

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

# Agriculture (Retained EU Law and Data) (Scotland) Bill

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## Financial Memorandum

### Introduction

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Agriculture (Retained EU Law and Data) (Scotland) Bill, introduced in the Scottish Parliament on 6 November 2019.

2. The following other accompanying documents are published separately:

- Explanatory Notes (SP Bill 59–EN);
- a Policy Memorandum (SP Bill–59-PM);
- Statements on Legislative Competence by the Presiding Officer and the Scottish Government (SP Bill 59–LC).

3. This Financial Memorandum has been prepared by the Scottish Government to set out the costs associated with the measures introduced by the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

4. The Policy Memorandum explains in detail the background and the policy intention behind the Bill. The purpose of this Financial Memorandum is to explain any costs associated with the measures introduced by the Bill, and as such it should be read in conjunction with the Bill and the other accompanying documents.

### Overview

5. The overarching principle behind this Bill is to provide the Scottish Ministers with regulation-making powers to modify the European Union

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(EU) Common Agricultural Policy (CAP) elements of retained EU law<sup>1</sup> in Scotland, and to provide new powers for the collection of agricultural data.

6. The powers in the Bill to modify the CAP will only be needed when the UK leaves the EU, and the EU CAP rules will continue to apply in their entirety until that happens. The European Union (Withdrawal) Act 2018 provides for EU law as modified under that Act to become domestic law from exit day, when it will be known as retained EU law. In particular, the EU regulations that provide the legal framework for the CAP have been “deficiency fixed” in anticipation of exit using the powers in the 2018 Act, in order to ensure that they will work in domestic law after exit. This ensures that the Scottish Ministers will have the powers they need to make CAP payments even after a ‘no deal’ exit.

7. The UK and the EU may yet enter into a withdrawal agreement, and if so there may be a transition period extending into 2020, or beyond, during which EU law would continue to apply in whole or in part in the UK after exit day. Should this occur, it is expected that the UK Government will bring forward a Withdrawal Agreement Bill to provide the necessary legal framework. It is expected that the powers in the Bill would still be needed, but possibly not until after any such transitional period. In either a no deal or a deal scenario, the EU CAP legislation as modified will eventually become domestic law.

8. If and when the UK leaves the EU, the majority of the funding for CAP payments will come from the UK Government, and may increase or decrease depending on what spending decisions it makes in the future. Any such change in funding will be subject to the usual budget processes in both the UK and Scottish Parliaments. The Scottish Government ran a public consultation, “Stability and Simplicity”,<sup>2</sup> in 2018 which outlined the uncertainty around future CAP funding and the commitments which had been made by the UK Government (as detailed in the UK Government Funding Commitments section below), and stated that the proposed transition period is based on these commitments being upheld. The

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<sup>1</sup> Retained EU Law is explained in detail in paragraphs 71 – 85 of the Explanatory Notes for this Bill.

<sup>2</sup> <https://consult.gov.scot/agriculture-and-rural-communities/economy-post-brex-it-transition/>

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consultation was clear that any decisions on future policy and funding commitments could only be taken once the totality of the financial impact of the UK leaving the EU, and the future funding allocation to be made to Scotland, is known.

9. The Bill itself does not give rise to any significant new direct costs, but rather enables the continuation of broadly the same financial framework as is currently associated with the CAP, with any changes made being met from within existing budgets.

10. This Bill enables the Scottish Ministers to modify the current CAP rules and regulations with the intention of simplifying or improving schemes or to provide funding to pilot new activities. Although future funding will come from the UK Government as opposed to the EU, subject to any transitional arrangements that might yet be agreed in connection with the UK withdrawal, there is no explicit intention to significantly alter either the overall amount of funding spent through the CAP, or the amount spent administering it. The Bill also provides for changes to be made within the confines of the current CAP financial framework, for example, to enable the Scottish Ministers to apply limits (also known as “ceilings”) on different areas in the CAP, but again, this is unlikely to result in new direct costs on the Scottish Administration. Finally, the Bill also contains a power to collect information relating to agricultural activities and the agri-food supply chain, which is essentially an update in legal mechanism as opposed to a change in policy, and so will not result in any new direct costs.

