



Northern Ireland
Assembly

Committee for Agriculture, Environment and
Rural Affairs

OFFICIAL REPORT (Hansard)

Direct Payments to Farmers (Legislative
Continuity) Bill: Departmental Briefing

21 January 2020

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Declan McAleer (Chairperson)
Mr Philip McGuigan (Deputy Chairperson)
Ms Clare Bailey
Mrs Rosemary Barton
Mr John Blair
Mr Maurice Bradley
Mr Harry Harvey
Mr William Irwin

Witnesses:

Ms Rosemary Agnew	Department of Agriculture, Environment and Rural Affairs
Mr Norman Fulton	Department of Agriculture, Environment and Rural Affairs
Mr Mark McLean	Department of Agriculture, Environment and Rural Affairs

The Chairperson (Mr McAleer): I welcome the witnesses from the Department: Norman Fulton, a deputy secretary; Rosemary Agnew, a grade 5 and director of Brexit; and Mark McLean. I will let you just kick off, Norman. Good to see you up here again.

Mr Norman Fulton (Department of Agriculture, Environment and Rural Affairs): OK. Thank you very much, Mr Chairman. First of all, I thank the Committee for taking the item at such short notice. I will just take a few minutes to provide you with some background to the issue.

Under the EU withdrawal agreement, the EU direct payments regulation, which provides the legal basis for all CAP pillar 1 support to UK farmers, ceases to apply to the UK after the end of the 2019 scheme year. The reason for that is that the 2020 scheme year payments will be made out of the EU 2020-21 financial year budget. That falls into the new EU multi-annual financial framework, to which the UK is not contributing, and therefore the UK needs to step outside the EU direct payments scheme.

If nothing were done to replace that EU legislation, there would be no legal basis to run direct payments for UK farmers this year. The Direct Payments to Farmers (Legislative Continuity) Bill corrects that deficiency. It is a technical Bill with a narrow scope that will incorporate EU direct payments legislation into UK law. It will also create delegated powers to make subordinate regulations to ensure that the retained legislation operates effectively in a domestic context. It provides an underpinning of direct support for the 2020 scheme year only, so there is a sunset built into the legislation, for the most part. It is envisaged that the Agriculture Bill, which was introduced last week

into Parliament will provide the necessary powers for 2021 onwards. There is a Northern Ireland schedule to that Bill, and, in due course, we will seek a legislative consent motion for that in a more conventional timeline.

The delegated powers in the Bill will enable failures or deficiencies in the retained EU law to be remedied and the retained law to keep pace with any changes that may be introduced into corresponding EU law during 2020, if that is deemed necessary. That may be required in order for us to maintain our state aid cover clearance for direct payments. You may also have noticed that there is a specific power in the Bill for DAERA to make regulations to move our basic and payment entitlements in Northern Ireland towards a uniform unit value. There is an option for that.

Agriculture is a devolved matter. The provisions of the Bill extend to the whole of the UK, and therefore it contains provisions that fall within the legislative competence of the Assembly. For that reason, DEFRA is seeking legislative consent for the Bill to be taken through Parliament and to include Northern Ireland in its scope. The formal request for that was received from Minister Eustice last night. This is happening at pace. It is not following a conventional pathway, and the process that we propose to take it forward is not in line with the normal Assembly Standing Order 42A. We have to work on an accelerated pathway to make the deadlines that we have been asked to meet.

The Bill was introduced to Parliament on 9 January. It is scheduled to have its Second Reading today and to have completed its Commons stages by 28 January. It will then pass through the Lords stages, to be completed on 29 January, and become law after 31 January, so there is a very constrained timeline. It needs to be in place after 31 January to ensure that there is a seamless transition from EU law to domestic law to cover direct payments.

Because it is a certified money Bill, the last stage at which amendments can be considered is as it completes its Commons Committee stage on 28 January, which is next Tuesday. Therefore, legislative consent from the Northern Ireland Assembly has been requested to be provided no later than 27 January, which is next Monday. That timetable, which has been moving and, indeed, was revised yesterday, now provides an opportunity for a motion to be tabled for debate in the Assembly next Monday. We propose that approach for consent to be provided. The Minister will write to the Speaker of the Assembly on that basis. That process is being taken forward. We propose to have a legislative consent memorandum tabled by no later than tomorrow to allow that process to continue.

