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Convener
Rural Affairs and Islands Committee

By email only: rural.committee@parliament.scot

26 March 2024

Dear Finlay,

**SCOTTISH GOVERNMENT RESPONSE TO THE
REPORT OF THE RURAL AFFAIRS AND ISLANDS COMMITTEE ON THE
AGRICULTURE AND RURAL COMMUNITIES (SCOTLAND) BILL AT STAGE ONE**

I write in response to the Rural Affairs and Islands Committee's Stage 1 Report on the Agriculture and Rural Communities (Scotland) Bill. I would like to thank the Committee for its careful and detailed consideration of the Bill.

I welcome the conclusion that the Committee agrees the general principles of the Bill and I also welcome the Committee's support for the Scottish Government's longstanding call for certainty from the UK Government on future funding.

The Scottish Government's response in Annex A responds to each of the main comments and recommendations in the report, using the paragraph numbers in the report.

I trust that this response addresses the issues raised in the Committee's Stage 1 report and is helpful in your further consideration of the Bill. I look forward to the opportunity to explore the issues raised in the Stage 1 report on 27 March 2024 and to continuing to work with the Committee on this important Bill at Stage 2.

Yours sincerely,

MAIRI GOUGEON

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SCOTTISH GOVERNMENT RESPONSE TO STAGE 1 REPORT

This paper provides the Scottish Government's response to the specific points and recommendations made by the Rural Affairs and Islands Committee in their Stage 1 Report, published on 18 March 2024.

For ease of reference, the Committee's points or recommendations are shown in bold text and numbered in line with their report. The Scottish Government's response is given directly underneath.

A Framework Bill

52. The Committee's stage 1 inquiry considered whether the use of a framework bill to provide for future support schemes was appropriate. The Committee agrees with the Scottish Government's approach that a framework bill is appropriate to establish a long-term basis for future support schemes. A framework bill would provide for, in primary legislation, the powers the Scottish Ministers need in order to give support whilst also providing the flexibility to adapt this support via secondary legislation.

53. The Committee's evidence gathering explored concerns about the implications of a framework bill for parliamentary scrutiny, especially about the lack of detail around how the powers in the Bill would be used, and the associated costs. It was felt that this can make it challenging for the Parliament to take a view on whether delegating these powers to the Scottish Ministers is appropriate. In addition, committees often have limited time and resources to scrutinise the secondary legislation implementing a framework bill when they are laid. The Committee notes the comments by both the Delegated Powers and Law Reform Committee (DPLRC) and Finance and Public Administration Committee (FPAC) in relation to the scrutiny of framework bills.

56. The Committee shares the views expressed by the sector and stakeholders that any future agricultural and rural support must be developed in full consultation with them. The Cabinet Secretary emphasised the Scottish Government's intention to co-design the agricultural support schemes with the sector and this is welcomed by the Committee. The Committee notes, however, that the Bill does not always provide for statutory consultation and recommends the Scottish Government consider whether amendments at Stage 2 would help give additional reassurances to the sector and stakeholders.

I welcome the Committee's agreement that the Scottish Government's approach of a framework bill is appropriate to establish a long-term basis for future support schemes. I also welcome the Committee's recognition that a framework bill will enable the support measures to be developed and delivered over the long-term, as needed, and provide the necessary flexibility and adaptivity. This approach will ensure that the Scottish Ministers are able to deliver on our commitment to support the agricultural industry. A framework approach enables tailored provisions and support to be implemented through secondary legislation and further adapted on a regular basis as required. This flexible approach will allow Scotland to adapt to changing social, economic, and environmental conditions.

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I note the Committee's concerns, and the concerns expressed by both the Delegated Powers and Law Reform Committee (DPLRC) and Finance and Public Administration Committee (FPAC) in relation to the scrutiny of framework bills.

I welcome the committee's views that future agricultural and rural support must be co-designed and co-developed with stakeholders – this validates the approach I have taken to date through ARIOB and engagement mechanisms and opportunities. Co-development and co-design with rural partners will continue to be the foundational approach to the development and design of future support structures and delivery.

I note the Committee's views on statutory consultation and will consider this further ahead of Stage 2.

54. The Committee heard concerns from across the sector about the lack of information about the direction of, and the time being taken to introduce, future agricultural support. The Cabinet Secretary referred the Committee to the wider information she has made available, including the agricultural reform route map. Some stakeholders also expressed concern about the length of time it has taken the Scottish Government to introduce the Bill. The Committee shares the sector's concerns around the impact of the delays on farmers, crofters and land managers. The challenges with ongoing uncertainty was also highlighted during the Committee's consultative event with land managers and rural development practitioners.

I note what the Committee says but it is disappointing that there is no real acknowledgement of the range of information that has already been made available through a variety of routes, nor of the work being done through the [Agriculture Reform Programme](#) (ARP) to deliver the Scottish Government's Vision for Agriculture, transforming how we support farming and food production in Scotland to become a global leader in sustainable and regenerative agriculture.

As I outlined during the evidence session, a [Route Map](#) and list of draft measures has been published which provides further clarity on how we intend to deliver the ambitions set out in the Vision. The Route Map outlines what information and guidance the sector can expect from 2023-2025 and when it will be available, providing a clear set of programme dates to explain when current schemes will transition or end, and when more guidance, support, and information will be available. We have already published one update of the route map and it is our intention to keep updating it at appropriate junctures, providing further guidance for farmers, crofters, land managers and stakeholders to ensure they are prepared for, and supported through, change.

