



Written evidence submission to the Rural Economy and Connectivity Committee: Agriculture (Retained EU Law and Data) (Scotland) Bill

Summary

LINK's response highlights that:

- The Bill should set out a clear purpose for allocating agricultural funding, making explicit the kinds of agricultural practices that will be supported. LINK's members believe these should be measures that address the interlinked climate and nature emergencies by meeting net-zero climate targets and enhancing biodiversity. This purpose could be set out in section 1(2).
- It should commit to maintain current EU environmental standards by including the principle of non-regression in the Bill. We note that this is the Scottish Government's first legislative opportunity to do so.
- This is an opportunity to begin to set a clear direction for the future of farming so that farmers, crofters and land managers can plan for their activity in the 2021-2024 transition period and then beyond, accepting that further legislation will be required to reach this.
- A sunset provision should be inserted to ensure the extensive powers granted Ministers by this Bill do not become a continual feature of a post-2024 system.
- Greater consideration should be given to replacing LFASS with a more outcomes-based scheme.
- The Bill currently gives too much discretionary power to Ministers. The powers proposed in Section 2(3) should be subject to the affirmative procedure.
- This Bill should establish a cap on basic payments and set out a growing percentage of the total fund over the scheme years 2021-2024 to be spent on measures to tackle the climate and nature emergencies.
- LINK believes the Bill should ensure that the proportion of Pillar1 funding allocated to greening cannot be reversed. This figure should be a minimum. We believe the evidence supports increased commitment to the allocation of funding to activities that achieve nature and climate objectives.
- The Bill should place a duty on Ministers to gather independent data on how payments were used, and on the impact of payments on the stated purposes of the scheme under which they were deployed, including the impact of any pilot schemes. This information is critical to developing an effective post-2024 system.

Introduction

Scottish Environment LINK welcomes the opportunity to present written evidence to the Committee on the Scottish Government's draft Agriculture (Retained EU Law and Data) (Scotland) Bill (henceforth 'the Bill'). LINK members see the Bill as a missed opportunity to set a clear purpose for the allocation of agricultural funding, to provide a clear direction for farmers and crofters to plan for their activities post-2024 and, perhaps most urgently, it fails to contribute to Scotland's response to the interlinked climate and nature emergencies.

Oral evidence provided by NFUS and SLE to the REC Committee on 18th December 2019 indicates the cross-sector concerns about the shortcomings of this Bill. We agree that the next decade will be extremely challenging for the agricultural sector given major issues such as climate change, and that this Bill falls short of addressing them and providing a direction for the 2021-2024 transition period.

The Committee on Climate Change's Scotland report, published 17th December 2019 (*Reducing Emissions in Scotland: 2019 Progress Report to Parliament*) concluded that:

"The Scottish Government's plans for a long-term policy framework to replace the EU Common Agricultural Policy (CAP) are lagging behind both England and Wales. There is now an urgent need to define a post-CAP framework for the 2020s that can significantly reduce emissions from agriculture and deliver transformational land-use change across Scotland."¹

It also noted that 'Decisions over the next 12 months are likely to determine the direction of the next 25 years'. It is untenable for this Agriculture Bill to not demonstrate compliance with these urgent requirements to meet Scotland's legislated targets. The current and future agricultural system must adapt.

As the Cabinet Secretary for Rural Economy and Connectivity, Fergus Ewing, has outlined in his letter to the REC Committee on 30 November 2019²,

It will be essential that future rural policy links to the outcomes set out in National Performance Framework and the UN Sustainable Development Goals.

¹ <https://www.theccc.org.uk/publication/reducing-emissions-in-scotland-2019-progress-report-to-parliament/>

² https://www.parliament.scot/S5_Rural/RECC_20191202_Cab_Sec_RE_-_follow_up_from_6_Nov_-_agri_and_fisheries_update.pdf

I expect future policy to focus on:

- *Enhancing biodiversity*
- *Lowering greenhouse gas emissions*
- *Growing the rural economy*
- *Maintaining populations*
- *Tackle poverty and inequalities.*

Farming and crofting have a direct and significant impact on Scotland's greenhouse gas emissions, biodiversity, landscapes, and other ecosystem services. This is a critical time for Scotland to signal what the future of agriculture will look like and this Bill presents an opportunity to steer the agricultural sector's transition to meet net-zero goals while enhancing nature, with a robust funding system in place to support this.

1. Governance and Purpose

The Bill should set out clearly the *purposes* for which Ministers will make grants to farmers, land managers, and others. There should be an explicit statement about what agricultural support is for on the face of the Bill.

The purpose statement should describe how agricultural support will meet the Scottish Government's National Outcomes and comply with the National Performance Framework, and ensure that any simplifications and improvements can demonstrate compliance with existing environmental protections as a minimum. If and where powers diverge from the CAP regulations they should only be used in ways that meet this purpose statement.

