



OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Economy and Connectivity Committee

Wednesday 20 November 2019

Session 5



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RURAL ECONOMY AND CONNECTIVITY COMMITTEE

32nd Meeting 2019, Session 5

CONVENER

*Edward Mountain (Highlands and Islands) (Con)

DEPUTY CONVENER

*Maureen Watt (Aberdeen South and North Kincardine) (SNP)

COMMITTEE MEMBERS

*Peter Chapman (North East Scotland) (Con)

*John Finnie (Highlands and Islands) (Green)

*Jamie Greene (West Scotland) (Con)

*Emma Harper (South Scotland) (SNP)

*Richard Lyle (Uddingston and Bellshill) (SNP)

*Angus MacDonald (Falkirk East) (SNP)

*Mike Rumbles (North East Scotland) (LD)

*Colin Smyth (South Scotland) (Lab)

*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Dr George Burgess (Scottish Government)

Andy Crawley (Scottish Government)

Vicky Dunlop (Scottish Government)

Dr John Kerr (Scottish Government)

Ally McAlpine (Scottish Government)

CLERK TO THE COMMITTEE

Steve Farrell

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament
Rural Economy and Connectivity
Committee

Wednesday 20 November 2019

[The Convener opened the meeting at 10:02]

Decision on Taking Business in
Private

The Convener (Edward Mountain): Good morning, everyone, and welcome to the Rural Economy and Connectivity Committee's 32nd meeting in 2019. I ask all people present to make sure that their mobile phones are on silent, please.

Agenda item 1 is a decision on taking business in private. The committee is asked to consider taking item 6 in private. This is to allow the committee to discuss a draft letter to the Scottish Government on the proposed national islands plan. Is that agreed?

Members *indicated agreement.*

Agriculture (Retained EU Law
and Data) (Scotland) Bill: Stage 1

10:02

The Convener: Agenda item 2 is consideration of the Agriculture (Retained EU Law and Data) (Scotland) Bill. Before we go any further, I ask any members present whether they would like to declare an interest. I declare an interest in that I am a member of a farming partnership.

Peter Chapman (North East Scotland) (Con): I declare an interest as a member of a farming partnership, too.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I am the joint owner of a very small registered agricultural holding, from which I derive no income.

The Convener: This is our first evidence session on the bill. We will take evidence from the Scottish Government bill team, who will provide information on the background to the bill and its objectives. I welcome Dr John Kerr, the head of the agricultural policy division; Dr George Burgess, deputy director of food and drink; Ally McAlpine, senior statistician; Vicky Dunlop, who is the bill team leader; and Andy Crawley, who is a lawyer for the Scottish Government. Vicky Dunlop will give a very brief introduction to the bill, of no more than three minutes, before we go to questions.

Vicky Dunlop (Scottish Government): Thank you, convener. Good morning, committee. I thought it would be quite helpful to give the committee a little bit of background as to how the bill came about and why we need it.

Essentially, we need the bill because when—or indeed if—the United Kingdom leaves the European Union, the existing common agricultural policy rules will continue to apply across the whole of the UK, including Scotland, as retained EU law via the European Union (Withdrawal) Act 2018. Without the primary legislation, Scottish ministers would not be able to make changes to retained EU law. In their report from May last year, the agriculture champions recommended a transition period of three to five years after the UK leaves the EU.

That informed our approach to the “Stability and Simplicity: proposals for a rural funding transition period” consultation that ran last summer, in which a period of stability, with little or no change to existing CAP rules, was proposed for 2019 and 2020, followed by a period of simplicity during which the overarching structure of the CAP would be maintained but with improvements made where possible.

An analysis of the responses to the consultation was published on the Scottish Government's consultation hub in November 2018. The outcomes of that analysis are being taken forward by the simplification task force, which we expect to report very soon, and the 2021 to 2024 policy and delivery co-ordination group.

All that has helped shape the development of the bill. However, the timing has been driven by the prospect of leaving the EU, and specifically the scope of the CAP from 2021. In addition, following the recent developments in the laws around data protection—namely the Data Protection Act 2018 and the general data protection regulation—we decided to take the opportunity to update the legal mechanism by which the Scottish Government collects agricultural data. The current mechanism relies on powers under the Agriculture Act 1947 and is in need of updating.

There was an opportunity for a schedule to the UK Agriculture Bill to grant the Scottish ministers the necessary powers to do much of what is set out in this bill. However, as is set out in the legislative consent memorandum that was submitted to this committee at the end of last year, the UK and Scottish Governments disagreed about the reserved or devolved nature of three areas of the UK bill.

As the committee will be aware, the UK Agriculture Bill fell when the UK Parliament was prorogued in October this year. It was expected to be reintroduced following the Queen's speech, but the early general election has overtaken those events. It will now be up to the incoming Government to decide whether to introduce an agriculture bill and what it may include.

As a result, the Scottish Government decided that the best option was to bring forward a bill to the Scottish Parliament, and that bill is the Agriculture (Retained EU Law and Data) (Scotland) Bill, which we are discussing today.

The Convener: I will ask the first question—I am not sure who will answer it. On 31 October 2018, the Cabinet Secretary for the Rural Economy was in front of the committee and was quizzed by Maureen Watt MSP regarding the Scottish Government's ability to make payments. I will quote part of that evidence session and ask you to clarify why we need the bill. Maureen Watt said:

"The cabinet secretary will be aware that NFU Scotland is concerned that there may not be a legal vehicle for delivering payments beyond 29 March 2019"—

that was to be the exit date—

"For the record, can you give me your thinking on that?"

Fergus Ewing was very clear. He said:

"we are absolutely satisfied that there is no problem with continuing to make all payments that are properly due to farmers and crofters."

He went on to say:

"I am absolutely satisfied of that for very good legal reasons, as I have indicated. We will provide the committee with the legal advice in copperplate and detail."—[*Official Report, Rural Economy and Connectivity Committee*; 31 October 2018; c 20-1.]

We never got the copperplate and detail, but at that stage the cabinet secretary was clear that there was no need for a bill. What has changed? Who would like to go with that question?

Dr John Kerr (Scottish Government): When we leave the European Union, the retained EU law will apply and that will allow us to continue to make payments. However, as this committee in particular will know well, we have had to do an exercise to ensure that the retained EU law functions properly. That is the deficiency-fixing exercise and colleagues in this room will have done a lot of work to allow us to progress the UK statutory instruments to make the necessary fixes. That process should have come to a conclusion when we left the European Union, but a number of dates have come and gone and we still have not left the European Union. There are one or two issues that colleagues in the four Administrations are working on together to ensure that we are in a legal position to pay.

That is why Mr Ewing gave the assurance that he did at the time, which was true and remains correct, because this bill does not perform that function. That function is a process of making sure that the retained EU law works. What this bill does, as Vicky Dunlop sought to clarify, is enable us to make amendments to the EU law in order that we can bring in any changes that the industry is looking for through the "Stability and Simplicity" consultation and to make any necessary changes once we have left the European Union.

The Convener: Today's evidence session will be interesting, because the bill makes some fundamental changes and gives the Scottish Government a lot more powers to vary payments, maybe in preparation for changes that have not been agreed yet. I will have to put the question to the cabinet secretary as well, and ask him why things have changed so much.

Stewart Stevenson: I want to pick up on what Vicky Dunlop said about the three areas of disagreement between the two Governments, and to get on the record that the Presiding Officer has confirmed that the bill is within the legal competence of the Parliament.

Vicky Dunlop: I completely agree. The bill does not touch on those three areas of dispute.

Stewart Stevenson: That is the answer. Thank you.

