

Scottish Affairs Committee

Oral evidence: [The future of Scottish agriculture post Brexit](#), HC 1637

Tuesday 30 October 2018

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Members present: Pete Wishart (Chair); Deidre Brock; David Duguid; Hugh Gaffney; Kirstene Hair; Christine Jardine; Ged Killen; John Lamont; Danielle Rowley; Tommy Sheppard; Ross Thomson.

Questions 1 - 92

Witnesses

[I](#): Vicki Swales, RSPB/Scottish Environment LINK, John Kinnaird, National Council of Rural Advisers, Jonnie Hall, National Farmers Union Scotland, and Russell Smith, Scottish Crofting Federation.

[II](#): Fergus Ewing MSP, Cabinet Secretary for the Rural Economy.

Written evidence from witnesses:

– [Add names of witnesses and hyperlink to submissions]

Examination of witnesses

Witnesses: Vicki Swales, John Kinnaird, Jonnie Hall and Russell Smith.

Q1 **Chair:** If it's okay with you, we will start early, just to make sure we maximise the time available with you fine gentlemen and lady today. Thank you very much for attending this session of the Scottish Affairs Committee inquiry into agriculture in Scotland. Just for the record, please say who you are and anything you wish to say by way of a short introductory statement. We'll go, as is traditional, from left to right, which means we start with you, Mr Kinnaird.

John Kinnaird: My name is John Kinnaird. I am a practising farmer, part of a family partnership dealing in cereals and suckler cows, suckler beef, finishing everything on farm. I am also a member of the National Council of Rural Advisers. I was chair of the sustainability part of the champions for "A Future Strategy for Scottish Agriculture". I also chaired reviews of the appeals process in Scotland and of veterinary surveillance. And a long time ago I was president of NFU Scotland.

Jonnie Hall: My name is Jonnie Hall. I am the director of policy with NFU Scotland. In that role, I have responsibility for a range of policy issues that we pursue, but right now my life seems to be dominated by Brexit-related issues and, as part of that, the Agriculture Bill that we are considering today.

Vicki Swales: I am Vicki Swales. I'm head of land use policy for RSPB Scotland, but I am here today representing Scottish Environment LINK, which is the umbrella organisation for environmental NGOs in Scotland, and we are very much engaged in issues about agriculture and the environment, climate change, biodiversity and so on.

Russell Smith: I am Russell Smith. I'm the chair of the Scottish Crofting Federation and a crofter in Bonar Bridge in east Sutherland. The point of our organisation is to promote crofting and to look after crofters, because crofting has proved very successful in the last 100-odd years at keeping population in remote rural areas, so it deserves support.

Q2 **Chair:** Thank you all very much for being so concise. Let's start with the Agriculture Bill. Mr Hall, you gave evidence the other day on the Agriculture Bill, didn't you?

Jonnie Hall: I did indeed—to the Public Bill Committee.

Q3 **Chair:** Some of these questions may be familiar to you, so we'll start with you. Obviously, the Scottish Government have declined to accept the very kind offer from the UK Government to take powers that have been accepted by Wales and Northern Ireland. Would you like to see the Scottish Government take the powers available? We'll start with you, Mr Hall, and go along the rest of the panel.



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Jonnie Hall: I think NFU Scotland and myself as an individual are already very much on record as saying that yes, the Scottish Government do need to establish powers so that Scottish Ministers can, fundamentally, develop and deliver an appropriate agricultural policy for Scotland, in a devolved capacity. Whether they use the vehicle of the Agriculture Bill here in Westminster or choose to step aside from that and use a Scottish agricultural Bill through the Scottish Parliament is clearly within their gift, and rightly so. Nevertheless, the concern of Scottish farmers and crofters is that at this moment in time the Agriculture Bill sits here in Westminster and the Scottish Government have declined to take a schedule within that Bill, as per the Welsh Assembly Government and the Northern Irish, and therefore, without anything clear coming from the Scottish Government themselves as to what they will do as an alternative approach, that is giving significant cause for concern.

We are clear in our own minds that agricultural policy has to remain devolved as it is today. We all understand that, under the common agricultural policy, there are the regulations that are commonly applied across that, but nevertheless, within the UK there are four clear settlements of the CAP and how it is implemented and operated across the United Kingdom. We are absolutely clear in our minds that Scottish agriculture needs a Scottish agricultural policy. Whether the Scottish Government utilise the Bill under consideration now and include a schedule that will enable Scottish Ministers to move away from the CAP after the implementation period of 2019-20, or whether they use their own Scottish Bill, they must do it with more urgency than is currently the situation. I suspect that your inquiry is not about finding criticism with another Government; it is about finding the right way forward for Scottish agriculture.

Q4 **Chair:** Just a couple of things on that—I will invite the other panellists to come in in a minute. There is no imperative for a Scottish Bill—I am referring to some of the evidence that was given to the Agriculture Bill Committee, because I think that Mr George Burgess from the Scottish Government said that there was no burning requirement for a Bill to be put forward, because the continuity Bill, or provisions in the Scottish Parliament's Bill, will cover that.

Jonnie Hall: The continuity Bill and withdrawal arrangements will secure payments for Scottish farmers and crofters in 2019, and until December 2020 and the end of the proposed implementation period, but that does not allow us to adjust or change the common agricultural policy rules in any way. It allows us to continue with arrangements as they currently exist—that is clearly the view of the Scottish Government, and I have had conversations with them in that respect. In Scotland we are after the opportunity to move out of the shadow—indeed, what some would describe as the straitjacket—of the common agricultural policy, and establish a new approach in Scotland that enables it to be more tailored to the needs of Scotland. We must deliver the outcomes that Scotland requires, not only for food production, but for safeguarding animal health

and welfare standards, and managing and improving what is a fantastic environment.

Vicki Swales: To echo what Jonnie said, we feel that Scotland needs its own legislation to enact a new rural policy from 2024, which is what the Scottish Government have signalled they want to bring forward. We need legislation for Scotland made by Scotland, given that agriculture is a devolved competence. Yes, we understand that the Scottish Government feel they currently have the necessary power in the interim to make the payments they need to make, but I support what Jonnie has just said: it is becoming increasingly urgent that the Scottish Government set out their intentions and aspirations for that new rural policy. The “Stability and Simplicity” consultation that took place was very much about short-term transitional measures, and it does not say where we are trying to get to. It is very difficult to make any plans in a transitional phase if you don’t know what end point you are trying to get to.

Obviously, Wales has asked for a schedule in the Bill to deal with what we understand are those short-term issues. Wales will also bring forward its own Welsh legislation in due course to take forward the proposals currently under consultation. Agricultural policy could potentially look different in the different parts of the UK. I see no reason why at this point Scotland should necessarily mirror the Welsh schedule, or why the English and Welsh schedules should be the same. They each need to construct what they require to deliver their own policies.

John Kinnaird: I think everyone would like clarity, but at this stage it is not going to happen. We have to understand that there is a huge difference between the requirements of Scottish agriculture, farmers and crofters, and the requirements and processes south of the border in England, and sometimes in Wales and Northern Ireland. In “A Future Strategy for Scottish Agriculture”, the champions identified very quickly that one size does not fit all. In other words, what is right for one farm is not right for another, even within Scotland. You put that across the UK, and it just spins out even more. Yes, we would like some clarity. I believe that there is an element of clarity from the Scottish Government just now up to 2024. We were clear in our report that this should be done with consultation on any changes that will be required, and that will make farming and the rural economy more progressive and resilient going forward.

If you look at the CAP in its present form, yes, it does deliver money into the rural economy. Farmers are good at one thing, and I presume that crofters will be the same: when we get money, we can certainly spend it, and we tend to spend it in the local area. Farming is very important—crofting is very important—to the rural communities, but the current CAP has become a bit of a dependency. It is inefficient and it leads to inequality. That is what has to be addressed. My biggest concern is that we rush into this and do not get the policies that are right. The policies that are right for Scotland should be determined in Scotland—they should not be determined in the UK. That is my personal opinion, because



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farming is completely different in Scotland, England, Wales and Northern Ireland. There are fundamental differences that need to be addressed and I do not believe that the Bill addresses them at all.

Chair: You have been teed up perfectly, Mr Smith.

Russell Smith: I just want to agree with my colleagues. You can see the case for a UK framework for agriculture in general, but as people have said, the farming in Scotland is different from the farming in England, and therefore needs its own policy that needs to be designed in Scotland and be specific to Scotland. That may lead to all sorts of things such as redistribution within Scotland, which we would like to see. There are aspects that are required in Scotland, however, such as less favoured area stuff and maybe headage payments in a limited way, which might not be necessary in England. We think that the policy should be designed in Scotland. How that is implemented legally, I am not too bothered, but it must be a Scottish decision for Scotland.

Q5 **Chair:** To clarify for us, to make sure that we are sure about what we are talking about, if the Scottish Government accepted the powers that were on offer in the Bill, that would resolve only issues to do with payments. It would not require them to accept any of the other provisions in the Bill. I know there are other issues that we will explore that are reserved and that cover particular areas, but if they accepted the powers it would mean only that there would be a system in place where payments could be made to farmers. Is that roughly right?

Jonnie Hall: That would be the case anyway, because of the continuity processes for 2019 and 2020. Thereafter, that could continue, but that would mean working within the exact same situation that we have under the common agricultural policy today, because you cannot adjust—

Q6 **Chair:** What does it do? What does it fundamentally change if the Scottish Government were to go along with what the Welsh and—

Jonnie Hall: It means that the Scottish Government would be stuck with the very rigid nature of the common agricultural policy, so the payments would still very much be based on the basic payment scheme, which would predominantly be an area-based payment whereby occupation of land is almost sufficient to unlock a payment. There is an appetite—I think John Kinnaird, Vicki and Russell would probably agree—for moving away from a system of support that is predominantly based on areas of land alone. As John Kinnaird said, that has by and large created inertia within Scottish agriculture. It has not fuelled innovation or productivity and it has done little or nothing for environmental delivery.

Basically, we are looking for a new settlement, if you like, of how we support farmers and crofters so they can continue to deliver food products, which will be vital if Scottish food and drink is to grow from its current £14.5 billion to £30 billion by 2030, which is the Scottish Government's target, and which at the same time will deliver on all sorts of other requirements in terms of driving the rural economy, underpinning rural communities and delivering for the environment.



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Q7 Deidre Brock: I declare an interest as someone who is sitting on the Agriculture Bill Committee at the moment. I want to ask about your views on the House of Lords Delegated Powers and Regulatory Reform Committee's report on the Bill, which was pretty scathing. I wonder how that fits, Mr Hall, because you are claiming that things will not be able to change.

"Stability and Simplicity" is the Scottish Government's paper—I think the consultation on it is over now. The Cabinet Secretary is considering it and taking into account those views plus the views of the National Council of Rural Advisers and the rural champions. Do you not think, given that the Agriculture Bill has already attracted a great deal of criticism, and given that payments aren't affected, that it is best to take time to make sure the legislation is good and fits the needs of Scotland's rural communities?

Jonnie Hall: I agree that time should be taken, but at the same time I would also argue that farmers and crofters are absolutely begging for a degree of certainty and clarity about where policy is going to go next so that they can work—

Q8 Deidre Brock: But isn't it best that we make good policy in consultation with everyone in these communities? I am seeing nodding from Mr Kinnaird.

Jonnie Hall: Yes, but this Bill is not about policy; it's about power. It's about enabling powers either by the Secretary of State or by Ministers within devolved Administrations, if Scotland so wished to join, as it is for the Welsh and the Northern Irish. It is about powers. It doesn't set out policy. What we want is a situation whereby a Bill, whether this Bill in Westminster or a Bill going through the Scottish Parliament, enables Scottish Ministers to take Scottish decisions about what is right for Scottish agriculture. That arguably does need to take time, but at the same time farmers and crofters, our members, are asking us every single day, "What is going to happen beyond 2020 and beyond 2022?" Where is the longer-term vision? Farming and crofting is a long-term game. It takes years and years. Decisions made today might not see a return for some time to come. What sort of operating environment will we find ourselves in? And there are all sorts of other unknowns at this moment in time, including things like trading arrangements that the UK might find itself with and things in relation to labour.

Q9 Deidre Brock: Indeed, and given those unknowns, shouldn't we be taking our time a little bit and not rushing into things in the way that this Bill proposes? That's my point.

