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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 (as amended at Stage 2)



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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 meeting on 11 June 2024, the Delegated Powers and Law Reform Committee ("the Committee") considered the delegated powers contained in the Agriculture and Rural Communities (Scotland) Bill following amendments made at Stage 2.
2. This Scottish Government Bill was introduced on 28 September 2023. The lead committee was the Rural Affairs, Land Reform, and Islands Committee.
3. 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.

Delegated Powers

4. The Bill confers nineteen powers to make subordinate legislation on the Scottish Ministers. The Committee considered the delegated powers in the Bill at Stage 1 at its meetings on 19 December 2023 and 23 January 2024 and issued its [report](#) on 26 January 2024.
5. The Bill completed Stage 2 on 15 May 2024. The Scottish Government has lodged a [Supplementary Delegated Powers Memorandum](#) (“sDPM”) covering the delegated powers in the Bill as amended at Stage 2. One new power has been added and seven powers have been revised.
6. The Committee is required by Rule 9.7.9(b) of the Standing Orders to consider and report to the Parliament on new or substantially altered delegated powers after Stage 2.

Review of powers

Section 1: Overarching objectives of agricultural policy

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or new power: New

Provision

7. Section 1 sets out the overarching objectives of agricultural policy for the purposes of the Bill. These objectives set the overall direction of agricultural policy and will form the basis for determining, among other things, the strategic priorities of the Scottish Ministers' provision of support in each 5-year rural support plan. It follows that the objectives are fundamental to the Bill and changing them would likely have significant implications for the agricultural sector in Scotland.
8. Following amendment of the Bill at Stage 2, section 1(2) was introduced, which provides for the Scottish Ministers to be able to amend the overarching objectives by regulations subject to the affirmative procedure.

Committee consideration

9. The Bill has therefore been amended to include a significant Henry VIII power, which is capable of being exercised in a way which could shift the direction of agricultural policy to a significant degree.
10. The sDPM explains that this power "will provide flexibility that allows the Scottish Ministers to ensure that those objectives stay aligned with future Scottish agricultural policy needs. This ensures that the section 1(1) objectives can remain relevant over time."
11. Although the power is subject to the affirmative procedure and will therefore require the approval of Parliament, the Committee notes that the power goes to the fundamental purpose of the Bill and could be used to effect significant policy change. This could result in the principles which underpin the Bill being changed after the Parliament has approved them (should the Bill be passed). As such, the Committee agreed to draw this power to the attention of the Parliament.
12. Given the breadth and significance of this power, the Committee would have expected more detailed justification for its delegation to be set out in the sDPM.

13. The Committee:

- notes that this power will allow the Scottish Ministers to make potentially fundamental changes to the Act which will result from the Bill by subordinate legislation; and

- **draws this power to the attention of the Parliament.**

Section 9: power to cap support and assistance

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or new power: Revised

Provision

14. Section 9(1) allows the Scottish Ministers to make provision by way of regulations to limit or progressively reduce the amount of support or relevant assistance which a person may receive.

Committee consideration

15. In its Stage 1 Report, the majority of the Committee expressed concern about how this power might be used by future administrations and recommended that the procedure be upgraded to the affirmative procedure. The Bill has been amended at Stage 2 to give effect to the Committee's recommendation and now provides that regulations made under section 9(1) will be subject to the affirmative procedure.

16. **The Committee welcomes the amendment to the Bill.**

Section 10: 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

Revised or new: Revised

Provision

17. This section gives the Scottish Ministers the power to make regulations concerning the circumstances in which support may be refused where the Scottish Ministers consider that it would not be in the public interest for the potential recipient to receive it. 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.

Committee consideration

18. The Committee was content with this power at Stage 1. The power itself has not changed, however, the Bill was amended at Stage 2 to add a consultation requirement.

- 19. The Committee is content that the exercise of this power will now be subject to a consultation requirement.**

Section 13: 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

Revised or new: Revised

Provision

20. Section 13(1) enables the Scottish Ministers to make regulations about the provision of support. This power provides the basis for the creation of the new payment framework which will replace the CAP rules. 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.

