detailed schemes in primary legislation as this would remove the opportunity to create flexibility to respond to future unforeseen changes, which is why this framework Bill is the right way forward. Secondary legislation will lay out detailed schemes which will be within the framework of primary legislation but able to respond to change. The immediate and overarching policy objective for the Bill is therefore to use the powers in the Bill to realise the Vision for Agriculture<sup>1</sup>. It delivers on the Scottish Government commitment to continue to support agriculture and rural communities. This support is in the context of making Fair Work practices the norm in Scottish workplaces and in doing so supporting the vision for Scotland becoming a Fair Work Nation.

9. The powers in the adaptive framework will enable the Scottish Ministers to respond flexibly to future social, economic, and environmental changes, challenges and opportunities. This enables tailored provisions and support to be implemented through secondary legislation, and further adapted as appropriate in the context of a new Rural Support Plan to meet future challenges and uncertainties including climate impacts, food security risks and challenges and market changes.

10. The Bill has been introduced to achieve the Manifesto<sup>2</sup>, Programme for Government<sup>3</sup> and Bute House Agreement<sup>4</sup> commitments, by the end of 2023, and so to enable the delivery of the Scottish Government’s Vision for Agriculture (published in March 2022), and the creation of a post EU-Common Agricultural Policy (CAP) support payment framework.

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<sup>1</sup> [Chapter 1: Introduction - Delivering our vision for Scottish agriculture - proposals for a new Agriculture Bill: consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/consultations/agriculture-2023-01/pages/introduction.aspx)

<sup>2</sup> [SNP 2021 Manifesto: Scotland’s Future, Scotland’s Choice — Scottish National Party](https://www.snp.scot/manifesto)

<sup>3</sup> [Programme for Government - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/programmes-for-government-2023-01/pages/introduction.aspx)

<sup>4</sup> [Agreement with Scottish Green Party - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/agreement-with-scottish-green-party-2023-01/pages/introduction.aspx)



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

18. The end of Common Agricultural Policy (CAP) Pillar 2<sup>7</sup> means there is a need to review how the Scottish Government supports rural communities and rural networking. The Bill provides the opportunity and flexibility to reform and modernise how to do that.

19. The Bill also provides the opportunity to modernise the powers of the Scottish Ministers on areas relating to animal health and identity, welfare and genetic resources, and plant health.

## **CONSULTATION**

20. A public consultation on proposals for a new Bill, “Delivering our Vision for Scottish Agriculture: Proposals for a new Agriculture Bill”<sup>8</sup>, was undertaken between 29 August and 5 December 2022. The consultation set out the Scottish Government’s vision for a new, post-EU CAP support payment system and sought views on proposals which aim to deliver the Vision for Agriculture and transform how the Scottish Government supports farming and food production in Scotland to become a global leader in sustainable and regenerative agriculture. The outcome of this public consultation has informed the contents of the Bill.

21. A total of 392 valid responses were received to the consultation, of these 225 were from individuals, and 167 were from organisations. The in-person and online engagement events were attended by approximately 600 people. The Scottish Government heard a range of views from members of the public and stakeholder organisations across Scotland.

22. An independent research company, Diffley Partnership, undertook an independent analysis of all responses and feedback received to the online consultation and during the consultation events. A final consultation analysis<sup>9</sup> report was published on 22 June 2023<sup>9</sup>.

23. Broad support was received for proposals. The quantitative data shows that all proposals in the consultation received a higher level of support than opposition, with the percentage of ‘Yes’ responses consistently higher than ‘No’.

24. More detail on the consultation analysis is provided under each of the Bill Parts for the topics included within the Bill.

## **OBJECTIVES AND PLANNING**

### **Policy Objectives**

25. The overarching objectives of agricultural policy are set in Part 1. This systemises the broader outcomes of the Vision for Agriculture into clear outcomes required through the use of powers sought. Acknowledging and clarifying that delivery of the Vision is the context in which any and all considerations are undertaken.

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<sup>7</sup> [Second pillar of the CAP: rural development policy | Fact Sheets on the European Union | European Parliament \(europa.eu\)](#)

<sup>8</sup> [Delivering our vision for Scottish agriculture - proposals for a new Agriculture Bill: consultation - gov.scot \(www.gov.scot\)](#)

<sup>9</sup> [Agriculture Bill: consultation analysis - gov.scot \(www.gov.scot\)](#)

26. The Vision has been welcomed by stakeholders and commits to transforming how the Scottish Government supports farming and food production in Scotland, to become a global leader in sustainable and regenerative agriculture. These overarching objectives meet a call from stakeholders to further clarify how Ministers propose to use the powers in the Bill, and so deliver upon the Vision.

27. A requirement is placed upon Scottish Ministers to prepare, lay before Parliament and publish a Rural Support Plan. This Plan will cover up to a five-year period and must set-out the strategic priorities for providing support during the plan period. It must also set out in such manner, and giving such detail as is appropriate, details of each support scheme in operation or expected to come into operation during the period.

28. The Plan shall also allow Ministers to make clear as to how agricultural support contributes to other statutory duties such as climate commitments and EU alignment. Such a Plan offers a level of certainty that was sought by many through the consultation within the flexible support model that was welcomed.

### **Alternative Approaches**

29. The alternative is to not make clear the outcomes intended through use of powers sought and omit the opportunity to provide further clarity in their specific usage over the period of the Plan. This was rejected on the basis that it would remove an opportunity to deliver a clarity of purpose, intent and action that is beneficial to the industry and rural partners in planning.

### **Consultation**

30. The concept of clarifying what the powers would be used for and the clear desire expressed for ‘certainty within a flexible model’ was articulated clearly by numerous contributors to the consultation and in the wider public debate around agricultural reform. For this reason, the objectives and the rural support plan have been included in the Bill to provide the clarity sought.

## **SUPPORT FOR AGRICULTURE, RURAL DEVELOPMENT AND RELATED MATTERS**

31. This Part of the Bill provides for the powers of the Scottish Ministers for and in connection with the provision of support, typically in the form of payments, for a wide variety of purposes connected with agriculture, forestry, rural communities and the rural economy and the environment.

32. The intention is that the new powers will be the framework for supporting agricultural and rural development through schemes made under this Part. This framework extends, amongst other things, to provision of support aligned to the Vision for agriculture, enabling more local employment in the rural sector and more new and young entrants into farming. The Scottish Government has made a commitment to new and young entrants and a power to provide support is contained under Section 4.

## **FUTURE FRAMEWORK SUPPORT**

### **Policy Objectives**

33. The new support powers will enable delivery of the Scottish Government’s Vision for Agriculture and provide flexibility to deliver future outcomes beyond the current Vision. This Vision contributes to the Scottish Government National Performance Framework and the legal obligations pertaining to climate emissions therein.

34. The Vision for Agriculture is that Scotland will transform how it supports farming and food production in Scotland to become a global leader in sustainable and regenerative agriculture. This commitment will sit at the heart of a robust and coherent framework to underpin Scotland’s future agriculture support regime. Scotland will have a support system that delivers high quality food production, climate mitigation and adaptation, nature restoration, and thriving rural and island communities. High quality, nutritious food locally and sustainably produced is key to wellbeing – in economic, environmental, social and health terms. The Scottish Government will support and work with farmers and crofters to meet more of Scotland’s own food needs, sustainably and to farm and croft with nature.

35. The CAP is the EU policy to provide financial support to farmers and in respect of the rural economy in Member States. The CAP rules in force when Scotland left the EU continue to operate under assimilated law. The new EU CAP rules that have come into force since then do not apply in Scotland, although the Scottish Government will remain aligned with the outcomes in respect of those new rules. For example, the CAP rules now operating in Scotland (the ‘current CAP rules’) provided for direct support payments to farmers and crofters, for a variety of purposes:

- a ‘basic payment’ per hectare;
- a ‘greening’ component;
- an additional payment for young farmers;
- a ‘redistributive payment’;
- coupled support for production; and
- a system for ‘small farmers’.

36. The current CAP rules also include payments for Rural Development through the Scottish Rural Development Programme (SRDP), and covers the common market organisation (“CMO”) which is the framework for the market measures provided for under the CAP.

37. Following the UK’s exit from the EU, the CAP Regulations 1307/2013 for direct payments, 1305/2013 for rural development including forestry, 1306/2013 for financial monitoring and controls, and 1308/2013 on common market organisation, and their delegated and implementing EU regulations were in particular rolled over into assimilated law, and have all been used in Scotland to provide for a period of stability and continuity and to enable the CAP legacy schemes to continue to operate in Scotland.

38. A new 2023-27 CAP was formally adopted by the EU Council on 2 Dec 2021, and has 10 broad objectives. Each Member State also has an individual CAP Strategic Plan, which explains

the detail of how they will implement targeted interventions addressing their specific needs at a national level in order to deliver on the 10 broad objectives. These Strategic Plans<sup>10</sup> came into effect on 1 January 2023, and at the end of the year the Commission will produce a report on the joint effort and effectiveness of these Plans.

