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**NFU SCOTLAND SUBMISSION - RURAL AFFAIRS AND ISLANDS  
COMMITTEE STAGE 1 CONSULTATION ON THE AGRICULTURE  
AND RURAL COMMUNITIES (SCOTLAND) BILL**

**1) Do you think a framework bill is the right approach? - Yes**

NFU Scotland welcomes the publication of the Agriculture and Rural Communities (Scotland) Bill. We believe that the Bill, as introduced, sets out the necessary powers and scope to deliver a future support framework which farmers and crofters need if they are enabled to deliver the stated objectives of the Bill and of future support. We welcome the fact that much of what NFU Scotland sought to be included is in the Bill.

We strongly believe that this Bill is not the place for specific statutory targets or prescriptive outcomes. Therefore, a framework Bill is the right approach.

An adaptive and flexible approach to future agricultural policy will be essential and this framework Bill provides this and will deliver for agricultural production, rural communities, climate, the environment and nature restoration. In addition, given the range of factors outwith the control of sector, having this framework within legislation will enable powers to be adopted and amended when required. This approach means that much of the detail as to how it will work in practice will be covered by regulations in secondary legislation. Much of this detail is being, and will continue to be, co-designed going forward. Critically, it is not the creation of powers that will ultimately matter but how the powers are used.

Since 2021, our President Martin Kennedy has co-chaired the Agriculture Reform Implementation Oversight Board (ARIOB) with the Cabinet Secretary for Rural Affairs, Land Reform and Islands, Mairi Gougeon MSP. This group was established to support the implementation of policy reform, incorporating the relevant recommendations from the farmer-led groups to support the production of sustainable, high-quality food and address the twin crises of climate and nature/loss of biodiversity and design a new system and approach. NFU Scotland is also involved in the Agriculture Policy Development Group (APDG) which assists with the development of policy detail and further support is provided to ARIOB by the Scottish Government's Academic Advisory Panel.

We are committed to continue to work with the Scottish Government, Scottish Ministers and other stakeholders on the delivery of future policy. To provide further reassurances and demonstrate the Scottish Government's commitment to co-design, the Bill could be strengthened to require continued extensive consultation during the secondary legislation process.

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

The purposes of the Bill mirror those which were published in the Scottish Government's Vision for Agriculture (the adoption and use of sustainable and regenerative practices, production of high-quality food, facilitation of on-farm nature restoration, climate mitigation and adaptation, enabling rural communities to thrive). These aims were consulted on in 2022 and published earlier this year within the Scottish Government's Agricultural Reform Route Map. We believe that the Bill provides the scope that will enable for these to be delivered.

We believe that the provisions included in the Bill set out a clear foundation for future rural policy and support going forward. It is our understanding that although the four-tier support framework is not mentioned on the face of the Bill, the Scottish Government is committed to deliver this model and we note that it is mentioned within the Explanatory Notes. We welcome the commitment to this four-tier approach and have been working with the Scottish Government on the detail as to what it will mean in practice.

We initiated the concept of a tiered approach to future support as far back as 2018 through our *Steps To Change* proposals. The principles we established are now evident in the intended future support framework which requires the Bill to enable it.

During the Scottish Government consultation in 2022, we underlined that the Bill, and any subsequent secondary legislation, must effectively support active farmers and crofters by putting sustainable and profitable agricultural production at its centre as only this will underpin the nation's ambitions for climate action, nature restoration, rural communities and the wider economy. We highlighted that this is important not just for farmers and crofters, but for the thousands of jobs and businesses that are supported by our sector across rural communities – both upstream and downstream.

The Bill sets out a range of powers, many of which NFU Scotland sought to be included in the Bill. The powers set out will enable a payments framework that incentivises a drive towards low carbon approaches to improve the resilience, efficiency and profitability of the agriculture sector.

This Bill, as introduced, provides the flexibility and scope required. There are a number of powers that will be enabled, but that will not necessarily come into force at the Bill's commencement. We believe that this approach is important as it means that it can be adapted to different circumstances and provides a degree of longevity for this important piece of legislation.

Many of the powers in the Bill as introduced are powers that are, in effect, already in place or possible and their inclusion within this legislation is required as we transition from the Common Agriculture Policy (CAP). The Scottish Government has repeatedly stated that the sector will not face a cliff edge and therefore a smooth transition of schemes over to domestic legislation is required.

The eligibility for support, the ability to intervene in exceptional market conditions and the ability to create support schemes based on a regional (or other) basis are examples of these. Examples of some of the new powers are the requirement for the publication of a Rural Support Plan, the ability to impose Continuing Professional Development and the ability to enable specific payments for new entrants or sustainable or regenerative practices.

