



Law Society
of Scotland

Consultation Response

Agriculture and Rural Communities (Scotland) Bill

24 November 2023



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful, and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Rural Affairs and Environmental Law sub-committees welcome the opportunity to consider and respond to the Scottish Parliament's Rural Affairs and Islands Committee's call for views: Agriculture and Rural Communities (Scotland) Bill (the "**Bill**").¹ The sub-committee has the following comments to put forward for consideration.

General Remarks

We welcome the introduction of the Bill, having previously responded to the preceding Scottish Government Consultation – *Delivering our Vision for Scottish Agriculture: Proposals for a new Agriculture Bill*² – in November 2022.³

As the Bill operates as a framework to provide broad powers intended to facilitate the Scottish Government's agricultural policy proposals, much of the detail of the regime will be provided by secondary legislation. While we recognise the potential benefits that this provides (e.g. in terms of flexibility), it is important that there is robust consultation undertaken ahead of the detail of the regime being set by secondary legislation, especially with rural sector stakeholders, as well as appropriate Parliamentary scrutiny of the subsequent regulations.

More generally, we note the ongoing and prospective legislative and policy reform within the wider agricultural and environmental legal landscape – covering areas such as land and estate management, land reform, and biodiversity matters. We highlight the importance of considering the interplay and overlap between such reforms to ensure a consistent and aligned approach across all policy developing affecting the rural sector.

¹ [Agriculture and Rural Communities \(Scotland\) Bill](#)

² [Delivering our Vision for Scottish Agriculture: Proposals for a new Agriculture Bill](#)

³ Law Society of Scotland response available [here](#).

Framework Bill

1. Do you think a framework bill is the right approach?

Don't know

We note that the Bill operates as a framework, which will in turn be supplemented by more detailed secondary legislation.

We are cognisant of the potential benefits of this approach, for example, allowing greater flexibility in designing and implementing the underlying policy proposals, particularly should these evolve over time. We nonetheless highlight the need for flexibility to be appropriately balanced against ensuring there is clarity in the law, appropriate levels of parliamentary scrutiny underpinning legislative and policy developments, and meaningful stakeholder consultation.

We would welcome greater detail as to the proposed measures and how they will operate in practice. Without this, it is difficult to fully understand and assess their likely impacts, particularly on those operating in the sector. We highlight the importance of there being certainty and clarity for those operating in the sector. The Bill itself does not provide such detail or certainty for the sector, and we anticipate that this could cause difficulties for those affected in terms of planning and developing their business.

It is crucial to upholding the rule of law that the law is clear, comprehensible, and transparent so that requirements can be understood by those affected. Individuals and organisations must be able to guide their conduct based on clear and understandable legal standards. We highlight that a framework made up of primary and significant volumes of secondary legislation can be challenging for those directly affected by the law to access and fully understand.

As detailed below, a number of the Bill's provisions require Scottish Ministers to "consult such persons as they consider appropriate" before making the relevant regulations. We particularly stress the importance of robust consultation on such secondary legislation, to provide an opportunity for scrutiny and critical comment from stakeholders on the details of the measures.

2. Does the Bill provide a clear foundation for future rural policy and support?

Don't know

We have no further comments to make.

Purpose and objectives (section 1)

1. Do you think these are the right objectives?

Don't know

We have no comments to make.

Purpose and objectives (sections 2 and 3)

1. Do you think the requirement that Scottish Ministers must prepare a five-year rural support plan is the right approach?

Don't know

We have no comments to make.

2. Do you agree with the matters to be considered when preparing or amending a rural support plan, as set out in section 3?

Don't know

We have no comments to make.

Key Provisions (Part 2 of the Bill)

1. Are the powers in Part 2 sufficient to provide for a new rural support programme?

Don't know

We have no comments to make.

2. Do you agree with the purposes as set out in Schedule 1?

Don't know

We would generally note the importance of ensuring consistency across different areas of law – for example agricultural support, agricultural tenancies, planning, tax, biodiversity, and environmental – to ensure that the objectives in one area are not disrupted by technical obstacles in others.

