



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Rural Economy and Connectivity Committee

**Wednesday 31 October 2018**

**Session 5**



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**RURAL ECONOMY AND CONNECTIVITY COMMITTEE**  
**27<sup>th</sup> Meeting 2018, Session 5**

**CONVENER**

\*Edward Mountain (Highlands and Islands) (Con)

**DEPUTY CONVENER**

\*Gail Ross (Caithness, Sutherland and Ross) (SNP)

**COMMITTEE MEMBERS**

\*Peter Chapman (North East Scotland) (Con)

\*John Finnie (Highlands and Islands) (Green)

\*Jamie Greene (West Scotland) (Con)

\*Richard Lyle (Uddingston and Bellshill) (SNP)

\*John Mason (Glasgow Shettleston) (SNP)

\*Mike Rumbles (North East Scotland) (LD)

\*Colin Smyth (South Scotland) (Lab)

\*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

\*Maureen Watt (Aberdeen South and North Kincardine) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

David Barnes (Scottish Government)

Ian Davidson (Scottish Government)

Fergus Ewing (Cabinet Secretary for the Rural Economy)

Elinor Mitchell (Scottish Government)

**CLERK TO THE COMMITTEE**

Steve Farrell

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



# Scottish Parliament

## Rural Economy and Connectivity Committee

Wednesday 31 October 2018

*[The Convener opened the meeting in private at 08:17]*

10:32

*Meeting continued in public.*

### Agriculture (Update)

**The Convener (Edward Mountain):** Good morning and welcome to the 27th meeting in 2018 of the Rural Economy and Connectivity Committee. I ask everyone to ensure that their mobile phones are switched to silent. No apologies have been received, but I note that John Finnie is attending another committee meeting and might return at some point.

We start in public with agenda item 5, which is an agriculture update. First of all, I invite members to declare any relevant interests, and I will start by declaring that I am a partner in a farming partnership, the details of which are disclosed in my entry in the register of members' interests.

**Peter Chapman (North East Scotland) (Con):** I declare that I, too, am a partner in a farming business.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** I declare that I am part-owner of a very small registered agricultural holding.

**The Convener:** This item forms part of our regular evidence taking on agriculture, which is one of the committee's areas of scrutiny. I welcome to the meeting Fergus Ewing, the Cabinet Secretary for the Rural Economy, and from the Scottish Government, Elinor Mitchell, director, agriculture and rural economy; David Barnes, national adviser, agriculture policy; Ian Davidson, head of agriculture policy division; and Douglas Petrie, head of area offices and head of agricultural profession.

Before I invite the cabinet secretary to make a short opening statement, I should make it clear that this will have to be a tight session, as there are a lot of questions. I therefore encourage everyone to keep their comments as short as possible so that I can give everyone the chance to ask their questions and the cabinet secretary the chance to answer them.

Cabinet secretary, you may have three minutes.

**The Cabinet Secretary for the Rural Economy (Fergus Ewing):** Thank you, convener, and good morning. I welcome this opportunity to discuss a wide range of topics, but I will focus my initial remarks on just two issues: progress with delivery and Brexit. I hope to cover the recent instance of BSE in the question-and-answer session.

Through regular monthly updates, I have kept the committee fully apprised of the progress of common agricultural policy payments, and I am pleased that we have achieved our target of making 95 per cent of pillar 1 payments by the end of June. We have now completed 99.6 per cent of basic and greening payments; 99 per cent of Scottish suckler beef support scheme payments; and 96.4 per cent of Scottish upland sheep support scheme payments. As for pillar 2 payments, which, of course, do not have a regulatory deadline, we started them in May and June, three months ahead of last year, and have now paid over 90 per cent of all such claims. We have completed almost 95 per cent of less favoured area support scheme payments, 89 per cent of beef efficiency scheme payments and 97 per cent of land managers options scheme payments, and we are working hard to pay the vast majority of all outstanding pillar 2 claims by the end of the year.

When the farming industry sought support for the impact of this year's exceptional weather, our response was, I hope, swift and effective. We made basic payment scheme loans available from 5 October, three weeks earlier than when we started last year and well before the opening of the CAP window on 1 December. We were the first United Kingdom Administration to get that vital cash flowing into the farming industry and the wider rural economy. We have now made 2018 basic payment loan offers to 17,428 customers—or 99 per cent of eligible applicants—providing up to 90 per cent of their anticipated pillar 1 CAP payments to a total of £341.9 million. We have made loan payments to 12,653 businesses, injecting over £294 million into the rural economy. We are absolutely focused on delivering practical support for our rural businesses. We are not complacent and we are always looking to do better, but we are building on a year of real progress in delivery.

There is no doubt that Brexit is a hugely important issue to farming, and the Scottish Government's overall position remains that the best option for Scotland—and, we believe, the whole of the UK—is to stay in the European Union. Failing that, we believe that the UK and Scotland must remain in the single market and the customs union. Nonetheless, as a responsible Government, we are working hard to prepare for Brexit. For example, we are working to address

the technical legislative deficiencies that would present themselves as a result of bringing EU law into UK law if there were to be no deal. We are working constructively with the Department for Environment, Food and Rural Affairs on this matter, as the Scottish Government has committed to doing. The process of notifying parliamentary committees of relevant statutory instruments is under way, and that secondary legislation will ensure that support schemes and payments can continue in their current form after next March, even if there is no deal.

In our document “Stability and Simplicity: proposals for rural funding transition period”, I have outlined a detailed policy position up to 2024. By sticking with the main elements of current farm policy over that period, we will give farmers and crofters stability in a time of unprecedented change. In the second half of the period, from 2021 onwards, we will simplify and improve farm support payments to make them even more effective. Our current assessment, therefore, is that we need new powers through primary legislation not by next March but from 2021 onwards.

Convener, I see you wagging your pencil furiously, and I accept your signal. I had more to say, but I will leave it there and invite questions from your colleagues instead.

**The Convener:** I thank the cabinet secretary for his observance. The first question is from Peter Chapman.

**Peter Chapman:** Good morning, cabinet secretary. You have already mentioned BSE, so I will get right into it. Given that we have already had a statement on the matter, we do not need to have a lengthy discussion, but I believe that there are four cohort and offspring animals associated with the cow concerned. Where are we with the investigations into whether they, too, have been infected?

**Fergus Ewing:** As Mr Chapman knows, my colleague Mairi Gougeon has made a statement on this matter. The news of the confirmed case of BSE in Aberdeenshire is hugely disappointing, but there is no risk to consumer health and the Scottish Government has activated plans to protect food safety and, of course, our valuable farming industry.

As for the investigation, it is simply the case that it takes time to do these things properly. Perhaps Elinor Mitchell can bring us up to date with any relevant information.

**Elinor Mitchell (Scottish Government):** The animals affected were evaluated on the farm on 26 October, and the three cohort animals and one offspring were culled there yesterday, with the carcasses transported to Dumfries for sampling and

disposal. The screening results will be available by the end of this week, and if any prove positive, the carcasses will be transported to the Animal and Plant Health Agency offices in Weybridge for further testing.

**Peter Chapman:** That is good to hear. We are absolutely sure and certain that no other animals apart from the cow in question’s immediate offspring could have been infected, and we know exactly where they are and that they have been taken out. I think that I am satisfied with that response.

**Mike Rumbles (North East Scotland) (LD):** In June, the cabinet secretary published his “Stability and Simplicity” consultation on proposals for a rural funding transition period until 2024. I appreciate that, during an unstable period in an unstable world, it is useful to have stability for our farming industry, but the committee is interested in the cabinet secretary’s vision for the future of Scottish agricultural financial support after the transition period. Assuming that he will still be the cabinet secretary in the long period of time ahead, we would like to know his vision for the future of agricultural support in Scotland.

**Fergus Ewing:** The “Stability and Simplicity” paper offers what it says on the tin: stability and simplicity. We have not completed the analysis of the huge range of very interesting responses—137 in total. They will be available to everyone, and they make very good reading. Out of respect for the 137, we need to treat their responses to the consultation seriously, and I have spoken to some of the individual farmers who have replied.

Our document is a plan for five years and is the only such plan in the UK. I say with respect that the UK document “Health and Harmony: the future for food, farming and the environment in a Green Brexit” makes only one thing clear: direct payments will cease. We believe that they will cease in 2027-28—that is what the UK Government has said. I believe that direct payments will continue to be required and that they are justified.

Moreover, farmers already provide public good. The “Health and Harmony” document presupposes that farmers do not provide public good and says that they should do so, but farmers already provide public good in many ways. Principally, they do so in two main ways. First, they produce high-quality food. That is the primary role of farming and it is what Scottish farmers do. Scotch beef, Scotch lamb and our livestock farming are renowned for their quality throughout the world. Secondly, farmers look after the landscape and are the custodians of the countryside. They do the work; they do not write views and polemics or theorise about it. Every day, farmers shape the landscape so that it looks

the way it does, as the centre of our tourism industry.