While we welcome the overarching objectives of agricultural policy and the flexibility and scope included within the Bill, we believe that the lack of any mention of multiannual ringfenced funding is an issue. We do not expect there to be details of the quantum of funding to be included on the face of the Bill, but we believe that a multiannual commitment to future funding, based on the same timescale as the Rural Support Plan (RSP), would provide certainty for farm businesses and deliver a greater foundation for success going forward.

In addition, there is growing frustration as to the length of time it is taking for the further detail to be decided upon and announced. While we believe that this Bill is not the place for this detail, we underline the urgent need that this is provided to us and our members as soon as possible.

### **Purpose and objectives (section 1)**

**Section 1 sets out ‘overarching objectives’ of agriculture policy. They are:**

- **the adoption and use of sustainable and regenerative agricultural practices**
- **the production of high-quality food**
- **the facilitation of on-farm nature restoration, climate mitigation and adaptation**
- **enabling rural communities to thrive**

### **3. Do you think these are the right objectives? Yes**

We fully endorse the clear purposes of the Bill set out in Part 1 which is for future support to deliver high quality food production, alongside climate and nature goals, while underpinning vibrant rural communities.

We very much welcome the inclusion of the production of high-quality food within the purpose and objectives of the Bill. It is essential that agricultural production is at the heart of future agricultural policy. The multipliers generated in Scotland's rural economy from active farming and crofting, providing the mainstay of rural communities, cannot be overplayed.

We also welcome the 'on-farm' element of nature restoration, climate mitigation and adaptation. Funding for these initiatives must be provided for at an on-farm level. Scottish agriculture is being tasked to do much of the heavy lifting to meet Scotland's climate and nature goals, whilst also continuing to produce food of the highest quality and sustain the socio-economic fabric of our rural communities.

### **Purpose and objectives (sections 2 and 3)**

**Section 2 provides that Scottish Ministers must prepare a five-year 'Rural Support Plan' and Section 3 provides that certain matters must be considered when preparing or amending a rural support plan. These matters include:**

- **the objectives set out in Section 1**
- **proposals and policies in the climate change plan which relate to agriculture, forestry and rural land use**
- **any other statutory duty relating to agriculture or the environment**
- **development of EU law and policy**

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

The Rural Support Plan (RSP) (Part 1, Section 2), will provide details on which powers enabled by the Bill will be used in the five-year period that follows. This will be an important document that will set out the strategic priorities for providing support during the plan period and can be amended. This would provide a short to medium term detail of the overarching policies and approach being taken and enable our farmers and crofters to fully understand what will be required from them. As mentioned above, the four-tier approach will provide much of the needed detail and incorporating this framework into the RSP will generate a way in which the approach can be bedded in over a five-year period while allowing for a formal approach to amend and shape differently as and when required.

The RSP will set out the intention. The four-tier support framework, and the allocation of funding to it, will provide the means to fulfil that intention.

**5. Do you agree with the matters to be considered when preparing or amending a rural support plan, as set out in section 3? No**

As set out in Part 1, Section 3 (1), we welcome that the RSP must have regard to other matters when being prepared or amended. Linking this to targets associated with other legislation, e.g. Climate Change and Biodiversity targets, is important. It should be aligned and not contradictory to related targets. However, attention must be taken with regard to the repeated assurances from the Scottish Government that the sector will not face a cliff edge. A phased approach to delivering on any targets will be vital.

In addition, we believe that the RSP must be underpinned by a parallel funding commitment of similar length. This would provide certainty and clarity and encourage strategic innovation and investment. We do not expect the quantum of funding to be included on the face of the Bill. However, we believe that a multiannual and ringfenced commitment to future funding, based on the same timescale as the RSP, would deliver a greater foundation for success going forward.

We also strongly believe that the RSP must be developed in consultation with agricultural organisations. We welcome that the Regulations (under Subsection (4)) will be subject to affirmative procedure. However, we seek a requirement for extensive stakeholder consultation to take place while it is being drafted, to be included on the face of the Bill.

**Key provisions (Part 2 of the Bill)**

**Part 2 confers powers on Scottish ministers to, among other things:**

- **Provide support for the purposes described in Schedule 1 (and by regulations add, amend, or remove purposes in Schedule 1)**
- **make regulations regarding any guidance that is produced in relation to support**

- **make regulations to place an upper limit (or ‘cap’) on support and assistance**
- **provide support under exceptional market conditions**
- **make regulations about support, including how the amount of support is to be determined, conditions that may be imposed, enforcement, monitoring and administration, eligibility criteria, and payment entitlements.**

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

The support powers enabled by Part 2 of the Bill provide the scope and flexibility required. We welcome how they are set out within the Bill in a framework approach and highlight that they must not be constrained by binding targets in relation to the purposes of the Bill set out in Part 1 via amendments as part of Stages 2 and 3.