Mike Rumbles (North East Scotland) (LD): I read the policy memorandum that accompanies the bill, paragraph 64 of which states:

“during a debate on 10 January 2019, the Scottish Parliament agreed to the appointment of a group to make recommendations on future long term policy, and this ‘Farming and Food Production Future Policy Group’ was announced at the Royal Highland Show in June 2019. However, legislating for a long term rural policy in this Bill may pre-empt the Scottish Ministers’ decisions in relation to the recommendations of that group, and so negatively impact”.

I could not agree more. That is a very good synopsis of why there is no policy in the bill and some have called it a technical bill. When I looked at the bill, however, I saw that section 3, which is called “Power to provide for the operation of CAP legislation beyond 2020”, says:

“The Scottish Ministers may by regulations modify the main CAP legislation for the purpose of securing that the provisions of the legislation continue to operate in relation to Scotland for one or more years beyond 2020.”

Since I was first elected 20 years ago, I have been wary of giving ministers powers through regulations. That is necessary on occasion, but I am wary of it. Our job is to interrogate the bill. If section 3 is passed unamended, it will give ministers of whatever colour and from whatever Government we have in the future an immense power by regulations to introduce a new system of agricultural support, such as the one that the group is going to recommend to the current cabinet secretary. Section 3 does not do only what is mentioned in the policy memorandum. It would give massive power to future cabinet secretaries. Why is it phrased in that way?

Vicky Dunlop: As you correctly pointed out and acknowledged, the bill does not set out the long-term future. That will be done by the farming and food production future policy group. The bill will enable Scottish ministers to implement the proposals in the “Stability and Simplicity” consultation. Although I acknowledge and accept what you have said, the power is for the short to medium term to enable the recommendations made by the agriculture champions.

Mike Rumbles: Why does the bill not say that? It gives much more power than just that.

Vicky Dunlop: It is driven by where we are at. Andy Crawley might want to comment.

Andy Crawley (Scottish Government): I am happy to comment on the scope of the power, given that that is the subject of the concern that has been raised. My view is that the power is not as extensive as you think. It is restricted to modifying the existing CAP legislation—the CAP

law that will become retained EU law if and when we leave the EU. It is not a power to completely rewrite the common agricultural policy, nor is it even close to that. It is restricted to modifying the existing legislation, so that is a substantial restriction on the scope of the power straight away.

10:15

More broadly, part of the purpose of the power—we might call it technical, but in a big way—relates to the fact that the CAP scheme, as I am sure members of the committee are aware, runs in phases and the current scheme is for 2014 to 2020. There are some restrictions in the CAP legislation that would cause difficulty once we get to the end of next year if the intention is to continue to operate the CAP, which is the purpose of the bill. The power is intended to be used to deal with those restrictions. If, for example, financial limits need to be modified or replaced in order to ensure that the CAP could continue to function, the power will allow ministers to do that.

I draw the committee’s attention to section 3(2), which is about that. The national ceilings are currently set under EU law. If we are out of the EU, which is the only situation in which the power would be available, our ministers will need to be able to deal with those issues.

Mike Rumbles: I hear and understand what you say but, as I said, our job is to interrogate the wording of the bill. It is absolutely clear that

“The Scottish Ministers may by regulations modify”—

I agree that it says “modify”—

“the main CAP legislation”,

but if we are out of the EU, there is no CAP. It is about what the CAP covers. The bill says that ministers may

“modify the main CAP legislation for the purpose of securing that the provisions of the legislation continue to operate in relation to Scotland for one or more years beyond 2020.”

The current minister has said that his intention is to have a new system by 2024. I would have no problem if the bill said “one or more years up to 2024”, because that would mean that the Government—of whichever colour—that we had by that year would have to come back to Parliament with primary legislation that we could interrogate.

This is a really important issue, because we are looking at the entire public policy for agricultural support throughout Scotland. Despite what Andy Crawley has just said, the bill gives ministers the power to modify that without coming back to primary legislation, does it not? Will you answer that question?

Andy Crawley: I do not agree with the way that you have characterised the issue, so I do not think that I agree that the power could be used in that way. On the wider issues of CAP policy over the longer term, it is not really for me to say. I would defer to colleagues from Government on that.

Mike Rumbles: Okay. I think that this is really important. On anything that we consider, different and often conflicting legal advice will come forward. As I understand it, we have a difference of opinion on the matter. Would it not be more circumspect—let me put it in that way—to remove the doubt with a Government amendment at stage 2 and put the policy intention, which is a good one, beyond doubt in the bill? I am sure that the cabinet secretary will be listening to this. Would it not be better to put the matter beyond any possible dispute?

Dr Kerr: Before I answer that, I would like to make a small correction to Mike Rumbles's comment a moment ago that, once we leave the European Union, there will be no CAP. That is not the case, because we will retain the EU law and confer the powers of the CAP into UK legislation. There will continue to be a CAP, and the bill's purpose is to allow us to operate that until such time as we bring in new primary legislation.

Mike Rumbles: I understand that.

Dr Kerr: That brings me to your point about when that will be. When we set out on this journey, we anticipated that we would be leaving the European Union in March. We then anticipated that we would be leaving at the end of October, but we have still not left the European Union. It is very difficult for officials and legal colleagues to come up with a robust point at which we can safely say that we will not need the powers in the bill, and particularly the provisions that you mentioned. We have not taken the step that you suggest and included an end date because we do not yet know when we will be in a position to have our new primary legislation in place.

Mike Rumbles: I will make a final comment. In my experience over 20 years of many Governments and civil service advice, the job of the civil service is to say to Government, "We need these powers because you might need them in the future." The point that I am trying to make is that our job as MSPs is to make sure that the legislation that comes through is fit for purpose from our perspective.

The Convener: I guess that, when the cabinet secretary comes in, you will push him hard on that point.

Stewart Stevenson has a supplementary question.

Stewart Stevenson: I have ended up with a tiny question. I note that, in section 1, which defines terms, the definition of "main CAP legislation" refers to specific domestic legislation and includes a list of six points, so it is clear that it is not the European stuff that we are referring to.

My question relates to some of the things that Mr Rumbles said, which he has said before. The powers of ministers are all subject to Parliament. Section 3(4) says that the affirmative procedure applies. Will you confirm on the record that ministers may make no changes without the Parliament's explicit consent? Mr Crawley is nodding to say that I am correct.

Andy Crawley: That is right.

Stewart Stevenson: Thank you, convener.

The Convener: I will park that as a comment. John Finnie expressed an interest in that as a line of questioning, so we might go back to it.

Will you clarify something? The "Stability and Simplicity" consultation has been completed, but we have not seen the results, so it is difficult to see how the bill reflects the changes that were recommended. Will the committee see that shortly?

Dr Kerr: The results of the consultation were published. We did an analysis of the results. What we have not yet brought forward is the considerations of the simplification task force. There are a couple of reasons for that. Much of what the task force discussed fell into the scope of things that we will be able to do only when we have the necessary powers to make changes. The cabinet secretary has previously spoken at the committee about inspections and penalties. In order to change those things, we have to think about the powers that we need to do that. That would fall within the scope of the bill. Quite a lot of the internal discussion has been about what we can usefully say from the simplification task force now and what we should defer until we have come forward with proposals for 2021 to 2024.

The Convener: I am not sure that that fully answers the question, but I am not sure that you are going to do that. The next question is from Richard Lyle.

Richard Lyle (Uddingston and Bellshill) (SNP): As there are no details of any agreement between the Scottish and UK ministers on a unified policy approach to agricultural support, it is not yet clear to what extent there will be a common system for agricultural support across either Great Britain or the United Kingdom. In some ways, we will have to devise a new system, call it what you like—CAP, no CAP or whatever CAP. Are the powers that are given to the Scottish Government via this bill intended to enable

simplifications or improvements to existing CAP schemes for a transitional period of approximately five years? With that in mind, are the provisions in this bill time limited?

