

**Business and Regulatory Impact Assessment**

**Agriculture (Retained EU  
Law and Data) (Scotland) Bill**

**October 2019**

# **Business and Regulatory Impact Assessment (BRIA) for the Agriculture (Retained EU Law and Data) (Scotland) Bill**

## **Title of Proposal**

Agriculture (Retained EU Law and Data) (Scotland) Bill.

## **Purpose and intended effect**

This BRIA relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill. The Bill is only required in the event that the UK leaves the European Union (EU).

The purpose of the Bill is to:

1. Provide the Scottish Ministers with the necessary powers to make changes in relation to the Common Agricultural Policy (CAP) Rules and Regulations which will become “retained EU law”<sup>1</sup> after the UK exits the EU.
2. Provide the Scottish Ministers with powers to collect information, including information relating to agri-food supply chains.

The Bill will enable the Scottish Ministers to implement proposals put forward in the 2018 “Stability and Simplicity” consultation<sup>2</sup>, described below, and other potential changes to the CAP rules that may be considered beneficial to Scotland’s agriculture and rural economy.

The Bill itself will not make any of the policy changes proposed in the consultation. These changes, once agreed upon, will be made through subsequent regulations under the then Act, which will be the subject of further impact assessments.

The Bill will also provide the Scottish Ministers with updated powers to collect information about agricultural activities and agri-food supply chains.

## **Background**

The CAP was launched in 1962 as a partnership between agriculture and society, and between Europe and its farmers. It is a common policy across all EU countries, and is managed and funded at European level from the resources of the EU budget.

The aims of the CAP are to<sup>3</sup>:

- Support farmers and improve agricultural productivity, ensuring a stable supply of affordable food.
- Safeguard European Union farmers to make a reasonable living.
- Help tackle climate change and the sustainable management of natural resources.
- Maintain rural areas and landscapes across the EU.

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<sup>1</sup> Please see below for an explanation of “retained EU law”.

<sup>2</sup> <https://www.gov.scot/publications/stability-simplicity-proposals-rural-funding-transition-period/>

<sup>3</sup> [https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/cap-glance\\_en](https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/cap-glance_en)

- Keep the rural economy alive by promoting jobs in farming, agri-foods industries and associated sectors.

The CAP is financed through two funds as part of the EU budget. The first is the European Agricultural Guarantee Fund<sup>4</sup> (EGAF) which provides Direct Payments and funds market measures, usually referred to as “Pillar 1”. The second is the European agricultural fund for rural development<sup>5</sup> (EAFRD) which finances projects for Rural Development and is usually referred to as “Pillar 2”.

The UK’s allocation for Direct Payments under Pillar 1 from the EU for the 2013 – 2019 period is €25.061 billion, of which Scotland’s allocation is €4.096 billion. In 2019, Scotland’s allocation was €0.585 billion.

The UK’s allocation for Rural Development under Pillar 2 from the EU for the 2014-2020 period is €2.580 billion, of which Scotland’s allocation is €478 million. In 2019, Scotland’s allocation was €0.068 billion.

Rural Development funding is co-financed through the EU allocation and domestic funding from the Scottish Government, with around one third of the total paid through Pillar 2 funded by the Scottish Government in 2018.

The main rules of the CAP are established by laws made by the EU. In the UK, responsibility for agriculture is devolved to Scotland and to the other Devolved Administrations. There are a number of flexibilities available in the CAP rules to tailor the CAP and the Scottish Government has used some of these to help address specific Scottish requirements. The authorities in England, Wales, and Northern Ireland have made their own use of these flexibilities. This means that the CAP has been implemented differently in each part of the UK reflecting regional differences.

Following the UK’s exit from the EU, the EU will no longer be able to make laws in the UK. However, EU law will be transferred into domestic law by the EU (Withdrawal) Act 2018 and will be known as retained EU law<sup>6</sup>. The CAP rules and schemes will therefore continue to apply in the UK and Scotland will still have the flexibility to make regional adjustments. However, the flexibilities which are available within the CAP rules are not sufficient to make new rules which would simplify and improve the CAP following EU exit.

The existing CAP rules, and proposals to modify them, contribute to the following objectives of the National Performance Framework:

- Environment – the existing rules and proposals recognise the duty to protect and enhance our natural assets as being essential to our economy, culture, way of life and the wellbeing of future generations.
- Economy – the existing rules and proposals recognise that in order to encourage economic growth, our economy must be environmentally sustainable, inclusive and benefit all our people and communities.

<sup>4</sup> [https://ec.europa.eu/agriculture/cap-funding\\_en](https://ec.europa.eu/agriculture/cap-funding_en)

<sup>5</sup> See link in at footnote 4

<sup>6</sup> For further information about the status of retained EU law please see:

<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8375>

- Communities – the existing rules and proposals contribute to protecting our rural communities by nurturing and protecting our local resources, environments and all who live in them.