39. The Bill provides the opportunity to develop a future agriculture support regime to be implemented at an appropriate point and flexibly from 2025 onwards. This will shift to a new Scottish approach that aligns with the new EU CAP and ensures a flexible approach to distributing payments towards outcomes. The Bill will also ensure that consideration is given to enabling claw back and cost recovery, where unnecessary administrative costs have been incurred and any resultant work for the Scottish Government due to negligence or rule breaking, or errors made by customers. By aligning the Scottish Government's future policy with the objectives and policy developments of the 2023-27 CAP (where practicable), it ensures that if Scotland has the opportunity to re-enter the EU in the future, then it will be in a position to do so. Any and all policy consideration is made within that context.

40. To support the delivery of the Vision for Agriculture a new four-tiered Support Framework is proposed and consulted on. The Bill provides the powers to deliver this four-tiered support. These objectives of the Vision have been agreed by Scottish Ministers, and subject to contribution from the sector and experts across land use, nature, biodiversity and climate. The high level powers required to implement these objectives have been the subject of formal public consultation through the Agriculture Bill process. The quantitative data shows that all proposals in the consultation received a higher level of support than opposition. 62% of respondents agreed with the proposal set out in the consultation paper to include a mechanism to enable payments to be made under a 4-tiered approach. The bill remains a framework to provide broad powers to deliver the vision. This primary framework does not provide the detail as that would be restrictive and fail to provide the flexibility to respond the change. This detail of the tier framework will therefore be provided in secondary legislation.

41. From earliest development, each tier has been conceived with a clear outline intent – a role in delivery towards the Vision:

- Tier 1: a 'Base Level Direct Payment' - a universal, entry-level payment for undertaking agricultural activity whilst meeting minimum production standards to protect the environment, animal health and welfare and ensure Fair Work.
- Tier 2: an 'Enhanced Level Direct Payment' - a universally accessible payment that supplements Base, for applicants delivering Base and undertaking further activity (delivery of outcomes) for nature and climate improvement practices, including recognition of wider land management.
- Tier 3: an 'Elective Payment' - a competitive or non-universal (criteria dependent) range of payments for 'specific-indicator nature and / or climate improvement undertakings' and 'specific-indicator undertakings' relating to other Vision policy outcomes, some might be dependent on undertaking Base and / or Enhanced.
- Tier 4 'Complementary Support' - provision of support for Continuing Professional Development (CPD), advice, knowledge exchange and linkages to wider land management support from Scottish Government officials and/or public partners.

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<sup>10</sup> [CAP Strategic Plans \(europa.eu\)](https://europa.eu)

42. Tiers 1 and 2 would sit under the one umbrella of what would be understood as “direct payments”, acknowledging the need to ensure that conditions are fitted to the variance of Scottish agriculture, and Tiers 3 and 4 would be what would be understood as “indirect payments”.

43. The following areas consulted on informed the development of the policy rationale for the Future Payment Framework, and subsequent proposals.

### **Alternative Approaches**

44. As was appropriate, a range of alternative approaches were given due consideration, but not consulted upon for reasons now expanded upon. All were weighted against the outcomes sought through the Vision for Agriculture alongside existing and broader Scottish Government outcomes. Practical considerations were also considered with focus upon the ability for any options to be delivered from the perspective of Scottish Government business functionality and supplier side (customer) capacity and capability. A matrix to offer such analysis focused on four Critical Success Factors:

- Strategic fit – this is the capacity for the option to deliver to Scottish Government outcomes, including as noted, but also beyond the Vision for Agriculture.
- Supplier Side Capacity & Capability (SSC&C) – this is the capacity for industry to deliver what is necessary for the policy to succeed. For the climate change and biodiversity objectives this includes considerations of farmers current capabilities and intermediaries, like advisors, to support this.
- Affordability – this refers to Scottish Government (taxpayer) funding availability and must also consider delivery affordability, costs which may become clearer with more detail.
- Deliverability – this is a high-level assessment of the capacity for Scottish Government to develop the necessary business mechanisms to support the policy in the timeframes set out in the Route Map at a high level – further analysis is needed as the programme options are narrowed down.

45. Utilising this approach, multiple alternatives were able to be discounted. A ‘no subsidies’ option was absolutely discounted due to a clear inability to meet Scottish Government outcomes. The concept of introducing the approved approach ‘with increased levels of funding and phasing out’, a concept of fast-tracking adaptation in the industry, was viewed as being unaffordable with further questions raised concerning the capacity of industry and supply chains to absorb such change.

46. Less orthodox considerations were also assessed. This included an ‘environmental taxation’ approach on a ‘polluter pays’ principle with revenues supporting change elsewhere in the industry. Placing too much burden at a time of change could be counterproductive with production being lost rather than improved and an incremental improvement could achieve a more sustainable change in business and food production. Significant concerns were viewed on both biodiversity and nature restoration outcomes and with core deliverability with this model.



47. Other models offered by external partners, whilst deemed not wholly applicable, contributed essential elements to the co-development to the model being advanced.

### **Consultation**

48. The consultation paper outlined proposals on the Future Support Framework to enable conditional payments under 4 tiers:

- Tier 1 a ‘Base Level Direct Payment’
- Tier 2 an ‘Enhanced Level Direct Payment’
- Tier 3 an ‘Elective Payment’; and
- Tier 4 ‘Complementary Support’.

49. Most respondents agreed with the proposals in relation to the proposed four-tier approach. Concerns were raised in relation to aspects of the conditionality attached and the potential complexity of the system. Some called for more detail on the specifics of the Future Payment Framework. Views on a ‘Whole Farm Plan’ (WFP)<sup>11</sup> as an eligibility criteria, focused on the need to ensure it was of value to farmers and did not create complexity. The WFP was viewed positively as a mechanism to achieve nature restoration whilst maintaining productivity.

50. The consultation also proposed to establish a national reserve of payment entitlements, and regional reserves if/when required, to ensure the equal treatment of farmers and to avoid distortions of the market and of competition. Although a majority of respondents were in agreement with the proposal, views were more mixed around the establishment of a national reserve with some believing it was required for the reasons set out in the consultation while others queried this given the costs to administer and called for more detail. The Bill therefore includes power to set up a national reserve, if that is considered the best approach, in order to provide appropriate flexibility.

## **CLIMATE CHANGE ADAPTION AND MITIGATION, AND NATURE AND BIODIVERSITY PROTECTION AND RESTORATION (SCHEDULE 1, PART 5, PARAGRAPHS 13-16)**

### **Policy Objectives**

51. The Bill will enable delivery of the Vision of Agriculture, which states that Scotland will have a support framework that delivers high quality food production, climate mitigation and adaptation, and nature restoration. The climate and nature crises are intrinsically linked – restoring biodiversity and rebuilding natural capital will play an essential role in reaching net zero and helping land to adapt to climate change. This specifically links to the purposes of support in the Bill which, amongst other purposes, sets out the purposes of greenhouse gases and climate change, and the natural environment.

52. As set out in the Environment Strategy for Scotland<sup>12</sup>, the Scottish Government is committed to addressing the twin crises of climate change and biodiversity loss: to create a fairer and greener

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<sup>11</sup> [Future agricultural support - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>12</sup> [The Environment Strategy for Scotland: vision and outcomes - gov.scot \(www.gov.scot\)](http://www.gov.scot)

Scotland. Scottish agriculture and associated land use will play a key role in tackling the twin crises. The future framework, therefore, will allow actions to address these key priorities.

53. Scotland's statutory framework for responding to the global climate emergency is set out through the Climate Change (Scotland) Act 2009 (as amended by the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019). On climate change mitigation: farming, crofting and land management will continue to play an important role in maintaining thriving rural and island communities as Scotland mitigates climate change. The Scottish Government also recognise the important role farms and crofts (our natural capital) have to play in carbon sequestration and helping meet climate targets. This must be done in a 'just' manner and a Just Transition Plan for Land Use and Agriculture is due to be published alongside the forthcoming draft Climate Change Plan.

54. On climate change adaptation, which is about how business and land managers prepare for a warming climate and more frequent extreme weather events: the current approach to building resilience to impacts is set out in the second Scottish Climate Change Adaptation Programme. There are strong synergies across climate mitigation and adaptation, and in fact biodiversity, for example actions to improve soil health, precision farming and minimum tillage, planting trees/hedges for shade and water management, and regenerative grazing.

55. Scottish Ministers are consulting on a final draft of a new biodiversity strategy which sets out a high-level vision and set of outcomes aimed at halting biodiversity loss by 2030 and reversing declines by 2045; alongside the first underpinning Delivery Plan, which will set out the actions needed to achieve those outcomes. Farming, crofting and land management will play an essential role in delivering on environmental outcomes by managing land, livestock and water in a way that protects and improves the environment. These outcomes include protecting and restoring biodiversity and supporting clean air and water, actions and measures that contribute to flood risk management locally and downstream and healthy soils. To deliver the vision and outcomes set out in the biodiversity strategy, the Bill proposes powers which will provide the mechanisms to support outcomes that restore nature, benefit natural capital and promote the natural economy and continue to encourage more farmers and crofters to farm and produce food organically.