## **The EU Common Agricultural Policy (CAP)**

11. The majority of the funding for the current CAP has come from the EU budget.

12. Table 1 shows the agreed allocation “ceilings” of the available EU annual budgets for Pillar 1 and Pillar 2 in Scotland (before any pillar-to-pillar transfers) for the 2014-2020 period. These “ceilings” are set out in the EU regulation on the 2014-2020 EU Multi-annual Financial Framework (MFF). The MFF is the EU’s long-term budget, usually covering a period of at least five years, which sets the limits for EU spending. “Ceilings” are then used to set limits for this EU spending in various areas, such as the CAP, at Member State level. The devolved administrations then receive an allocation of this “ceiling” from the UK Government. It is important to note

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that the structure of the various schemes means that the actual annual spend is more variable.

Financial Year	Pillar 1	Pillar 2
2014	€ 596,600,000	€ 68,789,532
2015	€ 580,014,747	€ 68,612,899
2016	€ 581,214,307	€ 68,432,928
2017	€ 582,415,174	€ 68,249,559
2018	€ 583,594,466	€ 68,061,893
2019	€ 585,327,526	€ 67,882,750
2020	€ 587,060,586	€ 67,764,004
2014-2020	€ 4,096,226,806	€ 477,793,565

Table 1 – confirmed annual allocation of EU budget ceilings for CAP Pillar 1 and Pillar 2 in Scotland (pre pillar-to-pillar transfers). On Pillar 1 (direct payments) the figures are based on the shares of the 2012/13 intra-UK regional ceilings and the amount of direct payments allocated to the UK following the conclusion of the Multi-Annual Financial Framework negotiations on 8 February 2013. Pillar 2 figures are based on the regional shares over 2007-2013 and the UK’s Pillar 2 allocation as set down in the proposed Rural Development regulation as of 26 November. Source: Defra

13. Over the 2014-2020 period, Scotland will receive around €4.6 billion from the EU, equivalent to around £500 million per annum. This funding has been paid to the UK as the Member State, and is distributed by the UK Government to the devolved administrations.

14. The CAP is conventionally split into two funds, or “Pillars”:

### **Pillar 1**

15. This has been 100% EU funded, applied for annually by farmers, crofters and land managers, and has been paid from the EU budget one year in arrears (in cashflow terms, payments are initially made from domestic funds, but the UK subsequently claims back an equivalent amount from the EU budget).

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16. The CAP regulations fix a financial allocation for Pillar 1 schemes for each Member State. The UK Government then decides on the allocation for each of the devolved administrations, and in 2013 announced how the funding was to be allocated in the UK for the 2014-2020 period. For Scotland, the announced share for Pillar 1 amounted to around €4,096 million (equating to approximately £3,501 million).<sup>3</sup> The Scottish Ministers can in turn decide how to utilise this allocation, including how to divide it up between the different schemes.

17. Pillar 1 funding covers the:

- “Basic Payments Scheme”, which acts as a safety net for farmers and crofters by supplementing their main business income.
- “Greening”, which takes the form of a payment “for agricultural practices beneficial for the climate and environment”.
- “Young Farmer” support scheme, which provides a top-up payment to farmers under 40 years of age.
- “Voluntary coupled” support schemes, which aim to help the environmental and social benefits that arise from extensive beef suckler herds and sheep flocks in Scotland.

18. Pillar 1 also allows for the intervention in agricultural markets through the Common Market Organisation (CMO), either directly or indirectly.

19. In the UK, responsibility for agriculture is devolved, and there are a number of flexibilities available in the CAP rules which allow them to be tailored to help address specific requirements. This means that the CAP has been implemented differently in each part of the UK, reflecting the differing needs and priorities of the different areas. For example, the Scottish Government is the only administration in the UK that has used the flexibilities in Pillar 1 to provide coupled support to help our beef and sheep sectors.

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<sup>3</sup> Due to the constant variation in exchange rates, this figure has been converted to pounds using the average exchange rate across the 2014-2020 period, which is 1.17, and so should be treated as indicative.

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## Pillar 2

20. This has taken the form of a rural development programme funding a mixture of farm and non-farm schemes, and has been co-financed with EU and national money (in cashflow terms, the EU funded element is initially paid out using domestic funds and subsequently reclaimed from the EU budget).

