

## Senior Officials Programme Board 17 Aug: Agriculture Bill

(Brief as updated after Defra/Wales/NI meeting on 16<sup>th</sup>)

### Objectives and handling

- Defra would ideally like agreement with the DAs, before introduction of the Bill, on the Bill itself and an accompanying policy statement.
- At this meeting they are expected to seek endorsement of an escalation process (comprising this meeting itself, possible ministerial phone calls and a round of ministerial correspondence) aimed at reaching such agreement.
- We have already signalled to them that it looks unlikely that agreement with Scottish Ministers will be possible (see rest of this note for details).  
**[REDACTED]**
- Defra should not seek in this meeting to negotiate solutions or compromises on outstanding points of disagreement. **[REDACTED]**
- In any case at time of writing a definitive list of outstanding issues is not yet possible because in several areas (Eg internal market) UKG's position is not clear. We should repeat our call for them to clarify their position so we can take a view and thus confirm whether there is or is not disagreement in these areas.
- **[REDACTED]**

### Background

**[REDACTED]**

Defra are hoping to get DAs' agreement, before the introduction of the Bill in w/c 10 Sept, on:

- a) whether any provisions should be extended to Scotland/Wales/NI
- b) the elements of the Bill which in effect implement parts of a UK framework on farm support, and
- c) an accompanying joint policy statement describing the contents of the Bill, especially in relation to the UK framework, and potentially also some non-legislative elements of the framework which (by definition) do not appear in the Bill.

This week Defra will have held discussions with DAs, comprising partly the routine working group discussions on the Bill and partly the round 2 deep dive on the farm support framework. There was no suitable date for all DAs, so SG met with Defra and Cabinet Office on Tues and at time of writing Defra and CO are due to meet Wales and NI on Thurs.

**[REDACTED]**

## Outstanding issues and points of actual or potential disagreement

a). Extension of powers to the DAs.

**Line to take: SG unable to take a position at this stage because of the wider constitutional position, grateful to Defra for agreeing to keep options open.**

**[REDACTED]**

We have already signalled to Defra that SG cannot take a firm position on extension of powers before the Bill is introduced, because of the wider position on Sewel Convention. Defra officials have acknowledged this and have said that if and when the wider issues are resolved, the Bill could be amended during its passage to extend powers to Scotland. This is acceptable – but probably means we will need to take a final definitive view by the end of 2018.

Northern Ireland and (for a transitional period only) Wales have confirmed that they would like to take powers via this Bill.

b) UK framework issues in the Bill

**Line to take:**

- **It would be useful to confirm that we have a shared understanding of what are the remaining points of disagreement.**
- **[REDACTED]**
- **We still need Defra to confirm its position on some points, without which we cannot say whether we are content. One of those is Internal Market, on which a lot will depend on whether UKG try to put any measures in legislation or rely on non-legislative approach.**

On some framework-related clauses in the draft Bill we definitely have a substantive disagreement, because Defra say the issue is 100% reserved (and have drafted accordingly) and we disagree. These issues are:

- compliance with the WTO rules (Defra say it is reserved because linked to trade);
- rules on exempting farmer groups or 'producer organisations' from competition law, and on codes of practice for the agri-food supply chain (Defra say these are all reserved because it's competition law).

**[REDACTED]**

On the WTO clause, we also have questions about whether some of the provisions go further than is necessary, or whether some are even needed at all. [REDACTED]

There are several framework issues where the UKG approach is still not clear:

- 'Marketing standards' (= quality standards for products). This is part of the existing CAP and Defra are planning to take powers in their Bill. They seem to be planning a light touch framework and it ought to be possible to reach agreement once Defra clarify. They also say they might like a non-legislative agreement on how marketing standards will be used by administrations, to avoid the risk of them upsetting the UK internal market.
- 'Market intervention' (= manipulating the price on the internal market). This is also part of the existing CAP on which Defra are planning to take powers in their Bill, and here too it ought to be possible to reach agreement once Defra clarify.
- **[REDACTED]**

**[REDACTED]**

#### Other issue that could come up

Red Meat Levy. This is not a Brexit issue but a long-running disagreement. We understand Defra are drafting a provision based on what SG asked for. We cannot confirm we are content till we see it. Defra say it may not be ready by introduction of the Bill in which case it would be brought in as an amendment – we have said this would give rise to presentational issues which will need joint consideration.

