



OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Economy and Connectivity Committee

Wednesday 18 December 2019

Session 5



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Pàrlamaid na h-Alba

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RURAL ECONOMY AND CONNECTIVITY COMMITTEE

35th 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:

Lizzy Baxter (NFU Scotland Next Generation Committee)

Jonnie Hall (NFU Scotland)

Eleanor Kay (Scottish Land & Estates)

Christopher Nicholson (Scottish Tenant Farmers Association)

Yvonne White (Scottish Crofting Federation)

CLERK TO THE COMMITTEE

Steve Farrell

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Economy and Connectivity Committee

Wednesday 18 December 2019

[The Convener opened the meeting at 10:00]

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

The Convener (Edward Mountain): Good morning, and welcome to the 35th meeting in 2019 of the Rural Economy and Connectivity Committee. I ask everyone to ensure that their mobile phones are on silent.

The first item on the agenda is consideration of the Agriculture (Retained EU Law and Data) (Scotland) Bill at stage 1. Before we go any further, I invite members to declare any relevant interests. I declare that I am a member of a family farming partnership.

Peter Chapman (North East Scotland) (Con): Likewise, I am a member of a farming partnership.

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

The Convener: This is the committee's fifth evidence session on the bill. Today, we will take evidence from representatives of the agriculture industry. I welcome Jonnie Hall, the director of policy at the National Farmers Union Scotland; Lizzy Baxter, an NFU Scotland next generation representative, who sits on the NFUS next generation committee; Yvonne White, the chair of the Scottish Crofting Federation; Christopher Nicholson, the chairman of the Scottish Tenant Farmers Association; and Eleanor Kay, the policy adviser on agriculture and forestry for Scottish Land & Estates.

I know that you are all practised at giving evidence, and that you have been told that the microphones will come on automatically without you having to push the buttons. I usually say that if a question is asked and everyone looks away, the last person who looks away will be the person who has to answer the question. However, there is no point saying that today, because Jonnie Hall never looks away and always tries to get in first, so everyone is quite safe. If you want to speak, just try to catch my eye and I will bring you in. Once you start speaking, do not look away, because there might come a time when I am trying to bring

someone else in and will need to indicate to you that you are coming to the end of your time.

Peter Chapman will ask the first question.

Peter Chapman: The Scottish Government's position is that there should be a period of stability and simplicity running to 2024, during which not a lot will change, although there might be some minor changes. Is that the correct way forward? Does the legislation reflect that approach?

The Convener: Who would like to lead off on that? I see that Jonnie Hall is indicating that he would like to speak. There is a surprise.

Jonnie Hall (NFU Scotland): I would not like to disappoint you, convener.

The Convener: You never do.

Jonnie Hall: First and foremost, the bill is absolutely necessary. That is widely accepted. We need the bill in order to provide the continuity element of the stability and simplicity agenda that the Scottish Government has set out, so we welcome the bill. It will provide a degree of certainty in the short to medium term.

The bill is enabling legislation—it is all about providing powers to the Scottish ministers. In itself, it does not set policy. That is where there is a bit of a grey area between the bill and what future policy should look like. Although the bill is an important stepping stone in the interim, it is not where we finally need to be. That is particularly the case now that it would appear to be almost certain that we will leave the European Union on 31 January, with an increasing likelihood of an implementation or transition period until the end of next year. Therefore, from January 2021, we absolutely need legislation in place that will enable the Scottish Government to continue to do the things that it currently does in terms of the current payments under the common agricultural policy while it tweaks those procedures and rules in order to provide some simplification and starts the process of developing future policy through the pilot schemes up to 2024.

Peter Chapman's question relates to the question of whether the Government is moving fast enough and going far enough in terms of the policies that the industry requires. We have serious concerns that it is not, because we view the next decade as being extremely challenging for Scottish agriculture, not only in terms of underpinning the growing food and drink sector, but, equally and importantly, in terms of tackling major issues such as climate change and what Scottish agriculture will be requested or required to do over the next decade. There is a strong argument that things need to happen sooner rather than later, in terms of delivering a fundamental change in how we underpin farming

and crofting in Scotland. Therefore, there is a debate to be had about whether the Government is moving fast enough.

Peter Chapman: The question is exactly as you put it. There is a danger that, if we do not change much more quickly between now and 2024, the industry could be in quite a difficult position with regard to the major change that is coming down the road because of Brexit and climate change, to name just two issues.

Eleanor Kay (Scottish Land & Estates): The bill certainly provides the ability to deliver stability and simplicity, but it is right to say that the point of the transition period is that we know what we are moving towards. Although we know that the bill enables pilot schemes to be run, we have no clear, defining guide to what it is that we need to be testing and trying out, and we do not know where we are going. We probably have a bit more certainty because we now know that we are almost certainly going to leave the EU, and we have some pretty strong campaign promises from the current Government around future funding guarantees. That means that we have more certainty than we did when the bill was written.

We are in a slightly different situation from where we were when “Stability and Simplicity: proposals for a rural funding transition period” was published. For example, the climate emergency had not been declared, so we had not started that conversation. However, that situation has moved on extremely quickly and the bill perhaps needs to be considered again in that regard. Equally, we do not know what the simplifications will be. We have not yet had a report from the simplification task force, which means that it is tricky to know what the modifications that are now possible under the bill could be.

Christopher Nicholson (Scottish Tenant Farmers Association): The bill appears to be fit for purpose, and it is necessary that it be passed to enable the continuation of EU law and to ensure that that law can be maintained and amended. As Jonnie Hall said, there is a lack of clarity about future policy, but I think that at this stage it might be difficult to decide future policy, given that there is not yet a United Kingdom-wide framework and we do not yet know the nature of the trade deals that the UK will have with the EU and other trading partners, which might well set standards and affect how future policy might be implemented. However, it is vital to have this legislation in place for the transition period, and it looks as though it is sufficient for that.

There are some questions and concerns about the extent to which the bill might be used to make significant changes to policy without scrutiny by Parliament or wider stakeholders, but I do not think that that is what it is meant to do.

The Convener: We will address that specific point later.

Peter Chapman: Is the proposal that nothing much should change until 2024 the correct way forward, or do you agree with me that we need to move much more quickly than that?

Christopher Nicholson: My understanding is that the date of 2024 is not set in stone. We need a transition period, but 2024 is five years away, and I agree that we may need to move more quickly than that with the new policy. Perhaps some of that change can be achieved through the bill.

Yvonne White (Scottish Crofting Federation): The bill appears to be a bridge to bring back the EU legislation and hold it in the Scottish Government. It is the next step that will be the most interesting one. We need the bill in order to get a fit-for-purpose agriculture policy.

On Peter Chapman’s point about stability and simplicity, that appears to be a contradiction in terms. How can we make something simple yet have stability? I do not know; perhaps someone, somewhere can throw light on that and help me to understand it.

Mr Chapman mentioned timeframes. It is imperative that the Scottish Government is fleet of foot. Anything that is put in place needs to be robust. Eleanor Kay asked whether the “Stability and Simplicity” document is robust enough. A lot of work needs to be done quite quickly, although I appreciate that civil servants are probably up to and over their ears in work because of this Brexit business. There is a danger, but there are also opportunities to carve out something that is more progressive, modern and up to date and that fits the constituent agricultural parts of Scotland. On the one hand, we have a great opportunity if people are brave and creative enough to take it but, on the other hand, there are the threats that Christopher Nicholson mentioned about trading terms and so on.

Lizzy Baxter (NFU Scotland Next Generation Committee): I completely concur with everything that the panel members have said. I pretty much concur with everything that Jonnie Hall said.

The Convener: I think that one of the points that has been raised might relate to Mike Rumbles’s question.

Mike Rumbles (North East Scotland) (LD): I am supportive of the bill, as I think everybody is. However, it is about a transition period, until we get to the meat of the new bespoke policy for Scotland. Our job is to interrogate the bill, and I want to focus on section 3, which says:

“The Scottish Ministers may by regulations”—

so not through primary legislation—

“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.”

John Kerr, the head of agriculture policy for the Scottish Government, told us in evidence:

“We have not ... 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.”—[*Official Report, Rural Economy and Connectivity Committee*, 20 November 2019; c 7.]

My concern, and that of other witnesses in previous sessions, as I am sure that you have seen, is that, if we do not modify section 3 and include an end date, because the wheels of Government and Parliament move slowly, we could go for years in a transition period, and the bill would allow that. What do you think of that?

Christopher Nicholson: I can see that the bill could be misused—for want of a better word—for that purpose and that policy changes could continue to be made for a long period without consultation. However, I do not think that that is the purpose of the bill. The purpose is to allow continuation for the transition period. However, I imagine that stakeholders may want reassurance. To give just one example, from reading the bill, I am not sure whether there is any limit on the transfer of funding from pillar 1 to pillar 2. If significant funds were transferred from pillar 1 to pillar 2, that would be a massive change in policy. I am not a lawyer, so I do not know whether there is a limit on that in the bill.

