

## LINK Parliamentary Briefing:

### Agriculture (Retained EU Law and Data) (Scotland) Bill - Stage 1 Debate



28 April 2020

***NOTE: LINK acknowledges that the Scottish Parliament is facing unprecedented challenges as it responds to the COVID-19 pandemic. This briefing is to aid MSPs planning to take part in the Stage 1 debate scheduled for Tuesday 5th May.***

#### Summary

LINK recommends that the Scottish Parliament agrees to the principles of the Agriculture (Retained EU Law and Data) (Scotland) Bill at Stage 1. LINK also urges the Parliament to consider a number of areas where the Bill could be strengthened during Stage 2, including:

- Setting an overarching purpose and direction for agriculture and support payments.
- Committing to maintaining or enhancing current environmental standards.
- Including a sunset clause to limit the use of extensive executive powers.
- Making regulations subject to the affirmative procedure.
- Ensuring policy measures are subject to an Environmental Impact Assessment.

#### Introduction

Scottish Environment LINK is the forum for Scotland's voluntary environment organisations, with over 35 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

The rapid escalation of the COVID-19 pandemic has created uncertainty across all parts of society and it is not yet clear what the long-term effects will be on Scotland's people and the economy. However, this emergency has highlighted the need to build-in resilience across all parts of our society to withstand future crises. Whatever challenges the months ahead may bring, we must remain cognisant that the trends driving the climate and nature emergencies continue and, indeed, the need to set out a clear direction of travel to provide stability for all sectors of the economy, including agriculture, has never been clearer. To protect against future shocks progress must be made towards a green recovery which responds to the challenges of COVID-19 and smooths the transition to a low-carbon, nature-rich Scotland.

Scottish Environment LINK members recognise the need for the Agriculture (Retained EU Law and Data) (Scotland) Bill (henceforth, the Bill) to allow for a smooth transition for the agricultural sector as the UK leaves the European Union. However, during the Stage 1 evidence process, LINK has highlighted a number of opportunities for the Bill to be strengthened to allow farmers to plan for their post-2024 activity and, critically, to set out a clear direction of travel for the agriculture sector as it responds to the climate and nature emergencies. Concerns about the short term focus of the Bill were also reflected by a number of stakeholders beyond Scottish Environment LINK during the evidence-taking process. We welcome the Stage

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1 Report from the Rural Economy and Connectivity Committee's (henceforth 'the Committee') which recognised a number of these concerns.

**In response to the Stage 1 Report, LINK urges the Scottish Parliament to consider the following measures:**

### **1. Set out an overarching purpose and direction for agriculture**

This Bill covers the period of 2021-24, a critical period for Scotland's agriculture sector which will take us halfway through the time available to meet Scotland's challenging 2030 climate targets. It is vitally important that steps are taken early in the decade to set out a clear direction for farmers transitioning to net-zero agricultural practices. The Committee on Climate Change noted in December 2019 that 'Decisions over the next 12 months are likely to determine the direction of the next 25 years.'<sup>1</sup>

The Bill must make the most of this opportunity to signal how regulations and related funding for the agriculture sector will change in the years ahead to deliver outcomes that benefit society. This call was echoed by a wide range of stakeholders during Stage 1 evidence sessions and we welcome the acknowledgement in the Committee's Report that:

"development of policy for the sector post-2024 is driven forward by the Scottish Government, with an objective of bringing forward new primary legislation as soon as is reasonably possible."<sup>2</sup>

And further that:

"It recommends that Scottish Ministers give further consideration as to how these specific concerns might be addressed during the Bill's passage."<sup>3</sup>

The Bill as it stands grants Scottish Ministers extensive additional powers to amend the operation of the Common Agricultural Policy from 2021 onwards when this policy ceases to apply in Scotland. LINK urges the Scottish Parliament to agree a purpose for the allocation of future agricultural support and any related schemes and measures designed to deliver such support.

This should include support for measures:

- To mitigate and adapt to climate change;
- To maintain, restore and enhance biodiversity and landscapes;
- To advance animal welfare beyond statutory requirements;
- To encourage agroecological land management and food production;
- To improve the health of plants and soil;

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<sup>1</sup> The Committee on Climate Change, 2019. *Reducing emissions in Scotland - 2019 Progress Report to Parliament*. Available at: <https://www.theccc.org.uk/publication/reducing-emissions-in-scotland-2019-progress-report-to-parliament/>

<sup>2</sup> Rural Economy and Connectivity Committee, 2020. *Stage 1 Report on the Agriculture (Retained EU Law and Data) (Scotland) Bill*. p.13. Available at: <https://digitalpublications.parliament.scot/Committees/Report/REC/2020/3/3/Stage-1-Report-on-the-Agriculture--Retained-EU-Law-and-Data---Scotland--Bill>

<sup>3</sup> *Stage 1 Report*, p.14.



