

Framework

1. Do you think a framework bill is right?

(Yes/No/Don't know)

No.

The framework Bill grants Scottish Ministers far-reaching powers but imposes no meaningful duties about how these powers should be used in order to achieve the Government's vision for Scotland's future agriculture. Without comprehensive guidance on how Ministers are expected to use their new powers and clear principles for future rural support, the framework legislation comes down to a set of blank powers subject to political arbitrariness.

Our main concern is that – after over 20 years of discussion about 'public funds for public goods' – no commitment is made to meaningfully reform the system of area-based payments which, in its present form, mainly favours large landowners. This stands in stark contrast to Scottish Government's wider policy aspirations towards a more equal society, a Just Transition and a fairer distribution of land.

If the approach focusing on a framework Bill is further pursued, we insist on the implementation of binding obligations towards mandatory capping and frontloading of area-based payments. This demand is by no means radical, given that the most recent version of the EU CAP legislation introduces mandatory redistributive payments.

While we support the objectives outlined in the Bill, namely the 'adoption and use of sustainable and regenerative agricultural practices', the 'production of high-quality food', the 'facilitation of on-farm nature restoration, climate mitigation and adaptation', and 'enabling rural communities to thrive', without further concretisation they can mean anything – or nothing at all.

In times where carbon majors such as BP or Shell pride themselves with fancy buzzwords such as 'sustainability', we should be wary of hollow phrases. The present framework Bill, unfortunately, risks to produce exactly that. With almost all decision-making left to secondary legislation, the avenues for public consultation and scrutiny are limited, as are the safeguards to ensure that Ministers will be held accountable to effectively enable the objectives the Bill is set to achieve.

2. Does the Bill provide a clear foundation for future rural policy and support?

(Y/N/DK)

No.

The reform mainly focuses on agricultural policy, with rural development only being an afterthought. Future rural policy and support should be centred on the needs of Scotland's diverse rural communities and the benefits each of them specifically can deliver for the wider public. No commitment is made on the continuation of a scheme of community-led

local development. Attention to local particularities, however, is key. While a framework Bill inevitably needs to conform to a certain level of generality, it is concerning that – beyond a vague commitment towards rural community support – does not mention the specific and diverse needs of different rural communities across Scotland and does not explicitly attempt to strengthen the role of local authorities in supporting their respective communities.

Inspiration for a much clearer objective for rural development could be taken from the proposals for a Welsh Agriculture Bill which includes: “to conserve and enhance the countryside and cultural resources, and promote public access to and engagement with them, to sustain the Welsh language and promote and facilitate its use”. Language should be prominent in Scottish rural development. A comprehensive strategy for rural development should address the main drivers of population retention/loss/recruitment in marginal areas, which includes the issue of adequate affordable housing.

Further, it is worth noting that rural policy and agriculture are not congruent and the conflation of the two seems unhelpful. While both go hand in hand, at the moment it is unclear how one is intended to relate to the other. Schedule 1 sets out various land-based activities and treats them as co-existent while not paying attention to the numerous interlinkages and overlaps between them. It suggests that policy strategies should be pursued along the lines of certain activities (such as farming, forestry, food and drink etc.) while ignoring that the fault line that divides just from unjust transition runs across all these sectors: the uneven distribution of rural land.

We believe this is an important opportunity to acknowledge and value the contribution of small- and medium-scale agriculture towards nature preservation sustainable food production. Globally, small-scale agriculture is gaining traction as strategy that not only helps to tackle climate and biodiversity crisis but also delivers various community benefits and job opportunities. At the same time, families across the country are struggling with multiple crises such as housing and cost of living. Any future agricultural policy will need to address both, chances and challenges, and it can do so: By the mandatory redistribution of financial support.

To further small-scale agricultural production, it is required to put an end to a system discriminating against small- and medium-scale agricultural businesses while further privileging large landholdings. While tier 1 basic payments need to be retained in the short- and medium-term to secure the financial survival of Crofters and their families, a redistribution of tier 1 payments needs to take place immediately, halting the allocation of excessive amounts of funds towards those who do not need it, instead investing them where they are desperately required: to ensure the short-term survival of crofters and smallholders and to enable them to adjust and diversify their businesses in line with the requirements of a high-nature-value, low-carbon agriculture.