21. As with Pillar 1, within the UK, the UK Government decides on the distribution of money between the devolved administrations (in 2013, the UK Government announced that Scotland's share for Pillar 2 would be around €478 million (equating to approximately £409 million<sup>4</sup>). The key purpose of the Scottish Rural Development Programme is to help achieve sustainable economic growth in Scotland's rural areas, and this is done through a range of grant schemes and support (full details can be found on the Scottish Government website).<sup>5</sup>

22. The CAP regulations also contain provision for Member States (or devolved administrations in the UK's case) to transfer funding in either direction between these two Pillars. In Scotland this provision is particularly important, as the Scottish Ministers have used it to boost the otherwise small Pillar 2 budget. Responsibility for this is devolved, and for the 2014 – 2020 period the Scottish Ministers chose to transfer 9.5% from Pillar 1 to Pillar 2 which was felt strikes the appropriate balance between agriculture and rural development. By contrast, the UK Government transferred 12% in respect of England, the Welsh Government transferred the maximum 15%, and the Northern Ireland Executive did not transfer any funds from Pillar 1 to Pillar 2.

## Costs on the scottish administration

23. As this Bill is largely a framework Bill, there is no anticipated significant change to the current financial implications for the Scottish Administration and sponsored public bodies, although it is worth noting that

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<sup>4</sup> Due to the constant variation in exchange rates, this figure has been converted to pounds using the average exchange rate across the 2014-2020 period, which is 1.17, and so should be treated as indicative.

<sup>5</sup>

<https://www2.gov.scot/Topics/farmingrural/SRDP/SRDP20142020Schemes>

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this is dependent on the overall available Scottish Government budget. While the Bill also contains stand-alone powers, for example in relation to the Common Organisation of Markets and in relation to the collection of agricultural information, these powers are also not intended to result in significant additional costs.

## **UK Government funding commitments**

24. The current uncertainty surrounding the UK leaving the EU means it is impossible to definitively predict what the future UK funding landscape might look like. To date, the UK Government has made a guarantee in relation to rural funding in the event of no deal, and a separate commitment that has not yet been quantified.

25. The guarantee in the event of no-deal covers CAP Pillar 1 Direct Payments for the 2019 scheme year. It also covers the EU element of all contracts under CAP Pillar 2 entered into by the end of 2020, for the lifetime of those projects. The guarantee for CAP Pillar 2 projects will also be honoured in the event of a deal.

26. Separately, there is a UK Government commitment to maintaining the same cash total in funds for “farm support” until the next UK election. However, there is still little clarity about how this will be calculated or whether “farm support” covers all CAP schemes, particularly those non-farming elements of Pillar 2 schemes such as LEADER, forestry and food and drink.

27. It was also announced that a UK “Shared Prosperity Fund” would be created to reduce inequalities between communities across the four nations in the UK, once the UK has left the European Union and EU Structural Funds. The UK Government has provided very little detail on this to date. For the purposes of this Bill, it has not been clarified whether the UK Government foresees support for rural communities and non-land based rural businesses falling under the Shared Prosperity Fund, or the role of devolved administrations in such decisions.

28. To take account of this uncertainty, the Bill contains specific provisions that will enable the Scottish Ministers, for example, to alter the amount of money spent through the different “Pillars” of funding, to reflect

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changes in the amount of funding available and decisions taken on the distribution of those funds across the various schemes.

## **CAP funding for 2014-2020**

29. Given the above, and all the uncertainties inherent in the process of the UK leaving the EU, the costs of this Bill are based on the current spend on CAP programmes as per the EU MFF period from 2014 to 2020, which are outlined below.

## **Funding totals for 2014-2020**

30. As outlined in the overview section above, all the funding for Pillar 1 schemes comes from the EU.

31. For the Pillar 2 schemes, the funding is split between that provided by the EU and that provided by the Scottish Government (this is known as “co-financing”). In total, the EU financed element for this period is expected to amount to €844 million, and the co-financed part of the funding provided by the Scottish Government during this period is expected to amount to £518 million. The rate at which this amount of co-financing is applied to the different Pillar 2 schemes can vary from year to year, and from scheme to scheme, according to the needs of the different schemes and the overall Scottish Government budget.

32. Pillar 2 co-financing is the only programme funding for the CAP that comes directly from the Scottish Government (as opposed to the EU). Decisions on future funding allocations for co-financing are dependent on what funding is provided by the UK Government to replace the lost EU funding, and on what is allocated to Scotland in future budgets.

33. Regulation 1305/2013 on support for rural development by the European Agricultural Fund for Rural Development (the “Rural Development Regulation”) will continue to regulate Pillar 2 funding as part of retained EU law after exit.

