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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Delegated powers in the Agriculture and Rural Communities (Scotland) Bill at Stage 1



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Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.




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Introduction

1. At its meetings on 19 December 2023 and 23 January 2024, the Delegated Powers and Law Reform Committee considered the delegated powers contained in the [Agriculture and Rural Communities \(Scotland\) Bill](#) ("the Bill") at Stage 1.
2. The Committee submits this report to the lead Committee for the Bill under Rule 9.6.2 of Standing Orders.

Overview of the Bill

3. This Scottish Government Bill was introduced by the Cabinet Secretary for Rural Affairs, Land Reform and Islands, Mairi Gougeon MSP, on 28 September 2023. The lead committee is the Rural Affairs and Islands Committee.
4. The Bill provides a legal framework for the Scottish Government to replace the EU's Common Agricultural Policy ("CAP") with a new system of agricultural support suited to domestic needs. It is a framework bill, the operation of which is essentially a matter for subordinate legislation.
5. As a member of the European Union, the UK participated in the EU's Common Agricultural Policy for decades and the four governments within the UK were responsible for administering subsidies according to EU rules. Outside the EU, the different administrations are free to develop their own schemes. Agricultural policy is a devolved matter, so the four administrations are each developing their own policies and legislative frameworks.
6. The Bill comprises thirty-four sections, divided over five parts and two schedules.
7. Part 1 sets out the key objectives of agricultural policy and imposes a duty on the Scottish Ministers to prepare and lay before the Scottish Parliament a 5-year Rural Support Plan setting out the strategic priorities of the Scottish Ministers for that period.
8. Part 2 confers power on the Scottish Ministers to provide support for the purposes set out in schedule 1 and makes a range of provision in connection with the support framework.
9. Part 3 makes provision enabling the Scottish Ministers to amend and adjust the enactments which contain the CAP rules.
10. Part 4 contains a variety of measures relating to agriculture, including a power for the Scottish Ministers to impose continuous professional development (CPD) requirements on farmers.
11. Part 5 contains general provisions that apply to the whole Bill, including interpretative provisions and commencement.
12. Schedule 1 sets out the purposes for which the Scottish Ministers may provide support.
13. Schedule 2 contains a variety of repeals and minor and consequential amendments. Many of the repeals relate to spent (i.e. no longer relevant) enactments.
14. The [Policy Memorandum](#) states that the Bill is intended to be a "framework bill". A framework bill is a bill that sets out the principles for a policy but does not include substantial detail on how that policy will be given practical effect. Instead, such bills seek to give broad powers to ministers or others to fill in the details at a later stage. This will most often be via delegated legislation, brought forward after the bill has been passed by the Parliament and become law.

15. The intention, as stated in the [Explanatory Notes](#), is that “the powers in the Bill will enable Ministers to make new payments and create new payment schemes. Collectively, this will form a framework of support for agriculture, forestry and in respect of rural communities more generally.”

Delegated powers

16. The Bill confers eighteen powers to make subordinate legislation on the Scottish Ministers.
17. The Scottish Government has prepared a [Delegated Powers Memorandum](#) (“DPM”) which sets out the reasons for taking the delegated powers in the Bill and the procedure chosen.
18. The Committee first considered the delegated powers in the Bill at its meeting on Tuesday, 19 December 2023. At that meeting, the Committee did not raise any queries in relation to the following delegated powers:
 - Section 7(1): Guidance
 - Section 10(2): Refusal or recovery of support where in the public interest
 - Section 18(1): Processing of information
 - Section 26: Code of Practice on Sustainable and Regenerative Agriculture
 - Section 28(2): Prescribing and regulating means of identifying animals
 - Section 31(1): Ancillary provision
 - Section 33(2): Commencement
19. However, the Committee agreed to [write to](#) the Scottish Government to raise questions in relation to the following delegated powers:
 - Section 3(4): Rural support plan: matters to be considered
 - Section 4(3): Power to provide support
 - Section 9(1): power to cap support and assistance
 - Section 13(1): Regulations about support
 - Section 19(3): Power to simplify, improve or update relevant CAP legislation
 - Section 20(2): Power to continue or end the operation of relevant CAP legislation
 - Section 21(2): Power to modify financial provision in relevant CAP legislation
 - Section 23(2): Public intervention and private storage aid
 - Section 24: Power to modify CAP legislation on aid for fruit and vegetable producer organisations
 - Section 25: Apiculture Power
 - Section 27(1): Continuing professional development

The Scottish Government [responded](#) on 12 January 2024

20. The Committee's consideration of this, and the other delegated powers contained in the Bill, are set out in the next section of the report.

Review of relevant powers

21. The Committee notes that while a number of the delegated powers are acceptable in isolation (for example sections 7(1), 10(2), 23(2) and 27(1)), the wide scope and range of Ministerial powers in the Bill give rise to concerns. By legislating using a framework Bill, the Scottish Government reduces the ability of this Committee and Parliament as a whole to properly scrutinise legislation.

Section 3(4): Rural support plan: matters to be considered

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

22. Section 3 provides for the matters that the Scottish Ministers must have regard to when preparing a rural support plan under section 2 of the Bill. It also provides that the Scottish Ministers may by regulations subject to affirmative procedure modify those matters by adding, adjusting or removing a matter.

Committee consideration

23. Given that each rural support plan will have a 5-year lifespan, the Committee accepts that it is necessary for Scottish Ministers to be able to modify the list of matters to which they must have regard when preparing such plans. This will ensure that the plan process can develop in response to changing needs over time.

24. Nonetheless, the Committee asked the Scottish Government: -

“This delegated power is linked to the rural support plan, however, as matters stand, no draft plan has been made available. In order to aid the Committee’s consideration of the delegated power in section 3(4), can the Scottish Government please explain:

1. what progress has been made in developing the plan, when a draft is expected to be available, and whether it will be available for the Parliament to consider before it votes on the general principles of the Bill; and
2. whether the plan should be subject to a statutory consultation requirement, given its strategic significance.”

25. The Scottish Government responded as follows:

1. "The rural support plan will be developed with stakeholders as part of Scottish Government’s co-development of the specifics of future support and eligibility. My intention is to produce the draft plan in 2025.
2. "It is not therefore thought that a statutory requirement to consult is necessary, but we remain keen to ensure that we have full engagement with those with an interest in the plan.”

26. **The Committee notes the additional information regarding the development of the rural support plan. While it understands the desire to allow for co-development and engagement, the Committee believes this approach poses difficulties for scrutiny, as the plan will not be available until 2025.**
27. **The Committee has difficulty in understanding why the first rural support plan is not at a more advanced stage and is concerned there is not a clearer direction of travel from the Scottish Government for Parliament and stakeholders to scrutinise. It therefore asks the Scottish Government to consider publishing a draft plan ahead of Stage 3 proceedings.**
28. **The Committee also considers that the first plan and subsequent plans should be subject to a statutory consultation requirement.**
29. **The Committee draws the attention of the lead committee to the potential difficulties posed by framework bills where the total amount of funding to be allocated and the breakdown of this funding is not known ahead of the legislation being passed. The Committee asks the lead committee to consider how stakeholders might fully engage with the co-development process in the absence of this information.**

Section 4(3): Power to provide support

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

30. Section 4 provides the basis for the Scottish Ministers to provide support for, or in connection with, the purposes that are set out in schedule 1. In broad terms, that includes traditional agricultural subsidies, forestry, supporting rural (and island) communities and development, and adapting to and mitigating against climate change. This section also provides the Scottish Ministers with the power to make regulations which modify the schedule in order to add, amend or remove a purpose.

Committee consideration

31. The Committee asked the Scottish Government,

"While the Scottish Government has indicated that it does not intend to use this power to make major changes to the purposes in schedule 1 (as stated in the Delegated Powers Memorandum paragraph 41), this power will be available without limit of time to future governments whose intentions cannot be known.

"It could therefore be used to make more significant changes than is currently anticipated. Furthermore, the power is a Henry VIII power, the exercise of which will amend the Act which will result from the Bill.

"In light of this, does the Scottish Government consider that the affirmative procedure would be more appropriate?"

32. The Scottish Government responded as follows:

“The purpose of this power is to provide flexibility and allow for the addition, removal or amendment of a ‘payment’ purpose specified in schedule 1. It is appropriate that the purposes can be modified in this way to ensure they remain fit for purpose and effective and proportionate over time.

“The power does enable the Scottish Ministers to modify one part of the Bill, but for only one purpose, and is therefore analogous in that respect to the power to modify section 153 (payments for environmental purposes) of the Environmental Protection Act 1990. That power is also subject to negative procedure, and the Scottish Ministers remain of the view that it would be proportionate for this power to be subject to negative procedure. We will of course reflect on all comments received during Stage 1, and review as appropriate.”