Chair: We'll leave that there. I know Ms Swales was desperate to come in. Then we'll go straight to Kirstene.

Vicki Swales: This is about the Scottish Government getting on the front foot in terms of policy. It's less about this Bill or a Scottish piece of legislation, but about setting out the policy direction it wants to go in. We have had two years now of discussions, of agriculture champions, of Griggs's greening group, of the National Council of Rural Advisers, and there is a great deal of consistency in many of those reviews and analyses



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coming forward, which say what many of us would like to see the future looking like. Yes, there will be differences when you get down to the detail, but what we are missing is the direction of travel. There is a real danger that if that isn't set soon, at least in broad terms, we are going to waste the period from 2021 to 2024 in not being able to put in place the appropriate transition arrangements, because I think we all agree that change from 2024 is required. We need to work towards that and put the right measures in place.

Q10 Kirstene Hair: I want to clarify just a couple of points. You are all suggesting, from the initial question, that if there was a Scottish schedule in this Bill, it would not restrict the Scottish Government from setting its own policy around farming. That's the first point I want to ask about. Secondly, because we don't have anything in the Scottish Parliament's Programme for Government around agriculture, if the Scottish Government continue to be unwilling to agree to part of the Bill, would you like to see the Scottish Government create a schedule to use as some sort of emergency if nothing in the Scottish Parliament is passed by the exit date? Or would you accept the uncertainty in that instance? I gather that a lot of your members have fed back to you that they are quite concerned about this level of uncertainty.

Jonnie Hall: Clearly, any schedule that comes into the Agriculture Bill here in Westminster that enabled Scottish Ministers to take decisions about Scottish agriculture policy in the future must be tailored to Scotland's specific needs. It should not be a cut-and-paste of the Welsh schedule or anything like that. What it should contain needs to be very clearly thought out.

If the Scottish Government choose not to do that—it has to be the Scottish Government's decision as to whether to do it or not—then clearly we will very quickly say, "How are you going to put in place a Scottish agriculture Bill through the Scottish Parliament?" There is nothing in the Programme for Government for 2018-19, so I anticipate that the parliamentary time would probably have to be found from autumn 2019 onwards, with a pretty quick legislative process to then get it in place for maybe December 2020.

The continuity issues are reasonably clear, in that payments, as I said earlier, will continue to 2019, 2020 under the current CAP. But if, as I think the panel have tried to express, we wanted to move to a new support settlement beyond the CAP, we would have to have a legal framework to do so. Scottish Ministers will have to have power from somewhere, either through this Bill, through a schedule, or through a Scottish Bill in the Scottish Parliament. But at the moment we have no clarity or certainty on what that might be or when that might come forward.

John Kinnaird: As a practising farmer very much at the sharp end, I would disagree with quite a bit of what Jonnie has said. Yes, we want certainty and, yes, we want it as soon as possible, but at the moment I would far rather take more time to get the policy correct than get it wrong



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and have to come back to change what quite frankly is a mess. It is a mess at the moment, so let us not make the same mistakes twice. Let us look at things holistically.

The major thing that is required within Scottish farming—I hold my hand up to this as well—is a change of mindset. That applies to Scottish farmers, crofters, civil servants, Government and all the way through—it is a mindset change. This is an opportunity as much as it is a challenge. Yes, we need the legal framework, but if the legal framework is not correct, why should we ask our Government to sign up to it? If it is correct, then yes, but I am not sure it is at that stage yet, by a long, long way.

Yes, there is an element of certainty and security at the moment, but that will run out in 2024. That is why it is important, I believe, that we should encourage the Scottish Government to get around the table with all stakeholders to look at getting a policy that is fit for the 21st century. It is not something that takes the current powers under the CAP, sits them in Westminster and shovels them out. That perhaps gives Secretaries of State more power than they have currently, and that is the danger that I see in the long term. It is not just about getting the legal framework in place, but about what powers are left with the Secretary of State. You can move on to the likes of the amber box and LFASS—less favoured area—payments. That is critical to Scotland, not less so to England.

Russell Smith: Yes, some sort of certainty would be nice. Whatever legal framework Parliaments or draftsmen can come up with is fine, but we need to start agreeing on what will happen later on. For most of our members, they are just carrying on, because they do not know what else to do—there is no guidance and no steer. We hope—assume—that the Scottish Government will come back with the results of their consultation, and that will be the start of this discussion that will take us through to the new system.

Vicki Swales: The timing of this is critical, though. I would concur with Jonnie that, whichever way it is done, we actually need to get on to do the doing, as it were. If you think about the time required to implement new schemes, to introduce IT systems, to communicate that to farmers and businesses what is coming or to equip the civil service to be able to deliver, it is a huge undertaking. If we are to move to a new system from 2024—we would support that, because Scottish Environment LINK wants a new framing of rural policy and support for farming and land management—there is a huge amount of work to be done, so we need the powers and duties now in legislation to be able to get on to agree where it is we are heading in future. Then we can do the necessary in terms of administration and everything else. That is hugely pressing. The Scottish Government do not have the best track record for implementing previous CAP reforms in that regard.

Q11 **Kirstene Hair:** I have one final point to make. One thing I can take from that is that the Scottish Government could absolutely go ahead to create policy, even though—the initial point that I made—that would be separate to having a schedule in the Bill. You all mentioned—or, Mr Kinnaird, you



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did—that you would rather wait and have time to get the policy correct. At the start, however, we heard that the agriculture champions and the programme that you yourself are involved with—the National Council of Rural Advisers—as well as many other policy groups have consulted to try to bring together what they believe Scottish agriculture should look like in future. Indeed, I have read through a number of those reports. Do you not believe that all the information has been collated and is there, and that what we actually need is for policy to come through the Scottish Government so that we have enough time for parliamentarians to scrutinise it, to ensure that we have the best possible agricultural policy for Scotland post Brexit?

John Kinnaird: I wholeheartedly agree with that. Equally, what was key in the champions report was that this is in consultation. We have set the stepping stones in place. It is now up to Government and all bodies to come together to look at the right way to take this forward, and not to look at farming as one and at environment as another. If I asked around this table, “What do you understand by looking after the environment?”, I guarantee I would get a different answer from everyone. It is about total policy—it should not be one in isolation from the other. As a farmer, I would not survive if I did not look after the environment, and it will be exactly the same for Russell.

We have to look at this together. It is not just about producing food. You’ve got timber, forestry and tourism—it is all interlinked. Something we picked up at the National Council of Rural Advisers was how important those things are. The output from rural communities is almost equal to the total output from Glasgow and Edinburgh combined. What rural communities contribute to the Scottish economy is considerable, and what agriculture adds to that rural economy is equally considerable. As Jonnie said, it is important looking forward that we add value further down the food chain to Scotland’s food and drink. Exports are very important and we must not lose sight of that.

Jonnie Hall: We have had the CAP for 45 years, and we will continue with it for at least another two or three. We are looking at 40 or 50 years of the CAP having a massive influence on Scottish agriculture and what we do, but it has not done Scottish agriculture any great favours. It has created a culture of support dependency in many sectors and businesses, as John and the agricultural champions have alluded to. It has incentivised inertia, in many senses; it has stifled innovation and prevented new entrants. It has done little or nothing for the environment. Here is an opportunity. I no longer view Brexit as a fundamental challenge so therefore we have to change agricultural policy; I view Brexit as a catalyst for change, but clearly change has to be managed rather than chaotic—we use that phrase all the time. We have to start that process of change now. “Stability and Simplicity”—the Scottish Government’s consultation—is good up to a point, but we need to break the oxymoron of “stabilised change”. We need to move away from what we currently have and build and develop a system that is fit for Scotland’s needs in the future, and that has to start now.

Q12 **Chair:** Would be it advisable to wait until the consultation has concluded,



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find out what the feedback is and what people are saying they want, and then design a piece of legislation based on that?

Jonnie Hall: The consultation concluded in mid-August, and there has been no feedback on it from the Scottish Government to date.

Vicki Swales: On the back of that, the Scottish Government said that the next step would be to set up a simplification taskforce to consider changes that could be made by tweaking existing schemes in the short term. LINK's recommendation is that the Scottish Government have a lot of what they need—that is in these different reports and the consultation results—and they should set up something like a future farm support taskforce, bringing the best brains together to engage with stakeholders and civil society. We did some polling of the public so we know what they feel about the future. They would like to see farmers supported for delivering wildlife, a clean environment, tackling climate change and so on. We have all that; we need to get on and work together to come up with a policy for the future.

Q13 **John Lamont:** Before I ask my substantive question, let me ask you, Mr Hall, about something you said. You said that it is the Scottish Government's decision whether to ask for the Agriculture Bill to be amended or for a schedule to be included that would apply to Scotland. Is that right?

Jonnie Hall: I think that should be the case. In my conversations with DEFRA and the Scottish Secretary, they say that the offer is on the table but that it is up to the Scottish Government to accept it.

Q14 **John Lamont:** There are 11 of us round this table who represent Scottish constituencies, some of us with significant agricultural interests, and we are very concerned about the delay and uncertainty. To deal with that, would it not be open to us as MPs to table that amendment and ensure that farmers in our constituencies have the certainty they need?

Jonnie Hall: I would disagree. The Scottish Government will have to utilise the powers in any schedule, and develop and implement policy on that, because it would be a devolved matter. It should therefore be in the gift of the Scottish Government.

Q15 **John Lamont:** It is devolved in Wales, but the Agriculture Bill is still addressing those issues to give certainty to farmers moving forward.

Jonnie Hall: But it will be Welsh Ministers, not UK Ministers, who will utilise those powers.

Russell Smith: And is there any more certainty in England or Wales?

Q16 **John Lamont:** There is more certainty than what we currently have in Scotland, because there is no legislation in Scotland to deal with payments and farming support after Brexit. I am just challenging the point that this is not up to the Scottish Government—they can have a view, but ultimately our job is to get the best outcome for our farmers.



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Jonnie Hall: I would contend with a lot of vigour that agriculture is currently devolved, and that it should be absolutely devolved.

- Q17 **John Lamont:** Nobody is disputing that, Mr Hall, but when trying to get the best outcomes for our farmers, the issue is whether, if the Scottish Government are refusing to deliver that, there is an opportunity for 11 of us round this table—and, indeed, for other Members of Parliament—to address that uncertainty by tabling an amendment ourselves. That was the point I was going to make, just to push back on your assertion that this is a Scottish Government decision, when it is clearly not. They are clearly part of it, as it is a devolved policy—

Jonnie Hall: I would prefer it if it were the Scottish Government's decision.

- Q18 **John Lamont:** But it is about getting certainty for our farmers who are members and might need to take alternative action.

Jonnie Hall: I agree.

- Q19 **John Lamont:** In terms of my substantive question, it was about the suggestion from the UK Government that future farming support in England will see most payments linked to the delivery of public goods, as opposed to the size of the farm and the requirement to farm it. Do you think a similar scheme or philosophy should be adopted in Scotland?

Vicki Swales: Scottish Environment LINK thinks that the English approach has much to commend it. We welcome the scope of clause 1 and the emphasis on providing support for delivering public goods identified as a priority. We welcome the defined transition away from direct payments, measures to promote supply chain transparency and—although it is not part of the Bill, it is clearly stated in the policy statement—the commitment to bring forward environmental land management schemes.

There are areas where we think the current Bill will need to be strengthened, but from a Scottish perspective, in terms of what we would like to see for the new rural policy 2024, we see three broad types of investments. That is not to say that we should replicate exactly what England is proposing, as we need to ensure that it is bespoke for Scotland and fits Scottish needs and circumstances. The first type is sustainable land management payments, including support for specific types of farming that are beneficial to the environment, including organic, agroecological and what we call high nature value farming systems. Scotland has a very significant share of that, particularly the farms in the uplands and our more marginal areas.

The second kind of investment is to facilitate change and help businesses to adapt and develop. It could take the form of grants, capital investments, IT and other infrastructure to help farmers get to a better place to earn from the market, as well as supporting them for the public goods they deliver.

The third kind of investment is in supporting activities. By that, I mean the underpinning things such as research, knowledge transfer, training for



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farmers, professionalisation of the industry and, importantly, advisory support to farmers to help them through this change and put them in a better place. There are some parallels with the English approach, but also some specific issues that we need to address in Scotland, particularly the upland marginal farming areas.