Purposes and objectives (section 1)

1. Do you think these are the right objectives? (Y/N/DK).

No.

Crofting has significant potential to contribute to policy outcomes as it delivers climate and biodiversity benefits, alongside production of food and the generation of social benefits for rural communities. Yet, substantially more investment is needed to ensure that crofting can continue to deliver for policy outcomes and more. Environmentally sustainable crofting is often socio-economically unviable. There is a risk that diverse and current good practices remain unnoticed in reforms that are geared towards *change* at *large* scale. This risk exists in relation to the uncertain position of common grazings under the Agriculture Bill and the lack of support for High Nature Value (HNV) agricultural systems across the crofting counties.

As mentioned above, the existing objectives are important and commendable in principle but require further concretisation in the primary legislation as they are extremely vague. Also, they are not enough.

The SCF urges to include at least two further main objectives, namely that the Act:

- promotes crofting and small-scale agriculture and facilitates the creation of crofts and smallholdings
- ensures a fair income for all farmers and crofters

Crofting and small-scale farming are the way forward when it comes to transforming Scotland's agricultural sector towards Agroecology and High Nature Value practices. The digital transformation increasingly enables people to live rurally while, at the same time, engaging in local food production beyond bare subsistence, contributing to the country's food supply. Instead of the use of pesticides and heavy machinery, crofting and smallholding rely on people – people who do exist and who would be keen on contributing towards local, healthy, low-carbon food production, if they only could. The Agriculture Act must ensure that opportunities exist for new entrants to join the movement towards sustainable agriculture and to provide initial support to launch their businesses. Further, it needs to ensure that existing business are given the support and time needed to adjust their business strategies to the needs of carbon-neutrality, the tackling of biodiversity crisis and the impacts of climate change.

Further, in order to further concretise the existing objectives, reference should be made to existing legislation and policies, as for example to expressly link 'production of high-quality food' to the Good Food Nation Act, 'facilitation of on-farm nature restoration, climate mitigation and adaptation' with the Climate Change Act, or 'enabling rural communities to thrive' with the Land Reform Acts and Local Development Plans.

Purposes and objectives (sections 2 & 3)

1. Do you think the requirement that Scottish Ministers must prepare a five-year rural support plan is the right approach? (Y/N/DK)

Yes.

We do welcome and support the proposal for the introduction of five-year rural support plans as these will give a clear sense of policy direction and stability to crofters, while also allowing ministers to regularly reassess and ramp up ambition towards achieving the bills'

objectives. However, the primary legislation should outline in greater detail what must be included in rural support plans and how outcomes are measured which includes budgets, targets and clear indications of how the plan will contribute towards overall objectives of the agriculture bill. Plans should be laid before and debated by the Rural Affairs Committee, relevant stakeholder groups should be consulted in the drafting phase. Successive rural support plans should ideally be published one year before the end of an ongoing plan in order to enable crofters and farmers to plan and prepare themselves accordingly.

2. Do you agree with the matters to be considered when preparing or amending a rural support plan, as set out in section 3? (Y/N/DK)

No.

The list of matters considered should explicitly include the following:

- Crofting law reform, being absolutely essential to ensure crofting provides a land use model that can deliver benefits across policy areas, including agricultural reform and rural development and their environmental and socio-economic aims.
- The Good Food Nation Act, The Local Food Strategy and the upcoming National Food Plan. These essential pieces of legislation on the future of food in Scotland all depend on agricultural production of healthy local food. It is therefore vital that they are considered when preparing or amending a Rural Support Plan.
- The Land Reform Bill and wider land reform agenda. A key aim of the land reform bill, as stated in the introduction to the consultation on the legislation, is reducing the concentration of land ownership in Scotland. Rural Support Plans must be created in consideration of this legislation to ensure agricultural support is not incentivising large-scale land ownership, as is currently the case with the area-based payments system.
- Wildlife management and muirburn
- Community Empowerment Act and Community Wealth Building
- Recent updates to CAP

Key provisions Part 2

1. Are the powers in Part 2 sufficient to provide for a new RS programme? (Y/N/DK)

No.

We do support the powers given under Part 2 as they are essential in order to deliver future support. However, powers should be accompanied by corresponding obligations that reflect

the government's vision for agriculture and the wider vision for a fairer Scotland and a Just Transition.

