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## **UK AGRICULTURE BILL REMAINING STAGES: NFU SCOTLAND BRIEFING**

### **Summary**

1. The UK Agriculture Bill sets out a detailed roadmap for the agricultural policy in England after the UK leaves the EU and the Common Agricultural Policy (CAP). The Scottish Government has introduced a Bill to the Scottish Parliament which will establish its own framework for developing a future agricultural policy, the detail of which NFU Scotland (NFUS) remains keenly focused on. However, this does not mean that NFUS does not retain significant interests in the passage of the UK Agriculture Bill, which contains various UK-wide aspects.
2. NFUS is concerned that in the negotiation of new free trade agreements with the EU and other international partners there will be little protection offered to domestic producers from cheaper imported produce that has been produced to lower standards. NFUS's first preference is for a Standards Commission to be established but has also lobbied strongly for provisions within the UK Agriculture Bill to require all food imported into the UK to be produced to at least equivalent food production standards as those required of producers in the UK.
3. Overall, it is vital that the approach being taken for English farmers via the UK Agriculture Bill is rolled out in a complementary fashion to the Scottish Government's approach for Scottish farmers and crofters – and that decision-making processes established via the UK Agriculture Bill in terms of future financial and regulatory frameworks ensure that Scottish interests are represented and consulted upon. Crucially, the UK Bill must ensure that the consent of devolved administrations is given on matters concerning these UK-wide frameworks.

## Introduction and context

4. As agriculture is a devolved policy area, some parts of this UK Agriculture Bill apply in Scotland, while some do not. For example, the UK Agriculture Bill makes provision for a new environmental land management scheme for England only, while making provision for UK-wide reporting on food security.
5. After the transition/implementation period, agriculture will continue to be devolved. Much of the content of a future agricultural policy for Scotland is not contained in this Bill. The Scottish Government introduced the Agriculture (Retained EU Law and Data) (Scotland) Bill in November 2019 (referred to in this briefing as 'the Scottish Agriculture Bill'). The Scottish Agriculture Bill makes provision for an interim approach to agriculture policy for Scotland based on simplifying and improving retained EU law. The Scottish Government intends to bring forward new legislation in due course to make provision for a longer-term agricultural policy for Scotland.
6. A future agricultural policy that fits the needs and profile of Scottish agriculture, and all that it underpins, remains critical to the future prosperity of Scottish agriculture. NFUS therefore entirely supports the Scottish Agriculture Bill as it continues its passage through the Scottish Parliament. It is vital that powers to make changes to agricultural policy are developed and delivered on a devolved basis – as they are now.
7. This does not however mean that Scotland, and NFUS, do not retain significant interests in the UK Agriculture Bill. Whilst the development and delivery of policy in the UK is devolved, the wider agricultural systems that operate across the UK are not: agriculture in the UK operates within a UK-wide single market.
8. Not only that, but following EU exit the EU-wide common regulatory framework will be transposed within a whole-UK context. Funding for agricultural support will continue and will be delivered by HM Treasury as part of a UK-wide funding framework. The UK Agriculture Bill will establish processes as to how decisions relating to these UK-wide frameworks are made and this is of vital importance to NFUS.
9. The remaining Commons stages of the Bill are taking place against a radically altered backdrop. The exogenous shock presented by Covid-19 has served to expose the severe fragility of the food and drink supply chain and issues for the UK's food security.

10. NFUS agrees with the UK farming unions that debate on the Bill at this crucial moment for the nation must recognise the importance of supporting primary producers to provide essential security of food supply, and for that food supply to continue to be produced to the highest of standards.
11. NFUS believes it is vital that this Bill provides a legislative affirmation that UK farmers will not be exposed to competition from sub-standard imports – an outcome which would undermine UK and Scottish farmers and result in lower standard food for UK and Scottish consumers.

