

From: [REDACTED]
Sent: Thursday, 9 August 2018 18:12
To: [REDACTED]
Subject: RE: FFWG Sub Group (Ag Bill)

[REDACTED]

Comments inserted below.

I've tentatively accepted the bilateral call with Defra on Tuesday afternoon. We can decide early next week whether I need to join.

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: 09 August 2018 17:01
To: [REDACTED]
Subject: Re: FFWG Sub Group (Ag Bill)

[REDACTED] just in case we don't manage to speak, I thought if I wrote down what I think the situation is then you can correct/update.

General approach to this meeting : we will not have any mandate to make concessions or compromises on behalf of SG, so on the points of disagreement we should reiterate SG positions in the expectation that, unless UKG moves, the disagreement will remain and the points will need escalating. Also, of course, in several areas we have not seen Bill text so we are still shadow boxing and cannot take a definitive position till we see text.

Specific points:

Defra are in effect through their Ag Bill proposing a UK framework on farm support with three legislative elements.

1. WTO Agreement on Agriculture. SG accepts that there is an international obligation. But we disagree with the approach taken in the draft Bill. We disagree with UKG on the reserved vs devolved definition, on the method for allocating wto limits within the UK, and on whether some elements are even necessary given the existing Scotland Act provisions on international obligations (Eg it is not necessary to create a duty on devolved ministers to hand over necessary data).

[REDACTED]– you should have a long email from me to **[REDCATED]** that sets out our main objections, and talks a little about handling strategy

2. Successor arrangements to CAP Common Market Organisation. Within this, it appears discussions are going relatively OK on marketing standards, market intervention and crisis response, so provided devolved powers are respected it should be possible to reach agreement. But we do not agree with the UKG assessment of the reserved vs devolved scope of the producer organisation and supply chain provisions and therefore on the proposed approach.

[REDACTED]

3. Internal market. SG made clear our opposition to draft provisions Defra included in an earlier draft of the Bill. That remains our position. This is not just about farm payments, it is a point of principle about devolution and the internal market . Any solution will therefore have to be developed as part of, or at least consistently with, the central discussions on internal market. If pressed, We acknowledge that the EU/UK Negotiations could introduce additional considerations (essentially, would we accept limits on our policy freedom as a quid pro quo for decent market access?) but this cannot be used as a stalking horse to introduce intra-UK constraints.

[REDACTED]

In addition to the above legislative elements, we know Defra is working on....

4. Non-legislative elements of this framework. We acknowledge that there will be a need for decision making processes, transparency rules, dispute resolution, and practical things like form and frequency of ministerial meetings. But these elements are not yet ripe for agreement. As Wales requested at the last Defra and DAs ministerial meeting, next step should be a progress report at the Sept meeting on the proof of concept work carried out on fisheries and animal health.

[REDACTED]

[REDACTED]

Agriculture Bill Second Reading - Response to NFUS Briefing

- Welcome this helpful contribution from NFUS on the UK Agriculture Bill, and their continued support for the Scottish Government position that decisions affecting Scottish Agriculture should be made in Scotland.
- [The Scottish Government would be prepared to consider taking powers through the Agriculture Bill if the UK Government were to agree to what we need to protect Scotland's interests and recognise the Devolution settlement, for example an amendment to the clause on WTO Rules as NFUS has suggested].
- The Scottish Government is not opposed to UK-wide frameworks where these are in Scotland's interests. However, frameworks must be agreed, not imposed and must happen in a manner that respects and recognises devolution.
- The Scottish Government shares the NFUS views that the Bill should contain provisions that requires food imported into the UK to be produced to at least equivalent standards as the UK.
- We also share the NFUS views that the Bill should address food production and address the Red Meat Levy issue.
- We are happy to clarify the position about payments after March 2019, in their briefing the NFUS say they are concerned that without a Schedule in the Agriculture Bill it is possible that Scottish Government may not have any legal vehicle of delivering payments beyond 29 March 2019.
- We can confirm that the Scottish Continuity Bill or the European Withdrawal Act 2018, plus the deficiency Statutory Instruments planned for this autumn, will rollover existing EU Law and ensure we have the powers we need to make payments.