My vision is that farmers should be permitted, enabled, supported, respected, valued and appreciated by the public for what they do. They should not be exposed to the line that says: "We will support you for a wee bit, but we haven't quite said how. We've given any details only up to 2022, or 2020 for some pillar 2 payments, and we're going to cut off all your money by 2027." That is not a particularly inspiring vision to me.

**Mike Rumbles:** I am not focusing so much on the transition period to 2024, because I understand what you are trying to achieve with that, and you have said some very good things about support for our farming industry. I am trying to dig a bit more deeply. This could apply to you or to your successor as cabinet secretary, but I am asking you because you are in the chair now. In practical terms, what is your vision post-2024? What would you like to see? Is there an opportunity to do things differently from how we are doing them at the moment? Will the transition period be just that? Will we basically stick with our current system? What would you like to be completely different in the Scottish landscape after 2024? We have inherited the system from the European Union, under which we needed to obey European Union rules. Like it or not, we will, I hope, be free to have our own rules. What would you like to see post-2024?

**Fergus Ewing:** I accept that that is a fair question. I hope that I have set out my vision for the future in general terms. Mike Rumbles asks what we can do better. I firmly believe that, in many respects, farmers are doing things extremely well at the moment, but it is clear that there is room for progress in some farms and in some farming practices. In general, we all want more practical greening measures to be taken.

10:45

It is also clear that, in our "Stability and Simplicity" consultation, we asked for views on how to simplify and improve the current regime, and we postulated that we would seek to do that in the second part of the five years. We are not just waiting until 2024. We envisage that, after the transition period of a couple of years, we will start to pilot new schemes and try out new systems. To give one example, as you know, yesterday evening we had a debate about the problems and difficulties that are associated with the export of live animals. I think that there is a consensus in Parliament that we would like to encourage change, difficult though that is financially, as I understand from the comments that were made during the debate by the farmers among the members who spoke. That is one area in which I

hope that pilot schemes could be considered and there could be some measure of support.

We also need to consider the wider series of questions that the National Council of Rural Advisers has set out. The council is looking for more focus on rural issues and more appreciation of what they are about. It wants us to look at things in an integrated development fashion, with farmers very much at the heart of that.

Like NFU Scotland, I want to encourage more productivity and diversification. It is invidious to single out one or two successful farming businesses, because there are so many of them, but we can all think of businesses that have started off as one family farm and that are now household names. I want to encourage, enable and facilitate the young male and female farmers who are now thinking in a business way.

Incidentally, because of the importance of farming and forestry in the south of Scotland, the new south of Scotland enterprise body, which we will debate separately, is perhaps an opportunity to try out things in a way that would be consistent with what I think is the direction that Mr Rumbles wants to go in.

I would also like us to further enhance the excellent marketing activities that are deployed by Quality Meat Scotland and Scottish Development International, with our in-market specialists, who for example have facilitated a market for the export of beef to Berlin. That is through one person in a company representing Scotland, whose efforts have been tremendously successful.

I would like to ensure that all the various advice that is available from Scotland's Rural College, the business gateway and others is of top quality and that we can integrate agroforestry to a better extent.

This is a long wish list, but I make no apologies for the fact that I am ambitious for Scotland. Finally, post-Brexit in particular, I would like to see a freeing up of opportunities for farmers to use the land through the planning system. I would like more permitted developments, so that farmers can use their initiative to diversify and use their land to the best sustainable effect.

I hope that that is enough to be going on with.

**The Convener:** Before I come back to Mike Rumbles, Stewart Stevenson would like to come in.

**Stewart Stevenson:** Could the cabinet secretary confirm that, with our coming out of the common agricultural policy, which is of course driven by the diverse needs of the north of Finland and the south of Crete, we might avoid things such as the three-crop rule, which was not appropriate for Scotland? We might also look at the way in

which we use water. There is a huge shortage of water in the Mediterranean areas whereas, if anything, we have a superfluity of it. Therefore, rather than just providing finance, we might tackle some practical issues, some of which the Government has raised, in a different way.

**Fergus Ewing:** I entirely agree with Stewart Stevenson's point about the three-crop rule. I point to the good work that was led by Professor Russel Griggs and the CAP greening group. That group brought together farmers and non-governmental organisations, and they reached conclusions that are going ahead in some instances.

The use of water is a bigger topic. Although I am not a farmer and I bow to the knowledge on this committee, in the discussions that I have had, the effective drainage of farmland is mentioned again and again as an absolute essential part of productive land. It is good to have an opportunity to mention that fact.

In terms of the provision of support and the rationale therefor, we have to address the need for continued financial support to be made available for high-quality, environmentally sound livestock production, because that is so important in Scotland. With respect, convener, that seems to be a fundamental difference between the Scottish Government's and the UK Government's proposals.

**Mike Rumbles:** You said that you want to be fair to the respondents to the consultation and that you are still analysing the "Stability and Simplicity" consultation responses, but can you tell us when we might expect the final plans for the period to 2024 to be published?

**Fergus Ewing:** I can say that we are analysing the responses. I had hoped to bring the process of analysis to a conclusion as soon as possible. I can also say that we promised a simplification body that would take things forward, and we are in touch with a number of individuals about that, so I hope to make an announcement, but I do not want to set a time limit because I know that that will be a noose around my neck. I know—perish the thought. Who would ever do that?

I want to do it as quickly as possible, but we have to respect the fact that we have had 137 very serious proposals, some of which have been extremely well thought through. There are a number of tools in the box and I hope that, when members have the opportunity to study them for themselves, they will see that the public have sent in some really excellent suggestions, which we will be able to incorporate. I hope that it will be as soon as possible.

**Mike Rumbles:** I have been asked to pursue this next question, and it is my last one. Under pillar 2 in the consultation, you state that many

schemes will continue, and you have confirmed that that is your hope. Which schemes do you plan to close, if any? If you do plan to close them, why would you be thinking of closing them?

**Fergus Ewing:** I do not have any plan to close particular schemes. The whole idea of stability is that we keep the existing schemes going so far as we can financially, and we have to look carefully at the figures. There are obviously some that we regard as a priority. One clear priority for Scotland is LFASS, and we have set out in our "Stability and Simplicity" consultation—

**The Convener:** I should say that LFASS is going to come up later in the meeting, so perhaps I could divert you from that subject so that I do not upset the deputy convener.

**Fergus Ewing:** I do not want to upset anybody. Perish the thought.

**The Convener:** There are some other questions on this issue, and I will come back to Mike Rumbles if he wants to ask more, but I think that Colin Smyth has a specific question.

**Colin Smyth (South Scotland) (Lab):** You have proposed a simplification task force and the committee is keen to know when full details of that will be announced. That task force will have quite a narrow remit, and you have described the various groups that you have appointed, such as the agriculture champions, the Griggs greening group, the National Council of Rural Advisers and the simplification task force. However, it seems to me that those groups do not have a specific remit to report on what future farm payments should look like. Rather than that being done by those various bodies and the simplification task force, with its rather narrow remit, is there not a case for a more all-encompassing task force that brings all the stakeholders together to look specifically at future payments, and reports in detail on exactly what future farm payments should look like?

**Fergus Ewing:** Our proposal, which has had broad support in the consultation responses, has been to provide a period of stability where the existing payment schemes continue. That is actually what most farmers and land managers want. We are really talking about the period post-2024, as Mr Rumbles has rightly said. In respect of that, I agree that a focused effort involving all relevant people and stakeholders is worthy of consideration and will probably be required in due course.

With regard to the work that the NCRA and the agricultural champions have done, the remit for the NCRA's work, which was done at the behest of the Scottish Parliament, was to look at matters in principle and to advise us on the principles around which we should plan future support. That was the initial stage. The simplification task force has a



more specific remit. As someone who has chaired a lot of task forces, I know that the clearer the remit, the greater the likelihood of getting a set of answers that can be turned into action; a vague remit can lead nowhere.

In response to the question about timescale, we expect to complete the analysis of the responses to the “Stability and Simplicity” consultation by mid-November. We will then prioritise the findings and bring them to the external stakeholder panel, the first meeting of which is planned to be held at the end of November or the beginning of December. Prior to that, we will announce the members of the panel. Ian Davidson and Douglas Petrie are leading the initial simplification work and, if we have time, they might be able to add to what I have said on what is a very important issue.

**The Convener:** Colin Smyth wants to focus on a particular area; his question might allow you to bring them in.

**Colin Smyth:** It would be good to get detail on the work of the simplification task force, but I am encouraged by the fact that you seem to be saying that you are seriously considering another task force that would take a wider look at future, as opposed to immediate, support. You have talked about lodging a motion to bring all parties together to look at the wider issues. When is that likely to happen? That might be a forum for fleshing out the detail on the establishment of such a task force.