Dr Kerr: As we discussed a moment ago in response to Mr Rumbles's questions, the proposal is not to time limit the powers in the bill. We do not know how long we will need them for, because we do not know when we might bring in future primary legislation.

Richard Lyle: Is that because we do not know how long we will still be in the EU?

Dr Kerr: That is one of the factors at play.

Richard Lyle: We do not know, and that is the problem. You guys are grasping in the dark and people like us are criticising you for it, but what can you do? Will the policy measures to be introduced via secondary legislation be specifically time limited to the end of that transition period, if you do not know what the transition period is?

Dr Kerr: That depends on what we take powers to do. There is a range of different things that we might want to do. Indeed, we might choose to do very little; that would be in line with stability, and any simplification should limit the discussion to something that is quite small in nature. However, the specific issues will determine whether or not it is appropriate to time limit those powers, and we will have to take that on as we bring forward each piece of secondary legislation.

Richard Lyle: I have a small finishing question. Do you sometimes wonder whether you are planning for something but you do not know what you are planning for—yes or no?

Dr Kerr: Yes.

Richard Lyle: Thank you.

Jamie Greene (West Scotland) (Con): I have more of a technical legal question. Is all this predicated on the fallback position of the European Union (Withdrawal) Act 2018 that, post-exit, EU retained law will have an effect in Scotland, or does the bill relate directly to the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill, which was passed in this Parliament and subsequently challenged, should it re-emerge? If the two Governments diverged with regard to the continuation of CAP, either during transition or post-transition, it is still unclear which of those two pieces of legislation this bill would be affected by, if at all. That is possibly directed towards a lawyer.

Andy Crawley: The drafting approach in this bill is based on the European Union (Withdrawal) Act 2018, because that is the piece of UK-wide legislation that provides for retained EU law. As you correctly say, the first continuity bill was

intended to do something similar. I do not have any information on what colleagues might do about that bill and that issue but, as far as this bill is concerned, nothing needs to be done in that respect. This will stand by itself working with retained EU law.

Jamie Greene: Irrespective of whether the continuity bill re-emerges.

Andy Crawley: Yes.

Peter Chapman: The agriculture industry out there desperately needs to see what future support will look like. We know that this bill will not give us the answers to that, but the policy memorandum says that it will

“enable pilot projects to be run in order to test out new policy approaches, so as to inform the development of longer term future rural policy.”

Could you indicate what the focus and purpose of those pilot projects might be, to give us an idea of the Government's thinking about future support?

The Convener: I am pretty sure that that is for you, John, although I may have that wrong.

Dr Kerr: We are not yet at a stage to categorically say what the pilots will be, because we are still in the development stage. On Friday, we will be discussing issues with the farming and food production group that has been mentioned. That work is very much on-going and actively so. Some of the issues that were discussed by the simplification task force are being handed on specifically with what we might usefully pilot in mind. It might be helpful to remind the committee of the operating principles that were set out in the debate in January: sustainability, profitability, simplicity, innovation, inclusion and productivity. Those are the sorts of things that we are pushing towards. In the intervening time, we have also announced a climate emergency, so it is also foreseeable that the cabinet secretary will wish to address some of the pressing issues that the Government has before it in addition to those that were set out in the debate in January. That is the framework that we are working within and we are hoping to bring forward useful pilots that will help us to determine future policy. The other constraint is that it has to be deliverable within the timeframe that is allowed.

Peter Chapman: When are we likely to have some idea of what the pilots will look like? Is there a timescale to have some pilots at least up for discussion or being trialled?

Dr Kerr: We anticipate being able to say more in the coming months. In particular, the farming and food production group is proposing to report its recommendations in the summer. We should have something by then and we may have some

simpler things from the simplification task force sooner than that, hopefully.

10:30

Peter Chapman: The proposal is that the pilots would be funded by a cap on individual farmers' payments—an upper limit is one of the proposals. Is there any further information that you can share on that plan to cap payments?

Dr Kerr: We set out in the “Stability and Simplicity” consultation what sum of money a proposed cap at certain levels would yield, but we have not got the discussion on the responses to a stage where we are able to share our thinking with you. We have not put decisions to ministers on that, so we are not there yet, but I can say that there was a mixed set of responses to the consultation, with a cap being favoured by a good number of responses and a cap at £75,000 to over £100,000 being the sort of level that people thought was acceptable. We have some useful information on which to build our decisions.

Peter Chapman: I have another question about powers. It is similar to what Mike Rumbles was speaking about. In theory, the proposed conferral of powers on the Scottish ministers allows the Scottish Government to implement a new system of agricultural support to replace the EU CAP schemes after the end of the transition period through secondary legislation and without the need for further primary legislation. We know that secondary legislation allows much less scrutiny by the Parliament of what is going on. Do you think that that is a sensible way to go forward?

Dr Kerr: The CAP schemes are set out and become part of retained EU law in the UK, and what we are proposing here is to amend those regulations where those amendments may create a simplification or an improvement. I think that using secondary legislation to do that is the correct vehicle for a whole set of reasons, not least of which is the timeliness and the efficacy of doing it in that way in order to get the support to farmers quickly. I think that it is an appropriate way to do it.

Peter Chapman: It means that there is less chance for scrutiny of this going forward. Do you accept that?

Dr Kerr: I think, though, that it is commensurate with the level of changes that we would bring forward.

Richard Lyle: The question that everybody always wants to ask is this: how much money do we get from the EU for this, either through the UK or whatever, and how will it be funded in the future? Will it be funded by the UK or by Scotland?

Dr Kerr: The answer to that is that we are continuing to press the UK Government to meet

the commitments that were previously met by the European Union.

Richard Lyle: How much money is paid—how many millions?

Dr Kerr: It is £500 million a year or so.

Richard Lyle: Right, so who will pay that £500 million after we leave the EU? It is a simple question.

The Convener: I am sure that John Kerr would like to answer that, but it may be more appropriate to let the cabinet secretary answer it when he comes in. I think that it is more of a political question than one for the bill team. I will park John's excitement at the opportunity to answer that and go to Stewart Stevenson.

Stewart Stevenson: My question may be for Mr Crawley. On the subject of scrutiny of legislation, be it primary, affirmative or negative, is it correct that it is entirely up to Parliament what the scrutiny process for any form of legislation is and that the difference between the types is related not to scrutiny but to the powers to amend?

Andy Crawley: I think yes. It is certainly up to Parliament to decide what level of scrutiny is appropriate.

The Convener: I have a general question. As farmers get pillar 1 and pillar 2 payments through the current CAP system, my understanding of the legislation is that it would allow the cabinet secretary to shift everything from a pillar 1 payment to a pillar 2 payment without further consultation with the Parliament. Have I got that completely wrong, or is that what the legislation suggests?

Dr Kerr: One of the reasons why we need to take these powers is to allow us to make changes such as the one that you are envisaging, although we have no plans to do something as radical as that. I do not think that that would count as a simplification or an improvement. Some people might see it as an improvement, but I think that that would be contestable. That is not what is proposed and it certainly would not be our intention to do that without bringing forward the powers.

The Convener: I was not asking whether it is proposed or intended; I was asking whether the legislation gives you the ability to do that should the cabinet secretary so wish.

Stewart Stevenson: And Parliament agreed.

Richard Lyle: That is a political question.

The Convener: No, it is a factual question, Mr Lyle. My understanding of the legislation is that, under the current system, payments can be shifted from pillar 1 to pillar 2 without further consultation.