[REDACTED]

[REDACTED]

[REDACTED]

SG news releases & media lines on the bill

[Not yet available]

Scottish Government Summary of the Bill

This is based on the version from 31 August 2018, as we have yet to receive the final version.

The purpose of this Bill is as follows:

1. To give the Defra Secretary of State powers to modify, amend or repeal retained EU Law for England in order to accommodate the measures Defra plan to adopt for an agricultural transition period in England following exit from the EU and the CAP. The Bill confirms the phase out of Direct Payments in England will take place over a period of 7 years, starting in 2021.
2. To give the Defra Secretary of State powers to introduce new financial support schemes etc., in England to facilitate the delivery of a new long-term policy for England along the lines outlined in Defra's Health and Harmony consultation document.
3. Extend some of the powers to Wales and Northern Ireland as requested.
4. To grant the Secretary of State UK wide powers in areas that the UKG considers are reserved, such as the WTO Agreement on Agriculture, and Producer Organisations. SG does not agree with the UKG assertion that these are reserved issues.
5. Although not a Brexit related issue, Defra are planning to include a clause on the Red Meat Levy in the Bill. This clause may not be ready by the time the Bill is introduced, but Defra have intimated that it will be included as an amendment during the Bill's progress.

[REDACTED]

[REDACTED]

[REDACTED]

SG media lines on the bill

Trail before Bill introduced - Fergus Ewing: 'Scotland must not be ignored'.

The UK Government Agriculture Bill must respect the devolved settlements and deliver on the promises made, Rural Economy Secretary Fergus Ewing has said.

Mr Ewing has called on the UK Government to ensure that the expected bill makes clear that Scotland and the other devolved administrations can continue to make decisions that are in the best interests for their rural communities, that future Scottish policies are decided upon here, and the bill does not create powers that could impose unsuitable policies on Scotland.

Speaking ahead of the publication of the Agriculture Bill, he said:

“We remain resolute in our opposition to Brexit, which will have significant and far reaching consequences for rural Scotland.

“The UK Government’s anticipated Agriculture Bill must meet the key test of respecting the devolved settlements. It would be wholly unacceptable if the Scottish Parliament were unable to continue to provide coupled support for active beef and sheep farmers and LFASS payments for our toughest farming areas for example, which are crucial elements of Scottish policy.”

Responding to the publication of the UK Government’s Agriculture Bill earlier today, Rural Economy Secretary Fergus Ewing said:

“The UK Government’s Agriculture Bill completely fails to meet the key tests of delivering on promises made to Scotland, respecting the devolved settlements, and righting longstanding issues.

“It represents a missed opportunity for the UK Government to deliver on promises made during the referendum and since – namely that Scottish farmers would continue to receive at least the same level of funding as they currently do in the event of Brexit.

“This bill rides roughshod over the devolved settlement. For example, on compliance with WTO rules, the bill could create sweeping unilateral powers that could constrain policy choices in Scotland. It is therefore of serious concern that the UK Government could impose unwanted policies and rules on Scottish farmers in areas of devolved competency.

“Unless and until the attempts to grab key powers that impact on farming and food production are addressed and revised, we are clear that we cannot and will not bring forward legislative consent motions for primary Brexit legislation, such as this, until the Sewel Convention is made operable again.

“This government has always said that the best way to go about this task would be by cooperation and coordination between governments, in a way that respected the principles of devolution. I therefore hope that the UK Government will agree both to amend the Bill to deliver the promises on future funding made during the referendum, and to fully respect devolution by engaging with the Scottish Government on strengthening the legislative consent convention, so that in due course we would be able to consider inviting the Scottish Parliament to give its legislative consent.”

Joint Statement by UK & Welsh Governments – Agricultural framework progress update, published 12 September 2018.

As agriculture is a devolved area, each administration of the UK will have the opportunity to develop policy to suit their own unique circumstances once the UK has left the EU. Both the UK Government and the Welsh Government have consulted separately on new agriculture policies to replace the Common Agriculture Policy (CAP) in England and Wales, respectively.

The UK Government published a '[Framework Analysis](#)' policy paper in March 2018. This paper set out 153 areas where EU law currently intersects with devolved competence. This is where the UK Government and devolved administrations would need to work together to determine whether we would need UK or GB wide common approaches in future. It will be guided by the principles agreed at JMC (EN) in October 2017. The paper also identified a list of 24 policy areas to be subject to more detailed discussion to explore whether a legislative common framework arrangement might be needed, in whole or in part. The list included "agricultural support".