33. The power in section 4(3) allows Scottish Ministers to change the purposes for which support can be given. Section 2 of the Bill requires the Scottish Ministers to prepare a plan (a “rural support plan”) giving information about the expected use during the plan period of the powers conferred on them by section 4, and to exercise their functions under the Act having regard to that plan. In turn, section 3 (Rural support plan: matters to be considered) requires the Scottish Ministers to have regard to the objectives of agricultural policy set out in section 1 of the Bill when preparing the rural support plan. It follows that, when adjusting the purposes for which support can be given, Scottish Ministers must do so having regard to (a) the adoption and use of sustainable and regenerative agricultural practices, (b) the production of high-quality food, (c) the facilitation of on-farm nature restoration, climate mitigation and adaptation, and (d) enabling rural communities to thrive.

34. **The Committee notes that it is being asked to consider this power in absence of the rural support plan which is to contain information about the expected use of the powers conferred by this provision. In light of the absence of detail, and the fact that this power is a Henry VIII power, the Committee recommends that this power should be subject to the affirmative procedure.**
35. **The Committee also highlights to the lead committee that changing the purposes for which support can be given could have significant policy implications.**
36. **The majority of the Committeeⁱ remains concerned about how such a power might be used by future governments, given its scope.**

Section 7(1): Guidance

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

ⁱ The majority refers to Jeremy Balfour MSP, Oliver Mundell MSP and Colin Smyth MSP.

Provision

37. Section 7 provides for the Scottish Ministers to be able to make provision by regulations subject to the negative procedure in relation to guidance about support, including in respect of the guidance in the proposed Code of Sustainable and Regenerative Agriculture (for which see section 26 of the Bill).

Committee consideration

38. Paragraphs 46 and 47 of the DPM explain that the nature of guidance issued by the Scottish Ministers varies greatly. As such, it may require to be given more weight in some circumstances than in others. This power enables Scottish Ministers to make regulations that set out the consequences of not following guidance relating to support (or support of a particular type) and make regulations for appropriate scrutiny. In particular, subsection (2) makes clear regulations will be able to require people to have regard to the guidance and for the guidance to be admissible in certain cases and have particular evidential value in any proceedings that relate to support (such as whether a person is eligible for support or has complied with conditions). Paragraph 50 of the DPM explains that regulations made under this power will make provision in respect of administrative matters (for example, concerning essential standards of agricultural practice), and will not relate to matters of principle or great significance. The Committee accepts the position as stated in the DPM and considers that the negative procedure is appropriate.

39. **The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

Section 9(1): power to cap support and assistance

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

40. Section 9 provides for the Scottish Ministers to be able to make provision by regulations subject to negative procedure to limit or progressively reduce the amount of support or relevant assistance that a person may receive.
41. In particular, the Scottish Ministers are able to set a level of payment above which the amount will be capped or tapered, and how the tapering will have effect. The Scottish Ministers must consult such persons as they consider appropriate before making regulations under this section.

Committee consideration

42. The Committee asked the Scottish Government: -

“The Scottish Government has stated that it does not expect to use this power to make provision in respect of significant sums of money. However, as with section 4(3) above, this power will be available without limit of time to future governments,

whose intentions cannot be known.

"It could conceivably be used in a way that has a significant impact on individuals who would otherwise be entitled to support. How the power will be used is not yet known and therefore cannot be scrutinised at present.

"In light of this, does the Scottish Government consider the affirmative procedure might be more appropriate?"

43. The Scottish Ministers responded as follows:

"This power is being taken to allow Scottish Ministers to cap or taper support or assistance to ensure support is proportionate for the purpose which it is given. The power is intended to fine tune funding in light of experience, in order to provide the best outcome against the vision whilst ensuring best value for the public purse.

"For example the cap for the current basic payment scheme for farmers is currently set at €600k. Individual direct payments that would otherwise be over that amount are capped at that figure. Tapering applies to direct payments over €150K, which are reduced by 5%.

"The Scottish Ministers remain of the view that negative procedure is appropriate given the purpose for which the power is sought, and consider that this will ensure that scrutiny is proportionate to the regulations."

44. **The Committee notes the additional information provided by the Scottish Government.**

45. **Nevertheless, the majority of the Committee ⁱⁱ remains concerned about how this power might be used by future administrations, whose intentions cannot be known and therefore recommends that the procedure be upgraded to the affirmative procedure.**

Section 10(2): Refusal or recovery of support where in the public interest

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

46. This section provides Scottish Ministers with power to make regulations concerning the circumstances in which the Scottish Ministers should be able to refuse to provide support where they consider that it is not in the public interest for the potential recipient to receive it (where the recipient otherwise would have been entitled to). It also enables regulations to be made about the recovery of support from a recipient which it was not in the public interest to have made.

ii The majority refers to Jeremy Balfour MSP, Bill Kidd MSP, Oliver Mundell MSP and Colin Smyth MSP.

Committee consideration

47. According to the Explanatory Notes on the Bill, regulations under this section could cover cases where:

- the recipient has an unspent conviction for an offence of dishonesty or animal cruelty,
- there is credible evidence of fraud,
- there is evidence of financial unsoundness such as insolvency or tax arrears,
- there is evidence of consistent regulatory failures, or
- there is other evidence such that the Scottish Ministers are satisfied that recipient lacks honesty or integrity.

48. Paragraphs 57 and 58 of the DPM set out the reasons for taking the power: -

“57. The circumstances in which it might be appropriate to refuse or recover support vary widely. It may for example be appropriate to refuse support to a person with a relevant conviction, say in respect of support for livestock activities where the person has been convicted of an animal cruelty offence.

“58. The Scottish Ministers consider therefore that the Bill should provide for powers to refuse or recover support, but the circumstances in which say support is recovered from a person or persons should be specified in secondary legislation. That will provide both flexibility, and Parliamentary oversight in respect of those circumstances.”

49. The Committee is content with the reasons set out in the DPM as to the delegation of this power and the choice of procedure.

50. **The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

51. **The Committee draws this power to the attention of the lead committee so the potential significance of future changes can be considered.**

Section 13(1): Regulations about support

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative if regulations make significant provision, otherwise negative

Provision

52. This section enables the Scottish Ministers to make regulations about the provision of support. It is intended to be read with sections 14, 15, 16 and 17 which contain further details about particular aspects of how the power to provide support might

be used. This power provides the basis for the creation of the new payment framework which will replace the CAP rules.

Committee consideration

53. The Committee asked the Scottish Government: -

"The above power enables the Scottish Ministers to make regulations about the provision of support, and is intended to be read with sections 14, 15, 16 and 17, which contain further details about particular aspects of how the power to provide support might be used.

"This power provides the basis for the creation of the new payment framework which will replace the CAP rules.

1. The central purpose of the Bill is to provide a framework that confers on Scottish Ministers extensive powers to make law. Extensive regulation will be required to fill in the details which are not on the face of the Bill. Can the Scottish Government provide an outline or timetable setting out its plans for laying these regulations?
2. Why has the Scottish Government opted for a framework Bill instead of waiting until such time as its policy position is more fully developed before bringing forward primary legislation?
3. Will the Scottish Government be in a position to provide outlines or drafts of any of the regulations which it plans to make?"

54. The Scottish Ministers responded as follows:

1. "The [Route Map](#) outlines what information and guidance the sector can expect from 2023-2025 and when it will be available. Further information will depend on development of details with stakeholders, in advance of changes being implemented from 2026 onwards.

2. "A framework approach has been taken as the Bill must enable a multi-year transformation in support for farming and rural communities. This will be a complex process, and will include a transition over time from the complex and expansive assimilated law scheme rules.

"The Scottish Ministers consider that it would not be practicable to attempt to replace all the current scheme rules in one Bill. An approach of that kind would also be inflexible.

"The framework Bill approach is required to ensure flexibility and adaptivity to mitigate possible future challenges, as recent history has shown us, including on geopolitical, economic and climatic fronts. This enables specific targeted support to be adaptable responding to the future challenges and uncertainties, including climate impacts and market changes, whilst reinforcing our commitment to support the agricultural industry. This will help ensure that the Scottish Ministers are able to deliver on our commitment to support the agricultural industry.

"This approach also enables tailored provisions and support to be

implemented through secondary legislation and further adapted on a regular basis as required.

"The detailed and technical nature of support schemes and the requirement for regular updating is better suited to secondary legislation and will allow for schemes to be brought into operation as and when it is appropriate to do so. Should the Bill be delayed until all areas (or a substantial number of them) are ready it would mean delaying the transition to the future support model and would extend the period of uncertainty further. In addition a framework bill provides the flexibility to implement changes as required to respond to changes mentioned but also remain aligned to future EU developments and potential future CAPs.

"It is also right that we take the time necessary develop the detail of our policy with the people directly affected by it, which is important if we are to deliver on our commitment to no cliff edges for our farmers and crofters.

3. "The Scottish Government is committed to a service design approach to policy making involving user-centred co-development and specific detail is subject to ongoing co-development with stakeholders.

"The route map sets out the proposed timescales for information and interaction with the agricultural industry and we expect to provide further details in June 2024. For capacity reasons we do not therefore expect to be able to produce either drafts or outlines of future regulations.

"We do however intend to produce a first draft of the rural support plan in 2025."

