

Written evidence submitted by NFU Scotland (AB04)

Introduction and context

1. After the EU transition phase, UK agriculture will be operating outside of the EU's Common Agricultural Policy (CAP). The CAP currently provides a common regulatory framework under which a uniform set of rules and regulations are governed by the European Commission and therefore are applied consistently across the devolved administrations. The CAP also provides nearly £4 billion of support annually to farmers and crofters across the UK, of which approximately £500 million of which comes to Scotland and is delivered to farmers and crofters via Direct Payments (Pillar 1) and the Scottish Rural Development Programme (Pillar 2).
2. Since the outcome of the 2016 referendum, NFU Scotland (NFUS) has been unequivocal in stating that a future agricultural policy that fits the needs and profile of Scottish agriculture, and all that it underpins, is the real prize that can be secured from the UK's withdrawal from the EU.
3. NFUS therefore entirely supports the position of the Scottish Government in its pursuit of putting legislation through the Scottish Parliament in order to enable Scottish Ministers to make decisions on future policy. It is important to NFUS that the powers to make changes to agricultural policy are debated and delivered as close to where those changes will take place on the ground. For these reasons, NFUS has been strongly engaged with the Agriculture (Retained EU Law and Data) (Scotland) Bill¹ (referred to as 'the Scottish Bill' for the purposes of this briefing) as it continues its passage through the Scottish Parliament. NFUS has also strongly engaged with the Scottish Government as to how the powers afforded to Scottish Ministers via the processes of the Scottish Bill will be implemented to run pilots and make simplifications and improvements to agricultural policy in Scotland in the short to medium term after exiting the CAP.
4. NFUS understands that the UK Agriculture Bill, in parallel, will give Defra, Welsh and Northern Irish Ministers like-for-like powers to make similar decisions for agricultural policy in England and the other devolved administrations.
5. 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. 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.

UK-wide aspects

6. Whilst Part 1 of the Bill does not apply to Scotland, Parts 2, 3, 4, 5 and 6 all contain clauses that apply to Scotland and therefore merit further consideration by NFUS. In the following paragraphs NFUS has not commented on all UK-wide aspects however has summarised the key aspects where it either supports the intentions of the Bill or where it wishes MPs to commit further scrutiny during Committee Stage.

¹ <https://www.parliament.scot/parliamentarybusiness/Bills/113288.aspx>

7. **Part 2, Chapter 1: Duty to report to Parliament on food security.** It was a significant concern to NFUS and the other UK farming unions during the passage of the 2018-19 UK Agriculture Bill that the Bill was deficient in referencing food security. NFUS therefore strongly welcomes the inclusion of this 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.
8. 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.
9. Whilst NFUS believes the duty to report on food security every five years 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.
10. **Part 6: WTO Agreement on Agriculture.** 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.
11. 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.
12. Having sought legal opinion on these clauses during 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. 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.

13. **Part 3, Chapter 4, Clause 33: Red Meat Levy.** The issue of red meat levy repatriation is a long-running sore for the industry – 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. 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.
14. **Part 3, Chapter 3: Producer organisations.** NFUS is highly supportive of producer organisations and notes that there are a number of successful producer organisations both within Scotland and operating across the UK. Collaboration, cooperation and improving the standing of primary producers within the supply chain are behaviours facilitated by producer organisations and must be encouraged, not least within a new trade and policy framework post-Brexit.
15. For these reasons, NFUS supports the creation of a domestic producer organisations regime throughout the UK. NFUS understands that the UK Government believes this is a reserved policy area, due to the interaction with competition law, however NFUS does note the Scottish Government’s concerns about its own devolved competence for the promotion of an effective agricultural market – a key aspect of producer organisations. NFUS is concerned about a dispute over competence arising between the UK and Scottish governments and asks MPs to call on the UK Government to clarify these issues during Second Reading of the Bill.
16. **Part 3, Chapter 2, Clause 27: Fair dealing obligations of business purchasers of agricultural products.** 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.
17. 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.