As we leave the EU and the CAP, we want our farmers and those with an interest in agriculture to be clear that we have been and will continue to work closely together. We want to achieve better outcomes for our farming industry, and to facilitate an open and transparent dialogue as our proposals develop.

The Agriculture Bill provides both administrations with new powers to bring replacement schemes into effect, as well as extending some provisions to Northern Ireland. However, the Bill does not contain a legislative framework for these powers. This reflects the fact that the UK Government and Welsh Government are of the view, based on discussions to date, that the vast majority of policy areas can be suitably managed through non-legislative, inter-governmental coordination.

As part of this process, we are proposing to develop an administrative framework for co-ordinating agricultural support spending and changes to marketing standards. The aim of this is to ensure effective co-ordination and dialogue between the administrations on how any changes to legislation in one part of the UK may affect other parts. This framework will tie in closely with planned common UK frameworks being developed for other policy areas. There are other areas identified within "Agricultural Support" that we are expecting to work on while the Agriculture Bill passes through the UK Parliament. These include market intervention and data collection and sharing. Other agriculture-related frameworks within the 24 identified, on organic farming, the environmental release of GMOs, zotech and fertiliser regulations are also being discussed. Our joint aim is to reach agreement on all of these areas in order for frameworks to be in place by the end of the Implementation Period (December 2020).

We are also discussing arrangements for cross-border holdings, which is of particular interest to the numerous farmers along the English/Welsh border. We are aware that farmers with holdings that straddle borders and those with holdings located in another administration will want to ensure their businesses can operate as smoothly as possible. Our intention here is to reduce bureaucracy and to provide clarity for these businesses.

It is still the ambition of the UK Government and the Welsh Government to work towards a UK-wide approach where that is necessary. We fully expect our close collaboration to continue with the Department of Agriculture, Environment and Rural Affairs in Northern

Ireland (DAERA) and the Scottish Government over the next 18 months to agree and implement administrative frameworks to set out future working and coordination on agriculture. As part of that process, we welcome the views of Parliament, the devolved legislatures and wider stakeholders on these proposals.

Background on Northern Ireland situation

Given the absence of local Ministers in Northern Ireland to take decisions about future agricultural policy, UK Government Ministers have sought to ensure as far as possible that the status quo can be maintained until a new policy direction can be established. There is a need to take care not to prejudge or constrain the ability of an incoming Minister, NI Executive and NI Assembly to decide what is appropriate for the Northern Ireland agri-food sector. The overarching principles that have been applied when considering the extension of clauses to NI are:

- to ensure the continuation of a legal basis to provide the current suite of agricultural support payments (and options) post EU exit.
- to ensure that the NI Executive has maximum flexibility to develop future agricultural policy consistent with the principles agreed by JMC(EN), including ensuring the functioning of the UK Internal Market.
- that the Agriculture Bill does not constrain the ability of the NI Executive to continue current schemes and options available under the Rural Development Programme and Common Market Organisation provided for by existing and retained EU legislation, for as long as NI Ministers consider this appropriate.

Scottish Government Summary of the Bill

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1. To give the Defra Secretary of State powers to modify, amend or repeal retained EU Law for England in order to accommodate the measures Defra plan to adopt for an agricultural transition period in England following exit from the EU and the CAP. The Bill confirms the phase out of Direct Payments in England will take place over a period of 7 years, starting in 2021.
2. To give the Defra Secretary of State powers to introduce new financial support schemes etc., in England to facilitate the delivery of a new long-term policy for England along the lines outlined in Defra's Health and Harmony consultation document.
3. Extend some of the powers to Wales and Northern Ireland as requested.
4. To grant the Secretary of State UK wide powers in areas that the UKG considers are reserved, such as the WTO Agreement on Agriculture, and Producer Organisations. SG does not agree with the UKG assertion that these are reserved issues.
5. Although not a Brexit related issue, Defra are planning to include a clause on the Red Meat Levy in the Bill. This clause may not be ready by the time the Bill is introduced, but Defra have intimated that it will be included as an amendment during the Bill's progress.