55. **The Committee notes the additional information provided by the Scottish Government.**
56. **The Committee expects the Scottish Ministers to set out their explanation for the choice of procedure in the Policy Note that accompanies any instrument made under this power, in line with usual practice.**
57. **The Committee highlights this provision to the lead committee, noting that this approach means that the Scottish Parliament will not be able to debate the detailed merits of the new agricultural support regime which is to replace CAP, because the Bill contains little detail regarding the substantive law which will replace CAP.**
58. **A majority of the Committeeⁱⁱⁱ considers that, given the significance and complexity of the legislation, this approach gives rise to concerns regarding parliamentary scrutiny, and it is not one which those Members can endorse in relation to this Bill.**

Section 18(1): Processing of information

ⁱⁱⁱ The majority refers to Jeremy Balfour MSP, Oliver Mundell MSP and Colin Smyth MSP.

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

59. This section provides the Scottish Ministers with the power to make regulations about the processing of information for or in connection with the provision of support (under this Bill or otherwise) or the carrying out of functions in relation to CPD. Subsection (2) elaborates on the type of things the Scottish Ministers may make provision about. Any regulations made under this section are subject to the negative procedure.

Committee consideration

60. At paragraphs 75 and 76 of the DPM the Scottish Government explains that this power is necessary to provide a lawful basis for processing and sharing of personal data for purposes connected with the administration of claims for and payment of support. This is required to ensure compliance with the General Data Protection Regulation. The Committee is content with the reasons for taking the power and with the choice of procedure applicable to its exercise.

- 61. The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

Introduction to the powers in part 3 (sections 19 – 25) of the Bill

62. The terminology for “retained EU law” changed between the Committee considering this Bill in December 2023 and January 2024. From the end of 2023, “retained EU law” is now called “assimilated law”. This change was made by the Retained EU Law (Revocation and Reform) Act 2023 (“REUL Act”).
63. Part 3 of the Bill has two main effects. First, it extends the powers to modify assimilated law on agriculture that already exist in the Agriculture (Retained EU Law and Data) Scotland Act 2020 (“2020 Act”). Those powers were initially intended to be of limited duration. Three of the key powers are due to expire on 7 May 2026: sections 2, 3 and 4 of the 2020 Act. The Bill revokes the expiry provision, with the effect that these powers become permanent^{iv}. The Session 5 DPLR Committee considered those powers in the bill for the 2020 Act and published its report on 6 February 2020.^v
64. The other main effect of Part 3 of the Bill is to increase the scope of those existing powers (in sections 2, 3 and 4 of the 2020 Act) by adding on powers that are equivalent to the powers to restate and update assimilated law which are contained

^{iv} Sections 2, 3 and 4 of the 2020 Act are amended by sections 19, 20 and 21 of the Bill respectively, see further below.

^v Session 5 Delegated Powers and Law Reform Committee [Report](#) on the Agriculture (Retained EU Law and Data) Scotland) Bill at stage 1, 11th Report, 2020 (Session 5)

in the REUL Act. The Committee considered those powers, in so far as they are exercisable within devolved competence, in the context of the LCM in the bill for the REUL Act and published its report on 16 January 2023.^{vi}

Section 19(3): Power to simplify, improve or update relevant CAP legislation

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative, if not subject to negative

Provision

65. This section amends the power in section 2 of the 2020 Act. The existing power enables Ministers to make modifications to the legislation that governs the Common Agricultural Policy (“CAP”), to “simplify or improve the operation of the provisions” of that legislation.

66. The changes that this section makes to the existing power are:

- making it permanent;
- adding power to “restate, to any extent”, the CAP legislation (this is equivalent to sections 11 and 12 of the REUL Act);
- adding an updating power: power to make modifications to the CAP legislation that Ministers consider appropriate to take account of:
 - (i) changes in technology; or
 - (ii) developments in scientific understanding.(this is equivalent to section 15 of the REUL Act);
- adding the CMO Regulation to the list of the legislation that can be amended under the power, which is the principal assimilated legislation on the Common Organisation of the Market in Agricultural Products;
- an added ancillary power.

Committee consideration

Making the power permanent

67. In the DPM, the Scottish Government states that the existing power to “simplify and improve”, which was enacted in 2020, was suitable for the objective of providing a period of stability after EU exit, but that it is appropriate now to make this permanent because there will now be a transition from support under the CAP legislation to support under the Bill. The Scottish Government states that this transition is expected to extend over a number of years, and that the power is necessary “to

^{vi} Delegated Powers and Law Reform Committee [Report](#) “Legislative Consent Memorandum: delegated powers relevant to Scotland in the Retained EU Law (Revocation and Reform) Bill”, 5th Report, 2023 (Session 6)

ensure that retained EU law CAP rules so far as still in force remain effective in a changing world”.^{vii}

68. The DPM gives one example of how the extended power may be used: that it may be appropriate to provide support under both a current CAP scheme and a new scheme under the Bill, and therefore the power to restate CAP rules might therefore be used to consolidate the current and the new rules in a single instrument, which could improve the clarity of the law.^{viii}
69. For context, the bill for the 2020 Act was being considered by the Scottish Parliament at a time when it was unknown whether the UK would be leaving the EU with or without a “deal”. The [Delegated Powers Memorandum for the 2020 Act](#) states that the Scottish Government’s objective at that time was to maintain the operation of the CAP schemes for a transitional period after exit day (subject to making simplifications and improvements), and that further consultation and engagement with stakeholders on the development of long-term future rural policy was ongoing. In addition, at that time the Scottish Government considered that flexibility was required in order to respond to any exit terms that were subsequently agreed.^{ix}
70. The existing power expires on 7 May 2026.^x When the bill for the 2020 Act was first introduced, this power was not subject to a sunset date. The Session 5 DPLR Committee recommended adding a sunset date, saying:
- “Given the Scottish Government’s repeated assertion that it intends not to use the power in section 2(1) any longer than is strictly necessary, the Committee considers that a sunset provision would be in keeping with the policy intention.
- “The Committee acknowledges that there are remaining uncertainties and that proposed timetables may not be achieved. The Committee would not therefore recommend a sunset provision ending in 2024 as this may not provide the Government with the flexibility it requires.
- “However, the Committee recommends that a sunset provision extending to a date beyond 2024, but no later than 2030, would be appropriate.
- “The Committee considers that it would not be proportionate for the Scottish Government to have such a potentially broad power indefinitely and that if the Scottish Government wishes to continue to have such a power, it would be appropriate to seek the renewed approval of the Parliament. This would strike a more appropriate balance between the role of the Parliament as the legislature and the need for the Scottish Government to be able to act quickly through the use of delegated powers during a period of uncertainty.”^{xi}

71. These recommendations were made in a context of preparing for a potential “no

vii Paragraphs 87 – 89 of the DPM.

viii Paragraph 90 of the DPM.

ix Paragraphs 18 and 19 of the DPM.

x Under section 5(1) of the 2020 Act, which the present Bill would repeal.

xi [DLPRC Stage 1 report on the Agriculture \(Retained EU Law and Data\) \(Scotland\) Bill](#), 6 February 2020, paragraphs 65 - 68

deal” exit. We are now in significantly different circumstances, and there would seem to be significantly less need for flexibility now than at that time, when it was anticipated that the Scottish Government would need to be able to act quickly through the use of delegated powers during a period of uncertainty. Since the Scottish Government agreed even in those circumstances that the powers should be time-limited, the Committee asked for further explanation of why the Scottish Government considers it necessary now to make the power permanent.

72. The Committee asked the Scottish Government:

Section 19(3) - Question 1

“The existing powers in sections 2, 3 and 4 of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (“the 2020 Act”) were conferred when it was unknown whether the UK would be leaving the EU with a withdrawal agreement, and on the basis that these powers were needed during a period of uncertainty. At that time, the stated policy intention was for the “simplify or improve” period to be from 1 January 2021 until approximately 2024 (from the [Policy Memorandum for that bill](#), paragraph 31). The then Cabinet Secretary told the Session 5 DPLR Committee that there was no intention to use the powers after 2024 but that he could not eliminate the possibility that such an eventuality will arise (Session 5 DPLR Committee evidence session with Cabinet Secretary for the Rural Economy, 21 January 2020, [Official Report](#), col 5). Could an explanation be provided of what the change in circumstances has been that means the powers now need to be used beyond 2024?

Question 2

“The Scottish Government agreed, even in the context of the uncertainty in 2020, that the powers should be time limited. We are now in significantly different circumstances. Further explanation would be welcome of (i) why the power is now required beyond May 2026 and (ii) why is it considered that it should now have no expiry date at all?”

Question 3

“What consideration has been given to extending the sunset date to a later point, rather than removing it altogether?”

73. The Scottish Government responded as follows:

Section 19(3) – Answer 1

“The 2020 Act was passed when the UK had only recently left the EU.

“The Scottish Ministers had not then had an opportunity to consider the extent to which future schemes under Scottish legislation should replace the then newly retained EU law support schemes (now assimilated law schemes). It was however thought that such new schemes that were wanted could be ready by 2024.