**[REDACTED]**

David Barnes  
14 Aug

## **Legislative Consent Position**

### **Top Lines**

- By making clear it is prepared to proceed with legislation on EU withdrawal without consent of Scottish Parliament, even if required, UKG has effectively suspended the established legislative consent process.
- It is unacceptable for UKG to ride roughshod over Devolution in this fashion, and we are seeking urgent discussions with them on how to strengthen and protect the Sewel Convention.
- We will consider progress in those discussions in deciding our position on consent for the UK Agriculture Bill as its Parliamentary consideration proceeds.
- UKG approach so far is not consistent with devolved responsibilities and SG cannot recommend Scottish Parliament gives consent to the Agriculture Bill at this time.
- We have serious concerns the Agriculture Bill could impose unwanted policies and rules on our farmers.

### **Background**

1. The UK Government has made clear, that it is prepared to proceed with legislation relating to the UK's withdrawal from the EU without the consent of the Scottish Parliament, even when that consent is required and sought.
2. The Scottish Government will continue to work to develop and improve UK legislation related to EU withdrawal, but does not believe there is a practical purpose in bringing forward legislative consent motions when the UK Government has made clear any decision of the Scottish Parliament is liable to be set aside.
3. The Scottish Government believes it is unacceptable for the deliberations and decisions of the Parliament to be treated in this way, and is seeking urgent discussions with the UK Government on how to strengthen and protect the Sewel Convention.
4. We have set out proposals for how the Scottish Parliament's confidence in the operation of the legislative consent convention could be restored, and will consider progress in those discussions in deciding its position on seeking legislative consent for the UK Agriculture Bill as its Parliamentary consideration proceeds..
5. The Agriculture Bill as it is currently drafted does not respect the devolution settlement, and we have serious concerns it could impose unwanted policies and rules on Scottish farmers in areas of devolved competency, for example, it could potentially affect the Scottish Parliament's ability to provide support for active beef and sheep farmers.
6. We will continue to work with the UKG to try and make changes to the Bill, but as things stand, we cannot ask the Scottish Parliament to give legislative consent to a Bill that seeks to alter and constrain the executive competence of the Scottish Parliament and Ministers.

***[REDACTED]***

**From:** [REDACTED]

**Sent:** 17 October 2018 13:33

**To:** [REDACTED]

**Subject:** RE: UK Agriculture Bill - proposed Scottish Government amendments

**[REDACTED]**

I have now considered **[REDACTED]** draft as it relates to geographical indicators. References are to paras of **[REDACTED]** covering note.

Para 9. As the UK Government are anticipating a single UK-wide scheme, I think the drafting approach works without the need to apply the consent requirement only when the exercise of the function extends to Scotland.

Para 10. Content that the clause applies to any function that the Secretary of State is given,

Para 11. Yes, from sight of the draft Regulations, we can be sure that functions will be conferred on the Secretary of State generically, and not a named Secretary of State or other Minister of the Crown. So the square brackets in subsection (2) can be removed.

Para 12. Content with the coverage.

Para 13. I am content with this, and think that it is helpful to make it absolutely clear (as the draft does) that we are dealing with the EU Regulation &c as incorporated and amended by the Withdrawal Act. It helps explain why we are talking about SofS functions when the EU Regulation currently contains none.

Para 14. Content that we apply the clause to regulations made by the Secretary of State under the EU Regulation. It is certainly the Defra intention at present that the Commission powers to make delegated and implementing Regulations will pass to the Secretary of State.

Para 15. We might as well cover these enforcement functions. **[REDACTED]**

**[REDACTED]**

**[REDACTED]**

17 October 2018

## **Agriculture Bill**

**(This is the latest position. A further meeting with Defra is planned for Wed 20 June, officials will update Cab Sec of any developments from that meeting prior to the meeting with Mr Gove)**

### **Top Lines**

- Welcome that you have started to share information on your proposed Agriculture Bill.
- However, it is disappointing that we are only seeing it a bit at a time with I understand only 3 clauses shared so far Environmental Land Management schemes, CAP Direct Payment Scheme and Financial Assistance Enforcement..
- Difficult to properly consider without seeing the whole Bill to put things into context.