Agriculture is a devolved area within the UK, and in the event of the UK leaving the EU, the Scottish Government plans to legislate to enable changes to be made to retained EU law. The UK Government are planning to take wide ranging powers through an Agriculture Bill in the UK Parliament, which would allow them to partially replace the CAP with a new policy, once that has been designed.

The Scottish Government has the option to take powers through the UK Agriculture Bill, but has decided against doing so because of significant differences between the UK and Scottish Government's positions in relation to the Bill, particularly around legislative competence. This had the potential to constrain the Scottish Ministers' policy choices and ability to exercise functions within devolved competence in relation to agriculture support in Scotland.

In the other Devolved Administrations, the Welsh Government plan to take similar powers to the UK Government for their Ministers, through the UK Bill, and due to the ongoing absence of a functioning political administration, Northern Ireland is seeking less wide ranging powers through the UK Bill to enable the continuation of current schemes, and to amend retained EU law, which would enable a future administration to make changes.

The current political uncertainty in the UK Parliament meant that the UK Agriculture Bill fell when the UK Parliament was prorogued on 8 October 2019 to facilitate a Queen's Speech. Since then a General Election has been called and it will now be for the incoming Government to decide whether they bring forward an Agriculture Bill in the next session of Parliament.

## **Objective**

The Agriculture (Retained EU Law and Data) (Scotland) Bill is a vehicle to provide the Scottish Ministers with regulation-making powers to modify retained EU law in relation to the CAP rules in order to simplify and improve on those rules after the UK exits the EU. The Bill makes provision on certain aspects of the CAP provisions on the Common Organisation of Markets (CMO), including marketing standards, public intervention and private storage aid and crisis intervention powers. It also provides for the collection of agricultural information.

This is in line with the Scottish Government's policy proposals as set out in the consultation document "Stability and Simplicity", which aim to provide Scottish farmers and crofters with some clarity and stability following the UK exit from the EU.

The proposals in "Stability and Simplicity" are for a transition period based largely around the existing CAP rules, but with some changes to retained EU law to improve and simplify them to benefit Scotland's agriculture sector, farmers, crofters, land managers, suppliers to the agriculture sector, the food processing industry, rural communities, etc. and prepare them for longer term policy development in the future.

This Bill also contains powers which enable the Scottish Ministers to collect information relating to agricultural activities and supply chains, including a power to demand information from persons in (or closely connected to) the agri-food supply chain and from persons who carry out agricultural activities. The aim is to make agricultural information collection more transparent and clearly linked to the principals of the GDPR.

The information which is collected can only be used for a purpose which is provided for in the Bill.

### **Rationale for Government intervention**

The CAP rules will become retained EU law on exit day (or following an implementation period should an agreement be reached between the UK and the EU), via the European Union (Withdrawal) Act 2018. Without government intervention, these would apply in Scotland and the Scottish Ministers would not be able to make any changes to them (except to the extent that some areas of CAP already provide delegated powers). This would be the case even if the EU subsequently made changes to the CAP rules.

This is something that cannot be fixed by leaving it to markets/industry to deal with, and could potentially put Scottish farmers, crofters, rural communities and economy at a disadvantage both internationally and compared to the rest of the UK where changes to retained EU law are being considered.

The Scottish Government is therefore taking forward this Bill to enable the Scottish Ministers to amend retained EU law in relation to aspects of the existing CAP rules, including those mentioned above, in order to simplify and improve these rules and to provide some clarity and stability for Scottish farmers and crofters. The Bill makes provision on certain aspects of the CAP provisions on the Common Organisation of Markets (CMO), including marketing standards, public intervention and private storage aid and crisis intervention powers. It also provides for the collection of agricultural information.

### **Consultation**

#### **Within Government**

Within Government the following Divisions/Directorates were consulted:

#### **Directorates for Sustainable Land Use and Rural Policy and Agriculture and Rural Economy**

Agriculture and Rural Development

Animal Health and Welfare

Agricultural Policy Implementation and Delivery (RPID)

Information Systems Division (ISD)

Rural Economy and Communities

#### **Directorate for Economic Development**

European Structural Funds

## **Directorate for Environment and Forestry**

Environment and Land Use Strategy

Rural and Environment Science and Analytical Services (RESAS)

## **Directorate for International Trade and Investment**

Food and Drink

Consultation and discussion with all of the above helped shape the Scottish Government's public consultation "Stability and Simplicity" and the policy choices that flow from that. The Agriculture (Retained EU Law and Data) (Scotland) Bill is intended to provide the regulation-making powers to facilitate these policy choices.

### **Public Consultation**

A public consultation on the Scottish Government's "Stability and Simplicity" proposals was launched on 20 June 2018 and ran until 15 August 2018.

The consultation paper focussed on what might be done to provide stability in the period immediately after the UK leaves the EU, as well as short term simplifications that could help current claimants of CAP related support and improve or enhance the delivery of policy goals. It also focussed on how best to support and integrate agriculture into the broader rural economy over a transition period and beyond, and how pilot projects might be developed and used to test different approaches.