56. The Bill will support agriculture to deliver towards the Scottish Government's commitments and outcomes against legislation and strategies including:

- Good Food Nation (Scotland) Act 2022<sup>13</sup>
- The Environment Strategy<sup>14</sup>
- The Biodiversity Strategy<sup>15</sup>
- Cleaner Air for Scotland 2<sup>16</sup>
- Emissions reduction targets under the Climate Change (Scotland) Act 2009<sup>17</sup>

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<sup>13</sup> [Good Food Nation \(Scotland\) Act 2022 \(legislation.gov.uk\)](https://legislation.gov.uk)

<sup>14</sup> [The Environment Strategy for Scotland: vision and outcomes - gov.scot \(www.gov.scot\)](https://www.gov.scot)

<sup>15</sup> [Biodiversity strategy - Biodiversity - gov.scot \(www.gov.scot\)](https://www.gov.scot)

<sup>16</sup> [Cleaner Air for Scotland 2 - Towards a Better Place for Everyone - gov.scot \(www.gov.scot\)](https://www.gov.scot)

<sup>17</sup> [Climate Change \(Scotland\) Act 2009 \(legislation.gov.uk\)](https://legislation.gov.uk)

- The Just Transition Plan for Land and Agriculture<sup>18</sup>
- The Scottish Climate Change Adaptation Programme<sup>19</sup>

## **Alternative Approaches**

57. No viable alternatives were identified that were able to allow the Scottish Ministers to deliver the range of objectives set out in the vision for agriculture of high-quality food production, climate change adaptation and mitigation, and nature protection and restoration. While the Environmental Protection Act 1990 (EPA) provides for Ministers to be able to give financial assistance for environmental purposes, the Bill goes further, and enables the Scottish Ministers to create statutory support schemes to deliver support for a wide range of purposes in relation to climate and nature actions.

## **Consultation**

58. The consultation paper discussed a number of proposals relating to climate change adaptation and mitigation objectives including: powers and other mechanisms to allow future payments to farmers, crofters and land managers to support delivery of national climate change mitigation and adaptation objectives; a mechanism to enable payments to be made that are conditional on outcomes that deliver climate mitigation and adaptation measures, along with targeted elective payments; and a mechanism to enable payments to be made that support integrated land management.

59. The consultation paper discussed several proposals relating to nature protection including: powers and mechanisms to protect and restore biodiversity, support clean and healthy air, water, and soils, contribute to flood risk management locally and downstream and create thriving, resilient nature; a mechanism to enable payments that are conditional on outcomes that deliver nature restoration, maintenance, and enhancement, along with targeted elective payments; and a mechanism to enable and support action on a catchment or landscape scale. The consultation considered potential individual provisions in detail to allow an understanding of stakeholder views across different proposals, for which there was broad support. The proposals have been taken forward under the Bill in a more holistic manner through the purposes of support.

60. The majority of respondents were in favour of proposals for future payments to support climate change adaptation and mitigation objectives. Many positive responses, in principle, to incentivising the adoption of climate change adaptation and mitigation measures. Many called for greater detail and some raised concerns around the complexity of existing payment systems. Broad agreement to proposals, with a need for recognition of work already undertaken to date by land managers, farmers, etc. Broad support for conditionality-based outcomes.

## **ACCESS**

### **Policy Objectives**

61. The Land Reform (Scotland) Act 2003 (LRSA) was a ground-breaking piece of legislation which introduced a right of responsible, non-motorised access to land and inland water throughout

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<sup>18</sup> [Just transition in land use and agriculture: a discussion paper - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2023/09/Just-transition-in-land-use-and-agriculture-a-discussion-paper-2023-09-28.pdf)

<sup>19</sup> [Scottish Climate Change Adaptation Programme \(SCCAP\) - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2023/09/Scottish-climate-change-adaptation-programme-2023-09-28.pdf)

Scotland, with few exceptions. The rights and responsibilities of land managers and those exercising access rights are set out in detail in the Scottish Outdoor Access code<sup>20</sup>. Under the LRSA it is the duty of access authorities to draw up a plan for a system of paths (“core paths”) sufficient for the purpose of giving the public reasonable access throughout their area. The core paths network in Scotland comprises around 22,500 km of paths. The intention is that core paths should link up with other path networks to overall improve access. The core paths network’s aim is to facilitate members of the public in exercising their rights to access land. Core paths are also an important means of managing access and of promoting access to a broader public.

62. The Bill will enable the Scottish Ministers to provide financial assistance for the purposes of public access over land. Under the existing Scottish Rural Development Programme there has been an Improving Public Access option through which funding for activities which relate to paths infrastructure has been made available. This power helps underpin the principle that Scotland’s people are able to live and work sustainably by for example supporting landowners to ensure access rights are able to be exercised in a responsible manner.

### **Alternative Approaches**

63. Support is currently under the Improving Public Access Programme, which is part of the Agri-Environment Climate Change support provided through the Scottish Rural Development Programme under retained EU law CAP rules. No viable alternative methods of supporting the exercise of access rights have been identified, and the Bill therefore provides the new powers that will replace the current CAP rules.

### **Consultation**

64. The consultation document proposed giving Scottish Ministers powers to support land managers and communities’ activities in public access and understanding land use. Although there were limited responses, there was generally support for public access in principle, but this was accompanied by calls to ensure these powers are used responsibly and concerns about the budgetary implications of such payments, which will be taken into account when future financial decisions are taken with due consultation as appropriate.

## **RURAL DEVELOPMENT, INCLUDING COMMUNITY LED LOCAL DEVELOPMENT (CLLD) AND THE SCOTTISH RURAL NETWORK (SRN) (SCHEDULE 1, PART 4, PARAGRAPHS 6 AND 7)**

### **Policy Objectives**

65. The main policy objective is to use the payment powers to replace the current CAP rules, and the payments and payment schemes made under those rules. These powers will provide, replace or update the generality of powers to make payments in connection with support for farming and the rural economy. The purposes of new support schemes are likely to remain broadly aligned with the equivalent types of payment in the current CAP rules.

66. The EU’s rural development policy is designed to support rural areas of the Union, and meet the wide range of economic, environmental and societal challenges. Rural development policy is

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<sup>20</sup> [NatureScot \(outdooraccess-scotland.scot\)](https://www.naturescot.org.uk/outdooraccess-scotland.scot)

implemented through multiannual rural development programmes designed by Member States. The Scottish Rural Development Programme operates under the current CAP rules to provide support through a range of schemes.

67. In the Bill, the objective is to provide financial assistance to communities and farmers, to support the rural economy through rural development. The Bill looks to deliver both new and further support mechanisms relating to the wider management and utilisation of Scotland's natural assets that further rural development, while still remaining aligned with EU outcomes. The focus is therefore to continue to provide the support to land-managers and communities who are undertaking and supporting economic and community-related activity related to land management and wider rural development. This activity can include, but is not limited to, agriculture, and continued provision of support for rural development: collaborative, partnership working; capacity building; support for rural communities; support for innovation, networking and engagement in local and policy development.

68. The EU 'LEADER' approach to rural community development was introduced in Scotland in 1990 in response to the perceived failure of traditional, top-down policies to address challenges faced by rural areas. The LEADER programme was the EU's approach to achieving grassroots-led community development in rural areas. It used community led local development ("CLLD") to empower local people and organisations to contribute to the future development of their rural areas by forming area-based Local Action Groups (LAGs) to identify priorities for action in their areas. The policy rationale being that local people were the best experts to drive the development of their areas. The added value of this approach is local empowerment and capacity building / social capital formation through experience of local strategy development, delivery and resource allocation.

69. EU funding for LEADER ended when Scotland left the EU. The Scottish Government continues to support CLLD through the established network of LAGs, as the 2020 Act has enabled continuation of CLLD. The Scottish Government's aim is to provide support for life and work in rural communities, and for producing / implementing strategies for the development of rural areas. This will give the Scottish Government the flexibility to review how to enable rural communities in the future.

70. EU Member States are required to establish a National Rural Network (NRN), which joins up the organisations and administrations involved in rural development. The NRN is intended to: increase stakeholder involvement in rural development; improve implementation of rural development programmes; inform stakeholders about policy and funding opportunities; and foster innovation in agriculture, food, forestry and rural areas. In Scotland, the Scottish Rural Network<sup>21</sup> (SRN) was formed to operate as the NRN. Through a broadly framed power in the Bill, the Scottish Government will be able to provide assistance to establish or maintain a network of persons and activity involved in rural development. This will allow the Scottish Government to review the current model versus need and impact, and its potential approach to rural networking in future.

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<sup>21</sup> The Scottish Rural Network (SRN), is a Scottish Rural Development Programme (SRDP)-funded function, managed by the Scottish Government. It presently (September 2023) aims to: enable rural people and stakeholders to be involved in policy development; help improve the delivery of the SRDP; inform farmers, rural businesses and communities about funding opportunities; and encourage rural innovation.