***[REDACTED]***

### **Background**

- Officials have recently started discussions with Defra on the Agriculture Bill.
- Defra Officials have stated that they are coming under pressure to introduce the Bill before the summer recess.
- Mr Gove wrote to Cabinet Secretary to say that he had instructed officials to share information with the DAs on the Bill.
- Defra officials have started sharing information on a clause by clause basis.
- The clauses are drafted to apply to England only but are being shared in case the DAs wish for Defra to legislate on their behalf in these areas.
- The clauses are confidential and still in draft form, they have not received clearance from other Government Departments and are not to be considered UK Gov policy.
- We have repeatedly asked Defra for policy instructions to accompany the clauses so that we can get a better understanding of what they are intending these clauses to do.
- We have also asked to see the complete Bill so that we can consider things in context rather than in the abstract of clause by clause.

***[REDACTED]***

18 June 2018

## UK AGRICULTURE BILL

**ISSUE: 12 Sept** - The UK Government introduced its Agriculture Bill. It:

- a) creates powers in England to create a new policy to replace the EU Common Agricultural Policy after Brexit, and 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 WTO obligations;
- Rules on giving special status to groups of farmers ('Producer Organisations') to exempt them from some parts of competition law;
- Powers to create statutory codes of fair conduct in agri-food supply chains.

**[REDACTED]**

Defra 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.

**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.

**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.
- The Tories claimed 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
- Until the attempts to grab key powers that impact on farming and food production are addressed 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.
- 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.

**[REDACTED]**

# UK AGRICULTURE BILL

## **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 arguments.
- For example, Defra asserts that everything to do with World Trade Organisation rules is reserved.
- However, it has always been clear that implementing international obligations in devolved policy areas is a devolved matter.
- We will not be bringing forward legislative consent motions until this is resolved and the Sewell convention is made operable again.

## **The Scottish Government is considering its options for future legislation against the background of this wider legislative consent issue**

- We are not opposed to UK-wide frameworks when in Scotland's interests. We have taken part in discussions in good faith.
- However, frameworks must be agreed, not imposed and must happen in a manner that respects and recognises devolution.
- The Agriculture Bill fails that test and must be amended so that any provisions applying across the UK have been agreed with the devolved administrations.

## **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]**

## UK Agriculture Bill – [REDACTED]

### Key Issues:

#### **We have serious concerns that this bill could impose unwanted policies and rules on Scottish farmers in areas of devolved competency.**

- The UKG assert that the clauses relating to the recognition of Producer Organisations, statutory industry codes, and the WTO Agreement on Agriculture are reserved.
- It is our view that these clauses relate to devolved matters.
- Indeed, when the Producer Organisation Angus Growers was de-recognised, its legal action was against SG not UK government. So how can recognition of POs be reserved ?
- As currently drafted, these clauses could potentially affect the Scottish Parliament's ability to provide support for active beef and sheep farmers, and could impact on Less Favoured Area Support for farmers working in the toughest areas.

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

- 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.
- 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.

### Background:

- The UK Agriculture Bill was introduced on 12 Sept 2018, had its second reading in the House of Commons on 10 October 2018, and is currently going through the Committee stage, with a view to this being completed by 20 November 2018.
- It a) creates powers in England to create a new policy to replace the EU Common Agricultural Policy after Brexit, and 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.
- **[REDACTED]**
- There are also areas that we would like to see added to the Bill, regarding guarantees of future funding, maintaining import standards, the recognition of PGIs, and the Red Meat Levy.

## UK AGRICULTURAL BILL AND FUTURE SCOTTISH FARM POLICY

### **Background:**

**12 Sept** - The **UK Government introduced its Agriculture Bill**. It:

- creates powers in England to create a new policy to replace the EU Common Agricultural Policy after Brexit, and to manage the transition from the CAP,
- 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
- 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 WTO obligations;
  - Rules on giving special status to groups of farmers ('Producer Organisations') to exempt them from some parts of competition law;
  - Powers to create statutory codes of fair conduct in agri-food supply chains.