“It has taken a bit longer to bring forward that legislation, which is done in this Bill, in part, due to the impacts of COVID. That reflects our extensive engagement with the sector, including the continuing co-development of our proposals with industry partners. As the Committee notes, the then Cabinet Secretary noted the possibility

that legacy schemes would continue to operate after 2024.

"The change in circumstances is that we are now able to set out in much more detail our plans for transforming support for farming and rural communities. Those plans include a longer transition from some legacy schemes, with the consequent need to be able to adapt those scheme rules after 2024 using the powers in the 2020 Act as modified by the Bill."

Answer 2

"The power in the 2020 Act is needed after May 2026 for the reason set out in the previous paragraph.

"The Scottish Ministers note that it is unusual to subject enabling powers to a sunset clause. The 2020 Act was passed in response to highly unusual, indeed unique, events.

"In those particular circumstances it was thought appropriate to provide some assurance that more developed proposals for new support schemes would be brought forward, and that was done by agreeing to proposals from stakeholders that the new enabling powers should be time limited.

"We are now in a very different position, and there is no longer any reason why the enabling powers should be subject to a particular time limit. Indeed until the new payment framework is fully developed which can done once the powers of this bill are passed, we require to maintain the existing powers to continue existing payment schemes to deliver on the commitment to no cliff edges in support. For this reason the powers should in our view be framed in the same way as any other enabling powers.

"That approach will also avoid creating a new 'cliff edge' that would likely need to be removed or replaced by further primary legislation which would not otherwise have been needed."

Answer 3

"The Scottish Ministers have not considered extending the sunset clause for the reasons set out in the previous paragraph. Any date chosen would necessarily be arbitrary and might prove unsuitable."

Recommendation on making the "simplify or improve" power permanent

74. **The Committee is content with the Scottish Government's explanation for the change in circumstances, in light of which the Committee considers that it is reasonable to make the "simplify and improve" power permanent.**

Width of the power

75. In relation to the width of the power, the Committee asked the Scottish Government:

Section 19(3) – question 4

"When considering the original "simplify or improve" power, the session 5 DPLR Committee had reservations about its width. The Scottish Government told that Committee that the power would be used to make moderate changes that were "predominantly minor in nature". The Minister at the time stressed that the power would be used to improve the process set out in the legislation, rather than the policy (Session 5 DLPR Committee Stage 1 [report on the Agriculture \(Retained EU Law and Data\) \(Scotland\) Bill](#), 6 February 2020). Does the Scottish Government's policy intention remain the same (that the powers will be used to make moderate changes that are predominantly minor in nature and will be used to improve processes rather than to change policy)? If so, given that the power is now being made permanent, would it be appropriate to draft the power more narrowly to reflect this policy intention? If the policy intention is no longer the same, could further information be provided on what has changed and what the new policy intention is in this regard?"

76. The Scottish Government responded:

Answer 4

"The policy objectives around 'simplify and improve' remain the same, and the Scottish Ministers consider that the power has indeed been used to make moderate changes of the kind referred to during the consideration of the Bill for the 2020 Act.

"For example, regulations have replaced a 5 tier penalty regime with a simpler single tier system, they have improved direct payment rules by enabling earlier payments, and they have improved direct payment rules by enabling small areas of farm woodland to be used as ecological focus areas.

"We do not therefore consider that it is either necessary or appropriate to draft the power more narrowly. Rather, our view is that it is appropriate to extend the powers in the 2020 Act as proposed in the Bill in order to enable legacy scheme rules to be modified in other proportionate ways (restating/updating). That will enable Ministers to ensure that the scheme rules remain fit for purpose during the planned transition to future support schemes."

77. The existing power has been used to make the following instruments:

Instrument	Purpose
Rural Support (Simplification and Improvement) (Scotland) (No. 2) Regulations (SSI 2022/279)	This instrument amends the afforested areas option under the Ecological Focus Area Greening element of the direct payment schemes with effect for the 2023 claim year onwards. This new option enables small areas of woodland on farms and crofts to be used as Ecological Focus Areas to provide environmental benefits.
Rural Support (Simplification and Improvement) (Scotland) Regulations (SSI 2022/206)	This instrument removes provisions that prevent advance payments being made for direct payments before a date in a calendar year earlier than 16 October.
Rural Development (Miscellaneous Amendment) (Scotland) Regulations (SSI 2021/33)	This instrument was made under both the “simplify and improve” power and a power in the EU (Withdrawal) Act 2018. Among other things, it makes simplifications and improvements to retained CAP EU legislation pertaining to rural development.
Common Agricultural Policy (Simplifications and Improvements) (Miscellaneous Amendments) (Scotland) Regulations (SSI 2021/9)	The principal amendment is to simplify and improve the operation of the provisions for penalties for voluntary coupled support schemes.
Direct Payments to Farmers (Miscellaneous Amendments) (Scotland) Regulations (SSI 2020/460)	This instrument was made under three powers in the 2020 Act: the “simplify or improve” power in section 2 and the powers in sections 3 and 4. This instrument specifies the manner by which Scottish Ministers will determine the annual financial ceiling which will provide the basis for calculating payments to farmers and crofters in Scotland from 2021 onwards. In addition, it makes amendments to retained EU law governing the direct payment schemes to ensure their continued operability in Scotland and removes provisions from that body of retained EU law which are not relied upon in Scotland.
Common Agricultural Policy (Less Favoured Area Support) (EU Exit) (Scotland) Amendment Regulations (SSI 2020/456)	Several powers were used to make this instrument: the “simplify or improve” power; and the powers in sections 3 and 4 the 2020 Act; and powers in the EU (Withdrawal) Act 2018. It provides the basis for the continuation of the Less Favoured Area Support Scheme (LFASS) from 2021 by amending retained EU law, and corrects a deficiency in that law.
Common Agricultural Policy (Simplifications and Improvements) (Miscellaneous Amendments) (Scotland) Regulations (SSI 2020/349)	This instrument is intended to simplify and improve the operation of the provisions for cross border applications; the Greening rules relating to crop diversification; and inspections that are undertaken for direct payment and rural development schemes.

Recommendation on width of “simplify or improve” power

78. **While aware that the intentions of the administration of the day do not bind any future administration, the Committee is content with the Scottish Government’s assurance that its policy intention remains the same (that the powers will be used to make moderate changes that are predominantly minor in nature and will be used to improve processes rather than to change policy). On that basis, the Committee is content with the width of**

the “simply or improve” aspect of the power.

Power to restate

79. The Bill expands the existing power by adding power to “restate, to any extent”, the CAP legislation.
80. It appears to be modelled very closely on the wording of sections 11 and 12 of the REUL Act, which allow Ministers to restate any secondary retained/assimilated law^{xii}. “Secondary” law in this context covers almost all retained/assimilated law.^{xiii} Accordingly, it appears that the Scottish Ministers already have a power (under the REUL Act) to do what the new power would enable them to do. The Committee asked the Scottish Government about this (below).
81. Turning to the content of the power, when considering the equivalent power in the REUL Act, the DPLRC reported, by majority:

“The Committee:

 - considers that the delegation of the power is acceptable in principle, but has concerns that even minor changes can have a significant policy impact;
 - notes the UK Government’s position that these powers “cannot substantively change the policy effect of legislation” and considers that, in line with the intention, the limits of what constitutes a “restatement” should be further circumscribed on the face of the Bill, by an express requirement that the policy effect must be the same, rather than substantially the same, as the policy effect of the law being restated...^{xiv} ___
82. The references in the second bullet point above are to the UK Government’s statements that the “restate” power in the REUL Act did not allow the function or substance of the legislation to change, nor the introduction of substantive policy change.^{xv}
83. The Committee considered whether the limits of what constitutes a “restatement” should be further circumscribed on the face of the Bill in relation to the present power. However, the Committee considered that a power to restate is a reasonable addition to the powers to simply or improve, particularly in the circumstances of a

^{xii} As noted above, “retained EU law” was renamed “assimilated law” at the end of 2023. The power in section 11 of the REUL Act was to restate retained EU law; the power in section 12 is to restate assimilated law.

^{xiii} “secondary” retained/assimilated legislation is defined in the REUL Act to mean all retained/assimilated legislation except that which is contained in primary legislation; and “primary legislation” means Acts of the UK Parliament, Scottish Parliament or of the other devolved legislatures. Relatively little retained/assimilated law is contained in primary legislation.

^{xiv} Delegated Powers and Law Reform Committee [Report](#) “Legislative Consent Memorandum: delegated powers relevant to Scotland in the Retained EU Law (Revocation and Reform) Bill”, 5th Report, 2023 (Session 6), 16 January 2023, paragraph 83

^{xv} For example in [UK Government Explanatory Notes for the REUL Act](#), paragraphs 51-54.

transition to a new CAP regime, and took into account also that the Scottish Ministers already have the “restate” power in the REUL Act which has not been tied down in this way.

