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Finlay Carson MSP  
Convener of the Rural Affairs, Islands and Natural  
Environment Committee  
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31 October 2022

Dear Finlay,

## **The Rural Support (Simplification and Improvement) (Scotland) (No.2) Regulations 2022**

Further to your letter of 13 October, I am now responding to the points raised as follows:

**1. Question : Section 2 of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 provides the power “to simplify and improve the operation of CAP legislation”. As you’ll be aware, there was some discussion about the interpretation of this power during the passage of the bill last session and officials and Ministers emphasised that the power would only be used to provide for process and/or operational changes. Please can you set out your reasons why you consider these regulations introduce a process and/or operational change, rather than a policy change ;**

### **Answer:**

During the passage of the Bill it was acknowledged that the section 2 power could be used both for technical or housekeeping matters as well as more substantive changes provided what was being done was a simplification or improvement. It is for this reason that the government supported changing the procedure for the section 2 power to “either way” during stage 3.

That being said my view is that the change made by this instrument is operational, and does not introduce any significant new policy. I consider that negative procedure is appropriate for that reason.

There is a pre-existing afforested areas Ecological Focus Area (EFA) option in the Direct Payments Regulation, although that was never used in Scotland. The amendment made by

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these regulations removes that option, and replaces it with an updated afforested areas option that is in line with government priorities on sustainable and regenerative agriculture. The wider policy on greening, including Ecological Focus Areas, remains unchanged.

In particular, please note that the afforested areas EFA option applies to areas of woodland on farms and crofts funded by the Forestry Grant Scheme. This ensures that any tree planting on farms and crofts is in full compliance with existing forestry policy and practice.

**2. Question : The policy note states these regulations, as well as the overall current CAP and greening provisions, will “continue until 2024 or such time as they are replaced by new schemes to be introduced”. Please can you confirm why the Scottish Government seeks to legislate for this provision now, rather than as part of the replacement CAP scheme. Please can you also provide information about whether the Scottish Government anticipates this change will be continued as part of the replacement CAP scheme;**

**Answer:**

I believe these regulations will provide a welcome opportunity for a positive discussion with stakeholders regarding additional opportunities for the growing of trees on farms/ crofts.

These proposals should encourage the planting of woodland on farms and crofts and recognise those who have already done so to support benefits for the environment.

These regulations should have a positive impact on stakeholders / scheme beneficiaries for direct payments as with effect from the 2023 claim year and subsequent years, they will be able to use small areas of woodland on farms / crofts to meet their EFA Greening scheme requirements.

At this early stage I cannot say whether these specific provisions will remain part of the replacement CAP schemes as that work is ongoing and the consultation will close next month on the Agriculture bill to be introduced to Parliament next year.

I can, however, confirm that the Scottish Government is committed to realising our Vision for Agriculture and transforming how we support farming and food production in Scotland to become a global leader in sustainable and regenerative agriculture. Therefore it is likely that land use for the planting of trees on farms and crofts, such as is encouraged by these provisions, will continue to feature as part of those future options.

**3. Question : The policy note suggests that consultation on these regulations was undertaken as part of the 2018 Stability and Simplicity consultation. The Committee notes that consultation was carried out over four years ago and did not consult on any specific policy changes but more on an overall approach to ‘stability and simplicity’ while a new policy is being developed. The Committee also notes that NFUS has been “informally advised” of the regulations and that officials “understand” the NFUS is supportive. Please can you set out your reasons why the Scottish Government has not consulted more widely, and more specifically, on these regulations in advance of them being laid ;**

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**Answer:**

A full public consultation was conducted on our period of Stability and Simplicity to 2024 and further consultation took place in relation to the Agriculture (Retained EU Law and Data) (Scotland) Bill. These regulations will be used to deliver on the stated objective of the Bill “to enable the continued operation of current CAP schemes and policies, but also to allow them to be progressively improved and simplified”.

In this case, for these regulations, I decided that no formal public or business consultation is necessary or appropriate. The simplification and improvement will provide an improved EFA option for afforested areas on farms/crofts. There is no policy change regarding the remaining options and elements of the EFA Greening scheme, no change regarding beneficiaries and no change regarding the other scheme conditions. No significant new policy is being created, instead these regulations provide for a minor modification and improvement of the existing EFA Greening scheme.

My view is that this improvement is in line with our overall approach to stability and simplicity, which was fully consulted on and conducting wider consultation on these regulations would not be proportionate to the minor nature of the change being made.

We informally advised NFUS and stakeholders of our proposals for the Regulations and we understand there is support for them, given they provide an additional EFA option for woodland planted on farms and crofts, which is compatible with and supports the environmental benefits of the Greening scheme. NFUS in particular had asked Scottish Government for this change at meetings earlier in 2022.

I can also confirm that in addition to the NFUS input, the proposed changes were covered at the Trees on Farm subgroup of our forestry Customer Representatives Group . This group includes a wide range of stakeholders with farming interests. At the 7 October meeting there was broadsupport for these proposals.

**4. Question: Please can you confirm whether these regulations maintain alignment with EU policy;**

**Answer:**

The regulations maintain alignment with EU policy. The EU’s updated CAP retains, and may increase, conditionality requirements for the receipt of direct payments. One of these conditionality requirements is for a minimum share of arable land at farm level to be devoted to non-productive areas and features (see Annex III of Regulation (EU) No. 2021/2115). Furthermore, there are ten key objectives of the EU’s new CAP, which include contribution to climate change mitigation and halting and reversing biodiversity loss. This improvement to the existing EFA options in Scotland is designed to meet these same two key objectives.

I hope the above information is helpful.

Yours sincerely,



**MAIRI GOUGEON**

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