**Fergus Ewing:** You are absolutely right: I have committed to holding such a debate, and I think that it should take place before the end of the year. This is not a plea in mitigation, but we face a huge volume of work, as the clerk will be aware, in preparing statutory instruments for a no-deal Brexit. That work has been taking up an enormous amount of our time, and I expect that it will take up a lot of Parliament’s time. Be that as it may, we are committed to holding a debate before the turn of the year.

I am not necessarily saying that I think that a grouping along the lines that Mr Smyth suggested should be formed immediately. We must proceed sequentially, and certain basics need to be established. Will the UK Government keep the Brexit pledge that it made before the referendum? Will the level of funding for rural Britain that we came to expect from Europe be matched? In the absence of assurances on whether that will be the case, it is difficult to plan post-2024. We know that direct payments are to be scrapped, as the Treasury has been extremely abrupt about that. There is no doubt about it—members should speak to Liz Truss. Farmers are not to get payments from 2027. In 2005, DEFRA put out a paper in which it indicated that that was the direction of travel, so this is not new.

Before we set up an elaborate process for deciding what schemes to have, we need to know what the overall commitment to rural Britain is. No one can make a plan without knowing whether they have £10, £50 or £100 to spend. There needs to be some co-operation. I have asked Mr Gove whether he would be kind enough to clarify matters on the record in *Hansard* in the course of the UK Parliament’s consideration of the Agriculture Bill.

I am certainly willing to co-operate with Mr Smyth’s suggestion, but I am not persuaded that we are yet in a position in which we have enough information usefully to initiate that work.

**Peter Chapman:** I have a question that follows on from Colin Smyth’s question about simplification. It is about a specific issue that causes a lot of grief in the farming community. The fact that horrendous penalties can sometimes be incurred following on-farm compliance inspections as a result of genuine mistakes creates huge anxiety in the farming industry. We recognise that the checks are necessary, but we are talking about law-abiding and honest people who have made genuine mistakes. The consequences can be horrendous. Can some of those difficulties be overcome as a result of Brexit?

11:00

**Fergus Ewing:** I am sympathetic to the view that Mr Chapman has just expressed—I have frequently heard the same argument from farmers and crofters. I am particularly sympathetic to the thesis that the penalty regime for clerical or honest administrative errors is far too harsh. Indeed, in the “Stability and Simplicity” paper, we specifically indicate that we think that both those issues—the penalty regime and inspections—should be looked at, and we have had a number of very useful responses. Interestingly, some responses have pointed to the need for inspections.

This is changing tack slightly, but if we are to have the high surveillance that resulted in the detection of the BSE case, we need to have a very effective surveillance regime. We have got that; if we had not, we would not have detected the case, and goodness knows what the consequences of that would have been.

Inspections are necessary—much of the correspondence that I have seen has made that point. However, the plethora of inspections, and their nature and timing—for example when they interfere with gathering or counting sheep—are the source of dissatisfaction and a great number of complaints. Overall, though, we need an effective regime, and I think that inspections will be part of the remit of any regime. Douglas Petrie and Ian

Davidson can talk a lot more about that, if they want to accept the invitation.

**Ian Davidson (Scottish Government):** What we have done so far is to canvass our staff on the ground who deal with farmers daily, to get ideas about ways in which the system could be simplified. Encouragingly, more than 300 ideas have been put before us. We received them only about 10 days ago, and we have a team going through them and looking at what is possible now without changes to legislation and what might have to wait until we can make some decisions of our own. Later this week, Douglas Petrie and I will meet our delivery partners in Scottish Natural Heritage, the Scottish Environment Protection Agency and the Forestry Commission to canvass ideas from them. It has been a very encouraging piece of work, which will form the basis of the work that we take to the external panel.

**Richard Lyle (Uddingston and Bellshill) (SNP):** In layman's terms, we will lose all new funding after Brexit. If the UK Government does not come up with funding, the Scottish Government might have to put that funding into future budgets. Am I correct?

**Fergus Ewing:** That is putting it starkly, but it is broadly true. We are fearful about the termination of direct support payments, which we believe serve a necessary and valuable role. Farmers should be appreciated more for what they do and they deserve those payments. After all, we are all public servants in different ways. Many people, even in the private sector, receive money from the state for different purposes, and it is particularly unfair to single out farmers and say that they are undeserving recipients of that money.

I hope that in the course of the debates that are going on, a reasonable conclusion can be arrived at. If not, it is very difficult for me, as a cabinet minister, to see how we could find hundreds of millions of pounds from elsewhere in the budget. For obvious reasons, that is not generally possible for any Government. If we had hundreds of millions of pounds sloshing around unallocated, you would be the first to say that we were not doing our job properly. By definition, it is up to the UK Government—which, after all, had the idea of the Brexit referendum and made promises on the side of a bus about matching funding—to come up with better answers on the level of funding. I have been making that point literally since the day after the referendum.

**Gail Ross (Caithness, Sutherland and Ross) (SNP):** Good morning, panel.

Cabinet secretary, obviously you are aware of the importance of the less favoured area support scheme. I will give you a chance to speak about it. The funding in that scheme is due to be reduced

from £65.5 million this year to possibly as low as £13 million in 2020. Stakeholders are rightly concerned about the potential reduction and loss of that funding. What options have you explored to prevent LFASS funding from being cut? Are any contingency plans being put in place in case that funding is reduced?

**Fergus Ewing:** Gail Ross is absolutely right. LFASS payments are particularly important in the north of Scotland—in her constituency, for example.

We made it clear in “Stability and Simplicity” that reducing LFASS payments to 20 per cent is unacceptable. However, those are the rules of the scheme, so we indicated in our consultation paper that we need to find a workaround for recipients. I do not want to make specific commitments, and I will not do that, because work is in progress and no decisions have been made. Our aim and desire are to work with the industry, especially the NFU and the beef and sheep associations, to find a workaround in order to maintain support to the least favoured areas at a level that is sufficient to maintain rural development, particularly in the most remote parts of Scotland. Gail Ross represents a large tranche of those.

That is our objective. It will not be an easy one to achieve, but I believe that it is achievable, and we have the good will of the stakeholders, whom we are working closely with, in committing to do that.

In August, I met the NFUS less favoured areas committee in Grantown-on-Spey, and my officials met it again earlier this month. Officials have also met other stakeholders, including crofters and the national beef and sheep associations.

That is work in progress. I undertake to keep the committee informed of the progress that we are making.

**Maureen Watt (Aberdeen South and North Kincardine) (SNP):** It is important that we know what the UK Agriculture Bill says about LFASS, because it is still under the UK Government's jurisdiction and will be for some time.

**Fergus Ewing:** I was just checking that, and I am advised that there is nothing in that bill about less favoured area schemes. Down south, the equivalent of LFASS was scrapped about seven years ago, I think. We have LFASS because we have this devolved Parliament. As far as I am aware, the scheme has been supported by all parties because it keeps the lights on in rural Scotland and keeps school rolls going. The most remote communities have farmers and crofters at their heart. For those reasons, I hope that there is a will among all members to find a practical way to continue to support the people who need it most.

**Peter Chapman:** I want to tie you down a wee bit more, cabinet secretary. Let us be clear. Whether the scheme is called LFASS or something else, are you saying that you intend to continue payments at the same level as the current level in 2019 and 2020?

**Fergus Ewing:** As soon as we became aware that we were permitted to do so this year, we restored LFASS to 100 per cent from 80 per cent, which hitherto had been the steer. The European Parliament intervened to allow the payments to be maintained at 100 per cent. We acted very quickly, and I took tough decisions that enabled me to maintain LFASS.

The payment reduction will be to 80 per cent next year. I do not think that we can prevent that from happening, but a reduction from 80 per cent to 20 per cent is just not acceptable. That is why I have stuck my neck out and said so. I will not stick my neck out further at this stage in case someone decides to apply the guillotine to it. I hope that you will forgive me for that self-preservation instinct.

To be serious, I am determined to find a workaround. My officials are working very hard on the issue, and I think that that is within our reach. I hope that we are approaching the issue in a practical way.

There are many other issues involved with the LFASS scheme and no one is saying that it is perfect in every way. We need to have a hard and close look at how it operates and who benefits from it, and to make sure that those who are in most need continue to benefit. My stated intention is to find a workaround to prevent payments going down to 20 per cent the year after next.

**John Mason (Glasgow Shettleston) (SNP):** The UK Agriculture Bill has been mentioned. What is your view of the bill? Could it or should it include measures concerning Scotland?

**Fergus Ewing:** The starting point is that agriculture is devolved and we have been making decisions about agriculture. To go back to the previous question, if it was not devolved, would there still be an LFASS scheme? We have used our powers under devolution to do something that we all believe was necessary, which is to diverge from UK policy. The principle that agriculture is a devolved area should continue. Any move away from that would be wrong in principle.