Q20 **Chair:** I see two fingers up in the air. Mr Smith was there first.

Russell Smith: We agree with support for high nature value farming and that sort of thing, because most of the crofting areas are included in that. There is scope in there for something like LFASS or a successor to it, such as areas of natural constraint, to try to level the playing field for those who are a long way from the market and are handicapped by climate, soil types or whatever. You talk about change, but if there are no alternatives, you are stuck with what you are doing. If you don't support, in this case, stock rearing in the north and the west, then you lose the population, the economy and everything that goes with that and supports it.

Q21 **Chair:** Mr Hall, you were keen to come in.

Jonnie Hall: Building on the comments of my colleagues, significant elements of the Agriculture Bill are clearly about policy and policy delivery in England, and they would give us significant cause for concern if they were to be applied in Scotland. Quite simply, Scotland's agricultural landscape is very different from that of England and much of the rest of the United Kingdom. That is why we must have agricultural policy delivered in a devolved capacity. There is clearly a trajectory within DEFRA England's policy thinking that it wants to phase out direct support payments over a seven-year period and replace them with a public support for public goods approach, and that is clear within the Bill. Now, if you took that very distinct and very clear "first and fast" approach in Scotland—*[Interruption.]* "London Calling" again.

Chair: The sound of The Clash. Apologies.

Jonnie Hall: No apology required. If we took a similar approach in Scotland, that would be extremely detrimental, in many senses, to huge tracts of Scottish agriculture. While a lot of the east coast of Scotland could benefit from an approach that is similar to much of the policy being talked about for England, given that 85% of Scotland is a less favoured area and vast majorities are based on grassland farming and extensive rough grazing farming, that approach would be disastrous in many senses. The beef and sheep producers of Scotland would not thrive in any sense under that approach.

Nevertheless, we do need to move away from the current system, which is predominantly area based and does not take account of how land is farmed. It does not incentivise and encourage farming land in a way that delivers sustainable outcomes in terms of the environment, but also delivers sustainable economies in rural communities. We need to move away, but we need to move away under Scotland's terms, in a way that is fit for Scotland's needs.



John Kinnaird: This might surprise one or two people, but I actually agree with most of what Vicki said, apart from “environmentally led”. I do not think it should be environmentally led, because that suggests that the environment is ahead of food production, which it should not be. The primary role of the majority of farmers and crofters is the production of food, while at the same time looking after the environment. That is key, and we have to have a policy that works together, not in isolation.

When you look at soil health and animal health, those are all environmental gains if they are done properly. A lot of our soils—not just in Scotland, but across the UK—need to be improved, and that should be done by incentivisation, not legislation. The same would apply to anything to do with the environment. It should be about what is right for a farm, what is right for a croft and what is right for the community. That is what is important, not being driven simply by an environmental programme, whatever that may be. That is wrong.

The other thing that is completely missing, just to follow up on John’s question, is that there has to be investment in careers. There have to be careers in agriculture. I am not just talking about farming and crofting; food processing, science, and research and development are all careers in agriculture, but not many people look at it that way. We have to remember that we need a lot of investment in careers.

Q22 **John Lamont:** In terms of a successful balance between using the financial support system to support public goods and food production, what is that split in your head? What should take priority?

Jonnie Hall: I agree with John’s comments, but equally, I am not averse to Vicki’s comments either. It is not an either-or. If we get the policy—

John Lamont: I am not asking that; I am asking where the balance should be. I am not asking you to choose one or the other; I am asking how you think the pot should be divided, in terms of balance.

Jonnie Hall: If you start to deliver policy through more efficient agricultural production at the same time as incentivising environmental delivery, rather than it just being on an area basis like we currently have, then those things can work coherently. John’s point about soil health and so on—efficient input use—will make huge strides in addressing things like diffuse pollution and climate change issues, as well as measures put in place to safeguard habitats and biodiversity. We have to get away from this “it’s one or the other” mindset. They are not mutually exclusive; a more efficient agricultural system is much more benign to the environment, and can deliver some really positive outcomes.

Russell Smith: For example—

Chair: Before you do, we only have until 20 past two, because the Cabinet Secretary is going to join us by video link at that point, so you are not all obliged to answer all the questions. If members of the Committee want to ask particular members of the panel, that would be helpful. We will maybe just move on, if that is all right, because we have lots of questions that



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were designed for you.

- Q23 Ross Thomson:** We have heard loudly and clearly that there is a different set of needs for Scottish farming. The landscape is different, so there has already been some divergence from the rest of the UK in how the CAP is implemented. Mr Hall, you said in evidence this morning that that has done Scottish farming no favours, because it has helped to facilitate inertia. How well do you think this divergence has worked to date?

Jonnie Hall: It has worked well in some respects. Scotland has made some policy choices—particularly over the last 10 to 20 years, let alone the last 45—that have allowed it to set a different tack from the rest of the UK. That has been critical for our livestock sectors and our uplands in particular, because we have a less favoured area support scheme in our pillar II. The rest of the UK does not utilise that measure, but we do. It remains a vital tool in maintaining—I stress the word “maintaining”—flocks and herds in more disadvantaged areas and everything that goes with it, as Russell and John have already alluded to, as well as in delivering high nature value farming in many senses.

Equally, there are things like coupled support schemes. The beef calf scheme has been in place since 2005 and has essentially rolled over since then. More recently, we have had a ewe hogg scheme for the really hard uplands, which has helped to deliver support to those who are genuinely active in the harder locations.

Having the ability and flexibility to deliver support in that way has been really important. We must have that divergence across the UK. That goes back to the fundamental question about having the devolved capacity to do things that are right for Scotland, and allowing Scottish Ministers to take those decisions in consultation with stakeholders. We might disagree to some degree on the exact detail, but the ability to do that is fundamental.

- Q24 Ross Thomson:** On that very point, do you think that a similar level of divergence would be able to cater for the future needs of the Scottish agricultural sector, or does the shift in policy objectives outlined by Michael Gove and the UK Government mean that there should be scope for further divergence?

Jonnie Hall: I would like to see further divergence in how support is managed and delivered, but not in the regulatory frameworks that govern things like pesticides and animal health and welfare. In order to protect the integrity of the UK internal market, we have to conform to the same standards of operation across the UK. It would be farcical for England to have different livestock traceability regulations from Scotland, or for Northumberland to have a different pesticide use regime from Berwickshire. The divergence should come thereafter, in how we support and incentivise our farmers and crofters to take certain actions and operate their farms and businesses in ways that deliver the food production to fuel the food and drink sector, at the same time as

managing our environment and delivering for our rural communities and economies.

Chair: Ms Swales's answer will have to be very quick, because we need to move on.

Vicki Swales: I think it is likely that there will be greater divergence in the future, but one point on which we may want greater commonality across the UK is in agriculture policy, in each of the countries having a high level of environmental ambition.

A lot of the discussions around divergence have focused on impacts on the internal market, but there are other areas that are particularly important. They relate to compliance with international obligations such as the Aichi biodiversity targets and the Paris agreement on climate change, to ensuring effective management of common resources such as soil, air and water, and to biodiversity across the UK. That may be one area in which there is a need for a UK framework—potentially a non-legislative one, with consensus from the four countries to work together.

Chair: Thank you. Mr Smith, would you like to come in quickly?

Russell Smith: I will do so very briefly, to illustrate the point about the LFASS in Scotland. In our croft, what we get from selling sheep and from our basic payment covers the costs of running the unit; the LFASS is the profit. Without the LFASS, we would stop.

Q25 **Tommy Sheppard:** I was going to ask this in a bit, but it seems more relevant now. It is slightly tangential, but it is relevant to the discussion that we are having in preparation for Brexit and the Agriculture Bill.

I have heard a lot in the last 40 minutes about the differences in Scotland and the fact that you cannot take a one-size-fits-all approach or cut and paste a DEFRA framework into Scotland. I think we all get that, but the fact is that the real reason why the Scottish Government is not engaging with this Bill is because the discussions on a joint framework are not going well, shall we say. We will be talking to the Minister in a minute, but my understanding is that at the heart of that difference of opinion between the Scottish and Westminster Governments is precisely this question about how the frameworks will protect the space for different policies and arrangements to pertain in Scotland and not be constrained or directed by a UK framework. Do you have any suggestions as to how the frameworks might work in order to protect the ability to do things differently in Scotland, which you seem to regard as essential?

Chair: Ms Swales had her hand up first.

Vicki Swales: Can I just focus a little on the intergovernmental mechanisms? I think that is a really important point, in terms of this cross-UK working, and it goes to the heart of UK frameworks and the extent to which they are agreed or they constrain activity in different places. There is a real problem here. The Joint Ministerial Committee agreed a set of principles broadly around UK frameworks, but the



mechanism for that working just isn't there at the minute. We basically need revised terms of reference for that process, new sets of guiding principles for those intergovernmental relationships—covering transparency and accountability—and a commitment to co-operate in a spirit of trust. We need some fixed timetables for meetings and jointly agreed agendas. If we had that, we would be in a better place across the UK for these sorts of decisions to be made and to avoid some of the contention that we have seen already.

Jonnie Hall: I echo what Vicki has just said. Clearly, there are 24 key areas on which civil servants from Scotland and the UK Government have been working very closely behind the scenes, in the so-called deep dives, to try to iron those issues out. Getting to the point at which we have a common framework, the key for us is not to have a common framework but commonly agreed frameworks. It is then the ongoing governance of those frameworks that is important. Is that a Government issue or a governance issue, and how do we set up a situation whereby we have the governance of those frameworks almost taken out of the hands of Westminster and Holyrood, but done in a way that is transparent, clear and open, as Vicki suggests?

A lot of thought has gone into this already. The Royal Society of Edinburgh have produced a document very recently, which they have provided as evidence to the Scottish Parliament's Finance and Constitution Committee, on ways in which governance can be worked through on these important issues. But it is quite, quite clear, and I sure we will come on to this in other aspects of the Agriculture Bill, that a Secretary of State for the UK Government should not have unilateral decision-making power over what happens over devolved Administrations, when we are talking about commonly agreed frameworks or, indeed, the devolved delivery of agricultural policy.

- Q26 **David Duguid:** We have spent the first 25 minutes of the session talking about exactly how we transfer powers to the Scottish Government. I think we can all agree that in the interests of the Scottish farmer or crofter or, indeed, the Scottish public, the Scottish agriculture industry needs to have absolutely as much input as possible into the decisions on future policies. But let us put that aside. There has already been some divergence in how the CAP is implemented in Scotland, but do you think there is a limit to how much divergence is possible within the UK, without causing market distortion?

Jonnie Hall: Given the amount of money we currently spend on schemes that might disturb or distort the internal UK market—I am thinking particularly of coupled support in Scotland, the only part of the United Kingdom that currently operates any coupled support through the CAP—it has little or no impact on the internal market. At the end of the day, the European regulations that allow Scotland to deliver coupled support are all about maintaining, rather than increasing, numbers of livestock in Scotland. They are deliberately set in such a way that they should not see an increase in production. We have had beef calf payments in Scotland since 2005. Some 13 years down the line, we have had direct support



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going into our suckler herd in Scotland, yet in the same period we have continued to see a significant decline in suckler cow numbers. In itself, those direct support payments are having no adverse impact on the UK internal market, because we are not driving up production.

David Duguid: Does anyone else want to come in on that before I ask my next question?

John Kinnaird: I think you will see greater divergence in markets, because we are aiming for a different production system and a different market. That is almost inevitable.

Q27 **David Duguid:** What kind of market distortions should we be looking out for?

Jonnie Hall: Anything that gives an unfair advantage or disadvantage to producers across the United Kingdom. At the moment, a beef producer in Dumfries and Galloway can get a payment on his calf, but a beef producer 20 miles down the road in north Cumbria cannot. However, that has no impact at all on the relative viability of those two agricultural businesses, because there are distortions all over the place. The payment per hectare that the Cumbrian farmer gets is different from the Scottish farmer, because they have a higher payment rate per hectare.

We already operate on an uneven playing field. The point is that we still play under the same set of rules. That is key. There are always differences of some sort. It is about whether a future policy creates such a divergence that it starts to create a problem. I don't think there is enough money in the pot, let alone whether it is directed in a particular way, to cause that particular issue.