84. A key difference between the proposed “restate” power and its REUL Act the REUL Act power is time limited, expiring on 23 June 2026. The proposed power would not be time limited. The Committee also asked the Scottish Government about this.
85. The Committee’s questions to the Scottish Government in relation to adding both the “restate” and “update” powers were as follows:

Section 19(3) – Question 5

“Section 19 of the Bill amends the “simplify or improve” power by adding on the power (i) to restate and (ii) to update relevant CAP legislation. These extensions to the power appear to be modelled on the restate and update powers in the Retained EU Law (Revocation and Reform) Act 2023 (“REUL Act”). Given that the Scottish Ministers already have power under the REUL Act to restate and update retained EU law, please advise:

- do you consider that the new power will enable the Scottish Ministers to make any restatement or updating that they do not already have power to do under the REUL Act, and if so, what?
- why you consider that a duplicate power is necessary?”

86. The Scottish Government responded:

Section 19(3) – Answer 5

“The Scottish Ministers consider that devolved legislation should make provision in respect of devolved matters, such as agriculture and support for rural communities. This helps ensure proper scrutiny of and accountability in respect of legislation on devolved matters, and defends and supports the devolved settlement.

"The Scottish Government acknowledges that Bill provisions have been modelled on REUL Act powers which, under that Act, may be used in substantive ways that affect policy, or in technical ways that may be necessary to ensure assimilated law continues to operate effectively. Thus, whilst the Scottish Government’s opposition to the REUL Act and commitment to not use REUL Act powers to alter policy remain in place, on a purely technical level its provisions were considered to be a relevant precedent for the development of the Bill and the framing of powers to ensure assimilated law continues to operate effectively.

"Indeed, the Scottish Ministers do not intend to use the REUL Act powers. The powers in the Bill are the powers that Ministers intend to make such changes as might be made under the UK legislation.

"We agree that the powers we seek to enable further modifications of legacy scheme rules do overlap to an extent with the UK REUL Act powers, but that is not for those reasons an argument against taking devolved powers for agriculture. In this policy context, the Scottish Government considers it is preferable to legislate bespoke powers made in and tailored for Scotland, that build on provisions in the Agriculture (Retained EU Law and Data) (Scotland) Act 2020. We would hope that

all members, including those on the DPLR committee, might agree and support such an approach.

"The 'UK' powers are in any event subject to a sunset clause, and the Scottish Ministers do not consider that such a limitation is either necessary or appropriate in respect of the devolved powers in the Bill for the reasons set out above."

87. *Section 19(3) - Question 6*

"The equivalent power in the REUL Act to "restate" is time limited, expiring on 23 June 2026. Why is it considered appropriate that the new power in the Bill should be permanent when the power on which it is modelled is time limited?"

88. *Section 19(3) - Answer 6*

"The Scottish Ministers consider that the powers we are seeking should be permanent for the reasons set out above."

Recommendation on "restate" power

89. **The Committee considers that the Scottish Government's response is helpful in providing an explanation for the apparent duplication of the powers.**

90. **The Committee is content with the "restate" aspect of the new power. The Committee considers that it is acceptable to make this power permanent notwithstanding that the equivalent power in the REUL Bill is time-limited for the reasons given in the Scottish Government's response to the questions on the "simplify or improve" aspect of this power (see paragraphs 72 – 73 above).**

Power to update

91. The Bill also expands the existing power by adding a power to "update": to make modifications to the CAP legislation that Scottish Ministers consider "appropriate to take account of—

- changes in technology; or
- developments in scientific understanding."

92. This wording is identical to the power to update in section 15 of the REUL Act. Again the REUL Act power is already available to the Scottish Ministers and allows the updating of the whole of secondary assimilated law, which includes the CAP legislation. The Committee's question (above) asked about this duplication in relation to both the "restate" and the "update" powers.

93. The DPLR Committee's position in relation to the equivalent power in the REUL Act was, by a majority:

- "the power should be circumscribed by defining more narrowly "technical changes" and "developments in scientific understanding," to align with the UK

Government's intention that the power is to be used only to facilitate technical updates..."

94. The Committee considered whether "changes in technology" and "developments in scientific understanding" in the proposed new power should be defined more narrowly. In considering this, the Committee took into account (similar to above, regarding the "restate" power) that the purpose of this new power is to enable the updating of the "legacy" schemes during the transition from the old to the new CAP regimes; and that the Scottish Government already has the same power to update assimilated law under the REUL Act.
95. For completeness, while the REUL Act "restate" power has an expiry date (as above), the REUL Act "update" power does not. The "update" power in this Bill is similarly not time limited.

Recommendation on "update" power

96. **The Committee is content with the "update" aspect of the power, but expects that, in line with the stated intention behind the REUL Act "update" power on which it is modelled, the Scottish Government will use it only to facilitate technical updates. The Committee would welcome confirmation to this effect from the Scottish Government.**

Adding CMO Regulation

97. The list of legislation that can be amended under the power is expanded to include the CMO Regulation,^{xvi} which is the principal piece of assimilated law on the Common Organisation of the Market in Agricultural Products, and the subordinate legislation that has been made under it.^{xvii}

Recommendation on adding the CMO Regulation

98. **The Committee considers that the addition of the ability to amend the CMO Regulation is acceptable.**

Procedure

99. The original "simplify or improve" power in the 2020 Bill, as introduced, was to be subject to the negative procedure (only). The Session 5 DPLRC suggested that consideration be given instead to making this power subject to a choice of procedure, so that the negative procedure could be used for "housekeeping" matters and the affirmative where there were policy implications.^{xviii} Amendments

xvi Retained EU law [Regulation \(EU\) No 1308/2013](#) of the European Parliament and of the Council of 17 December 2013 (establishing a common organisation of the markets in agricultural products)

xvii The present power can be used to modify any provision of the CMO Regulation. The equivalent power under the 2020 Act could be used to modify only some of the CMO ([articles] 8-21 (on private storage aid), articles 32-28 (on fruit and vegetable producer organisations) and various Parts of the Annexes regarding marketing standards).

were accepted at stage 3 of the Bill to insert a choice of negative or affirmative procedure. This is also known as “either way” procedure.

100. The procedure for the equivalent “restate” power in the REUL Act is also “either way”.^{xix} When considering that power in January 2023, the DPLRC made the following recommendation, by majority:

“The Committee... notes that Scottish Ministers have a choice of the negative or affirmative procedure for instruments made under this power which do not amend primary legislation. The Committee expects Ministers to exercise this discretion in each case with care. The Committee will monitor how this discretion is exercised to ensure that the appropriate level of parliamentary scrutiny is provided”^{xx}.

101. The procedure for the equivalent “update” power in the REUL Act is the negative procedure.^{xxi} When considering that power, the DPLRC made the following recommendation, by majority:

“The Committee considers that... depending on the nature of a particular change in technology or development in scientific understanding, the “updating” of retained/assimilated EU legislation could involve significant policy change for which the affirmative procedure (or indeed primary legislation) would be more appropriate. In the absence of a policy context in which to consider how this power could be used, the Committee considers that the power should be subject to a choice of the negative or affirmative procedure.”

Recommendation in relation to procedure

102. **The Committee considers that “either way” procedure is appropriate.**
103. **The Committee expects Ministers to exercise this discretion in each case with care. The Committee will monitor how this discretion is exercised to ensure that the appropriate level of parliamentary scrutiny is provided.**
104. **The Committee expects that, in line with usual practice, the Scottish Ministers will set out their explanation for the choice of procedure in the Policy Note that accompanies each instrument made under this power.**

Section 20(2): Power to continue or end the operation of relevant CAP legislation

Power conferred on: Scottish Ministers

^{xviii} [DLPRC Stage 1 report on the Agriculture \(Retained EU Law and Data\) \(Scotland\) Bill](#), 6 February 2020, paragraphs 50-52

^{xix} Although in that case, the affirmative procedure must be used if the regulations amend primary legislation. This is not relevant here as none of the CAP legislation is primary legislation as defined in the REUL Act.

^{xx} DPLRC 5th Report, 2023 (Session 6), 16 January 2023

^{xxi} REUL Act Schedule 5, paragraph 7 read with paragraph 5(4).

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative, if not subject to negative

Provision

105. Section 20 amends the power in section 3 of the 2020 Act which enables Scottish Ministers, by regulations, to modify CAP legislation so that it continues to operate in relation to Scotland beyond 2020 (being the point at which EU law stopped applying in the UK). The key changes made by section 20 are:
- making the power permanent (it would otherwise expire on 7 May 2026);
 - changing the parliamentary procedure from affirmative to “either way”;
 - enabling the power to be used to suspend the legislation for a period or cease the application of the legislation altogether (at present the power is only to continue the operation of the legislation).
106. Section 20 also adds the CMO Regulation to the list of legislation that can be modified under this power (as for section 19).

Committee consideration

Width of power

107. The DPM states that the ability to suspend/cease the legislation is “considered necessary in order for the Scottish Ministers to “switch off” CAP rules when they are replaced by future support and become redundant.”^{xxii} ____

108. While the DPM envisages that this power will be used by the present administration to disapply rules as and when they are replaced and become redundant, the power itself is not limited in this way. The Committee asked the Scottish Government:

“Section 20 of the Bill amends section 3 of the 2020 Act (which enables the CAP legislation to be kept going beyond 2020) by adding power to suspend or cease that legislation. The Delegated Powers Memorandum envisages that this power will be used by the present administration to disapply rules as and when they are replaced and become redundant, but the power in section 20 is not limited in this way. Could the power be more narrowly drawn to restrict its use to disapplying CAP rules where they have been replaced by future support and are considered by Ministers to be redundant, in line with the policy intention?”