The present framework and the accompanying financial memorandum indicate that no major changes are envisioned regarding the distribution of area-based payments. We do not oppose the concept of area-based payments in principle, and the retention of tier 1 payments – at least in the short- and medium term – is essential to secure the financial survival of existing crofters, giving them time to adapt and avoiding to be faced with a cliff edge. Where crofting is often undertaken alongside part-time and full-time employment, base level payments with low administrative burdens are crucial to securing accessibility of funds and thereby continuation of crofting activities with significant public benefits. Yet, the way direct payments and top ups such as the Less Favoured Area Support Scheme (LFASS) and the Voluntary Coupled Schemes (VCS) have been distributed in Scotland – favouring the largest and often most productive businesses – is feeding the myth that basic payments are always a bad use of public money.

Basic payments in support of crofting may help to maintain active management at appropriate stocking densities in areas of High Nature Value, continuation of traditional activities that often support closed cycles (e.g. use of seaweed for fertilisation and the growing of heritage grains for animal feed), local and high quality food production and rural development including population retention, rural employment and community building and preservation of languages. Public goods, by definition, do not get compensated for by the market, the provision of which therefore needs public support.

Consequently, tier 1 must include an obligation towards mandatory redistributive payments, and not only the powers for Ministers to do so (or not). This means that more funding would be available for land below a certain hectareage, and less for land above this threshold. There is wide consensus across farmer-led organisations, the environmental sector and academic experts as that such redistribution provides for an effective mechanism to address some of the inequalities introduced by an area-based payments system and support small to medium scale farms. Also, this approach would be in keeping with the most recent version of the EU CAP legislation: The CAP Strategic Plans Regulation (EU) 2021/21151 introduced a mandatory requirement for EU member states to allocate at least 10% of direct support to redistributive payments, so that more of the budget is directed at small and medium sized farms. Given the extreme inequality of land distribution in Scotland, the share of 10% constitutes an absolute minimum in the Scottish context.

Hence, capping and tapering of support as outlined in clause 9 of Part 2 should not only be made possible but instead mandatory. It should be further specified which payments can be capped and on which levels. Further, the primary legislation must introduce a mandatory mechanism for redistribution (also known as 'frontloading'). Businesses should receive more funding for the first few hectares of land claimed, and less above a certain size threshold. The present minimum size threshold of 3 ha required to receive agricultural support payments has to be abolished, hence primary legislation's commitment to redistribution must clearly state that no minimum threshold exists.

It should be borne in mind that certain agricultural practices such as horticulture can be successfully conducted on limited space and better support for this must be a priority of the reform. Tier 1 payments should be based on current agricultural activity rather than historic

entitlements, and a a two-region model combined with capping should be adopted. LFASS should be reformed , whereas reform of the workings of VCS should aim to allow for much better targeting of funds in favour of marginal areas.

We welcome the inclusion of powers to refuse support if it is not in the public interest, as detailed under section 10 of Part 2. However, clear guidance must be given as to what counts as in the public interest. Spending large amounts of public money where it is not helpful or necessary for achieving the stated objectives of the bill or the goals of the Vision for Agriculture should not be considered in the public interest – for example, area-based subsidies for wealthy landowners are extremely difficult to justify with regard to the public interest, as are production methods that are detrimental to climate and environment, especially if conducted on a large scale. Section 10 should lay out clearly what criteria must be met to show that providing support is in the public interest, and should give decisive powers to refuse payment when these are not met.

2. Do you agree with the purposes set out in Schedule 1? (Y/N/DK)

No.

While we agree with the purposes set out in Schedule 1 in general, we would like to point to some serious omissions in the list of products for which assistance can be provided, specifically chicken, egg and pork. Many crofting business demonstrate that these products can be produced on smaller scales and in an environment supportive of regenerative agriculture but currently this activity goes largely unsupported

3. Do you have any other comments on the provisions in part 2? Please provide response

While we support the wide range of activities outlined, our concerns relate to the subdivision of the activities into topical 'silos' (such as 'food and drink' as opposed to 'agriculture' as opposed to 'forestry' and so forth). We do see the need for a certain categorisation and acknowledge that part 1 of Schedule provides for a combination of purposes. Still, there is a certain risk – especially for the competitive tier – that the demands of small-scale agricultural production will not be adequately reflected.