## **Alternative Approaches**

71. The Scottish Government is committed to sustaining and developing resilient and thriving rural communities and businesses. Longer term policy decisions will be made regarding the future direction of these programmes, but having the powers set out in the Bill will be necessary to give Ministers the option to continue and to set strategic policy direction in the future regarding rural communities and rural networking.

72. The use of other legislation was considered for powers to pay e.g. section 126(1) of the Housing Grants, Construction and Regeneration Act 1996. The challenge is that the activities in respect of which support can be provided under that power are too narrow to allow effective, flexible and future-proof delivery of future support for rural communities and rural networking. Such support is likely to cover a broad spectrum of potential matters in respect of which the Scottish Ministers may seek to deliver support for rural and community matters.<sup>22</sup> Furthermore the section 126(1) power does not allow the Scottish Ministers to make regulations to deliver support by way of statutory scheme and therefore does not allow the Scottish Ministers to deliver it flexibly by way of either statutory or non-statutory mechanism. Accordingly, it could not be used to enable the objectives of the Agriculture Vision to be met or the consultation responses to be fully delivered.

73. Beyond socio-economic activity, wider and more flexible powers to pay are required in order to respond to rural development opportunities, create closer alignment with the activity previously under SRDP and in respect of the ambitions in the vision.

## **Consultation**

74. The consultation document proposed giving Scottish Ministers powers to support land managers and communities' activities in rural development and the rural economy generally, community led-local development, collaboration and innovation, and to influence policy development. These levers to support Rural Development are well established in Scotland and across Rural Europe.

75. While there was broad support overall, there were some mixed views provided on the inclusion of non-agriculture enterprises for support due to perceived potential to divert funding away from Agricultural activity.

76. However, 73% of those responding to the question set agreed that the proposals on wider rural development outlined above should be included in the new Agriculture Bill, while 17% disagreed. Those in favour of including wider rural development within the scope of the Bill often cited the symbiotic relationship between agriculture and rural communities, along with the need to ensure that rural communities remain viable / sustainable. Many of these respondents favoured continued support for rural communities, with a majority of these participants expressing favourable evaluations of the approach previously taken by the EU LEADER programme to supporting rural community-led action.

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<sup>22</sup> The Housing Grants, Construction and Regeneration Act 1996 is concerned with housing, construction contracts, architects, regeneration and development, clearance areas, home energy efficiency schemes, urban development, corporations, housing action trusts and the Commission for the New Towns.

77. This section also covered whether or not other areas relating to non-agricultural land management such as forestry should be considered. 52% of respondents thought there were other areas relating to non-agricultural land management that should be considered for support under the Bill. Open responses received were heavily influenced by the inclusion of forestry as an example of non-agricultural land management. Most responses commented on whether they believe forestry should be included in the Bill. Responses opposing the inclusion of non-agricultural activities tended to focus on the assertion that those matters are out of the scope of the Bill.

## **FOOD AND DRINK**

### **Policy Objectives**

78. Food and drink hold an important place in the culture and economy of Scotland, and Scottish Ministers are committed to encouraging the production of high-quality food, produced more sustainably. The Scottish Government will deliver the Vision of *“high quality, nutritious food locally and sustainably produced is key to our wellbeing – in economic, environmental, social and health terms. We will support and work with farmers and crofters to meet more of our own food needs sustainably and to farm and croft with nature.”*<sup>23</sup>

79. To enable the Scottish Government to deliver wider objectives while reflecting current circumstances, adjustments are necessary to the nature of the support. The Bill therefore includes new powers to provide support for food and drink. It is intended that the new powers will be used alongside the current CAP rules in the CMO Regulation, as considered later. The new payment power will provide a modern, specific, flexible power for the Scottish Ministers to provide financial support to the food & drink industry, specifically to food producers and processors, to support the use of organic practices and organic certification requirements. In addition, the Scottish Ministers are taking powers to modify support schemes for the fruit and vegetables sector and the apiculture sector. These provisions will provide the Scottish Ministers with appropriate powers to tailor those sector specific support schemes to post EU exit circumstances.

80. As has been seen over recent years, unexpected events can impact negatively and severely on food supply and quality. To address this, the Scottish Ministers should be able to declare exceptional market conditions and to be able to use certain powers as a consequence. This would enable Scottish Minister to intervene in such emergencies when there are exceptional or unforeseen conditions adversely affecting food production, processing or distribution and to provide financial support to the agri-food sector and related bodies in cases of major crises affecting food production, processing, distribution or quality of food.

### **Alternative Approaches**

81. The Bill will introduce several new powers which will enable the Scottish Ministers to provide financial support to the food and drink sector. These powers have a different focus to, and are in addition to, the existing EU CAP schemes which are relevant to the sector. The power to intervene in agricultural markets as a result of exceptional market conditions will provide the Scottish Ministers with new powers to respond quickly and effectively to crises affecting the

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<sup>23</sup> [Chapter 3: Proposals for Inclusion in the New Agriculture Bill - Delivering our vision for Scottish agriculture - proposals for a new Agriculture Bill: consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/consultations/agriculture/bill-2023-24/chapter-3-proposals-for-inclusion-in-the-new-agriculture-bill-delivering-our-vision-for-scottish-agriculture-proposals-for-a-new-agriculture-bill-consultation-gov.scot/consultation-gov.scot)

sector. The new funding power for the food and drink sector will provide a modern and flexible power to provide financial support. In addition, Ministers are taking powers to tailor existing food and drink related schemes in retained EU law. The alternative to taking these new powers would be to do nothing and continue to rely on existing powers, which would leave the Scottish Ministers less able to respond quickly and agilely to unexpected events and crises such as EU exit, Covid and the Cost of Living crisis. There are therefore no other alternatives that would achieve an equally satisfactory outcome, in terms of flexibility of new powers provided to enable Scottish Ministers to support the agri-food sector. There is a need for more modern and flexible powers (including in respect of amendments to assimilated law as considered below) to declare exceptional market conditions and to provide financial support to the agri-food sector.

82. To ensure that Ministers have appropriate powers to make secondary legislation, the powers set out in the Bill provide Ministers with the necessary flexibility to suit the requirements for more unpredictable agri-food sector context and are deemed the best fit for their intended purpose.

### **Consultation**

83. The consultation paper discussed several proposals relating to high quality food production, including: giving Scottish Government Ministers powers to make changes on rules related to food; continuing to provide current support regarding food; giving new powers to support the agri-food sector, including a mechanism to enable payments which help deliver food production and, where appropriate, to provide grants to support both the agri-food sector and to bodies related to the agri-food sector; and giving reserve powers to support the agri-food sector, including powers to declare when there are exceptional or unforeseen conditions adversely affecting food production or distribution, and the ability to provide financial assistance, if necessary, to the agri-food sector and related bodies affected by such conditions.

84. There was general agreement among respondents to the proposals set out in relation to high quality food production. The alternative to these proposals would be to do nothing and rely on existing powers and provisions. However, the Scottish Ministers' experience since EU exit is that these proposals will improve the Scottish Ministers' ability to provide support to the sector and to respond effectively to exceptional or unforeseen circumstances in the sector. There was a sense from respondents that giving Scottish Ministers powers in this space was imperative in a landscape of considerable policy change and global uncertainty. Others who were less supportive stated a lack of confidence in Ministers and Governments to appropriately intervene in a way to make appropriate, sustainable changes to rules on food. There was wide support for the proposals to declare when there are exceptional or unforeseen conditions affecting food production or distribution, though there was a desire to see what could be seen deemed exceptional or unforeseen as clearly defined with a framework in the Bill.

## **ANIMAL HEALTH, WELFARE AND GENETIC RESOURCES**

### **Policy Objectives**

85. Scotland aspires to achieve continuous improvement in animal health, welfare and genetic resources in order to facilitate efficient production and to promote trade and ensure consumer confidence. In order to achieve the Vision for Agriculture commitment to continue delivering high farming standards new powers are needed to support improvement in the health and welfare of



animals affected by endemic diseases and conditions, and to support the protection and improvement of animal health and welfare more broadly.

86. Following consultation, the Bill also includes provision allowing support to be provided for the purposes of protecting or improving animal genetic resources. The livestock sector has used traditional breeding for many centuries. Due to the inherent biological and genetic variation in animal populations there are traits within individuals, breeds and breeding lines that could be beneficial to the wider population for the purposes of efficient production and climate change mitigation (for example lower GHG emissions, resistance to diseases). The objective is to enable financial assistance as part of future agricultural and rural support payments and to be able to make payments for the purposes of supporting particular schemes and projects. The inclusion to provide financial assistance for the protection and improvement of animal genetics is in line with Vision for Scottish Agriculture.

### **Alternative Approaches**

87. Consideration was given to the need for powers in this area, the extent of the existing powers available to Scottish Ministers, and whether they are suitable for delivery of the Vision for Scottish Agriculture. It was concluded that the Scottish Ministers required modern powers to support the protection or improvement of animal health, welfare and genetic resources in order to deliver the Vision for Agriculture.