Dr Kerr: That would require parliamentary scrutiny.

The Convener: Where does it say that?

Dr Kerr: With some of the processes that we are currently replacing by bringing the legislation into domestic law, some of the functions of the Commission are also being replaced. In order to make pillar-to-pillar transfers, we have to notify the Commission of our intention to do so, and there are limits, which are set out. We would have to follow the required process within the European framework that will have been retained. I would look to Andy Crawley to tell me exactly where that was in the legislation, because there is quite a lot of legislation and I am not familiar with the precise articles.

The Convener: Maybe we can park that and you can give me a specific lesson afterwards, so that I understand it—because I do not see it at the moment—rather than taking up any more time.

Dr Kerr: I am happy to do that.

Jamie Greene: I have listened to the first part of the session and I am still a bit confused as to what this bill does and does not do, which I do not think is a great place for the committee to be in at the moment. I am hoping that, by the end of this session and future sessions, we will have more clarity. It is still unclear. The Scottish Parliament information centre briefing, which I am very grateful for, says:

“the Bill grants powers for Scottish Ministers to, by regulation:

- Make changes to ... any part of the CAP legislation.
- Make changes to the operation and financial provisions of CAP ...
- Revoke or modify legislation on public intervention.”

That sounds like quite a lot, so I am still at a bit of a loss as to whether this is simply a bill that enables Scottish ministers to continue to pay CAP support under the current system, to continue to pay CAP support under a new system and modify the current system, or to devise an entirely new subsidy system as a result of any policy decisions that it makes. Can someone enlighten me as to where we will end up if this bill passes?

The Convener: Who would like to lead on that? It looks like John Kerr is champing at the bit.

Dr Kerr: Yes, everyone is looking at me. The purpose of the bill is to make improvements or simplifications to the retained EU law, which we will then have. The CAP legislation is quite big and it does quite a lot of things. It does things with direct payments under pillar 1—there are a number of schemes within that area of the common agricultural policy—and it does quite a lot under pillar 2, from agri-environment schemes all

the way to LEADER projects, which benefit rural communities. It is doing quite a lot of things already.

The scope of the powers in the bill would allow us to make improvements or simplifications to all those schemes. In one sense, that is quite a broad range of things that we can do, but we can only change them to the extent that they are an improvement or a simplification. It does not go as far as your latter point, which would be a wholesale change. We are not proposing to get rid of pillar 1 payments or get rid of pillar 2, and we could not do so, because that would be a wholesale change. What we are proposing is to allow us to make the necessary changes to the retained EU law to continue to function.

Jamie Greene: I return to the premise of my original question. If the bill is to allow something that currently exists to continue, I understand and accept that there is a technical need for Scottish ministers to have that power. However, if Scottish ministers want to do something different from what is currently happening and the bill enables them to do that, it does not specify the limitations of what those changes may be. The cabinet secretary told the committee that the bill is “a technical bill” that is designed to give ministers powers to amend EU law in relation to the CAP but that it is not intended to make changes to existing policy. You have just said that the bill could enable quite substantial changes to policy. Can you give me an idea of some of the changes that the Scottish Government may want to make under the bill?

Dr Kerr: European Union member states already have discretion to decide which schemes they do and do not use within the different funding mechanisms. For example, in Scotland, we use voluntary coupled support under pillar 1, whereas other parts of the UK do not. It is already in our gift, within the European framework, to choose whether to do that and the extent to which we provide funding through that mechanism. Those are the types of things that the bill gives us the powers to amend as we would if we were a European Union member state or a territory therein. A wholesale change is not what is envisaged.

Jamie Greene: It is not what is envisaged, but it is possible—that is my point.

Dr Kerr: No, it is not possible, because that would go beyond the powers of the bill, which are about making improvements or simplifications.

Jamie Greene: I think that other members will have questions on that subject. Again, those are quite vague terms that could be interpreted in different ways.

I have another question. Why has the Scottish Government chosen to go down the road of

introducing the bill? What was wrong with the UK Agriculture Bill? What deficiencies did you feel were not addressed by that bill, which meant that Scotland-specific legislation needed to be passed by this Parliament? I am keen to dig deeper into that.

Dr George Burgess (Scottish Government): I will take that question.

The Convener: I feel that it is more a question for Mr Ewing to answer. However, if you want to start and let him fill in the gaps when we see him, that is perfect.

Dr Burgess: As Vicky Dunlop's opening statement set out, although our colleagues in the Department for Environment, Food and Rural Affairs sincerely offered an opportunity for the Scottish Government to participate in the drafting of the UK Agriculture Bill, our view is that the appropriate place for legislation on devolved matters is here, in the Scottish Parliament. Nothing in the bill that is before us today requires Westminster intervention in any way; therefore, the prime place for that legislation should be here. We are now slightly ahead of the UK Government, as the UK Agriculture Bill has fallen and, at this stage, we do not know when it will be reintroduced.

Jamie Greene: It is in no way the case that the bill reflects the fact that there is political disagreement between the two Governments on a number of issues and that your way of dealing with that disagreement is to legislate.

Dr Burgess: As Vicky Dunlop has set out, our bill focuses on a different set of issues from those that were identified earlier around a disagreement between the UK Government and the Scottish Government on the World Trade Organization provisions on producer organisations and fair dealing in supply chains. None of those provisions is in our bill. We sought, unsuccessfully, to improve the provisions in the Westminster bill. However, should that bill re-emerge, as we expect that it will, we will look to make its provisions more suited to Scotland.

The Convener: I think that you have pushed that as far as you can, Jamie. Emma Harper has some questions that she wants to ask.

Emma Harper (South Scotland) (SNP): I will pick up on supply chain issues—for instance, the issues around dairy producer organisations, fruit and veg supply chains and how we protect the producers over the big guys in the business when we support milk contracts.

Section 6 allows producer organisations and associations of the producer organisations to be recognised under a given set of conditions, and organisations that are recognised in that way may

be exempt from some provisions in the Competition Act 1998. I am seeking information about the extent to which the bill will cover areas that might be disputed between the Scottish Government and the UK Government. How can we support our producer organisations and make the supply chain more stable?

10:45

The Convener: I think that is a question for George Burgess.

Dr Burgess: The provisions in section 6 relate simply to the fruit and vegetable producer organisation aid scheme, not to the fundamental issue of the recognition or otherwise of producer organisations. The United Kingdom Government has asserted that that area is reserved, but, as is set out in the legislative consent memorandum for the Agriculture Bill, we do not agree with that position. Indeed, over the past 20 years, it has been understood that, in practice, the recognition of those organisations is devolved. There has been a slightly surprising change of stance by the UK Government.

The UK Government's proposed new legislation on the recognition of producer organisations will be in the UK bill, and the provision in section 6 is simply about the aid scheme. The UK Government does not dispute that the granting of aid to producer organisations is a devolved matter; its assertion about reserved status is more about the exemption from competition law that producer organisation status grants. There is a distinction between the two things, and I have received no indication that the UK Government has any difficulty with the provision that is in our bill.

Emma Harper: Will the bill help to promote dairy producers? We have seen the volatility in the milk market. The South Scotland region has 48 per cent of Scotland's dairies, and there is such a difficulty. We are finding that a lot of dairy farmers do not even have contracts that will help to support them. Will the bill help to support some of the producers and make their lives a bit more stable?

Dr Burgess: This bill will not, because, in the UK Government's view, this bill cannot. The UK Government has taken the view that producer organisation recognition and the provisions on fair dealing in supply chains, which were in the consultation that we carried out with the UK Government on dairy supply chains and mandatory contracts, can be addressed only in UK legislation, not through anything in our bill.