While the four-tier support framework is not mentioned on the face of the Bill, we welcome the Scottish Government’s commitment to deliver this model. We will continue to work closely with the Scottish Government, through ARIOB and directly with officials, to co-design the detail.

**7. Do you agree with the purposes as set out in Schedule 1? Yes**

We are happy with the purposes as set out in Schedule 1.

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

NFU Scotland welcomes the provisions included in Part 2.

We believe there is the necessary and sufficient scope within Part 2 to enable Ministers to support, usually financial, farmers and crofters to undertake activities and/or pursue outcomes in relation to the purposes of the Bill set out in Part 1. We also believe there is sufficient flexibility to support activities by land type, geographic region, enterprise, etc. in the pursuit of key outcomes.

In particular, NFU Scotland considers it vital that the Bill includes powers for Scottish Ministers to declare when there are exceptional or unforeseen conditions affecting food production or distribution. Given the turbulent and volatile nature of agri-food markets and supply chains, not least as witnessed in recent months and years, we welcome the inclusion of this in the Bill. We also believe that the Scottish Government should take a proactive role in risk planning for food security/energy security so that we can be on the front foot of issues and build resilience within the sector so it is less susceptible to shocks.

With regard to the conditions that may be imposed that could require the repayment, or otherwise making good, of any financial support (with or without interest) we believe that Section 10 (2) should explicitly set out that there may be circumstances which would exempt a farmer from this requirement. There may be things outwith a farmer's control that they can't make good on the conditions and should not be penalised for this.

NFU Scotland endorses the inclusion of powers to enable grants to support the agri-food supply chain to encourage sustainability, efficiency, co-operation, industry development, education, processing and marketing in the agri-food sector.

### **Key provisions (Part 3 of the Bill)**

**Part 3 confers powers to modify existing legislation relating to support. The policy memorandum states that there should be a “smooth transition” from the current Common Agricultural Policy (CAP) rules to the future support schemes and, to achieve this, the Scottish Ministers need “suitable powers” to modify current CAP rules, including making more extensive changes and repealing them when the time is right.**

**Part 3 enables the Scottish Ministers to, among other things:**

- **Simplify, improve or update relevant retained EU law relating to the Common Agricultural Policy**
- **continue or end the operation of that legislation**
- **modify the financial provisions in that legislation**

## **9. Do you agree with the Scottish ministers' powers in Part 3 relating to retained EU law? Yes**

We support Part 3 of the Bill that allows for relevant retained EU law relating to the Common Agricultural Policy (CAP) to be changed and repealed. The flexibility included in relation to the possibility to continue or end the operation of the legislation means that it can be done when the time is right, not when legislation requires it to be done.

It is essentially that existing CAP 'legacy' schemes are adapted through 2025 to best enable a smooth transition to the new four-tier support framework from 2026 onwards. Current schemes must enable a soft landing into new schemes and that requires the ability to adjust retained EU law.

NFU Scotland agrees that the Bill should contain provisions to allow Scottish Ministers to amend the CMO regulation, to take appropriate measures to provide support to relevant sectors in the future and to begin, conclude or modify schemes or other support relevant to the agricultural markets

NFU Scotland fully endorses the proposals in the Bill to provide powers to make changes to rules related to food production, processing and marketing, recognising that some technical fixes are necessary to allow Scottish Ministers to readily amend retained EU law and legislation relating to the Common Market Organisation (CMO) which was partially replaced and amended by the Agriculture (Retained EU Law and Data) (Scotland) Act 2020.

### **Key provisions (Section 26 of the Bill)**

**Section 26 provides that Scottish Ministers must prepare and publish a 'Code of Practice on Sustainable and Regenerative Agriculture'. There is no deadline for producing this. Regulations made under Section 7 (on guidance) may require this Code of Practice (or any other guidance about support) to be laid before the Scottish Parliament, require certain people to follow or pay attention to the guidance, or specify that following the guidance is important to ensure that a person has met a statutory duty or condition of support**

## **10. Do you agree with the provisions on a Code of Practice on Sustainable and Regenerative Agriculture? Yes**

We accept the provisions in the Bill (Part 4 Section 26) that sets out a duty on Scottish Ministers to prepare and publish a Code of Practice on Sustainable and Regenerative Agriculture. We also welcome Section 26 (7) that requires Scottish Ministers to consult those who are considered likely to be interested in or affected by it.

While there are rightly no definitions of ‘sustainable and regenerative agriculture’ contained in the Bill, we underline the need for the Code to be based on a clear set of principles that should encourage and inspire farmers and crofters to adapt their practices rather than be restrictive.

We believe that ‘sustainable’ agriculture is reasonably self-explanatory and that ‘regenerative’ farming is broadly farming activity which both generates production and improves the environment.

We welcome the stipulation that the Code is to be reviewed on a five-year cycle, via consultation, and that it is made clear within Section 26 and the guidance alongside the Bill that the definitions are to adapt over time.