Nonetheless, we recognise that we want to be—and I hope that I have been—constructive in our engagement with the UK Government, particularly in meetings with DEFRA, with which my officials have carried out a huge amount of work. That work has been fruitful and there are reasonable relations at all levels.

However, there are three sticking points. I do not know whether you want me to mention them now, as I went over that ground in detail yesterday at Pete Wishart's select committee. There are three areas in which we believe the powers of this Parliament would be predated, which is not acceptable. There are particular risks involved in that. The areas are the World Trade Organization, producers' organisations and fair dealing in respect of market developments.

The WTO issue is particularly complex because, basically, it is reserved although its implementation is devolved. That is, essentially, the argument. I could talk about the matter for a long time, but I will not dwell on it—the convener would not want me to do that.

In summary, the decision that those three areas are devolved was not my decision; it came from legal advice. I put it to the committee that it was not me playing at politics or the Scottish Government being "political"; it was quite the opposite. We have clear legal advice that the bill, as drafted, will take away powers from this institution. Our response has been to argue and seek to persuade the UK Government to amend the bill so that it will not do that. It is my hope that those efforts, which continue, will be successful. Thus far, the UK Government has not provided any justification for its argument, which we have done for ours.

Incidentally, a legislative consent memorandum has been lodged with Parliament, which the committee will receive. It sets out our arguments in a great deal of detail, as is our duty and as is right and proper.

**The Convener:** The LCM will be discussed next week by the committee, as we only recently received it.

John Mason has kindly agreed to my asking you a couple of questions on the WTO agreement on agriculture, which is addressed in part 7 of the UK Agriculture Bill. Who negotiates with the WTO for us while we are in the EU?

**Fergus Ewing:** I have been well briefed, but to save time it might be better if David Barnes were to answer that technical question.

**The Convener:** I am happy for David to answer, if he wants to. I am trying to make the questions very simple so that they require short answers. Who negotiates with the WTO on behalf of the EU?

**David Barnes (Scottish Government):** The problem with simple and precise questions is that they might only pick out one small element of a complex landscape.

The position is that, under the EU's common commercial policy, the European Commission

negotiates on behalf of the European Union and the member states on all trade policy issues. However, that does not mean that accountability, legal responsibility and so on automatically fall to the European Commission, too. I apologise if I am jumping ahead and answering a question that you have not asked. It is a complicated position. The negotiation is done by the European Commission, and there are bureaucratic arrangements whereby the member states effectively give that mandate to it. The European Commission does not set the negotiating policy but it carries out the negotiation.

11:15

**The Convener:** Direct payment to farmers is covered by the amount of money that is put in under the aggregate measurement of support. What is the current level of the aggregate measurement of support for the European Union, and does it allow us to pay farmers as we want to with direct support?

**David Barnes:** The way in which European policies have been designed means that the direct payments all fall either under the green or blue categories in the WTO, for which no limits apply, provided that the scheme in question meets the rules of that category.

The aggregate measurement of support is a limit that applies to the amber category. I am 99 per cent sure—I would have to check to make absolutely certain—that none of the current direct payments in Scotland fall into that category, which means that none of them is subject to the aggregate measurement of support limit.

**The Convener:** My understanding is that, after Brexit, direct payments to farmers will be in the amber box. Is that correct?

**David Barnes:** That will not be automatic, but will depend entirely on the design of the scheme. The point of concern for the Scottish Government in how the DEFRA Agriculture Bill has been drafted is about who will get to make the decision about which category particular schemes will fall into.

**The Convener:** I was trying to take you down the line that the UK has asked the WTO for the ability, after Brexit, to make direct payments of up to £5.9 billion in subsidies, which is approximately 83 per cent of what the EU is paying across all of the EU. My point is that there is ample scope within the funds, should direct payments to farmers fall into the amber box.

Based on that, and based on the evidence that we heard from Michael Gove earlier in the year on the EU's current negotiations, it seems that the powers to negotiate with the WTO would have to remain with the UK Government, because it is the

signatory. Michael Gove has said—it says this in the UK Agriculture Bill—that the UK will consult the devolved Administrations. Why are you worried about part 7 of the Agriculture Bill? I cannot follow your concern, and I have considered the issue on several occasions and have taken advice on it.

**David Barnes:** You have asked a number of questions. Excuse me if I look slightly discombobulated; it is because of your comment about the requirement to consult. Unless the bill's text has changed since I last looked at it, one of our concerns is that there is not even a requirement to consult the devolved Administrations, let alone secure their consent. I know that there have been discussions and that all the devolved Administrations have been pushing the UK Government on that.

The Scottish Government is not questioning in any way the fact that negotiation of international obligations, including WTO negotiations, is reserved. The cabinet secretary said that the few moments ago. There is no issue at all about negotiation. The issue is entirely about implementation of international obligations. The legislative consent memorandum sets out the Scottish Government's position, based on legal advice, as the cabinet secretary said. Essentially, the legal advice is that if an area of policy is devolved, once an international obligation has been negotiated, implementation of that in a devolved Administration's territory is devolved.

There might be things that have to be done that it makes sense to decide at UK level rather through four separate decisions, but in our understanding that would not change the devolution settlement and suddenly flip something back to being reserved. For example, let us say, hypothetically, that in Scotland there were to be future support of some kind that fell into the amber box. It might be the case that, as you say, there is a great deal of headroom in there. However, as things stand, the amount of headroom that Scotland would have would be the result of an allocation to Scotland that, under the bill, would be made unilaterally by the UK secretary of state. The view of devolved ministers is that, because agriculture is a devolved policy area, devolution should be respected, and that even when something has to be done on a UK-wide basis, that should be agreed between the Administrations and not done unilaterally by the UK Government. The details of all that are in the legislative consent memorandum.

**The Convener:** To me—we will perhaps leave it at this—the point is that Michael Gove has said that agriculture and agricultural support are matters for the Scottish Government, because the area is devolved. There is so much headroom in

the amount of money that can be paid in relation to the amber box that, frankly, we would have to be as big as the whole EU to use up the allocation. It appears that we are seeing problems that do not actually exist.

John Mason has more questions on this issue.

**John Mason:** My questions are perhaps more general. The convener went down a specific route.

In your last answer to me you mentioned the three areas of the UK Agriculture Bill in which you are looking for amendments. Could you spell out in simple terms, for non-farmers like myself, how those amendments would practically impact on our Scottish farmers, and what the impact would be if they were not agreed to?

**Fergus Ewing:** The three areas were identified by senior legal advisers. The dialogue is continuing. I have no wish to fall out with the UK Government over technical matters. A huge amount of effort is going into trying to reach agreement, and there is a focus on the important and substantive issues.

John Mason has asked what the impact of the amendments would be. In relation to the WTO, David Barnes has said that decisions could be taken by the UK Government that might impact on our ability to continue to make coupled payments or voluntary coupled payments. Given the importance of livestock farming, that, in principle, is wrong. Even if the convener is correct about the nature of the dispensation, that might be the case now, but it might not be the case in the future. If we agree to the proposal, we will be forfeiting powers on the basis of legal advice.

Secondly, we would not be able to set up a producer organisation in Scotland without the say-so of the UK Government. That seems to me to be absurd and runs contrary to the practice whereby, when the producer organisation Angus Growers was de-recognised, the legal action was taken against the Scottish Government. If it was not a devolved function, why was the legal action not taken against the UK Government?

I do not want to overplay the risks—they are risks, but they are not the greatest ones. The greatest risks are to do with other political matters. In that respect, as well as the three specific areas, I have also asked the UK Government to add various things to the bill. I wanted to add a commitment on the record—in *Hansard*—to clarify what level of funding there will be, which will answer Mr Lyle's point.

The second point concerns the red meat levy, and I am pleased that an amendment is being tabled on that, albeit that it is being done by a back bencher. However, this is not back-bencher territory, and we think that the amendment, which

we have just had sight of, is unsatisfactory in several respects. In practical terms, a couple of million quid for marketing Scotch beef and Scotch lamb is being lost. We could do a lot with that money. We really need that funding, and it is money that is attributable to Scottish livestock. This is a long-standing issue that has not been resolved. This bill should resolve it, and I hope that that will happen.

Also, geographical indications are not in the bill, and they should be. The UK Government appears to be seeking to use that as a lever.

Finally, we are all concerned that, after Brexit, there could be a free for all in importation of cheap meat—chlorinated chicken and meat produce that has been produced in countries that do not have the high standards that pertain in the UK under the EU legislative frameworks. Therefore, we would have liked to have seen in the bill a requirement that, prior to the importation of any such meat produce or other foodstuffs, relevant certification and evidence would have to be produced to demonstrate that it had been produced in accordance with high welfare, hygiene and other regulatory standards. The UK Government has not agreed to that—although, to be fair, I think that it has said that that will be dealt with in a trade bill.