10:15

The Convener: Christopher, you seem to be very good at picking up points that other people are going to raise. We will leave pillar 1 and 2 payments for the time being.

Eleanor Kay: Mr Rumbles is absolutely right. We share other stakeholders’ concerns about the bill’s unlimited duration. The ability to continue essentially papering over the cracks is quite a concern. The Committee on Climate Change recently said that we need to move quickly to implement transformational change, but continuing to make minor modifications to retained law does not really allow us to do that. I am not sure whether you would want to commit to a five-year timescale and put 2024 in the bill, but it would definitely be welcome if there were an end point or a point of review.

Jonnie Hall: Some sort of sunset clause, which is what we are talking about here, would be advantageous, but the time limit needs to be thought out very carefully. If you put a limit on the powers in the bill, say to the end of 2022,

significant work would require to be done to ensure not only that a policy direction for Scottish agriculture had been agreed by then, but that the measures and administration systems around that were in place so that that policy direction was effective.

We all aspire to a new agriculture policy. We are all hungry for that change to happen in order to meet the challenges that we face over the next decade, but we need to be careful to ensure that the implementation of that policy is, to use Christopher Nicholson’s expression, fit for purpose. We would not want the continuity and certainty of the bill’s provisions to end and find that future schemes and so on are not ready to operate in practice. That would leave us in a very tricky situation indeed. We would very much support it if something were put in place that would require change sooner rather than later, rather than an open-ended situation.

In my opening comments, I questioned whether the bill goes far enough. Equally, though, does it go fast enough? My biggest concern is 2030. It is a decade away, but we all know that, in farming and crofting terms, a decade is nothing at all. If we are going to address the challenges that we have to address, we need to be given the tools to do so, and that requires a significant change from the current policy regime that we operate under.

Mike Rumbles: We have touched on the fact that the bill gives the Scottish ministers powers to simplify and improve the operation of the CAP, which is what we are all interested in seeing. The point is that one person’s idea of simplification and improvement may not be somebody else’s idea of simplification and improvement. The bill says:

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

What does that enable the Scottish ministers to do? That is the worry that I am articulating. The next elections are in 2021. I very much support the bill and the policy intention, but the law that we are about to pass may allow any future Government to operate a new system. That is my concern. Is it shared by the panel?

The Convener: Yvonne, do you want to go first? You wanted to answer the previous question, too, so I will let you tie them together.

Yvonne White: As Mr Rumbles points out, as it stands, the power in section 3 of the bill will be available in perpetuity. There is a fine line. The bill is necessary, but there are concerns about the CAP legislation continuing to operate in perpetuity. However, I recognise that it is difficult to specify a date, because there are so many external factors in play. It is possible that there are constitutional lawyers who could insert some clever caveats that

would give comfort to people with regard to an expiry date.

Mike Rumbles: I want to ensure that there is no misunderstanding about what we are talking about in legislative terms. If the minister or anybody else came up with an amendment that would limit the operation of the CAP legislation to 2024, that would not limit the policy to 2024; it would simply say that the Government had to legislate for a new system by 2024. Jonnie Hall mentioned a period of 10 years, but we are talking about the view that the date of 2024 should be in the bill so that the Government of the day can say, "We are consulting stakeholders and Parliament on legislation for the new system," which we hope that everyone will agree to. That is the point. Such a provision would not say that the new system had to be in place by 2024.

Yvonne White: There needs to be a timetable—a timetable is necessary for anything to be delivered and to be effective. The bill needs to be delivered so that we can get to the next stage of creating a new agricultural policy for Scotland.

Jonnie Hall: If we are talking about introducing legislation by such a date and enacting legislation by such a date, it would be clear what was required, but my concern is about how that legislation would be implemented and any potential gaps that we might expose ourselves to. A policy can be agreed and we can pass legislation, but recent history tells us that the implementation of that, along with all the systems that would be required, remains a risk. I am not saying that it is a probable risk, but it is a risk, and we need to be cautious about that.

I want to come back to the question about simplification and improvement. For my sins, I sat on the Scottish Government's simplification task force. I think that the bill, which will give the Scottish ministers powers to tweak some of the CAP legislation from 2021, can be used to everybody's advantage so that Governments, Government agencies and farmers and crofters will benefit. We can have simplification on things such as mapping, penalties and inspection processes, but the move from simplification to improvement is a slightly grey area. I agree that the interpretation of "improvement" involves looking at policy rather than operation. Simplification is all about the operation of existing schemes—that is what we are talking about when we talk about simplification. We are looking at the current CAP rules and how they can be made to work better in Scotland through the bill; we are not necessarily looking at how we can change policy to use taxpayers' funding to deliver different things and achieve different outcomes. There is a difference between simplification and improvement.

Jamie Greene (West Scotland) (Con): I have a quick follow-up question for Mr Hall.

At the moment, section 2 of the bill, which is on "Power to simplify or improve CAP legislation", is very short. It consists of three simple sentences, the second of which says that ministers can make modifications

"that they consider would simplify or improve the operation of the provisions of the legislation."

Will you be suggesting alternative wording, if you think that that is inappropriate? Subsection (3) says:

"Regulations under this section are subject to the negative procedure."

Do you think that that provides for enough parliamentary scrutiny of such changes?

Jonnie Hall: That is an important point. In our written submission, we raised the difference between negative and affirmative resolutions. It is about how ministerial powers are exercised.

We are talking about a significant number of potential simplifications of mapping rules, inspections and penalties in the short term, and they probably require wider consultation before decisions are made rather than decisions being made unilaterally by ministers. Scrutiny by the likes of this committee is then required to ensure that the objective of improving the situation for farmers and crofters as the claimants and recipients under the schemes that we currently have will be delivered.

I am concerned about the procedural side of what the bill implies.

Eleanor Kay: The issue has been pretty well covered by Jonnie Hall and by Jamie Greene's question. I wonder whether the negative procedure is sufficient for the scrutiny of things such as improvements and even for some of the simplifications.

The Convener: We will come on to that in a minute.

Mike Rumbles: I have one final point. My concern about regulations rather than primary legislation is not to do with parliamentary scrutiny. We can have as much parliamentary scrutiny of regulations as we can of primary legislation. The issue with regulations is that the minister of the day decides what the system and the rules will be. They will bring regulations to Parliament, members can say only yes or no, and the pressure to say yes is incredible.

Stewart Stevenson: That is my question.

Mike Rumbles: I am sorry; I was following on from Jamie Greene's question.

The Convener: Does Stewart Stevenson want to follow that up with his question? I know that he is also concerned about the level of scrutiny.

Stewart Stevenson: Colleagues are beginning to make the point, and I think that we have a shared view. I have heard Eleanor Kay and Christopher Nicholson say that the negative procedure does not permit scrutiny, and paragraph 14 of the NFUS's submission says that the bill

"does not allow scope for parliamentary scrutiny."

I invite colleagues on the panel to look at the second item on today's agenda, which is scrutiny of a negative instrument. I wonder where the idea that there is no scrutiny of negative instruments comes from. I have just heard Jonnie Hall say that ministers can unilaterally change the law. I do not know where that comes from. I am sure that it comes from somewhere, and I would like to know where, because there is no secondary legislation in the policy area that will not come to the committee for scrutiny. I wonder where colleagues at the other end of the table get that idea from.

Eleanor Kay: Mike Rumbles made the point that members can say only yes or no. You can debate regulations and point out where you disagree but, ultimately, it is a yes or a no. We can get involved with a lack of scrutiny and say what we think needs to happen. That is much harder under the negative procedure.

Stewart Stevenson: Why?

Eleanor Kay: It just seems to be much harder for us to scrutinise—

Stewart Stevenson: It should not be. There are consultations on secondary legislation that can change policy, just as there are on primary legislation.

If our witnesses are saying that there is a problem, I am trying to understand what it is. Is there a problem because the way in which the Government interacts with stakeholders in making secondary legislation is not fit for purpose?

The Convener: To clarify, the Government is supposed to consult on negative instruments before they come to the committee, and the industry can feed in to the Government as part of that process. It is up to members to lodge motions to annul if they are not happy with instruments. The point that Stewart Stevenson is making is that you are suggesting that the Government is not consulting sufficiently prior to instruments being lodged. Is that right, Stewart?

Stewart Stevenson: My point is drawn a bit more broadly but, in essence, that is what it concerns. I should also say that there is no legal requirement to consult, even on primary legislation, where there is no policy change.

Indeed, the instrument that we are to consider has not been consulted on because it involves no policy change.

The Convener: In fairness, when other panel members are answering, it is up to them to say whether they would be happier with the other system.

