



The Scottish Parliament
Pàrlamaid na h-Alba

Clerk to the Delegated Powers and Law Reform Committee
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10 December 2019

Agriculture (Retained EU Law and Data) (Scotland) Bill at Stage 1

The Delegated Powers and Law Reform Committee considered the above Bill on 10 December 2019 and seeks an explanation of the following matters:

Section 2(1) – Power to simplify or improve CAP legislation

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative

The Scottish Government has stated clearly that it does not intend to use this power to make major changes (DPM paragraph 26), but this power will be available without limit of time to future governments, whose intentions cannot be known. It could be used to make changes to any aspect of the CAP, with significant effects on individuals who received CAP funding and on the policies delivered through the CAP. How the power will be used is not yet known and therefore cannot be scrutinised at present. The affirmative procedure would enable the Parliament to scrutinise the policies which the power will be used to effect, as and when they have been developed.

1. In light of all these factors, would the affirmative procedure be more appropriate?

The DPM notes that it is essential that stakeholders are fully engaged in the process of making these simplifications and improvements (DPM paragraph 23). The intention of the present Scottish Government to consult is noted (Policy Memorandum paragraphs 31-36). However, this power could be exercised by future Governments to make potentially significant changes without any consultation.

2. Would a statutory consultation requirement be appropriate?

The policy is for this power to be exercised during a transition period of approximately five years (Policy Memorandum paragraph 36), but the power in the Bill is unlimited in time.

3. Would a sunset provision be appropriate?

4. In light of the uncertainty over how the power will be used, and given that the power is not limited in time, would it be appropriate to insert a requirement on the Scottish Government to report periodically to the Parliament on how the power has been used?

Section 3(1) – Power to provide for the operation of CAP legislation beyond 2020

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

The current Scottish Government has stated its intention to consult on the use of this power, and states in the DPM that decisions on how to continue the CAP beyond 2020 will be a significant policy process. This power can be used without limit of time by future governments.

5. Would a statutory consultation requirement be appropriate?

6. In light of the uncertainty over how the power will be used, and given that the power is not limited in time, would it be appropriate to insert a requirement on the Scottish Government to report periodically to the Parliament on how the power has been used?

7. On whom might functions be conferred in connection with, or with the making of, a determination? What might those functions be?

Section 4(1) – Power to modify financial provision in CAP legislation

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

The DPM (paragraphs 36-38) explains that this power may be required to respond to funding cuts at UK level. How any such cuts would be distributed across the different aspects of CAP expenditure in Scotland could involve significant policy choices with significant impacts on the individual farmers and crofters depending on their circumstances and the type of payments they receive.

8. Would a statutory consultation requirement be appropriate?

Section 6(1) – Power to simplify or improve CAP legislation on aid for fruit and vegetable producer organisations

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative

The exercise of this power would principally affect an easily identifiable, limited group of stakeholders, and could have significant financial impact on individual growers.

9. Would a statutory consultation requirement be appropriate?

This power is not limited in time, despite the Policy Memorandum stating that the aim is to enable simplification and improvement of this aid scheme by making amendments to retained EU law “during the period up to around 2024”.

10. Would a sunset provision be appropriate?

Section 8(1) – Marketing standards

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative

This power establishes a new regime for the regulation of marketing standards in Scotland after EU withdrawal. Although this is not the Scottish Government’s intention, the power could enable radical changes to be made to marketing standards in Scotland. It also enables the creation of offences with a penalty of up to 5 years imprisonment. Deciding whether or not to replicate changes made at UK level could involve significant and politically sensitive policy considerations to which the Parliament may wish to apply a higher level of scrutiny.

11. In light of these factors, would the affirmative procedure be more appropriate?

Section 10(1) – Carcass classification

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative

This power enables Scottish Ministers to establish a new regime for the regulation of carcass classification in Scotland after EU withdrawal. The detail of what a new regime might entail is not given in the Bill. The power can be used to create offences with a penalty of up to 5 years imprisonment.

12. In light of these factors, would the affirmative procedure be more appropriate?

I'd be grateful if you could please email your response to the Delegated Powers and Law Reform Committee e-mail address above by 12 noon on Monday 6 January 2020.

Thank you.

Andrew Proudfoot
Clerk to the Delegated Powers and Law Reform Committee