### **[REDACTED]**

- Defra 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]**

## Top Lines - UK AGRICULTURAL BILL AND FUTURE SCOTTISH FARM POLICY

- The UK Government's Agriculture Bill completely fails to deliver on promises made to Scotland during the EU referendum.
- The Conservatives claimed Scottish farmers would continue to receive at least the same level of funding as they currently do.
- The Bill also rides roughshod over the devolution settlement.
- **Until the attempts to grab key powers that impact on farming and food production are addressed we cannot and will not bring forward any legislative consent motion for this Bill.**
- The UK Government might be content to leave farmers in England high and dry without the support they need to provide quality food, we are not.

- **[REDACTED]**

**We have serious concerns that this bill could impose unwanted policies and rules on Scottish farmers in areas of devolved competency**

- The UK Government is attempting to grab key powers 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 we refute this absolutely.
- For example, Defra asserts that everything to do with World Trade Organisation rules is reserved.
- However, it has always been clear that implementing international obligations in devolved policy areas is a devolved matter.
- We will not be bringing forward legislative consent motions until this is resolved and the Sewel convention is made operable again.

**We are considering options for future legislation against the background of this wider legislative consent issue**

- We are not opposed to UK-wide frameworks where these are in Scotland's interests, and have taken part in detailed discussions around these in good faith.
- However, frameworks must be agreed, not imposed and must happen in a manner that respects and recognises devolution.
- The Agriculture Bill fails that test and must be amended so that any provisions applying across the UK have been agreed with the devolved administrations.
- **[REDACTED]**

**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.

**Quote from NFUS President Andrew McCornick, from an NFUS News Release on the Bill (published 12 Sept)**

- “We have been crystal clear that the interests of Scottish agriculture will be best served by Scotland setting its own future policy so that it respects and underpins the unique agricultural profile of Scotland”

**Other useful quotes**

- “Agriculture is devolved to the Scottish Government and should remain devolved. And the UK Agriculture Bill should not change that” – NFUS Director of Policy Jonnie Hall, 21 September 2018, from his NFUS Blog.
- “A future agricultural policy that ignores food production will be damaging for farmers and the public alike” – NFU President Minette Batters, 12 September 2018.
- “The opportunity of achieving a comprehensive reform, balancing the needs of food, farming and the countryside appears to have been missed” – Chief Executive of the Tenant Farmers’ Association George Dunn, 12 September 2018.
- ***[REDACTED]***

**From:** [REDACTED]

**Sent:** 18 October 2018 11:56

**To:** [REDACTED]

**Subject:** RE: FFWG Sub-Group (Ag Bill)

Dear all,

Further to our discussion about technical amendments the other day, OPC have suggested another one to make the definition of subordinate legislation more comprehensive and consistent. The definition of primary legislation in the Bill includes Acts of the Scottish Parliament and Measures or Acts of the National Assembly for Wales (as well as UK Acts and Northern Ireland legislation). At the moment the definition of subordinate legislation in the Bill (clause 30) relies on the definition in the Interpretation Act 1978. This definition covers instruments made under an Act of (the Westminster) Parliament and, once the relevant amendment is brought into force, instruments made or to be made on or after exit day under retained direct EU legislation. However, this definition does not cover legislation made under Acts of the Northern Ireland Assembly, Acts of the Scottish Parliament or under a Measure or Act of the National Assembly for Wales.

This means that, for example, where the Bill provides in section 29(4) that power to make supplementary, incidental, consequential, transitional or savings provision is available when modifying subordinate legislation, it would not cover legislation made under the NI and Welsh Assemblies or the Scottish Parliament. An amendment will be needed to include subordinate legislation of the Northern Ireland Assembly, and our lawyers propose that, for consistency between clauses of the bill, we define subordinate legislation as being instruments made under all the primary legislation in clause 30 (or made, on or after exit day, under retained direct EU legislation).

This will be tabled alongside the other amendments to the NI Schedule. Do let us know if you have any questions.

Best wishes,

**[REDACTED]**

**From**[REDACTED]

**Sent:** 19 April 2018 16:22

**To:** [REDACTED]

**Subject:** Off Sen - Agriculture Bill

**[REDACTED]**

I mentioned at this morning's teleconf that by coincidence we were meeting with our own legal team this afternoon. It was helpful to be able to reflect on the morning's discussion.

