

## Stage 3 Briefing

# Agriculture and Rural Communities (Scotland) Bill

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## Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

The Agriculture and Rural Communities (Scotland) Bill<sup>1</sup> (the **Bill**) was introduced by Mairi Gougeon, Cabinet Secretary for Rural Affairs, Land Reform and Islands on 28 September 2023. We submitted written evidence<sup>2</sup> to the Rural Affairs and Islands Committee of the Scottish Parliament as part of its Stage 1 consideration of the Bill in November 2023. The Rural Affairs and Islands Committee's Stage 1 Report on the Bill (the **Stage 1 Report**)<sup>3</sup> was published on 18 March 2024.

The Stage 1 debate on the Bill took place on 27 March 2024, and Parliament agreed to the general principles of the Bill on the same date. We issued a briefing to MSPs ahead of the Stage 1 debate.

The Bill completed Stage 2 on 15 May 2024, following consideration by the Rural Affairs and Islands Committee during its meetings on 8 May 2024 and 15 May 2024. The Bill as amended at Stage 2 was also published on 15 May 2024.<sup>4</sup>

We welcome the opportunity to consider and provide comment on the Bill ahead of the Stage 3 debate scheduled for 18 June 2024.

## General Remarks

The Bill operates as a framework, which will in turn be supplemented by more detailed secondary legislation.

We are cognisant of the potential benefits of this approach, for example, allowing greater flexibility in designing and implementing the underlying policy proposals, particularly should these evolve over time. We nonetheless highlight the need for flexibility to be appropriately balanced against ensuring there is clarity in the law,

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<sup>1</sup> [Agriculture and Rural Communities \(Scotland\) Bill](#)

<sup>2</sup> Further information on our engagement on the Bill to date, including the links to the relevant documents, can found on our website, accessible [here](#)

<sup>3</sup> [Stage 1 Report](#)

<sup>4</sup> [Bill as amended at Stage 2](#)

appropriate levels of parliamentary scrutiny underpinning legislative and policy developments, and meaningful stakeholder consultation.

It is important there is certainty and clarity for those operating in the sector. Individuals and organisations must be able to guide their conduct based on clear and understandable legal standards. We would welcome greater detail as to how the subsequent proposals will operate in practice. Without this, it is difficult to fully understand and assess their likely impacts, particularly on those operating in the sector.

It is crucial to upholding the rule of law that the law is clear, comprehensible, and transparent so that requirements can be understood by those affected. We highlight that a framework made up of primary and significant volumes of secondary legislation can be challenging for those directly affected by the law to access and fully understand.

We particularly stress the importance of robust consultation on secondary legislation under the Bill, to provide an opportunity for scrutiny and critical comment from stakeholders on the details of the measures.

More generally, we highlight the ongoing and prospective legislative and policy reform within the wider agricultural and environmental legal landscape – covering areas such as land and estate management, land reform, and biodiversity matters.<sup>5</sup> It is important to consider the interplay and overlap between such reforms to ensure a consistent and aligned approach across all policy developments affecting the rural sector.

## Comments on Sections of the Bill

### Part 2 (Support for agriculture, rural development and related matters)

Part 2 confers the power on the Scottish Ministers to provide support for the purposes set out in schedule 1 and makes a range of provisions in connection with the support framework.

#### Section 4

Section 4 is the basis for the Scottish Ministers to provide support for or in connection with the purposes that are set out in schedule 1.

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<sup>5</sup> See, for example, our response to the Net Zero, Energy and Transport Committee's call for views on the Land Reform (Scotland) Bill, accessible [here](#).

We would generally note the importance of ensuring consistency across different areas of law – for example agricultural support, agricultural tenancies, planning, tax, biodiversity, and environmental – to ensure that the objectives in one area are not disrupted by technical obstacles in others.

We note that schedule 1 (which sets out the purposes of support referred to at section 4(1)), Part 4, at paragraph 15(2) refers to “Compensating persons in respect of additional costs incurred and income lost”. We consider that greater information around the policy intention would be welcomed, particularly given the related legal principles potentially engaged by the operation of a compensation scheme of this nature.

## Section 10

We note section 10 of the Bill and the provisions relating to the refusal or recovery of support in the “public interest”. This section creates a power to refuse to provide support or recover support given if Scottish Ministers consider that it is not in the public interest for a person to receive it. We would highlight the absence of a definition of “public interest” or an indication of due process before such financial sanctions occur. We consider that both of these aspects will require consideration in any resulting secondary legislation, particularly given the need for legal clarity and compliance with related legal obligations, including the European Convention on Human Rights.

We would also welcome greater detail and clarity on the types of scenarios where it is envisaged that such powers would be exercised. It is of particular importance in the context of funding and wider industry support that there is certainty for those operating in the agriculture sector, and sufficient time to enable them to plan and develop their business accordingly. It is important that those operating in the sector can have a clear understanding of legal requirements and related support so that they may guide their conduct accordingly.

Section 10(3) of the Bill places a requirement on Scottish Ministers to “consult such persons as they consider likely to be affected” before making regulations under the section. In the interests of transparency, the outcomes of such consultations should be published. This would similarly apply to the analogous consultation requirements elsewhere in the Bill, such as at sections 9(2), 13(3), and 26(6).

## Section 13

We note that Section 13(4)(a) provides that regulations made under section 13 are subject to the affirmative procedure if they “in the opinion of the Scottish Ministers, would make significant provision” (and otherwise would be subject to the negative procedure). Section 13(5) sets out what “significant provision” includes for these purposes. This is referred to in the Delegated Powers Memorandum as an ‘either way’ power (paragraph 68).

We note the subjective nature of this assessment and consider that greater clarity would be welcomed within the Bill as to the parliamentary procedure used for

regulations made pursuant to section 13. Such an assessment may benefit from additional procedural safeguards to ensure that the appropriate procedure is used.

### Sections 14-15

We have no specific comments on these sections at this stage.

### Section 16

Similar to our comments above in relation to section 10, section 16 allows for provision in relation to the withholding (section 16(2)(g)) and recovery (section 16(2)(f)) of support. Likewise, these provisions lack specification and would merit similar consideration as above should subsequent regulations be introduced.

## Part 3 (Powers to modify existing legislation relating to support)

Part 3 makes provision enabling the Scottish Ministers to amend and adjust the enactments which contain the CAP rules.

We highlight as a general observation the increasing legislative complexity in this area. We note that legislative powers in relation to retained EU Law are contained in myriad primary and secondary legislation, guidance, and legal authorities – including the general EU withdrawal and continuity legislation, retained EU law, subsequent sectoral legislation, in addition to pre-existing legislative authority.

### Schedule 1

We refer to our comments in relation to section 4, and our general remarks, above.

## Part 1 (Objectives and Planning), Part 4 (Miscellaneous), Part 5 (Final Provisions), and Schedule 2

We have no specific comments on these parts of the Bill for the purpose of this briefing and refer to our general remarks above.

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