[REDACTED]

[REDACTED]

UK AGRICULTURE BILL

ISSUE: 12 Sept - The UK Government introduced its Agriculture Bill. The Bill a) creates powers in England to create a new policy to replace the EU Common Agricultural Policy after Brexit, and powers to manage the transition from the CAP, b) creates similar powers, at their request, for Wales and Northern Ireland (in the case of Wales, as a stopgap till the Welsh Assembly legislates), and c) creates UK-wide powers in three policy areas which UKG asserts are reserved. These three areas are rules on farm payments needed to comply with World Trade Organisation obligations; rules on giving special status to groups of farmers ('Producer Organisations') to exempt them from some parts of competition law; and powers to create statutory codes of fair conduct in agri-food supply chains. **[REDACTED]** Defra had previously announced that in England all farm income support will be removed in favour of environmental payments, and the Bill confirms that income support in England will be phased out over 7 years starting 2021. **[REDACTED]**

12 Sep: The National Audit Office published a report on "Progress in Implementing EU Exit" by Defra, which recognises progress made in preparing for EU Exit but is highly critical of Defra's readiness for a no-deal scenario, particularly in relation to the import and export of animals and animal products, and marine control and enforcement. The report finds that Defra is not ready for Brexit in key areas such as animal imports and exports, regulation of chemicals, and marine control and enforcement.

ISSUE: 10 Sept - NFUS issued a press release calling for the Scottish Government to support the Chequers Agreement as a no-deal would be catastrophic for farmers. In response, the Scottish Government has made clear that 'Chequers or No Deal' is a false choice.

Top Lines

- The UK Government's agriculture bill completely fails to deliver on promises made to Scotland during the EU referendum that Scottish farmers would continue to receive at least the same level of funding as they currently do
- It rides roughshod over the devolved settlement – we have serious concerns that the UK Government could impose unwanted policies and rules on Scottish farmers in areas of devolved competency
- Unless and until the attempts to grab key powers that impact on farming and food production are addressed and revised, and until the Sewel Convention is made operable again we are clear that we cannot and will not bring forward legislative consent motions for primary Brexit legislation like this.
- We will take no lectures from the Tories – their Agriculture Bill is proposing to remove direct payments from England's farm businesses.

UK AGRICULTURE BILL

- And while the UK Government may be happy to leave farmers in England high and dry without the support they need to provide quality food, we are not.
- This government was the first administration in the UK to set out detailed plans for agriculture for the short and medium term after Brexit.

The UK Agriculture Bill means that the UK government could impose unwanted policies and rules on farmers in areas of devolved competency

- It attempts to grab key powers which impact on farming and food production.
- For example, as drafted, this bill could potentially affect the Scottish Parliament's ability to provide support for active beef and sheep farmers.
- It could also impact on Less Favoured Area Support for farmers working in the toughest areas.
- Defra asserts that the UK-wide powers in its Bill only affect reserved areas, but Scottish Government refutes this absolutely.
- Defra has offered only perfunctory responses to Scotland's compelling arguments.
- For example, Defra asserts that everything to do with World Trade Organisation rules is reserved, when it has always been clear that implementing international obligations in devolved policy areas is a devolved matter.
- Of course UK government has a legitimate interest, but that does not make it a solely reserved matter.
- We will not be bringing forward legislative consent motions until this is resolved and the Sewell convention is made operable again.

We are aware Wales published a joint progress report with Defra on discussions to create a UK farm support framework, and is taking powers through the Defra Bill.

- As Welsh ministers have acknowledged, Wales is in a very different place from Scotland because Wales voted to leave.
- Scotland voted to remain and our position must be guided by that
- Powers over farm support are devolved and we are clear they should stay devolved
- just as each part of the UK operates distinct and different CAP schemes now, so we can continue to operate farm support schemes which best support our farming and food production needs and interests in the future
- We have always said we are not opposed to UK frameworks where they are in Scotland's interests and provided they are agreed not imposed on us.
- We have been engaging in discussions in good faith and will continue to do so - although it is hard to see this publication is little more than an attempt to bounce Scotland into agreeing to what the UK Government wants

[REDACTED]

From: [REDACTED]

Sent: 12 September 2018 09:24

To: [REDACTED]