10:30

Stewart Stevenson: I want to be clear about the point that I am pursuing. I think that I am hearing panel members say that the present system for creating secondary legislation does not provide adequate opportunity for stakeholders to come in. I just want to tease out a bit more what creates that feeling, so that we can say to the Government, "Here is something that you need to do." I do not think that the issue is one of scrutiny as such.

Jonnie Hall: I suspect that that is a grey area. That takes us back to Mike Rumbles's point about the definition of what would be a simplification in everybody's interests and what might be assumed to be an improvement.

It is clear that the Scottish Government is—quite rightly, I think—looking to move from simplification to improvement. That is the language that it uses in that context all the time. However, we must ask: improvement in what sense? As stakeholders, we want to be absolutely involved in the process from the outset. What instigates that? Is it an improvement that is to the benefit of administrators or to the benefit of farmers and crofters—or both, ideally?

Stewart Stevenson: So the process that concerns you is the consultation process.

Jonnie Hall: Yes.

Stewart Stevenson: I think that we can lay the question of the scrutiny process to rest. All legislation—whether negative, positive, primary or secondary—is scrutinised.

Jonnie Hall: That is the function of the institution that is the Scottish Parliament.

Stewart Stevenson: Yes—sure.

Mike Rumbles: I just want to add something. I gave way earlier to Stewart Stevenson, because it was his question. The important point is that we are not worried about there not being enough scrutiny. If the committee decides that it wants to scrutinise regulations, it can do so—that is not a problem. To go back to my question, we can change what the Government wants to do only if we are dealing with primary legislation. There must be hundreds of regulations that go through basically on the nod, even if we have scrutinised them. No one wants to prevent something from

happening if there is tremendous pressure for change and, if the Government says that something needs to be done, we tend to support that.

For me—and, I am sure, some other committee members—the issue is section 3, which goes down the route of changes being made by regulation rather than by primary legislation. I go back to the point that I made at the start of the meeting. Perhaps you would confirm whether my understanding of your position is correct. I am glad to hear that you support putting in a date for primary legislation to be introduced. Otherwise, the bill would allow whichever Government was in power in the future to continue to go down the regulation route for as many years as it wanted to, as opposed to introducing primary legislation.

The Convener: I noticed a few panel members nodding their heads. Does anyone disagree with that? I say that so that your positions are clear. A nod of the head cannot easily be put on the record.

Jonnie Hall: I absolutely agree with Mike Rumbles's last point.

The Convener: Does anyone else want to say yea or nay to that?

Eleanor Kay: I agree.

Christopher Nicholson: Yes, I agree. For future policy, after the transition period, we need primary legislation.

Colin Smyth (South Scotland) (Lab): I simply want to check that panel members do not disagree that the improvements need to start happening between now and the next round of legislation coming through in 2020. We cannot simply wait until then. The improvements need to happen—it is just a case of having a process for ensuring that there is proper consultation on them. Is everyone agreed that they need to start happening now? We cannot say that the issue is purely one of stability and then have a new policy in 2024.

Jonnie Hall: Absolutely. The whole process needs to be—

The Convener: Hold on, Jonnie. Yvonne White indicated to me first that she wanted to come in.

Yvonne White: I think that we all agree that the improvements would need to be agreed. That can be quite a long process, and the changes have to be implemented correctly and efficiently. I note that any changes or improvements—those are not defined in the bill, and that is making people a bit nervous—would need to be subject to legislation. My experience is that, even for small things, that can take a long time.

The Convener: As no one is indicating that they disagree with Yvonne White, we will move on to the next part of Stewart Stevenson's question.

Stewart Stevenson: My question is on a different subject. We will move on.

Where will we go in future? Clearly, the policy is aligned in a single EU framework. To what extent should we retain that position once we are outside the EU? There might be reasons for doing that.

We do not know about the overarching framework for the UK and the different Administrations of the UK. To what extent does the bill enable or inhibit areas where implementation may be different in different jurisdictions? What do people think about whether the bill—that is our sole concern today—will enable or inhibit proper differences between the Administrations and whether it will enable our working in a common framework, given that that is what we will have to do?

Jonnie Hall: That is an incredibly important question. Fundamentally, agricultural policy is devolved. As you know, we have four different CAP settlements across the four devolved Administrations of the UK. That is quite right, because it reflects the different agricultural profiles and needs of the devolved nations. However, we also operate in an internal UK market and, currently, an internal EU market. Therefore, the standards that underpin agriculture practice are common. There is a grey area between, on the one hand, the delivery of agricultural policy and the means and tools by which farmers and crofters are incentivised to do certain things in order to achieve certain outcomes and, on the other hand, maintaining a standard of operation—the rule book—in order to prevent any destabilising of the internal market. That aspect will be very important.

With the UK leaving the EU, it is imperative that we have commonly agreed—it is really important that things are agreed in this context—regulatory frameworks on agricultural operations, issues such as pesticide use and environmental standards, and animal health and welfare issues. Those areas must be regulated on a UK-wide basis. Thereafter, it is about how different devolved Administrations implement measures to support or incentivise farmers and crofters to do different things in different places. Clearly, we have seen a different trajectory from the Department for Environment, Food and Rural Affairs for England, and we also know that the Welsh Assembly Government and the Northern Irish are doing very different things. Scotland must have an ability to develop and implement its own agricultural policy, but that has to be in a common framework.

The bill potentially undermines some of that by giving powers to ministers to set different rules on,

for example, carcass classification and marketing standards. That concern is almost the polar opposite of our concerns about the UK Agriculture Bill. Under that bill, which was introduced at Westminster in September 2018, there is the potential—I am not saying that this power would be used—to operate in a different fashion in Scotland as opposed to the rest of the UK. I think that other committees in the Parliament have raised that point.

Stewart Stevenson: May I tease that out? We will come back to carcasses; the convener will quiz you on them.

On standards, you referred mostly to standards for how we do things. The example that I wrote down before you gave your list was slurry, on which there are standards. However, there are also standards for the outcomes that we deliver, such as standards that need to be met with the products that we produce. I take it that, when you mentioned standards, you were talking about both kinds.

Jonnie Hall: Yes. I meant both standards for agricultural activity or production methods and standards that are attached to the products that are then sold into the market.

Stewart Stevenson: However, you are looking for policy and practice that reflect the different geographies and the different agricultural products that are produced in the various jurisdictions. You are saying that we must retain that flexibility.

Jonnie Hall: We need the flexibility to deliver schemes that enable farmers and crofters to do things differently in Scotland. That is not about the practice or the rules by which people operate, but how they are supported should absolutely be devolved, as it is currently.

Yvonne White: I echo that. It is important that agriculture in Scotland continues to be devolved.

Christopher Nicholson: I reiterate that. Scotland is always going to be better off with its own unique policy. Within Scotland, there are different regions with different requirements, and we need to keep that flexibility. Scotland should not have a one-size-fits-all agricultural policy.

The Convener: The deputy convener, Maureen Watt, has a question.

Maureen Watt (Aberdeen South and North Kincardine) (SNP): Good morning. I want to pick up Jonnie Hall's point about the importance of UK-wide standards. Scotland relies on high standards in order to sell its quality products. Let us say that, for whatever reason—to please the Americans, perhaps—one of the four nations decided that standards should be lowered. You are not saying that we should go down that route, are you?

Jonnie Hall: Absolutely not. That takes us into the argument that we have been making for the past three years. Any agricultural framework in the UK post our departure from the EU must be commonly agreed, and the governance of those standards cannot rest with the secretary of state at DEFRA. We have said that time and again.

On standards and imports, we have also said time and time again that, if we are talking about new trading arrangements with non-EU countries, which I think is what you inferred, nothing that it is currently illegal to produce here should be allowed to come into this country. We need to maintain our standards at the threshold that they are at now, if not improve them, because that is what sells our product.

The Convener: Lizzie, you are nodding. Do you want to add to that?

Lizzy Baxter: I work pretty much on the ground—I am a farm secretary and I also work at home on the farm. From that perspective, I agree with what Jonnie Hall said. We need the same standards to be met across the board, but if they were to be lowered in other countries, we would still want to have those high standards through the Scottish labels for beef, lamb and pork. We have those labels and the standards that are attached to them, and farmers understand those standards because they have been working with them for so long. Keeping things simple and having that continuity is the best option.

Stewart Stevenson: I have a final question on that. We could probably discuss the subject for another two hours, but I think that one-sentence answers would be desirable. The NFUS submission does not say to what extent we will need to remain aligned with the EU rules. If we are going to export to the EU, we will have to conform to its rules. To what extent will it be useful to retain alignment with those, or have we identified areas where it would be useful to diverge? Given that we are discussing the bill, to what extent does it either inhibit or aid our doing that?