Vicki Swales: One area where we need to avoid divergence is in some of the fundamental standards that underpin our food production and farming systems, in terms of environment, food safety and animal welfare. I don't think it is in any of our interests, nor in those of consumers, to see a race to the bottom, with one part of the UK trying to water down standards in order to gain a competitive advantage.

At the minute, it seems that all four countries are broadly talking about maintaining high environmental and other standards, in relation to future agriculture policy. That is certainly something that we endorse and want to see.

Q28 **Christine Jardine:** How would the Scottish agriculture sector be affected if the transition period to a new agricultural support regime in Scotland were different from the one that the Bill proposes for England?

Vicki Swales: My understanding is that the transition period proposed for England takes it up to 2025. Scotland is talking about the introduction of a new policy from 2024. Those look like quite different timelines, on the face of it, but if you look at what DEFRA has published on the timelines, the move to a new system of phasing out direct payments and introducing environmental land management schemes is actually quite a bit shorter.



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It says that environmental land management schemes will be fully functional and up and running from 2025, with quite a front loading in the phasing out of direct payments, looking at options on whether farmers could take lump sums or a bond-type arrangement. It might actually be that, ultimately, there is less divergence in the system than first appears when looking at those end dates.

Russell Smith: How long the transition period needs to be depends on what we are moving towards.

Q29 **Christine Jardine:** How long is a piece of string, you mean?

John Kinnaird: Twice the distance it is from the middle.

Jonnie Hall: On the transition, it is important to bear in mind that we do not know what operating environment UK and Scottish agriculture will find themselves in. We don't know the shape of the trade deals or anything of that sort. In some senses, there might be a need to actually slow the transition down, particularly when it comes to direct support payments, because our reliance on them in the short to medium term might actually increase if we are suddenly exposed to cheaper imports, such as beef from South America, for example.

Q30 **Christine Jardine:** Would it be fair to say that—as with so much with Brexit—on the Agriculture Bill and how Scotland's agriculture will be impacted, the uncertainty we face is still the biggest problem?

Jonnie Hall: Without question.

Russell Smith: It is certainly very difficult.

Vicki Swales: But I think we also face many other uncertainties, for example climate change. We know that agriculture and related land use gives rise to almost a quarter of emissions. We recently had the IPCC reporting, saying that we have 12 years. We need to move fast. Agriculture is an emitter of greenhouse gases but it is also part of the solution to tackling climate change. So there are some imperatives, particularly in relation to biodiversity declines for example, where I think we need to get on and do things, albeit that I accept the obvious impacts on farm businesses need to be handled carefully.

Q31 **Christine Jardine:** Many Scottish farmers rely on the common agricultural policy for their financial stability and we have seen over the last two or three years the problems it has caused, because of the computer glitches, the late payments, etc. To avoid that sort of situation, what specific guarantees in post-Brexit funding does the Scottish agricultural sector need to ensure stability and avoid the same sort of chaos?

Jonnie Hall: I think you are talking about two things there. You are talking what sort of level of funding Scottish agriculture needs, but then there is the delivery of that funding, and we need both. We have argued from day one that Scottish agriculture will continue to need at least the same quantum of money as it currently receives under the CAP, and we

currently get about 16.3% of the UK's allocation of funding. That equates, in terms of direct support, to around £0.5 billion per year.

However, it's then about getting that to farmers and crofters in a timely fashion, because it's not so much the money at farm level; it's the timing of it, in terms of managing cash flow and running a business. That's been the problem with late payments in Scotland as much as anything else.

So the argument going forward is that we need some further guarantees from the UK Government about future funding. The UK Government are on record time and again as saying that funding is guaranteed up to 2022, or the lifetime of this Parliament, but there are some question marks around that. They talk about farm support. Does that relate to all pillar II measures, or is it just the pillar I direct support payments, etc. etc.?

Thereafter, there is no guarantee—no commitment on funding. Clearly, this is an issue for the Treasury rather than for DEFRA and we have no clear indication about how that might be allocated across the United Kingdom, and that gives us concern.

- Q32 Chair:** That leads us perfectly on to my next question. We know we have got this new intra-UK allocation of agriculture funding review—Lord Bew's review. What are your hopes and ambitions for that review for Scottish farming?

Jonnie Hall: Having looked at the terms of reference, obviously the review was way, way overdue. We have been asking for this review, given that the convergence dividend issue has been rumbling on since 2012 or 2013. Successive Secretaries of State for DEFRA have promised reviews. Even at our own AGM, George Eustice, who is the Agriculture Minister, promised a review some three or four years ago and it's only now that we've managed to coerce something out of the UK Government in that respect.

However, we are more disappointed by the actual terms of reference of that review, because essentially it will not be retrospective in terms of the convergence uplift and it will not look beyond 2022 and the existing commitment that the UK Government have already given. So we are looking at a very tight and narrow window as to any change in allocations across the United Kingdom that the review might come forward with.

Trying to be more positive about this, if this review goes through and it is an independent review and it is clearly transparent in how it assesses the allocation of funding, any decisions about future allocation beyond 2022 cannot possibly ignore it. It would be quite fanciful if a future UK Government ignored the outcome of a review that is going on today about what would be a fair and appropriate allocation of funding.

- Q33 Chair:** We will come to you, Ms Swales, but the one thing we do know about this review is that it will not be subject to the Barnett formula, which I think we have been told is a good thing. I think that the presumption behind that particular statement is that the situation will not get any worse, but they have never given any indication that it would get



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better, because Barnett and Barnettisation, if that was to be the case, would obviously be a disaster for the Scottish allocation of funding.

I just wonder: is there any hope that Scotland might actually get a better share of the intra-UK funding?

Jonnie Hall: It will all depend on the criteria that the review determines are a more appropriate way to allocate funding than what we have today, which is historical and goes back to pre-CAP reform in 2005, because it was based on the old schemes of back in the day.

Chair: Ms Swales is desperate to come in.

Vicki Swales: Mr Gove had made a statement that future funding would not be Barnettised, but as I understand it, and as Jonnie has elaborated, that was not specifically about the remit of that review itself. In terms of that future funding, which we clearly need to know about, we would argue for a needs-based approach to deciding that funding level and the amounts of money needed.

Last year, the RSPB, the National Trust and the Wildlife Trusts commissioned research to look at the costs of delivering environmental land management across the UK under that public money for public goods policy. That amounted to £2.2 billion annually, and it also acknowledged that other interventions would need to be made to support farming, similar to the ones that I alluded to earlier. So we are looking at a quantum of money that does not look dissimilar to the amount of money that we currently receive under the CAP.

The interesting point about that, from a Scottish perspective, was that under that kind of system, Scotland would secure 26% of the total UK pot, if it opted for a public money for public goods approach, compared with the 17% it gets now, or the 8% if it was Barnettised. So actually, because of Scotland's landscape, environment and farming systems, it has a huge amount to gain from going down an environmental land management and public goods—

Q34 **Chair:** Are we all agreed that the convergence uplift money—the £160 million that Scotland is owed—has gone and there is no prospect of getting that back? Is that your view, Mr Kinnaid?

John Kinnaid: I would not say it is an agreement; something has been imposed. It is something that should have been delivered. If is not part of the review, it is not part of the review. That is a disappointment.

As far as funding is concerned, we have to make sure that funding is maintained at its current level or enhanced. In reality, I do not think that anybody would expect it to be enhanced, but if it stays at the same level, but the delivery and allocation changed to deliver more public goods that also help farming and the environment, that has to be a positive. That is what we should be looking at.

Chair: We have only a few minutes left, but thank you.



- Q35 Kirstene Hair:** This is to Jonnie Hall first, and then it will be opened up to the panel. NFUS expressed concerns about part 7 of the Bill, which aims to ensure that the UK complies with its WTO obligations and would allow the Secretary of State to impose potential limits on the level of domestic support for Scotland. Could you expand on your thoughts on that schedule? If you disagree with it, what would your substitute be? Is it in the interests of the wider UK for the Scottish Government to have a veto on that area, and why?

Jonnie Hall: I think you have explained the situation quite neatly. We have outstanding reservations about part 7 of the Bill, and part 6 as well, in relation to what could be, on the face of it, a unilateral power for the Secretary of State for DEFRA to essentially limit the amount of spending in particular policy areas, thereby limiting the policy choices of Scotland, Wales or Northern Ireland as to what they do. We have had an awful lot of discussion and thought about that.

Clearly, we want to get to the situation whereby, although the United Kingdom is the signatory to the WTO, so the United Kingdom is the one that has to report to the WTO about funding across agricultural support measures, that is not done in a unilateral sense but with a degree of consensus across the devolved Administrations. There is a fine but important difference between a Secretary of State for DEFRA consulting devolved Administrations and getting some consensus, or even consent, from them. We are going back to the point made earlier by Mr Sheppard about frameworks and their governance and agreement. It is a very similar issue.

We have concerns. We have taken academic opinion on this and we have taken legal opinion on this. The legal opinion is quite clear that our concerns are well founded. That is the reason why we are using evidence at Committees such as this and in the Public Bill Committee last week to at least throw that out. We need to flesh this out. If anything, I think it is incumbent on the UK Government, whether that is through George Eustice or someone else, to explain if we are wrong, how we are wrong and to show that the situation would not be that the Secretary of State for DEFRA would have unilateral control over allocations of funding for certain types of support measure.

- Q36 Kirstene Hair:** On the legal and academic advice that you received on part 7, had you created an opinion—the opinion of NFUS—and therefore asked them to ratify that, almost? Or did you go to them neutrally and ask them what their position was on it?

Jonnie Hall: We had questions from 12 September onwards. As soon as we read the Bill when it was published, the wording in part 7 raised issues in our minds. We then had discussions with legal folk and academics to say, “Are we reading this right?” They took that away and have given us clear guidance in writing back to say, “Your concerns are justified, but this needs to be fleshed out.”

- Q37 Chair:** Could you talk about what the concerns are that your legal opinion



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reached? Was it that this would give a swathe of powers to the Secretary of State to legislate within what would normally be devolved areas?

Jonnie Hall: It would not be on legislating in those areas—it would be able to control the sums of money spent on certain types of support.

Q38 **Chair:** But would it allow the Secretary of State to create a limit on what support the Scottish Government could give to farmers?

Jonnie Hall: Yes. It would not stop Scottish Ministers from actually spending on those types of measures, but it might limit how much could be spent on those measures, and that is the issue.

In reality, it is arguable that that might never come to pass, but if it remains a risk then I think—this is my opinion—that that is one fundamental reason why the Scottish Government are very reticent about coming forward into this Bill through their own schedule.

Chair: We have only got a few minutes left. We will have the Cabinet Secretary in. We have three questions. John Lamont wants to come in with a very brief one.

Q39 **John Lamont:** This is an important point. You are talking about the powers that the Secretary of State will supposedly have. Where do the powers rest as of today, with the UK being a member state of the European Union?

Jonnie Hall: They basically rest with the UK Government and it is a reporting exercise—well, the European Commission effectively is the signatory, because we are part of the European Union.

Q40 **John Lamont:** So the Commission has the power to direct the Scottish Government if the financial support doesn't comply with WTO. Because the European Commission is responsible to the WTO, they have that power just now.

Jonnie Hall: Yes.

Q41 **John Lamont:** I missed the campaign that NFUS has been running to try to take those powers away from the European Commission. Have you been running a campaign to try to take those powers away from the Commission?

Jonnie Hall: Mr Lamont, you know fine well we haven't. We have had this discussion several times already. You know exactly our position.

Q42 **John Lamont:** I am sorry. I am asking the question, with the greatest respect.

Jonnie Hall: You have asked it a number of times and you don't ever seem to be satisfied with the answer that I give.

Q43 **John Lamont:** So you are happy for the European Commission to have that power, but you have an issue with—

Jonnie Hall: That is the current situation—



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- Q44 **John Lamont:** Let me finish my point. You are happy for the European Commission to have that power, but not the Secretary of State.

Jonnie Hall: That is the current situation we find ourselves in. We are talking about the UK leaving the European Union and therefore that current power being transferred to the Secretary of State for DEFRA. We think that would give unilateral power to then control spending.

We are not seeking to take away the power of the UK reporting to the WTO. What we want though is the devolved Administrations to have some say in that process.

- Q45 **John Lamont:** It seems bizarre for you to say that the NFUS are content for the Commission to have that power but take issue with the UK Secretary of State having that power.