88. In terms of existing legal powers of expenditure, section 3(1) of the Animal Health Act 1981 enables the Scottish Ministers to expend such sums as they think fit with the object of eradicating disease of animals in Scotland. The 1981 Act also contains provisions on compensation of animals for disease control purposes. However, it does not provide Scottish Ministers with general powers when the Scottish Ministers would like to provide financial support to particular projects or initiatives relating to improvement of animal health, welfare or genetic resources. There are various powers that might be relevant in these scenarios depending on the nature of the project or initiative in question, but providing modern powers to pay for the purposes of protecting or improving animal health, welfare and genetics will better reflect modern agricultural practices, the objectives of the Bill and alignment with the Vision for Agriculture.

### **Consultation**

89. The consultation made three proposals in the area of animal health and welfare:

- to establish standards for animal health, welfare, and biosecurity as a condition for receiving payments
- to make payments to support improvements in animal health, welfare, and biosecurity beyond legal minimum standards
- to collect and share livestock health, welfare and biosecurity data.

90. There was broad support for the proposals as set out in the consultation document, with broad recognition of the importance of high standards for animal health and welfare and promoting best practice in Scotland. Some consultation responses suggested that the proposal to establish animal welfare standards could duplicate efforts given that current statutory standards in Scotland were already seen to be high, and are also covered by Farm Assurance schemes (which are voluntary).

91. In response to stakeholder comments made during the Bill consultation, proposals were expanded to include a power allowing the Scottish Ministers to provide support for the purposes of protecting or improving animal genetic resources. Provisions have also been added to replace an existing power in the Animal Health 1981 Act to ensure that future provision may be made in relation to animal identification. The decision to include these provisions was made because animal identification is a pre-requisite for effective interventions on animal health and welfare to deliver the objectives of the Bill, while protecting and improving animal genetics contributes to the Scottish Government's Climate Change and GHG emissions objectives. Selection of genetic traits of animals can improve production efficiency, health and welfare, and potentially reduce methane emissions by livestock.

## **PLANT GENETIC RESOURCES AND PLANT HEALTH**

### **Policy Objectives**

92. Genetic diversity amongst domesticated plants and their wild relatives provides a foundation from which the development of resilient new varieties and agricultural systems can be drawn. In the face of increased pressure from biotic (pests and disease etc.) and abiotic (climate and soil contamination etc.) stress, coupled with drives to reduce inputs such as plant protection products and fertilisers, a broad plant genetic resource base is likely to prove vital in ensuring future food security. Additional funding for the conservation of plant genetic resources may in future be necessary to support this area and the funding provisions contained in this Bill seek to modernise existing powers, ensuring that support can be provided for these purposes.

93. The objective is to create new powers which will enable support to be given for the conservation of Plant Genetic Resources, including plants developed and grown for agricultural, horticultural or forestry purposes and their wild relatives, for example, measures for funding programmes such as gene-banks and community seedbanks, or measures to conserve landraces and crop wild relatives through on farm schemes.

94. Funding powers are also sought for the purpose of supporting activities in the area of plant health. This could include support for measures which reduce the risk of introduction and spread of harmful pests and diseases and avert, minimise and address loss and damage caused to plants associated with interceptions and outbreaks of pests. This could include enabling landowners to take appropriate and timely action in response to pest and disease outbreaks, for example support to remove infected plants, treat infection, or undertake pre-emptive action through the removal of pest reservoirs, or support for recovery from pest and disease outbreaks in landscapes through replanting with appropriate species to build resilience and help reduce the impact of any future outbreak – for example, support for measures to control the spread of plant pests and diseases or to increase resilience to outbreaks.

95. This area aligns with the vision of protecting and restoring biodiversity, including agricultural biodiversity. Conservation of such resources aligns with the Sustainable Development Goals (Goal 2, Target 2.5)<sup>24</sup>, which are localised in Scotland by the National Performance Framework.

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<sup>24</sup> [Goal 2: Zero Hunger - United Nations Sustainable Development](#)

## **Alternative Approaches**

96. Consideration was given to existing powers in legislation, as well as what vehicle might be appropriate. The option of not taking powers and keeping existing ones was considered, but gaps were identified as described below and a more solid foundation was thought necessary to ensure funding could be awarded for these purposes.

97. The purpose of the power to support persons to protect and improve plant health is to enable a proactive or preventative approach to dealing with threats, such as pests, to plant health. Current powers limit Scottish Ministers' ability to provide proactive or preventative support to deal with threats to plant health across a range of plants. The new power would apply in relation to all plants, providing scope for support to deal with threats across a wide range of plants – some pests can exist in different plant hosts, and it may therefore be necessary to deal with different hosts in order to eradicate a pest in particular area. The power to provide support to protect and improve plant health would allow Scottish Ministers to provide support to do that.

98. Existing funding powers available to Scottish Ministers to promote, protect and improve plant genetic resources have been reviewed, and it has been identified that there are no powers which are targeted at offering specific support in relation to conserving genetic diversity in plants. General powers to provide support to farmers may not cover support to ensure genetic diversity, such as the establishment of seed banks.

## **Consultation**

99. Given the recognised value of plants for the economy and society, and the threat posed to plants by pests and diseases, the consultation document proposed the provision of powers: to support the conservation of Plant Genetic Resources, including plants developed and grown for agricultural, horticultural and forestry purposes and their wild relatives; and to support in the protection and improvement of plant health, for example through support for measures to control the spread of plant pests and diseases or to increase resilience to outbreaks.

100. The consultation analysis shows that these proposals received a high level of support from stakeholders, with widespread agreement on proposals. A number of responses highlighted the importance of conservation of existing genetic material for crop diversity in food security.

## **FORESTRY**

### **Policy Objectives**

101. The key aim in having forestry support included and integrated within the Agriculture Bill is to have forestry aligned and compatible with the wider agricultural support framework.

102. The Forestry and Land Management (Scotland) Act 2018 ("the 2018 Act") provides the legislative framework for forestry policy in Scotland, and outlines Scottish Ministers' duties in relation to the promotion of sustainable forest management. The 2018 Act completed the devolution of forestry, transferring various powers from the Forestry Commissioners to Scottish Ministers.

103. Ministers have a duty under the 2018 Act to prepare and report on a Scottish Forestry strategy. The Forestry Strategy<sup>25</sup> sets out the strategic framework for forestry in Scotland and the contribution of forestry to wider Scottish Government targets, for example, policies and proposals as regards forestry contained in the Climate Change Plan which will contribute to the climate change targets in the Climate Change (Scotland) Act 2009, and the Biodiversity Strategy<sup>26</sup>. Forestry grants play a significant role in contributing to a wide range of Scottish Government policies, and in particular support the sustainable management and restoration of Scotland's forests, in line with Scottish Ministers' duties under the 2018 Act.

104. Future forestry funding will fit within the overall funding package for rural support. This will help to ensure that support for forestry activities is seen as integrated and accessible by farmers, and other land managers, making it easier for them to engage and contribute to climate mitigation and adaptation, nature restoration and high quality food production, for example through agroforestry measures, whilst improving the economic sustainability of farming, and other land uses, and contributing to the tree planting targets set out in the Scottish Government's Climate Change Plan. To achieve these objectives, the powers in the Bill will enable Scottish Ministers to offer non-financial support and financial support. Some examples of forestry matters in relation to which support may be available are set out below.

- Afforestation: to support afforestation (woodland creation) of agricultural and non-agricultural land.
- Agroforestry: to support the establishment of agroforestry systems and approaches to deliver integrated land use, increased sustainability and increase the overall productivity of land use systems.
- Woodland Improvement: to support capital investments in woodlands to protect or improve the biodiversity, community or economic value of the woodland; and capital investment in woodlands designed to increase the resilience of woodlands to future threats including climate change and pests and diseases.
- Sustainable Management of Forests: recurring payments to provide support for management activities needed to improve the condition of woodlands and associated habitats.
- Tree Health: to support capital investment and management activities needed to reduce the risks of pests and diseases in woodlands and assist with the restoration of forests after they have been impacted by pests, diseases and other factors such as storms or fire.
- Forestry Harvesting, Processing and Business Development: to support capital investment in equipment and machinery to help build capacity in the forestry sector, encourage rural development and farm diversification, particularly aimed at increasing the management of small scale, on farm and inaccessible woodlands.
- Skills development: to support investments in training and skills development, and dissemination of good practice and new techniques in the forestry and farming sectors, to help grow capacity in order to help deliver the Scottish Government's ambitious

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<sup>25</sup> Scottish Forestry, *Scotland's Forestry Strategy 2019 – 2029*, [Scotland's Forestry Strategy 2019–2029 - gov.scot \(www.gov.scot\)](https://www.gov.scot/Scotland's-Forestry-Strategy-2019-2029)

<sup>26</sup> [Biodiversity strategy to 2045: tackling the nature emergency - gov.scot \(www.gov.scot\)](https://www.gov.scot/Biodiversity-strategy-to-2045-tackling-the-nature-emergency)

climate change plan and biodiversity strategy target for tree planting and habitat restoration, for example, planting Atlantic oak woods.