On Tuesday 26 March, an [updated Agricultural Reform Route Map](#) was published including the changes which will come into effect from 2025 in three key areas: Introduction of Peatlands and Wetlands as a new condition of cross compliance; Introduction of a new condition to the Scottish Suckler Beef Support Scheme (SSBSS); and the foundations of a Whole Farm Plan.

It is worth reiterating why a framework approach has been taken - the Bill must enable a multi-year transformation in support for farming and rural communities. This is a complex process, and includes, and requires, a transition over time from the complex and expansive

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assimilated law scheme rules. It would not be practicable to attempt to replace all the current scheme rules in one Bill.

A framework bill provides the flexibility to implement changes as required to respond to changes, but also remain aligned to future EU developments and in particular schemes brought forward under future iterations of the EU common agricultural policy. It is right that the Scottish Government takes the time necessary to develop the detail of its policy with the people directly affected by it, which is important if the Scottish Government is to deliver on its commitment to no cliff edges for our farmers and crofters.

55. The Committee notes the lack of certainty about the future agricultural and rural support funding from the UK Government and that this is, as stated in the financial memorandum, “the subject of ongoing dialogue” between the two administrations. The Committee also notes that funding for support schemes is received ring-fenced and from the UK Government, with the Scottish Government able to allocate additional monies towards agricultural and rural support. The Committee calls on the Scottish Government to ensure there is a multi-year, ring-fenced budget for support schemes and calls on the UK Government to provide clarity regarding future funding in order to make this possible. This approach would give stakeholders a level of certainty in order to plan ahead. The Committee also calls for the Barnett formula not to be applied to future agricultural and rural support funding provided by the UK Government but, instead, a formula to be used which reflects Scotland’s agricultural landscape – such as less favoured areas.

I welcome the Committee’s backing for the Scottish Government’s longstanding call for certainty from the UK Government on future funding. Brexit means we no longer have any assurance on long-term funding nor the certainty that multi-annual funding frameworks also provide. Agriculture requires future funding certainty, preferably on a multi-annual basis, not least because of the long lead-in time for farmers, crofters, land managers and the Community Led Local Development (CLLD) programme. Despite this, the UK Government has provided only annual allocations for the current UK Parliamentary term and there is no funding commitment from 2025.

There is also a continued lack of engagement from the UK Government with the devolved governments on future funding and future policy development, and divergence. The Scottish Government has made repeated requests to UK Ministers to engage on this, but these requests have been ignored. The UK Government accepted the Bew Review recommendation for collective engagement to agree the principles of future intra-UK allocations but these discussions have, to date, not taken place. The Scottish Government expects the UK Government to meet its public commitment and engage in collective and meaningful discussion on future budget allocation for rural support.

At a minimum, rural Scotland must not suffer any funding decrease as a result of Brexit and decisions made by UK Government. The Deputy First Minister made our position clear to the Chief Secretary to the Treasury at the Finance Interministerial Standing Committee (F:ISC) on 22 June. I welcome the Committee’s alignment with the Scottish Government on future funding certainty from the UK Government.

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Despite this uncertainty, I have been clear that there will be no cliff edges in support as the Scottish Government has committed to maintaining direct payments beyond 2026 and supporting our nation's producers through a just transition.

Current funding levels do not reflect the potential of Scotland's land to contribute significantly to the UK's climate and nature restoration targets, particularly through woodland creation and peatland restoration. Unless the UK Government significantly increases the capital allocation to the Scottish budget, the UK will not meet its climate change targets and we will miss a significant opportunity to take urgent measures to meet current and future climate change emissions reductions. Put simply, Scotland should not have to fund the majority of woodland creation nor peatland restoration on behalf of all of the UK, alone.

Agriculture is devolved and it is crucial that Scottish Government policies are unhindered by the threats posed by the lack of long-term replacement EU funding. If we were still in the EU, we would have funding certainty through the multi-year CAP framework. The Scottish Government has been clear and consistent in its position that we expect full replacement of EU funds to ensure no detriment to Scotland's finances, and we expect the UK Government to fully respect the devolution settlement in any future arrangement. I welcome the committee's support for this.

57. In terms of parliamentary scrutiny of the Bill and the delegated power provisions, the Committee will make specific recommendations in the relevant sections of this report. In relation to the future scrutiny of the secondary legislation proposed in the Bill, the Committee is keen to ensure that the Parliament will have the opportunity to scrutinise this effectively, noting that a high number of large or detailed instruments may be laid within a short period of time. The Committee, therefore, calls on the Scottish Government to keep it updated on the number of instruments, policy detail and timetable for the secondary legislation over the course of 2024 and 2025. The Committee would also welcome further information about whether it anticipates laying the secondary legislation as a suite of instruments rather than on an individual basis. The Committee indicates here that it may wish to take evidence from the Scottish Government at any point in anticipation of its scrutiny of the proposed secondary legislation.

58. Recognising the importance of parliamentary scrutiny of secondary legislation made under framework legislation, the Committee asks the Conveners' Group to consider how the Parliament and Government can work together to ensure the Parliament has sufficient time and information to allow effective scrutiny of subordinate legislation brought forward under some framework bills.

