



Post-Brexit Priorities for Legislative

**CHANGE**

# Our objective: To reduce the regulatory burden under which Scottish farmers and crofters currently operate and to develop better approaches to deliver the outcomes society seeks.

The food and farming sector is highly regulated. While farmers recognise that much of this law is necessary, Brexit provides a unique opportunity to review this regulatory environment. As a result, there has been much speculation about what Brexit will mean for the huge number of EU rules and regulations that govern farming in the UK and Scotland.

NFU Scotland has long believed in better regulation that promotes productive agriculture while protecting human health, animal health and welfare, and the environment.

Brexit presents an opportunity to replace elements of EU agricultural regulation that are bureaucratic, ineffective or ill-tailored to farming conditions in the UK and Scotland. We believe that elements can be redesigned or implemented in a better way.

In taking this opportunity it is important that any changes to UK and/or Scottish legislative frameworks are balanced, ensure stability and continuity for farm businesses, and do not result in Scotland's farmers and crofters being at a competitive disadvantage.

Regulation should always be appropriate, it must be proportionate, evidence-based and as light-touch as possible allowing farmers to do what they do best – provide a safe and affordable supply of food.

We will also need to ensure our regulations do not diverge from those of our trading partners in a way that makes free trade impossible.

**CHANGE:** The opportunity exists to start the process now to identify priorities for legislative change, during the period between the UK exiting the EU, and before the implementation of any new UK and Scottish agricultural policies.

# Why Scottish Agriculture Needs Legislative CHANGE

Membership of the EU and governance under the CAP has led to ever increasing regulatory burdens; however the nature and extent of this regulatory landscape emerges time and again as a theme contributing to a lack of confidence at farm business level. Poor and illogical regulation, often paired with the financial costs of compliance and the management time spent adhering to and demonstrating compliance, add significantly to farmers' and crofters' workloads and stress.

We recognise that regulatory change will have to strike a balance between managing international obligations, consumer and public demands, costs for producers, and the conditions of trade agreements. Following the transfer of EU laws and regulations into the UK legal system there must be review and adaptation of the post-Brexit regulatory environment to support productive agriculture.

NFU Scotland believes that there are opportunities to improve how regulation is designed and implemented, and ensuring it is less burdensome and more proportional, grounded in clear science and evidence, and that farmers' and crofters' efforts in attaining the highest animal welfare and environmental standards are recognised.

Regulation is intrinsically intertwined with modern day-to-day farming. Brexit provides an opportunity to review much of that regulation, and to devise a regulatory regime that is fit for purpose and that can help the industry flourish and grow.

NFU Scotland is committed to working with the Scottish and UK governments and regulators to show ambition for the task ahead, in developing better approaches to deliver the outcomes society seeks.

There is scope across a range of existing regulations that affect Scottish agriculture to look at possible changes that would not erode standards, audit or accountability, but could yield dividends in terms of three distinct, but related, themes:

- Protecting the integrity of the supply chain and improving the profitability of agricultural production
- Basing decisions on science/evidence using risk as the factor rather than the precautionary principle based on hazard
- Removing disproportionate penalties and erroneous mapping and record keeping requirements

These three themes capture the principles that should be applied to all future regulations that govern agricultural production and businesses and can yield real benefits for agricultural businesses and administrators alike. But just as importantly, these changes will neither compromise standards nor jeopardise Scotland's and the UK's ability to trade in agricultural and food products.



# Protecting supply chain integrity and agriculture's profitability

It is vital that some existing EU legislative requirements are amended in order to bring greater transparency to the supply chain, and thereby improve the returns to, and margins of, Scotland's farmers and crofters.

**Food Labelling** - Current regulations stipulate that fresh meat products must carry Country of Origin Labelling (COOL). However, despite calls from farming unions and from the European Parliament, the EU has not extended this to dairy products or processed meat products. It would benefit consumers and Scottish farmers, crofters, and growers if COOL was extended to cover processed meat products and dairy products.

**Food Procurement** - Current competition regulations within the EU do not allow for local authorities or central governments to stipulate that food and drink that is procured centrally must be of Scottish or British origin. It would benefit the Scottish food and drink sector hugely if Scottish local authorities and the Scottish Government could choose to source based on origin.

**Farm Assurance** – The consumers of the UK, when buying UK assured foods have a clear desire for it to be produced in the UK, giving them confidence and certainty. EU regulations should be changed so that only UK farm assurance schemes can be applied to foods produced in the UK.

**Protected Food Names** – Currently, regulations protect food names in the European Union. On leaving the EU, there is a need to ensure that current protected food names in the UK continue to receive protection under UK law, and also the implementation of a system that allows for new food protection applications in the UK.

**Greening (Crop Diversification)** – The so-called 'three-crop rule' was intended to address monoculture in parts of the EU which have large, continuous areas of maize or wheat. The three-crop rule particularly hits mixed farmers in parts of Scotland with few cropping alternatives, as well as those growing for niche markets such as spring barley for malt whisky. This blunt requirement does nothing for the environment, but impacts on farm businesses, and it should be replaced with 'smarter' environmental alternatives.

**Levy Funds** - The EU requires that levies to the likes of the AHDB and QMS should not be trade distorting, and so are viewed in a similar way as State Aids. Legislative changes are required so that funds used for productivity improvements and product promotion should not be governed in the same way as State Aids, as they are specifically intended to improve competitiveness.