- Forest Infrastructure: to support investments in infrastructure including forest roads, bridges, accesses from public roads and forestry buildings to help increase the area of woodland under management and improve the integration of woodlands on farms.
- Forestry Co-operation and Community Forestry: to provide support to help communities to engage with and develop forestry projects in their local area that help to maximise the opportunities for community and rural development; to support the co-operation of multiple landowners in order to help deliver landscape scale forestry projects requiring co-ordination across multiple land ownerships; and to support the development of partnerships between tenant farmers and landlords aimed at reaching agreements that will allow tenant farmers to contribute to and benefit from woodland creation on their farms.

### **Alternative Approaches**

105. Two options for future government financial support for forestry were considered:

- Adopting a stand-alone basis for forestry funding, using separate forestry legislation and taking an approach that was not connected or related to agriculture or other land-based Scottish Government support policies, regulations or delivery mechanisms, or
- Taking a more integrated approach where forestry support was part of a wider aligned package of rural support mechanisms, under the same primary legislation, but potentially with different secondary legislation and using similar delivery mechanisms such as the same IT and contracts.

106. During the development of the forestry policy for the Agriculture Bill the potential to operate forestry grant support under general powers provided by section 71 of the Forestry and Land Management Scotland Act 2018 was also considered and, although possible, would have certain disadvantages. It is not possible to create a scheme by way of secondary legislation under the financial assistance power in the 2018 Act. This means it would not be possible to clearly set out the detail of the proposed future forestry grant scheme in regulations.

### **Consultation**

107. The consultation included a proposal on other areas relating to non-agricultural land management, such as forestry, being considered for support under the Agriculture Bill to help deliver integrated land management and the products produced from it. Some respondents argued that the wider rural development proposals should not be the focus of the Bill and should not divert resources and funding from agriculture. Responses opposing the inclusion of non-agricultural activities tended to focus on the fact that this is out of the scope of the Bill. Responses supporting the inclusion of forestry argued that taking an integrated approach to rural support would make it easier for farmers to engage with diversification opportunities, that would deliver climate benefits and that agriculture and forestry should not be viewed as mutually exclusive.

## **MODIFICATION OF EXISTING LEGISLATION**

### **Policy Objectives**

108. There should be a smooth transition from current CAP rules to the future support schemes under the Bill. To achieve that the Scottish Ministers need suitable powers to modify current CAP rules, including making more extensive changes, and repealing them when the time is right.

109. This is a major transition that will take time to deliver, and some legacy schemes under current CAP rules are expected to continue beyond 2026. For example, some schemes have longer contractual periods and will need to be supported to ensure an effective transition. The powers to modify the current CAP rules in the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (the 2020 Act) are subject to a sunset clause, and that should be repealed.

110. This will for example enable the Scottish Ministers to amend assimilated law so that they can continue to give, and to be able to adapt as they consider appropriate, financial support using powers in the Common Market Organisation Regulation. For example, there may be opportunities to tailor support to the Scottish context while maintaining the objective of EU alignment, in order to produce more Scottish fruit, vegetables, and horticulture products; assist the apiculture programme; support the circular economy; or meet Scotland's climate change and biodiversity targets. Similarly, there may be changes to support schemes at an EU level which Scotland wishes to consider as part of its policy of alignment.

111. In terms of current controls on food quality, many of the detailed rules for marketing standards for food are of EU origin. The CMO Regulations lays down a common organisation of the markets in agricultural products (including key foods such as poultry, meat, beef, eggs etc.). It is essential to be able to readily amend the current rules on food to maintain consumer confidence and high quality standards. The CMO was partially replaced and amended by the 2020 Act.

112. The CMO Regulation contains a number of powers which the Scottish Ministers use to provide funding to the food and drink sector. The Bill will ensure that the Scottish Ministers can amend the CMO Regulation that currently exists in order to continue, post EU exit, to be able to continue to provide support to the Food & Drink sector.

### **Alternative Approaches**

113. As regards to the CAP legacy schemes and REUL, and the technical fixes to be made to the Agriculture (Retained EU Law and Data) (Scotland) Act 2020, powers are needed to ensure Scottish Ministers have all requisite powers to allow CAP legacy schemes and REUL to continue to operate and be monitored and regulated and also to ensure Scottish Ministers have flexibility to better respond to current and future post EU exit circumstances. There has been no viable alternative identified which would enable this to happen and these powers are needed to enable and manage effectively a smooth transition from CAP legacy schemes to new schemes.

### **Consultation**

114. The consultation findings illustrate support for these proposals, with broad recognition from respondents on the importance of Scottish Ministers having the necessary flexibility and powers

to respond to current circumstances to make changes to assimilated law / CAP legislation and help enable a smooth transition to new schemes.

## **GENERAL**

### ***Code of Practice on Sustainable and Regenerative Agriculture***

#### **Policy Objectives**

115. The Bill places a duty on Scottish Ministers to prepare and publish a ‘Code of Practice on Sustainable and Regenerative Farming’.

116. There is stakeholder expectation that the Scottish Government more effectively characterises what is meant by ‘sustainable and regenerative agriculture’ and this would best be clarified with an evolving Code of Practice that can be refined as practice and science advances. Ministers will be empowered to amend this code as required and at minimum on a five yearly basis in consultation with practitioners and others considered interested or effected thereby.

117. The intention is that the Code of Practice will make clear the expectation that all agricultural land should be managed in a way that – as a minimum – protects the environment, prevents environmental damage, and that where environmental damage occurs it is rectified as soon as possible. The recommendations in the Code of Practice are expected to underpin good agricultural and environmental practice, as set out in conditions for area-based support for farmers.

#### **Alternative Approaches**

118. The alternative is to not create a duty to prepare and publish a Code of Practice. This was rejected on the basis that it would remove an opportunity to deliver a clarity of purpose, intent and action that is beneficial to the industry and rural partners in planning and delivering towards Vision outcomes. Alternatively, such principles and practices could have been proposed for inclusion in the Bill itself, naturally such consideration was rejected. This would have resulted in legislation that would potentially need immediate amending as and when scientific opinion and agricultural practice regularly progressed.

#### **Consultation**

119. A clearer understanding of what Scottish Ministers have expected through the terms ‘sustainable and regenerative’ was a regular refrain from contributors to the consultation. This duty recognises the importance and validity of that ask.

### ***Continuing Professional Development***

#### **Policy Objectives**

120. Knowledge, innovation, education and training are critical components in addressing skills gaps in the agricultural sector and delivering innovation through on-the-ground improvements in agricultural competitiveness, resource efficiency, environmental performance and sustainability. Their importance has been clearly acknowledged by the farmer-led climate change groups of

2020<sup>27</sup>, and in the responses to consultations on agriculture, most recently in June 2018, August 2021 and August 2022.

121. The overarching policy objective is to establish powers allowing the Scottish Ministers to support delivery of knowledge, innovation, education and training in agriculture and land use or related sectors. This will help to establish, develop, deliver or undertake a range of activities including courses of training or professional development, advice, research, the testing of innovations, and undertaking other research and development as well as the development of resources, digital tools or databases. These will all contribute towards provision of support in relation to knowledge, innovation, education and training.

122. The immediate objective to establish a Continuing Professional Development (CPD) regime for farmers, crofters and land managers is to encourage and facilitate personal and professional development, and improvement in practices, in agriculture, land management and other associated vocational fields. It will also contribute towards the alignment with EU policy aims in terms of the CAP, and what the EU seeks to achieve with respect to knowledge management, innovation, co-operation, and skills and professional development matters.

123. The Vision for Agriculture recognises the need to support farmers, crofters and land managers in delivering the values and principles aligned to the Vision. This includes ensuring that the right support is in place to identify and develop the skills needed for establishing and improving regenerative and sustainable farming practices; undertaking changes of land use; adaptation to the changing climate; and to encourage co-operative approaches to optimise collaboration and knowledge exchange. Support is currently provided in this policy space through a number of measures under the current CAP rules, including the Farm Advisory Service (FAS), the Knowledge Transfer and Innovation Fund (KTIF) and the Monitor Farm Scotland Programme. The Scottish Government does not currently provide a CPD system for farmers, crofters and land managers.

124. The need for enhanced fit-for-purpose training, education and skills to enable farmers to improve their profitability and to become greener was highlighted by the national discussion on the future of Scottish agriculture 2015-16.<sup>28</sup> A future Strategy for Scottish Agriculture, May 2018,<sup>29</sup> recommended that “new policies must include a major increase in knowledge transfer effort, to help the industry reap the benefits of both existing and new research and development on, for example, reducing animal diseases or improving soil organic matter.” It also recommended that “there should be more advice and training, and in particular greater emphasis on business skills, as well as technical farming and land management skills.”

125. Approaches to knowledge exchange, learning and innovation in agriculture are rapidly evolving. There is now recognition that there are new and better ways to deliver and share knowledge, expertise and innovation. This includes the co-creation, development and sharing of an integrated knowledge and innovation system.