Today provides the Committee with the opportunity to consider the draft Bill and come to a view on that in advance of the debate next Monday. It is obviously a very constrained timeline, and I thank the Committee for its forbearance on that. However, it is crucial that there is no gap between the ending of the EU legislation and the beginning of domestic legislation to ensure that we have a legal basis on which to make direct payments to farmers in Northern Ireland this year. I am sure that the Committee is fully aware of the importance of direct payments to the farming industry.

Finally, for completeness, I inform the Committee that DEFRA intends to lay two statutory instruments under this legislation on 31 January in Westminster via a made affirmative process under the Bill. That will seek to address the technical failures and deficiencies arising from transferring EU law into domestic UK law.

My request of the Committee today is to consider and to provide its view to inform the planned debate for Monday. I am happy to take any questions from the Committee.

The Chairperson (Mr McAleer): Thank you, Norman, for that comprehensive briefing. A number of members want to ask questions, but I will kick off.

Obviously, what we are looking at here is a consequence of the Brexit debacle, which has created so much uncertainty for our farming and wider rural communities. I noted the comments from the British Chancellor on, I think, 30 December, when he said that he would protect the funding for 2020, which will give, perhaps, a year of certainty, but will there be any changes to the application or the inspection regime for 2020? Importantly, as well, what about funding for rural communities beyond 2020?

Mr Fulton: The 2020 scheme will be a rollover of what we had in 2019, so no changes there; indeed, if we want to retain our state aid cover, we have to ensure that there are no material changes from what has gone before and keep pace with any changes that might be introduced for the 2020 scheme from Europe. What farmers can expect for 2020 is exactly what happened for 2019. There is no change in the regime at all.

The funding announcement on 30 December again rolls forward the budget that we had for 2019 into 2020 at the same exchange rate as was applied for 2019, so we have certainty on that. This legislation and the budget are for 2020 only. Our assumption is that anything in subsequent years will be part of the budget process. That is where we will expect to see some greater clarity around future years.

In terms of the shape of schemes beyond this year, as I mentioned, the Agriculture Bill will provide us with the ability to continue to take forward some simplifications, if that is what the Minister decides. Any more fundamental reform will probably require primary legislation to come through the Assembly process. We are at the start of a new era and a new journey.

The Chairperson (Mr McAleer): Thank you for that, Norman. I turn now to some members. First on the list is John Blair.

Mr Blair: Thank you, Chairman. Before I ask my question, I beg your indulgence for a moment to thank the departmental officials for the work that they have done and the help that they have provided us with during a time of much uncertainty, when they were working on Brexit issues in an ever-changing environment and with ever-changing demands, preparing for one deal, then another deal and then, sometimes, of course, preparing for all three possible outcomes and, perhaps, some more. We are grateful for that, and I want to put that on the record.

My question is more focused on how this will be rolled out. Do the regulations, for example, enable DAERA to roll out further tranches of the environmental farming scheme (EFS)? In that regard, as developments take place and given that the other devolved Governments might diverge from it, what preparations, if any, are being made by the Department or the Minister to ensure that the Assembly can keep pace with changes in the other devolved regions?

Mr Fulton: The legislation relates to pillar 1 only, so it is direct payments only. EFS is part of the rural development programme, and it will continue to make commitments under the rural development programme up to the end of this calendar year. We will then have a roll-out period where we service those commitments under N+3, so it does not affect what we are planning under the environmental farming scheme and further tranches there; it is on a separate pathway.

As for keeping pace with what happens in other regions, now that we are leaving the CAP, agriculture is a fully devolved matter, and therefore the Administrations in Wales, Scotland, England and Northern Ireland have complete autonomy in terms of the policy agenda that they will follow. Of course, within that, we all have to recognise that we will operate in a single market of the UK, and that therefore has to be part of our thinking. We do not want to create distortions or have conflicting policies in all of that, but there will be significant scope for each Administration to tailor what they wish to do in the agriculture and environment arena, because they have that devolved responsibility and autonomy. Many of the issues that are currently decided in Brussels flow straight back to the devolved Administrations.