It is deeply unfair to Scottish farmers to not give them a clear direction. To maintain the industry in a state of fragile stability until 2024, only for them to then have to make very rapid changes to their businesses to achieve large emissions reductions only 6 years later, would place a burden on the sector. Farmers live and work at the frontlines of environmental and climate changes as we currently experience them in Scotland. Most know that something has to be done about this, but what is lacking is the leadership by government and financial and advisory resources. In lieu of these, they receive perverse financial incentives to continue, in many cases, damaging practices that are not sustainable. Without a clear direction in the sector, farmers, crofters, and other land managers are unable to plan far enough ahead to make necessary investments. A purpose statement could be used to set that direction.

This Bill must seize the chance to help farmers make a positive impact on the environment by enhancing biodiversity and meeting net-zero goals. By the time we reach the end of the period the Bill covers (i.e. 2024) we

will already be halfway to 2030 and will have challenging climate targets to meet. Agriculture must play its part in this. Its transformation must begin now, with this Bill, in order to ready the sector. What is put in place now must play a substantial part in solving three quarters of Scotland's emissions within 10 years. This makes change inevitable – whether by inaction or through decisive action now.

LINK notes that the Bill will grant Ministers substantial powers which will not necessarily require Parliamentary scrutiny or approval. A time limit, or sunset clause, should be inserted to ensure the extensive powers granted Ministers by this Bill do not become a continual feature of a post-2024 system – changes to such an important and encompassing policy should be subject to Parliamentary scrutiny.

The Scottish Government is committed to maintaining environmental standards, so far as devolved powers permit, after the UK leaves the EU. Whilst we commend this commitment we are concerned that an explicit mention of the principle of non-regression is absent from this Bill, the first primary legislation where it would have direct relevance.

We consider the inclusion of a non-regression clause in this Bill necessary to ensure that current environmental protections are maintained as a minimum, with the possibility that Scotland can go further. The Scottish Government's ambitions to be "world leader" in these areas cannot be realised, by definition, unless this is the case. As part of this, any future regulations should adhere to the EU Environment Principles, soon to be transposed into the forthcoming Continuity Bill, and to the principle of no regression. We have welcomed ongoing commitments from the Scottish Government to maintain high environmental standards in the event of an EU exit. This Bill is the first legislative opportunity to deliver on that commitment. Simplification or improvement cannot be at the expense of environmental, welfare or other existing standards. This will be particularly important if Scotland is to seek re-entry into the EU in future and/or if the UK is to maintain trading agreements with the EU. It is essential that these standards are jointly agreed within a common framework across all four countries of the UK, so that Scotland's high standards are not jeopardised by competitive deregulation in the other UK countries or by future trade agreements.

Moreover, The EU CAP's direction of travel is clear; the Less Favoured Area Support Scheme (LFASS), which covers 85% of Scotland's land, has been replaced by the Areas facing Natural Constraint (ANC) scheme and land designation. LFASS is being maintained, albeit at 80% (2019) and 40% (2020), before ending in 2021. It remains unclear what scheme might replace this, but Scotland has already diverged from EU in this regard. In 14% of farm businesses, LFASS payments comprise more than 50% of their subsidy. As noted in the Policy Memorandum accompanying the Bill, it is clear that the Scottish Government intends to continue to fund the current Scheme rather than move to an ANC model, as is happening elsewhere in the EU. An independent evaluation of

LFASS/Development of ANC found flaws in the intervention logic of both LFA and ANC and concluded, given that this measure is not a compulsory element of Rural Development Programmes, it recommended that:

“serious consideration be given to the merits of diverting at least a proportion of current LFASS expenditure to other support measures which can be more clearly targeted – to focus on desired positive outcomes rather than negative constraints.”³

Despite its wide scope, LFASS remains unconnected from any environmental conditionality. We would strongly encourage a greater focus on positive environmental outcomes in the allocation of public money. For the sake of policy coherence, the Bill should demonstrate compliance with the patchwork of climate and biodiversity strategies, including demonstrating explicit commitment to the Land Use Strategy, its objectives and principles, and future Regional Land Use Frameworks (as mentioned in the 2019-20 Programme for Government).

2. Transition and enabling functions

To work with what we know, such as the extent of biodiversity net-decline and greenhouse gas emissions as a direct result of agricultural support and incentives, this Bill should establish a cap on basic payments and set out a growing percentage of the total fund over the scheme years 2021-2024 to be spent on measures to tackle the climate and nature emergencies.

It is not tenable to leave things as they are for another 4 years – we need to be beginning a transition in agriculture. While the Bill is intended as enabling legislation for the so-called transition period, it remains unclear what is being transitioned to. This is akin to beginning construction without a vision of what is being built. In addition, it insulates the process from civil society scrutiny, despite the wide implications for civil society in terms of the delivery, or not, of social and environmental public goods, pollution, land use, environmental and climate change, and so on.