- To conserve Scotland's genetic resources (livestock and plants) and encourage agrobiodiversity;
- To encourage public access and public understanding of agriculture;
- To maintain and increase rural population;
- To raise incomes and improve working conditions among farmers, particularly those working on smaller farms and on marginal land;
- To increase productivity and resilience in agriculture and food chains?;
- To encourage the sustainable production of net human edible food; and, in addition,
- No activities should be supported which deliver on one purpose if they result in a loss of biodiversity, additional greenhouse gas emissions or reductions in animal welfare

Setting a purpose for the allocation of future funding will set a clear direction for farmers planning their activities and provide early clarity on the policies that will be legislated for in the future Agriculture Bill to cover the period post-2024.

## **2. Commit to maintain or enhance current environmental standards**

The Scottish Government has stated its commitment to maintain or exceed current environmental standards following the UK's exit from the EU. Plans had been announced to include keeping pace provisions in the Government's new Continuity Bill to ensure environmental standards could not be rolled back after the Brexit transition period concludes.<sup>4</sup> However, the indefinite pause to the Scottish Government's planned Continuity Bill, announced as part of its revised legislative timetable on 1 April 2020, raises the possibility that no such checks will be in place when EU exit negotiations conclude.

It is now more important than it was during Stage 1 evidence, when LINK first raised these concerns, that the Agriculture Bill includes a keeping pace provision to maintain or exceed current environmental standards, and protect against a lowering of standards at a later date.

LINK strongly encourages MSPs to rectify this at Stage 2 through the inclusion of a keeping pace provision.

## **3. Include a sunset clause**

The Bill is intended to provide Scottish Ministers with powers to make transitional arrangements for the period 2021-24 following EU exit, however the Bill as drafted includes no time limitation. LINK notes that the Scottish Government has provided the Committee with reassurance that it does not intend to use the powers contained in this Bill longer than is strictly necessary. However we remain concerned that without a sunset clause included in the Bill, and/or other provisions requiring review of the regulatory regime, these extensive executive powers could become a feature of a post-2024 agricultural support system. Moreover, with Scottish elections approaching, the assurances of the current government will not necessarily be relevant during and after the 2021-24 period.

LINK welcomes the recommendation in the Committee's Stage 1 Report that a sunset clause is brought forward during Stage 2 of the Bill.

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<sup>4</sup> Scottish Government, 2019. *Protecting Scotland's Future: the Government's Programme for Scotland 2019-20*.p.26. Available at: <https://www.gov.scot/binaries/content/documents/govscot/publications/publication/2019/09/protecting-scotlands-future-governments-programme-scotland-2019-20/documents/governments-programme-scotland-2019-20/governments-programme-scotland-2019-20/govscot%3Adocument/governments-programme-scotland-2019-20.pdf>



#### **4. Powers should be subject to affirmative procedure**

LINK agrees with the concerns identified in the Committee's Stage 1 report with the blanket use of negative procedure for powers conferred by section 2 of the Bill. Given the extensive range of powers in this section, LINK urges the Bill to be amended so that regulations made under section 2 are subject to the affirmative procedure.

#### **5. Measures introduced must be subject to an Environmental Impact Assessment**

Agricultural activity contributes almost one-quarter of Scotland's territorial greenhouse gas emissions and has a significant impact on levels of biodiversity across Scotland. LINK remains concerned that the Strategic Environmental Assessment of the Bill, outlined in the Policy Memorandum, concludes that the Bill is likely to have 'no or minimum effect in relation to the environment.'<sup>5</sup> We strongly support the Committee's recommendation that any policy measures introduced using powers conferred by the Bill are subject to an Environmental Impact Assessment.

In addition to these recommendations, LINK supports the Scottish Food Coalition's calls for a requirement for a National Food Plan to be included in the Bill.

**This response is supported by the following LINK member organisations:**

**Buglife Scotland**

**Nourish Scotland**

**RSPB Scotland**

**Scottish Badgers**

**Scottish Wildlife Trust**

**Soil Association Scotland**

**Woodland Trust Scotland**

**WWF Scotland**

#### **For more information contact:**

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<sup>5</sup> Agriculture (Retained EU Law and Data) (Scotland) Bill - Policy Memorandum, p.20. Available at: [https://www.parliament.scot/S5\\_Bills/Agriculture%20\(Retained%20EU%20Law%20and%20Data\)%20\(Scotland\)%20Bill/SPBill59PM\\_S052019.pdf](https://www.parliament.scot/S5_Bills/Agriculture%20(Retained%20EU%20Law%20and%20Data)%20(Scotland)%20Bill/SPBill59PM_S052019.pdf)