Jonnie Hall: There are many things that we are not content with the European Commission about.

Chair: Order. Maybe Mr Lamont and Mr Hall might want to continue with this conversation offline. Last question from Ged Killen.

- Q46 **Ged Killen:** How important is it for the Scottish agricultural sector that the UK receives a pro-rata share of the EU's amber box allowance when it leaves the EU? What would it mean for beef and lamb farmers if that wasn't achieved?

Russell Smith: If I give the ewe hogg scheme as an example, if there was no direct headage support then, we will see even more abandonment of the hills. After the last EU CAP reform, huge numbers of sheep went off the hills. The ewe hogg scheme is designed to try to keep some of the flocks still going. It is succeeding, but if we don't have what is effectively a headage payment, then we will lose even more.

Vicki Swales: My understanding is that those negotiations would need to take place for the UK's share of the amber box, but the headroom is so enormous—£6 billion or something—that it would be highly unlikely to ever constrain any activity that any of the devolved countries wished to do in terms of supporting their agriculture, so it may be a bit of a non-issue in some senses.

John Kinnaird: I think we have to be careful that we do not sit back and let it become a non-issue. Any risk of the likes of LFASS payments through the amber box being taken away or diminished for something else would be particularly serious for Scottish agriculture and the Scottish rural scene. We have to be very clear that the amber box is important, and it is part of WTO that is an international obligation, although implementation is devolved. That is the way it should stay. The amber box fits in nicely with that.

Chair: We are grateful for that. There were so many other questions. Thank you ever so much for what was a very informative session. As usual, if there is anything further that you feel you could usefully contribute to the Committee, please give it in writing, but for now we will

suspend the sitting so that we are able to communicate with the Cabinet Secretary by video link.

Examination of witness

Witness: Fergus Ewing MSP.

Chair: Cabinet Secretary, we are very grateful to you for joining us from this splendid video link from the Scottish Parliament this afternoon. This is our first session of the inquiry into agriculture in Scotland. For the record, please say who you are, who you represent—I think we know that—and anything by way of a short introductory statement.

Fergus Ewing: Thank you very much, Convener. I am joined by my senior officials, David Barnes and George Burgess, and I am extremely grateful for the invitation to participate via video conference in your evidence session today. I have three opening comments, if I may. Scotland did not vote for Brexit; we voted against Brexit and our analysis shows that if Brexit must happen, continued membership of the single market and customs union is by far the best solution for our economy, society and people. Therefore, all my comments today should be taken in that light.

I will briefly highlight three things. First, it is important for people to understand that the powers in this UK Agriculture Bill are not needed for March 2019, even in a no-deal scenario. The powers that would be needed in that scenario are being created through a different vehicle, so the powers in this Bill are not urgent. Secondly, as drafted, the Agriculture Bill does not respect devolution, so of course the Scottish Government and Scottish Parliament cannot accept it. That is a very serious point on which the Scottish Government's position is explained in detail in our memorandum to the Scottish Parliament, which I understand has been made available to your Clerks. Thirdly, there are serious omissions in the Bill. It fails to deliver on a number of promises that were made to the rural sector about Brexit. We would like amendments to the Bill to address issues such as the red meat levy, guarantees on future rural funding, the protection of import standards and geographical indications.

Convener, we have sought to be co-operative throughout this process—myself in particular—but it is fair to say that we have found the process leading up to this Bill very difficult. Time and again, we received little or no information from DEFRA, despite repeated requests, only to be presented eventually with a virtual fait accompli. That is not what we would expect or hope for. None the less, we will continue to try to work constructively with the UK Government on the Bill and all other Brexit issues. I am very happy to answer your questions.

Q47 **Chair:** I am grateful; thank you for that, Cabinet Secretary. I was going to ask you your reasons for not accepting an inclusion in the Bill in the way that Wales and Northern Ireland have, but you have clearly explained that in your opening remarks. Can you therefore clarify whether the Scottish Government will implement a new post-Brexit



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agricultural support in Scotland without a schedule in this Bill? Is it your intention to bring forward Scottish Government proposals for a means to deal with the situation post Brexit?

Fergus Ewing: I stress that I have sought, and continue to seek, to work constructively with the UK Government. The sticking point is that it is very clear to me that there are at least three areas in which the Bill as drafted would predate, remove and grab powers from the Scottish Parliament. We may come on to those, and I am very happy to go over them in great detail. The frustrating thing for me is that, although we have set out our stall and set out our reasoning and justification for the position we have taken, we have not received from the UK Government their reasoning for the position they adopt—namely, that these matters are reserved issues.

We do not need to take powers through this Bill. We will be able to continue to make payments. That is not an issue. Indeed, I am afraid to say that there has already been a shocking amount of scaremongering by certain other Scottish MPs, suggesting that if we do not take powers in this Bill and have a Scottish schedule, we will somehow be unable to make payments to our farmers and crofters. That is simply not the case. First, we will seek to co-operate, but secondly, we will take all measures and exercise all powers that are necessary for us in due course. This Bill is not necessary for us to be able to do that.

Q48 **Chair:** I think that was abundantly clear to this Committee. To ask the last of my opening questions, are there any possible conditions at all under which you would agree to accept being included in a schedule to this Bill?

Fergus Ewing: If the points of concern can be adequately dealt with—it is not too late; they can be dealt with if there is good will—then of course, we can consider co-operation. I have worked on numerous occasions with Michael Gove and George Eustice. I have sought to develop a good working relationship with them. My senior officials have likewise worked for months and months with their counterparts. Even though we wholly disagree with the UK Government's view of Brexit, we have taken the view that it is our duty, ex officio, to do everything we can to co-operate for the greater good of Scotland's farmers and crofters, and the rural community at large. We are ruling nothing out at the moment, and if Mr Gove is willing to deal with the points that we have raised directly and repeatedly, eyeball to eyeball, then I am very happy to consider that, with a view to being as co-operative as we can. But we will not tolerate the removal of powers from the Scottish Parliament. We might come on to some of the consequences, if we were to do that—what the consequences might be. I think that would plainly be to Scotland's detriment, and to the detriment of farmers and crofters in Scotland.

Chair: We will come on to some of those issues, but we will move on just now.

Q49 **Kirstene Hair:** Minister, the NFU Scotland said that it is concerned that without a schedule in the Agriculture Bill, it is possible that the Scottish



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Government may not have a legal vehicle for delivering payments beyond 29 March 2019. Are they wrong?

Fergus Ewing: That is what they said initially, but they have since changed that. It is simply not correct. In fact, there is no requirement in this Bill at all that would prevent us from continuing to make payments in 2019—that is simply rubbish.

Q50 **Kirstene Hair:** Do you think it is responsible to reject the schedule in the Bill, not bring forward your own Bill and leave Scottish farmers in a situation where we are five months away from exit day and, although you are suggesting there is a way, there is no clarity given on how the Scottish Government will provide support payments after that? Following on from the disaster around the CAP payments in recent years, it seems that the Scottish Government have a complete disregard for the rural community. Hand on heart, do you believe that this is governing responsibly?

Fergus Ewing: Convener, there were about seven or eight different questions all in a melange there. First, let me stress that the central premise of Ms Hair's questioning is untrue. There is no requirement for this Bill to enable us to continue to make payments. The Member has suggested that we are tardy at making payments to our farmers and crofters. The fact is that of Scotland's farmers and crofters, 99% of those eligible to receive payments received 90% of their payments from 5 October, quite some time before farmers in England will receive a penny piece. The facts are that this year, thanks to the excellent work that our officials have been doing, 99% of our eligible farmers and crofters will receive up to 90% of their entitlements in respect of the pillar I payments. I think that is a very welcome measure—I know that is the case, because I speak to farmers and crofters a great deal.

Q51 **Chair:** Just to clarify, we did have the NFUS in just before you and I am not particularly sure that the comments attributed to the NFUS by Kirstene Hair were accurate. I have another quote here from the NFUS, which said to the Agriculture Bill Committee the other day that "there is no doubt that the Scottish Government will be able to continue making payments, but they would be governed by the existing rules of the CAP." That was their concern—there was no move on from the existing rules of the CAP, other than the fact that payments could not be made. Just to clarify, do you recognise that as the position of the NFUS?

Fergus Ewing: I am grateful that you have clarified that. That is exactly my understanding. I read through the *Hansard* of the evidence. That is precisely what the NFU representative, Mr Hall, said. He did not say what Ms Hair attributed to him. I am grateful for that clarification. Taking on Mr Hall's point directly, there is nothing that would prevent us from establishing the necessary powers—by legislation, if that were necessary—if that became necessary, in order for us in due course to make departures and changes from the CAP. I am afraid that that, too, is a red herring that other Members are putting around. Let me quite clear: this Bill is not necessary to address the point that Mr Hall clearly made. If necessary, we



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can deal with it in Scotland, but until we know exactly what the situation will be, we cannot formulate the direct plan. If it is the case, as I mentioned a moment ago in response to the Chair's question, that Mr Gove agrees to resolve the differences between us, then perhaps that won't be necessary. We will make a plan once we know the facts, and we will work hard constructively with all our partners across the UK to seek what agreement we can while standing up resolutely for Scotland's interests.

- Q52 **John Lamont:** Good afternoon, Mr Ewing. You spoke very confidently about the Scottish Government's ability to continue financial support. For the benefit of the Committee, could you please set out the legislative provisions that allow the Scottish Government to continue that support by opting out of the Agriculture Bill?

Fergus Ewing: The existing powers under devolution allow us to carry on making payments. The UK Agriculture Bill does not detract from those powers. As you know, Mr Lamont, agriculture is a devolved issue. One of the problems with the UK Bill, which has been pointed out by the House of Lords, is that it contains not one scoby of a hint of what the substantive policy is in the UK. Fortunately, or unfortunately, the only thing we know for certain about the UK policy is that they want to stop direct payments to farmers in around 2027. I don't know about Mr Lamont, Convener, but I don't want my constituents to lose direct payments. Does Mr Lamont want his constituents to lose theirs?

- Q53 **John Lamont:** You have not answered my question. For the benefit of the Committee, could you set out the legislative provisions that allow the Scottish Government to continue financial support?

Fergus Ewing: The legislative provision will exist under the withdrawal Act and the continuity Bill, which would allow for us to keep payments from 2019. That is the precise legal foundation. Of course, that would allow us to continue what I assume the Scottish Tories wish us to do, which is to exercise our powers in Scotland to make policies for Scottish farmers, such as support for hill farmers, which is absolutely essential.

- Q54 **John Lamont:** The continuity Bill has not been enacted yet. Are you working on the basis that the Supreme Court will give a judgment in your favour?

Fergus Ewing: I hope Brexit won't go ahead at all. That's an option, isn't it?

- Q55 **John Lamont:** You seem unable or unwilling to answer any of my questions. The continuity Bill has not yet been enacted and is currently before the Supreme Court. Could you set out the legislative provisions, as they currently stand, that will allow financial support for farmers to continue after Brexit?

Fergus Ewing: Either of the provisions that I have mentioned would allow us to do that, and either would be necessary—otherwise, Brexit won't happen.



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- Q56 **John Lamont:** The Bill has not been enacted, so what currently exists? What legislative provisions allow the Scottish Government to provide financial support to Scottish farmers?

Fergus Ewing: I have already answered that question very clearly.

- Q57 **David Duguid:** I am trying to be very clear here. If, when we leave the EU and leave the CAP, there is no schedule in the Agriculture Bill for Scotland—similar to, if not exactly the same as, what is provided for Wales—and if your continuity Bill does not get enacted, what will be the mechanism for Scottish farmers to continue to be paid?

Fergus Ewing: This Bill is not necessary to allow us to continue payments. It is very disappointing that this canard is continuing to be perpetrated by the Scottish Tories, because it is complete and utter scaremongering. It is not necessary for us to have a schedule in the Bill for that to happen, although we continue to seek to work co-operatively with the UK Government. Our plan, contained in the document called “Stability and Simplicity”, envisages that we have a period of five years. Broadly speaking, the first two years would provide continuance of the current schemes and payments. The second period of three years would allow us to try out different measures, while continuing to provide the benefit of certainty to farmers.