10:45

Yvonne White: My one-word reply to that is totally. My three-word reply is totally and utterly. *[Laughter.]*

Jonnie Hall: I will use slightly more than three words. The question was raised directly with NFU Scotland. As we have said throughout the piece, if we wish to retain our trading arrangements under whatever agreement we get with the EU, we will almost certainly have to operate to the same standard or to an equivalent standard that is agreed by both parties. That will be absolutely necessary. I echo what Yvonne White just said—we must not erode that in any way.

The Convener: Before we move on, I have a question, to which you can give a simple answer.

I have yet to meet a farmer who wants to reduce the current high standards of production; I have certainly not met any such farmer when going around Scotland. I assume that the general feeling of the panel is that we have very good standards and that it is imperative that we keep them. Everyone is nodding.

Jonnie Hall: I put one rider on that. Nobody wants to erode the standards, but there is scope in the bill to address how we manage those standards when it comes to the inspection process, the proportionality of penalties and the mapping issues, which we have concerns about. There is absolutely no problem with the standards themselves, but how they are enforced and regulated is another matter entirely. That is where the bill could add value.

Richard Lyle (Uddingston and Bellshill) (SNP): Our paper contains a number of quotes on rural policy development. For example, the NFUS said:

“NFU Scotland considers that the Scottish Government’s ambitions do not go far enough. Stability and simplicity in the here and now are important. But it is vital that the opportunity is grasped to take Scottish agriculture beyond transition and into a new Scottish agricultural policy that is bold and carries the clear intent of providing financial support as the emphasis shifts to supporting those driving productivity gains and delivering desired environmental outcomes.”

Is the bill bold? Does it provide clarity on the priorities and objectives for rural policy in Scotland during the transition period from now until 2024?

Eleanor Kay: You quoted the NFUS but, as stakeholders, we are all quite aligned in thinking that we need to be more ambitious and that we need to move. The bill is designed to keep things the same and tide us over for the transition; it does not set out plans for the future. Plans for where we are moving to and what needs to change in the transition period have not been put to us yet. We set out ideas in our report, “#Route2050: A direction of travel for Scottish land management to 2050”, and the NFUS published “Steps to Change: A New Agricultural Policy For Scotland”. As a sector, we have been clear that we know that we need to change and we know what we need, but the bill does not deliver that. It is not intended to do so.

Jonnie Hall: The bill does not go anywhere near far enough, but it is a necessary stepping stone. The here and now of the Brexit challenges will be small beer in comparison with the other challenges that the industry will face over the next decade. The Parliament has set a target of a 75 per cent reduction in emissions by 2030 and agriculture will have to play a huge role in

delivering that. However, it cannot do so with the tools that are currently in the toolbox, so we need a new agriculture policy beyond this continuity bill to enable farmers and crofters to do far more. I rigidly agree with the NFUS quote that Richard Lyle just cited.

Richard Lyle: I do not want to stray into other members’ questions. I just want to say that the one thing that I would like to see is everybody in Scotland—the industry, the Government and the relevant organisations—sitting down and agreeing what will be required after Brexit.

I will move on to my second question.

The Convener: Before you ask your second question, I think that Christopher Nicholson wants to come in.

Christopher Nicholson: I just want to reiterate what others have said. To my mind, the bill is for one purpose only, which is the transition period, and we need to look at policy going forward. Agriculture faces huge challenges over the next decade, so the sooner we come up with policies and joined-up thinking, not just for agriculture but for rural issues as a whole, the better—that is missing at the moment.

Richard Lyle: There will be major changes. Once the bill comes into force and after Brexit, everybody has to sit down and basically agree. There will be winners and losers. It is not fair that the Government is continually blamed. I believe that you have the opportunity to sit down and agree a policy before we implement it.

Moving on, how do you expect rural policy in Scotland to change during the transition period? What are your priorities for that period and what would you prefer to be included?

The Convener: That is a massive question, and it could allow all our witnesses to go off on massive answers.

Richard Lyle: Perhaps we could just have one item from each witness then.

The Convener: Everyone will get a chance.

Yvonne White: My priorities would be the environment, retaining population, accessibility for the public and the production of high-quality vegetables, grains and meat. There are lots of things that we need to do. A good and fit-for-purpose agriculture policy can help to underpin all that, encourage it and allow the sector to flourish, if we involve the right people and if we have the will and the pragmatism that are needed. We have an opportunity, although there are a lot of threats.

Lizzy Baxter: I pretty much agree with what Yvonne White said. The current data collection lets us see exactly what is happening in Scotland and across the UK. The paperwork that we

currently do gives us a good indication of what is happening. I would pretty much reiterate exactly what Yvonne said.

Jonnie Hall: The current CAP under which we operate is fundamentally flawed, because 90 per cent of all the support payments that go to farmers and crofters are based on declaring an area of land and are no reflection of how the land is managed. We therefore need to move swiftly to an action-based approach, with actions around improving productivity and delivering on the environment. We set out those actions in our document “Steps to Change: A New Agricultural Policy For Scotland”. Fundamentally, the biggest change that we can make is to break away from area-based payments and move to action-based payments so that we can see real outcomes and achieve fundamental objectives on climate change, productivity, food production, rural communities, population and so on.

Richard Lyle: I totally agree with that statement. I do not want to veer into anyone else’s questions, but that is refreshing, and I agree.

The Convener: I would like to hear what Eleanor Kay and Christopher Nicholson have to say as well.

Eleanor Kay: I will be a bit lazy and refer you to our “#Route2050” document, which sets out that, within the transition, we want the integrated land management approach to be embraced. That approach looks at business efficiency and improving resilience so that we can make the most of the opportunities that are to come and weather the inevitable storms. It will also enable us to focus on our environmental credentials, including the climate change targets that we have set ourselves. Those credentials are fantastic, but we can build on them.

Christopher Nicholson: The current support framework, which is based on area payments, is not helpful for the tenanted sector. At the moment, a landowner can access area payments with very little activity. We would like a change so that there is a focus on activity rather than on area payments. At the moment, the tenanted sector is hamstrung by a taxation framework that works against the sector. There is nothing that we can do about that here, because that is not a devolved issue, but the support framework should be changed to move away from area-based payments and towards activity, as that would help the tenanted sector.

The Convener: I find it interesting that no one has used the term “food security”, which used to be bandied about quite a lot. We have been talking about high-quality food production, but is there a need to ensure that sufficient food is

produced in Scotland for people to eat? Is that part of the picture?

Eleanor Kay: It is absolutely the case that there is such a need, but I do not think that environmental considerations and food production are at odds with each other. Producing high-quality food sustainably and efficiently goes hand in hand with good environmental practice.

Jonnie Hall: In an increasingly unstable world, food security must be an issue for any Government. Food price inflation is the last thing that any Government wants to see anywhere, but we live in a trading world. We will never be self-sufficient in Scotland—or, indeed, in the United Kingdom—so let us drop any notion of that. We need to focus on what we do and to do it very well, in the most effective manner. We need to utilise what we do not only in providing food but, equally, in driving the rural economy and the food and drink sector, which is a major sector of the Scottish economy.

Jamie Greene: I had my first bag of crickets the other day as part of my efforts to expand my protein sources, so it is absolutely right to say that the way in which we consume is changing by the day.

I want to bring the discussion back to what the bill does and does not do and to how we move forward. We have had a few evidence sessions on the bill. I was quite struck by a point that Michael Keating of the Royal Society of Edinburgh made. He said:

“The bill is a symptom of the tendency to fix little bits and pieces, rather than bringing together the big picture to see how environment, agriculture and rural development fit together.”—[*Official Report, Rural Economy and Connectivity Committee*, 4 December 2019; c 22.]

Other witnesses said that they would have preferred a hybrid bill that catered for the transition and gave the Government the ability to manage that, but which also pointed in the general direction of what should happen next. That would lie somewhere between what we have here, which is a fairly simple transition bill, and a new piece of legislation for rural policy. Would you like the bill to become more of a hybrid bill? Would you prefer a new bill or a more sweeping and comprehensive piece of legislation?

Eleanor Kay: That is a really good question. It is clearly a bridging bill—it does not do anything beyond that. Although the UK Agriculture Bill was not perfect, it set out the direction for England, and Wales quickly followed suit. That has meant that pilots have started and that people have started to look at the new environmental land management system that will be used. That is the key thing that we are missing. I am not sure whether the Agriculture (Retained EU Law and Data)

(Scotland) Bill needs to be amended to reflect that, or whether it needs to be quickly followed by an additional piece of legislation. However, it would be fantastic to get that direction very quickly.

Jamie Greene: Pete Ritchie from Nourish Scotland said:

“The bill should have a purposes clause that lists the purposes for which ministers may make grants.”—[*Official Report, Rural Economy and Connectivity Committee, 4 December 2019; c 8.*]

Others have called for additional wording to be included on the purpose of the future direction of policy. Maybe witnesses can reflect on that in their answers.