There are certain issues that, although they do not involve powers being taken away, should be in the bill, from the point of view Scotland's interests, but which are not.

**John Mason:** Is the main concern that the Scottish Government, the Parliament and even farmers will not have the same powers that they had to act, is it that the funding will be so reduced that we cannot pass it on to farmers, or is it a mixture of both?

**Fergus Ewing:** It is a mixture of both.

**Peter Chapman:** How has the UK Government responded to your proposed amendments to clauses 22 to 26 of the Agriculture Bill?

**Fergus Ewing:** When I suggested that Mr Gove should clarify what he promised during the Brexit referendum as the bill goes through Parliament, he replied by saying that that was a very good point. However, he has not done what I asked—namely, to make a statement in *Hansard*. This issue perhaps trumps everything: it would be a statement to rural Britain—not just Scotland—because I assume that farmers down south are getting increasingly worried about future support levels. They do not know about the situation beyond 2022. That is point 1.

Point 2 is that we were promised that the red meat levy would be dealt with in the bill. We have just received the back-bench amendment and we are looking at that. That is an element of progress,

but the amendment has to be satisfactory. It has to work and repatriate the money that is attributable to Scottish livestock. There has been no agreement to deal with geographical indications in the bill.

Lastly, moving to the three topics of the WTO, producer organisations and fair dealing and marketing, my key point is that we have provided the justification for our arguments. Our lawyers and our LCM say why we have come to our conclusions. The UK Government has not shared its reasoning, rationale or justification; it has only made an assertion. That is not good enough, so I have written to the UK Government asking it to set out the reasons why it believes that those three matters are wholly reserved. I hope that that will lead to a continuing positive dialogue and, ultimately, resolution of those issues. That is my preference.

**The Convener:** You say that you have written to the UK Government. Can you confirm to the committee when that was?

**Fergus Ewing:** I have written to the UK Government on numerous occasions, but 24 October was the date of the amendment letter—I have it here. This is just a detail, but we have been in respectful and continuous engagement. I have met Mr Gove and Mr Eustice on eight or 10 occasions, and Mrs Leadsom before that. We have regular meetings and that is absolutely appropriate because, although we disagree with the fundamentals about Brexit, we have a duty to prepare for the worst—from our perspective, Mr Chapman—and we take that duty very seriously. We are not slacking. We are spending a huge amount of time—and, as I understand it, you guys are about to spend an even greater amount of time—with the statutory instruments.

**Peter Chapman:** You say that you want to get an agreement, but what happens if there is no agreement between this Government and Westminster? What is the next step?

**Fergus Ewing:** Agriculture is a devolved matter and we are perfectly capable of legislating for ourselves. There is no technical problem. We will not be prevented from doing anything by not agreeing to the UK Agriculture Bill. It is, again, a matter for legal advice, but I am absolutely certain that no deleterious impacts will affect farming in any way simply by virtue of our not agreeing to the bill. That is a red herring, which I dealt with extensively yesterday at the select committee. Sadly, there has been some scaremongering from Tory MPs that is based on completely false analysis of the factual legal position.

Therefore, I am arranging for a legal opinion to be provided to this committee and the select committee setting out precisely why any claims

that there would be any detrimental impact on farmers simply by virtue of our not agreeing to the bill are completely and manifestly ill founded.

11:30

**Peter Chapman:** You have decided to bring forward a legislative consent memorandum on the bill, but you have not lodged a motion. Can you explain the thinking behind that?

**Fergus Ewing:** I have not looked closely at the parliamentary procedure. Incidentally, we have supplied the LCM, but we got dispensation to do so a bit later than would normally be the case because of the complexity. I have it here, and it is a complex document. I am in the Parliament's hands. We will do what it is right to do. I was concerned to ensure that, initially, we set out our reasoning on what is a series of pretty complex topics. Of course, further proceedings might involve responding to the committee when you have considered the LCM, as I think the convener indicated that you are planning to do next week. Maybe the next process is that, after you have done that, we have a dialogue about it. However, that is a detail. The more important thing is that we are seeking to co-operate with the UK Government but, if we do not and there is no agreement, that will not affect farmers detrimentally. It is important to make that clear because, sadly, there has been quite a lot of scaremongering.

**The Convener:** Just to clarify for people who may be watching the meeting, the committee has received the legislative consent memorandum, but the point is that there is no motion attached to it. The committee will have to consider next week how to take that forward. It would perhaps have made it easier for the committee to move forward if we had had a motion. However, that is a matter for another committee meeting.

**Maureen Watt:** The cabinet secretary will be aware that NFU Scotland is concerned that there may not be a legal vehicle for delivering payments beyond 29 March 2019. For the record, can you give your thinking on that?

**Fergus Ewing:** Obviously, we have had a great deal of dialogue with NFU Scotland. We have been all over the issue, and we are absolutely satisfied that there is no problem with continuing to make all payments that are properly due to farmers and crofters. Moreover, in due course, post the transition period, in the event that it is determined and agreed that there should be changes to the CAP, there will be no problem about enabling that to happen in the absence of a UK bill. I am absolutely satisfied of that, for very good legal reasons and, as I have indicated, we

will provide the committee with the legal advice in copperplate and in detail.

I could talk about the issue for a long time, but I am absolutely persuaded by the detailed advice that I have had over the past week or so, which was occasioned by all the scaremongering that has been going on, that that scaremongering is completely unfounded. I hope that, once the legal advice is shared and members have looked at it, they will come to the same conclusion as I have done and will get on with dealing with the real issues rather than side issues. Farmers and crofters will continue to receive their payments. Indeed, as you know, it is my priority as the cabinet secretary to deal with that.

**Jamie Greene (West Scotland) (Con):** I want to follow on from Maureen Watt's question. You spoke at great length on the issue yesterday but, for the benefit of this parliamentary committee, will you outline which legal framework the Scottish Government will use to deliver support payments beyond March 2019?

**Fergus Ewing:** There is a sort of tripartite answer to that. I will ask David Barnes to deal with that.

**David Barnes:** The UK Government announced a long time ago that the strategy that it would adopt would be to take the entire body of European law, including the common agricultural policy, and roll it into domestic law at the point when that is necessary, because it was simply impossible to replace the entire body of European law with domestic law in the timeframe. As the cabinet secretary has reminded us, Scottish ministers would rather not be in this position at all, but they have pragmatically decided that, given the circumstances, they will follow the same strategy. The date on which it becomes necessary depends on whether there is a deal, but that does not affect the legal instruments.

The UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill that passed through the Scottish Parliament and the European Union (Withdrawal) Act 2018 that went through the Westminster Parliament carry out that act of rolling the entire body of European law into domestic law. Doing that verbatim causes technical difficulties—for example, all the references to the EU institutions do not really make sense in domestic law—and there is therefore a huge programme of work that, as the cabinet secretary has said, will hit the committee very soon. My colleagues have already been discussing this with the clerks, but there will be a programme of secondary legislation—statutory instruments—to make those technical corrections and to ensure that when European law is rolled into domestic law, it will function properly. We have been working closely with the UK Government and colleagues in

DEFRA on that. When all that work is done, whether it is needed for next March or for a later date as a result of a withdrawal agreement, the common agricultural policy will, in effect, exist in domestic law, and we can therefore carry on using it as the legal base.

Convener, you will notice that I have not even mentioned the DEFRA Agriculture Bill. Indeed, I have not needed to, because, as the cabinet secretary has explained, it is a red herring. It is for other things; for the purposes of immediate continuity, we need the legal instruments and the strategy that I have just described.

**The Convener:** Cabinet secretary, you suggested that the answer was three-pointed.

**Fergus Ewing:** What I meant is that there is the no-deal scenario, the continuity bill and the withdrawal act.

**Jamie Greene:** I thank Mr Barnes for his long answer. In summary, then, you are saying that the Scottish Government is relying on the Westminster withdrawal act and the continuity bill that the Scottish Government pursued in the Scottish Parliament. However, is the continuity bill not subject to certain legal concerns about its validity? Are you concerned that, if the Supreme Court were to deem the bill invalid, it would interrupt the seamless flow that you have talked about?

Secondly, is it not the case that the situation that you have described allows only the status quo to continue? In other words, it allows the Scottish Government only to continue to make CAP payments under the current CAP regime. Given that the Government is choosing not to participate in the UK's Agriculture Bill, what legal framework will it use beyond 2019 to deviate from that regime in order to deliver Scottish farm payments? I do not think that you have answered that question.

**David Barnes:** To take the second question first, the cabinet secretary reminded us that in "Stability and Simplicity" he set out a five-year plan made up of two phases. Because any changes would begin to be made in the second phase, the powers in question would not be needed in 2019, even in the event of a no-deal scenario.