The consultation proposed creating a 5 year transition period up to around 2024, with minimal changes to funding and payments in the early stages of the transition period (up to 2021), an approach that was also recommended by the Scottish Government's Agriculture Champions in their report "A Future Strategy for Scottish Agriculture"<sup>7</sup>, published in May 2018.

The consultation also sought views on the following:

- Reducing the administrative burden on a range of steps in the payments system and process, including inspections, mapping and scheme rules.
- Capping payments to release funds for testing new policy priorities.
- Protecting and enhancing long term future support for Less Favoured Areas.
- Shifting, where possible, from a strict compliance approach towards combining delivery of outcomes with support.
- Streamlining and synergising some Pillar II schemes.
- Where we should be piloting new approaches and testing fresh ideas and innovation.

By the close of the consultation a total of 135 responses had been received, and a range of constructive ideas were put forward on how to simplify and improve things. Overall, respondents to the consultation were broadly content for support to continue in its current form to ensure a period of stability for the rural economy up to around 2024.

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<sup>7</sup> <https://www.gov.scot/publications/future-strategy-scottish-agriculture-final-report-scottish-governments-agriculture-champions/>

An analysis of the responses to the consultation was published<sup>8</sup> on the Scottish Government's consultation hub web pages in November 2018, along with responses where permission to publish had been granted.

Given the responses to the Stability and Simplicity consultation, it is expected that stakeholders will be content with the Scottish Bill option, and the National Farmers Union Scotland (NFUS) has already welcomed the decision to have a Scottish Bill.

A Simplification Taskforce<sup>9</sup>, including both an external panel of stakeholders and Scottish Government officials, was set up to explore ways of simplifying rural payments identified in the consultation.

## **Business**

This BRIA relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill, which itself will not make any policy changes to CAP, or introduce any new significant costs, therefore no individual businesses have been interviewed at this stage.

However, there has been stakeholder engagement through the Scottish Government's Agriculture and Rural Development Stakeholder Group<sup>10</sup> and the Rural Development Operation Committee<sup>11</sup>, where the Bill and the approach to Stability and Simplicity have been discussed.

As previously mentioned, once final policy decisions have been taken, they will be made by regulation through subsequent secondary legislation. At that time further impact assessments will be required, which will include consultation and discussion with stakeholders, including businesses in the agriculture sector, farmers, crofters, land managers, suppliers to the agriculture sector, the food processing industry, etc.

## **OPTIONS**

Four options have been considered and are described in more detail below, they are:

### **Option 1 – Do nothing and rely on flexibilities in the existing CAP rules**

This option is effectively a do nothing option, and would mean that the existing CAP rules, as rolled over into retained EU law on the UK's exit from the EU, would continue in Scotland until replaced or repealed by primary legislation (except where retained EU law provides delegated powers for amendment). It would also mean that the information collection powers would remain unchanged, relying on the Agriculture Act 1947<sup>12</sup>.

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<sup>8</sup> <https://consult.gov.scot/agriculture-and-rural-communities/economy-post-brex-it-transition/>

<sup>9</sup> <https://www.gov.scot/groups/rural-funding-simplification-taskforce/>

<sup>10</sup> <https://www.gov.scot/groups/ard-stakeholders/>

<sup>11</sup> <https://www.gov.scot/groups/srdp-2014---2020-rural-development-operational-committee/>

<sup>12</sup> <http://www.legislation.gov.uk/ukpga/Geo6/10-11/48/contents>

## **Sectors and groups affected**

The sectors and groups primarily affected would be the agriculture sector, farmers, crofters, land managers, suppliers to the agriculture sector, the food processing industry, rural communities, etc. and government.

## **Benefits**

The main benefit of this option would be that the existing CAP rules and information collection powers would continue, thus allowing the continuation of existing schemes that are familiar to farmers, crofters, land managers, rural communities etc., as well as the Scottish Government administration and implementation teams, meaning there would be no additional costs or changes for farmers, etc.

This option would also allow the Scottish Government to consider the flexibilities and delegated powers available in the current CAP regulations and rules without the need for any additional legislation, as these flexibilities will be rolled over into retained EU law through the EU (Withdrawal) Act 2018.

The flexibilities available include:

- For the Direct Payments regulation: the ability to amend some of the “greening” measures; the ability to review annually; the reduction/capping of payments, provided there is no reduction on the funds available for Rural Development; and the rules on Voluntary Coupled Support, either stopping it completely, or amending the scheme rules and/or payment rates for Coupled Support schemes.
- For Rural Development regulation: there is scope to make adjustments to the existing schemes including amending eligibility requirements, payment rates and budgets to target emerging priorities. Out with CAP rules the communication, targeting and provision of advice around schemes can be changed to better inform beneficiaries and to reduce non-compliance issues.
- For the CMO, there are flexibilities provided by the powers which are exercisable by the EU Commission under EU law to make regulations, which will transfer to the Scottish Ministers in retained EU law.

The use of all these flexibilities must be done within the rules and limits as laid down in the CAP regulations which will be rolled over into retained EU law.