In relation to your question on whether we would like the Bill to include powers for DAs, we concluded among ourselves that if you hope to introduce the Bill before summer recess, then you need a definitive answer from DAs sufficiently soon for the drafting consequences to be dealt with. But for devolved ministers to give definitive answers rather than the general steers we gave this morning, they have to know what it is they are jumping on board with.

In other words, analogously with the joint work on legislative deficiencies SIs, it will only be possible for us to fit in with your legislative timetable if material is shared with us very soon now, on a confidential basis.

At the Defra/DAs Programme Board mtg of senior officials tomorrow we will be discussing the agenda for the 14 May ministerial mtg and I think we will have to think about this issue in that context – **[REDACTED]**

**[REDACTED]**

**MINISTERIAL MEETING BRIEFING: FERGUS EWING**

***[REDACTED]***

**UK Agriculture Bill**

The UK Government's agriculture bill completely fails to deliver on promises made to Scotland during the EU referendum, and rides roughshod over the devolution settlement.

I have serious concerns that the Bill could allow the UK Government to impose unwanted policies and rules on Scottish farmers in areas of devolved competency.

For example, as drafted, in terms of WTO compliance it grants the Secretary of State unilateral powers to set rules that could constrain Scotland's choice of policies and schemes.

***[REDACTED]***

## LINES TO TAKE

### Primary Legislation for Agriculture and Fisheries

- We have outlined our policy position for a transition period following Brexit, up to 2024, in our Stability and Simplicity consultation. **[REDACTED]**
- We could take powers for this through the UK Agriculture and Fisheries Bills.
- But, we have serious concerns regarding the Agriculture Bill.
- The UKG continue to assert that the clauses relating to the recognition of Producer Organisations, statutory industry codes, and the WTO Agreement on Agriculture deal with reserved matters.
- It is our view that these areas relate to devolved matters.
- **[REDACTED]**
- In addition, there is the wider issue that Mr Russell set out before the Summer recess, that due to the actions of the UKG in relation to legislative consent for the EU (Withdrawal) Bill, SG will not recommend consent to Brexit-related Bills until progress has been made to protect and strengthen the Sewel Convention.
- With that in mind, we will be lodging a Legislative Consent Memorandum on the UK Bills setting out these issues, but will not be recommending that a Legislative Consent Motion be brought forward at this time.
- Despite this, SG continues to work constructively with UKG to resolve these issues.
- **[REDACTED]**

**[REDACTED]**

## BACKGROUND

### ***UK Agriculture Bill***

- The UK Agriculture Bill was introduced on 12 Sept 2018, had its second reading in the House of Commons on 10 October 2018, and is currently going through the Committee stage, with a view to this being completed by 20 November 2018.
- It a) creates powers in England to create a new policy to replace the EU Common Agricultural Policy after Brexit, and 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.
- **[REDACTED]**
- There are also areas that we would like to see added to the Bill, regarding guarantees of future funding, maintaining import standards, the recognition of PGIs, and the Red Meat Levy.

### ***Legislative Consent Position***

- The UK Government has made clear that it is prepared to proceed with legislation relating to the UK's withdrawal from the EU without the consent of the Scottish Parliament, even when that consent is required and sought.
- The Scottish Government will continue to work to develop and improve UK legislation related to EU withdrawal, but does not believe there is a practical purpose in bringing forward legislative consent motions when the UK Government has made clear any decision of the Scottish Parliament is liable to be set aside.
- The Scottish Government believes it is unacceptable for the deliberations and decisions of the Parliament to be treated in this way, and is seeking urgent discussions with the UK Government on how to strengthen and protect the Sewel Convention.
- We have set out proposals for how the Scottish Parliament's confidence in the operation of the legislative consent convention could be restored, and will consider progress in those discussions in deciding its position on seeking legislative consent for the UK Agriculture Bill as its Parliamentary consideration proceeds..
- The Agriculture Bill as it is currently drafted does not respect the devolution settlement, and we have serious concerns it could impose unwanted policies and rules on Scottish farmers in areas of devolved competency, for example, it could potentially affect the Scottish Parliament's ability to provide support for active beef and sheep farmers.
- We will continue to work with the UKG to try and make changes to the Bill, but as things stand, we cannot ask the Scottish Parliament to give legislative consent to a Bill that seeks to alter and constrain the executive competence of the Scottish Parliament and Ministers.