Mr Irwin: I thank Norman and his officials for their presentation. I welcome the fact that there will be some continuity of payments at this stage. It is important that farmers have a level playing field with their neighbours in the Irish Republic and, indeed, Great Britain. I think that I picked you up saying that the exchange rate would be the same as last year, irrespective of what the exchange rate is this September: is that what you mean?

Mr Fulton: The budget that has been set for us was announced by the Chancellor on 30 December. We have a budget ceiling of €329 million. The conversion of that to sterling was done at the exchange rate from last year, which was 0.89. That gives us a budget of £293 million for the 2020 scheme year. Now, the entitlements that are held by farmers are denominated in euros, so there is still a piece to be done to actually take those entitlements and convert them to sterling. For the 2020 scheme year, obviously, the sensible thing would be to use the same exchange rate as was used to set the budget. Otherwise, you will create the potential for either a budget pressure or an underspend, depending on the exchange rates that you use. That would be our intent, but it has to come forward as an additional piece of subordinate legislation to actually make it happen.

Mr Irwin: You are saying that there is no certainty at this stage.

Mr Fulton: I think that you can be reasonably assured. We have a budget of £293 million, so we will work towards that.

Mr Irwin: I welcome that.

Mr McGuigan: Following on from your comments on Brexit, Chair, obviously, Brexit has created an awful lot of uncertainty and likely negative impacts for farmers and the agriculture sector. You used the word "crucial": it is obviously crucial that the direct payments continue for 2020. I understand that the British Government have given some kind of commitment that they will carry on for the next five years, but, speaking as an elected representative and given the commitments to the New Decade, New Approach deal that they quickly reneged on, I think that farmers will look at anything that they have said about what follows 2020 with a certain amount of trepidation. That is vital, given the volume and value of money that comes in and supports the local agriculture industry and the local economy.

Just in relation to some of the technical points, I know that you have said a couple of times that it is the same, but can you confirm that the money is ring-fenced solely for that purpose? Some members have mentioned other issues. I am looking for clarity on whether enforcement is the same, the application process is the same and the timeline for all of that is the same, just so that farmers have knowledge and certainty around that.

You also mentioned that this allows you to rectify — I think "rectify" was the word that you used — failures and deficiencies in EU law. Can you explain what that actually means?

Mr Fulton: First of all, yes, this is a ring-fenced budget, so that is the basis on which it has been provided. I think it is a general principle that any budget that is allocated to the devolved Administrations above and beyond what would be a normal Barnett process has to be ring-fenced for the purposes for which it has been allocated. That applies in this case. Therefore, this is ring-fenced and cannot be used for anything other than direct payments to farmers. I can give you that assurance.

In terms of enforcement application, there is no change to any of that. The timelines are the same. I suppose that there is one difference: we will aim towards, again, the usual 15 May application deadline and starting payments from the middle of October, but because we will no longer be paying under an EU budgetary process, we will be able to make full payments from 16 October rather than advance payments. I am sure that that will be welcome for farmers. It also cuts down a certain level of administration for us in terms of making, effectively, an advance payment and then a balance payment. Effectively, when the file is cleared after 16 October, we will have the ability to make a full payment at that stage.

In terms of failures, it is very technical. For example, if there are references to "EU member states", "the Commission" or things like that, those are the types of things that do not apply. Have you any other examples?

Mr Mark McLean (Department of Agriculture, Environment and Rural Affairs): Yes. One other example is that, at the moment, there are financial discipline deductions from farmers' payments of around 1.4% to amounts above €2,000. That goes into the EU crisis reserve. Now, that is not appropriate any more in 2020. It is not relevant, because it is UK national money. Therefore, these statutory instruments will remove those provisions from the retained EU law, because it is clearly not applicable.

Mr Fulton: Once we get beyond the end of this month and we have all the legislation tied down, the Minister will seek to set all of this out so that farmers have a clear picture of what they can expect in the coming year.

Mr Harvey: I thank the Department, and I welcome the Bill. Just one thing: can you assure the Committee that there is nothing in the application process that will make it more complicated for farmers to obtain the payment?