### **Trade and Standards**

12. UK and Scottish stakeholders (including NFUS), the Scottish Government, some MSPs and MPs, and academic commentators have shared concerns that the UK Agriculture Bill opens the door for lowering environmental, animal welfare and food safety standards, complicating trade with the EU, or undercutting UK producers by allowing the import of goods produced to lower standards.
13. Leaving the EU may introduce the possibility of divergence from the EU regulatory framework to allow the UK to strike trade deals with third countries and allow the importation of agricultural products produced to different standards than those required in the UK.
14. The UK Agriculture Bill does not explicitly allow for practices that are currently legal in third countries to happen in the UK, nor does it allow for the import of these sorts of products. However, as many (including NFUS) have noted, neither does the UK Agriculture Bill rule out the importation of agricultural products that are produced to a lower standard nor does it enshrine UK/EU standards.
15. The Scottish Government, NFUS and other stakeholders, and the Scottish public currently have no formal role in agreeing trade negotiations, and therefore will have no power over products placed on the Scottish market. The sale of agricultural products produced to lower standards than is allowed in Scotland may also therefore undermine Scotland's ability to keep pace with EU standards and maintain current rules.
16. NFUS and the UK farming unions strongly believe that the UK Government should ensure that future trade deals always contain provision that require agricultural imports to meet domestic environmental, animal welfare, and food safety standards. But this does not address the wider issue of how, outside

specific trade agreements, the UK Government intends to stick to its promise not to allow food produced to lower food safety, environmental, and animal welfare standards that could undermine the UK Government's broader ambitions for a productive and sustainable UK farming industry.

17. It is the view of NFUS that the Bill should contain provisions to ensure food imported into the UK, whether or not under the auspices of a specific, bilateral trade agreement, is produced to at least equivalent standards as those required of producers in the UK. A failure to do so would undermine the principles that should be at the very heart of the Bill - an efficient, productive, profitable UK farming sector meeting the needs and expectations of the British public, both in terms of the food they eat and the public goods they value.
18. NFUS notes that numerous MPs expressed support for such a measure during Second Reading of the Bill and, as such, encourages MPs to support amendments such as NC1 and NC2 which would put standards on the face of the Bill and uphold equivalence.
19. NFUS also recognises that considerable debate on this subject took place at Committee Stage, and the concerns set out by the UK Government at Committee Stage about legislation being too restrictive on trade in other goods deemed important to UK consumers.
20. For this reason, NFUS supports the proposal of NFU England and Wales for the establishment of a Trade and Standards Commission which would be tasked with reviewing policy and reporting to government with specific recommendations on the matter in a short timeframe.
21. It would be constituted of representatives from government, industry and NGOs alongside academics and experts in trade and food policy. By examining the complexities of the issue and taking into account the need to avoid unintended consequences, the Commission would provide a roadmap for the government to meet its commitment to protect the UK's high standards of production in future trade policy. We urge the government to set this body up as a matter of priority.

#### **Part 1, Chapter 4: Multiannual financial assistance plans.**

22. NFUS understands that the Bill requires UK Government to establish multi-annual financial programmes in England. NFUS understands that this is not the same as establishing a multiannual financial framework like the type that

finances the CAP. However, taking this Chapter of the Bill alongside the UK Government's commitment to maintain farm budgets to the end of the Parliament (2024) then this approach is welcome.

23. Whilst this clause pertains to spending on English agricultural policy programmes only, NFUS would reassert its belief that the Bill should legislate for the creation of multiannual financial frameworks beyond the current commitment, so as to offer some certainty to devolved administrations and agricultural businesses across the UK a level of certainty to plan on a multiannual basis.

### **UK-wide aspects**

24. As noted above, much of the UK Agriculture Bill only applies in England. The UK Agriculture Bill contains 54 clauses and 7 schedules. Some 16 of the substantive clauses extend and apply to Scotland. Those clauses are:

- Clause 17 (food security);
- Clauses 27 - 30 (Fair Dealing with Agricultural Producers and Producer Organisations) and the schedules introduced by these clauses;
- Schedule 2 (Competition Exclusions);
- Clauses 31 - 32 (Fertilisers and Identification and Traceability of Animals);
- Clauses 36 - 37 (Organic Products);
- Clause 39 (Power to reproduce modifications under section 35 for wine sector);
- Clauses 40 - 42 (WTO Agreement on Agriculture)

25. In the following paragraphs NFUS has not commented on all UK-wide aspects but has summarised the key aspects where it either supports the intentions of the Bill or where it wishes MPs and Lords to commit to fully undertake further scrutiny.