I note the Committee's recommendations in terms of parliamentary scrutiny of the Bill and the delegated power provisions and have addressed these in the relevant sections of the report.

I note the Committee's calls to keep the Committee updated on the number of instruments, policy detail and timetable for the secondary legislation over the course of 2024 and 2025. I also note the Committee's ask for further information about whether the Scottish Government anticipates laying the secondary legislation as a suite of instruments rather than

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on an individual basis. I will endeavour to provide the committee with the information it requests, at the appropriate juncture.

Part 1 – Objectives and Planning

102. The Committee notes the objectives were included in the Bill in response to stakeholders’ concerns around a lack of clarity about how the Bill’s powers would be used and a “clear desire expressed for ‘certainty within a flexible model’”. The Committee appreciates the Scottish Government’s attempts to address these concerns but, on the basis of the range of views expressed to it over the course of its stage 1 inquiry, it is not clear that the inclusion of the four objectives has achieved this aim. The Committee recognises the importance of the overarching objectives in shaping the content of the rural support plan and agrees their scope and meaning should be clear.

103. The Committee welcomes the range of comments made during its evidence taking on the proposed objectives and refers them to the Scottish Government for its consideration. Opinions were expressed about the number of objectives and the Committee notes the Cabinet Secretary’s view that the issues raised with the Committee would be covered under these overarching objectives. The Committee encourages the Scottish Government to explore amending the number, theme or wording of the objectives, in line with the evidence provided, for example additional objectives in relation to food resilience and sustainable farm businesses.

I acknowledge the Committee’s recommendations here and also welcome the wide range of comments and views made during the Committee’s evidence taking on the proposed objectives. I will continue to listen to stakeholders’ views, and will consider whether or not any changes to the objectives will improve the Bill.

I have paid close attention to the wide range of views on the current four objectives in the Bill. The objectives are, by their very nature, wide-ranging and align with the principles contained in the ‘Vision for Agriculture’. The four objectives are not hierarchical; they are not listed in order of priority, nor in respect of the importance of their outcomes, but each serves to support the others. I have been clear that there need be no contradiction between producing high-quality food and doing so in ways that benefit biodiversity gain and action towards climate adaptation and mitigation. It is my intention that the rural support plan will set out how the Government intends to go about delivering the Bill’s central objectives.

104. The Committee’s roundtables discussed the absence in the Bill of any definitions of the objectives. The Committee acknowledges this adds to the general feeling of uncertainty but agrees that these are not needed in the Bill. The Committee notes the section 26 requirement for sustainable and regenerative agriculture to be included in the proposed code of practice. The Committee comments further on this provision later in this report. The Committee also expects the proposed rural support plan to provide additional information around these overarching objectives.

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I welcome the Committee's view that definitions are not needed in the Bill. I note the Committee's comments on the requirement for sustainable and regenerative agriculture to be included in the proposed code of practice and I have addressed these comments later in my response.

Section 2 – Rural Support Plan & Section 3 – Rural Support Plan: matters to be considered

134. The Committee notes the proposed rural support plan was included in the Bill to address calls made during the consultation on the Bill for more information about how the section 4 powers would be used. Many of those who gave evidence to the Committee supported the proposed plan and the proposed five-year plan period, although some supported shorter or longer plan periods than five years.

135. Many stakeholders at the Committee's roundtable discussions expressed concern about the content of the proposed plan, especially in the context of it being laid at the same time as the secondary legislation in 2025. The Cabinet Secretary and Scottish Government officials emphasised the proposed plan would be largely based on the vision for agriculture and the route map. The Committee agrees it would have been helpful to reflect this information in the Bill's accompanying documents.

136. As set out earlier in the report, many stakeholders called for the section 2(2) requirements for what should be included in the plan to be amended. It was suggested that the plans should set out more detailed outcomes, targets or milestones, information about budget priorities for each tier, delivery mechanisms and about how support schemes would be monitored and evaluated over the plan period. The Committee believes the proposed plan would be a more meaningful and useful document with this information included and recommends the Scottish Government considers whether section 2 should be amended to include such requirements.

137. The Committee also agrees the Bill should include a requirement for future plans to include an evaluation of the previous plan. This would provide transparency and accountability around the effectiveness of the strategic priorities and budget of the previous plan in terms of meeting the overarching objectives. This could also include information about the effectiveness of the previous plan in terms of the matters set out in section 3, such as the climate change plan and EU alignment. The Committee recommends that section 2 be amended to include this requirement.

138. There were strong calls from the sector for consultation with stakeholders on the draft plan and the Committee welcomes the Cabinet Secretary's reassurances that the co-development aspect of the plan is "absolutely critical". The Committee notes, however, that the Bill does not provide for statutory consultation and recommends the Scottish Government consider whether an amendment at Stage 2 would help give additional reassurances to the sector. The Committee also requests further details about the timescale for consultation with stakeholders on the plan.

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139. A number of similar views were also expressed regarding the rural support plan during the Committee’s consultative event with land managers and rural development practitioners. Participants also highlighted a range of issues which they felt the rural support plan should take into consideration. The Committee refers the Scottish Government to the event report which details participants’ views expressed at the event.