On the first question, I have to tell you that I am not a lawyer. The cabinet secretary has said that we will send you the detailed legal position, but my understanding of the Scottish Government's legal understanding is that, although the Government is clearly hoping for success in the Supreme Court over the continuity bill, the outcome will make no difference to the precise issue of continuity of powers to make farm payments.

**Jamie Greene:** But you have just said that you are relying on the withdrawal act and the continuity bill as the legal basis for continuing to make CAP

payments. One of the elements of that approach is being contested. Are you saying that, regardless of the verdict in that case, you can rely solely on the withdrawal act being incorporated into domestic legislation to allow you to make the payments?

Moreover, I do not think that you have quite answered my second question. Given the absence of participation in the UK Agriculture Bill, under what legal framework will you be able to make different types of payments outside of the CAP regime? That is still unclear.

**David Barnes:** On the point about the legal continuity bill and the withdrawal act, yes, it is absolutely the case that one of those is subject to court proceedings, but the other one is not. I am not a lawyer but, in layman's terms, if one of them fails, the other is the safety net into which it falls. I hope that that is clear, but we will get the lawyers to spell it out properly. When asked about the legislative vehicles previously, the cabinet secretary has said that we are exploring all available options. He has explained that we are still trying to work constructively with DEFRA, and I have certainly heard the secretary of state say to the cabinet secretary in private meetings—and I think that he has done so in public as well—that taking powers through the Agriculture Bill is still an option that would be on the table, although the cabinet secretary has described some big obstacles to that. However, as he has also said, we are perfectly capable of legislating through the Scottish Parliament, so that would be an alternative, and all options are being kept open and explored.

**Jamie Greene:** In that case, can I ask you directly, cabinet secretary, whether there is going to be a Scottish agriculture bill?

**Fergus Ewing:** We continue to work with the UK Government on the UK Agriculture Bill. I have already made that clear twice. If that does not happen and we require to take our own measures, we are obviously free to do so, and there is ample time within which to do so under every scenario, so there is no issue, and our legal advice will demonstrate that beyond doubt.

**Mike Rumbles:** I just want to check that I have not misunderstood David Barnes's response to the question that Jamie Greene asked. Correct me if I am wrong. I do not want to put words in your mouth, but I think that you said that we did not need the continuity bill to make those payments. After all that hassle that we went through with the continuity bill—I voted against it, by the way—are you saying that it was not necessary?

**David Barnes:** I hope that I chose my words carefully when I said that for this single, very precise point, in the absence of the continuity bill,

there is effectively a safety net. I was confining those comments to this one very specific point about the continuation of CAP payments. I am not competent to comment on the wider need for the continuity bill.

**The Convener:** I apologise if I am making a point that another member intends to make, but I would like to clarify something. Are you saying that there will be a Scottish agriculture bill if we need it, but if we do not need it and you can work with the UK, you will work with the UK?

**Fergus Ewing:** If we need to act by way of legislation, we will of course consider so doing, and if it proves to be necessary, that is exactly what will happen, although it is for the Cabinet to decide. That is a statement of the obvious, but that is the course that we propose to take should that scenario arise. However, I hope that the UK Government will start to justify the decisions that it has reached, rather than simply assert them.

**Jamie Greene:** I wonder whether you could comment on something that the NFUS representative said during yesterday's evidence session at Westminster. He said:

"The continuity issues are reasonably clear ... But if ... we wanted to move to a new support settlement beyond the CAP, we would have to have a legal framework to do so. Scottish Ministers will have to have power from somewhere, either through"

the Agriculture Bill,

"through a schedule"—

which the Scottish Government does not want to participate in—

"or through a Scottish Bill in the Scottish Parliament. But at the moment we have no clarity or certainty on what that might be or when that might come forward."

Can we assume from your answer today that there is an on-going lack of clarity and uncertainty, given that you have made no commitment to us?

**Fergus Ewing:** There is no lack of clarity on our part. We have had a number of discussions with the NFU about the matter and we will continue so to do. We are absolutely clear that, for the reasons that Mr Barnes and I have set out, there is no problem and we will provide for all eventualities in any way necessary, and it will not be particularly complicated or difficult so to do.

**Jamie Greene:** I have no further questions.

**The Convener:** To clarify, Pete Wishart said:

"Of course we will have a Government Bill"—[*Official Report, House of Commons*, 10 October 2018; Vol 647, c 196.]

on agriculture. Was he a bit early in making that comment?



11:45

**Fergus Ewing:** If it is necessary for there to be a bill, there will be a bill. There is no problem with that; there is plenty of time for us to introduce a bill. Moreover, as I understand it, such a bill would not be particularly complicated. It would be very straightforward, and it would be limited to what is necessary in order to achieve the specific point about being able to amend the CAP. There is nothing difficult or complex about that. Instead of dancing on the head of a pin and having a sort of medieval metaphysical argument, born of a desire to nit-pick and make trouble, would it not be better to talk about things that matter to farmers and crofters? There is no shortage of those issues.

**The Convener:** We will move to the next question—

**Fergus Ewing:** I am sorry—Elinor Mitchell wants to come in briefly.

**The Convener:** I am sorry—I did not know that.

**Fergus Ewing:** I apologise, convener. I did not know until a moment ago that she wanted to come in.

**The Convener:** I am happy to bring her in very briefly.

**Elinor Mitchell:** For the avoidance of doubt, to my mind, we are working to three clear periods. There is the period after Brexit day until 2021, and we are clear that we will have in place the legal arrangements, under either the continuity bill or the withdrawal act, to be able to use current CAP regulations. The “Stability and Simplicity” consultation document tells the story of what will happen between 2021 and 2024 or 2025. We will try out some new things, including different farming models and different ways of offering payments to farmers and others. During that time, we will take the time that we need to develop a clear policy on the future payments for farmers and crofters, using the wider information that we have been given in the NCRA report and others. There are three clear timeframes, and we have clear plans to take forward the work that is needed for each stage.

**The Convener:** We will move to the next question, which is from Colin Smyth.

**Colin Smyth:** Back in 2016, the cabinet secretary said:

“We are going to consult on a good food nation bill”—

the bill was a manifesto commitment—

“and ... I hope to build cross-party and stakeholder consensus.”—[*Official Report, Rural Economy and Connectivity Committee*, 29 June 2016; c 23.]

That consensus appears to have broken down, given that the programme for government seemed

to diminish the commitment to a stand-alone good food nation bill. In September, Parliament voted clearly in support of such a bill. Will you deliver on the will of Parliament by legislating for a stand-alone good food nation bill that includes the right to food?

**Fergus Ewing:** The member has asked several questions. The specific right to food is a very important and detailed one. We have made a clear commitment to consult on proposed legislative solutions before the end of the year. That document is being prepared and, once it is available, I very much hope that we can have a proper, thorough, considered and rational discussion about the legislative options. The document will introduce a useful element to that discussion. Elinor Mitchell might be able to add to that.

**Elinor Mitchell:** The document will set out a range of measures. As the cabinet secretary said, plans are in place to consult on those measures. If members feel that the document does not fully cover all the things that we will need to do to progress as a good food nation, we will, of course, take those views on board as the consultation proceeds.

**Colin Smyth:** I am still not clear on what is being proposed. Previously, the Government said that there would be a stand-alone good food nation bill. The programme for government says that there will be a wider piece of legislation—most likely, a farming and food bill. What exactly is that? To be clear, will you aim to legislate for the right to food and for the creation of an independent statutory body to oversee the implementation of the good food nation programme? Will there be statutory targets? Are you proposing to legislate for those specific things? What will the legislation look like? Will there be a good food nation bill, which Parliament voted for, or will there be a farming and food bill, as the programme for government seemed to suggest?

**Fergus Ewing:** There was a whole range of questions there and I do not think that I have time to answer them all. In practice, what we are doing—consulting the public and all interested parties—is the correct, orthodox approach, so that these matters can be considered in a rational and considered way and not in a political, polemical way.

I have undertaken that our consultation will be issued this year, despite the Brexit workload that is being thrust upon us in addition to our normal workload. We will carry on with the day job and issue the consultation. It would be quite improper for me to prejudice the views of the people of Scotland and stakeholders and blithely give yes or no answers to all those important questions. The whole point of a consultation is to consider things

properly, thoroughly and rationally, and that is exactly what we will do.

**Colin Smyth:** It seems strange that, although we had a manifesto commitment for a good food nation bill, the position is now uncertain. The recent programme for government said that there was likely be a farming and food bill, but we are now being told, "We don't really know yet."

**Fergus Ewing:** I do not agree with that characterisation. With respect, I think that most people out there are thinking, "Let's get this Brexit business sorted out. Let our politicians devote their attention to what is essential and needs to be done." That is what I am doing.