The Convener: Do you believe that this bill allows the development of common frameworks across the United Kingdom and that it works hand

in glove with all of the United Kingdom, or is it pushing purely towards Scotland?

Dr Burgess: The bill itself does not enable frameworks to be created, nor does it get in the way of frameworks; rather, the frameworks are a concept that has been developed under the auspices of the joint ministerial committee between the Administrations. In the early half of 2018, quite a bit of work on the frameworks was done between the UK Government, us and Welsh and Northern Irish colleagues.

That work has taken a little bit of a back seat lately because the concentration has been on fixing the deficiencies in the European Union (Withdrawal) Act 2018 and on no-deal preparations. However, we are meeting our colleagues next week, and we will reassess the position, looking at frameworks and all the work that needs to be done on them. In the meantime, some work has been done on what are called working level arrangements—in essence, the practical arrangements between the Administrations—focusing on a no-deal scenario and how, in practice, we can make sure that the work between the Administrations goes on.

You could see the marketing standards provisions as an example of how we are ensuring that there can be a UK-wide framework. The provisions on marketing standards for England, Wales and Northern Ireland that are in the UK Agriculture Bill and the provisions that we have in our bill would allow Scotland, if it so desired, to keep in step and ensure that we had a UK-wide set of arrangements.

Stewart Stevenson: I was going to ask this question later, but the issue of marketing standards has come up and it is a wee technical question. Section 8(2)(d) covers labelling and section 8(2)(j) covers the place of farming or origin. Does the bill allow us to insist that the place of origin be stated on food labels?

Dr Burgess: Yes. Section 8(2) provides quite a long list of provisions, all of which come directly from the existing European legislation. Although they are framed as new powers, they are really no broader than the existing EU powers. In some areas of marketing standards, there is a requirement for country-of-origin labelling; in some areas, there is less of a requirement. What section 8(2) gives is a general power that is identical to the one that the European Union already has.

Stewart Stevenson: I do not want to go any further on that point. It was just a technical question.

We have covered a lot of ground on simplifications and improvements. I have one tiny question left, which I think we can deal with briefly. It would be helpful to the committee if we could

have an early indication of any simplifications or improvements that are currently being contemplated at official level. When we have the minister before us, we might ask him about that as well.

Dr Kerr: We have noted your enthusiasm to get stuck in. We are keen that you can do so, so we will take that request away and bring something back as soon as we can.

Stewart Stevenson: In the light of the previous discussion, I expected that that might be the answer.

The less favoured area support scheme is very important and distinctly different in Scotland, as 85 per cent of our farming ground is less favoured. Is the intention to continue the current scheme for the duration of the transition period, or is it envisaged that changes may be made to LFASS? If so, when and of what character?

Dr Kerr: Mr Ewing has already said—I think that he said it at last week's committee meeting—that we intend to bring forward proposals to change LFASS. It is quite an old scheme—in some ways, it is quite outdated—and we intend to start the process of bringing forward a replacement for it. In fact, that work has already started and we are already engaging informally with some stakeholders on the matter, as Mr Ewing indicated previously. The intention is to do that as quickly as we can.

Stewart Stevenson: As an official, are you being directed towards development of new policy or merely towards improving the implementation of the existing policy?

Dr Kerr: The main thrust of our approach on LFASS hitherto has been to use the European Union's areas of natural constraint approach, and that is the process under which we are still working, given that we do not yet know whether we will be in or out of Europe. That is the basis on which the new scheme is being looked at. In that sense, it is a new policy because the scheme has different rules and a different basis.

John Finnie (Highlands and Islands) (Green): I thank the panel for their input today. You have substantially covered the area, but I want to raise one small point relating to section 2 and the fact that wide-ranging powers will be conferred through secondary legislation. That issue has been well covered, but how will the views of the public and stakeholders be taken on board in producing any secondary legislation, accepting that it is for Parliament to determine how the bill is progressed?

Dr Kerr: For any new proposals such as the one on LFASS, which we have just discussed, we would normally go through a process of

engagement with stakeholders, and the level of engagement would be commensurate with the size of the change that we were proposing. We engage specifically with interested parties through regular meetings with key stakeholders at official level, which we have at least quarterly. Any proposals that we bring forward are consulted on in that way.

Jamie Greene: Can I clarify something? Under section 2, changes to CAP legislation will be made through regulations that are subject to the negative procedure. Can you explain why that is the case? Why will the affirmative procedure not be used? Given the importance of the future of the CAP, why will those regulations not be in a separate piece of legislation that the committee, for example, can consult fully and take proper evidence on and that people will have the ability to amend?

Dr Kerr: We have indicated that they should be subject to the negative procedure because we envisage that they will involve simplifications and improvements that are not major in nature. It is a matter for consideration, but that is our recommendation, given the magnitude of the change that is involved.

Jamie Greene: If I was a Scottish minister and I wanted to make sweeping changes to the CAP in the future, how would I go about doing that? Would I use this piece of legislation or would I need to introduce a new bill to Parliament?

Dr Kerr: As we have stated, the purpose of the bill is only to make simplifications and improvements. If we wanted to make broader changes, new primary legislation would be envisaged, and that is what we have stated that we intend to produce.

Mike Rumbles: Section 2(1) states:

“The Scottish Ministers may by regulations modify the main CAP legislation.”

Can you tell me what the main CAP legislation is, please?

Andy Crawley: Section 1(2) defines the main CAP legislation, which is the list of the main European regulations that will become retained EU law. It is the direct payments regulation, the rural development regulation and the horizontal regulation. It is the basic acts. To put it crudely, it is the European primary legislation that will move into national law if and when we leave the EU.

Mike Rumbles: Ministers may, by regulation, change primary legislation that we have through the EU—is that what you are saying? You just referred to primary legislation.

Andy Crawley: It is not a like-for-like change; they are the basic acts—the important pieces of EU legislation. From our perspective, at least, the

point to recognise is the scope of the change that can be made. I go back to what John Kerr said: the bill is about simplification and modernisation.

Mike Rumbles: My point is that one person’s modification is another’s change, and one person’s simplification can be quite radical, can it not?

Andy Crawley: That is one point of view.

Mike Rumbles: It can be, can it not? You are not saying that it cannot be.

Andy Crawley: I am not sure that I can answer that question.

The Convener: I think that Stewart Stevenson wants to come in. Are you going to clarify the point?

Stewart Stevenson: That is for others to say, convener. Looking at section 3(1), it seems clear to me—and I will be happy to hear confirmation that I am reading it correctly—that the modifications to the main CAP legislation are constrained to securing the continued operation of the provisions of that legislation, with section 2(2) saying:

“The Scottish Ministers may only make modifications ”

as

“would simplify or improve”.

That is it; it is not a total power to do all the things that you may wish to do.

Ultimately, of course, it is up to the courts to decide what the intention is and, therefore, it will be important that, when we talk to the minister, we seek clarity to get that on the record. Is my reading of the bill correct, in that it is not an untrammelled power but is constrained by both section 2(1) and section 3(1)? I am getting a nod from Mr Crawley. Thank you.

The Convener: I am not sure whether that puts Stewart Stevenson on the bill team or back on the committee.

Angus MacDonald (Falkirk East) (SNP): I will stay with part 1 of the bill. What consultation has been done on the provisions relating to public intervention and private storage aid, aid to fruit and vegetable producers, the EU food promotion scheme, marketing standards and carcass classifications? What change does the Government intend to make in relation to those specific areas?

The Convener: Those are definitely for George Burgess.

Dr Burgess: Those are for me.