140. The Committee notes DPLRC’s recommendation that a draft plan be published before Stage 3. The Cabinet Secretary told the Committee she was taking advice on this. The Cabinet Secretary and her officials have indicated that much of the information relating to the proposed plan is already publicly available; this being the case, the Committee expects the Scottish Government should be able to provide a working draft, if not a full draft, before Stage 3.

141. The Bill makes no provision for parliamentary scrutiny of the proposed plan. The Committee notes the Scottish Parliament would have a one-off opportunity to scrutinise the proposed schemes when the secondary legislation is laid in 2025 but members agree there should be an on-going role for the Parliament to scrutinise support schemes. The Committee believes it is important for the Parliament to have oversight of the Scottish Ministers’ strategic priorities, budget priorities and information about how these will impact on the support schemes. The Committee has previously noted the lack of certainty about the future funding of the budget for agricultural and rural support from the UK Government. The Committee asks the Scottish Government to consider amending the Bill to require the initial draft, and subsequent draft, plans to be laid and to allow the Parliament sufficient time to report on them. The Committee believes this proposal would provide the appropriate level of democratic oversight and ensure that it, and its successor committees, are able to hold the Scottish Government to account for its agricultural and rural community support. The Committee recommends that parliamentary scrutiny be completed, and the initial plan laid, in advance of the secondary legislation being laid in 2025.

149. The Committee acknowledges the purpose of section 3 is to clarify and confirm what matters the Scottish Ministers should have regard to during their development of the rural support plan. The question of what has been included, and what has been excluded, from section 3 was raised during the Committee’s evidence taking, with a number of further matters put forward. In addition, the question of why this list has been included at all was raised. It includes matters already set out in the Bill, matters which the Scottish Government is already required by law to have regard to or EU alignment which the Scottish Government has already committed to “where that is appropriate and practicable”. Taking these questions about section 3 into account, the Committee is unclear about its exact purpose. The Committee recommends the Scottish Government provide further information about the purpose and function of section 3 in its stage 1 response.

150. The Committee notes the Bill does not require the Scottish Ministers to set out in the rural support plan the progress which has been made in relation to these matters. The Committee recommends, earlier in this report, that the Bill be amended to include a requirement for future plans to include an evaluation of the previous plan. The Committee recommends that any evaluation include information about the

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effectiveness of the previous plan in terms of the matters set out in section 3, such as the climate change plan and EU alignment. The Committee recommends that sections 2 or 3 be amended to include this requirement.

I note and thank the Committee for their comments which I will reflect on as the Rural Support Plan is developed. I will in particular consider carefully whether or not to bring forward any of the suggested amendments and will update the committee on those considerations ahead of Stage 2. This will include whether and how we might update the accompanying documents to address the committee's comments at paragraph 135.

As I and government officials set out in our evidence, the Rural Support Plan is intended to compliment the Vision for Agriculture and the on-going work to co-design future agricultural policy in line with the Agricultural Route map. The Rural Support Plan is intended to provide a strategic overview of the reporting period and outline the available support provided in order to deliver towards the overarching objectives of the Agriculture and Rural Communities (Scotland) Bill.

It systemises the broader outcomes of the Vision for Agriculture and will be co-developed through the Agricultural Reform Programme to deliver the required outcomes of the Bill. It will set out details of each support scheme in operation or expected to come into operation during the plan period.

The Plan shall also allow Ministers to make clear as to how agricultural support contributes to other statutory duties such as climate commitments and EU alignment and set out the strategic priorities for providing support during the plan period. It is not intended to duplicate or cut across existing Scottish Government mechanisms (e.g. the Scottish Budget) and statutory reporting requirements (e.g. the Climate Change Act) but will draw key aspects together to inform the planned support during the period. I note the committee's concerns in this regard and will consider this further.

Monitoring and evaluating the effectiveness of agriculture support towards its outcomes will be undertaken as an existing requirement of ensuring best and most effective use of public expenditure. This will naturally inform how we might adapt support in future. Again, I will consider the need and efficacy of providing for this on the face of the Bill.

Part 2 – Support for Agriculture, Rural Development and Related Matters

Section 4 – Power to provide support

165. The Committee notes that the section 4 power to provide support would be the main power for the Scottish Ministers to establish support schemes.

166. The Committee notes the comments by stakeholders about the scope of schedule 1 and that some sectors and products are not included on the current list and refers the Scottish Government to Annexe C for further details. The Committee encourages the Scottish Government to explore amending the purposes of support set out in schedule 1, in line with the evidence provided.

167. The Committee notes the DPLRC's recommendation that any regulations made under section 4(2) to modify schedule 1 should be subject to the affirmative procedure to reflect that these regulations would modify primary legislation. Given the potential implications of modifying schedule 1, the Committee agrees that the

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affirmative procedure might be more appropriate and recommends the Bill be amended accordingly at stage 2. In addition, the Committee suggests that an updated version of schedule 1 be referenced in each rural support plan to give clarity on any changes made to the areas that support would be provided.

168. The Committee recognises that flexibility will be required in amending schedule 1 but expects that any changes would be undertaken only through consultation with the relevant sectors and stakeholders. The Committee asks the Scottish Government for confirmation that any modifications to the schedule would be co-designed with stakeholders.

I welcome the Committee's conclusions in relation to the purposes of support, and particularly the suggested purposes for inclusion in schedule 1 at Annexe C. I agree that the Scottish Government may need to provide support for other purposes, and that is why we are seeking a power to modify the schedule. It is helpful to see examples of other possible purposes, and I will consider whether any new purposes should be added either through amendments to the Bill or in regulations made under the Bill.