3. Do you have any other comments on the provisions in Part 2?

Yes

We note section 10 of the Bill and the provisions relating to the refusal or recovery of support in the “public interest”. This section creates a power to refuse to provide support or recover support given if Scottish Ministers consider that it is not in the public interest for a person to receive it. We would highlight the absence of a definition of “public interest” or an indication of due process before such financial sanctions occur. We consider that both of these aspects will require consideration in any resulting secondary legislation, particularly given the need for legal clarity and compliance with related legal obligations, including the European Convention on Human Rights.

Similarly, section 16 allows for provision in relation to the withholding (section 16)(2)(g)) and recovery (section 16(2)(f)) of support. Likewise these provisions lack specification and would merit similar consideration as above should subsequent regulations be introduced.

We would also welcome greater detail and clarity on the types of scenarios where it is envisaged that such powers would be exercised. It is of particular importance in the context of funding and wider industry support that there is certainty for those operating in the agriculture sector, and sufficient time to enable them to plan and develop their business accordingly. It is important that those operating in the sector can have a clear understanding of legal requirements and related support so that they may guide their conduct accordingly.

We note that Schedule 1 (which sets out the purposes of support referred to at section 4(1)), Part 4, at paragraph 15(2) refers to “Compensating persons in respect of additional costs incurred and income lost”. We consider that greater information around the policy intention would be welcomed, particularly given the related legal principles potentially engaged by the operation of a compensation scheme of this nature.

Section 10(3) of the Bill places a requirement on Scottish Ministers to “consult such persons as they consider appropriate” before making regulations under the section. In the interests of transparency, we consider that there would be merit in the outcomes of such consultations being published. This would similarly apply to the equivalent consultation requirements elsewhere in the Bill, such as at sections 9(2), 13(3), and 26(6).

More generally, greater detail on who is intended to be consulted would be welcomed and we would highlight the importance of undertaking a robust consultation process to capture the views of interested parties.

We note that Section 13(4)(a) provides that regulations made under section 13 are subject to the affirmative procedure if they “in the opinion of the Scottish Ministers, would make significant provision” (and otherwise would be subject to the negative procedure). Section 13(5) sets out what “significant provision” includes for these purposes. This is referred to in the Delegated Powers Memorandum as an ‘either way’ power (paragraph 68). We note the subjective nature of this assessment and consider that greater clarity would be welcomed within the Bill as to the parliamentary procedure used for regulations made pursuant to section 13. Such an assessment may benefit from additional procedural safeguards to ensure that the appropriate procedure is used, for example prior consultation with the Presiding Officer.

We welcome the use of the affirmative procedure when criminal offences are being created through secondary legislation (section 13(5)(iv); section 16). We note, however, that regulations relating to the other provisions of section 16 may also merit the use of the affirmative procedure, whether or not they create an offence pursuant to section 16(1)(e).

Key Provisions (Part 3 of the Bill)

1. Do you agree with the Scottish ministers' powers in Part 3 relating to retained EU law?

Don't know

We would note as a general observation the increasing legislative complexity in this area. We highlight that legislative powers in relation to retained EU Law are contained in myriad primary and secondary legislation, guidance, and legal authorities, including the general EU withdrawal and continuity legislation, retained EU law, subsequent sectoral legislation, in addition to pre-existing legislative authority.

Key Provisions (Section 26 of the Bill)

1. Do you agree with the provisions on a Code of Practice on Sustainable and Regenerative Agriculture?

Don't know

We have no comments to make.

2. Do you agree with the power – set out in section 7 – for the Scottish Ministers to make regulations about the guidance contained in a Code of Practice on Sustainable and Regenerative Agriculture?

Don't know

We have no comments to make.

Key Provisions (Section 27 of the Bill)

1. Do you agree with the provisions around continuing professional development?

Don't know

We have no comments to make at this stage.

2. Is there anything missing from the Bill that you expected or wanted to see? You may wish to consider issues discussed in the [Agriculture Bill consultation](#) which are not explicitly referenced in the Bill.

We have no comments to make.

3. Is this Bill an appropriate replacement for the EU's CAP regime in Scotland?

Don't know

We have no comments to make.

4. Are there any issues arising from the interaction of this Bill with other UK and Scottish legislation?

We have no comments to make.

Further comments

1. Please use the text box below to set out any further comments you wish to make about the Bill.

We note the broad nature of section 30(1)(a) and would welcome further detail on whether this provision is necessary to achieve the aims of the legislation, given the inclusion of sections 31 and section 33.

For further information, please contact:

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