## **Costs**

This option is based around the current CAP rules and funding, and should not therefore create any additional costs. However, any changes made using the flexibilities available in the current legislation may require some adjustment to administrative and IT processes and systems which could create additional costs. The precise nature of those additional costs would depend on the extent of changes required. Doing nothing also creates a risk and potential costs of having to support legacy IT systems. This option is unlikely to lead to any savings.



Any changes to Scotland's funding allocation for CAP type support by the UK Government would affect the level of funding available to the Scottish Ministers. The UK Government has accepted most of the recommendations of the Intra-UK Funding Allocations Review<sup>13</sup>, agreeing to increased funding for Scotland up to 2022. Details of exactly how and when that additional funding will come to Scotland and decisions on how it will be used are still to be confirmed, these details are required to accurately assess the impact for this option.

As the information collection powers would remain unchanged, there will be no additional costs for either customers or the Scottish Government.

## **Risks**

This option means that we would be indefinitely tied to current CAP schemes and rules (except where retained EU law provides delegated powers for amendment), with no scope to make changes, including responding to any changes in funding from the UK Government.

The available delegated powers for amendment are limited, and pursuing this option would not allow us to fully implement the proposals set out in the Stability and Simplicity consultation, or address the concerns of stakeholders expressed through their responses to that consultation.

Without a Bill, it would not be possible to amend the retained CAP legislation to address changing government priorities or future policies, or to explicitly ensure that CAP schemes remain fully operable for as long as required.

This could potentially put Scottish farmers, crofters, land managers, etc. at a disadvantage compared to their counterparts in the rest of the UK, and Europe, if other administrations in the UK were to amend or replace retained EU law, or the EU were to change the existing CAP rules and regulations, in a way that benefits their farmers, etc. (for example, by reducing administrative burdens, creating more proportionate penalties, amending marketing standards, etc.).

The retained EU Law will not include a keeping pace power with EU regulations, which means that the current CAP rules will become fixed in time following the UK's exit from the EU (except to the extent that regulation making powers can be used). This would also apply in either a no deal or a deal scenario.

This option would also have a major impact on payments for the Less Favoured Area Support Scheme (LFASS) for 2019 and 2020. The existing CAP rules require that the current LFASS designation be changed to an Areas of Natural Constraint (ANC) designation, which would result in changes to the current designation and risk viability of constrained businesses that may no longer be eligible for support. The rules also mean that by not moving to ANC for 2019/20, LFASS payments have to be reduced to 80% for 2019 and 40% for 2020, which would have a significant impact on farmers and crofters in Scotland's poorer quality LFA land.

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<sup>13</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/829757/intra-allocation-uk-review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/829757/intra-allocation-uk-review.pdf)

There is uncertainty about the level of funding that will be available to Scotland beyond the next UK election. The UK Government have committed to provide the same level of funding for “farm support” up to the next UK election (May 2022 at the latest), and have now accepted most of the recommendations of the Intra-UK Funding Allocations Review, agreeing to increased funding for Scotland up to 2022, beyond that there are no guarantees. Details of exactly how and when that additional funding will come to Scotland and decisions on how it will be used are still to be confirmed, these details are required to accurately assess the impact for this option. At the time of writing, the UK Government have not confirmed how the commitment on “farm support” will be calculated and whether it includes all of the Pillar 1 and Pillar 2 funding that we currently receive from the EU.

The Scottish Government would continue to use the Agriculture Act 1947 for the powers to collect agricultural data. There is a risk that these powers may become ineffective for collecting the data as they become antiquated while agriculture continues to evolve.

### **Option 2 – Request powers in the UK Agriculture Bill**

This option would have seen the Scottish Ministers request a Schedule of powers, including data provisions, for Scotland in the UK Agriculture Bill that was before the UK Parliament. That Bill fell when the UK Parliament was prorogued on 8 October 2019 to facilitate a Queen’s Speech. Since then a General Election has been called and it will now be for the incoming Government to decide whether they bring forward an Agriculture Bill in the next session of Parliament.

### **Sectors and groups affected**

The sectors and groups primarily affected would be the agriculture sector, farmers, crofters, land managers, suppliers to the agriculture sector, the food processing industry, rural communities, etc., and government.

### **Background**

The UK Agriculture Bill was introduced into the House of Commons on 12 September 2018 and completed the Public Committee Stage before it fell when Parliament was prorogued on 8 October to facilitate a Queens Speech and a new session of Parliament. Since then a General Election has been called and it will now be for the incoming Government to decide whether they bring forward an Agriculture Bill in the next session of Parliament. The Bill proposed broad powers for the UK Government to amend, and ultimately phase out and replace, the existing CAP rules. This would be done initially through an agricultural transition period until around 2027, followed by a new long term policy based on environmental land management. This would be used to provide support for agriculture in England, with powers also being extended to Devolved Administrations, at their request, through Schedules in the Bill. Wales and Northern Ireland decided to take that option.

### **Benefits**

The main benefit of taking powers through the UK Agriculture Bill would be the reduced need for legislation in the Scottish Parliament, and the freeing up of

resources and Scottish Parliamentary time that would be needed for taking other Scottish legislation forward.