**[REDACTED]**

**From:** [REDACTED]

**Sent:** 20 June 2018 21:22

**To:** [REDACTED]

**Subject:** Highland Show: Mr Ewing's mtg with Mr Gove: additional briefing on Ag Bill discussions with Defra

**[REDACTED]**

As foreseen when we contributed to the brief for Mr Ewing's meeting tomorrow with Mr Gove, I am attaching an addendum bringing Mr Ewing up to speed with the seven hours of discussion with Defra which several of us took part in today. In view of the short timescale I am also copying direct to Private Office.

There has not been time to clear the lines to take with [REDACTED] but I am assuming they will not dissent from the proposed line that SG ministers will not be bounced into taking a position on this Bill when the constitutional backdrop remains unresolved, the policy content has not been discussed at all at ministerial level, the proposals relating to a UK-wide framework do not seem acceptable, and the technical quality of the material available is very poor.

I will be present at the meeting in case more detail is needed.

**[REDACTED]**

## **ATTACHMENT**

### **MR EWING'S MEETING WITH MR GOVE 21 JUNE 2018 ADDITIONAL BRIEFING ON WESTMINSTER AGRICULTURE BILL FOLLOWING OFFICIAL-LEVEL DISCUSSIONS 20 JUNE**

#### Lines to take

Given the amount and quality of information that has been shared, **it will be impossible for Scottish Ministers to take a position on Defra's Agriculture Bill in the timescale UKG has set for itself.**

Aside from the constitutional and policy considerations, **we seriously doubt that your officials can produce a technically competent Bill in the timescale.** Most clauses are apparently not drafted yet; surely it will be impossible to produce a sensible Bill in only 3-4 weeks from now? Why not postpone introduction and allow more time?

It would have been helpful to discuss these issues much sooner. **Happy to discuss at the Defra/DAs ministerial meeting on 5 July but remember those meetings are not a negotiating or decision-making forum** – if UKG wishes to seek SG's agreement then it must use the correct inter-governmental mechanisms.

## Background

SG officials took part in an all-day teleconference with Defra, Wales and Northern Ireland from 10.00 till 17.00 on 20 June. A full note and advice will be provided for ministers separately.

Defra officials said the Bill is to be introduced on 12 July or during the week commencing 16 July, i.e. either **three or four weeks from now**.

The number of **draft clauses shared with DAs still stands at three**. Compared with the summary sent to Mr Ewing this Monday, Defra have shared one additional draft clause (on WTO compliance) but they have withdrawn one of the three that had been shared previously. For the remainder of the Bill, DAs have only had brief written notes or oral descriptions of Defra's policy intentions.

**[REDACTED]**

Defra's hope was that **before the introduction of the Bill, they would reach agreement with devolved administrations** on a) whether they would like any of the otherwise England-only elements of the Bill to be extended to cover Scotland, Wales or Northern Ireland, and b) the proposed legislative elements of the UK framework.

**[REDACTED]**

**[REDACTED]**

## Agriculture and Brexit

### Top lines

- **[REDACTED]**
- The UK Government will be bringing forward its Agriculture Bill in September. While a near-final draft has been shared with officials (in confidence), there are still some important clauses which have not been shared.

### **[REDACTED]**

The UK Government has shared a near complete draft version of its planned Agriculture Bill, in confidence, with officials in the Scottish Government, although a few important clauses are still to be added.

Defra were planning to introduce their Bill before the UK Parliament summer recess, but this has now slipped to September 2018.

### **[REDACTED]**

**From:** [REDACTED]  
**Sent:** 21 September 2018 11:34  
**To:** [REDACTED]  
**Subject:** RE: Ag Bill - Note for Producer Organisations

[REDACTED]

I think there is potential confusion here between the scheme for the recognition of producer organisations, on which the Agriculture Bill provisions extend to Scotland, and the scheme for financial assistance for POs in your sector, where the Ag Bill does not extend to Scotland.