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<sup>27</sup> [Farmer-led climate change groups - Agriculture and the environment - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>28</sup> [The Future of Scottish Agriculture: A Summary of the National Discussion \(www.gov.scot\)](http://www.gov.scot)

<sup>29</sup> [Future agricultural support - gov.scot \(www.gov.scot\)](http://www.gov.scot)



126. The Scottish Ministers currently lack the powers to support knowledge, innovation, education and training, including CPD activities, in agriculture and land use or related sectors. The purpose of the powers is to allow the Scottish Ministers to support these activities and to establish, develop, deliver and undertake a range of support schemes that will help to support personal and peer-to-peer learning, create connections and support knowledge flows, facilitate new approaches to exchanging knowledge, and help reduce gaps between research, advice and practice.

127. The Scottish Ministers established and financed Farm Advisory Services (FAS) and Knowledge Transfer & Innovation Fund (KTIF) as part of the 2014-20 SRDP. However, these schemes only form part of a wider ecosystem of knowledge exchange and innovation. The need for a comprehensive knowledge and innovation system has been recognised by the EU Rural Development Programme under the new CAP and this is now at the heart of the new agricultural reforms. Introducing powers to support knowledge, innovation, education and training in Scotland will contribute towards the alignment with EU policy aims, in terms of the CAP and what the EU seeks to achieve insofar as knowledge management, innovation, co-operation, skills and professional development matters are concerned.

128. The development and enhancement of knowledge, innovation, education and training in Scotland (including a CPD regime) will help contribute to the Vision of Agriculture.

129. To achieve these policy objectives in relation to knowledge innovation, education and training, the Bill enables the Scottish Ministers to provide appropriate support. This can be brought about by establishing schemes in secondary legislation or administratively. These schemes include the establishment, delivery or undertaking of courses of training or professional development; the provision of advice; the undertaking of research; and the development, introduction, or testing of new or improved products, activities, methods or systems relating to agriculture, forestry and food production and processing; support innovation; and undertaking of certain ancillary activities to support these schemes such as developing and maintaining resources, digital tools or databases. These activities could include, for example, undertaking pilot projects, demonstration events, co-operative programmes, demonstration events, farm visits and exchange programmes.

130. To achieve the policy objective to establish and fund a new CPD system for farmers, crofters and land managers the Bill allows the Scottish Ministers to make regulations establishing and regulating a CPD regime and also provide support to establish, develop, deliver or undertake courses of professional development and other forms of learning and information sharing. This power will give the Scottish Ministers discretion as to the exact design of that CPD system for farmers, crofters and land managers, and Scottish Ministers will be able to expand the scope of support to others in the agriculture sector.

### **Alternative Approaches**

131. The Scottish Government does not currently have a suite of powers to develop schemes relating to knowledge, innovation, education and training that would form a comprehensive support system of knowledge and innovation support. However, it does provide some support for knowledge exchange and innovation, for example through the Farm Advisory Service (FAS), Knowledge Transfer and Innovation Fund (KTIF) and the Monitor Farm programme (MFP).

132. There was widespread endorsement among respondents that support should continue in the area of skills, knowledge transfer and innovation. Continued support was viewed as vital to ensure there could be a thriving agricultural sector in future, to encourage new entrants and to encourage new delivery methods and innovative solutions going forward. It was, however, argued that current support is insufficient and should be extended or modified. It was asserted by some stakeholders that there were gaps in delivery in areas such as Integrated Pest Management and biological soil analysis and that there was a need to have more involvement with the supply chain. Other suggested improvements included the provision of mentorship schemes, farm schools and more engagement with key stakeholders. Current proposals seek to address these concerns.

133. The Bill contains powers that allow the Scottish Ministers to deliver support for the establishment, development, delivery and undertaking of knowledge, innovation, education and training support. The Scottish Government has taken a strategic approach rather than instructing specifically on key component schemes, such as the farm advisory service, knowledge transfer and innovation fund, and co-operative action. It considers that this approach will give greater flexibility in the design of schemes which could be legislative or non-legislative and could be provided administratively, for example, by way of a grant.

## **Consultation**

134. The consultation paper proposed that the Bill continues to provide the full panoply of support for knowledge transfer, innovation and skills development within the agricultural, crofting and land management sectors and that future support mechanisms are designed in such a way that they meet emergent needs and remain flexible/adaptable to future pressures for change.

135. The Scottish Government has given consideration to different ways of establishing powers to allow the development and delivery of support for knowledge, innovation, education and training so that it can create a comprehensive support system relating to knowledge and innovation. This includes encouragement to support the introduction of improved levels of collaboration between organisations. The Scottish Government recognises the need to prevent or reduce overlap/duplication as well as optimising knowledge and innovation flows. The Scottish Government has considered whether it could procure an all-encompassing system. However, it was established that there was no provision in law that provided a clear and appropriate basis on which to develop and support knowledge, innovation, education and training. Accordingly, it was concluded that new powers are required in order to achieve this. It also considered whether there should be a new body established to deliver these knowledge and innovation flows, but concluded that this would not be proportionate, would further add to a complex agriculture stakeholder landscape, and that this may not be the most effective way to stimulate and encourage flows across the agriculture sector. Nevertheless, the powers sought provide the greatest flexibility to optimise the development of mechanisms to support and encourage knowledge and innovation flows.

## ***Animal identification***

### **Policy Objective**

136. Following consultation, provisions to amend an existing power under the Animal Health Act 1981 Act to ensure that future provision may be made in relation to the means of identifying animals have been included. The amended power could be used to make future regulations to require farmers to identify cattle with Radio-Frequency Identification (RFID) EID (electronic

identification) devices and make other rules about the means of identifying cattle. Bovine EID is seen by experts in the sector as one of the tools that will drive efficiency. The amended power would also allow the Scottish Ministers to make changes to rules about identification of other species as and when required to keep pace with technology and changing circumstances.

### **Alternative approaches**

137. Regarding animal identification, the existing powers in section 8(1)(a) of the 1981 Act regarding “marking” of animals do not provide sufficient basis for all future policy proposals relating to the means of identifying animals. Therefore, the Bill will make provision for powers to prescribe and regulate “the means of identifying animals” generally.

### **Consultation**

138. Livestock identification and traceability is a cornerstone of animal health and welfare policy. In combination with data systems it enables both disease control and disease prevention. In addition, modern technologies such as electronic identification facilitate electronic data transfer of both mandatory and management information on farms and through supply chains. In this way identification contributes to improvements in health, welfare and genetics.

### **Repeals**

139. Various provisions in agricultural law are now redundant, and are repealed.

## **FINAL PROVISIONS**

### ***Administration, Control, and Transparency of Payment Framework Data***

#### **Policy Objectives**

140. The Vision for Agriculture provides for a framework not just for high quality food production but in addition ambitious objectives for Climate Change Adaption and Mitigation, and Nature Protection and Restoration.

141. The Bill provides the framework for the support payments that will help enable the Vision. It is essential that there is strong oversight of public money, and the Bill provides for the Scottish Ministers to be able by regulations to make provision for checking, enforcing and monitoring payments. It also provides for publication of information about support payments, and for the refusal of support where that is in the public interest.

142. The aim is to:

- create a system that provides for an integrated database, to collect information in relation to applications, declarations and commitments made by beneficiaries of rural support.
- create a system that collects and shares information for lawful purposes, including management control, audit and monitoring and evaluation obligations, for various statistical purposes, and where appropriate for wider matters of public interest).

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- create a system that provides the data required to undertake administrative checks on applications/claims made by beneficiaries for rural support.
- create a system that provides a mechanism that aligns with the principles of the Scottish Public Finance Manual<sup>30</sup>.
- create a system whereby on-the-spot-checks should be undertaken to further verify applications/claims made by beneficiaries for rural support.
- create a system that would provide for cross compliance, conditionality that covers core standards in relation to sustainable environment, climate, Good Agricultural and Environmental Condition (GAEC), land, public and animal health, plant health and animal welfare, soil health, carbon capture and maintenance.
- create a system that provides a mechanism to support the delivery of practices aligned to the receipt of elective payments for targeted outcomes.
- monitor and evaluate outcomes to ensure they meet the agreed purpose and help better inform future policy.
- seek independent assurance that outcomes are delivered appropriately.
- enable the publication of details pertaining to recipients of payments, including under the future payment model, and set a level above which payment details will be published.

143. The Bill is intended to provide the legislative framework for multi-year transformation of rural support. As at present, a great deal of data will be collected and processed (including sharing) for the purposes both of providing support and of good governance generally.

144. All such processing must continue to comply with the General Data Protection Regulation. The Bill will, therefore, provide by regulations for the collection, processing and or sharing of data where that is necessary to ensure effective governance, and the sharing of rural data where there is a public interest in doing so. The Scottish Ministers have consulted with the Information Commissioner on the proposed powers. The Commissioner has responded, noting Ministers have met the compliance requirement to consult with the Commissioner under Article 36(4) of the UK GDPR, and have taken into account that the proposed processing does not appear to be high risk.