**11. 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? Yes**

We support the requirement for a consultation to be carried out with those interested in or affected by the Code of Practice on Sustainable and Regenerative Agriculture. It is imperative that it must be based on a clear set of principles. The Code should encourage and inspire farmers and crofters to adapt their practices rather than be restrictive.

**Key provisions (Section 27 of the Bill)**

**Section 27 of the Bill gives Scottish Ministers the power to make regulations about continuing professional development for certain people or professions. ‘Continuing professional development’ typically means things like attending a training course or otherwise developing knowledge and understanding within a sector. The policy memorandum states the policy objective of this power is to “support delivery of knowledge, innovation, education and training in agriculture and land use or related sectors”.**

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

No

With regard to possible future continuing professional development (CPD) requirements, we do not support this being ‘imposed’ as part of future support. It is essential that it is done in a flexible and inclusive way. It cannot be too restrictive or limited in options or require a large investment of both time and money in order to adhere to the requirement. A huge amount of valuable peer-to-peer knowledge sharing takes place among farmers and this should be acknowledged as part of future CPD.

We acknowledge the stipulations set out in the Bill relating to the requirements that will be set out in regulations regarding possible CPD requirements. We urge the need for this to be fully consulted upon so that any possible impacts and unintended consequences can be fully understood prior to its introduction. For our members, the requirement to incur excessive costs in order to adhere to this possible requirement would not be welcome.

**13. 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.**

The major thing missing from the Bill is reference to multiannual ringfenced funding commitment. While we do not expect for the quantum of funding to be included within the Bill, the requirement to provide a multiannual ringfenced funding commitment should be included on the face of the legislation. This would provide certainty for farmers and crofters and for those responsible for delivering support measures.

We understand that modern tenancies, which was consulted on previously will be part of the Land Reform Bill which is due to be published soon.

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

Yes

The Bill is a necessary and sufficient replacement of CAP Regulations (EC1307/2013), which have effectively been rolled over by the Agriculture (EU Retained Law and Data) (Scotland) Act 2020.

The existing powers of the Bill will allow Scottish Ministers to develop and deliver a more bespoke support package that better fits the needs of Scotland's agricultural profile and will align with (complementary) objectives relating to food production, climate, nature and people. In doing so, and if used to best effect, the Bill will allow farming and crofting to play its unique role in delivering multiple outcomes in the interests of Scotland's future prosperity.

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

There is a significant amount of legislation and regulation that will shortly impact our sector. Not just this Agriculture and Rural Communities (Scotland) Bill but also the Climate Change Plan Update, Land Use and Agriculture Just Transition Plan, Energy Strategy and Just Transition Plan. Also, the Biodiversity Strategy will set out details in terms of nature restoration and enhancement while the Land Reform Bill will also drive changes in the way in which our land is managed. A holistic approach to ensure that these policies will work together and not set out too great, or contradictory, burdens on the sector is important.

We have concerns in relation to how the differing systems in England, Scotland, Wales and Northern Ireland will work in practice going forward with regard to future funding and the operation of the UK's internal market. Currently, Scotland is allocated a quantum of the UK wide budget. As policy divergence means that different approaches are being taken, it is not clear yet as to how future allocations will continue and whether the differing approaches by the Scottish and UK Government will be taken into consideration as and when the budget allocation decision is taken.

With regard to the Internal Market Act 2020 and Subsidy Control Act 2022, it is imperative that Scotland is able to implement future agricultural policy that works for Scotland and is not limited to, or restricted by, decisions being taken by other administrations.

It is critical that the agricultural support and regulatory regimes do not diverge to the point of creating a competitive disadvantage for Scotland's farmers and crofters. Moreover, Scotland's unique challenges must be recognised and, in the delivery of public goods, fully supported by the public purse.

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

The Bill, and any subsequent secondary legislation, must effectively support active farmers and crofters by putting sustainable and profitable agricultural production at its centre. Only this will underpin the nation's ambitions for climate action, nature restoration, rural communities and the wider economy. This is important not just for our members, but for the thousands of jobs and businesses that are supported by our sector across rural communities – both upstream and downstream.

We must ensure that the Bill has all the enabling powers to provide the necessary support to active farmers and crofters for them to deliver intended outcomes around food production, climate, biodiversity and wider rural development. A sustainable and profitable agricultural industry is key to Scotland's ambitions and having the appropriate powers in place to deliver the right support is a crucial factor in that.

In the context of wider rural development, there is an unequivocal link between active farming and crofting and the prosperity of rural areas and the vibrancy of rural communities. The socio-economic benefits derived from agricultural activity and production are undeniable – including the not insignificant role agriculture plays in population, infrastructure and services retention in more disadvantage and remoter locations in Scotland.