I note the DPLRC's recommendation that any regulations made under section 4(2) to modify schedule 1 should be subject to the affirmative procedure to reflect that these regulations would modify primary legislation. I welcome the agreement that the schedule 1 purposes should be capable of being modified to ensure they remain fit for purpose, effective and proportionate over time. Any change to the schedule 1 purposes is expected to be modest in scope, and the committee will wish to note that the Parliament will indeed be able to scrutinise 'support' legislation for the first time, given that we are moving from EU programmes to domestic ones.

Section 9 - Power to cap support and assistance

190. The Committee agrees with the principle of including a power to cap or redistribute payments. The Committee notes that a similar power is currently in place under retained EU CAP legislation.

191. The Committee notes the requirement for the Scottish Government to consult with stakeholders on how such a power to cap or taper payments would be implemented. The Committee asks the Scottish Government to ensure that any consultation on capping, tapering or frontloading payments is completed at an early opportunity with consideration for businesses that would be affected by any change.

192. The Committee notes the DPLRC's recommendation that regulations made under this section should be subject to the affirmative, rather than the negative, procedure, given the potential significance of capping or tapering on recipients of support. The Committee agrees that secondary legislation should be subject to the affirmative procedure, for the reasons put forward by the DPLRC.

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193. The Committee notes the strong views of some stakeholders on the need for redistribution in agricultural payments, which capping, tapering or frontloading payments could play a role in achieving, and that there is a requirement to allocate at least 10 per cent of direct payments to redistributive payments in the new EU CAP. The Committee also notes the concerns of other stakeholders that a cap, insensitively applied, may have unintended consequences, and that capping or degressivity should not be applied to payments targeted at achieving specific outcomes, such as environmental payments.

194. The Committee urges the Scottish Government to consider the issue of the distribution of payments across the sector and expects to see evidence of its thinking in the rural support plan. The Committee also considers that any proposals to implement a cap, taper, or frontload as part of this should be accompanied by appropriate impact assessments to avoid unintended consequences and should not be applied to payments which deliver specified outcomes, where a cap may limit the extent of benefits realised.

I welcome the Committee's agreement with the principle of including a power to cap or redistribute payments. I also note the concerns of the Committee and any capping or tapering will be subject to appropriate consultation and scrutiny in a timeous manner. I also note the Committee's agreement with DPLRC's recommendation that regulations made under this section should be subject to the affirmative, rather than the negative, procedure.

I expect that this power will be used in respect of matters of detail and may be used to fine tune funding in light of experience, in order to provide the best outcome against the 'Vision' whilst obtaining best value for the public purse. It is not expected to relate to matters of principle or great significance, but I will consider whether the negative procedure remains appropriate.

The Scottish Government anticipates that there might be a reason to continue to use these powers in order to ensure best value for public money in providing support where it is most needed. The new framework aims to deliver the Vision and provide best value in doing so. Any use of the powers would be considered and balanced to deliver the desired outcomes.

Section 13 – Regulations about support

200. The Committee recognises that the nature of secondary legislation made under section 13 will vary and that flexibility over the choice of procedure can be useful. The Committee, however, notes the DPLRC's reservations about the use of the either way power for parliamentary scrutiny of regulations made under section 13(1). The Committee also notes the concerns expressed by some stakeholders about the Scottish Government's use of section 13(5), which sets out the criteria for what secondary legislation would be considered 'significant provision' and which would be subject to the affirmative procedure.

201. The Committee expects the Scottish Government will set out the reasoning behind its choice of procedure in the policy notes published to accompany secondary legislation; the Committee will monitor these to satisfy itself that it agrees with this choice.

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202. The Committee also asks the Scottish Government to clarify at what point, and by what process, Parliament would be able to “have a view on whether we are bringing forward the right kind of instrument” in order to “inform decisions that are made later about the level of scrutiny that the Parliament expects”.

203. The Committee notes the definition of ‘significant provision’ set out in section 13(5) largely relates to whether the change has significant scale, rather than other measures of significance. The Committee considers that ‘significant provision’ should also include regulations which implement significant policy decisions, have significant implications for stakeholders or have a significant ability to affect the achievement of outcomes or objectives. The Committee asks the Scottish Government to respond to this point in its response to this stage 1 report.

I acknowledge the Committee’s conclusions on regulations about support and agree that the level of scrutiny by Parliament for our secondary legislation must be appropriate for each instrument to be introduced.

I confirm that Scottish Ministers will continue to detail their rationale in the policy note as to why their initial consideration is either that the instrument deals with significant provisions to be dealt with the affirmative procedure or it deals with non-significant or technical provisions that would fall to be dealt with under the negative procedure. As regards the request for clarity as to at what point, and by what process, Parliament would be able to “have a view on whether we are bringing forward the right kind of instrument” in order to “inform decisions that are made later about the level of scrutiny that the Parliament expects”, Parliament will be able to say if, for example, they consider that a particular negative instrument we have laid should, by reasons of its significance, be affirmative. The Scottish Government would of course give careful consideration to any such comments, and would in particular take that into account when making further regulations under this power.