Commonly Agreed Frameworks

18. Within the context of two agriculture bills, currently progressing through parallel parliamentary processes, NFUS has identified various overlapping clauses which are identified in the table below. At face value, it would appear that the parallel bills will give respective UK and Scottish ministers similar powers in relation to these issues. What

is not clear, and NFUS is anxious to clarify, is whether this is duplication or whether the processes established by these parallel bills would give one legislature precedent over the other in the event that there is policy divergence on any of the clauses encompassed in the below table. These are concerns that NFUS has also raised with the Scottish Parliament in the context of the Scottish Bill².

UK Agriculture Bill	Scottish Bill
Part 1, Chapter 3, Clause 15: Aid for fruit and vegetable producer organisations	Part 1, Section 6: Power to simplify and improve CAP legislation on aid for fruit and vegetable producer organisations
Part 2, Chapter 2, Clause 18-20: Intervention in agricultural markets	Part 1, Section 5: Power to modify CAP legislation on public intervention and private storage aid
Part 3, Chapter 1: Collection and sharing of data	Part 2: Collection and processing of data
Part 5: Marketing standards, organic products and carcass classification	Part 1, Sections 8-11: Marketing standards and carcass classification

19. An illustrated example of the above is as follows. Part 2, Clause 16 of the Scottish Bill clearly refers to powers for the Scottish ministers to collect data in order to ensure the traceability of animals (livestock). Likewise, Part 4, Clause 32 of the UK Agriculture Bill suggests that the Secretary of State will possess functions exercisable in relation to England, Wales, Northern Ireland or Scotland in the context of the identification, movement and health of animals.
20. The livestock industries in Scotland and the UK, working with their respective governments, have developed two separate systems for livestock traceability (ScotEID and the Livestock Information System, respectively). Whilst these systems are complementary to one another due to consensus between the governments at the current time, in the event that there is divergence between the governments then Scotland's ambitions for a multi-species database under ScotEID could theoretically be undermined. It is not clear, due to the duplication within the Scottish and UK agriculture bills, how such an issue would be resolved and which legislation would take precedence in such an event.
21. The governance of common frameworks is an extremely complex constitutional issue which is also increasingly political. NFUS understands that UK and devolved ministers are at an advanced stage in discussions on the governance of UK-wide frameworks on issues such as those identified in the above table. However, NFUS believes it is a valid query as to why the parallel bills will at face value legislate for the same issues, before a formalised structure has been put in place to ensure that commonly agreed frameworks on these issues are agreed, not imposed, and regulatory divergence is avoided. To do otherwise would jeopardise the integrity of UK internal market and/or create conflict between the governments on issues to do with legislative competence – at the agricultural industry's loss.

² https://www.parliament.scot/S5_Rural/RECC_NFU_Scotland_AB.pdf

22. This is a significant concern to NFUS because the vast majority of Scottish produce is marketed and sold within a UK-wide single market. NFUS would be concerned with any possibility of policy divergence or conflict on, for example and as outlined above, livestock traceability. Whilst NFUS wholly appreciates that policy divergence is not the intention of the current government(s), the theoretical possibility that is created by the legislation is a significant concern.

NFUS suggestions for improvements to the Bill

23. **Part 1, Chapter 4: Multiannual financial assistance plans.** 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. 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.
24. **Trade and Standards.** During the passage of the 2017-19 session Agriculture Bill, NFUS with the UK farming unions called on the UK Government to enshrine in the legislation the high standards of production which UK farmers produce to as a prerequisite for any future trade agreements. It is disappointing to NFUS that this vitally important issue regarding standards and trade have not been included in the new UK Agriculture Bill. NFUS encourages MPs to support amendments to the Bill containing provisions to require all food imported into the UK be produced to at least equivalent standards, as they relate to animal welfare, environmental protection and any other legitimate public policy concerns associated with food production, as those required of producers in the UK. NFUS notes that numerous opposition MPs expressed support for such a measure during Second Reading of the Bill.

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