34. Regulation 1305/2013 has been amended to take account of the decision to leave the EU, and now refers to a “core contribution” which will replace the EU portion of funding for co-financed schemes. It has not yet been confirmed where this “core contribution” will come from, or what



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the rates will be. It is expected that it will be funded by the UK Government, assuming that the commitments outlined above are upheld. Therefore, with the information currently available, it can be assumed that the proportion funded by the Scottish Government from 2021 onwards will follow a similar level to that of the current 2014-2020 programme. The indicative budget for 2020/2021 from the 2019 Scottish Government Spending Review is £69.1m.

## Spend on CAP schemes

35. Table 2 shows spend per financial year through payments for some of the major CAP schemes since payments started in 2015 (this level of data is only available for certain schemes). The figures between 2015/16 to 2018/19 represent actual spend; the figures from 2019/20 to 2021/22 are what is currently forecast to be spent for the remainder of the 2014-2020 scheme programmes (i.e. contracts entered into by end December 2020, although this spend goes beyond 2020 for some Pillar 2 schemes due to the multi-annual nature of the contracts available).

36. While the figures in table 2 for Pillar 1 and Less Favoured Area Support Scheme provide a reasonable indication of the level of annual spend that could be expected in the near future, the annual spend variation for the remaining Pillar 2 schemes means that these figures provide a less precise indication, albeit one that is likely to be broadly correct. The annual variance in these figures over the seven year programme is due to the nature of the individual schemes, and the fact that the level of spend per year is dependent on scheme demand and uptake, exchange rates and the availability of Scottish Government budgets.

		2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	Total
Pillar 1	BPS	£233m	£258m	£270m	£263m	£263m	£263m		£1550m
	Greening	£116m	£132m	£138m	£133m	£133m	£133m		£785m
Pillar 2	LFASS*	£125m	£66m	£66m	£64m	£51m	£30m		£402m
	LEADER	£7m	£5m	£3m	£15m	£21m	£25m	£6m	£82m
	FGS		£13m	£33m	£44m	£31m	£44m	£5m	£170m
	AECS		£8m	£24m	£26m	£40m	£44m	£25m	£167m

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	RP	£15m	£12m	£5m	£8m	£2m			£42m
	Other Pillar 2 schemes	£149m	£45m	£37m	£55m	£44m	£22m	£7m	£359m
	Total	£645m	£539m	£576m	£608m	£585m	£561m	£43m	£3557m

Table 2 - Spend per financial year on certain CAP schemes. Source: Scottish Government RPID-Finance \*note 2014/15 included in 2015/16. Also, it should be noted that while the spend under an EU LFAS Scheme will reduce in 2019 and 2020 due to the limits applied by the EU, the intention of the Scottish Ministers is to maintain the same level of funding to the Less Favoured Area so the overall spend is expected to be retained.

## CAP administration costs 2014-2020

37. Table 3 outlines the costs of administering the majority of the CAP, showing the total operating costs of the Rural Payments and Inspections Division (RPID) and the Information Services Division (ISD) from 2014/15 to 2018/19, and the projected costs for 2019/20 (after 2016, RPID was split into 2 separate divisions, RPID Agri Delivery and RPID Agri Policy Implementation).<sup>6</sup> These administrative costs are predominantly met from 'domestic' Scottish Government funds.

38. Staff in these divisions undertake a wide range of activities, including making payments, application processing, claim validation, inspections, field mapping, financial monitoring and accounting, audit and compliance, advice and guidance to the sector, policy development, communications and training, and administering and supporting IT.

<sup>6</sup> Other costs are incurred elsewhere in the Scottish Government budget, however these are of lesser magnitude and are part of divisions which also carry out other, non-CAP related functions.

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	2014/15 Costs	2015/16 Costs	2016/17 Costs	2017/18 Costs	2018/19 Costs	2019/20 Costs (budgeted)
	£000	£000	£000	£000	£000	£000
RPID Agri Delivery				24,147	27,097	22,407
RPID Agri Policy Implementation				9,717	9,317	8,681
RPID	29,779	30,537	37,157			
ISD	17,965	17,802	19,190	19,008	17,210	16,971
Total	47,744	48,338	56,347	52,872	53,624	48,059

Table 3 – Total Operating Costs for Scottish Government divisions involved in administering the CAP. Source: Scottish Government RPID