109. The Scottish Government responded:

“Scottish Ministers consider that a power as amended is highly desirable, given the complexity of the legacy CAP scheme rules, and the corresponding challenge of implementing future support schemes.

“It may be appropriate to cease some current CAP rules either because the applicable scheme has served its purpose and no replacement is necessary, or because it is appropriate to leave a gap between ceasing one scheme and

xxii DPM paragraph 96

commencing another under the powers in the Bill. It may be advantageous to suspend the application of some CAP rules for the purposes of piloting new interventions that may or may not become permanent.

"The Scottish Ministers do not therefore consider that the power should be drawn more narrowly, and note that all exercises of the power will be subject to scrutiny by the Parliament."

Previous use of the existing power

110. The existing power has been used, alongside other powers, to make two sets of regulations to date. Both these SSIs also relied on the "simplify or improve" power (and others), so appear in the table at paragraph 77 above:
- Direct Payments to Farmers (Miscellaneous Amendments) (Scotland) Regulations ([SSI 2020/460](#))
 - Common Agricultural Policy (Less Favoured Area Support) (EU Exit) (Scotland) Amendment Regulations ([SSI 2020/456](#))

Permanence

111. The effect of the present power is similar to that of section 14 of the REUL Act, which is a very broad power to revoke assimilated law without with or without replacing it, but that power is time limited, expiring on 23 June 2026. The Committee also asked similar questions and received similar answers in this regard as in relation to section 19.

Procedure

112. The procedure for the new power is also "either way". The procedure for the original provision (which it is worth noting could extend but not disapply the existing legislation) was affirmative. The reason given in the DPM for downgrading the procedure is that it will enable Scottish Ministers "to take into account the significance and extent of the amendments being proposed which will vary considerably. Moving to 'either way' procedure will also align the scrutiny for section 3 of the 2020 Act with that in section 2 of that Act, where the same considerations apply."
113. The Committee asked the Scottish Government:
- "As regards the parliamentary procedure:
- Would the affirmative procedure be more appropriate given that, in proceeding with this reform by way of a framework bill, Parliament is not given the usual opportunity to scrutinise, up front, the full picture of the new regime; the detail of the new provisions; and to see which provisions will be revoked and/or replaced?
 - Noting the Scottish Government's explanation in the Delegated Powers Memorandum that the significance and extent of the amendments being proposed will vary considerably, is it possible that the more minor of these amendments could be made under the "simplify or improve" power (which is

“either way”) leaving the more significant amendments for which the present power is required to be subject to the affirmative procedure?”

114. The Scottish Government responded:

“If a framework Bill is appropriate, as is the case here for the reasons set out above, then it does not in our view follow that enabling powers in the Bill should for that reason be subject to affirmative procedure.

“The Scottish Ministers agree however that it is appropriate to provide the Scottish Parliament and wider stakeholders with information about the purpose and content of future support policies, and it is for that reason that we intend to prepare statutory rural support plans under the Bill.

“In respect of this particular power, our view is that ‘turning off’ legacy CAP rules will be in most cases a minor and technical exercise of the power for which negative scrutiny is appropriate. Affirmative would be appropriate in those case where the regulations would have a significant effect, and it is for that reason that we consider that an ‘either way’ power is appropriate.”

115. **The Committee is content with the Scottish Ministers’ explanations in response to the Committee’s questions on the width of the power, its permanence and the procedure.**

116. **The Committee finds the power acceptable in principle and is content that it is subject to “either way” procedure.**

117. **The Committee makes the same recommendations here regarding how it expects the choice of procedure to be exercised as in paragraphs 103 and 104 above.**

Section 21(2): Power to modify financial provision in relevant CAP legislation

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative, if not subject to negative

Provision

118. Section 21 amends section 4 of the 2020 Act, which is a power, by regulations, to modify provision in the CAP legislation that relates to the setting or determining of ceilings on the amounts of payments and expenditure; and the reallocation or transfer of amounts or proportions of such ceilings between or among different purposes under the legislation.

119. The changes made by section 21 are:

- making the power permanent (it would otherwise expire on 7 May 2026);
- changing the parliamentary procedure from affirmative to “either way”;

- removing the illustrative list of provisions that the power could be used to amend; and
- including the CMO Regulation in the list of legislation that the power can be used to amend.

Committee consideration

120. The explanation in the DPM for moving from affirmative procedure to “either way” is that this will enable Scottish Ministers “to take into account the significance and extent of the amendments being proposed which will vary considerably. Moving to ‘either way’ procedure will also align the scrutiny for section 4 of the 2020 Act with that in section 2 of that Act, where the same considerations apply.”^{xxiii}

121. The Committee asked the Scottish Ministers about the suggested procedure:

“It appears that Section 21 of the Bill would significantly expand the power in section 4 of the 2020 Act, while downgrading the procedure from affirmative to “either way”.

“The power is relatively wide, allowing modifications to be made to financial ceilings etc. across the whole of the CAP legislation, without any restrictions on what those modifications may do. The existing power has only been exercised twice to date, in both cases in 2020, so it would not appear that the power is frequently used such that retaining the affirmative procedure would take up unnecessary Parliamentary time with multiple instruments.

“As above in relation to the new section 3 power of the 2020 Act, could it be that the more minor of these amendments could be made under the “simplify or improve” power (which is “either way”) leaving the more significant amendments for which the present power is required to be subject to the affirmative procedure?”

122. The Scottish Ministers responded:

“The Committee is right to identify that section 21 effectively expands the power in section 4 of the 2020 Act, but to reassure members, it is for a defined purpose only. The expansion will only cover applicable assimilated law. CMO regulation is the remaining part of the basic CAP legislation which is assimilated law.

“The Scottish Ministers do not consider that section 21 will significantly expand the power. We draw the Committee’s attention to the fact that the list of Articles in subsection (2) is illustrative only. Our view is that the change improves the transparency of the power, which applies to all relevant assimilated law and not just the listed Articles.

“Our intention with the Bill’s measures is to allow for particular regulations to be scrutinised in the manner appropriate to the subject matter of those regulations. In some cases that will mean affirmative procedure. Thus, we have included a range of scrutiny processes in the bill as introduced. We do not share your suggested assessment that changing the scrutiny procedure amounts to a downgrading. We would suggest that flexibility and responding to evidence is a key consideration here

to allow for the appropriate scrutiny of as yet undrafted and unspecified future regulations by future Parliaments.

"We do not consider that the 'simplify or improve' powers will cover all the modifications that might be appropriate under the power in section 2, and that is indeed the reason why a separate power was taken in section 4 of that Act."

123. The existing power has been used twice to date, in making the two SSIs mentioned in relation to the section 20 power above.

124. **The Committee is content with the additional explanation provided by the Scottish Ministers.**

125. **The Committee finds the power acceptable in principle and is content that it is subject to "either way" procedure.**

126. **The Committee makes the same recommendations here regarding how it expects the choice of procedure to be exercised as in paragraphs 103 and 104 above.**

Section 23(2): Public intervention and private storage aid

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative, if not subject to negative

Provision

127. Section 23 amends section 6 of the 2020 Act, which is a power to modify CAP legislation on public intervention and private storage aid ("PIPSA").

128. The key changes made by the Bill are as follows.

- The existing power allows Scottish Ministers suspend, cease, simplify or improve the PIPSA legislation. Section 23 changes this into an unrestricted power to make whatever modifications Scottish Ministers wish to PIPSA legislation.
- The existing power is limited in that it can only be used:
 - (a) to suspend the provisions for a period;
 - (b) to disapply the provisions; or
 - (c) to simplify or improve the operation of the provisions;
- The Bill removes these restrictions.
- Instead the power would contain an illustrative list of what the power can be used for, as follows:

- (a) to alter the operation of the legislation in so far as it has effect in connection with exceptional market conditions (“EMCs”) which are the subject of a declaration under s. 12 of the Bill;^{xxiv}_____
- (b) securing that provisions of the legislation cease to have effect otherwise than in connection with EMCs which are the subject of such a declaration; and
- (c) altering the operation of provisions of the legislation otherwise than in connection with EMCs.

Committee consideration

129. The Committee asked the Scottish Ministers several questions regarding the purpose and clarity of the provision, and how it fits with other powers in the Bill.

Interaction / overlap with other powers in the Bill

130. The Committee asked the Scottish Ministers:

“As the Delegated Powers Memorandum points out at paragraph 107, the public intervention and private storage aid (“PIPSA”) legislation can be modified already under sections 2 to 4 of the 2020 Act as amended by the Bill, because it is part of the relevant CAP legislation. Accordingly there is already power elsewhere in the Bill to simplify, improve, restate, update, continue, suspend, cease and modify the financial provision in relation to PIPSA. The power in section 6 of the 2020 Act, as amended by the Bill, will be in addition to these. What use does the Scottish Government anticipate making of the section 6 power that could not be done under these other powers?