Subject: Changes in Final Version of Agriculture Bill

Importance: High

[REDACTED]

I have gone through the Final version of the Ag Bill received yesterday and compared it with the 31 Aug version. The changes are in the main small and technical, tidying it up a bit and re-ordering some parts. There are however one or two substantive, or potentially substantive, changes that have been made as follows;

Part 1 – New Financial Assistance Powers

- Clause 1(1)(c) now refers to managing land or water in a way that maintains, restores, or enhances cultural or natural heritage. Previously it read “Maintaining, restoring, or enhancing cultural heritage or natural heritage”

Part 2 – Financial Support After Exiting the EU

- Clause 6(2) now includes provisions for terminating greening payments before the end of the transition period in England.

Part 4 – Intervention in Agricultural Markets

- Clause 17(2)(a) now includes the word “severe” in relation to disturbance in agricultural markets, and now reads - In this part “exceptional conditions” exist where (a) “there is severe disturbance in agricultural markets or a serious threat of a severe disturbance in agricultural markets”,

Also several new clauses inserted;

- New Clause 17(3)(b)(iii) now also asks that the grounds for considering the conditions in subsection (a) are met in relation to disturbance or threatened disturbance.
- New Clause 17(3)(c) states that a declaration must describe the ground for considering that the exceptional market decisions justify making the powers conferred by or referred to in section 18 available for use.
- New Clause 17(9) states that in this clause and clause 18 a reference to agricultural markets, agricultural producers or agricultural products includes horticultural markets, horticultural producers and horticultural products.
- New Clause 18(7) states that nothing in subsection (1) and (2) of clause 18 prevents the SoS from giving or agreeing to financial assistance under subsection (2) after the end of the period of which the declaration has effect or in response to an application made during that period.

Part 5 – Marketing Standards And Carcass Classification

- A new Clause 20 has been created which now encompasses both marketing standards and carcass classification (clauses 27 and 28 in previous print). The provisions relating to the CMO Regulation have now been moved to Schedule 5.

Part 6 – Producer Organisations And Fairness In The Supply Chain

- Clause 23(2) has been extended to include recognised associations of POs and interbranch organisations.

Schedule 3 – Provision Relating To Wales

- There are significant changes in the powers being taken by Wales. In the 31 Aug version they were only taking powers on Financial Assistance, but now seem to be mirroring all the England only powers on Financial Support after Exiting the EU, including powers to phase out direct payments, etc, and also to have the same transition period as England, Powers on the Collection and Sharing of Data, Intervention in Agricultural Markets and Marketing Standards and Carcass Classification.

Schedule 4 – Provision Relating to Northern Ireland

- Northern Ireland are also now taking powers on Marketing Standards and Carcass Classification in addition to the powers included in the 31 Aug version.

Grateful for any comments or if you have spotted something I have missed, before I circulate wider.

[REDACTED]

From: [REDACTED]

Sent: 12 September 2018 10:03

To: [REDACTED]

Cc: [REDACTED]

Subject: RE: Changes in Final Version of Agriculture Bill

Thanks [REDACTED].

Nothing to add from me. Subject to [REDACTED] view, although the changes in Parts 4, 5 and 6 are more than just commas and full stops, they look to me still essentially technical. That being the case, I would say the one change significant enough to draw specifically to our ministers' attention is the Schedule on Wales. [REDACTED]

Once [REDACTED] has responded, I am happy for you to send a short update email to the full copy list, drawing attention to the Wales changes and anything [REDACTED] would like highlighted.

[REDACTED]

From: [REDACTED]
Sent: 12 October 2018 12:45
To: [REDACTED]
Subject: RE: Agriculture Bill - GI - draft instructions - legal rural

[REDACTED]

I attach a copy of **[REDACTED]** draft with some tracked changes and comments.

[REDACTED]

Attachment withheld – Section 36(1) Legal Advice

From: [REDACTED]
Sent: 12 October 2018 11:21
To: [REDACTED]
Subject: Agriculture Bill - GI - draft instructions - legal rural

[REDACTED]

From: [REDACTED]
Sent: 11 October 2018 10:14
To: [REDACTED]
Subject: RE: EU deficiencies - food and drink - Agriculture Bill - GI - Immediate: - Draft LCM - Potential SG Amendments - legal rural

My instructions are as per my email on Tuesday.