## **Costs**

As with the other options, any policy decisions that require changes to administrative and IT systems or replacing existing schemes with new ones, would create additional costs. The precise nature of those additional costs would depend on the policy decisions made and the extent of changes required. Any changes decided upon would require a further BRIA to be completed at that time to assess the potential impact on costs.

Any changes to Scotland's funding allocation for CAP type support by the UK Government would affect the level of funding available to the Scottish Ministers. The UK Government has accepted most of the recommendations of the Intra-UK Funding Allocations Review, agreeing to increased funding for Scotland up to 2022. Details of exactly how and when that additional funding will come to Scotland and decisions on how it will be used are still to be confirmed, these details are required to accurately assess the impact for this option.

It is not envisaged that taking information collection powers in the UK Bill would create any significant additional costs.

## **Risks**

The Scottish Ministers' policy choices and ability to exercise functions within devolved competence in relation to agriculture support in Scotland could be constrained by the way certain powers are set out in the UK Agriculture Bill.

Timing could become an issue if the Bill has not been completed in sufficient time to allow amendments to retained EU law from 2021 as outlined in the "Stability and Simplicity" consultation. If Scotland had chosen to take powers through the UK Bill, it could be left in a position of having to operate with the retained EU law until the UK Bill is completed, or until such time as further primary legislation could be introduced.

As with other options, there is uncertainty about the level of funding that will be available to Scotland beyond the next UK election and what is actually covered in the funding guarantees that have been made to date.

## **Option 3 - Scottish Bill for longer term replacement of CAP policy**

This option would see the Scottish Government introduce a Bill with policy provisions for the longer term replacement of the current CAP support. This would include information collection powers similar to those contained in the UK Bill as explained in option 4.

## **Sectors and groups affected**

The sectors and groups primarily affected would be the agriculture sector, farmers, crofters, land managers, suppliers to the agriculture sector, the food processing industry, rural communities, etc., and government.

## **Benefits**

The main benefit of adopting a wide ranging longer term Bill would be to give a clearer indication of future policy direction and to provide a long term legislative framework for future rural support.

This would also please some stakeholders who want the Scottish Government to set out its long term policy now.

## **Costs**

As with the other options, any policy decisions that require changes to administrative and IT systems or replacing existing schemes with new ones, would create additional costs. The precise nature of those additional costs would depend on the policy decisions made and the extent of changes required. Any changes decided upon would require a further BRIA to be completed to assess the potential impact on costs.

Any changes to Scotland's funding allocation for CAP type support by the UK Government would affect the level of funding available to the Scottish Ministers. The UK Government has accepted most of the recommendations of the Intra-UK Funding Allocations Review, agreeing to increased funding for Scotland up to 2022. Details of exactly how and when that additional funding will come to Scotland and decisions on how it will be used are still to be confirmed, these details are required to accurately assess the impact for this option.

It is not envisaged that these information collection provisions would create any significant additional costs.

## **Risks**

Leaving the EU with or without a deal, and without knowing what the future arrangements with the EU will be in terms of trading, tariffs etc., will have a significant impact on future policy decisions. Long term policy decisions will need to be tailored in such a way as to address whatever the final outcome of leaving the EU is, including the level of funding that will be available, and as this remains unknown and uncertain, taking long term policy decisions at this time is difficult and somewhat speculative.

In January 2019, the Scottish Parliament agreed to the setting up of a group to make recommendations on future long term policy. The Farming and Food Production Future Policy Group<sup>14</sup> was announced in June 2019. Legislating for a long term policy at this stage may pre-empt the Scottish Ministers decisions in relation to the recommendations of that group and delivering the best long term outcome for Scotland's agriculture sector.

As with other options, there is uncertainty about the level of funding that will be available to Scotland beyond the next UK election and what is actually covered in the funding guarantees that have been made to date.

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<sup>14</sup> <https://www.gov.scot/groups/farming-and-food-production-group/>

Making provision for a longer term legislative framework under these circumstances would require a Bill with very broad powers. This could open up the Bill to amendments on a wide range of issues, not necessarily connected to the original policy aims and direction of the Bill, with the potential to have a negative impact on rural businesses. It would also come under fire from stakeholders for being too vague, and not being specific enough on issues that are important to them.

In relation to marketing standards, awaiting a longer-term Bill risks that other parts of the UK will have implemented changes to marketing standards using the powers in the UK Agriculture Bill, which the Scottish Ministers are unable to follow. This in turn could lead to divergent standards across the UK and additional complexities for businesses and a lack of clarity for consumers.

#### **Option 4 - Agriculture (Retained EU Law and Data) (Scotland) Bill**

This option would see the Scottish Government introducing primary legislation in the Scottish Parliament. The objective of introducing such legislation would be to give the Scottish Ministers enabling powers to amend retained EU Law and deliver the proposals set out in Stability and Simplicity. It would also include powers to collect agricultural data.