**Colin Smyth:** With respect, cabinet secretary, the consensus from all the stakeholders is that we need a good food nation bill to tackle, for example, the scandal of food poverty in Scotland. That is important to the people. However, we will wait and see the consultation.

**Fergus Ewing:** There are many different views—

**The Convener:** Sorry, cabinet secretary, but you have had a chance to make a statement, and so has Colin Smyth. I do not want to give either of you the last word, so I will move on to the next question, which is from Stewart Stevenson.

**Stewart Stevenson:** On Thursday last week, the UK Government published the Fisheries Bill. What engagement has the Scottish Government had in the preparation of that bill?

**Fergus Ewing:** At the meetings between the UK Government and the devolved Administrations that I have referred to, I have had fairly detailed discussions about fishing, although they were not as detailed as the discussions about agriculture were. It is fair to say that our officials have played a constructive role in the Fisheries Bill. Through the efforts of our officials, and after discussion and sensible dialogue, a provision that would have meant that most matters relating to quota would be set by the UK Government was altered so that it would not interfere with devolved powers. I am pleased that that dialogue has had some positive outcomes.

We have sought to work constructively with DEFRA and the other devolved Administrations in order to advance our fishing interests, although there is more work to be done. There are matters that we will still need to look at carefully. We have only just received the bill. We did not get advance notice of the substance of the bill, so I hope that we can come back to the issue once we are a little bit further down the road.

**Richard Lyle:** It is my understanding that in September 2018, the UK Government and the Welsh Government published a joint statement on

agricultural framework progress. Why was the Scottish Government not included in that joint statement?

**Fergus Ewing:** Which statement?

**Richard Lyle:** In September 2018, the UK Government and the Welsh Government published a joint statement on agricultural framework progress. We were not included in that joint statement.

**Fergus Ewing:** We have taken part in the processes agreed centrally between the Scottish Government and the UK Government to discuss frameworks in an exploratory way. We have sought therefore to be positive about that. We have taken part in those discussions without prejudice to the overall positions on Brexit, where we differ substantially from the UK.

However, we believe that the UK Government's approach to the Agriculture Bill, through which it is attempting to assert a UK-wide framework, has been unhelpful. Despite that, we are continuing to work with the UK Government to seek to resolve the matters. The joint statement is a matter for the Administrations that signed it. Welsh ministers have already made it clear that, given the different result of the EU referendum in Wales from that in Scotland, they are in a different position, which is a fair point to make.

**Richard Lyle:** Do you agree that the vast majority of policy areas can be managed through non-legislative intergovernmental co-ordination? Do you also agree that, if the UK Government would work with the Scottish Government and not against it, that would be good?

**Fergus Ewing:** Obviously, we would like the UK Government to respect devolution and not to impose matters upon us in the way that, sadly, is being done in the Agriculture Bill. Despite that and despite our taking the blows, we are still engaging positively in the hope that, ultimately, common sense can prevail.

**Richard Lyle:** The joint UK and Welsh Government statement on agricultural framework progress says that an administrative framework will be developed to ensure

"co-ordination and dialogue between the administrations on how any changes to legislation in one part of the UK may affect other parts."

Will the Scottish Government be part of that administrative framework?

**Fergus Ewing:** Engagement between officials has been taking place on a daily basis, and it will continue. I, along with Ms Cunningham, Mr Dey and Mr Russell, who is leading, will continue to engage in the various forums and meetings at which these matters are discussed. I think that the

public want us to try to be reasonable where we can and to try to set aside our differences in the hope that solutions can be found. However, the public in Scotland also expect us to stand up for this institution, for Scotland and for the powers of the Scottish Parliament. Therefore, that is our approach.

**Richard Lyle:** Do you sometimes get frustrated with the process?

**The Convener:** Maybe the cabinet secretary could answer that question in a different place when we have more time. I am sure that he would be delighted to answer you.

Jamie Greene has a follow-up question, and then I want to move on to the next issue.

**Jamie Greene:** I appreciate that there is a fair amount of politics in all this but, from a civil service point of view, could the cabinet secretary or anyone on the panel update us on the important issue of the 24 areas of common frameworks in which there have been deep dives over the past months? What progress has been made on ensuring that there is a sensible and co-ordinated approach to UK frameworks?

**Fergus Ewing:** I am pleased to say that the man doing the deep dive from the diving board into the swimming pool is David Barnes, who is sitting to my right. I will let him speak about the deep dives.

**The Convener:** I encourage you to be brief, Mr Barnes.

**David Barnes:** I was involved in a deep dive for one policy area, and lots of other Scottish Government officials have been involved in the other areas. The process is taking place under a mandate that was set collectively by the joint ministerial committee (European Union negotiations), which had a progress report relatively recently. The agriculture and environment ministers meet again in November, and I expect that they will have the issue on their agenda. Discussions are happening and progress is being made, although agreements are not imminent. My colleagues in our central constitutional area are in the lead on the process, but my understanding is that a number of Brexit-related global and non-agriculture issues need to fall into place before an agreement can be finalised. There is progress but agreement is not yet imminent.

**Peter Chapman:** In October this year, Mr Gove announced a review to deliver fair funding for farmers in all four parts of the UK when we leave the EU. What input have you had to the process of setting up the fair funding review?

**Fergus Ewing:** Well, I can tell you—

**The Convener:** I know that you may want to look back, cabinet secretary, but I think that Mr Chapman is encouraging you to look forward, and I look forward to your answer.

**Fergus Ewing:** I will answer the question.

It is important to say that this began long before October. Mr Gove announced last November that there would be a review. We agreed the terms of reference in principle in February this year. Mr Davidson was on the call during which the agreement was made.

In August—unilaterally and without warning—the terms of reference were completely changed and diluted by the Treasury. Moreover, the UK changed various of the agreed components of the review. Mr Gove's announcement was made without reference to us, and without agreement to the terms of the review being finalised. Mr Gove has acknowledged that in correspondence and apologised for that.

12:00

Where are we going now? We want the review to go ahead because it is necessary to undo a manifest injustice, in which money that was clearly intended for Scottish farmers and crofters was diverted by the UK Government for other purposes. We have made it clear that we do not expect any payments to be recouped from farmers in England, Wales and Northern Ireland but we do expect justice.

Mr Gove has suggested that Lord Bew should conduct the review, and we agree with that suggestion. He is a cross-bencher and a man of repute. We will nominate our representative, as agreed with Mr Gove during the discussions between November and spring this year.

It is deeply dispiriting that, after we had reached agreement with the UK Government, it moved the goalposts in a way that sought to dilute the review so that it would be so watered down that it would not meet the requirements.

Be all that as it may, I understand that the inquiry will be independent, it will be free to come to its own conclusions and recommendations, and it will get input from reputable and experienced representatives from Scotland, Wales and Northern Ireland. I hope that the review will conclude in a matter of months and that the advice that it gives will be a useful method of informing the debate that we then need to have about the intra-UK allocation of funding, pre and post-Brexit.

**Peter Chapman:** I recognise that the process is important. We recognise that the convergence funding has been spent, but that does not mean that the review cannot take that into account. I hope that it does take it into account. That has

been my position in the past 18 months or so. The money has been spent and we will never get it back, but we can look forward and think that it should be part of this process, and I expect that to be the case. I welcome the review and I look forward to seeing how it pans out.

Of course, we must avoid at all costs this money being part of the Barnett formula. That would be a disaster for Scottish agriculture.

**The Convener:** Cabinet secretary, do you agree?

**Fergus Ewing:** I agree with some of what Mr Chapman said and I am pleased that he is supportive of the review.

It was always agreed that there would be a review—ever since Owen Paterson—and it was agreed that it would not just look post-Brexit. That was not envisaged at the time of the agreement of the review. It was agreed that we would look at what actually happened and that must still happen. There is an opportunity to undo a manifest injustice. The issue affects not Wales and Northern Ireland, but Scotland and the United Kingdom Government, so I hope that the review will do that.

The stakeholders have supported us in the review and criticised the UK Government for moving the goalposts.

The whole point of the EU convergence policy was to make farm payments fair across the EU. It was meant to bring up by one third the level of the lowest to 90 per cent of the EU average. I have some figures with me that show that the average payment per hectare in the period from 2014 to 2020 for rural development funding ranges from €1,236 in Malta through the EU average of €76 to €12 for Scotland. The table that I have in front of me, which I would be happy to share with the committee, shows that, next year, the rate of receipt of farm support in Scotland will be €12 per hectare and the EU average will be €76. We will receive the lowest rate of any EU state, and our rate will be less than half the rate pertaining in England, Wales and Northern Ireland. We will need to debate that long and hard.

I mention those figures to illustrate the fact that, on the face of it, Scottish farmers and crofters have had, and continue to get, a raw deal. The UK Government has perpetrated that raw deal, and I am determined to stand up for Scottish farmers and crofters to redress that past and future injustice.