Eleanor Kay: I agree. That would help to settle some of our concerns about what changes could be made if we were encouraged to follow a more environmental or climate change-focused agenda. We lack information on the intention as to what changes will be made.

Jonnie Hall: The real answer is that we are where we are. In an ideal world, we would have something that is far more progressive, but we need the bill for the short to medium term, given that it looks certain that we will leave the EU by the end of 2020. We need the bill to provide continuity.

The problem that we have in Scotland—it is not just our problem or the Government’s; it is a shared problem, because we all have a responsibility—is that there has been lots of talk about change from everywhere, but we have not yet agreed on where the change should take us.

If we cannot agree on what the landing space should be for agriculture in Scotland, and on what the roles, responsibilities and purpose should be, we cannot agree on how we get there. Fundamentally, the problem is that we cannot put it in the bill that we will have schemes to do X, Y and Z without knowing where we want to get to. The committee obviously has an interest in the recently established farming and food production future policy group. I know that some members take a serious interest in the deliberations of that group. However, we really need that group and other governmental processes to come out with a clear statement as soon as possible about where we want to get to, and when. Then we can decide how we get there.

11:00

The Convener: If witnesses want to speak, they should try to catch my eye. I am fishing around to see whether people want to come in. I do not want to embarrass anybody if they do not want to come in, so please give me a wave and I will bring you in if I can.

Christopher Nicholson: I agree with Jonnie Hall. We are where we are. The current bill covers the short-term period, as is necessary, but I imagine that, for policy going forward, we will need another bill.

My feeling is that we should not focus only on agricultural policy; the approach should be more joined up with other rural policy. The convener mentioned food security, which has competing interests with forestry, energy, biomass, anaerobic digestion and so on. Some of those interests are competing against one another, and there are winners and losers. As far as I can see, in the past, we have looked at those different rural issues in their own silos rather than jointly. A future rural policy needs to look at the bigger picture of how all those interests compete against one another.

Jamie Greene: The committee is scrutinising the bill and, after we have heard the evidence, we will report back to the Government on what we think should happen next. Should the bill have a specific purpose that covers only transition? Should it have an end date and mandate the Government to introduce a new bill that does some of the things that you are talking about? If so, when should that new bill be brought forward within the transition period?

Jonnie Hall: Is that essentially the same question that Mike Rumbles asked?

Jamie Greene: Yes.

Jonnie Hall: In that case, I absolutely think that that should happen. We could probably discuss actual timings in detail, but there should be some sort of mandate on the Government to deliver the next phase of the process.

Christopher Nicholson: Work on new policies needs to start now. My understanding is that it has started through the future policy group. I imagine that the timing will be dependent on how Brexit works out and the arrangements with trading partners, but the bigger-picture thinking for new policy needs to start now. We cannot expect the bill to do that—it merely covers a gap.

Emma Harper (South Scotland) (SNP): I have a supplementary question. Page 1 of the policy memorandum states that the bill is

“intended to provide the Scottish Ministers with regulation-making powers to amend or replace the European Union (EU) Common Agricultural Policy (CAP)”.

Bullet point 2 talks about enabling

“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.”

Would that wording not enable tests of change to be implemented and progressed pretty quickly?

In previous evidence, the committee heard about the environment, biodiversity and wider land use strategy. The bullet point that I quoted would enable pilot projects that could be delivered under a wider land use strategy and could support testing and getting on with the job faster.

Eleanor Kay: I agree that nothing in the bill would prevent pilots from being undertaken. That is exactly what we need. However, we do not have any steer on what the pilots would be for. The farming and food production future policy group is looking at that, but the timescale in which we are getting information is not as quick as we would like it to be. We have had reports from the agriculture champions and the National Council of Rural Advisers. Various inquiries have highlighted where we need to go. We have another task force and another review, but surely we know enough to start consulting with stakeholders on ideas about what pilots could be done and how we could tender for them.

The pilots in Wales and England have got under way remarkably quickly, so the work can be turned around swiftly. The bill allows for pilots, but it does not give us any idea of what they would be for.

Yvonne White: Some pilots are going on now, funded by Scottish Natural Heritage. They are in four areas of Scotland, which are Skye, Argyll and—

Jonnie Hall: East Lothian and Strathspey.

Yvonne White: Those are looking for a replacement for CAP. CAP is very prescriptive, so they are looking for a more pragmatic system, which is good. Little things are happening, but they are not widely promoted.

There might be concerns over the funding of the pilots. They are based on projects that have happened in the Burren area in Ireland, which have been remarkably successful in generating more hen harriers and getting better results with cattle. The projects are based on traditional methods but are not old-fashioned. They tick a lot of boxes.

Jonnie Hall: To follow up on what Yvonne White said, the pilot projects that SNH is running are about the bottom-up approach, but they look only at agri-environment measures and how we might replace our current agri-environment climate scheme. They do not look at things such as productivity or the performance of the agricultural business.

To address Emma Harper's point, pilots are great and tell us lots of things. However, to get the significant outcomes that we want, it would be too little, too late to roll out the pilots on a wider scale from 2024 onwards. We need to put in place a suite of measures that every farmer and crofter

can do now. I cannot emphasise enough the expediency of 2030. If every farm and croft in Scotland did soil testing and a carbon audit and was a member of a benchmarking group, they would tick three important boxes around input efficiency, climate change and financial performance.

Other than financial resources, it would not take much to put that in place. That would fundamentally change the performance of Scottish agriculture, in terms of how farms and crofts operate as businesses and what they deliver on climate change. Those things are not mutually exclusive. We drive efficiencies at a business level. Nutrient management, soil testing and carbon audits are pretty much one and the same. Therefore, that would make those businesses more resilient, more market focused and, at the same time, they would deliver on a wider public agenda. I do not understand why we are not getting on with that sooner rather than later.

The Convener: You have made that point clearly.

Angus MacDonald (Falkirk East) (SNP): I turn to the less favoured area support scheme and issues around areas of natural constraint. There is a majority of opinion among stakeholders that the LFASS-style lifeline support for farmers and crofters must continue. In fact, the 2016 independent evaluation concluded that many LFA farm enterprises would not be sustainable in the absence of support payment. The bill team suggested that it may wish to make changes to the LFAS scheme, and has indicated to the committee previously that it is still working on the new areas of natural constraint approach. Is that change appropriate, and were you expecting any other changes to less favoured area support as a result of the bill?

The Convener: A lot of people are leaning forward. I will start with Jonnie Hall. I suspect that Yvonne White and Christopher Nicholson may have comments, too.

Jonnie Hall: The current LFA support scheme is vital for farmers and crofters in Scotland. It is fundamentally business defining in some situations. However, along with the basic payment scheme, it is an area-based payment, and it is blunt. It does not necessarily deliver on its objectives of retaining grazing management in our hills and uplands, retaining populations, avoiding agricultural land abandonment and all the rest of it.

As such, we need to move away from the current LFA support scheme and find something to replace it that delivers on the requirements of our less favoured areas. That will be easier said than done. The reason why the Scottish Government cites the issue is because we already know that

we have a challenge with the existing European regulations, which force us down the so-called parachute payments route whereby payments under LFASS have been reduced this year—2019—and will be reduced significantly again in 2020. There is a real urgency about reforming LFASS or, in fact, replacing it with something completely new.

To go back to the point that I made to Richard Lyle, we need to use that as an opportunity to move away from blunt area-based payments—we can throw as much money as we like at those without necessarily changing what happens on the ground—to something that supports activity, particularly through livestock grazing management and all the associated social, economic and environmental benefits.

Yvonne White: I broadly agree with Jonnie Hall that some support is vital to keep rural communities in the Highlands and Islands going. If we did not have LFASS, those communities would be in danger of collapsing, and the look of the landscape and the population would change considerably. The scheme can be improved in that it can be much better tailored and less prescriptive. We need parts of the scheme to be less prescriptive to better support the areas that really are less favoured. I understand that about 70 per cent of Scotland's land is considered less favoured.

Jonnie Hall: It is 85 per cent.

Yvonne White: So nearly the whole of Scotland—85 per cent—is less favoured area. However, there are huge differences within that. There is good farmland in Nairn and Inverness-shire, but bog on Uist. As such, the scheme does not fit and there is no value from public money, because there is a blanket approach. We have the opportunity to change that and to support productivity and balance that with environmental concerns. At present, it is either one thing or the other, and that has not worked. We need a balance.

The Convener: Just to clarify, the question was whether you expect changes as a result of the bill. Christopher Nicholson probably has comments. Will you answer the second part of the question, Christopher?

Christopher Nicholson: Do you mean whether we expect changes with LFASS?

The Convener: Yes.