Agree with [REDACTED] that the bit about no new requests for recognition after Brexit needs to be clarified. [REDACTED] The Agriculture Bill provisions, which create a brand new domestic regime for recognition of POs, will only kick in and replace the CMO provisions, at some later date. Section 30 (b)(ii)

And looking at the Ag Bill provisions, clause 22 provides that organisations that meet the criteria may apply to the Secretary of State to be recognised. It would be contrary to law, and subject to judicial review, for Defra to adopt a blanket policy of refusing all applications. There is little flexibility in clause 22 for the SofS to refuse applications that meet the criteria.

[REDACTED]

**From:** [REDACTED]  
**Sent:** 21 September 2018 10:12  
**To:** [REDACTED]  
**Subject:** RE: Ag Bill - Note for Producer Organisations

A couple of comments. Sorry for late reply, but in any case it looks like it had already been sent out. Copying in [REDACTED] for their interests.

The note ought to have made clearer that the comments about the future relate to England, and that it will be for DAs to decide on the future of the scheme in their areas.

Also I think you shd ask Defra to clarify the bit that says No new requests for recognition as a PO will be accepted after we leave the EU. As you know, official recognition as a PO or inter-branch organisation is one of the areas in the Bill which has been drafted as reserved but which we dispute (Clauses 22-24). [REDACTED]

[REDACTED]

[REDACTED]

**From:** [REDACTED]  
**Sent:** 12 September 2018 09:33  
**To:** [REDACTED]  
**Subject:** Ag Bill - Note for Producer Organisations

Hi both

I got in touch with **[REDACTED]** yesterday in advance of the Ag bill being published with regards to the Fruit and Veg Aid Scheme. Her response enclosed the attached note that Defra have asked the RPA to send to all Producer Organisations (including the Scottish POs).

I just wanted to ask your opinion on it, particularly the paragraphs I have copied below. I think it's unclear for our Scottish POs as it implies the SoS will redesign and introduce a new scheme for the whole of the UK. I'm aware that even if SG was open to a UK-wide scheme, Defra have indicated that it's unlikely to happen. However, the note is maybe factually correct if there is still the possibility later down the line that the provisions could extend to Scotland(?).

I'd welcome your thoughts and a steer on redrafting if possible.

**[REDACTED]**

Many thanks

**[REDACTED]**

**From:** [REDACTED]

**Sent:** 24 August 2018 11:09

**To:** [REDACTED]

**Subject:** RE: EU withdrawal - Agriculture Bill - update to ministers and meeting with SpAds - legal rural

[REDACTED] the wording in Defra's Bill is slightly different for different bits of the CAP, and in some cases it is explicitly linked to the phasing out (in England) of certain things – DPs, Fruit and Veg PO payments, and market intervention other than in a crisis. In some cases the wording gives power to amend for the specific purposes of simplification, in other cases the power is if anything wider as it is worded simply as a power to amend retained EU law.

[REDACTED]

[REDACTED]

## UK AGRICULTURE BILL

**ISSUE: 12 Sept** - The UK Government introduced its Agriculture Bill. It:

- a) creates powers in England to create a new policy to replace the EU Common Agricultural Policy after Brexit, and 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 WTO obligations;
- Rules on giving special status to groups of farmers ('Producer Organisations') to exempt them from some parts of competition law;
- Powers to create statutory codes of fair conduct in agri-food supply chains.

**[REDACTED]**

Defra 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.

**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.

**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.
- The Tories claimed 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
- Until the attempts to grab key powers that impact on farming and food production are addressed 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.
- 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.

**[REDACTED]**

# UK AGRICULTURE BILL

## **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 arguments.
- For example, Defra asserts that everything to do with World Trade Organisation rules is reserved.
- However, it has always been clear that implementing international obligations in devolved policy areas is a devolved matter.
- We will not be bringing forward legislative consent motions until this is resolved and the Sewell convention is made operable again.

## **The Scottish Government is considering its options for future legislation against the background of this wider legislative consent issue**

- We are not opposed to UK-wide frameworks when in Scotland's interests. We have taken part in discussions in good faith.
- However, frameworks must be agreed, not imposed and must happen in a manner that respects and recognises devolution.
- The Agriculture Bill fails that test and must be amended so that any provisions applying across the UK have been agreed with the devolved administrations.

## **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]**

# UK AGRICULTURE BILL