[REDCATED]

From: [REDACTED]
Sent: 11 October 2018 10:13
To: [REDACTED]
Subject: EU deficiencies - food and drink - Agriculture Bill - GI - Immediate: - Draft LCM - Potential SG Amendments - legal rural

[REDACTED]

From: [REDACTED]
Sent: 11 October 2018 09:44
To: [REDACTED]
Subject: Agriculture Bill - Immediate: - Draft LCM - Potential SG Amendments - legal rural

Hi **[REDACTED]**

I agree with that approach, namely, that given the limited time available we should focus on the preferred amendments we would wish to see in relation to Scotland for the priority areas identified in the draft LCM. That seems to be the more efficient approach all round, not least in terms of our collective resources.

Subject to the views of **[REDACTED]** I can draft instructions to PCO colleagues on that basis.

Many thanks
[REDACTED]

From: [REDACTED]
Sent: 11 October 2018 09:39
To: [REDACTED]
Subject: Immediate: RE: Agriculture Bill - Draft LCM - Potential SG Amendments

All

It has transpired that our mtg with **[REDACTED]** tomorrow is not going ahead. Also Mr Ewing's box deadline this week is 3pm today, and if we miss that then his next box is next Thurs.

In order to get this moving, my inclination is to out a note into his box today outlining the issues and recommending that:

- we do draft and publish (one way or another) amendments addressing the three areas where we disoute the sassertion that they are reserved.
- we do not draft a red meat levy amendment, on the understanding that Defra are drafting it.
- we press for an amendment on GIs **[REDACTED]**
- and we press Defra to draft any other amendments we think are needed on technical issues Eg marketing standards for wine.

Ideally I would draft the note and let you all see it in draft before sending, but time may not allow for that. If my proposal makes any of you deeply unhappy, plse let me know by return; otherwise I will put a note up, copying you in.

Thanks and apologies for the unreasonably short notice.

[REDACTED]

Meeting with Peter Chapman MSP

Date Thurs 14 June 2018

[REDACTED]

[REDACTED]

ANNEX B

Future Funding Guarantees & Agriculture Bill

There is still no clarity from the UK government regarding future farm funding, or their plans for an Agriculture Bill

- *[REDACTED]*.
- Despite repeated requests, we have no detailed information from Defra on the content of the proposed UK Agriculture Bill, or the proposed transition period.

[REDACTED]

From: [REDACT]
Sent: 14 August 2018 17:00
To: [REDACT]
Cc: [REDACT]
Subject: RE: UKG agriculture bill

[REDACT]

In [REDACT] absence I have discussed the following with [REDACT] in his team.

- Clause 33 is the Agriculture Bill clause relating to the WTO Agreement on Agriculture. Defra are arguing that the entire clause is reserved. SG does not accept that it is reserved.
- [REDACT]
- We have also challenged the fact that as drafted:
 - the clause could potentially allow the Defra SoS to set limits on the levels of any agricultural support that the Scottish Ministers can provide, not just those areas that are subject to WTO limits (though Defra dispute this reading).
 - and it makes the Defra SoS the final arbiter in the event of any dispute between administrations regarding the appropriate classification (in WTO terms) of items of agricultural support.
- [REDACT]

[REDACT]
ARE/ENFOR EU Hub
Scottish Government
[REDACT]

From: [REDACTED]

Sent: 15 October 2018 10:57

To: [REDACTED]

Subject: RE: Agriculture Bill - UK - LCM issues - draft instructions to PCO - legal rural

[REDACTED]

Comments. As all of these are on my side of the house, I do not expect that [REDACTED] will comment.

[REDACTED]

[REDACTED]

15 Oct 2018

Attachment withheld – Section 36(1)

From: [REDACTED]

Sent: 15 October 2018 08:55

To: [REDACTED]

Subject: Agriculture Bill - UK - LCM issues - draft instructions to PCO - legal rural

Hi [REDACTED]

I have drafted instructions to PCO covering the LCM issues.

Grateful if you could let me know whether you have any comments, otherwise I will just send these up later today.

I take it there is no further word as yet re what are the likely deadlines for lodging any amendments during HC committee stage?

Many thanks

[REDACTED]