## Projected CAP Payments and Administration Costs Beyond 2020

### CAP Payments

39. As outlined above, the uncertainty around the UK leaving the EU, and the lack of clarity around the current funding commitments made by the UK Government and the future rate of co-financing, make it impossible to produce a definitive detailed forecast of the costs on the Scottish Administration. However, based on the funding totals and spend associated with the 2014 – 2020 CAP period as discussed above, and with the caveat that there may be significant change due to the uncertainties previously described, it can be reasonably estimated that beyond 2020 the annual spend on CAP payments could be up to around £600 million per year. This figure is a rounded estimate, and has involved converting from Euros using the CAP annual exchange rate for 2018 which is 1.12.<sup>7</sup>

40. This estimate has not been broken down into individual schemes as such a breakdown is not provided for the current CAP schemes, and, while the intention is to maintain the overall financial

<sup>7</sup> This exchange rate has been used here, as opposed to the 1.17 average rate across the 2014-2020 period, as it is the most recent rate agreed between the Scottish and UK Governments, and therefore is most appropriate to be used for estimating future spend.

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framework of the CAP, factors such as the ability to transfer money between Pillars, the ability to cap individual scheme payments (which is discussed further in the section below), and the potential for the amount of future funding provided by the UK Government to differ from the amount previously provided by the EU, would make such a breakdown potentially misleading. The powers in sections 3 and 4 of the Bill enable the Scottish Ministers to make changes in this regard, to explicitly ensure that CAP schemes remain fully operable for as long as required, including adapting to any changes in the availability of future funding, and to maintain alignment with Scottish priorities.

41. Section 2 of the Bill enables the Scottish Ministers, by regulation, to modify the CAP in order to change its operation. As set out in the Policy Memorandum, work is underway to consider the potential simplifications and improvements that will be delivered by regulations under this Bill, based on responses to the “Stability and Simplicity” consultation,<sup>8</sup> input from the Simplification Taskforce,<sup>9</sup> and planned engagement with stakeholders in the autumn of 2019. Any changes in costs identified by this process will be subject to further scrutiny when they are brought forward under secondary legislation, and will be delivered in line with the available portion of the budget, which will be determined as per the normal Scottish Government Budget process following parliamentary scrutiny.

## **Administration costs**

42. In terms of the costs of administering the CAP, the Scottish Ministers are committed to reducing costs by seeking efficiencies where possible, as evidenced by the recent budget approach, and adhering to the principles of simplification and making only necessary changes to IT systems. While this Bill does enable changes to be made, the intention is to maintain the general structure of the CAP schemes, and so it is not anticipated that there will be significant new administrative costs in this

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<sup>8</sup> <https://consult.gov.scot/agriculture-and-rural-communities/economy-post-brex-it-transition/>

<sup>9</sup> This task force was set up in response to the “Stability and Simplicity” consultation, to explore ways of simplifying how the customer interacts with the Scottish Government’s Rural Payments and Inspections Division. Further information is available on the Scottish Government website: <https://www.gov.scot/groups/rural-funding-simplification-taskforce/>

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regard. The presumption is that there will be minimum change to IT systems. However, should a potential requirement be identified that needs more substantial change, then the cost will be assessed against the benefits that it brings. The Scottish Government is currently reviewing the model used for assessing the cost/benefit of such changes. As such, it is anticipated that CAP administration costs will continue at broadly current levels, as outlined in table 3, but that any changes made to any scheme may result in future development costs.

43. In the event of the UK leaving the EU without a deal, contingency plans and any associated support for the rural sector will be considered as part of the wider Scottish Government no deal preparation process. This Bill is neither intended, nor needed, to address any contingencies required in the event of such a 'no deal' scenario.

### **Costs of future pilot schemes**

44. It is not the Scottish Ministers' intention to change the overall level of funding in order to run any pilot scheme, but rather, as proposed in the consultation, to cap individual scheme payments in order to provide the necessary funding. The aim would be to free up funding for pilot schemes and appropriate administrative costs wherever possible.

45. While further analysis and consultation is required in order to determine an appropriate capping policy for the future, table 4 illustrates the potential level of funds that could be generated from capping payments at different levels, and how many businesses might be affected.<sup>10</sup> These figures are based on internal analysis done by the James Hutton Institute, using data from 2015 projected out to 2019, and only relate to Pillar 1 (not Pillar 2). These figures were originally published in the 2018 "Stability and Simplicity" consultation.<sup>11</sup>

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<sup>10</sup> Please note that these estimates do not consider potential structural changes which may occur, if farmers or land managers change their behaviour in response to new rules.