Mr Fulton: As I said, there are no changes planned at all to the existing process, which is now working very well with 100% online applications, which has enabled us to achieve, I think, 99.3% of payments by the end of December. That is by far the best performance of any region of the UK and, indeed, Ireland. The system is really working very well now, and payments are getting out to farmers at the very earliest opportunity. The remaining cases are largely around issues like probate or a few farmers not providing bank details or whatever. All but seven inspection cases had been paid by 31 December, so, again, the process is now working very effectively.

Mrs Barton: Thank you very much for your presentation. As you know, the EU has been working towards flattening out the basic rate to make it more level for everybody. How much progress have you made towards that?

Mr Fulton: The 2019 scheme was the last year of the decision period, and we went five sevenths of the way towards a flat rate by that phase — I think it was 71.4%. There is a power in the Bill for the Minister to continue towards that, if that is what he decides. It is an option, and, if that option were to be exercised, it would be by affirmative resolution, so the Assembly would have the opportunity to debate that. It will be for the Minister to consider any further progress towards a flat rate, but we are substantially along that pathway.

Ms Bailey: Thank you very much. I welcome this. I am very new to this area, and this is our first meeting, so please bear with me and be patient if I go over the same ground. Is the Department fully content that what is contained in the Bill is almost a copy-and-paste version of the way things are done at the moment?

Mr Fulton: Yes.

Ms Bailey: I know that farmers were very wary about what was coming down the road in terms of Brexit and the changes that it would bring. Have they raised any concerns with you in relation to the Bill?

Mr Fulton: No. DEFRA provided a briefing for stakeholders last Thursday, I think it was.

Ms Rosemary Agnew (Department of Agriculture, Environment and Rural Affairs): 10 January.

Mr Fulton: Sorry, I am a week out. That was an opportunity just after introduction for a full briefing, and stakeholders were very content.

Ms Bailey: They were content as well? OK. Can you confirm that the Bill explicitly provides a one-year funding stream?

Mr Fulton: Yes. At this point, it is a one-year Bill and a one-year funding commitment.

Ms Bailey: You have no plans, then, for the following year. We just need to get this done first and see.

Mr Fulton: What will happen thereafter is that the Agriculture Bill, which was tabled last week, contains a schedule for Northern Ireland that would enable us to continue beyond into 2021 and subsequent years and will give us certain powers to simplify things or to make relatively small changes, I suppose. We would have those powers via that mechanism. As I indicated, there will be a request for a legislative consent motion in respect of that Bill, because it legislates for Northern Ireland through a process in Parliament but in a fully devolved area.

Ms Bailey: Are you confident that that will happen and that this will not turn into a sunset clause and drag on?

Mr Fulton: No, the Agriculture Bill does not have a sunset clause.

Ms Bailey: OK. Just one more question: you mentioned the money and the 1.4% that goes into an EU — was it an emergency fund?

Mr McLean: The EU crisis reserve.

Ms Bailey: If that 1.4% of the payments is going back into Westminster funds — no?

Mr McLean: That will not be deducted from farmers' payments.

Ms Bailey: No, so it will go straight to the farmers.

Mr McLean: It will go to the farmer, yes.

Ms Bailey: OK. Great.

Mr Fulton: The way it works is that, every year, there was a deduction of 1.4%, and then it was refunded the following year because it has never been used.

Ms Bailey: OK.

Mr Fulton: Now we really do not need to go through all of that process. We just do not deduct it in the first place.

Ms Bailey: OK.

Mr Fulton: Again, it will simplify things.

Ms Bailey: Thank you.

Mr M Bradley: Thank you very much for your presentation. I welcome the Bill, as it gives certainty, albeit only for one year. Clare has beaten me to my question, so I will not ask you to repeat the answer. I am happy enough that the Agriculture Bill will be coming here next year, and it is up to us to make the decisions to keep the farmers happy. You beat me to it.

The Chairperson (Mr McAleer): Norman, just picking up on the Agriculture Bill that is going through Westminster. Last year, the Department opened a consultation on a future agricultural policy over here, which obviously received a good bit of interest. Will that future agricultural policy be implemented here through an LCM? What is the mechanism? Where does that fit with the Agriculture Bill? You say it was recently introduced: what is the timeline for it actually impacting here?