### **Alternative Approaches**

145. Alternative approaches were considered and the choices made were driven not just by Scottish Government Rural Payments Inspections Division business needs but the strategic objectives of the Vision for Agriculture. Given (a) the public objectives of administrative and control systems that will be capable of monitoring and evaluating progress to achieving the Vision for Agriculture and (b) the ambitious public tasks and the need for accountability to Parliament, these strategic objectives can be best achieved by the continued administration and control by the Scottish Ministers and the handing over of this task to a private contractor would not be appropriate or viable as an alternative.

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<sup>30</sup> [Scottish Public Finance Manual - gov.scot \(www.gov.scot\)](http://www.gov.scot)

## **Consultation**

146. The consultation paper discussed several proposals for administration, control, data and the transparency of payment framework data including:

- The Scottish Ministers take the power to set up an Integrated Administration and Control System (IACS), which includes an area monitoring system, a system for the identification of beneficiaries, and more.
- That Scottish Ministers take the power to collect information for the purposes of carrying out management, control, audit and monitoring and evaluation obligations and for statistical purposes.
- That Scottish Ministers take the power to gain independent assurance that objectives are being met.
- That Scottish Ministers take the power to enable the publication of details pertaining to recipients who receive payments and set a level above which payment details will be published.
- That Scottish Ministers have the power to amend assimilated law for CAP legacy schemes as needed to ensure their continued effective operation and regulation until they expire and also to ensure Scottish Ministers have flexibility to better respond to current, post EU exit, circumstances.

147. The consultation findings illustrate support for these proposals with broad recognition from respondents on the importance of ensuring that the Scottish Government can evaluate and monitor progress to achieving desired outcomes and also of ensuring schemes are well administered and audited to ensure good compliance and effective transparent management of schemes.

148. Respondents broadly agreed with the proposals on powers to create a system that provides a mechanism that aligns with the principles of the Scottish Public Finance Manual. There was a sense that this was a cost-effective way (rather than introducing a different system that would involve additional costs) of achieving the principles set out in the Scottish Public Finance Manual and a sense that public funds should be properly handled, reported on, and audited.

149. There was general support (67% of the consultation respondents) for the proposals for Scottish Ministers to have the power to create a system whereby on-the-spot checks would be undertaken to further verify claims/applications made by beneficiaries for rural support. Views raised were around how important they were to ensure appropriate use of public money, though some did voice conditional support for checks. Others saw on-the-spot checks as an administrative hurdle for businesses and there was a desire for applicants to be clear what is expected of them. The Scottish Government acknowledges this desire for clear systems that are easy to understand and recognise what is needed to ensure compliance. There are business processes and digital services already in place that enact these controls under the current legislation. The Scottish Government has created the Agricultural Reform Programme Design Authority to govern the business and digital design requirements that will deliver the new agricultural support framework to be delivered from 2025 onwards. The Design Authority will determine that relevant stakeholders have been engaged, while developing and exercising control with the appropriate policies and standards. The Design Authority will provide transparency to stakeholders and will ensure that they will be at the heart of how business processes and digital services are adapted or designed afresh. The Scottish Government will engage with them, understand their circumstances

and seek to introduce adapted or new services that meet their needs in the most cost-effective manner.

150. Generally speaking, respondents agreed that Scottish Ministers should have the power to collect information for the purposes of carrying out management, control, audit, monitoring and evaluation obligations and for statistical purposes to help better inform future policy. 57% of consultation respondents agreed that Scottish Ministers should have the power to enable the publication of details pertaining to recipients who receive payments including under the future payment model and set a level above which payment details will be published.

## **EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.**

151. A suite of Impact Assessments is currently being drafted for the Bill and will be published on the Scottish Government website in due course. Due to the framework and co-design approach, the process of impact assessments will continue throughout the Bill process, seeking to identify and avoid or mitigate any negative impacts that may arise as more detailed proposals are developed. Through this co-design approach, the Agriculture Reform Programme<sup>31</sup> will deliver the Scottish Government's Vision for Agriculture, and brings together work including the Route Map<sup>32</sup> and this Bill, transforming how the Scottish Government supports farming and food production in Scotland to become a global leader in sustainable and regenerative agriculture. This co-design will continue throughout the process. When secondary legislation is brought forward, it will be accompanied by that more detailed impact assessments.

### **Equal opportunities**

152. For the purposes of this Bill, the impact assessment exercise on Equal Opportunities has already begun, and it will be completed this calendar year.

153. The Scottish Government is assessing the potential impact of the Bill on equal opportunities. The Bill does not unlawfully discriminate in any way with respect to any of the protected characteristics (including age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) either directly or indirectly.

154. The Bill does not have direct impact on people, as it mainly provides Scottish Ministers with the powers to make regulations.

155. The Scottish Ministers are committed to ensuring potential equality impacts are considered at the right time. Any specific potential impacts will be assessed when secondary legislation is made under the Bill, and further impact assessments including an EQIA will be carried out where appropriate.

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<sup>31</sup> <https://www.ruralpayments.org/topics/agricultural-reform-programme/>

<sup>32</sup> <https://www.ruralpayments.org/topics/agricultural-reform-programme/arp-route-map/>

## **Human rights**

156. The Scottish Government considers that the Bill does not give rise to any human rights concerns, and is therefore compatible with the rights with the European Convention on Human Rights.

## **Island communities**

157. The Agriculture Bill consultation, which was open from 29 August 2022 until 5 December 2022, included a number of engagement sessions aimed specifically at island communities and included discussion on themes relating specifically to those island communities.

158. In relation to island communities, the consultation responses highlighted a number of concerns, such as the need for flexibility to account for specific island communities' concerns when developing future schemes and support, and barriers for island communities such as transport and housing limitations and poor connectivity. The engagement of island communities will continue throughout the co-design process to ensure island communities are part of the co-design process.

159. For the purposes of this Bill, the impact assessment exercise on Island Communities has already begun, and it will be completed this calendar year.

160. The Bill does not have direct impact on island communities, as it mainly provides Scottish Ministers with the powers to make regulations.

161. As such any future policy changes will be brought forward through secondary legislation, and will be assessed for their impact on people and businesses, and further Impact Assessments, including an Island Communities Impact Assessments, will be carried out where appropriate at that time.

## **Local government**

162. The Bill is a framework Bill and as such, it makes no direct reference to local government, and it is unlikely that any of its provisions will have a direct impact on local government. Any policy changes, once decided upon, will be made through secondary legislation under this Bill, and will be subject to further impact assessments and consultation with stakeholders (including local authorities) where appropriate.

## **Sustainable development**

163. At a strategic level the Bill will provide a range of powers for Scottish Minister to deliver the Scottish Government's Vision for Agriculture, however in most cases environmental impacts associated with these powers will depend on their subsequent use in secondary legislation. Any specific actions resulting from the Bill, particularly in relation to secondary legislation, will be considered for their environmental impacts when they can be identified.

164. Given the Bill is largely enabling in nature, the Scottish Government are fully committed to undertaking a full SEA when detailing secondary legislation as it is acknowledged this is when

environmental impacts could be more fully assessed. The Scottish Government's Vision for Agriculture is high level in nature and the proposed new Agriculture Bill will largely look to enable the delivery of the Vision at an equally high level. The details on how this will be achieved is likely to be addressed in secondary legislation. The details, which will be addressed during secondary legislation, will create opportunities to enhance the way in which the Scottish Government supports farmers and crofters to produce Scotland's food more sustainably to meet objectives beyond immediate priorities, including on sustainable development, climate resilience, and Net Zero.

165. A pre-screening exemption notification was submitted to the Consultation Authorities as per the requirements of the Environmental Assessment (Scotland) Act 2005. Their view was that the Bill was likely to have no direct or indirect environmental effects and could therefore be considered exempt. Consequently, there is no need for a full Strategic Environmental Assessment to be undertaken at this stage.

## **CROWN CONSENT**

166. It is the Scottish Government's view that the Bill as introduced does require Crown consent. Crown consent is required, and must be signified during a Bill's passage, where the Bill impacts the Royal prerogative, the hereditary revenues of the Crown or the personal property or interests of the Sovereign, the Prince and Steward of Scotland or the Duke of Cornwall. The Scottish Government's view is that the creation of a new support framework for agriculture and rural communities (see sections 4 and 13 and schedule 1), particularly with the emphasis on environmental matters, means that the King's private interests at Balmoral estate may be affected by the changes to the subsidy regime. It is a working estate with farming and woodland and publicly available information confirms that a number of subsidies have been paid in recent years. In relation to the hereditary revenues, the Crown estate (which has agricultural holdings in Scotland) is potentially impacted in the same way as the Balmoral estate. It is the Scottish Government's view that this would also indicate Crown consent is required.

167. For the source of the requirement for Crown consent, [paragraph 7 of schedule 3 of the Scotland Act 1998](#), and [rule 9.11 of the Parliament's Standing Orders](#). For further information about the considerations that go into determining whether Crown consent is required for a Bill see [Erskine May](#), the guide to procedure in the UK Parliament.





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

## **POLICY MEMORANDUM**

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