Crofting and smallholding often combines a range of various activities which provides for a range of income streams and helps to make businesses more resilient. In the past, funding options have tended to discourage diversification, for example with regard to tree planting. Any future support system should encourage and reward small-scale enterprises combining a range of business activities and make sure that such activities can be supported without having to compete with large-scale projects in the various sections operating on economies of scale.

Lessons (positive/negative) need to be learned from previous schemes - e.g. AECS and the Food Processing, Marketing and Co-operation Scheme, with the former being inaccessible to crofters and the latter having largely been inadequate to support crofting and local supply chains.

Key provisions Part 3

4. Do you agree with Scottish ministers' powers in Part 3 relating to retained EU Law?

No

'Retained EU law' as described here relates to EU law that was in place at the time of Brexit. This legislation is no longer in use in the EU, and has not been for several years. Law in Scotland is based on an early version of the CAP which was introduced in 2015, and which has been shown to have serious limitations in terms of efficacy. Since Brexit, a much more progressive CAP has been introduced in the EU, which tackles more directly some of the key issues facing farming in Europe (and Scotland) today. The Agriculture Bill should take into account recent developments in CAP legislation, and should require ministers to consider all future developments and whether similar legislation may be of benefit to Scotland. By merely tinkering with the 2015 version of CAP we risk being seriously left behind by our European neighbours. All retained legislation should be updated in-line with the most recent version of CAP, with ministers having power to alter this in respect to the specifics of the Scottish context, where they can demonstrate clearly that this is in the public interest.

Key provisions s26

1. Do you agree with the provisions on a code of Practice for Sust and Regen Ag? Y/N/DK

No.

We do, in principle, welcome the introduction of a Code of Practice, however, again, clarity is lacking: The Bill does not specify what this code of practice will be used for, and whether it will be merely used as guidance in shaping policy or whether it will be employed as part of a cross compliance process for agricultural support.

Any code of practice needs to be developed in a process that takes into account the views and experiences of farmers and crofters already engaged at the forefront of agricultural transition in terms of HNV and agroecology. It needs to be attentive to the possibilities and constraints crofters and smallholders face in any given context – a 'one fits all' all approach is unlikely to accommodate this requirement. In general, targets in the code have to be defined with great care as there are various, competing and at times opposing visions of what exactly counts as regenerative farming. Likewise, care has to be taken when it comes to developing the methodologies to measure if any set target has been achieved. If the Code remains a mere box-ticking exercise it is useless.

Regardless of whether this code of practice will offer guidance or be used for cross compliance, it is important that this is published as soon as possible. There should be a clear deadline put in place for when this must be completed by, as it will be essential for the development of secondary legislation, and will offer much needed clarity for farmers and crofters on what sort of practices they should be focusing on going forward.

2. Do you agree with the power- set out in s7- for the ministers to make regulations about the guidance contained in a Code of Practice on Sust and regen ag? Y/N/DK

Yes

If the Code of Practice can define sustainable and regenerative agriculture and corresponding methods in a way that does not introduce excessive burdens upon crofters and other small-scale producers.

Key provisions s27

1. Do you agree with the provisions around CPD? Y/N/DK

No.

We do acknowledge the need for CPD as we transition our food and farming system. However, any such system must be cognisant of the fact that best practices are already demonstrated by farmers and crofters across Scotland applying traditional as well as novel approaches towards agroecological and regenerative farming.

Any CPD should not convey the impression of being imposed upon the crofting and farming community but rather values their knowledge and input. Peer-to-peer advisory groups and farmer-led knowledge sharing networks are the best ways to achieve this. Farmers and crofters should be able to choose from a variety of opportunities and decide what works best for them when moving towards nature and climate friendly farming.

Further, any CPD activities should be accessible for rural communities in remote locations hence either being delivered online or, in case hands-on experience is required, be provided for somewhere nearby in any area of Scotland.