Most of those provisions are of a piece with the wider stability and simplicity work. As already

noted, the provisions on the fruit and veg aid scheme specifically refer to simplification and improvements. There has not been specific consultation on the provisions; they were to some extent already covered by the wider “Stability and Simplicity” consultation.

11:00

However, as I mentioned, the provisions on marketing standards are effectively a response to the provisions that the UK Government included in its Agriculture Bill. As we have set out in the policy memorandum, the risk is that, if those provisions proceeded for England, Wales and Northern Ireland, Scotland could be left adrift. It is better to take a matching set of powers here so that we can, if the need arises, make similar changes to our marketing standards.

There will already be fairly wide-ranging powers under the retained EU law to make changes to marketing standards. It is not that nothing can be changed in marketing standards; it is simply that the provisions in the bill will allow us to keep pace with other parts of the UK.

Angus MacDonald: Could you give us a bit more clarification with regard to carcase classifications? I am intrigued as to why that those are included. Why would they have to change?

Dr Burgess: The carcase classification provisions are effectively a species of the marketing standards provisions in the EU common organisation of the markets regulation. They have a slightly different origin: at the outset, the intention was more to make sure that the carcasses that went into cold storage under the public intervention scheme that ran in decades gone by were of an appropriate standard, whereas the rest of the marketing standards are more directed at consumers and the retail sector—essentially, they are in the same basket as the rest of the marketing standards. In the UK Government’s Agriculture Bill, they are all dealt with in a single clause. We thought that, for clarity, it was better to separate out marketing standards and carcase classification.

At this stage, there is no intention to make any changes to the carcase classification provisions. In the past, DEFRA has suggested that it might be interested in looking at a different scheme of carcase classification in future. The current systems are more about the confirmation of the animal, rather than anything to do with what might be described as the eating quality of the meat. There has been some indication from DEFRA that it is interested in moving into that space, but at this stage, there is no proposal anywhere in the UK for changes to the carcase classification legislation.

Angus MacDonald: Thank you for that clarification. *[Interruption.]*

The Convener: Sorry—my phone is ringing. That is quite the most appalling thing that has ever happened to me in this committee, so I am going to chastise myself for not following my own instructions. I apologise to committee members—I hope that it never happens to you. To my wife, I say that you should not be ringing when you know I am in a committee. *[Laughter.]* I apologise profusely to everyone. I will talk to my wife later.

Angus MacDonald: If it does ever happen to me, I will remind you of this, convener. *[Laughter.]*

The Convener: Wait until I speak to my wife.

Angus MacDonald: The previous UK Agriculture Bill proposed to abolish for England, Wales and Northern Ireland the market intervention powers contained in the common organisation of the markets regulation, and to replace them with new powers that would be available during “exceptional market conditions”. The bill that is before us allows market intervention provisions under that regulation to be disapplied, temporarily or permanently, or otherwise simplified or improved, in Scotland. Does that indicate a fundamental difference in approach between Scotland and the rest of the UK? If so, what is the rationale for that?

Dr Burgess: I do not think that I would describe it as a fundamental difference of approach. We have already talked a little bit about the old days of market intervention. Many people in this room will be old enough to remember the days of the butter mountains and the wine lakes. Those have largely gone. There is relatively little use of the public intervention and private storage aid provisions at the moment. They are used a little in relation to skimmed milk powder in Northern Ireland, and the European Commission has recently opened an intervention scheme for olive oil, which is not something that affects us greatly in Scotland. However, the provisions are far less regularly used now; in fact, I would probably go as far as to say that they are used now only in particular market crisis situations.

Our colleagues in DEFRA have decided that it is time to draw a line under the schemes and remove them. The provision in the previous Agriculture Bill would allow the schemes to be done away with.

We have taken an approach that is more in keeping with the stability and simplicity approach. We allow some simplification of and improvements to the schemes, and there are provisions to suspend the effects of the schemes. Some of the market intervention provisions are mandatory: if prices fall below a certain level, a scheme automatically kicks in. We would want to avoid a situation in which that happened in Scotland while

the rest of the UK was not intervening in the same way. We could end up with one part of the UK trying to prop up the entire UK market.

The approach that we have taken allows us to suspend the operation of the schemes. The longer-term future of whether we retain anything like them will be a matter for the longer-term policy work.

The Convener: I have a question on the carcase classification provisions. George Burgess and I both know that every abattoir has a slightly different permutation of carcase classification as far as pricing is concerned. The abattoir will set pricing; some abattoirs go much deeper into carcase classification than others. There is no intention by the Scottish Government to change that or to force every abattoir to use a standard form of carcase classification, is there?

Dr Burgess: All abattoirs should be operating the same carcase classification system.

The Convener: Yes, but sometimes they split the pricing, or part of the pricing, further than the basic classification.

Dr Burgess: No. Essentially, the EUROP scheme will continue. You want to be an E or a U; you do not want to be like me and be classified as a P. That scheme will remain in place. How the individual abattoirs deploy that with their suppliers, in terms of how finely they set out their pricing schedule, is a commercial matter for them. The bill would not affect that. I go back to the question about fair play in the supply chain: the scheme is there to ensure a bit of rigour so that farmers do not get a poor price and discover that their animal has been downgraded without there really being any objective standard to measure that against. It provides a bit of clarity and transparency in the arrangements.

Emma Harper: I will pick up on the answers to Angus MacDonald's questions. The previous UK Agriculture Bill proposed the abolition of the fruit and vegetable aid scheme in England, whereas the bill that is before us enables Scottish ministers to simplify—you talk about simplification, which sounds positive—and improve the on-going operation of the scheme in Scotland. Can you clarify the difference between the UK approach and the Scottish approach?

Dr Burgess: Yes. Essentially, our approach is in line with the stability and simplicity approach. We are not, in the bill, doing away with the fruit and veg aid scheme; the intention is that that would continue to operate in Scotland during the next couple of years, pending the longer-term policy work.

Across the UK, around £40 million a year goes into the fruit and veg aid scheme, of which about

£4 million is for Scottish producers. There will be some complications, in that many of the producer organisations have members in a number of different parts of the UK. In fact, some of them are transnational organisations, with members in Spain. The complications of that, as part of Brexit, still have to be fully worked through.

The immediate intention is not to do away with the fruit and veg aid scheme, which in our view has been a valuable way of supporting a sector that is generally unsupported in the CAP scheme.

Emma Harper: Section 7 gives the power to revoke the EU food promotion scheme. Does the Scottish Government intend to revoke that scheme?

Dr Burgess: Yes, and we understand that that intention is shared by other parts of the UK, or at least by DEFRA. The food promotion scheme is an EU-wide competitive scheme. Some Scottish bodies have benefited from it. For example, Quality Meat Scotland has participated in previous years. At the moment, the only UK participation is through the Northern Ireland Dairy Council, which has a couple of schemes to promote dairy products, primarily in the middle east. There is no current benefit from that EU scheme.

The scheme has been translated into domestic law under the deficiencies process. We have, or will have, legislation that would allow us to operate the scheme domestically. However, essentially, we will end up with what has previously been an EU-wide competitive scheme turning into a purely Scottish scheme that is rather too heavy duty for our needs. We already have existing powers, as noted in the policy memorandum. Under the Quality Meat Scotland Order 2008, there is a power to make grants to Quality Meat Scotland, which we have already used and which could be used to achieve the same effect as the food promotion scheme. There are also powers under the Agriculture Act 1993. We already have the simpler mechanisms by which we could achieve the same end as the EU scheme would provide. Therefore, it becomes redundant.

Emma Harper: The policy memorandum states that any decision to make changes to the marketing standards

“can be taken on a case-by-case basis regarding whether to follow any changes introduced in ... the UK Agriculture Bill, or whether to retain alignment with EU law.”