<sup>11</sup> <https://consult.gov.scot/agriculture-and-rural-communities/economy-post-brex-it-transition/>

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	Return of different levels of capping (£)				
	200,000	100,000	75,000	50,000	25,000
Percentages of businesses affected	<1%	2%	4%	10%	27%
Number of businesses affected	50	350	750	1800	5000
% of Pillar 1 budget	1%	5%	8%	17%	37%
Potential funds generated (£)	£4m	£18m	£30m	£60m	£140m

Table 4 – Businesses affected and funds generated from different levels of cap. Source: Scottish Government “Stability and Simplicity” consultation 2018 (<https://consult.gov.scot/agriculture-and-rural-communities/economy-post-brexite-transition/>)

## Cost implications of the collection and processing of data powers

46. As set out in greater detail in the Policy Memorandum, the Bill at Part 2 also contains a power regarding the collection of information related to agricultural activity and the agri-food supply chain. Accurate and up-to-date statistical information is vital for National Economic Accounts, and to enable the Scottish Government to regulate and develop policy for the agricultural sector. The Scottish Government already collects agricultural data using the Agriculture Act 1947, and provides data to the EU to report on the effectiveness (or otherwise) of the current CAP, and so the powers in this Bill are intended to make the collection of this data more open and transparent, and more clearly linked to the principles of GDPR and the Data Protection Act 2018. There is no change in policy around what data the Scottish Government collects or how it is collected, and therefore it is not expected that this will result in any significant new direct costs on the Scottish Administration. Any significant future changes in what data the Scottish Government collects or how it is collected will be subject to engagement with relevant stakeholders and compliance with the UK Statistics Authority’s “Code of Practice for Statistics”,<sup>12</sup> which states that

<sup>12</sup> <https://www.statisticsauthority.gov.uk/code-of-practice/>

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“the burden imposed should be proportionate to the benefits arising from the use of the statistics”.

47. The current costs of administering data collection also include the work of analysing, publishing and providing other policy support within Scottish Government. Table 5 sets out an overall forecast for these costs, with an estimated proportion of the amount used for data collection (as relating to this Bill). As noted above, these costs are not expected to change as a result of this Bill, and so costs in future years are expected to be similar. The income noted in the table is from DEFRA for collecting data on its own behalf, for example supplying data collected through the Sheep and Goat Inventory to help with UK national reporting.

48. Cost Category	Forecast (2019/20)	Estimated Proportion of Data Collection costs
Staff costs	£950,000	35%
Other operating costs	£25,000	50%
Goods and services	£1,332,000	90%
Income	-£72,000	100%

Table 5 – Forecast costs on the Scottish Government for data collection, analysis, publishing and policy support. Source: Scottish Government

49. Some staff time and costs are currently used for sending reminder letters and chasing large organisations where there are few businesses in a sub-sector. In recent years there are some parts of the industry which have merged (or been taken over) meaning there are only a few large businesses operating. If data collection only achieves a successful return from one or two businesses and they are not the largest in the sub-sector, it is very problematic trying to estimate sector output for GDP calculations. There are additional costs in researching and analysing data received to then provide estimates for the whole sector. Approximately five to ten per cent of staffing costs are devoted to improving data collection and subsequent issues with failure.

50. With appropriate financial penalties to compel larger businesses to comply with data requests, the additional staffing costs associated with

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non-compliance could be reduced, in particular the costs associated with research and analysing poor quality data collection to make refined estimates. The focus of staff costs will change to more pro-active engagement with businesses to comply; if pro-active engagement does not work, then in a very small number of cases, enforcement of penalties may be a route that the Scottish Ministers will want to pursue. The costs to set this up would be absorbed into “business as usual” spending, and would be fully considered during the development of any secondary legislation. As such, there is no anticipated change to the net costs involved in the improvements, as the net gains in reduced administration costs due to improvements in data quality will be offset by work on pro-active engagement. It is anticipated that any financial penalties levied will be infrequent, and will cover any additional costs of working with firms to improve their returns.