I acknowledge the Committee’s conclusions in relation to the definition of “significant”. These are matters that the Scottish Ministers would be able to take into account when determining under section 13(4) and (5) of the Bill whether regulations would make significant provision, and be subject therefore to affirmative procedure. I will however consider whether or not to bring forward amendments to reflect the committee’s recommendation.

Part 3 – Powers to modify existing legislation relating to support

214. The Committee notes the Scottish Government’s reasons for amending, and extending (by repealing the sunset clause), the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 powers to facilitate a smooth transition from legacy EU CAP support schemes to a new support policy. The Committee agrees with these provisions.

215. As set out earlier in this report, stakeholders have expressed concerns around the lack of certainty about the timetable for the introduction of replacement schemes. The Committee notes the Scottish Government intends to introduce a new agriculture policy by 2025 and for the new tier system to be in place by 2026. The Committee also notes the information available about the transition to the replacement schemes in the route map and expects the Scottish Government will ensure that information in the

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route map about expected modifications or repeals of existing regulations, including about what legacy CAP schemes will continue beyond 2026 and whether any schemes intending to align with, or replicate, the new EU CAP will be introduced, will be updated when necessary to ensure that the use of these powers is transparent. The Committee also expects the Scottish Government to work with the sector to ensure there is no cliff edge for recipients of legacy support schemes.

216. The Committee notes, and agrees with, the DPLRC's recommendations relating to the delegated powers and proposed scrutiny procedures for Part 3 of the Bill.

I welcome the Committee's agreement with the provisions, noting the reasons in point 214.

As the committee will know, I have, on a number of occasions, made clear my commitment and intention that there will be no cliff edges in support and that direct payments will be maintained beyond 2026, supporting our nation's producers through a just transition. That includes recipients of legacy support schemes. I refer the Committee to my response to the conclusions at paragraph 54 of the committee's report, which outlines the relevant information on the Agricultural Reform Programme and the Route Map.

The Scottish Government has been clear and consistent that it expects full replacement of EU funds to ensure no detriment to Scotland's finances, and it expects the UK Government to fully respect the devolution settlement in any future arrangement.

I remain committed to working closely with industry representatives and stakeholders using the established co-production approach to developing future policy. Co-development and co-design with rural partners will remain the foundational approach to the development of future support structures and delivery.

I note the Committee's agreement with the DPLRC's recommendations, relating to the delegated powers and proposed scrutiny procedures for Part 3 of the Bill. I refer the Committee to my [response to the DPLRC](#) on 12 January 2024.

Part 4 – Miscellaneous

Section 26 – Code of Practice on Sustainable and Regenerative Agriculture

239. The Committee welcomes the provision for a code of practice for sustainable and regenerative agriculture. However, the Committee agrees with stakeholders that further clarity should be provided on the process for producing and reviewing the code to ensure it is subject to appropriate oversight and rigour. This should include co-design with stakeholders, monitoring the implementation of the code and evaluating whether the code is fit for purpose. The Committee recommends the Scottish Government should consider whether these further requirements should be included on the face of the Bill.

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240. The Committee understands that the Scottish Government intends to set out conditionality requirements in regulations setting up new support schemes. The Committee remains unclear as to the Scottish Government’s intentions on giving legal effect to the code under section 7, and to what extent this may make compliance with, or regard to, the code mandatory. The Committee seeks clarity from the Scottish Government on this in advance of stage 2.

241. Given the potential for section 7 powers to give legal effect, in whole or in part, to the code or other guidance, the Committee agrees that this should be subject to the affirmative procedure, considering that the code itself is not subject to parliamentary scrutiny.

I welcome the Committee’s support for my intention to develop and publish a code of practice for sustainable and regenerative agriculture. The Code will be co-developed and there is already a requirement in the Bill that Ministers must, in preparing or reviewing the code, consult such persons as they consider likely to be interested in or affected by it. This statutory requirement ensures the Code is produced with appropriate engagement ensuring it is fit for purpose.

I note the Committee’s views that section 7 should be subject to the affirmative procedure, considering that the code itself is not subject to parliamentary scrutiny. The power in section 7 is not directed at the Code, which is referred to only to clarify that the guidance in the Code can be treated in the same way as any other guidance for which further provision might be made under that section. I do not therefore think that the section 7 power should be affirmative for that reason only.

The Code will not be mandatory, but rather will provide guidance. The proper place for any mandatory requirements is in legislation that can be scrutinised.

I expect that some of that legislation will provide for an activity with a sustainable or regenerative character to be a condition of payment of support. It may be helpful to a farmer or land manager to have regard to the Code when carrying out that activity, and appropriate for the Scottish Ministers to have similar regard when determining whether the condition has been met. I expect that Ministers would consider using the power in section 7 in those circumstances, so that the Code had legal effect to that extent.

The Committee asks for examples in legislation where we set out guidance, and ask people to refer to this. Section 10 of the Land Reform (Scotland) Act 2003 provides for the Scottish Outdoor Access Code, which provides amongst other things for guidance on the circumstances in which those exercising access rights are to be regarded as doing so in a way which is or is not responsible. Section 2 of that Act provides access rights to be exercised responsibly, and for regard to be had to that Code when determining whether a purported exercise of the right is indeed responsible.