**Jamie Greene:** Yesterday, you gave evidence to the Scottish Affairs Committee as part of its inquiry into the future of Scottish agriculture post-Brexit. It is clear that we have an opportunity to look at subsidy systems. There might be some

divergence between the two Governments on the direction in which they want to take policy. What is your response to what Jonnie Hall said in evidence to the Scottish Affairs Committee yesterday? He said that the CAP

“has not done Scottish agriculture any great favours. It has created a culture of ... dependency ... incentivised inertia ... stifled innovation ... prevented new entrants”

and

“done little or nothing for the environment.”

Do you agree with those comments?

**Fergus Ewing:** No, I do not. I agree with the NFU and the agricultural champions that we should encourage greater productivity and a more professional mindset, and I agree with the non-governmental organisations that believe that we should work together to encourage more environmental practice where that can practically and sensibly be done; Ms Cunningham and I are doing a lot of work on that at the moment, as is right and proper. However, the characterisation of the CAP that Mr Greene has read out is too negative.

We should remember that the EU has been a good friend to hill farmers—it has provided them with certainty and stability in funding. It has also enabled a large number of environmental schemes to operate in Scotland, which has led to a lot of good work to alleviate flooding and deal with various environmental issues. It is right and proper that such work has been done. The individual whom Mr Greene cites is entitled to his views, but I do not agree with them.

**Jamie Greene:** The purpose of the Scottish Affairs Committee's inquiry—and, I suspect, of the Scottish Government's work—is to look to the post-CAP future. What are your views on the Scottish Affairs Committee's work on the subject? I know that you gave evidence to it. Does the Scottish Government have a formal role in that inquiry? How is the Scottish Government working with Westminster or the UK Government to look at any areas of common interest in a post-CAP scenario?

**Fergus Ewing:** I am happy that the Scottish Affairs Committee is taking an interest in the future of Scottish agriculture. My formal role was evident yesterday when I, along with officials, gave evidence to it for an hour.

I am keen to continue to engage with the UK Government on the future of agriculture in Britain. As I have said, I very much hope that the UK Government will reconsider its abandonment of the commitment to continue to provide financial support for food production in the UK, which I think is a fundamental issue. If now, when the UK

Parliament is considering the Agriculture Bill, is not the right time to debate that issue, when is?

I welcome the Scottish Affairs Committee's work, and we will continue to engage with the UK Government, although we sometimes do so in a state of frustration—we engage more in hope than in expectation.

**The Convener:** I welcome everyone looking at the future of agriculture in Scotland, but how will a Westminster committee feed into the work of a Scottish Parliament committee on a devolved matter? How do you see that happening? Would you welcome such feed-in? From the Government's point of view, how will you make that process work properly?

**Fergus Ewing:** The relationship between the two committees is not really a matter for me—it is a matter for you.

**The Convener:** But this is a devolved matter.

**Fergus Ewing:** Unless I am missing something, I do not think that it is for me to issue instructions or advice to Parliament. With respect, I think that that is for Parliament to decide.

However, it is right and proper that there is a courteous and positive engagement. In fact, I took part in the Westminster committee's proceedings yesterday, and I rearranged my day to do so. I attach an importance to making myself accountable to Scotland's MPs, who have decided, quite fairly, to have an inquiry on something of great importance.

I hope that the points that I am making about food production are having a bit of an impact. There is a real debate that needs to be had on the matter. The environment is fundamental, and it is important that we continue to support it, but we should not do so by just abandoning our support for farming. Such a proposition seems extraordinary to me, but it is virtually what the UK Government is proposing. Yesterday, I asked the MPs involved—some of whom are from your own party, convener—whether they would be happy at the prospect of their constituents ceasing to receive the financial support necessary for their businesses to continue to function. I have to say that I did not catch an answer to that, but perhaps my job on that occasion was to answer the questions.

**Gail Ross:** As you will be aware, cabinet secretary, the National Council of Rural Advisers published its final report last month. Will you implement its recommendations?

**Fergus Ewing:** I welcome the report, which we are studying in detail. It describes why rural matters, what rural thinks, what rural needs and what happens next, and it suggests a set of actions. The council worked very hard, holding 11

events around the country, and the consultation that it held received 130 responses. It makes a series of recommendations that we are looking at but, broadly speaking, we are very happy with them, and we think that it is well worth the committee's looking at them carefully with a view to considering how we might take them forward. I am particularly keen to keep a focus on the rural economy and to establish a rural economy action group to guide the work that needs to happen during the transition to mainstreaming the rural economy. I commend the report to members.

**Gail Ross:** Will you inform the committee of the action group's membership, once you know what it will be?

**Fergus Ewing:** Of course. We seek to keep the committee advised in respect of all these matters.

**John Mason:** It was announced in August that the new entrants to farming scheme would close at the end of that month. It seemed like quite short notice, but, as I understand it, it might have happened because all the funds had been used up. How can we encourage new—and especially younger—people to move into farming? I should say that, at a reception last night in Parliament, we heard from a younger woman who came across impressively. How do you see this moving forward?

**Fergus Ewing:** We have provided a total of £22.4 million of grant commitments through new entrants schemes, and 1,138 people have been assisted under the start-up and capital grants schemes. As the member said, the new entrants scheme was exhausted and the funds were used up, but it was fully utilised. More than 250 new agricultural businesses were kickstarted and hundreds of other business development projects were funded.

We are working with the farming opportunities for new entrants—or FONE—group in other ways, and Henry Graham is looking at that. It has helped to provide more than 60 land opportunities, mainly across the national forest estate but also on land owned by Scottish Water, Highlands and Islands Enterprise, the Highland Council and East Lothian Council, and it is beginning the process of identifying further opportunities in 2019. I am pleased that the scheme has been recognised by a European research body as an inspiration, but it was with some regret that we were not able to continue the funding that had been exhausted.

The last thing that I would say is that one of the things that we would wish to try out in our stability and simplicity approach—I hope that support exists across the parties for this—is to identify a wider way to support new entrants, particularly younger people, into farming. There are many different ways of doing that. Not all of them are

financial; some of them involve the provision of advice, mentoring and matching. I should say that it is not easy to provide support and then guarantee that someone will make a success of a business. Plainly, one needs to have a motivated, determined, impressive and hard-working man, woman or couple to take that forward. These are not easy things in terms of efficacy. I do not think that signing a cheque is necessarily the be all and end all in this respect but, plainly, it is an important facet.

As I said, I hope that there is a commitment across the board to come back and consider what might be a new and substantial policy in relation to new entrants in Scotland.

12:15

**John Mason:** We are considering the whole picture of support for farming. It is possible that attracting new people into farming would be part of the bigger overall package, or that there might be a separate package for new farmers, but is it the case that it is too early to decide on that?

**Fergus Ewing:** That is an option for future policy post-Brexit or not post-Brexit. In either event, we need to come back to this issue, and I hope that we will.

**Richard Lyle:** Small landholdings are tenanted holdings under the small landholders acts that were passed between 1886 and 1931, and typically comprise 50 acres or less.

I will combine my two questions. What insights have recent research and publications on small landholdings provided, and do they indicate that particular action is required?

Do you intend to ask the Scottish Law Commission to review the law on small landholdings and to recommend reforms?

**Fergus Ewing:** We commissioned Sir Crispin Agnew to write a guide to small landholding legislation. That was published on 25 September. We have not had any feedback on it yet, but some small landholders have been in touch with us for a copy. In addition to that, we appointed Newcastle University to consider the changes to ownership of small landholdings over time and the feasibility of establishing an administrative register of small landholdings. That work is complete, and will be published shortly, for the benefit of those with an interest in this area. The university concluded that it would be possible to establish a register of small landholders. It estimates that the cost of that would be £130,000, and that there are only 68 small landholders.

In response to the question about the Scottish Law Commission, the 2017 review showed strong evidence that small landholders, their landlords

and, in some cases, legal practitioners, have not understood the legislation that governs small landholdings. That lack of understanding might have contributed to disputes and to the rise of practices that are out of step with legislation. That is why I commissioned the guide from Sir Crispin, in order to make legislation more accessible, which is something that Parliament asked us to do.

As I said, the guide has just been published and we have not had a great deal of reaction to it. I think that it would be premature to consider the question whether a reference to the Scottish Law Commission is appropriate. We should digest the guide first before deciding whether to do anything else.

**The Convener:** I can confirm that Sir Crispin Agnew's briefing is extremely useful and quite easy to understand.

That brings us to the end of our questions. I thank the cabinet secretary, Elinor Mitchell and David Barnes for their contributions. Ian Davidson and Douglas Petrie were supporting from the side—no, Ian said something; I apologise. Douglas Petrie sat on the sidelines.

I thank everyone for the evidence that they gave.

*Meeting closed at 12:19.*

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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