How is it envisaged that taking a case-by-case approach to decision making on this or other aspects of the bill will work in practice?

Dr Burgess: At the risk of repeating the question, it will happen case by case. If DEFRA were to propose to change a particular bit of marketing standards legislation that would take it out of alignment with the European standards, that

would be the point at which we would need to look at whether it was better for us—based on trade flows, for example—to maintain alignment within the UK so that the standards in England and Scotland were aligned, or to retain alignment with the EU.

At this stage, I am aware of only one proposal from DEFRA for use of the powers, and that is in relation to hops and the frequency with which hops crops have to be inspected, which DEFRA is looking to reduce. That might be one where we are quite happy to fall in with DEFRA.

Jamie Greene: You talked about hops crops marketing standards. What might a divergence in marketing standards on a practical level look like? We have quite different understandings of food and drink and marketing standards. Will the bill allow Scottish ministers to look at changes that either the UK or the EU has made and decide which ones they prefer? Is that what you are saying to us?

Dr Burgess: Essentially, yes. If standards diverge because of decisions taken either at European level or by DEFRA and we have to decide which way to go, the bill will give us the flexibility to do it. I said earlier that there are already European powers to change marketing standards, and we would be able to use those powers but, because the ones in the UK Agriculture Bill are a bit broader, a change could be made under the UK Agriculture Bill that Europe would not be able to make. That could lead to the sort of divergence that we are talking about. In that situation, we would look at whether the balance of advantage would be for us to retain alignment with England or with the EU.

11:15

Jamie Greene: Have you had any feedback from stakeholders about a potential divergence in standards between Scotland and England?

Dr Burgess: There has not been any comment from the stakeholders. It is worth remembering that a lot of the standards, certainly in the fruit and veg space, which is one of the main areas, are effectively developed at an even higher level than the EU. The United Nations Economic Commission for Europe—UNECE—sets standards. The most recent EU legislation on fruit and vegetable standards aligned the EU system with the new UNECE standards that kick in next month. Although they look like very broad powers, most of the standards are developed at a supranational level.

Maureen Watt (Aberdeen South and North Kincardine) (SNP): We move on to the collection and processing of data. Section 12 gives the Scottish ministers the power by regulation under

the affirmative procedure to amend the definition of agricultural activity. Does the Scottish Government intend to change the definition of agricultural activity and, if so, to what?

Ally McAlpine (Scottish Government): The question you are asking is why the power is in the bill. At the moment, we do not want to change anything that is defined. In fact, the legislation relates to the EU law definition of agriculture as it stands. The answer is, no, we do not want to change the definition, but considering that we rely on the Agriculture Act 1947, by putting the power in the bill, we are hoping that it will have the same longevity in relation to the Data Protection Act 2018.

Maureen Watt: The definition of agricultural activity talks about:

“(i) production, rearing or growing of agricultural products, including harvesting, milking, breeding animals, and keeping animals for farming purposes.”

Is it sufficiently clear for growing fruit and veg, for example?

Ally McAlpine: We want to be able to collect information from producers of food, and I think that that is covered by the list of specifications. I do not see anything that would not allow us to collect that information from fruit and veg producers. I disagree with the idea that we would not be able to do that.

Maureen Watt: To what extent do the provisions of the bill relating to data collection and processing mirror the corresponding provisions contained in the UK Agriculture Bill as was, whether it comes back in the same form?

Ally McAlpine: We had discussions with DEFRA early on when it started discussing this, and we looked at what it was trying to achieve with the bill. The focus was on animal welfare and plant health, which are covered by other legislation in Scotland.

The point that we thought was being missed was the fact that we now have the GDPR and the Data Protection Act 2018. Under that legislation, we need a legal basis for collecting data, and we need to be able to specify that and show the public and the farmers what that legislation is. The bill was an opportunity to clarify that because, at the moment, a number of pieces of legislation or EU regulations can apply. Bringing everything together in one place helps us to focus and become more open and transparent about the data that we can and cannot collect. That is the focus of our bill, and it is different from the focus of the UK bill.

Maureen Watt: I suppose that farmers will want reassurance that there will not be any more data collection, although sometimes they forget that we

collect data because we are spending taxpayers' money on their subsidies. Can we have that reassurance?

Ally McAlpine: Yes, you can have that reassurance.

Stewart Stevenson: On a technical issue, section 16(4)(a)(ii) is about helping people to manage risks,

"including, but not limited to ... climatic risks".

I want it to be clear that that would include the particular risks associated with climate change, especially in the light of the declaration of a climate emergency. It seems to me it would but I am just seeking clarity.

Ally McAlpine: Yes, it would.

The Convener: Before we move on, the deputy convener asked about changing the definition of agricultural activity. If the definition of agricultural activity changed as a result of the bill, what effect would that have on agricultural tenancies or planning legislation that rely on the current definition of agriculture as laid down? You have mentioned the Agriculture Act 1947, so you have used various definitions. Will that be affected if you change it?

Ally McAlpine: No, it will not be affected, but I can go into a bit more detail on that.

The Convener: Rather than waste everyone's time on it, because it is possibly quite a geeky question, I would like confirmation that the definition for planning of agriculture and agricultural legislation will not be changed as a result of the bill, thereby affecting tenancies and planning legislation.

Ally McAlpine: The bill is about collecting statistics and collecting data from farmers for survey. It does not cover planning.

Andy Crawley: No, it will not affect it.

The Convener: Andy Crawley and Ally McAlpine, you can definitely write in and confirm that it will not affect those two bits of legislation. It is critically important that the definitions of agriculture in legislation will not be affected by a change of agricultural definition in the bill.

Angus MacDonald: Following on from Maureen Watt's questioning, I am thinking back to 2014-15 and Brian Pack's doing better initiative, which was an attempt to reduce red tape for farmers and land managers. Has an impact assessment been undertaken to confirm that the data provisions of the bill will not impose any additional burdens on farmers, crofters and land managers?

Ally McAlpine: No, we have not done an impact assessment, and no, there will not be an additional burden. I can give that assurance

because the purpose of the legislation is to define the legal basis on which we collect data. That is supposed to be open and transparent, so farmers will be able to look at the act and see whether we are doing the job that we said we would do under the legislation. The bill restricts what we can ask, so there will be no additional burden.

Within the Statistics and Regulation (Registration Services) Act 2007, we have the code of practice, which places a duty on statisticians to look at survey burden. We are always looking to reduce that. For example, there used to be the sheep and goat inventory and the December census. Those two things are now combined to reduce the burden. Going forward, the statisticians in my team are always looking at ways of combining questions and reducing the time that surveys take. We also look at the sampling frames, and at sending out as few forms as we possibly can.

Angus MacDonald: Many farmers and crofters will be pleased to hear that, I am sure.

The Convener: Colin Smyth has waited patiently to ask his questions.

Colin Smyth (South Scotland) (Lab): Absolutely, and they are very much in line with your reference to geeky questions, convener, because I have one or two quite specific questions around the importance of data collection. The policy memorandum states that the Scottish Government does not intend to collect additional agricultural data. Given the rapidly changing policy environment that we are facing with regard to issues such as climate change and Brexit, have there been any discussions about the fact that there might be a need to collect different data in the future?