“There appears to be some overlap in particular between the new section 3 power to cease (any) CAP legislation and the power in the new section 6(2)(b) to cease provisions of the PIPSA legislation otherwise than in connection with exceptional market conditions which are the subject of a declaration. What is the difference between these powers intended to be and why is the more specific power in section 6(2)(b) necessary?”

131. Scottish Government responded:

“The Committee is correct that the Bill will modify sections 2 to 4 of the 2020 Act to provide for a power which will include power to modify or restate the PIPSA legislation for the purposes set out there. However, the powers to modify or restate the legislation are for specific and limited purposes. The power provided for in section 23(2) is intended to provide for, in addition to those powers to modify or restate, the making of new policy. As set out in the Delegated Powers Memorandum, these powers are required to ensure that the Scottish Ministers have the power to tailor the operation of these provisions of legislation to provide an appropriate response to events requiring a market intervention, which may not necessarily fall within the scope of the power to modify for the purposes set out in

xxiv An “exceptional market conditions declaration” under s. 12 of the Bill could be made in the event of a severe disturbance in agricultural markets (or a serious threat of such) and would authorise the Scottish Ministers to provide financial support to affected agricultural producers. Section 6 also applies to a declaration which is made under the CMO Regulation articles 219, 220 and 221 (by virtue of new section 6(3A)).

the amended section 2 of the 2020 Act.

"The power in the new section 3 is a power to modify the provisions of the relevant CAP legislation so that it ceases to apply for a period or ceases to have effect in Scotland. The power in the new section 6(1) is simply a power to modify the PIPSA legislation, with a non-exhaustive list of purposes for which the power may be used listed in subsection (2), one of which is that the power may be used to secure that the PIPSA legislation ceases to have effect other than in connection with exceptional market conditions. We accept that there is an element of repetition in the Bill provisions, but the Scottish Ministers consider that even if the new subsection (2)(b) were removed, then the scope of the power in the new section 6(1) of the 2020 Act would remain the same. The Scottish Ministers consider that the new section 6(2) provides clarity as to the type of provision which may be made under the new section 6(1) power and avoids any implication, given section 22(2)(a) of the Agriculture Act 2020 in particular, that these purposes are not intended to be included within the new section 6(1) power."

Policy intention and drafting

132. The Committee asked the Scottish Government the following questions regarding the policy intention and drafting of section 6 and received the following answers:

Question (a)

"The Bill changes section 6(1) from a power which is subject to restrictions to a power which is not subject to any restrictions (subsection (2) currently provides that the Scottish Ministers may only make modifications under this power for listed purposes (a), (b) and (c); whereas new section 6(2) states only that the power includes the power to make provision for listed purposes (a), (b) and (c)). However the Delegated Powers Memorandum is not abundantly clear on this point, particularly as it uses the word "only" in paragraph 110:

"The power to modify the legislation is updated to allow for its use in connection with exceptional market conditions, to provide that the powers are only to be used in connection with exceptional market conditions, or to otherwise modify the operation of the provisions." (emphasis added)

Could clarity be provided on the policy intention in this regard?

Answer (a)

"The policy intention is that the power is not subject to restriction and that the new section 6(2) provides a non-exhaustive list of purposes for which the power in the new section 6(1) may be used."

Question (b)

"Is "otherwise than" in new subsections (2)(b) and (c) intended to act as a restriction on the section 6(1) power, as it does in the equivalent provision for England & Wales in section 22(2)(a) and (b) of the Agriculture Act 2020, and if so, does the drafting achieve this now that section 6(2) has changed from containing restrictions to containing illustrations?"

Answer (b)

"The Scottish Ministers do not intend "otherwise than" to act as a restriction on the section 6(1) power and do not consider that it does. The new subsections (2)(b) and (c) provide examples of the purposes for which the new section 6(1) power may be used. In subsection (2)(b), the "otherwise than" illustrates that the power may be used to secure that the legislation partially ceases to have effect. The new subsection (2) provides that the list of purposes is inclusive, so the new subsection (1) power would also be capable of securing that the provisions cease to have effect for all purposes. We will consider whether any amendments are required to ensure that the provision is sufficiently clear."

Question (c)

"What is the distinction intended to be between "altering the operation of the legislation" in section 6(2)(a) and "altering the operation of the provisions of the legislation" in 6(2)(c)?"

Answer (c)

"There is no distinction intended between "altering the operation of the legislation" in section 6(2)(a) and "altering the operation of the provisions of the legislation" in 6(2)(c). We will consider whether any amendments are required to ensure that the provision is sufficiently clear."

Question (d)

"Sections 6, 7 and 7A of the 2020 Act, as amended/inserted by sections 23, 24 and 25 of the bill, each appear to have the same effect: to confer a wide, general power to modify the legislation in the subject area in question, without any restriction. Of these, only section 6 contains additional detail (in section 6(2)) as to the provision that can be made under it. Could information be provided on why the drafting approach to these three provisions differs?"

Answer (d)

"The amendments in sections 24 and 25 relate to very specific policy areas and powers to give financial support to specific sectors. As explained in the Delegated Powers Memorandum, the Scottish Ministers consider that the provisions provide appropriate flexibility for provision of future support to these sectors taking into account the post EU exit landscape, the Scottish Ministers' EU alignment policy, support provided to the sector elsewhere in Great Britain, and Scottish specific requirements. Schedules 5 and 6 of the Agriculture Act 2020 provide equivalent unconstrained apiculture powers to Welsh Ministers and the Northern Irish Department of Agriculture, Environment and Rural Affairs. The Scottish Ministers were able to provide some additional detail as regards section 23 given experience of PIPSA scheme legislation since EU exit."

133. The original power was already permanent (unlike those in sections 2, 3 and 4 of the 2020 Act, above). The original power is subject to "either way" procedure, and the Bill would not change this.

134. **The Committee is content with the additional explanation provided by the Scottish Ministers.**
135. **The Committee finds the power acceptable in principle and is content that it is subject to “either way” procedure.**
136. **The Committee makes the same recommendations here regarding how it expects the choice of procedure to be exercised as in paragraphs 103 and 104 above.**
137. **The Committee welcomes the Scottish Ministers’ undertaking to consider whether any amendments are required to ensure that the provision is sufficiently clear.**

Section 24: Power to modify CAP legislation on aid for fruit and vegetable producer organisations

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative, if not subject to negative

Provision

138. Section 24 amends section 7 of the 2020 Act, which is a power to modify the CAP legislation on aid for fruit and vegetable producer organisations.
139. The current power is restricted in that Scottish Ministers can only use the power to make modifications that they consider would simplify or improve the operation of the provisions of the legislation.
140. The amendment would remove this requirement, with the result that the power is unrestricted.

Committee consideration

141. The legislation on aid for fruit and vegetable producer organisations is contained in the CMO Regulation and its related delegated legislation. As noted above, the Bill includes the CMO Regulation and related legislation within the definition of relevant CAP legislation. Accordingly, the powers in sections 2 to 4 of the Bill also apply in relation to aid for fruit and vegetable producer organisations.
142. The DPM states that “[t]his amended power although wider in scope than the powers in sections 2 to 4... remains focused on one sector.” ^{xxv}
143. The Committee asked the Scottish Government the same question as in relation to section 23 regarding the interaction of this power with other powers in the Bill and received a similar response.
144. The Committee also asked about the width of the power:

xxv DPM paragraph 115

“The Delegated Powers Memorandum states that “[t]his amended power although wider in scope than the powers in sections 2 to 4... remains focused on one sector” (paragraph 115). Could further explanation be provided for why it is considered that wider powers are appropriate in relation to this particular sector (and in relation to public intervention and private storage aid, and to apiculture) than the rest of the CAP legislation?”

145. The Scottish Ministers responded:

“The Scottish Ministers are not intending to introduce wider powers here for this particular sector and while the power is broad in scope, its application, given it applies to the fruit and vegetable sector specifically and only that sector, will be limited. We will however consider the drafting here further to see what, if any, improvement or tightening might be helpful to avoid others misinterpreting the purpose and effect of the clause.”

146. Again like the power in section 6, the original power in section 7 was already permanent (unlike those in sections 2, 3 and 4 of the 2020 Act, above). The original power is subject to “either way” procedure, and the Bill will not change this.

147. **The Committee is content with the additional explanation provided by the Scottish Ministers.**

148. **The Committee finds the power acceptable in principle and is content that it is subject to “either way” procedure.**

149. **The Committee makes the same recommendations here regarding how it expects the choice of procedure to be exercised as in paragraphs 103 and 104 above.**

150. **The Committee welcomes the Scottish Ministers’ undertaking to consider whether any improvement or tightening in relation to the drafting might be helpful.**

Section 25: Apiculture Power

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative, if not subject to negative

Provision

151. Section 25 introduces a new section into the 2020 Act, section 7A. It gives Scottish Ministers an unrestricted new power to modify the legislation governing apiculture, which is contained in the CMO Regulation^{xxvi} and related delegated legislation.