### **Cost implications of the power to revoke the EU Food Promotion Scheme**

51. This scheme is currently administered by the European Commission, and so does not currently cost the Scottish Government or other bodies. Retained EU law under the European Union (Withdrawal) Act 2018 will transfer the powers to run this scheme to the Scottish Ministers. Operating a domestic scheme would incur costs, but as there is no intention to do so no estimates have been developed. As set out in the Policy Memorandum, these powers currently have very little Scottish benefit and would be cumbersome to operate, therefore it is the intention of the Scottish Ministers to revoke this scheme and instead rely on existing domestic powers where required. The cost involved in revoking the legislation is minimal.

### **Cost implications of the marketing standards and carcass classification powers**

52. Under the current system, marketing standards are developed and set by the EU, and result in some enforcement costs for the Scottish Administration. For example, the Marketing of Bananas (Scotland) Regulations 2012 and the Marketing of Horticultural Produce (Scotland) Regulations 2009 allow the Scottish Ministers to appoint officers who can exercise enforcement powers. This enforcement is carried out by a team of horticulture and marketing officers in the Scottish Government, which



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includes 4.25 full time equivalent posts at an annual cost of approximately £165,000, and a variety of staff related costs with an annual cost of approximately £75,000.

53. The powers in this Bill are not expected to give rise to any additional enforcement costs, as no change to the existing marketing standards provisions is expected. Should there be changes in the future, any associated costs would be considered as part of the specific proposal.

### Costs on local authorities

54. Under the current system, marketing standards are developed and set by the EU. Various marketing regulations, such as the Drinking Milk (Scotland) Regulations 2011, place an enforcement function on local authorities (as food authorities) and apply the enforcement provisions in the Food Safety Act 1990. Those arrangements will continue unchanged as part of retained EU law. The Scottish Government considers that it is unlikely that this Bill will result in significant additional costs for local authorities, as no wholesale replacement of the existing marketing standards provisions is expected. Should any changes arise, the cost would be a matter for consideration, including consultation where deemed appropriate, as part of any specific future proposal.

### Costs on other bodies, individuals and businesses

55. The Scottish Government considers that it is unlikely that this Bill will result in significant additional costs for other bodies, individuals and businesses as most uses of the powers can be expected to involve minimal cost to others. Where the use of the powers would have more significant cost implications, the Scottish Ministers will engage with stakeholders before using their powers.

56. One aspect of the Bill which could potentially affect certain businesses is the capping of individual scheme payments, as, depending on the level of the payment cap, it would reduce the amount of funding they receive. The current EU CAP regulations do provide for a payment cap; annual Basic Payment Scheme payments to individual businesses are subject to a 5% reduction above €150,000, and from the 2018 scheme year, they are currently capped altogether at €600,000.

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

57. Another aspect that could potentially affect some businesses is the power to collect information relating to agricultural activity and the agri-food supply chain. As explained in the “cost implications of the collection and processing of data powers” section above, this is more of a change in the legal mechanism by which agricultural data is collected rather than a change in policy behind the collection of that data. As the Scottish Government currently collects such data under powers from the Agriculture Act 1947, the switch to using the power under this Bill is not intended to result in more data being collected from more businesses, and so is unlikely to result in any additional cost for businesses that currently comply with the use of that power. In the event that any additional costs to businesses do arise (for example, for a business that did not previously comply with requests for data), these should be both modest and proportionate (i.e. a big player in an agri-food supply chain will incur more administrative costs to collate and provide the information, but not necessarily more proportionately when compared to other businesses). In some discrete cases the Scottish Government procures information on market data. The new power would compel those businesses to provide the data at zero cost, which could have an impact on their business income but will be a negligible amount compared to their main business. However, there are no planned changes to current business and financial arrangements.

58. The powers provided in these provisions allows enforcement to be set through secondary legislation. This could be used, for example, to allow the Scottish Ministers to change the current statutory penalty from the Agricultural Act 1947, which applies to all businesses irrespective of turnover and relative size within a sub-sector, to a more proportionate regime. In such an example, a programme of engagement, encouragement and consultation would be undertaken before any such secondary legislation is brought forward. The intention behind this type of change would be to encourage compliance from large businesses that have a significant presence within sub-sectors (which have the potential to affect the overall quality of economic estimates) to provide timely and sufficient data upon request, while smaller businesses with modest turnovers and a smaller impact on the overall sector would be encouraged to comply with smaller penalties proportionate to their business operation, to prevent falsification of returns.

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# Agriculture (Retained EU Law and Data) (Scotland) Bill

## Financial Memorandum

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