#### **Sectors and groups affected**

The sectors and groups primarily affected would be the agriculture sector, farmers, crofters, land managers, suppliers to the agriculture sector, the food processing industry, rural communities, etc., and government.

#### **Benefits**

The main benefit of introducing the Agriculture (Retained EU Law and Data) (Scotland) Bill would be that Scotland is not tied indefinitely to the current CAP rules and schemes, as the Bill will provide the Scottish Ministers with the powers to modify retained EU law in relation to the CAP. This would enable the Scottish Ministers to take decisions in the best interests of Scotland, our agriculture sector, and the efficient use of public funds.

Those powers would enable them to bring forward secondary legislation to deliver changes to simplify and improve those support schemes for Scotland's farmers, crofters, land managers, etc., in line with the proposals set out in Stability and Simplicity.

This would also include the ability, during the transition period from 2021 to around 2024, to pilot future policy proposals and evaluate them for longer term rural policy.

A Simplification Taskforce has been established to consider some of the changes that were put forward during the consultation, such as to Land Parcel Identification System (LPIS) mapping requirements, farm inspections and the penalty regime. Once such policy changes have been decided upon, details of those individual changes and their potential impact will require a further BRIA to be completed.

This option would also present an opportunity to include measures to deal with the LFASS situation described earlier under the other options.

The information collection provisions would not directly apply to consumers, but rather to update the current legal mechanism by which agricultural information is collected. It will provide greater transparency and openness regarding what information can and cannot be collected and used for, ensuring that we respect the principles of the GDPR and the Data Protection Act 2018.

## **Costs**

This option is based around the current CAP rules and funding, and as the Bill is to provide regulation-making powers rather than change policy, it is not envisaged that it will have any significant impact on costs, or generate any savings.

The Stability and Simplicity proposals mean minimal change to the current CAP rules for 2019 and 2020, with changes to simplify and improve proposed from 2021. As with the other options, any policy decisions that require changes to administrative and IT systems or replacing existing schemes with new ones, would create additional costs. The precise nature of those additional costs would depend on the policy decisions made and the extent of changes required. Any changes decided upon would be made through secondary legislation and require a further BRIA to be completed at that time to assess the potential impact on costs.

It is not envisaged that these information collection provisions would create any significant additional costs.

Any changes to Scotland's funding allocation for CAP type support by the UK Government would affect the level of funding available to the Scottish Ministers. The UK Government has accepted most of the recommendations of the Intra-UK Funding Allocations Review, agreeing to increased funding for Scotland up to 2022. Details of exactly how and when that additional funding will come to Scotland and decisions on how it will be used are still to be confirmed, these details are required to accurately assess the impact for this option.

## **Risks**

As with other options, there is uncertainty about the level of funding that will be available to Scotland beyond the next UK election and what is actually covered in the funding guarantees that have been made to date. However, the powers taken in this Bill will allow the Scottish Ministers to react more effectively to any changes.

Some stakeholders may take the view that this option does not go far enough, and that Scotland should be bringing forward legislation that includes powers for a future long term policy.

## **Scottish Firms Impact Test**

This BRIA relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill, which itself will not make any policy changes to existing CAP schemes, therefore, no businesses have been interviewed at this stage.

The new data powers raised in this legislation would compel agriculture and agri-food supply chain businesses to provide information to the Scottish Ministers free of

charge. For the vast majority of businesses there will be no effect from this power as they currently provide data and information free of charge to the Scottish Government. In some discrete cases, the Scottish Government procures information on market data. The new power would compel those businesses to provide the data at zero cost, which could have an impact on their business income but will be a negligible amount compared to their main business. However, there are currently no anticipated changes to current business and financial arrangements.

As previously mentioned, once final policy decisions have been taken, they will be made by regulation through subsequent secondary legislation. At that time a further BRIA and impact assessments will be required, and, as part of that, businesses in the agriculture sector, including farmers, crofters, land managers, suppliers to the agriculture sector, the food processing industry, rural communities, etc., will be given an opportunity to comment on the impact of those policy decisions.

### **Competition Assessment**

The provisions on market intervention and marketing standards will support competition by avoiding discrepancies in the market, e.g. products being supported by public intervention or private storage aid in one part of the UK but not others, and by avoiding unwanted discrepancies in standards across the UK.

The Agriculture (Retained EU Law and Data) (Scotland) Bill will neither directly or indirectly limit the number or range of suppliers, limit the ability of suppliers to compete, nor reduce suppliers' incentives to compete vigorously, and so a competition assessment is not therefore required.

### **Consumer Assessment**

The Bill will not affect: the quality, availability or price of any goods or services; the essential services market; storage; or routes for consumers to seek advice or raise complaints. The information collection provisions included in the Bill will not directly apply to consumers, but it is possible there could be an incidental impact on consumer data, in that there is a possibility that information collected from other persons in the supply chain could, in some cases, identify consumers. The Bill will not create increased opportunities for unscrupulous suppliers to target consumers.

The powers in relation to marketing standards may potentially have an impact on consumers, but that would need to be assessed in relation to individual proposals for changes to standards and would be the subject of a further BRIA. The power specifically requires a public consultation prior to the making of any new regulations.