Our document is the only plan in the UK. The UK’s proposals were set out in what could loosely be described as a discussion document, called “Health and Harmony”. The only thing that is clear in that document is that DEFRA and perhaps the Treasury are intent on stopping direct payments to Mr Duguid’s constituency as quickly as they can get away with it. We believe that that is completely the wrong route, and the farmer’s role in food production, as well as stewardship of the countryside, must be continued with the necessary support for the public goods that are provided thereby.

- Q58 **Christine Jardine:** Cabinet Secretary, we seem to be speaking a lot about hypotheticals—if the continuity Bill is passed, if we leave the European Union, if this happens and if that happens. Surely the situation is that there is a Bill on the table that would give you powers similar to Wales. Do you not think it is incumbent on the Scottish Parliament to recognise that those powers are there, and to work within the possible and do what is necessary at the moment, rather than cause delay and further confusion by talking all the time about hypotheticals?

Fergus Ewing: Nobody is causing confusion except certain MPs who choose to misinterpret the very plain realities of the law, which are that this Bill is, I repeat, not necessary. Mr Hall has recognised that. The NFUS has recognised that. The only people who seem to me not to recognise that are certain Members of Parliament.

This Bill would, in parts 6 and 7, remove powers from Scotland over producers’ organisations, fair dealing in the supply chain, and the implementation of the WTO agreement on agriculture. Those three are all



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important, and Ms Jardine is asking us in the Scottish Parliament to accept a situation where we lose powers over those three things—

Christine Jardine: No, I'm not.

Fergus Ewing: That is the premise of your question. The WTO implementation would result in very serious potential detriment for Scottish farmers and crofters. I cannot accept that. I am surprised that the Lib Dems would.

Q59 **Christine Jardine:** Actually, the premise of my question, Cabinet Secretary, was that you are basing your argument on a hypothetical agreement by the Supreme Court. What are you going to do if the Supreme Court says no? That was the basis of my question.

Fergus Ewing: George Eustice agreed that this Bill is not necessary. Ironically, although we would expect Scottish MPs to stand up for the interest of the Scottish Parliament in continuing to be able to exercise the devolved powers, it seems that Mr Eustice is taking a more enlightened view than some of your colleagues today.

Q60 **Tommy Sheppard:** Good afternoon, Cabinet Secretary. To change the subject slightly, another thing that the UK Government and DEFRA have signalled is that they wish to shift the payments regime away from one linked to land towards payment for common goods, as it is described. Can you tell us your thoughts on the applicability of such a system for Scotland? If you do not wish to implement it as DEFRA would wish, do you have adequate powers at the moment to tailor a separate scheme for Scotland?

Fergus Ewing: Yes, I can answer that. In Scotland we believe that it is important to recognise the contribution that farmers and crofters make in looking after the countryside, and their stewardship and environmental work. I personally believe that they very often do not get sufficient credit for the good practices and the improved environmental practices that they are conducting.

We must also recognise that they are producing high-quality food. They are food producers. I think that when the public think of farmers, they still think of them as people whose job it is to produce high-quality food. In Scotland, livestock farming is absolutely essential. Under devolution, we have been able to tailor our own policy support towards livestock farming in a way that allows our hill farmers and our beef and sheep farming to operate. I am seriously worried that the "Health and Harmony" paper appears to offer little comfort or support and barely mentions the necessity for high-quality food, particularly when we hear from the UK's own advisers that supermarket shelves may be empty within days of a no-deal Brexit, and that there could be serious problems in the continuity of food supplies. Now is not the time to risk the continued supply of food for the country. It is extraordinary that the UK Government do not recognise the importance of farmers as food producers.



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The second part of Mr Sheppard's question was whether we will be able to tailor our policies in order to improve the CAP, which obviously needs improvements in many areas. The answer is yes, we can and we will. In addition to that, in our "Stability and Simplicity" plan we have already set out in quite considerable detail our proposals for how we would seek to do that. We have not finalised our consideration of the responses to the consultation paper—we had a great number of them. But I can share with the Committee that there is very strong support for the central thrust of our paper, namely that farmers and crofters need a period of stability and certainty, particularly since the rest of the Brexit preparations by the UK Government appear to be—to use a Gaelic word—a bùrach.

- Q61 **Tommy Sheppard:** Thank you for that. To clarify, are you saying that you have sufficient legislative ability in the Scottish Parliament to design a payments scheme in future that meets Scottish circumstances and does not require any further legislation, either through the Scottish Parliament or the Westminster Parliament?

Fergus Ewing: We may require legislation in the Scottish Parliament. We have not come to the point where it is necessary to determine if that is the case because, as I said at the beginning to the Convener, we want to co-operate with the UK Government if they will co-operate with us in providing justification for their position. Thus far, they have not done that. If it is necessary for us to legislate, in the absence of agreement with the UK Government, the Scottish Government would consider that and it would be up to the Scottish Parliament to consider such legislation. There is plenty of time for that to happen. There is no risk whatsoever to our being able to do what Mr Sheppard raised.

- Q62 **Ross Thomson:** Cabinet Secretary, this afternoon we have heard evidence from the NFU, which raised its own concerns about divergence that could result in differences in the UK internal market. Do you accept that there is a risk that too much divergence could have an impact on the UK's internal market? If so, how do you think that risk should be managed?

Fergus Ewing: There already is considerable divergence. For example, I hope the Member will know that we have less favoured area schemes in Scotland. My understanding is that that was abandoned about seven years ago down south. That is just one example. Surely, devolution means we must be free to do what is necessary for Scotland's needs. The nature of devolution is that there should not need to be a uniform approach and that we in Scotland decide what to do. There has been a fair degree of consensus across political parties that, for example, divergence in support for our hill farmers is absolutely necessary.

What is disappointing is that nothing that the UK Government have said deals with the unfairness of divergence in funding, particularly the convergence moneys that the UK Government in 2013-14 decided, instead of distributing to the Scottish farmers and crofters for whom it was intended, to distribute across the rest of the UK. That divergence has plainly had a high cost, which the Member may know is around £14,000 in



lost revenue over the period for every farmer and crofter in Scotland on average.

- Q63 **Ross Thomson:** Thank you very much, Cabinet Secretary. You are absolutely right that devolution means taking different decisions to meet different needs, but that is not a justification for breaking up the UK internal market. We have heard again today—it is crystal clear in evidence—that the NFU and those in the farming community would not want to see barriers to the market to which they sell most. In your opening statement, I think you yourself talked about the importance of alignment with the EU single market, but I am sure you would recognise that the UK internal market accounts for a considerably larger proportion of Scottish exports—61% as opposed to 16% to the EU27. Is it not then of paramount importance that nothing is done that might break up that very important UK internal market?

Fergus Ewing: Nobody is suggesting, to use the terminology that the Member just used, a “break up” of the UK internal market. Many of our successful farmers operate on a UK basis, supplying large companies, supermarkets and wholesalers throughout the UK. There is absolutely nothing whatever in our plans that would alter that. I have no idea what the Member means when he accuses us of taking measures to break up the market. What I can say is that if he thinks that we should give up our devolved powers over agriculture and forfeit the right to tailor our policies in the way that we have, and if he thinks that we should terminate support for our hill farms and end direct support payments, as the Treasury and Mr Gove seem to think, then I respectfully disagree.

- Q64 **Ross Thomson:** Thank you very much, Cabinet Secretary. I am sure that when you watch this back, you will see that I did not accuse you of any of that. You may have skipped breakfast this morning, given your mood, but I am sure that you will see that I did not accuse you of anything. I am, however, glad that you have given us the reassurance that your Government will not do anything to break up the UK internal market. My last question picks up on a point made by Christine Jardine, which I don’t think was actually answered by you. We have had evidence again today from the NFU, which said that farmers are begging for certainty from your Government. You have pinned their hopes on your continuity Bill. If the Supreme Court says that it is illegal, what will you do?

Fergus Ewing: I do not accept the premise, and incidentally I do not recognise the emotive quote that you gave, but I am happy again to provide absolute assurance to every farmer and crofter in Scotland that there is nothing in this Bill that prevents us from continuing to make the payments. We are making the payments, and they go out the door earlier than they do down south—something that I would have thought that the Member might have been pleased about—with 99% of eligible farmers receiving up to 90% of their direct payments in the month of October. I think that that is a pragmatic welfare measure, and we shall continue with it.



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Just to finish with this point, the big uncertainty is this, and the NFU did raise it: the quantum of funding post Brexit. That is the big uncertainty. I must report that in the run-up to the Brexit referendum, the Brexiteers, including Mr Gove and Mr Eustice, assured voters—who no doubt accepted those assurances in the ballot box—that EU funding for rural Britain would be at least matched. I have asked Mr Gove to confirm on the record, in Parliament, in *Hansard*, that this pledge will be obtempered. The various limited assurances that we have go nowhere to provide that assurance. That is the real uncertainty. The NFU, from my reading of their comments over the last week, indicated that the lack of overall funding certainty is the big problem, coupled with the fact that we know that the Treasury wants to cease direct support payments to your constituents. Well, I do not agree with that. I think that they deserve the payments and, incidentally, that they provide the public good already. They should be recognised for that. We should be willing, across all parties, to recognise that they earn the support that they receive for both food production and environmental stewardship.

- Q65 **Kirstene Hair:** Cabinet Secretary, do you not think that it might alleviate some alleviate some of the uncertainty raised in the previous session by Scottish Environment LINK, the National Council of Rural Advisers, NFU Scotland and the Scottish Crofting Federation if you set a date for an agriculture Bill in the Scottish Parliament?

Fergus Ewing: No, I do not, because I do not think that that uncertainty actually exists except in the minds of certain MPs. I have provided an absolute assurance that the payments will continue.

I can also say that our paper “Stability and Simplicity” has had an extremely positive response for precisely the reasons that you indicate. What farmers and crofters want, in contrast with the current Brexit chaos, is a period of certainty that they will continue to receive the payments that they have come to expect from the EU over a seven-year period. Since you are quoting stakeholders, Mr Hall made that point specifically: he said that because the EU has determined support over programme periods of seven years, and is due to do so once again from 2020 to 2027, it is precisely the lack of long-term funding commitment from the UK Government post Brexit that is causing the uncertainty. That is why “Stability and Simplicity”, our plan, seeks to provide that certainty amidst the Brexit chaos.

- Q66 **Kirstene Hair:** Cabinet Secretary, did you listen to the previous panel?

Fergus Ewing: I have read the *Hansard* report of the evidence that Mr Hall gave, and I have had memorandums indicating the evidence that was given. I am virtually quoting verbatim from what Mr Hall said about the lack of funding certainty. EU programmes are devised over seven years, but what assurances is Mr Gove providing? Direct farm support till 2022, and pillar II payments, excluding farm support, until 2020. That includes things like forestry grants. Forestry is a long-term business, is it not? Surely we must have assurances from the UK Government that go beyond 18 months’ time.



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- Q67 **Kirstene Hair:** Cabinet Secretary, I would really appreciate it if you could answer the question, because it seems to me that you are wasting time. If we could get our questions answered, we would get more evidence from this session. Perhaps you are getting confused with the *Hansard* report of the Agriculture Bill Committee, but I was asking you about the panel that came in just prior to your video link. Yes or no: did you listen to that panel session?

Fergus Ewing: I have not been able to listen to that panel session—I will do so later—but I am reading quotes from Mr Hall. I am afraid that what he said was diametrically opposed to the premise of your question, Ms Hair, which implied that the uncertainty is somehow the fault of the Scottish Government.

Chair: Sorry, Cabinet Secretary, but I think we have to draw some sort of line under this. What we will do, if this is satisfactory to the Committee, is ask the NFUS what the position is. I did not hear its representatives say that, and I have the record in front of me, as you do. So that there is no need to ask the Cabinet Secretary again, we will ask the NFUS to clarify exactly its position concerning payments. Is everyone happy with that? We will move on.

- Q68 **David Duguid:** Cabinet Secretary, you have said that the Bill fails to deliver on the promises that Scottish farmers will continue to receive at least the same level of funding. What would you like to see the Bill contain on agricultural funding for Scotland?

Fergus Ewing: That is a very fair question, Mr Duguid. I have suggested directly to Mr Gove on numerous occasions in our meetings that he should provide, on the parliamentary record, a reassurance about the funding that should be provided and that was promised during the Brexit referendum.