Section 27 – Continuing Professional Development

269. The Committee notes the Scottish Government’s aim to establish a continuous professional development (CPD) scheme to support the sector to realise the ‘vision for agriculture’ and stakeholders’ unanimous support, in principle, for the proposed scheme. The Committee agrees that delegated powers to establish a CPD scheme

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should be part of the Bill. A well-designed and co-ordinated CPD scheme, tailored around supporting the sector to meet Scotland’s nature and climate targets, would be an important and useful component of Scotland’s future agriculture policy. In reaching this conclusion, the Committee recognises the extent of existing peer-to-peer knowledge exchange and wider training already undertaken within the sector.

I welcome the Committee’s support for and recognition of the importance of the delegated powers to establish a CPD regime to help deliver the Vision for Agriculture and meet Scotland’s nature and climate targets. A CPD regime – as well as encompassing a wide range of knowledge and innovation elements, education, and training support that will be provided in Tier 4 of the Agriculture Support Package Post 2025 – is something that we know stakeholders have emphasised the need for during the extensive consultation activities that have been undertaken in the lead up to the development of the Bill.

Indeed, stakeholders are continuing to note the importance of CPD in engagement as part of our development of a potential suite of support under Tier 4, not least – as the committee also notes – through the extent of existing peer-to-peer knowledge exchange and wider training already undertaken within the sector.

270. At the same time, however, stakeholders highlighted the lack of detail about the proposed scheme in the Bill and accompanying documents and they set out some suggestions about how the scheme should be developed and delivered. The Committee refers the Scottish Government to the views expressed during oral evidence and recommends it reflects on these when establishing any CPD scheme.

Section 27 of the Bill provides the power to establish a CPD regime, and subsection (3) further details that regulations made under that power can include provision about CPD activities, with paragraphs (a)-(j) setting out examples of the types of provision this made include. Those matters are indicative of the core aspects of CPD regimes and will be key building blocks around which the regime is developed.

While the Scottish Government recognises and appreciates the desire for stakeholders to have further information on the development of what the CPD regime will include, the focus of the Bill is on the provision of an enabling framework on which to develop the CPD regime. It would therefore be inappropriate to provide detail on how the scheme will be developed and delivered in advance of full and proper stakeholder engagement aligned to the spirit of co-development. The importance of co-developing the CPD regime with stakeholders is fully recognised and we would not wish to compromise this objective.

The Scottish Government has already taken steps to undertake that co-development work through an informal discussion paper on an Agricultural Knowledge and Innovation System (AKIS) in Scotland, which was circulated to more than 100 stakeholder organisations in November 2023. This included a number of questions about the CPD regime, including the types of activities that should be made available in the system, support to encourage the uptake of CPD, the role of the Farm Advisory Service (FAS) in providing some CPD and the amount of CPD that should be undertaken by farmers, crofters and land managers. A copy of that paper was sent to the Committee on 2 November 2023.

The Scottish Government is currently analysing the responses to this discussion paper as well as the discussions in a large number of stakeholder meetings that were also conducted. The evidence gathered will help to inform the development of the CPD regime and the wider

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Tier 4 “complementary” support. The Scottish Government intends to formally consult on proposals later in 2024 and intends to consult on the regulations for the CPD regime in 2025. During these consultations the Scottish Government will continue to work closely with stakeholders to help co-develop the regime. We will of course also consider the views provided to the committee during Stage 1.

271. Taking into account stakeholders’ views, the Committee recommends any CPD scheme is developed and delivered according to the following principles—

- **Co-designed with the sector in order to identify and meet farmers’, crofters’ and land managers’ needs;**
- **Delivered in the most appropriate format, which could include peer-to-peer knowledge exchange;**
- **Accessible to all farmers, crofters and land managers;**
- **Accredited scheme for all CPD trainers and advisers; and**
- **Monitored and evaluated.**

I welcome Committee’s recommendations and I share the views, as above, on the principles of the CPD regime that will be developed and introduced.

The Scottish Government has started to explore these points for the development of a CPD regime and also Tier 4 “complementary” support through the informal discussion paper sent to stakeholder organisations. The Scottish Government will look at how each of these can be specifically applied to the CPD regime, whilst recognising that there are fundamental principles that are still required to be developed and delivered under Tier 4 support.

As noted in my response to paragraph 270 (which also sets out our proposed activities with stakeholders), the Scottish Government will co-develop the CPD regime with stakeholders.

272. Stakeholders also expressed concern around the Scottish Ministers’ ability to make CPD compulsory and part of the eligibility criteria for support. The Committee notes the explanatory notes accompanying the Bill refer to regulations “that impose CPD requirements”. Aside from recognising some training should be compulsory for health and safety reasons, there was no support amongst stakeholders for compulsory CPD. The Committee recognises the transformational change required to be made by the sector to meet the nature and climate crises and the view that some element of compulsion might be required to achieve this. At the same time, however, it believes that these changes will be most effectively and quickly achieved by the Scottish Government and the sector working together, in partnership. The Committee does not believe that – other than where training to a certain standard or a qualification is required for health and safety reasons or in order to undertake specific activities– any CPD should be compulsory or tied to support. The Committee also requests clarification by what is meant by regulations “that impose CPD requirements”.

I recognise that there are a wide range of views as to whether CPD should be compulsory or not, note the Committee’s conclusion that stakeholders did not demonstrate support for it and further note the Committee’s conclusion. I recognise that there is some anxiety around the idea that CPD requirements could be linked to payments and/or made compulsory. The Scottish Government is however aware that some stakeholders favour compulsion for certain elements e.g. advisers working in the sector, animal health, health and safety etc.