Christopher Nicholson: The answer is yes, and we hope for a replacement for LFASS. That is vital for the disadvantaged areas of Scotland, and we would look for a strong link with activity. LFASS takes a broadbrush approach, but certain areas need more specific help.

11:15

Angus MacDonald: I will finish with what may be a daft laddie question. Is there an argument to return to supporting a headage basis in regional areas?

Lizzy Baxter: I was actually going to suggest that it should be done on the basis of stocking density or headage, purely because that is based on actual activity, which goes back to what Jonnie Hall was intimating. That would certainly help, given that the vast majority of Scotland—85 per cent—is LFA, and we need to help that sector. A payment rate that is on the basis of headage or stocking density would be the best option.

The Convener: I ask Jonnie Hall, in answering that question, to say whether there are implications for World Trade Organization rules if the scheme is done on a headage basis.

Jonnie Hall: I do not agree that we should do it on a headage basis but, as I have just said, I do not agree that we should do it on an area basis. We need a hybrid of the two. Lizzy Baxter touched on that in talking about stocking density rather than a payment per skull, which is what we had prior to 2005 under the direct support payments and prior to 2001 under the HLCAs—hill livestock compensatory allowances—which preceded LFASS and were a payment on suckler cows and breeding ewes. We ended up with a very inefficient agricultural system in which we just kept livestock—the scheme was not based on how the livestock were managed. We do not want to go back to that.

On the WTO, there is more than enough scope in the UK's headroom in that regard for there not to be an issue. If we started to use headage payment again, just as we currently do under the ewe hogg scheme and the calf scheme in pillar 1, we would not distort trade on a global scale by any stretch of the imagination. Our "Steps to Change" document sets out proposals for a hybrid approach involving stocking density—that is, livestock—and area. Those two things come together to be a measure of activity. It is not one or the other; it is somewhere in the middle.

Yvonne White: This is where a prescribed approach does not work because, as we have all pointed out, the solution is probably a mixture of everything. With stocking density, if you run a hill flock of sheep on common grazings that are poor land and in region 3, you get £5 subsidy per hectare. In our sheep stock club, there are more than 1,000 ewes and we lose 200 to 300 lambs a year to predation, which could be to foxes or sea eagles. We are getting into trouble because, no matter what we do, we cannot maintain the number of sheep that the department says that we should have on the hill on the Trotternish ridge.

The money and the subsidies go to local labour to support the rural area, which is termed as economically deprived. The subsidies do not just go into the pockets of hill farmers or crofters; they are spread out.

The Convener: We are almost getting into the process of redesigning the LFA support scheme. I am going to be very mean and drag us back to the bill.

Colin Smyth: I will move on to financial aspects. The bill gives ministers powers to modify the financial provisions in CAP legislation, which could mean moving money between pillars and different schemes. It also suggests a cap on individual payments. What are the panel's views on those powers and how they should be used?

Jonnie Hall: The power to transfer money between pillar 1 and pillar 2 already exists under EU legislation. Currently in Scotland, 9.5 per cent can be transferred from pillar 1 to pillar 2; Richard Lochhead took that decision in 2013-14.

It is absolutely right that we retain that power, but the power could be adjusted, given that, under EU law, the percentage that is transferred can only go up, from 9.5 per cent to a maximum of 15 per cent. There is an argument for having the flexibility for the percentage to go down, if required, as well. Future funding when we are outwith the CAP remains a relative unknown, so it is important to retain the flexibility to move money from pillar 1 to pillar 2, but we want maximum flexibility, so that money can be moved back from pillar 2 to pillar 1 if need be.

That said, in the longer term we need to get rid of pillar 1 and pillar 2. They are a European construct. In future policy, we do not have to have pillar 1 and pillar 2. We have to underpin agricultural businesses and so on. That is our approach.

Capping already exists, too, but the cap is based only on the basic payment and it is set at such a high threshold—€600,000—that it touches nobody. Having the power to cap payments to individual recipients is probably important; the policy question is how such a power would be used. Beyond that, how would the yield from any cap be recycled and reused to underpin other actions that were required?

Yvonne White: I agree with capping, but policy makers need to look carefully and thoroughly at the detail, so that they do not end up doing something that they did not set out to do. We are talking about the use of public money, which needs to be scrutinised.

Christopher Nicholson: We support capping. There might be an opportunity to use the surplus or excess that was generated from capping to help

genuine new entrants into farming, because such people are disadvantaged when they are competing with established businesses to get in.

Eleanor Kay: Capping is an interesting issue. Should a cap apply at claimant level or at holding level? Should pillar 1 or pillar 2 payments be capped? In considering the need for capping, it would be valuable for us to know what would happen to the revenue from it and whether that would be used for climate change or environmental issues, or for the pilots.

We need to take a step back and consider the purpose of the capping. What is it supposed to do? What is it targeted at? Are we talking about capping pillar 2 money? Are we talking about open-ended capping or setting a ceiling? It is currently possible to set a ceiling. At individual holding level, it is important that there should be no unintended consequences that put land managers off doing good things.

Peter Chapman: Jonnie Hall made the point that there is currently a cap, but it is at a very high level. When I speak to farmers, I find that they are all in favour of capping, as long as the cap is just above what they receive. That is the issue. It is easy to say, "My payment is £30,000, so capping payments at £35,000 would work." If we are going down the road of capping, we need some idea of a fair level for the cap. I do not expect anyone here to come up with a fair level; I just make the point that that is the problem. A cap will hurt businesses. It will hurt big businesses, and it is often big businesses that are good at delivering on environmental issues.

Jonnie Hall: To follow on from that, there is more than one way to skin a rabbit when it comes to capping. You can set an absolute limit or you can apply degressive payments, whereby you start to scale back.

I draw the committee's attention to what is happening in Europe right now on proposals for the next CAP. The proposal that is on the table from the European Commission is that businesses would start to have their payments reduced when the level went above €60,000 and would receive nothing above €100,000. That might seem like quite a high amount of money and, in a European context, it would probably not affect a huge number of people, but if that was applied in Scotland, it would affect a significant number of businesses that employ a lot of people and which are responsible for driving a lot of the food production in Scotland.

The point that I am making is that, although we often cite the fact that Scotland has the lowest payment rate per hectare in the EU, we have the highest payment rate per business, because we operate on a big scale. Our landscape is such that

we have to operate on a big scale. In Scotland, the payments per business are very high on average. To go back to Peter Chapman's point, the issue is about where we would pitch an absolute cap. We could also apply degressive payments and then have a final cap.

Larger businesses can operate with economies of scale. They generate lots of multipliers in local economies, they employ people and they keep people in remoter rural areas. The notion that big is bad and small is beautiful is often misplaced. The management of a cap, where that cap would be set and how the funding from capping would be recycled would have to be handled extremely carefully. The bill does not talk about that; it enables ministers to do something, but it does not set a policy agenda for what should be done or how it should be done.

Colin Smyth: I would like to turn that back on the panel. What do you think should be capped? What should that funding be used for? The "Stability and Simplicity" consultation talks about capping direct payments under pillar 1 and using the money for pilot schemes, for example. Do you support that?

The Convener: That is an interesting subject, but it takes us into the designing of the scheme again, so I ask people to keep their answers short.

Yvonne White: We could start by capping big estates that cover huge areas where production is not high, which might be owned by Saudi people or other people from the middle east. Public ground that was not used for agriculture used to be included, but I think that that was sorted the last time round. I think that airports were getting money through the CAP. There could probably be some quick wins in areas like that, but whether there would be the political will to do that is a different matter.

I agree with Jonnie Hall's view that small is not always beautiful. Scotland's agriculture is so diverse in terms of the land and the output that we need bespoke support for the different areas. What is right for a large farm on the east coast that produces lots of fruit will not be fit for crofts on the machair—those are totally different areas.

Christopher Nicholson: Jonnie Hall was correct to mention that Scotland has the highest average payment per business. That is a function not just of bigger businesses but of the concentrated pattern of land ownership in Scotland. Capping needs to fit in with the land reform aims. If we continue to reward very large holdings with uncapped funds, that will have a big influence on the size of holdings.

Eleanor Kay: I am going to skirt the issue slightly. If we are looking at having a landscape-scale approach and using the land use strategy in

the context of the climate change ambition and the targets that are set in the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019, it is worth noting that such an approach would include quite a few landowners. As those landowners are delivering a lot, it is important to consider where the cap would be put and what impact any sort of payment ceiling or degressive reduction would have. The impact of making such a change on the local economy and jobs could be quite significant. Although I understand that there is an appetite for introducing such things, it is not something that we should do quickly or without consideration.

11:30

The Convener: Something else to bear in mind is that some of the big organisations that do huge amounts for conservation are also in receipt of very large grants. The RSPB, for example, gets large farming grants and uses them very effectively, in some cases, for good conservation. Would a cap concern such organisations?