The EU has been slowly reforming the CAP at each iteration, for example including greater subsidiarity in June 2018 and replacing the LFASS. Increasing attention is being paid to climate and environmental challenges. The Scottish Government must keep pace with these developments to comply with its oft-repeated aim of non-regression on environmental, and other, protections. The Bill represents an important opportunity to legislate on this basis and help protect Scotland’s, and the wider, environment.

³ Grieve, J., Cook, P., & Moxey, A. (June 2016) Evaluation of Less Favoured Area Support Scheme (LFASS)/Development of Areas of Natural Constraint (ANC). RESAS/005/15

We are concerned that, as worded, the modulation between Pillars 1 and 2 would allow for the funds to flow either way. We would strongly support a limit on this modulation so that the Pillar 2 provisions cannot be decreased whilst the overall system remains in place. LINK believes the Bill should ensure that the proportion of Pillar 1 funding allocated to greening should be maintained as a minimum. Ideally, however, we wish to see increased funding for activities that achieve nature and climate objectives.

The Bill should place a duty on Ministers to gather independent data on how payments were used, and on the impact of payments on the stated purposes of the scheme under which they were deployed, including the impact of any pilot schemes. This information is critical to developing an effective post-2024 scheme.

3. Climate and Nature Emergencies

This Bill misses an opportunity to set a direction for agriculture that responds to the climate and nature emergencies: it would merely enable business as usual in a context where we know this is unsustainable. This is not good enough given the climate and nature emergencies and the need of the farmers, crofters, and land managers to have some certainty about the direction of travel in this essential sector.

We welcome the commitment to developing pilot studies elsewhere. Scotland needs to test new approaches which support the transition to nature-friendly and climate-friendly farming as set out in the recent Climate Change (Emission Reduction Targets) (Scotland) Act 2019. In particular, the Bill should specify what will be tested to align payments with the whole farm approach and with the regional land use frameworks.

The Strategic Environmental Assessment (SEA) for the Bill states that it will have no impact on the environment – this is unacceptable at a time when agriculture is contributing nearly a quarter of Scotland’s territorial greenhouse gas emissions, and plays a substantial role in the net-decline of biodiversity. Of these current emissions, totalling 9.7 MtCO₂e, 4.3 MtCO₂e is methane and 2.6 MtCO₂e nitrous oxide (in 2017), accounting for the vast majority of these greenhouse gas emissions in Scotland, which are not offset by natural carbon stores. Given these impacts, at a time when Scottish land must be managed to contend with these challenges, and given that a Business and Regulatory Impact Assessment was undertaken, we see no reason as to why a SEA would be deemed unnecessary.

The Bill is also doing a disservice to farmers by not giving them certainty for the future. It needs to be held against the same standard as other policy in relation to its compliance with net-zero targets to provide confidence that sudden, urgent changes will not need to be made as we get closer to the 2030 and 2045 targets, for which this Bill is ill-equipped.

LINK published its [10 Principles for Future Land Management Support in Scotland](#)⁴ in 2018. These principles are at the centre of LINK's vision for a thriving countryside where:

- all land managers help to enhance landscapes and biodiversity and where a clean, healthy and wildlife rich environment is regarded both as an asset to society and essential for underpinning economic activity such as farming and forestry;
- land is adaptable and resilient to climate change, and is used and managed in ways that contribute to climate change mitigation and adaptation more broadly;
- people live, and work and rural communities are sustained, with opportunities for young people to work and manage the land, and where new entrants to traditional sectors are encouraged and supported;
- a broad range of land use and rural business activities offer good livelihoods and employment opportunities. Those who manage the land secure a fair return from it, whether producing traditional products such as food and timber or delivering public goods;
- food production is part of a fair, healthy and sustainable food system, from farm to fork, and plays its part in becoming a Good Food Nation;
- the full range of ecosystem services land provides are recognised and valued for their contribution to our economy and to society;
- land is used and managed in more integrated ways to deliver multiple outputs and benefits wherever possible.

LINK members believe this Bill should seize the opportunity to direct the agricultural sector and future funding allocations towards this vision.

This statement represents the consensus view of LINK's Food & Farming Subgroup. Members may also produce information individually in order to raise more detailed issues that are important to their particular organisation.

For more information contact:

Vhairi Tollan

LINK Advocacy Manager

vhairi@scotlink.org | 0131 225 4345

 www.scotlink.org | www.fightforscotlandsnature.scot | www.savescottishseas.org

⁴ http://www.scotlink.org/files/documents/10-principles-for-future-land-management-support-in-Scotland_finaldraft.pdf