### **Test run of business forms**

This Bill does not make any policy changes, changes to the application process, or introduce any new forms, so no test run of business forms is required at this time.

The information collection powers in the Bill provides for Ministers to specify the form in which information is provided, this will be set out in any subsequent secondary legislation or guidance.

The policy intention in the Stability and Simplicity consultation is to make little change to current CAP policy until 2021, and then from 2021 only minor changes and simplifications. Any policy decisions which require changes to the application process including the current Single Application Forms (SAF) will be explained and tested with existing customers.

### **Digital Impact Test**

This Bill does not make any changes to the current application system, so no digital impact test is required at this stage.

Once policy decisions have been made, a further BRIA will be completed. It is envisaged that any changes to the current digital application system should be positive as the aim of the changes would be to simplify, improve and streamline the service both for customers and administrators. A facility to allow customers, experiencing technical or connectivity issues to complete forms digitally in area offices will continue, as will the facility to submit paper applications if customers so wish.

### **Legal Aid Impact Test**

An appeals process exists to allow persons to appeal on eligibility for existing CAP payments, etc.

The appeals process is designed to try and resolve issues without recourse to the legal system. Additionally, the Land Court takes a flexible approach, not always requiring an appellant to be represented by Legal Counsel.

Currently, a person appealing against a decision can claim Legal Aid to assist them to pursue that appeal

This Bill will not make changes to existing policy, which means the Bill should not impact on an individual claimant's access to legal aid.

The Bill provides regulation-making powers to amend retained EU law in relation to the CAP. Final policy decisions, once made, will be implemented through secondary legislation under this Bill and any changes will be subject to further impact assessments.

### **Enforcement, sanctions and monitoring**

The existing CAP is enforced through a robust regulatory framework set out in the Regulation of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy (EU) No 1306/2013 (The Horizontal Regulation), and in implementing regulations, (EU) Nos 639/2014, 640/2014, 641/2014 and 809/2014.

Following the UK's exit from the EU, this framework will be rolled over into retained EU Law through the EU Withdrawal Act 2018, subject to the correcting of deficiencies identified through the UK readiness programme and addressed by Statutory Instruments.



The Scottish Government's Rural Payments and Inspection Division (RPID) will monitor and enforce the policy in conjunction with delivery partners such as Scottish Environment Protection Agency and Animal Health and Veterinary Laboratories Agency through administrative checks and inspections, including the use of aerial photography, GPS equipment, livestock and record checks.

The sanctions for non-compliance will include a range of penalties laid down in the retained EU Law. These penalties can range from warning letters in the event of very minor breaches to 100% reductions and exclusion from schemes in the event of extremely serious or repeated breaches or over declarations.

The data provisions in this Bill include a regulation power for the Scottish Ministers to create enforcement and sanctions regimes in relation to the provision of information, and the provisions on marketing standards include provision on enforcement and sanctions (as currently exist in relation to the provisions in the CMO).

It is the intention that the regulation-making powers included in this Bill could be used, if so desired, to make future sanctions more proportionate and persuasive than current ones.

If for example a policy decision is made to change the inspection and penalty regime, these changes will be made through subsequent secondary legislation, and the impact of any such changes would be included in further impact assessments that would be required.

### **Implementation and delivery plan**

The Agriculture (Retained EU Law and Data) (Scotland) Bill is intended to complete its Parliamentary progress and receive Royal Assent by the summer/autumn of 2020, in order to enable amendments to retained EU law to be made from 1 January 2021. As outlined throughout this BRIA, any amendments to retained EU law, i.e. policy and/or delivery changes, will not be delivered through this Bill itself, but through subsequent secondary legislation and will be implemented in a manner consistent with the robust implementation principles laid down in the retained EU law, as may be amended, i.e. submission of application forms, inspections and where necessary penalties applied for non-compliance.

### **Post-implementation review**

A post implementation review will be carried out during the period up to around 2024 to establish whether the enabling powers included in the Bill are sufficient to deliver any simplifications, improvements and pilot projects that are decided upon.

## **Summary and recommendation**

### **Option 1 - Make non-legislative changes within retained EU law – Not Viable**

Pursuing this option would mean that Scotland would be indefinitely tied to current CAP schemes and rules (except where retained EU law provides delegated powers for amendment), with no scope to make changes.

This would not enable the Scottish Government to implement the proposals identified in the “Stability and Simplicity” consultation, and so would not deliver the simplifications and improvements that stakeholders would like to see.

Without a Bill, it would not be possible to amend the retained CAP legislation to address changing government priorities or future policies.

This option could potentially disadvantage Scotland’s agriculture sector particularly if the rest of the UK make changes to their schemes and rules.

Any benefit to farmers, crofters, etc., from maintaining familiar schemes would be heavily outweighed by the costs of not being able to adjust and amend the scheme over time to best fit the needs of Scotland and further risks tying the Scottish Government into funding a scheme long-term without any guarantees of where the funding will come from.