## A risk, rather than hazard-based approach

**Sound regulation and justifiable legislation around the environment, animal health and food safety would underpin the crucial role that Scotland's farmers and crofters in delivering the nation's food and drink. In reality, EU legislation has all too often been based on perceived 'hazard' rather than actual risk or a genuine evidence base.**

**Sheep Electronic Identification (EID)** – The costs of these regulations are disproportionate to the benefits. The system does not allow a batch-based approach. It would benefit farmers if groups of sheep required only single EID until such a point that a batch is separated for breeding or slaughter after 12 months. Also, current regulations state that sheep must be tagged individually while on holding of birth if they require full EID. Sensible reform would allow farmers to choose to individually tag only when they leave the holding of birth.

**Nitrates Directive** – The Nitrates Directive is overly prescriptive and inflexible, imposing high costs to agriculture. The scientific basis of the 50 mg/litre limit for identification of 'polluted waters' is questionable, and implementation of Nitrate Vulnerable Zone (NVZ) Action Programmes reduces farmers' scope to make informed decisions based upon knowledge of the land and current weather conditions.

**Fallen Stock** – The current livestock burial derogation regulation only allows for geographic area derogation. Further flexibility is required for cattle burial derogations based, for example, on carcase weight or alternative options. Extending the burial derogation would also allow Scottish Government to better respond to communities where fallen stock uplift is not readily provided.

**Cattle EID** - Current EU regulations do not mandate the technology which can be used for electronic identification (EID) of cattle. There is concern that should the Scottish cattle industry progress with either low-frequency or ultra-high-frequency transponders, then updates to regulations may make current investment obsolete. To ensure flexibility future regulations must allow the option within the UK for both low-frequency and ultra-high frequency until such time that industry is agreed on the best way to progress.

**Carcase Splitting and SRM** - Scotland now has negligible risk status for BSE. Further flexibility of Specified Risk Material (SRM) controls should now be possible. Future regulation should take account of the reduced risk status and allow for flexibility on when SRM is removed, particularly in sheep where carcase splitting for SRM removal carries a significant financial impact.

**Plant Protection Products** – The EU legislation adopts a hazard-based approach rather than a risk and evidence-based approach. This is rapidly depleting the range and availability of effective plant protection products, even when there is no demonstrable threat to human health or the environment.

# Proportionality in penalties, mapping and record-keeping requirements

**Support remains vital to Scottish agriculture, yet verification, inspection and penalty have brought a culture of fear of unintentional breaches and have led to farming by prescription. There is significant scope to amend an array of EU requirements relating to support payment claims, mapping and compliance – for the benefit of farmers, crofters and Scottish Government – without diminishing accountability or responsibility.**

**Farm Inspections** - On-the-spot-checks have come to mean 'unannounced' inspections. However, if the aim is to improve compliance levels rather than finding fault, and providing the purpose of the inspection is not jeopardised, then inspections requirements could be adjusted so that on-the-spot-checks are pre-announced. For on-the-spot-checks concerning livestock, the notice period should be at least 48 hours.

**Mapping Ineligible Features** - Currently EU rules require ineligible features to be measured and located within a field parcel. Rules should be changed so the requirement is only to identify the ineligible area and reduce that from the claimed area. There is no additional benefit from having to also locate the ineligible area within a field parcel.

**Mapping Frequency** – Land-based claims made are currently validated against Scottish Government Rural Payments and Inspections Division's (SGRPID) land register. It is therefore essential that the most recent map is used. However, under current EU rules, SGRPID are required to continually review the boundaries and ineligible areas within all land parcels held on the land register. Amending these requirements to allow the use maps for a fixed point in the year would be of significant benefit to both claimant and SGRPID.

**Proportionate Penalties** - Current EU rules require penalties to be applied that are clearly disproportionate to the compliance breach, and are rightly described as Draconian. A risk-based and proportionate system could be implemented without compromising accountability or traceability. This could include a proper 'yellow card' system as a preliminary warning for farmers committing non-severe breaches of cross-compliance regulations, which would give them time to rectify an unintentional breach before incurring a penalty.

**Agricultural Activity** - Currently, CAP rules make it very easy to be defined as an 'active farmer' carrying out 'active farming', and qualify for support payments. The tests defined in regulation need to be more stringent and to focus on the decision-maker and risk-taker with the economic control over the agricultural activity. Beyond the CAP, there is scope to revise existing activity rules so funding is better targeted to agricultural businesses rather than land per se.

**Making Support Payments** - The existing 1 December to 30 June direct payments window is a construct of EU regulations and audit requirements. Beyond the CAP, domestic legislation could be amended to allow payments to be made sooner, without compromising new audit requirements or distorting competition. Equally, currently SGRPID can not issue any payments until all necessary checks have been completed. Legislation could be amended to allow partial payments at least with a balance payment following the completion of all verification checks required by UK and/or Scottish audit requirements.

## NFU Scotland - Make Your Voice Heard

No sector will be more directly affected by Brexit than ours and things are going to change.

The role of the Union in representing your views and protecting your interests has never been more important.

### We need to hear from you.

Tell us what your priorities are when it comes to delivering the best deal for Scotland's farmers and crofters.

WRITE TO US:

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