I repeat that the UK's Bill fails to deliver on the promises made in the referendum. It contains nothing to honour the promises that all lost funding for farming would be at least replaced. I have pressed Mr Gove on that point on numerous occasions. The importance of the red meat levy is also a cause for concern. I was assured originally that it would be included in the Bill from its introduction, but it has now been tabled as a Back-Bench amendment, with no warning given to the devolved Administrations. My information, although we have only just got it, is that it is in need of substantial improvement.

This is important, because there has been a real unfairness. A couple of million pounds to market high-quality Scottish meat has instead been earmarked and not received in Scotland. This is a long-standing grievance that the UK Government have not adequately sorted out. I very much hope that it will now be sorted out in the course of the Bill's passage.

Ensuring that imported foodstuffs—particularly meat—meet the high standards of welfare, hygiene, labelling and so on that are met in this country should be put in the Bill. Mr Gove's argument on that is that it is the UK Government's policy, and that it will be included in a trade Bill.



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That is why I have not majored on that as one of the reasons why we have taken the stance that we have, because he provided an assurance that it will be dealt with in that way.

Finally, the Bill does not deal with geographical indicators, which are worth hundreds of millions of pounds, particularly for Scottish beef and lamb, but also for 12 or 13 measures. They are absolutely vital. We are concerned that the UK is not willing to do as we wish, which is to implement a reciprocal recognition of EU and UK indicators, because they wish to keep it in reserve as a negotiating lever in other Brexit negotiations. That carries with it the risk that the EU will take legislative action, on a tit-for-tat basis, to refuse to recognise Scottish beef and lamb. That would be absolutely devastating, given the importance of our access to those EU markets. That is just a quick summary.

- Q69 **David Duguid:** I appreciate your comments on animal welfare, the red meat levy and geographical indicators, and I broadly agree with everything you said. However, that was not the question. If I rephrase the question slightly, it might be easier to answer, more or less, with a yes or no. Is legislation needed, given that the UK Government have said that they are committed to the same cash total in funds for Scotland until 2022?

Fergus Ewing: That assurance does not match the promises made before Brexit that funding would continue. Indeed, we know that direct support payments are due to cease in 2027-28, according to the Treasury. I am reliably informed that a 2005 DEFRA paper set out the desire to cease the direct payments, so this really has been cooked up in Whitehall for many years.

I am astounded that there is not huge concern among all Members representing Scottish constituents about this direct support, which I am told is crucial by my constituents and by farmers across the country, and by crofters in the case of the highlands and islands. This direct support payment is absolutely crucial for what they do and to sustain their work in rural communities, as I am sure Mr Duguid knows.

I do not understand why the Conservatives want to end direct payments. I would have thought that the Bill would be a good opportunity to insert, in tablets of stone, that that should not happen.

- Q70 **David Duguid:** You are not satisfied with the commitment to maintaining the cash total in funds for Scotland until 2022. What cash funds commitments has the EU given its member state farmers beyond 2022?

Fergus Ewing: The seven-year programmes I referred to come to an end in 2020. The new programmes will begin in 2020-27. It is up to the EU to determine its policies, as has always been the case. The point I make is that the EU payments over the period of the UK's membership of the EU have come to be taken for granted by farmers and crofters. There are many aspects of the CAP that we feel are unfair, such as the disproportionate penalties that are unfairly imposed on farmers. However, they have come to expect that support from the EU.



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Lastly, the guarantee made in respect of some pillar II payments is that they will only continue in respect of farm support. For those that do not include farm support, the guarantee, Mr Duguid, terminates in 2020. That is only 18 months away, and therefore that assurance, particularly with regard to non-farm support payments, is far less than what we were all promised on the back of the Brexit bus. Sadly, the back-of-the-bus promises for Brexit have not even translated themselves on to the side of a fag packet as far as the UK Government's commitments are concerned.

Q71 David Duguid: So you have no understanding or awareness of any commitment by the EU to maintaining funding for farmers of its member states beyond 2022?

Fergus Ewing: The EU are committed to continuing a regional regime of support for the CAP, as they have in the past. None of us here can predict exactly what that will be because that is for the EU to determine. If the UK decides that the Brexit process goes ahead, the UK will not play a part in that.

The last point I will make, which is very serious indeed, is that next year, in 2019, the level of payments per hectare for farmers and crofters in Scotland, compared with all EU countries and the rest of the UK for that matter, will be the very lowest. Next year, Scottish farmers and crofters will receive the lowest level of support per hectare than any other part of the EU. I think that is shocking, and the convergence review was designed in order to address that, although of course it was promised to be initiated several years ago. But as a reasonable person I will seek to continue to co-operate to seek to ensure that the UK Government deliver. I do not know why Mr Lamont finds this funny; it is £14,000 for every farmer in Scotland that we have lost, because the convergence of policy was designed by the EU in order to bring the low level of payments that we enjoy in Scotland up to—not even the average—90% of the average. I do not think that there is anything funny about that, but maybe Mr Lamont disagrees.

Chair: Let me just move on at that point. Over to Ged Killen.

Q72 Ged Killen: Cabinet Secretary, you will be aware that we are soon beginning our inquiry into the relationship between the UK and Scottish Governments. Every time I sit in a session like this I think that that inquiry cannot happen soon enough. You have perhaps covered this already in your previous answers. Can you confirm what discussions you have had with the UK Government regarding the allocation of Scottish agricultural funding during a transition period and post transition? Have any specific commitments been sought or given?

Fergus Ewing: Yes. First of all, I have had many discussions with Mr Gove and Mr Eustice, and I think the Member is misinformed if he thinks that these discussions are characterised by anything other than an attempt to engage in a constructive fashion. I think Mr Eustice and Mr Gove—I hope—would recognise that as I do.



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My job is to stand up for Scotland and get the best possible deal, and that is why the public commitment that I have sought is to implement what we were promised when people were persuaded to vote for Brexit, namely that the level of funding in Scotland and rural Britain would be at least matched. In addition to that, I have obviously called upon the UK Government to repatriate the money due to Scottish farmers and crofters—an average of £14,000. That is plainly a manifest unfairness.

We have not got the commitments that I have asked for, which I think was the question you asked. What we have got is a commitment that direct payments will continue up to 2022. I welcome that as far as it goes but it does not go far enough. Farming is a long-term business; land management is a long-term business; and at the risk of repeating myself, as far as the pillar II payments are concerned, the commitments in respect of non-farm support payments expire in 2020. Plainly the commitments that have been made are inadequate, and again, that is a point that was very clearly made by, I believe, the NFU, with whom we also enjoy a very good relationship and regular discussions.

- Q73 **Chair:** Can I ask you, Cabinet Secretary, about this new review of intra-UK allocation of agricultural funding, which I believe the Government has charged Lord Bew with conducting? It is a six-month review and is due to report, I believe, by 2022. The only thing we know about this so far is that it will not be subject to the Barnett formula, which I have seen presented as good news in Parliament. It strikes me as perhaps unambitious. What are your views about what should happen in the allocation of funding across the United Kingdom?

Fergus Ewing: First of all, we have more farmers and crofters per head in Scotland than elsewhere in the UK. Farming and crofting amounts, I think, to about 15%, 16% as a share of the total economy of the UK—you can check the exact figure. Broadly speaking, it is around about double the Barnett formula contribution, so anyone is suggesting that Barnett should apply would be proposing to cut in half support. That is clearly nonsense.

The starting point, it seems to me, is the existing level of finance, but the convergence review, as you rightly said, was announced by the UK Government and was agreed to by the UK Government last November. The agreement was reached between myself and Mr Gove. We exchanged terms of reference and although the person conducting the review would be decided by and picked by the UK Government—they picked Lord Bew and we are happy with that—we would choose one person to represent the Scottish Government. That was fine.

In February, I had a telephone conversation with Mr Gove, in which he said that he was broadly happy with the terms of reference. We then pressed and pressed to get the inquiry going, and got no answer. We then discovered in August/September that the Treasury had intervened and imposed various strictures de novo on the terms of the review. We cannot share these because they are in confidence, but they appear to hamstring the review, in the sense of what the Treasury would do after it is completed. Normally when you have a review you let the review go ahead



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and then wait to see what it comes up with by way of recommendations before you decide what to do. None the less, because of the importance of this matter, we think that the review should go ahead.

Sadly, Mr Gove announced that there would be a review prior to our resolving the various matters of agreement and differences of agreement—not least, for example, would the review have access to all the advice that was given to Ministers? If it does not, how can it do its job? As matters stand, no answer has been given to that, as far as I am aware.

Finally, the Treasury apparently suggested that we should nominate two people to represent Scotland and the Prime Minister would select the person to represent Scotland. That was very clearly moving the goal posts after the game had begun. So you can understand that this has caused concern, but the bigger picture is that I am keen that this review should get going. Incidentally, I do not recognise—maybe the UK Government have told you something that they have not told me—2022 as the outcome of the inquiry. I think I am correct in saying that it is envisaged that Lord Bew—with a panel that incidentally would comprise representatives from Scotland, Wales, Northern Ireland and the UK—should conduct the inquiry much more speedily than that. If you think about it, it needs to be, in order to be able to inform the bigger question of the fair allocation of intra-UK funding. I am happy, if the Convener wishes, to provide a lot more detail and background insofar as I can, consistent with our duty of confidentiality, if that would help the inquiry that you are conducting.

- Q74 **Chair:** I think that would be very helpful, and we look forward to securing that. Obviously you cannot go into detail about the conversations you have had because of the confidentiality, but is there anything that you could tell the Committee about areas that should concern us or that we should look at?

Fergus Ewing: The inquiry must be independent. I do not know Lord Bew myself, but I believe he has an impeccable reputation for issues of governance and independence. I think that is a good thing. I think it is essential that Scotland and Wales pick their own representatives. That was the agreement initially. I think it is quite wrong that that should be changed.

Any inquiry of importance has to have access to the prime documents, otherwise it cannot do its job—it is gagged. We are waiting for a response on that, and it would be very helpful if the Committee could express the view that to get to the bottom of things, such access is necessary. I would imagine that such documents would be treated as confidential until such time as the report's recommendations are concluded, at which point they would obviously have to be made public. After all of these years—this review was promised, I think, back in Owen Paterson's day in 2013, 2014—we need to get this done. We need to get this over, and my hope is that it will inform a fair and honest debate with the UK Government and the devolved Administrations whereby a fair allocation of funding post



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Brexit—if Brexit happens—can be achieved for our farmers and crofters. That must be the hope for the outcome of this review.

- Q75 **Chair:** Lastly on this, I note your frustration about Scotland being deprived of the previous conversion uplift money. I get this all the time from my farmers: real frustration and anger that this money has effectively not come back to Scotland, where it should rightly belong. Is it gone? Is there no chance whatsoever that the UK Government may still allow Scotland this money, so that we can properly compensate our farmers?

Fergus Ewing: No one is suggesting that the particular allocations of funding made in the years 2014 to 2018 can be revisited. What is done is done, but if the review recommends that there have been wrongs in the past, it must surely be possible for those wrongs to be righted, albeit without taking money from farmers elsewhere who received it in good faith. We have made it absolutely clear to our Welsh and Northern Irish counterparts—and, indeed, to our friends in England—that we are not suggesting that any money should be recouped from anybody.

This is an issue, ultimately, between the UK Government and their Treasury and the Scottish Government about a fair allocation of funding—funding that no one really disputes was always intended for Scottish farmers and crofters, and only for Scottish farmers and crofters. No others in the UK qualified, and this policy had a very clear aim, which was to level the playing field—to balance out the inequity of the low level of payments here and the higher level of payments elsewhere, and bring them up to the EU average. It was a fair policy, I think—a good EU policy—but it was thwarted, in my view, by the UK Government. Therefore, the recommendations of this review should, on the basis of a public debate, be capable of righting the wrongs and bringing to an end an auld sang, if you like.

- Q76 **John Lamont:** Cabinet Secretary, in relation to the WTO provisions within the Bill, you have said that it will “ride roughshod over the devolution settlement” and impose policy constraints on Scotland. I just wondered if you could explain how, or why, you think these WTO provisions are infringing the devolution settlement.