Mr Fulton: First of all, the discussion we had with stakeholders in August 2018 was about a future framework, so quite a high-level document. We talked about the key themes that future agricultural policy should look at, so it was really around productivity, environmental sustainability, resilience and supply chain functionality. We had a number of issues on all of that where we floated some ideas and sought feedback from stakeholders, and we got a very positive response. Really, that now needs to come back. The Minister needs to consider responses to that and how to progress from here. Obviously, the Minister will have his own thoughts on future agricultural policy.

I think that will eventually crystallise into our own primary legislation in Northern Ireland to take forward that agenda, but, in the meantime, we have the Agriculture Bill going through Westminster with a Northern Ireland schedule, which, as I said, will enable us to maintain the status quo and, perhaps, do a bit of simplification in the meantime until we are ready to branch out and be a bit more, I suppose, ambitious about changes that might come forward. I would imagine that, by that stage, it probably would be under our own primary legislative powers.

In terms of the timetable for the Agriculture Bill, it was tabled last week; I imagine that it will probably take until June/July to complete the parliamentary processes; and it will then be in place for 2021. We will operate from 2021 under that primary legislative framework.

The Chairperson (Mr McAleer): Will we have an opportunity to scrutinise the schedule?

Mr Fulton: Yes. It will come forward again through a similar legislative consent motion process but, obviously, with considerably more time and in a more conventional way. Absolutely, that will come back to the Committee.

The Chairperson (Mr McAleer): Thank you. Do members have any other questions?

Mr Blair: Chair, with your permission, I have one quick question. According to a report that I have, the funding for payments, which included, apparently, pillar 2, was £326 million in 2018. We are now budgeting 329 million, if I heard it right, for pillar 1 only. There seems to be a bit of disparity there. How would that happen?

Mr Fulton: £326 million is probably the totality of all CAP payments — pillar 1 and pillar 2 — whereas €329 million was the pillar 1, which is about £293 million at the exchange rate being used.

Mr Blair: Which must mean that pillar 2 is a much smaller amount.

Mr Fulton: Yes. Pillar 2 is co-financed, so it is a combination of national funding and EU funding.

Mr Blair: Does that include the environmental farm payments?

Mr Fulton: Yes.

Mr Blair: Has any budgetary preparation been done to include that in other budgets for 2020?

Mr Fulton: We have the budgetary provision for EFS built into our budgets, and, looking forward into the coming budgetary process over the next three years or whatever, we will build those bids into the preparations.

Mr Blair: Not to hog this, but will that include provision for any deficit created by the lack of pillar 2 funding from the EU?

Mr Fulton: Yes. There will be replacement money.

Mr Blair: That shortfall will be made up.

Mr Fulton: Yes. We are looking to replace that from national funds going forward and thinking about the longer-term direction of policy.

The Chairperson (Mr McAleer): Thank you, Norman. Just before we finish, going back to schedule 2 to the Bill, paragraph 1 gives a power to make regulations under the Act. You gave the example of the transition towards a flat rate: what other types of regulations under the Bill will be at the —?

Mr Fulton: It corrects deficiencies. There are two broad categories: it corrects deficiencies in bringing EU law into national law, taking out irrelevant references or things that do not really make sense any more, and, secondly, there is the group where it will be about keeping pace. Those are the two broad categories of legislation that will come forward. For example, if there were some change to the 2020 scheme year that Europe was bringing forward, if necessary, we could replicate that in domestic law for the measures that we will operate here, so that it keeps pace. Those are the two broad categories. I do not think that there is anything much beyond that.

The initial fix is under a made affirmative process. The SIs coming through Parliament on 31 January will be under that process, and any keeping pace will be under an affirmative resolution process. There are options either to do that through Westminster, if it is the same across the UK, or to do it in the Assembly, if that is the more appropriate way of doing it. There are options in there.

The Chairperson (Mr McAleer): Thank you, Norman, Mark and Rosemary and the members, for contributing.

Is the Committee content to support the extension of the provisions of the Direct Payments to Farmers (Legislative Continuity) Bill to here? Are members content for the Minister to table the LCM and debate it in the Assembly on Monday?

Members indicated assent.

The Chairperson (Mr McAleer): Thank you.