Ally McAlpine: I am happy to give geeky answers; I am used to doing that. The geeky answer to your question is that we plan on collecting additional data but not from farmers and not through survey. For example, one of the things that we are currently looking at—I have a team working on this now—is the use of satellite data. At that point, things get very geeky as we are using data science to do that. Our approach involves information technology specialists, mapping specialists and statisticians working together to look at things such as what crops are growing across Scotland. There are worldwide projects going on in the area of satellite data, and we collaborate with academics with regard to what learning we can adopt in-house. We are not yet in a position to use that satellite data as we would like to, but the focus of our work in that regard is to move away from the cereal harvest and, therefore, reduce the additional data that we request from farmers, because we will be able to use new technologies to do that ourselves.

Colin Smyth: Sections 13 and 14 of the bill allow the Scottish Government to, by regulation, impose requirements on persons carrying out agricultural activity or who are in or connected with the agri-food supply chain. The delegated powers memorandum clarifies that that is intended to allow the Scottish ministers to collect data from industry or supply chain subgroups. Can you tell us what those groups are at the moment? Is that likely to be any different from the groups that data is currently collected from?

Ally McAlpine: No. The point of the legislation is to be more open and transparent. As alluded to earlier, we have been using the 1947 act, which specifies that we can ask for data from holdings. What we are actually doing with this legislation is stating who we are already collecting data from. We are not collecting data from anybody else. The legislation restricts who we collect data from and specifies them explicitly. For example, we will ask for information from a number of suppliers and we will look back to the cereal harvest as well—we will look at where the cereal goes after it leaves the farm gate. We would be looking further down the supply chain, which we currently look at—we would just be repeating that.

Colin Smyth: So, it would just be the existing groups—the status quo, in other words.

Ally McAlpine: Yes, the existing groups—nobody new.

Colin Smyth: The policy memorandum states that the data that is collected is used to analyse economic output and the performance and effectiveness of policies, and to help Scotland provide information on the sustainable development goals. Can you elaborate a bit on the type of data that is collected for that purpose?

Ally McAlpine: We have three main data collections that we combine to help to do that. One is the farm business survey, which involves between 400 and 500 farms. We do not do it ourselves; we contract it out to specialists, who are used to auditing financial accounts. We examine the information that we get from that and it helps us consider the effectiveness of things such as the CAP scheme. We do not ever get to see the individual record data; we get to see the analysis.

We also have the December survey, which is going out now, and the June census, which has already been out. Those focus on certain points through the year and look at what the situation has been with regard to agricultural production and where we might see problems within the production. We can alert policy colleagues if we see anything in those trends that needs to be raised. Those two surveys combined are fed into what we call the total income from farming

statistics, which are a combination of those surveys and a number of other minor surveys. We take all of that information and we estimate what gross domestic product, gross value added, productivity and so on look like for the sector.

Emma Harper: My question is about the definition of agricultural activity in relation to bee keepers. In Scotland, we have hobby bee keepers and we have about 25 bee farmers. Does the definition include harvesting? Is that where bee keepers fall into the definition of agricultural activity?

Ally McAlpine: That is quite a minor issue. If it is all right with the convener, we might answer that question in writing later. I am not aware of what data we currently collect from bee keepers.

The Convener: I am sure that it would be helpful to submit the response in writing. As we all know, masses of data is kept even on things such as smallholdings with chickens, which have to register chickens in relation to avian flu and suchlike. I am sure that we would welcome knowing where our honey comes from.

11:30

Jamie Greene: Moving on from bees, I want to ask a technical question around the collection of data, linked to the issue of CAP payments. At the moment, the financial calculation for how much someone is paid and the level of subsidy is based on certain criteria. If the policy around CAP payments were to change, so that it used different parameters and required different pieces of information from the farmer or the landowner, would that be in conflict with the policy memorandum, which states that, as a result of the bill,

“there should be no additional burden placed on farmers, crofters and land managers”?

Ally McAlpine: Part 2 is about the legal basis for us going out and asking for information from survey. We have to state that under the GDPR—that goes in the privacy notice, and we can point to the piece of legislation that says that we are asking for that data. If a farmer wants to receive CAP payments, that involves the part of the GDPR on consent—the farmer would be consenting to give their information in order to receive the CAP payments. I do not think that that is covered here. John Kerr might have something to say on that issue.

Jamie Greene: My point is that, if the bill allows ministers to change the CAP system by whatever means, and if working out the financial subsidy is based on a different set of criteria, that will inevitably require additional information to be given by farmers to the Government.

Ally McAlpine: The level of information that we collect is at the whole-sector level. We are not collecting data for CAP. There is a clear firewall between what data is collected for CAP and what we collect. You could devise a different system and we would still be able to collect that data. That data is about the holistic goings-on within the sector, and we can then analyse that data to look at the effectiveness of whatever policies this Government or any other Governments want to bring forward.

The Convener: Richard Lyle, you get the last question.

Richard Lyle: I once had the good fortune to go to one of the local offices and try on the equipment that the chap uses when he goes out and measures the farm to the last inch or metre or whatever. Are we still going to have to measure up what people have in order to equate their payments to that, or can we get rid of that part of the process?

The Convener: John Kerr wants to come in, no doubt to say that it is centimetres, not inches.

Dr Kerr: Indeed, yes.

Richard Lyle: Okay, I am pre-EU.

Dr Kerr: At the moment the requirement is driven by the European Union legislation. What is envisaged is not a wholesale change, but Mr Ewing and the stakeholders are keen on reducing the burden of the legislation, if it is possible to do that, in particular with regard to where that burden is not producing a benefit to the farmers or the wider public.

Richard Lyle: We have to be able to minimise and reduce the red tape and the paperwork and the hoops that people have to go through. Some people say that you are going to take back control. Are you really going to take back control?

Dr Kerr: On that specific point about inspections and penalties, colleagues are involved in an active stream of work with specific regard to that purpose. We hope to minimise the impact of that on businesses and on us in delivery terms, so that we can do our work more efficiently on behalf of the sector, too.

The Convener: That brings us to the end of the questions that members want to ask at this stage. I thank all the people who attended this morning. There are some follow-up bits of information that the clerks will be in contact with our witnesses about.

11:34

Meeting suspended.

11:41

On resuming—

European Union (Withdrawal) Act 2018

Agriculture Market Measures (EU Exit) (Scotland) (Amendment) (No 2) (SSI 2019/347)

The Convener: Item 3 concerns the sift of one EU exit instrument under the European Union (Withdrawal) Act 2018. The Scottish Government has allocated the negative procedure to this Scottish statutory instrument. Is the committee agreed that it is content with the parliamentary procedure that has been allocated to the instrument by the Government?

Members indicated agreement.

Subordinate Legislation

Agriculture Market Measures (EU Exit) (Scotland) (Amendment) (No 2) (SSI 2019/347)

Fishing Boats Designation (EU Exit) (Scotland) Order 2019 (SSI 2019/345)

11:41

The Convener: Item 4 concerns the consideration of two negative instruments. I remind the committee that no motions to annul or representations have been received in relation to these instruments. Do any members of the committee have any comments on either of these instruments?

Mike Rumbles: I notice that the Delegated Powers and Law Reform Committee found two errors in schedule 1 to the Fishing Boats Designation (EU Exit) (Scotland) Order 2019, one relating to the Republic of Ireland and the other relating to the Netherlands and Norway. I also notice that the Scottish Government has committed to correct both of those errors before the instrument comes into force. I do not want to delay the process, but I think that we should ask the Government to write to us and confirm that it has done that. I think that that is an important part of our role.

The Convener: Looking around the committee, I can see that people are nodding in general agreement with the suggestion that we write to the Scottish Government noting that we have noticed that the instrument requires some work and asking it to confirm to us that it has been done. On that basis, are we agreed that we do not wish to make any recommendation in relation to these instruments, other than that request?

Members *indicated agreement.*

The Convener: Thank you. We will now move into private session.

11:43

Meeting continued in private until 11:59.

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