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Mairi Gougeon MSP  
Cabinet Secretary for Rural Affairs, Land Reform and Islands  
Scottish Government

By email to: [cabsecralri@gov.scot](mailto:cabsecralri@gov.scot)

March 18<sup>th</sup>, 2024

Dear Cabinet Secretary,

## **AGRICULTURE AND RURAL COMMUNITIES BILL – AMENDMENTS**

Scottish Environment LINK's Food and Farming Group has been considering our response to the Agriculture and Rural Communities Bill. This is a crucial Bill and a priority for environmental NGOs. We are grateful for your engagement and the engagement of your officials to date on its development.

There are several areas in which we think the Bill can be improved. LINK accepts that this is a framework Bill and that the Scottish Government wants to ensure flexibility in delivery. We are proposing a number of amendments which would retain that flexibility but which would strengthen the legislation by setting a clearer direction of travel and ensuring the best possible policymaking over future Rural Support Plans.

This letter will outline our proposals. The text of some proposed amendments are provided as an annex, and we can share draft text of other amendments with your officials if desired.

## **OBJECTIVES**

Section 1 of the Bill seeks to set out the "overarching objectives of agricultural policy". These objectives then influence the Rural Support Plan (section 3(2)(a)) which is required to set out "the expected use ... of the powers" in section 4 to provide support (that is, the various payments and other schemes that, in practice, implement agricultural policy).



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As such, section 1, taken together with the provisions described above, seeks to describe an overall purpose for the bill – and its various provisions. However, as drafted, the objectives are a mix of outcomes and processes to seek to achieve those outcomes. The links to the implementation of policy to achieve the objectives (through the Rural Support Plan and the payment schemes that follow) is also unclear.

We have provided an alternative draft in the annex.

## **TARGETS**

The Scottish Government has set out high level objectives for change in the Vision for Agriculture. It is the strong view of LINK's Food and Farming Group that specific targets are necessary to drive this change. The Scottish Government has adopted a targets driven approach to change through the Climate Change Act and the upcoming Natural Environment Bill, and it is appropriate too in the case of agriculture. We would, for example, support targets to increase the proportion of land farmed organically, reduce harm from pesticides, and reduce nitrogen loss and waste.

There are several ways in which a target-based approach could function. The Bill could require, or empower, Ministers to set targets by regulation. Alternatively, it could be made a requirement that the Rural Support Plan includes targets and indicators related to the outcomes in the Bill. We would be happy to discuss these options further.

## **RURAL SUPPORT PLAN**

As the Bill is framework legislation, the most important decisions will be made afterwards through the Rural Support Plan. It is important that stakeholders and parliamentarians have a clear understanding of what the Rural Support Plan will include and how it will interact with the objectives set out in law.

The Bill should be amended to set out in greater detail what Ministers are required to include in the Plan, including indicative multi-year budgets; details of each payment scheme, including objectives, rationale and expected uptake; and detail on how the impact of funding will be monitored.

Additionally, we believe the Bill should be amended to require the first draft of the Rural Support Plan be laid before Parliament by a specified date and to be subject to parliamentary scrutiny.

We believe such amendments would be supported across parliament and by multiple stakeholders.

## **DUTY TO SEEK INDEPENDENT ADVICE**

In preparing the Rural Support Plan, the draft Bill requires Ministers to “have regard to” both the objectives established in section 1 of the Bill and other factors, including the climate change plan and other statutory duties, which will include nature targets established through the Natural Environment Bill.

There is precedent set in the Climate Change Act 2009 for a duty on Ministers to “seek advice from the relevant body”, allowing for independent expert advice to help shape policy making. Due to the importance of agriculture funding in meeting our climate and biodiversity targets, as well as food production, we believe a similar duty to seek independent advice should be adopted in this Bill. This would require Ministers to commission and publish advice from an appropriate independent body or bodies, such as the Climate Change Committee.

In addition to seeking advice, it is also important that each plan is reviewed for its impact and effectiveness – and that the outcomes of this review are used to inform the preparation of the subsequent plan (including the formal advice to be received).

We have discussed this proposal with your officials and are aware of concerns that the timeline for producing the first Rural Support Plan could make such a duty challenging. It is possible that such a duty could be applied only to future iterations of the Plan. This would increase the importance a mid-term review process. We propose the establishment of a “plan -> implement -> review -> revise” cycle, that would ensure that agricultural policy continues to develop informed by independent advice and through an iterative learning process. We have included a proposed amendment in the annex to demonstrate how this could function in legislation.

## **REDISTRIBUTION AND MATTERS RELATED TO FRONTLOADING AND CAPPING**

The Common Agricultural Policy 2023-27 includes a mandatory redistribution of income support, with EU countries required to dedicate at least 10% of their direct payments to the redistributive income support tool, increasing the income of small and medium sized farmers. We do not believe it would be appropriate to include a similar requirement in legislation. However, it is appropriate to consider the distributional impact of payments. From a LINK perspective, small farms and crofts are often more environmentally sustainable but face economic disadvantages due to economies of scale.