Jonnie Hall: It probably would if they are in receipt of direct support payments, rather than just pillar 2 agri-environment payments.

The point that I was going to make—and it is a fundamental one about future policy—is that, if we move away from an area-based payment to an action and activity-based payment, capping will no longer be an issue. Capping becomes a non-issue if we are focusing on actions on the ground, rather than the areas that people declare.

The Convener: The next series of questions are for specific members of the panel. Time is creeping on, so short, focused answers to short, focused questions would work very well.

Angus MacDonald: This question is for Yvonne White. Will you expand on your earlier response to Richard Lyle? Do you have any views on the implications of the bill for the Scottish crofting sector? Will the plans for the rural policy transition period deliver benefits specifically for crofting?

Yvonne White: We see the bill very much as a bridging bill rather than something that will make much difference. We hope that it will give some necessary continuity for the period before a new agriculture bill comes in. It is important that we have a timetable for a new agriculture bill that is more tailored to the specific needs of crofting areas, as well as those of farming generally. We all know that crofting is unique to Scotland. It is unique in Europe and many people from outwith the UK reference crofting as an excellent type of small-scale agriculture on marginal land. However, a lot of the time we do not quite appreciate crofting and the culture that is attached to it. Being optimistic, we have big hopes that a much better

agricultural policy will come out of this, which will help us to retain people on the land in our marginal areas.

Angus MacDonald: Thanks for putting that on the record.

Emma Harper: I have a similar question, probably for Chris Nicholson, about tenant farming. Does the bill have any specific implications for tenant farmers? Do the plans that have been developed for the rural policy transition period address the specific needs of tenant farmers?

Christopher Nicholson: There are measures in the bill that could benefit the tenanted sector. We have already covered some—for example, moving from area-based payments to activity-based payments. If capping is introduced at a level that will result in a saving, that saving could be used to institute a support system for new entrants, who get very limited support at the moment. The bill has measures that could help the tenanted sector, but I hope that a further bill looking at future policy might give more consideration to that sector.

Emma Harper: It is probably also a question for Lizzy Baxter, as new entrants will be a specific issue for the next generation of young farmers.

Lizzy Baxter: As has been mentioned, there is no timescale. The bill is a bridging bill to cover the period until we get something more set in stone. If legislation and policy are put in place more quickly and farmers know about it, they can adapt to change if they need to. As Jonnie Hall keeps saying, 2030 is not far away, and for farmers to adapt to change, it needs to be implemented sooner. I am already involved in farming, so I am not a new entrant as such. The bill is just a bridging bill at the moment.

Maureen Watt: My question is for Eleanor Kay. Do you think that the bill adequately provides for wider rural needs beyond agriculture, such as forestry, the sustainability of rural communities and the other aspects of rural development that we talk about?

Eleanor Kay: The bill does not change what is currently provided. It could go further to highlight how those things will continue to be provided for in the future. A common criticism of the bill is that it is about what we currently do, and doing that for the rest of time. There is a question about forestry and whether the ability to make changes to some definitions could impact on how we address the forestry question and achieve the increase that we need to achieve. Again, we need to consider what will happen to the LEADER funding and the various other schemes that we have had and how we change them and make them better.

John Finnie (Highlands and Islands) (Green):

A number of the responses have referred to the environment. The Scottish Government has declared that there is a climate emergency, and colleagues round the table now agree that there is such an emergency. We have heard from earlier panels about the agri-environment climate scheme, which closes for new applicants next year, and about potential changes to the CAP, and how, when combined, those could be a retrograde step for environmental protection. Can I have your thoughts on that, please?

Jonnie Hall: Everything that I have said this morning has referenced climate change as a very important, if not the most important, thing that is faced by society, let alone agriculture. Enabling farmers and crofters to contribute positively to tackling and addressing those issues remains paramount to us. We therefore need the bill to provide continuity, in the first place, but then, as we have discussed, we need something beyond that to set the direction of policy and implementation thereafter.

Your question refers to the continuity of schemes such as the agri-environment schemes. As things stand, in 2020, there will be no new applications to the existing agri-environment climate scheme. There will be a rollover for those schemes that will be coming to an end, but I think that it is critical—and we have seen this in previous years: every time there has been a change in the CAP, a transition has usually been required—to ensure that there is continuity. In a way, the bill should allow that work to continue in a Scottish context, rather than in a European context under the CAP.

That is critical because, whether it be biodiversity, water quality or climate change issues in the environment, farming and crofting account for 70-plus per cent of Scotland's land mass under management, so we have a ridiculously important role to play in safeguarding and enhancing our environmental assets. Continuity is important, so the bill is important in that sense. It is not just about support payments for farm businesses; it is about ensuring the continuity of management under those agreements.

John Finnie: You say that the bill “should” allow the agri-environment work to continue, but does it do that?

Jonnie Hall: I am no lawyer, and to avoid the risk of using a non sequitur—that is, of saying that it will—I will say that we do not know. The hope is that it will, if the wording in the bill is drafted as it should be and if the bill is enacted as it should be. It all depends on what ministers do with the powers that are conferred on them. They might sit on their hands and do nothing, which would be a

concern. The powers in the bill need to be used in the most positive and effective way.

Yvonne White: John Finnie asked whether the agri-environmental climate schemes are good—or words to that effect—and my response is no. Many people who would like to croft extensively—it is an extensive system—cannot get into the schemes. They are doing everything that the schemes aspire to, but it is almost as though the schemes are some sort of foil or take a cosmetic approach. They lack meaning because they do not get to everybody in the areas where they need uptake to come from. There are lots of reasons for that, and I know that this is not the place to discuss the ins and outs of the situation. It is disappointing. Uptake could be much better, which would benefit Scotland generally.

Christopher Nicholson: It is important that the AECS can continue. There will be plenty of examples across Scotland of environmental measures that are in place under that scheme and which have been continued from previous schemes, going all the way back to the Scottish rural development programme and the previous scheme, whose name I have forgotten. The schemes have had largely the same measures in them, they are continuing and I hope that they can continue in future.

One of the problems with the AECS, which Yvonne White touched on, is that entry into it has been competitive, so it has not reached everybody.

On the bigger picture going forward, as farmers and land managers, we are responsible for the management of the world's biggest carbon sink—the soil, and the organic matter and carbon that are in the soil. To my mind, farmers could be taking a lot of measures to improve carbon capture in the soil. Other countries have schemes to ensure that farmers farm in a way that puts carbon into the soil, and we need to look at that issue for the future.

As many people have said, rather than being the problem, agriculture can be the solution to climate change.

Eleanor Kay: The bill would allow current schemes to continue once we are outside the EU. I imagine that one possible modification could be made to eligibility in order to widen the scope of uptake. The competitive approach of the schemes could also be tweaked.

We need to be aware of how the issue sits with the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019. There are some significant commitments on land use in the 2019 act, such as whole-farm action plans, nitrogen accounts and improvements to the land use strategy. We need to consider further whether the

ambition in the 2019 act and parts of the climate change plan sit comfortably with the bill, as well as how we can move quicker.

John Finnie: A couple of the witnesses have touched on the way in which the bill could deliver simplifications and improvements for land managers while maintaining environmental, animal welfare and food standards. That is about the bill's relationship with other legislation—after all, it is an enabling piece of legislation. Do the witnesses have any suggestions on how the bill could deliver simplifications and improvements with regard to environmental, animal welfare and safety standards?

The Convener: Who would like to start off on that? As I said, if you all look away, the danger is that I will pick the one who looked away last. Would Eleanor Kay like to start off?

Eleanor Kay: I would probably wait for the simplification task force to report on what it thinks is possible, but the speeding up of the process seems to be mostly down to inspection and the handling of the paperwork behind such things. I would not want to hedge my bets.

11:45

Jonnie Hall: This addresses Yvonne White's point, to a degree, but it would be of great benefit if the bill could shift some resources from the competitive elements of the current agri-environment schemes to non-competitive things, so that there is a greater uptake across a greater swathe of individuals. I go back to the point that I made earlier. There are certain measures that, on a non-competitive basis—

John Finnie: I am sorry to interrupt, but could you explain the competitive element?

Jonnie Hall: The current agri-environment climate scheme is part of pillar 2 and the Scottish rural development programme, and its funding is available to all. However, because the funding is limited, applications are assessed on a points basis, and points mean prizes. As a rule, if applicants are big enough and in the right place, they get enough points. If they are not big enough and in the wrong place, they do not get the right number of points, so it does not matter how good their application is. There is not enough funding to go around, so the Scottish Government and other organisations have difficult decisions to take. The participation rate in the agri-environment climate scheme is nowhere near as high as we would all like it to be.