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The Scottish Government is also aware that some agricultural membership, accreditation and quality assurance schemes already have compulsory elements.

This government is wholly committed to enabling Scotland to be a world leader in sustainable and regenerative agriculture: CPD will play an important role in helping to deliver such transformational change.

As the Committee is aware, section 27(3)(a) sets out that the regulations made under section 27(1) for, or in connection with, CPD *may* contain provision about requiring persons to undertake particular, or a particular amount of CPD. This does not mean that they are making CPD compulsory under the Bill. Rather, they have the option to do so, should there be a clear need for it. If as a consequence of dialogue with stakeholders it appeared desirable to incorporate compulsory elements to the CPD regime, or if it appeared to the Scottish Government in future that a non-compulsory CPD regime or non-compulsory elements of a CPD regime were not delivering the change that was needed for Scottish agriculture, then the Bill will provide Ministers with the flexibility to incorporate compulsory CPD elements if Ministers considered that doing so may help achieve their aims. However, before introducing any compulsory CPD requirements, Ministers will fully consult with and consider the views of stakeholders across the agriculture sector, including those that would be directly affected by the provisions and full cost/benefit analyses would be undertaken.

The Committee has asked for clarification on what is meant by regulations “that impose CPD requirements”. This means that section 27 allows the Scottish Ministers to make regulations on CPD which can, if Ministers so desired, include CPD requirements that are compulsory.

273. The Committee believes that, given the possibility that any CPD scheme may contain an element of compulsion or be an eligibility criteria for support, it would be more appropriate for any regulations made under section 27 to be subject to the affirmative procedure, rather than the proposed negative procedure.

I note that the DPLRC considered the delegated power relating to section 27 and indicated that the power was “acceptable in principle” and “was content that it would be subject to the negative procedure”.

274. Finally, the Committee notes that the financial memorandum does not include any costs relating to CPD. The Committee seeks a commitment from the Scottish Government that it will provide information relating to the projected costs of any CPD scheme when it lays any regulations under this provision. The Committee believes that, without this financial information, the Parliament would not be able to scrutinise this secondary legislation effectively.

The First Minister announced on 5 February 2024 that Tiers 1 and 2 of the Agriculture Support Package would receive at least 70% of the funding, with the remainder to be allocated across Tiers 3 and 4. A decision has not yet been taken on the split of funding between Tiers 3 and 4, or a consideration of how much support for Tier 4 funding will be allocated to the CPD regime within Tier 4. A decision will be made in due course, ensuring that there is adequate support provided for CPD. At that point, we will of course update Parliament.

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The Scottish Government will assess costs of the CPD regime when we bring forward the secondary legislation under section 27. The formal consultation will also be accompanied by the mandatory impact assessments.

Costs associated with the Bill

291. As stated earlier in this report, the Committee agrees with the Scottish Government that a framework bill is appropriate to establish a flexible basis for future support schemes. Nevertheless, the Committee also agrees with the Finance and Public Administration Committee that the use of framework bills has implications for the scrutiny of the costs of implementing that legislation. The Committee expects that, in response to this, the administrative costs and costs to bodies, individuals and businesses will be reflected in the policy notes accompanying any secondary legislation to allow parliamentary scrutiny at that point.

292. The Committee notes the proposed funding allocations indicated in the financial memorandum and the Scottish Government's further announcement on its funding decisions, outwith Parliament, on 9 February 2024. The Committee considers it would have been useful for this information to be communicated directly to the Committee considering its relevance of the stage 1 inquiry.

293. The Committee acknowledges the variety of stakeholder views on how budgets should be distributed between future support tiers and that full discussion of funding decisions has not been possible during Stage 1 scrutiny of the bill given its framework nature. The Committee also recognises that future funding for agriculture from the UK Government remains uncertain. The Committee, however, believes that the Parliament should be given an opportunity to scrutinise these significant decisions on funding priorities through the forthcoming rural support plan, and during scrutiny of secondary legislation. The Committee expects to see evidence and justification for funding decisions in the rural support plan, and (as set out above) in policy notes accompanying any secondary legislation.

294. The Committee did not have time to consider this issue in greater detail but is mindful that the FPAC highlighted stakeholders' views regarding the assumption in the financial memorandum that additional funding would not be required for administrative costs, including staffing and IT costs. The Committee asks the Scottish Government to provide more information about its thinking underpinning this assumption in its response to this stage 1 report.

I note the Committee's comments above in relation to costs associated with the Bill. I would remind the Committee that the announcement made on 9 February 2024 was done so to Parliament through a [Government Initiated Question](#).

As outlined by officials at the Finance and Public Administration Committee, the Scottish Government needs clarity and certainty from the UK Government about future rural funding after 2025. Until this is received it is difficult to outline detailed future costs. The associated financial memorandum provides costings as accurately as possible given the aforementioned budgetary uncertainty. The figures presented in financial memorandum are based on the assumption that future delivery costs will be similar to the current delivery

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costs. The financial memorandum also set out our best estimates of transition costs and these estimates will be updated as we move through the agriculture reform programme. The Scottish Government will provide further detail as and when possible but wishes to avoid any delays in the progress of the Bill.

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