Dear Gillian,

During my evidence to the Committee on 4 December 2018, I undertook to write with an explanation of the legal basis for making Agriculture and Rural Development payments if the UK leaves the EU.

As farming is devolved, it is our responsibility to ensure that devolved law continues to function after EU withdrawal and Scottish Officials are working closely with colleagues in the other administrations to ensure we have a clear and robust legal basis to continue to make the support payments into the rural economy. This process does not rely on the UK agriculture bill progressing through Westminster and Scotland will not need to seek powers from primary legislation to be operable for the 2019 scheme year.

The precise legal basis that will apply depends on the outcome of the EU-UK negotiations.

In a “No Deal” scenario, by virtue of the EU (Withdrawal) Act 2018, the existing CAP rules and other legal provisions that are necessary to support our rural economy, as set out in direct EU legislation, will continue to apply. They will on and after the date of the UK’s withdrawal from the EU form part of domestic law as retained EU law. Those CAP rules include provision for payments including for the 2019 and 2020 scheme years.

If however, the proposed EU-UK deal is accepted and the EU-UK Withdrawal Agreement is implemented, then broadly speaking EU law will continue to apply in the UK until the end of 2020. However, there would be a technical issue to sort out for 2020.
• The draft withdrawal agreement says that whilst most EU law would still apply in the UK in 2020, the CAP (‘Pillar 1’) Direct Payment Regulation would not apply. In this scenario therefore, there would be no issue for 2019, but it would be necessary, for all parts of the UK, to ensure legal cover in domestic law for the 2020 scheme year’s Pillar 1 payments.
• At this point we do not know whether the deal will go through, and if so how the UK government will address this technical issue. It is possible that legislation in Scotland might be needed relatively quickly for this one technical point. If that is required, the Scottish Parliament is more than capable of passing what would be very limited and technical legislation.

For 2021 onwards I have explained in ‘Stability and Simplicity’ the improvements I intend to start making. At that point new powers will be needed, either via a Westminster Bill or a Bill in the Scottish Parliament. There is plenty of time for a Scottish Bill, if that is where we end up, in time for improvements to start from 2021 onwards.

I hope this clarifies the situation and provides reassurance to the Committee that the Scottish Government will have the powers necessary to continue to make support payments going forward in the event of Brexit.

FERGUS EWING

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew’s House, Regent Road, Edinburgh  EH1 3DG
www.gov.scot