We propose that the Bill requires Ministers to consider the distributional impact of funding decisions. This could be achieved through a duty to outline the distributional impact of funding schemes, and to consider methods of redistribution within scheme design. This would retain flexibility for Ministers in decision-making, but ensure that questions of equity are clearly considered in policy development.

### ***Powers to “frontload”***

Under 9(1)(a) and (b), the Bill gives Ministers the power to either cap payments or to taper payments. These are important tools which could be used to address long-standing distributional issues which disadvantage smaller farmers and crofters. An additional tool would be a frontloading approach, with a higher rate paid for the first hectares in a farmer or crofters claim under Tier 1. This is similar to, but distinct from, the tapering approach as payments per hectare would fall after a defined threshold but would not “progressively reduce” from that point.

The Bill would be strengthened by adding a specific power to introduce such a frontloading approach in relation to tier 1 payments. We understand that the Bill may not strictly require an explicit power in order for Ministers to frontload payments, but as powers to cap and taper payments are included in the Bill, it is appropriate that frontloading is given a similar status.

### ***Use of capping powers***

The long-standing demand for agricultural payments to be capped has referred to area-based basic payments, which see large landowners receive a disproportionate amount of current agricultural funding. These are the payments which will be made under Tier 1 of the new system and are distinct from the payments made under higher tiers where it may be appropriate for larger landowners to receive uncapped payments (for example, for landscape scale nature restoration).

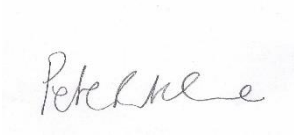
The power under 9(1)(a) should be amended to specify that the capping can be applied only to parts of the overall payments.

The application of such a cap to tier 1 payments (whose public policy objective is income support) is entirely justified – as it ensures that such support is focused on low income farmers/crofters. Where a farmer/crofter has reached a certain level of income, from the public, there should be no more need for ‘income support’.

For other tiers, the public policy benefits (e.g. carbon savings or nature restoration) will be increase as payments increase – as payments will be based on delivery of specific outcomes. This means that capping would, in effect, cap the outcomes that could be delivered – which is not in the public interest.

We would be grateful for your thoughts on the matters raised and would be happy to speak to you, your officials or advisors to cover any of these proposals in further detail.

Yours sincerely,



Pete Ritchie  
Convener, Scottish Environment LINK Food & Farming Group

## **ANNEX – text of amendments**

### **Objectives**

In section 1, page 1, line 8, delete whole section and replace with:-

#### **(1) Purpose of this Act**

- (1) The purpose of this Act is to make provision for the support of agriculture in Scotland, and to ensure that such support is in the public interest and contributes to the achievement of the overarching policy objectives.
- (2) The overarching policy objectives referred to in subsection (1) are:-
  - (a) The production of high quality food and other farm products using sustainable and regenerative agricultural practices;
  - (b) The mitigation of and adaptation to climate change;
  - (c) The maintenance and enhancement of the resilience of ecosystems and the benefits they provide;
  - (d) Thriving rural communities, including fair work and incomes for the farming community.
- (3) [Placeholder should any definitions of key terms in subsections (2) be necessary]
- (4) Scottish Ministers may, by regulations, amend the public policy objectives in subsection (2)
- (5) Regulations under subsection (4) are subject to the affirmative procedure.
- (6) The Rural Support Plan, prepared and published under section 2, must set out how the Scottish Ministers intend to define the overarching policy objectives in subsection (2), the outcomes sought for each objective and how they intend to achieve those outcomes.
- (7) In exercising any powers under this Act, Scottish Ministers must act in a manner best calculated to the achievement of overarching policy objectives referred to in subsection (2) and described in detail in the Rural Support Plan.

#### **Duty to seek independent advice**

In section 3, page 3, line 4, insert new subsection:-

- (3A) In exercising their function in relation to amending a rural support plan under subsection (1), the Scottish Ministers must consult with the relevant bodies in relation to the matters in subsection (2).
- (3B) The relevant bodies are:
  - (a) in relation to the matter in subsection (2)(b), the advisory body designated under section 24 of the Climate Change (Scotland) Act 2009 or, if established, the Scottish Committee on Climate Change.
  - (b) in relation to the matters in subsection (2)(c):-
    - (i) Scottish Natural Heritage,
    - (ii) The Scottish Environmental Protection Agency,
    - (iii) Food Standards Scotland, and

(iv) Historic Environment Scotland.

- (3C) A draft, amended rural support plan, laid under section 2(4), must set out the advice received from the relevant bodies and how the Scottish Ministers have responded to this advice in the formulation of the draft plan.
- (3D) In relation to amending a rural support plan, in advance of consulting relevant bodies under subsection (1), the Scottish Ministers must publish a review of the impact and effectiveness of the previous rural support plan, and support schemes established under it, including their assessment of—
- (a) the way in which, and the extent to which, the support has achieved the purposes for which it was provided, and
  - (b) the way in which, and the extent to which, the provision of the support has contributed to achieving the overarching objectives set out in section 1.