Fergus Ewing: Well, it’s not actually my view, Mr Lamont; it is the view of the very senior legal advice that we in the Scottish Government have received. Let me explain the exact basis of that legal advice. Clause 26 of the Bill concerns the WTO agreement on agriculture, and we believe that our consent in the Scottish Parliament is required, because it concerns the implementation of international obligations as regards matters—namely agricultural support—that are devolved. Clause 26 contains provisions that would affect the Executive competence of Scottish Ministers as regards the exercise of functions in relation to agricultural support in Scotland, so if you like, this was an argument that arose because of legal advice that we took. This was not an argument that I, as a Minister and a politician, cooked up in my office. It is because we have had the clearest and most authoritative legal advice that we pursued this.



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Now, when I raised it with Mr Gove, he undertook—and this is in the public realm—that there would be discussions between senior Law Officers. It is not for me to discuss what discussions have taken place between the senior Law Officers, as there are protocols that mean I am not permitted to do so, but let me just say that the real frustration here, Mr Lamont, is that we have set out our stall. We have given our justification. We have set out our rationale—namely, that this is not the setting of WTO agreements but the implementation of agreements, which is plainly devolved. What we have not had is any setting out of the stall, any rationale, or any justification from the UK Government. Maybe, when Mr Gove gives evidence pretty soon, you could ask him that very question.

- Q77 **John Lamont:** Under the terms of the Bill, it is the Secretary of State who takes on responsibility for complying with WTO rules, and that has been described as the power grab. Where do those powers that the Secretary of State is going to assume under the Bill currently rest?

Fergus Ewing: The WTO agreement does not apply at the moment, because it could only apply post Brexit. We accept that the WTO international relations are a reserved function, but we believe, and our legal advice is, that the implementation of those is a devolved matter. If it would assist members—these matters are partly legal, and we are not really here to have a legal debate—I can help by pointing out that our arguments are in the public domain in our LCM. If it would help the Committee to understand them better, they can have a good read of that.

- Q78 **John Lamont:** That is helpful, but we are compliant with WTO rules just now through our membership of the European Union. It is the European Commission that has to comply with WTO rules. Is that not correct, Cabinet Secretary?

Fergus Ewing: I am sorry; I did not catch the question.

John Lamont: We are complying with WTO rules just now, though our membership of the European Union. It is currently the European Commission that exercises those powers that will be assumed by the Secretary of State.

Fergus Ewing: Yes, but the problem is that there is a refusal to recognise that the implementation of those powers impinges on devolved matters.

- Q79 **John Lamont:** We all accept that agriculture is devolved, but those powers are currently exercised by the European Commission. I just wonder what your concern is, when you are happy for the European Commission to exercise those powers, but you have an issue with the UK Secretary of State doing it, who arguably has a better interest than the European Commission in Scottish matters.

Fergus Ewing: I hope that is the case, although it is not really proven. It certainly has not been the case in convergence, has it?

- Q80 **John Lamont:** So to answer my question, you accept that those powers are currently exercised by the European Commission, which you are content with, but you have an issue with the suggestion, as laid out in



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the Bill, for it to be the Secretary of State.

Fergus Ewing: No, that is not correct. Responsibility for compliance with the WTO is already devolved. What has been proposed in the Bill is that that fact is not recognised and that the powers in respect of compliance, which are already devolved under the existing arrangements, would not remain devolved. In the current arrangements, the European Commission is really just acting as a post box.

Q81 **John Lamont:** So the European Commission does have those powers, which are going to be transferred to the Secretary of State, so the Secretary of State will be in the same role as the European Commission as of today. I am not aware of any campaign that you are running to take those powers off the European Commission and repatriate them to Scotland.

Fergus Ewing: It is the member states, I am told, that are required to have the legal obligation to comply, so the European Commission does not actually have those powers. I am informed that, although these are legal arguments, and I think we are both lawyers, I am not sure that either of us are particularly well qualified to opine on these matters—

Q82 **John Lamont:** With the greatest of respect, Cabinet Secretary, you are making this a big political issue about power grabs.

Fergus Ewing: The advice that we have had is advice from very senior lawyers. These are not political arguments; these are legal arguments. They should be taken very seriously by all members.

Q83 **John Lamont:** I am sorry, Cabinet Secretary, but you, the Scottish Government, are making this a political point by talking about power grabs. If those powers are currently exercised by the UK Government, which is what you are now suggesting, or by the European Commission, there is no power grab.

Fergus Ewing: No, that is not the case. We enjoy the powers at the moment through the UK Government because of the way the legislation is framed. We will see that removed, in our view. It is the member states who are the signatories of the WTO agreement, not the Commission. This is already a devolved area of policy. It would cease to be so if the predation that we believe is the impact of the UK Agriculture Bill were to proceed.

Q84 **Chair:** Can I ask, Cabinet Secretary, have you seen the NFUS legal advice on the issue? If you have, what does that say about the particular powers when it comes to this?

Fergus Ewing: I have not seen the NFU advice myself, and I do not believe that my colleagues in the Scottish Government have seen it. I would say that it is not the normal practice to share legal advice, by the nature of things.

The point I would like to stress is that I do not want a battle about these things; I want a peace treaty, if that is how you want to term it. I would



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love for Mr Gove to explain what his reasons are. We have explained our reasons and our argument. I have gone over it in principle, and there is more detail in our LCM. If you have the chance to ask Mr Gove, who is a very courteous man, maybe he will explain to you what he has so far not explained to us, which is, what his argument is in response to our pretty senior legal advice on these matters, which is very clear.

Chair: Okay, I suggest that you have a look at the NFUS legal advice, because what it says is almost identical to what you have suggested and presented as your advice. We were just told that by the NFUS. Can I just ask about the practicalities?

John Lamont: Sorry, can I challenge that? The NFUS suggested that it is the European Commission that currently exercises those powers.

Chair: Can I suggest again that it has been circulated among the Committee that the NFUS—

John Lamont: We heard it earlier.

Q85 **Chair:** I suggest you look at it.

Can I return to what these things actually mean, Cabinet Secretary? What we heard in the previous session is that the NFUS is concerned that if this interpretation is taken forward, it will set limits on the amount of domestic support that can be targeted at specific measures that Scottish Ministers may seek to apply in Scotland to meet their objectives. It would put a cap on what Scottish Ministers could supply to further assist Scottish farming. Is that your interpretation? *[Interruption.]*

Fergus Ewing: I'm sorry. For some reason the lights went on and off. It distracted me from the premise, which I did not quite catch.

Q86 **Chair:** In the last session, the NFUS told us that the practical outcome of this dispute over WTO powers will be that the Secretary of State will be able to limit the amount of support that can be offered by Scottish Ministers to Scottish farming. Is that a representation that you recognise and would agree with?

Fergus Ewing: Yes, I do. I am in agreement with that. In particular, my understanding—I stress that I am not a legal expert; that is not my job—is that the support that is provided is categorised into amber, green and red. Under the powers as drafted, the Secretary of State would be enabled to determine into which category certain types of support fell in the UK. If he decided that it fell into the wrong category, then, as you have been advised by stakeholders, that would have the potential effect of delimiting the powers that we currently enjoy, such as payment of moneys to hill farmers, which is something that we wish to continue to see happen.

Q87 **John Lamont:** Cabinet Secretary, on the point of the colour categorisation, who makes that decision today? Is that a job that you have?



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Fergus Ewing: We decide these matters at the moment. The changes in the Agriculture Bill would allow the UK Government, over devolved policy in Scotland, to cut the cake and choose the slice.

- Q88 **John Lamont:** Even though Scotland is not a member state of the WTO, it is Scotland that is doing that colour coding, is it not?

Fergus Ewing: At the moment, we set our policies and they have not been subject to any challenge. The risk is that under the Bill as drafted, the Secretary of State and the UK Government would be enabled to take decisions—it is not only ourselves who have pointed this out; the stakeholders have done so, as the Convener has pointed out—that would impact and potentially delimit what payments we can make. I don't know about you, Mr Lamont, but I don't want that to happen. I want us to continue to be able to support our livestock farmers and our hill stock farmers in the way that we have enjoyed and taken for granted under the EU.

Chair: We are just about concluded, Cabinet Secretary, you will be pleased to know, but we have a question from Christine Jardine.

- Q89 **Christine Jardine:** Cabinet Secretary, DEFRA has said that existing Scottish Government policies, including voluntary coupled support, would still be possible under the Bill's provisions relating to WTO obligations. Do you agree with that assessment? If so, why, and if not, why not?

Fergus Ewing: Of course, we can continue with voluntary coupled support for the time being, but as we have already covered in evidence, it is beyond doubt that the UK Government have indicated that their plan—after a period of time, admittedly—is to terminate certain elements of direct support. We believe that that would be deleterious. That is why our plan, “Stability and Simplicity”, is the only plan. “Health and Harmony” may be a good name for a beautician's business, but it does not cut the mustard for the future of farming in Britain, as far as I can see. We want to be able to continue to do it, not just for as long as the UK Government says that it is okay, but as long as it is necessary for the good of rural Scotland.

- Q90 **Christine Jardine:** If I could go back to that, what I did say at the very beginning was that DEFRA has said that existing Scottish Government policies—not only voluntary coupled support, but including voluntary coupled support—would still be possible under the Bill's provisions. What about other Scottish policies that DEFRA is saying could continue? Do you accept that assessment or do you disagree with it?

Fergus Ewing: It goes back to the nature of the specific assurances that are received. Nobody is more acquainted with them than myself, with respect, because I have been at numerous meetings where they have been the topic of discussion. The assurances are time-limited—up to 2022 for direct payments and 2020 for non-farming support. My argument is—as the NFU has argued and as I have said before—that the length of the assurances is insufficient for the needs of farming. I strongly agree with that. After all, if you are running a business—I think you were in that



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position, as I was—you want to have certainty. If you don't know whether funding is going to continue beyond a relatively short period, you have uncertainty. You are not going to plan for that new shed. You are not going to buy or significantly enhance your herd. You are not going to invest in a new combine harvester. You need that certainty. That is what "Stability and Simplicity" is about. It is the only plan, frankly, that I can see in the UK in relation to future farming support payments. That is what our plan offers—a future for Scottish farmers and crofters. That is probably why so many of them agree with our plan.

- Q91 **Christine Jardine:** Can I ask you to clarify something? The inference I am taking from what you said is that your objection is to the time limit. You have said several times that the problem is 2022. If it weren't for the time limit, would you be happy with it?

Fergus Ewing: Well, no, because the UK Government, in their discussion paper, "Health and Harmony", have talked about public goods, most of which are already being provided, as if they are going to be provided in the future. I think that is somewhat insulting for farmers who are already providing access and environmental improvements in Scotland. I think we should recognise the good work they do. The main thing is that the UK Government does not seem to recognise the primary role of farmers as producers of high-quality food.

I saw some evidence—I think it was in your previous session—from a witness who suggested that the food was not of high quality or was poorly produced. I do not accept that. We should value farmers for the production of high-quality food; certainly that is what they do in Scotland, and they should continue to receive payment for that. I do not just disagree about the time limits, Ms Jardine, although they are pretty scary, especially the 2020 limitation, but I disagree with respect to Michael Gove in principle on the need for public support. We believe that both functions—food production and environmental stewardship—are worthy of continued support. The UK Government have put a time limit on support for food production. That is deeply flawed.

- Q92 **Chair:** Lastly, Cabinet Secretary, could you update us on whether there has been any progress made between the Scottish and UK Governments in the 24 policy areas that potentially require legislative common frameworks—the majority of which, as you know, relate to agriculture?

Fergus Ewing: We are working hard across the common frameworks. You are right that 24 areas were identified by DEFRA as requiring a common framework. Some progress has been made and we have sought to engage constructively, but in order to have a common framework we need a basis of agreement. With respect, I feel that the substantial points we have been dwelling on in this exchange, whatever our view, are matters that I would like to resolve if we possibly can, but if not, we will stand our ground. We will continue to co-operate with the UK Government and Government agencies across all rural development issues, as we do, but without prejudice to that. Because we are desirous of being co-operative, my officials here and I have been engaged very constructively on the



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frameworks. If the high-level matters are resolved, Convener, then I hope we can continue to make further progress.

Chair: Thank you for that, Cabinet Secretary. It has been a highly entertaining session, and other than the few seconds or so when we lost you and the lights went out, we managed to survive the technology and the gap between the two Parliaments. Thank you for your attendance today. As with anything, if there is anything further that you could usefully contribute to this Committee, please do. I think there was one item, which our Clerks will remind you about, that you said you would submit, so we look forward to seeing that in due course. Thank you again for today.