An alternative approach would be to take some funding out of that scheme, or provide additional funding, to operate a non-competitive approach whereby every farm and croft could choose

activities from a list of options, such as soil testing and nutrient management work to help to improve carbon storage, nutrient budgeting or producing extensive grazing management plans for common grazing and upland areas, which would benefit habitats and biodiversity, and carbon storage. We used to have the land managers options scheme, which was the same in essence. Before that, we had environmentally sensitive areas, through which there was geographically targeted funding that did pretty much the same thing. It is like “Back to the Future”, in some ways.

We need to put in some practical, effective measures that farmers and crofters can work with, and which will fit with their aspirations for operating their businesses, will not cost a heap of money—because we are talking about an allocation per farm business—and will not only add value to their businesses through how they operate and manage their land, but add an environmental bonus. That is exactly our argument in “Steps to Change”.

That would require a change to what we currently do. Would the bill enable that? It would probably start the piloting process for the change, because that is in the bill, but it would not provide for its roll-out. If the agriculture sector is to achieve its climate change plan targets, it is quite clear that every farmer and crofter will have to do everything everywhere. That will soak up a lot of resources, so we will need that funding if we are to play our part.

The Convener: Does John Finnie have a brief follow-up question?

John Finnie: No—I just want to thank Jonnie Hall for that comprehensive explanation.

Emma Harper: The bill proposes a power to modify CAP legislation on public intervention and private storage aid. Do the witnesses have any thoughts on that?

I have another question, which is about fruit and vegetable producer organisations. During our previous evidence session, Nigel Miller said:

“We have failed on the issue of producer organisations. There is potential to bring producers together for development and to market their products.”—[*Official Report, Rural Economy and Connectivity Committee, 4 December 2019; c 13.*]

The issues are public intervention and private storage, and how we simplify and improve the situation for fruit and vegetable producer organisations.

The Convener: Who wants to start off on private storage?

Christopher Nicholson: It is good that the intervention option is in the bill. It might never be

needed but, given the uncertainties that we face, the means to intervene should be there.

Jonnie Hall: I agree with Christopher Nicholson. We probably still need that in our armoury for extreme circumstances.

The Convener: The second question was on producer groups.

Jonnie Hall: Producer organisations are currently covered by European legislation, and it is imperative that we are able to continue to operate them. They have worked well in certain sectors, such as the soft fruit sector. They allow for collective action by a number of growers, so that individual growers do not get picked off.

NFU Scotland would like producer organisations to be developed in other sectors, such as the beef sector, which is facing challenges. We argue strongly for more formal collaboration, so that the primary producers have a bit more power in the supply chain. At the moment, the primary producers are price takers, and individuals get picked off. With a supply chain that is less than transparent, to say the least, and with big processors and retailers to deal with, the primary producer is the whipping boy or girl at the end of the supply chain. Producer organisations have the potential to strengthen the primary producer’s role in the supply chain. Having that power and developing it in sectors other than fruit and veg—which is where it has operated so far—is important.

Emma Harper: Dairy producers need support, too.

Jonnie Hall: Yes. Producer groups come into the realms of dairy contracts and so on.

Peter Chapman: My question is on sections 8 and 9, which are on marketing standards. Those provisions are quite a big part of the bill—they deal with classification criteria, labelling and various production methods. We have already touched on the potential for there to be an effect on the UK single market, so we will park that.

In a previous session, the Scottish Government outlined that it would amend marketing standards “case by case”, and that the bill would provide the flexibility for Scotland to align standards with either the UK or the EU. What are your thoughts on that?

Eleanor Kay: It is important to consider the primary markets for our produce. I do not have the exact figures to hand, but I know that a lot of our beef and sheep meat ends up in England. It is not that we cannot diverge from UK and EU standards, and there will probably be some similarity in relation to the standards that are set out in trade agreements, but it is important that we do not end up distorting the UK market. That is not to say that we cannot be slightly different, but we

must not change standards for the sake of changing them.

Jonnie Hall: We want differentiation, because we want to be able to sell our products as Scotch—we want them to be recognisable as such—so we have to operate at that production standard. However, marketing is another element, and it needs to be consistent across the UK if we are to protect the internal UK market.

I can see the logic behind the Scottish Government line that Peter Chapman just quoted, but I am concerned about how it would work in practice. Operating different standards for different markets—whether the European market or the UK market is seen as more important—might end up being a bit messy. However, the principle is sound.

Peter Chapman: If we go down different routes and have different standards, there will be an attached cost for the industry. To give just one example, we could have costly labelling issues if we have different standards.

Jonnie Hall: We also need to be careful to differentiate between production standards and marketing standards, which is a point that Stewart Stevenson raised earlier.

Jamie Greene: We are not talking about differentiating between production standards and marketing standards in the bill. Section 8 says that “The Scottish Ministers may by regulations make provision about ... products”

that

“are marketed in Scotland.”

It does not have a provision on products that are produced in Scotland.

Section 9 lists the sectors that are referred to in section 8. They include olive oil and wine, which are products that we do not make a lot of in Scotland. Interestingly, pork and lamb are omitted. Does anyone have a view on why they are omitted?

As a direct result of the powers that are listed in section 8, which includes powers to dictate presentation, labelling and packaging, could we end up with products that we import from the EU or elsewhere needing different labelling in order to be sold in Scotland? More important, what effect would that have on the market?

Eleanor Kay: That is already the case when a food product is exported to the US, where different labelling is required. You are right to say that the bill is more about how products are marketed in Scotland. It would depend on different things. Some label changes can be so detailed that it is

almost too expensive for a small producer ever to consider changing what they do.

The provisions might have an impact on products that are currently sold in Scotland. If the bulk of a domestic company’s product is exported, it could be cheaper to export it, because it would already meet the labelling requirements for that. It would depend on the level of change.

The Convener: I will throw in a question. The bill would allow Scottish ministers to change carcase classifications, so we could end up with classifications in Scotland that are different from those in the rest of the UK and, indeed, Europe. Would that be beneficial? Is that a sensible provision to have in the bill? Do we need it?

Jonnie Hall: That is obviously part of the approach to retained EU law. Carcase classification rules are set at a European level and we have to absorb those into Scots law. The bill would enable the rules to be changed—that is the whole point of the bill, essentially—and doing that would then become a policy choice. If the ability to do that is not included, the European standard would become frozen.

The Convener: So it is not an issue for common frameworks for trade.

Christopher Nicholson: At the moment, we do not know the details of any trade deals post-Brexit. This important part of the bill will allow flexibility for a future situation.

The Convener: We will have to wait and see.

I am conscious of the time, so I will ask the final question. As everyone knows, the current system collects a lot of data about the management of agricultural holdings. It has been argued that, as the public give money to that end through taxation, it is right that that data is collected and made available to the Scottish Government and to other people. Are the data provisions, including those on the collection of data, reasonable? A yes or no answer, if anyone wants to give one, would be helpful.

Jonnie Hall: Yes.

Lizzy Baxter: Yes.

Yvonne White: Yes.

Christopher Nicholson: Yes.

Eleanor Kay: Yes.

The Convener: I love ending on a note of consensus—that is great.

I thank you all for giving evidence. I would usually suspend the meeting at this point, in order to allow our witnesses to depart, but I ask that you stay seated for the next item. Given some of your comments this morning, I am sure that you will find it interesting.

Subordinate Legislation

Official Controls (Agriculture) (Scotland) Regulations 2019 (SSI 2019/419)

11:59

The Convener: Item 2 is consideration of a statutory instrument under the negative procedure. I confirm to the committee that no motion to annul or representations have been received in relation to the instrument. Does anyone want to comment on it?

John Finnie: I am content with its contents. However, as I am a layperson, not a lawyer, I head straight to the explanatory note—I imagine that others do likewise—to understand what an instrument is about. This instrument, which contains 28 regulations, covers a wide range of issues. The explanatory note concludes by saying:

“A full impact assessment has not been produced for these Regulations as no, or no significant, impact on the private, voluntary or public sector is foreseen.”

I find that totally inadequate. It is almost as though the Government is hedging its bets. You either take the trouble to make an assessment, or an assessment is not required because it is not considered that there will be a significant impact. Is there any way to get a more comprehensive comment on the instrument, not least because we know that a considerable weight of secondary legislation is coming our way?

The Convener: Should the committee agree to do so, I think that it would be entirely appropriate for us to write to the Government and say that statements such as the one in the explanatory note are not particularly helpful to our consideration of instruments.

Jamie Greene: I note that the instrument was laid on 3 December and came into force a couple of days ago, on 14 December. I appreciate that we have a letter from the Government explaining the rationale for that, but in light of our earlier conversation, perhaps we should highlight that, in normal circumstances, that approach would be unacceptable to us.

The Convener: It appears that the committee considers it appropriate to write to the Government to ask it to clarify the situation and to make sure that when we consider future instruments, we have more information than has been given to us on this occasion. Does the committee agree to do that?

Members indicated agreement.

12:01

Meeting continued in private until 12:22.

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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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