2. Is there anything missing from the Bill that you expected or wanted to see?

Apart from everything mentioned above – above all, redistribution of area-based payments – any new funding schemes should recognise that much of Scotland's High Nature Value (HNV) land is found within the crofting counties and that the potential of HNV areas to contribute to nature and climate objectives is reliant on low intensity agricultural methods. HNV is a European concept referring to areas where agriculture is a major land use and where agriculture sustains high species and habitat diversity. Much of Scotland's HNV areas are in the crofting counties and it is estimated that common grazings make up 15-20% of semi-natural, HNV areas. The important link between crofting and HNV means that HNV agriculture does not only hold great promise for delivering on the Scottish Government's aims due to its value for nature, but also for quality produce, rural employment and cultural heritage. Additionally, support for HNV agriculture will support active use of common grazings and the delivery of many social public goods, including traditional cooperative work, peer-to-peer learning and conservation of community assets. Yet, despite this potential HNV has so far received little attention within discussions on agricultural reform. We call upon

the Scottish Government to explore how HNV can be adequately encouraged and supported under a new agricultural framework.

3. Is this Bill an appropriate replacement for the EU's CAP regime in Scotland? Y/N/DK

No.

As mentioned above, the EU CAP has significantly evolved in the meantime and, in many ways, goes further than what is proposed by the present framework Bill, specifically with regard to the redistribution of area-based payments.

4. Are there any issues arising from the interaction of this Bill with other UK and Scottish legislation? Provide response

Yes.

As mentioned, the proposed Bill has impacts beyond the relatively narrow issue of agricultural subsidies and is potentially sets the course for a whole range of Scotland's broader policy objectives. The Bill does need to align with the objectives of existing policies and legislations such as Climate Change Plan, Circular Economy Bill and the Biodiversity Strategy.

If implemented as envisioned by the draft framework Bill and the Financial Memorandum, the new agricultural payments system hardly aligns with the Land and Agriculture Just Transition Plan as it further exacerbates, rather than mitigates distributive inequalities.

Crofting law reform is absolutely essential to ensure crofting provides a land use model that can deliver benefits *across* policy areas, including agricultural reform and rural development and their environmental and socio-economic aims and needs to be developed alongside the wider agricultural reform agenda.

Further, we would like to put special emphasis of the linkages between the present reform and the upcoming Land Reform Bill. The Land Reform Bill aims at reducing the concentration of landownership in Scotland, however, the present proposal is likely to hamstring this endeavour if no mandatory capping and redistribution of support payments is introduced. If done rightly, we see the Agriculture and Communities Act to walk hand in hand with Land Reform, for example enabling that more use can be made of the existing community right to buy for sustainable development.

In line with our consultation response on muirburn licensing, we may not that incentives to encourage good practices could be achieved by mainstreaming into agricultural and forestry policies.

Further comments

1. Please use this box to set out any further comments you wish to make about the Bill.

SCF recognises the potential of enhanced conditionality for incentivising improvements to businesses to help deliver environmental and other outcomes. Yet, measures will have to be designed with crofting in mind and proportionality and diversity are key: conditions that are imposed on big businesses may not necessarily work for small businesses, nor may top-down conditions work across all regions and sectors. Much thought will need to go into the design of conditions to ensure that they are workable for those that are operating at small scales, as well as for common grazings. Outcome-based rather than prescriptive measures may be more appropriate, and lessons should be taken from work that has been done in Scotland and elsewhere (e.g. Ireland).

Support for extensive grazing, the use of the common grazings, support for agroecology and agroforestry practices, small-scale horticulture, rare breed animals and heritage grains should all be part of elective measures. It is largely unclear where current support for crofting through LFASS/ANC and Voluntary Coupled Schemes fit in the proposed structure. Redesign of these schemes to allow for better targeting at the areas that truly face natural and geographical constraints should be part of the Scottish Agriculture Policy, informed by the key outcome of rural development. This should allow for financial support for crofting at higher than current levels. Also, at the very least we expect an explicit commitment to schemes that have been crucial for crofting and rural development more widely – the Crofting Agricultural Grant Scheme and the Croft House Grant Scheme - whilst taking the opportunity to work with SCF to fix any issues with the administration of these schemes.

While we are aware that a national legislative framework must 'fit' in a wide range of circumstances and therefore needs a certain generality, we are nonetheless concerned that hardly any reference is made to local peculiarities, historically grounded or otherwise. We do not avail ourselves of any claim that crofting is more important than any other agricultural practice, however, we do think that traditional agricultural practices such as crofting are part and parcel of and deeply rooted in the cultural identity of rural communities and any reform is required to recognise and value this heritage if it does not want to risk stiff opposition as we have recently experienced with the proposal on the introduction of Highly Protected Marine Areas (HPMAs).