Committee consideration

21. As introduced, section 13(3) required the Scottish Ministers to consult with such persons as they consider “appropriate”. Following amendment at Stage 2, section 13(3) now requires the Scottish Ministers to consult with such persons as they consider “likely to be interested in, or affected by” the provisions of section 13.
22. No changes have been made to the substantive power and therefore the comments made by the Committee in its Stage 1 Report remain unchanged.

- 23. The Committee notes the minor adjustment to the consultation requirement.**

Section 14: Eligibility criteria for 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

Revised or new: Revised

Provision

24. Section 14 elaborates on the type of provision that may be made in regulations under section 13. It does not represent a power to make regulations in its own right.
25. This section clarifies that eligibility criteria for support schemes may be set by

reference to a broad range of things – from the activities in question, how they are carried out, the land (or the location of land) on which activities are conducted etc. to the applicant's personal circumstances (such as a person starting a new farming business).

26. Section 14(1)(g) of the Bill was added at Stage 2 and sets out that the Scottish Ministers may, by regulations under section 13, make provision for, or in connection with, criteria for support by reference to the ability of grazing committees and co-operatives to claim support as a collective for joint projects separate to individual support.

Committee consideration

27. The Committee's Stage 1 Report did not consider section 14 because it does not represent a delegated power in its own right. Rather, it elaborates on the sort of provision which can be made under section 13.
28. New sub-paragraph (g) simply adds to criteria which were already listed in section 14. Those criteria were illustrative and not exhaustive.
29. No changes have been made to the substantive power in section 13 and therefore the comments made by the Committee in its Stage 1 Report regarding that power remain unchanged.

30. **The Committee notes the minor adjustment to section 14.**

Section 15: Payment entitlements

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

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

Revised or new: Revised

Provision

31. This section elaborates on the type of provision that the Scottish Ministers may make in relation to payment entitlements under section 13. It does not represent a power to make regulations in its own right.
32. Section 15(1) sets out several key aspects of payment entitlements about which regulations may be made.
33. Section 15(1)(f) of the Bill as amended at Stage 2 sets out that the Scottish Ministers – by regulations under section 13 – may in particular make provision for, or in connection with, the surrender of payment entitlements to, or the reclamation or cancelling of payment entitlements by, the Scottish Ministers.

Committee consideration

34. The Committee's Stage 1 Report does not include consideration of section 15 because it does not represent a delegated power in its own right. Rather, it elaborates on the sort of provision which can be made under section 13.
35. New sub-paragraph (g) simply adds to criteria which were already listed in section 15. Those criteria were illustrative and not exhaustive.
36. No changes have been made to the substantive power in section 13 and therefore the comments made by the Committee in its Stage 1 Report regarding that power remain unchanged.

37. The Committee notes the minor adjustment to section 15.

Section 18: Processing of information

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Revised or new: Revised

Provision

38. Section 18(1) of the Bill allows the Scottish Ministers to make regulations about the processing of information for and in connection with the provision of support (under the Bill or otherwise), and the carrying out of functions in relation to continuing professional development activities under the Bill.

Committee consideration

39. Section 18(3A) of the Bill as amended at Stage 2 clarifies how certain duties or powers to disclose or use information that are created under regulations made using the section 18(1) enabling power can operate with respect to disclosure of information that would contravene data protection legislation.

40. The Committee notes the minor adjustment to section 18.

Section 27: Continuing professional development

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Revised or new: Revised

Provision

41. 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.

Committee consideration

42. The Committee was content with this power at Stage 1. Following amendment of the Bill at Stage 2, the list of persons in respect of whom continuing professional development regulations can be made has been extended to include persons who work in agriculture (whether as employees or otherwise). Subsection (3)(e) is also adjusted to mention that a person providing CPD activities may be required to have particular skills or qualifications.

43. **The Committee notes the minor adjustment to section 27.**