- **Part 2, Chapter 1: Duty to report to Parliament on food security**

26. NFUS strongly welcomes the inclusion of the objective to report on food security appearing on the face of the Bill as a clear recognition of farmers producing food as a public benefit. NFUS purports that the backdrop of Covid-19 has only highlighted the importance of food security and the requirement, more than ever, to ensure the food security of the UK.

27. NFUS considers that this is particularly important when considering budgetary expenditure and the delivery of public benefits in return for public money. NFUS fully supports the view that budgetary expenditure under the UK Agriculture Bill must be clearly connected to agricultural activity and food security as strategic objectives for the UK – or misunderstandings will arise as to the purpose of financial assistance and appropriate levels or justifications for support.
28. Whilst NFUS believes the duty to report on food security is a significant and important inclusion within the UK Agriculture Bill, NFUS supports the view of NFU England and Wales that at least for the period during and immediately following the negotiation of a new Free Trade Agreement with the EU the frequency of reporting on food security should be increased to an annual requirement. It is also vital that the Bill set out clearer requirements relating to the degree of the nation's food security derived from domestic production, and commitments to prevent any further declines in self-sufficiency.

- **Part 6: WTO Agreement on Agriculture**

29. The UK Government contends that it will be responsible for ensuring that all UK policies on domestic support in relation to agriculture are WTO compliant, as the UK will be the signatory to the WTO rather than any of the devolved nations. NFUS, and indeed the Scottish Government, has no contest with this principle.
30. However, NFUS' reading of Part 6 of the Bill would enable the UK Secretary of State to set financial ceilings on the devolved administrations and England in relation to agricultural support that is classified as 'Amber Box' by the WTO; and establish a decision-making process to classify agricultural support in accordance with WTO criteria. Part 6 would also require devolved administrations to provide relevant information in relation to any of their proposed or existing farming support.
31. Having sought legal opinion on these clauses during the previous iteration of the Agriculture Bill in the 2017-19 session, NFUS retains the concerns and conclusions that were raised during the passage of the previous Bill: that the wording of the Bill creates a theoretical possibility that a UK Secretary of State could, in the future, exercise an ability to set limits on the amount of domestic support which could be targeted at specific measures that Scottish Ministers may seek to apply in Scotland to meet their objectives, and that these limits could be

set at a lower ceiling than what is currently the case under existing arrangements.

32. NFUS believes that it would compromise the devolution settlement for unilateral decisions on financial ceilings to be taken by the Secretary of State without prior consultation and, crucially, the agreement of the devolved administrations.

- **Part 3, Chapter 4, Clause 33: Red Meat Levy**

33. Quality Meat Scotland (QMS) estimates that over £1.5 million of levy on Scottish animals is lost each year due to the fact that some cattle, sheep and pigs produced in Scotland are slaughtered elsewhere in the UK.
34. Following years of negotiation, it is now welcome that Defra has sought to redress this issue by including Clause 33 within the new UK Agriculture Bill which will establish a framework for appropriate authorities to work together to agree a scheme for redistribution. Whilst it is for the appropriate authorities to agree such a scheme, NFUS is supportive of the intention to redress this issue.

- **Part 3, Chapter 2, Clause 27: Fair dealing obligations of business purchasers of agricultural products**

35. NFUS understands that Clause 27 would give UK Ministers powers to introduce obligations that promote fair contractual relationships between primary producers and producer organisations and the purchasers of their products. Fair dealing in the supply chain is an issue on which NFUS has extremely strong interests on behalf of its membership in which there are many examples of unfair contractual relationships between producer, processor and buyer and a lack of transparency on pricing and practice through the supply chain.
36. NFUS wholly supports the UK Government's intention to enact the recommendation of the Groceries Code Adjudicator Review in 2017 to introduce mandatory written contracts in the dairy sector and understands that Clause 27 would give UK Ministers the powers to progress this. As such, NFUS supports Clause 27.