Committee consideration

xxvi Articles 55-57 and 215

152. The DPM gives the same explanation for this power as in relation to the expanded power immediately above to modify the legislation on fruit and vegetable producer organisations (in section 7 of the 2020 Act).
153. The legislation which could be modified under this power is:
- CMO Regulation article 55 which empowers the Scottish Ministers to develop 3-year programmes for the Scottish apiculture sector with a view to improving general conditions for the production and marketing of apiculture products, in cooperation with representative organisations in the beekeeping field. The programmes can include (for example) technical assistance to beekeepers, measures to support laboratories, measures to support the restocking of hives, and market monitoring.
 - CMO Regulation article 56 which is a delegated power for the Scottish Ministers to make regulations on the avoidance of double funding between apiculture programmes and rural developing programmes, in order to ensure the efficient and effective use of aid for apiculture; and to update the list of measures that the programmes can include (above).
 - CMO Regulation article 57 which is a delegated power for the Scottish Ministers to make regulations relating to the content of apiculture programmes and the content of the studies under article 55(3).
 - CMO Regulation article 215 which empowers the Scottish Ministers to make payments for the protection of apiaries disadvantaged by structural or natural conditions or under economic development programmes, except for those allocated for production or trade.
 - Unspecified delegated legislation.
154. As requested by the Committee the Scottish Ministers have now provided a list of the unspecified delegated legislation in the final point above, which they advise is:
1. Commission Delegated Regulation (EU) 2015/1366 of 11 May 2015 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to aid in the apiculture sector.^{xxvii}_____
 2. Commission Implementing Regulation (EU) 2015/1368 of 6 August 2015 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to aid in the apiculture sector.^{xxviii}_____
155. The Scottish Ministers also provided a list of four EU Exit instruments which amend either the two Regulations listed above or articles 55 to 57 of the CMO Regulation (which, along with article 215, are the articles of the CMO Regulation which the power may, “in particular”, be used to modify).^{xxix}_____

xxvii [Commission Delegated Regulation \(EU\) 2015/1366 \(legislation.gov.uk\)](https://legislation.gov.uk/eu/2015/1366)

xxviii [Commission Implementing Regulation \(EU\) 2015/1368 \(legislation.gov.uk\)](https://legislation.gov.uk/eu/2015/1368)

xxix The Common Organisation of the Markets in Agricultural Products Framework (Miscellaneous Amendments, etc.) (EU Exit) Regulations 2019/821; The Agriculture (Legislative Functions) (EU Exit) (No. 2) Regulations 2019/831; The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments etc.) (EU Exit) (No. 2) Regulations 2019/ 1422; and The Common Agricultural Policy (Cross-Compliance Exemptions and Transitional Regulation)

156. The power to modify the legislation above which contains delegated powers would enable the Scottish Ministers to modify those powers and thereby decide for themselves what power should be delegated to them. This is unusual. However, across the whole range of the CAP legislation there is likely to be a number of similar provisions which cannot be individually brought to the Committee's attention for scrutiny.

157. **The Committee considers, in relation to the apiculture powers, that in light of the response provided by the Scottish Ministers, the key legislation that can be modified under the proposed power has been identified and the Parliament has the information necessary to enable it to decide whether it is content for that legislation to be subject to unrestricted modification under this power.**

158. **The Committee finds the power acceptable in principle and is content that it is subject to "either way" procedure.**

159. **The Committee makes the same recommendations here regarding how it expects the choice of procedure to be exercised as in paragraphs 103 and 104 above.**

Section 26: Code of Practice on Sustainable and Regenerative Agriculture

Power conferred on: Scottish Ministers

Parliamentary procedure: Laid, no procedure

Provision

160. This section places a duty on the Scottish Ministers to prepare and publish a Code of Practice on Sustainable and Regenerative Agriculture. The Code is to contain, among other things:

- an explanation of what the Scottish Ministers are classifying as sustainable and regenerative agriculture,
- the agriculture activities and methods that they consider best practice for sustainable and regenerative agriculture, and
- such other information about sustainable and regenerative agriculture as they consider appropriate.

Committee consideration

161. The code or any revised code must be laid before the Scottish Parliament before being published, and there is also a requirement that Scottish Ministers must, in preparing or reviewing the code, consult such persons as they consider likely to be interested in or affected by it.

162. The Committee is content with the power in principle and that it is not subject to any parliamentary procedure.

Section 27(1): Continuing professional development

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

163. This section enables the Scottish Ministers to make regulations that impose continuing professional development (CPD) requirements on farmers, crofters, land managers or others directly or indirectly connected with farming etc. or the wider rural economy.
164. Subsection (3) sets out a non-exhaustive list of various requirements and other rules that the Scottish Ministers may make provision about, from the imposition of the amount of CPD that a particular category of person (such as farmers) must carry out and as well as exemptions, the types of activity that qualify, who may provide the activity, how it is to be monitored and enforced etc. Compliance with the relevant CPD requirements may be made a condition of certain support schemes.
165. Financial and other assistance for the completion of such CPD requirements is a supportable purpose contained in schedule 1. It is open to the Scottish Ministers to provide for CPD schemes, or aspects of them, to be provided by other persons or organisations (such as agricultural colleges).

Committee consideration

166. The Committee asked the Scottish Government: -

“In relation to this section, the Committee notes that the Government has stated that regulations made under this power will not make provision with significant economic or budgetary consequences. However, there is nothing on the face of the Bill which would prevent the imposition of an onerous CPD regime which did have such consequences. Has the Government considered how this power might be circumscribed so that it better reflects the stated intention, perhaps by means of an upper limit on the number of CPD hours that can be imposed in a given timeframe?”

167. The Scottish Ministers respond as follows:

“The DPLR committee’s wider interest in the policy intent of the bill and its measures is appreciated. You will of course be aware that 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.

“Requiring and enabling CPD is something that the agricultural industry and other organisations are keen for the Bill to provide for, hence the inclusion of this section in the Bill and our intention to set out in regulations how this will work in practice.

The extent of CPD will be co-designed with relevant stakeholders to ensure it is proportionate and appropriate and thereafter be provided for in relevant regulations. We will of course continue to listen to the Stage 1 evidence on this, and consider carefully any views from the RAI committee in its Stage 1 report.

"There is currently an informal consultation being undertaken on a wide range of topics falling with the Agricultural Knowledge and Innovation System in Tier 4 of the Vision of Agriculture Support Package post-2025, which includes CPD. The evidence gained during this stakeholder engagement will, in addition to the views received as part of the parliamentary bill process, help inform policy development in respect of (in addition to other knowledge and innovation matters) CPD and a CPD regime design."

168. **The Committee notes that Scottish Ministers are not required to introduce a CPD scheme and, if introduced, any scheme will be co-designed with relevant stakeholders to ensure that it is proportionate.**

169. **The Committee therefore finds the power acceptable in principle and is content that it is subject to the negative procedure.**

Section 28(2): Prescribing and regulating means of identifying animals

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Laid, no procedure

Provision

170. This section amends section 8 of the Animal Health Act 1981 to allow for the Scottish Ministers to make provision generally in relation to the identification of animals (rather than just the "marking" of animals, as is currently the case).

Committee consideration

171. The Explanatory Notes explain that this reflects that identification of animals is now broader than the "marking" of animals or the application of identification devices. In particular, it may involve the keeping of passports, records and databases and the procedures for scanning identification devices and this amendment ensures provision can be made for that. The DPM explains that the existing powers in section 8 of the 1981 Act, and most of the other powers to make orders under the 1981 Act, are not subject to parliamentary procedure. The amended power will similarly not be subject to parliamentary procedure.

172. The Committee is content with the explanation offered in the DPM.

173. **The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

Section 31(1): Ancillary provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative, if not subject to negative

174. Section 31 enables the Scottish Ministers, by regulations, to make incidental, supplementary, consequential, transitional, transitory or savings provision for the purposes of, in connection with, or for giving full effect to the Bill.

Committee consideration

175. This is a standard ancillary power. It is important to be aware and keep in mind when considering the powers in this Bill that, by virtue of section 30(1), every power in the Bill except for the commencement provision includes power to make incidental, supplemental, consequential, transitional, transitory and saving provision. This significantly increases the width of the provision that can be made under each power. This is separate to, and addition to, the more standard free-standing ancillary power in clause 31(1)).

176. **The Committee: -**

- **finds the power acceptable in principle and is content with the choice of procedure;**
- **notes the position regarding the operation of section 30(1).**

Section 33(2): Commencement

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Laid, no procedure

Provision

177. Section 33 sets out when the provisions of the Bill will come into force (i.e. begin to have effect). Sections 30, 31, 32 and 34 will come into force on the day after Royal Assent. However, for the most part, commencement will take place on the day appointed by the Scottish Ministers in regulations. Regulations under this section will be laid before the Scottish Parliament but will not otherwise be subject to any parliamentary procedure (see section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010).

Committee consideration

178. This is a standard commencement power.

179. **The Committee finds the power acceptable in principle and is content that it**

will not be subject to any parliamentary procedure.