Recognising the negative impacts described above means this option is not considered a viable option.

### **Option 2 – Taking Powers through UK Agriculture Bill – Not Viable**

The UK Agriculture Bill posed potential constraints on the Scottish Ministers’ policy choices and ability to exercise functions within devolved competence in relation to agriculture support in Scotland.

The current UK political situation means the timing of any UK Agriculture Bill could seriously affect the ability of the Scottish Ministers to implement “Stability and Simplicity” proposals, from 2021 if this option were to be adopted.

As a result, this option is not considered a viable option to pursue.

### **Option 3 - Scottish Bill for longer term replacement of CAP policy – Not Viable**

With so much uncertainty over what the final Brexit position will be, or what the future arrangements with the EU might be, or what funding would be available after the next UK election, making any long term policy decisions at this stage would be speculative.

Given all this uncertainty, pursuing this option is not considered a viable option.

## **Option 4 - Agriculture (Retained EU Law and Data) (Scotland) Bill - Preferred Option**

This is the preferred option. A Scottish Bill would give the Scottish Ministers regulation-making powers to amend retained EU Law in order to simplify and improve support schemes for Scotland's farmers, crofters and land managers in line with the proposals set out in Stability and Simplicity.

This approach would respect the stakeholder views expressed during the consultation, and by creating the transition period outlined in the consultation provide a degree of stability during that period.

### **Summary costs and benefits**

The Agriculture (Retained EU Law and Data) (Scotland) Bill is an enabling Bill, it is not making policy changes in relation to existing schemes.

All of the options were considered on the basis of current CAP funding allocations and administrative costs as explained in the Financial Memorandum prepared for the Bill.

The precise nature of any benefits to be achieved or additional costs associated with any of the options would depend on the specific policy decisions to be taken for each option, which would require further impact assessments to be carried out.

| <b>Option</b> | <b>Total benefit per annum:<br/>- economic, environmental,<br/>social</b>  | <b>Total cost per annum:<br/>- economic, environmental, social<br/>- policy and administrative</b>  |
|---------------|--|---|
| <b>1</b>      | <p>This option is based around the current CAP rules and funding and would maintain the status quo.</p> <p>Information collection powers would remain unchanged. There will be no additional costs for either customers or government.</p> | <p>This option should not create any additional costs, however any changes made using the flexibilities available in the current legislation may require some adjustment to administrative and IT processes and systems which could create additional costs.</p> <p>Over time the lack of flexibility to change the CAP would be expected to lead to significant disadvantages to farmers and rural Scotland.</p> <p>As the information collection powers would remain unchanged, there will be no additional costs for either customers or government.</p> |
| <b>2</b>      | <p>This option is also based around the current CAP rules and funding, but would enable wide ranging policy decisions to change existing</p>   | <p>Future funding allocations would affect the level of funding available to the Scottish Ministers, and Scottish powers could be</p>   |

|          |   |  |
|----------|---|--|
|          | <p>schemes or replace them with completely new ones. The benefit from any changes would be identified once specific policy decisions have been taken.</p> <p>The information collection provisions included in this option make agricultural data collection more transparent and clearly linked to the principals of the GDPR.</p>   | <p>constrained in a UK Bill. This option has the potential to create additional costs if policy decisions are taken to change or replace existing schemes with new ones, requiring changes to administrative and IT systems.</p> <p>It is not envisaged that the information collection powers included the UK Bill will create any significant additional costs.</p>  |
| <b>3</b> | <p>This option is similar to Option 2, but with the legislation being delivered through the Scottish Parliament.</p> <p>As with Option 2, the benefit from any changes would be identified once specific policy decisions have been taken</p>   | <p>Future funding allocations would affect the level of funding available to the Scottish Ministers. Like Option 2, this option has the potential to create additional costs if policy decisions are taken to change or replace existing schemes with new ones, requiring changes to administrative and IT systems.</p>  |
| <b>4</b> | <p>This option is based around the current CAP rules and funding and is aimed at providing minimum change up to 2021, then simplifying and improving the current rules.</p> <p>The benefit from any simplification and improvement measures would be identified once specific policy decisions have been taken.</p> <p>The data provisions included in this option make agricultural data collection more transparent and clearly linked to the principals of the GDPR.</p> | <p>It is not envisaged that this option will have a significant impact on costs.</p> <p>Any policy decisions to simplify or improve existing schemes has the potential to create additional costs through changes to administrative and IT systems, however measures to simplify and improve the existing schemes also has the potential to generate some efficiencies.</p> <p>It is not envisaged that the information collection powers included this option will create any significant additional costs.</p> |

### **Declaration and publication**

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed:**

A handwritten signature in black ink that reads "Fergus Ewing". The signature is written in a cursive style with a large loop under the 'F' and another under the 'E'.

**Date: 21 Oct 2019**

**Minister's name: Fergus Ewing**

**Minister's title: Cabinet Secretary for the Rural Economy**

**Scottish Government Contact point: John Brownlee**



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Any enquiries regarding this publication should be sent to us at

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