NFU SCOTLAND SUBMISSION – EUROPEAN UNION (WITHDRAWAL) BILL

- NFU Scotland (NFUS) welcomes the opportunity to submit evidence to the Finance and Constitution Committee’s inquiry on the European Union (Withdrawal) Bill.
- Scottish agriculture plays a pivotal role in the rural economy. It is the bedrock of Scotland’s £14.4 billion food and drink industry – which now exceeds the oil and gas industry in returns to the Scottish economy. Scottish farming and crofting supports 65,000 jobs in agricultural production, and 360,000 jobs in the wider food and drink industry.
- Scottish and UK agriculture has operated under the EU regulatory framework and Common Agricultural Policy (CAP) for over 40 years and the negotiations to leave the EU will have significant consequences for the industry.
- As the largest representative body for Scottish farmers and crofters who have operated under EU regulations over the last forty years, NFUS understands the importance of ensuring continuity and legal certainty in the immediate aftermath of ‘exit day’. NFUS considers the European Union (Withdrawal) Bill to be a technical and procedural piece of legislation in order to ensure that ‘the wheels do not come off’ in the short-to-medium term. However, it is vital that all political implications of this landmark Bill are understood.
• The primary concerns of NFUS from the legislation pertain to the transposition of policy frameworks from the EU into UK law – namely, the CAP – and ensuring that governments establish a sensible regulatory framework after Brexit that allows Scottish agriculture to thrive.

**The CAP and Scotland**

1. The 1998 devolution acts have radically altered the balances of power in the UK from when the UK first joined the European Economic Community in 1973. Since 1999, the Scottish Government along with the other devolved authorities have had the ability to make implementation decisions on agricultural policy within the confines of the EU CAP framework, as well as decisions on implementing various environmental directives.

2. The EU CAP framework operates to deliver financial stability to food producers whilst allowing them to remain productive and deliver on environmental outcomes. It has also set high standards for animal health and welfare, environmental protection, and food safety – all obligations which UK farmers are proud to exceed.

3. It is also valid to outline that there are various elements of the CAP which have not worked for Scottish and UK agriculture; a common complaint is that its prescriptive and top-down nature has stifled innovation, with one-size-fits-all areas of regulation being poorly applied and having counterproductive results for productivity and the environment. NFUS considers that leaving the EU presents a valuable opportunity to develop a new agricultural policy and regulatory framework that is much better fitted to the differing contexts of agriculture across the UK.

4. It is the position of NFUS that devolution of agricultural policy has worked very well for Scottish agriculture as it has allowed decisions on the implementation of the CAP to be made closer to the businesses it impacts. Under this arrangement, Scotland has been free to implement agricultural policy in different ways to its neighbours elsewhere in the UK. There are several examples where different approaches to agricultural policy have been taken in the four parts of the UK based upon what is deemed right for each region.
Post-Brexit Policy Frameworks

5. The European Union (Withdrawal) Bill amends section 29, clause (2)(d) of the Scotland Act 1998 so that the Scottish Parliament:

"Cannot modify, or confer power by subordinate legislation to modify, retained EU law" (section 11, clause (1)).

6. This suggests that from ‘exit day’ onwards, the Scottish Parliament has its powers to amend EU law relinquished, which in effect stops the automatic flow of EU powers to devolved competence.

7. Whilst NFUS understands that the Bill is technical and procedural in nature, it is a concern that there is no built-in mechanism to determine exactly where overarching EU frameworks – such as the CAP – will be returned to on ‘exit day’.

8. The UK Government’s White Paper on the (formerly titled) Great Repeal Bill, published in March 2017, outlined that the UK Government intends to replicate existing EU frameworks (such as the Common Agricultural Policy) in UK legislation whilst starting intensive discussions with the devolved administrations to identify where common frameworks need to be retained in the future, what these should be, and where common frameworks covering the UK are not necessary. It is suggested that in that interim period, no changes will be made to the common frameworks. In other words, the UK Government’s forthcoming Agriculture Bill will address the long-term administrative settlement on the successor policy to the CAP.

9. The accompanying explanatory notes to the subsequently-published European Union (Withdrawal) Bill state the following:

- “The Bill does not aim to make major changes to policy or establish new legal frameworks in the UK beyond those which are necessary to ensure the law continues to function properly from day one. The Government will introduce separate primary legislation to make such policy changes which will establish new legal frameworks.” (Page 7)

- “The UK Government hopes to rapidly identify, working closely with devolved administrations, areas that do not need a common framework and which could therefore be released from the transitional arrangement

by this power. This process will be led by the First Secretary of State and supported by the relevant territorial Secretary of State and will begin immediately following the Bill’s introduction.” (Page 13)

10. NFUS is equally aware of the Scottish Government’s contrasting position, which it understands to be that all powers over agricultural policy should be transferred to the Scottish Parliament on ‘Brexit day’, as this is where they have sat since the Scotland Act 1998. The Scottish Government would then enter into discussions with the UK Parliament as to which areas of agricultural policy are best served on a UK-wide framework.

11. It is therefore significant that the UK Parliament seeks to engage the legislative consent of the Scottish Parliament for such a measure via the Sewel Convention. However, if the Scottish (and/or Welsh) Parliament(s) do not grant a Legislative Consent Motion to the UK Government, NFUS understands that vote has no formal recourse to veto the application of the European Union (Withdrawal) Bill. Whilst there would be no legal consequences, NFUS is concerned about the political implications such a situation would bring about in terms of relations between the UK Government and the devolved administrations.

NFUS Position

12. In the first instance, NFUS is urging UK Government to ensure that there are ‘appropriate levels of Parliamentary scrutiny’. This includes consideration of introducing new procedures to deal with the volume of forthcoming secondary legislation.

13. NFUS also considers that the Bill should include provisions to allow the courts to interpret UK law created by it. This would avoid the possibility that in transferring EU law into UK law mistakes will be made. Such mistakes may make some laws inoperable, or the regimes they govern fail to operate as intended in the same way as they did under EU law.

14. As regards to the transposition of the CAP, NFUS’ long-standing position is that any future policy must have significant in-built flexibility for the devolved administrations to be able to use the agricultural budget to develop policies and tools that are fitted to the unique agricultural characteristics of the different parts of the UK. It is also accepted that as part of that process, a common regulatory
framework is sensible for major issues that cross across borders such as animal welfare, food standards, and pesticide regulation. NFUS suggests that such a model would operate in entirely the same way that the CAP has for Scotland since the inception of devolution – a ‘commonly agreed framework, with devolved delivery’.

15. NFUS is clear that any approach which drops a one-size-fits-all policy on all four nations of the UK will not work for farmers, crofters and growers anywhere across the UK. NFUS will continue to engage UK Government to determine what mechanisms will be put in place to ensure Scotland has the flexibility to design and use tools that are appropriate to the Scottish agricultural context.

16. Article 50 is irrevocable, so notwithstanding legal recourse and fallout from the LCM process, the UK will leave the European Union. This means that it is vital consensus is found on the transpositions of policy and regulatory frameworks so that governments can ensure the correct policies are in place after ‘exit day’.

17. NFUS agrees with the suggestion from a range of commentators that the simplest way to ensure all the devolved administrations have input is via a strengthened Joint Ministerial Committee, rebuilt into a UK Council of Ministers covering the various aspects of policy for which agreement between all four UK administrations is required. As part of this process, it is also important that all governments undertake meaningful consultation with interested stakeholders.

18. NFUS considers this to be the only realistic way in which constructive detail can emerge from UK Government and the devolved administrations on how differing farming systems can be supported in different ways across the UK after Brexit.