Edward Mountain MSP
Convener of the Rural Economy and Connectivity Committee
c/o Clerk to the Committee
Room T3.40
The Scottish Parliament
Edinburgh
EH99 1SP

7 March 2019

Dear Edward,

EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT
THE COMMON AGRICULTURAL POLICY AND AGRICULTURE AND HORTICULTURE
DEVELOPMENT BOARD (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019
THE EUROPEAN STRUCTURAL AND INVESTMENT FUNDS COMMON PROVISIONS
RULES ETC. (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

The Scottish Parliament Rural Economy and Connectivity Committee at its meeting on 5
December 2018 recommended that the Common Agricultural Policy and Agriculture and
Horticulture Development Board (Amendment etc.) (EU Exit) Regulations 2018 (now known
as the Common Agricultural Policy and Agriculture and Horticulture Development Board
(Amendment etc.) (EU Exit) Regulations 2019) and the Common Provisions (Implementing
and Delegated Acts) (Amendment) (EU Exit) Regulations 2018 (now known as the European
Structural and Investment Funds Common Provisions Rules etc. (Amendment etc.) (EU Exit)
Regulations 2019) should both include Scottish devolved matters, as set out in the
notification to the Parliament.

The notification indicated that both of the proposed SIs would be laid under the negative
procedure on 21 November 2018, however on the recommendation of the UK Commons
sitting committee, the SIs were laid again in draft under the affirmative procedure in the UK
Parliament on the following dates in 2019:

the Common Agricultural Policy and Agriculture and Horticulture Development Board
(Amendment etc.) (EU Exit) Regulations 2019 was laid on 21 January;

the European Structural and Investment Funds Common Provisions Rules etc. (Amendment etc.) (EU Exit) Regulations 2019 was laid on 12 February.

I can now confirm that these SIs are consistent with the consent granted.
THE COMMON AGRICULTURAL POLICY (DIRECT PAYMENTS TO FARMERS) (AMENDMENT) (EU EXIT) REGULATIONS 2019
THE COMMON AGRICULTURAL POLICY (RULES FOR DIRECT PAYMENTS) (AMENDMENT) (EU EXIT) REGULATIONS 2019
THE RURAL DEVELOPMENT (AMENDMENT) (EU EXIT) REGULATIONS 2019
THE RURAL DEVELOPMENT (RULES AND DECISIONS) (AMENDMENT) (EU EXIT) REGULATIONS 2019
THE EUROPEAN STRUCTURAL AND INVESTMENT FUNDS COMMON PROVISIONS (AMENDMENT) (EU EXIT) REGULATIONS 2019


The following SIs were laid in the UK Parliament under the negative procedure:

the Common Agricultural Policy (Direct Payments to Farmers) (Amendment) (EU Exit) Regulations 2019 was laid on 11 February;

the Common Agricultural Policy (Rules for Direct Payments) (Amendment) (EU Exit) Regulations 2019 was laid on 11 February.

The notification indicated that all of the proposed SIs would be laid under the negative procedure on 28 and 29 November 2018, however on the recommendation of the UK Commons sifting committee, the following SIs were laid again in draft under the affirmative procedure in the UK Parliament on the following dates in 2019:

the European Structural and Investment Funds Common Provisions (Amendment) (EU Exit) Regulations 2019 on 12 February;

the Rural Development (Amendment) (EU Exit) Regulations 2019 on 13 February;


I can now confirm that the Common Agricultural Policy (Direct Payments to Farmers) (Amendment) (EU Exit) Regulations 2019, the Common Agricultural Policy (Rules for Direct Payments) (Amendment) (EU Exit) Regulations 2019, the Rural Development (Amendment) (EU Exit) Regulations 2019 and the European Structural and Investment Funds Common Provisions (Amendment) (EU Exit) Regulations 2019 are all consistent with the consent granted.
As regards the Rural Development (Rules and Decisions) (Amendment) (EU Exit) Regulations 2019, I can now confirm this SI varies in some respects from the original proposal but that the variation is not so significant as to need any further process.


THE AGRICULTURE (LEGISLATIVE FUNCTIONS) (EU EXIT) REGULATIONS 2019

The Scottish Parliament Rural Economy and Connectivity Committee at its meeting on 16 January 2019 recommended that the Agriculture (Transfer of Functions) (EU Exit) Regulations 2019 (now known as the Agriculture (Legislative Functions) (EU Exit) Regulations 2019) should include Scottish devolved matters, as set out in the notification to the Parliament.

The notification indicated that the Agriculture (Transfer of Functions) (EU Exit) Regulations 2019 (now known as the Agriculture (Legislative Functions) (EU Exit) Regulations 2019) would be laid under the affirmative procedure on 22 January 2019, however it was laid as a draft in terms of this procedure in the UK Parliament on the later date of 13 February 2019.

I can now confirm this SI varies in some respects from the original proposal but that the variation is not so significant as to need any further process.

The notification referred to the transfer of functions for laying down rules on the lodging and handling of securities, but these functions are now being dealt with in a separate SI entitled the Agriculture (Legislative Functions) (EU Exit) (No. 2) Regulations 2019 that also deals with the transfer of legislative functions.

Additionally, bearing in mind the interest of the Committee in legislative procedure applying to powers exercisable under retained EU law, I would mention that it was decided that it is appropriate for the following powers to be exercisable by the Scottish Ministers using affirmative procedure:

- powers to make regulations for the making of payments in the event of an emergency in terms of Article 75(3) of Regulation (EU) No 1306/2013 of the European Parliament and of the Council;

- powers under Article 15 of Regulation (EU) No 1307/2013 of the European Parliament and of the Council to make regulations following review of the list of support schemes listed at Annex I of that Regulation;

- powers to make regulations to add to the list of practices beneficial for the climate in terms of Article 43(12) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council;

and powers to make regulations for emergency measures to resolve problems in terms of Article 69(1) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council.
THE COMMON AGRICULTURAL POLICY (FINANCING, MANAGEMENT AND MONITORING) (MISCELLANEOUS AMENDMENTS) (EU EXIT) REGULATIONS 2019
THE COMMON AGRICULTURAL POLICY (FINANCING, MANAGEMENT AND MONITORING SUPPLEMENTARY PROVISIONS) (MISCELLANEOUS AMENDMENTS) (EU EXIT) REGULATIONS 2019

The Scottish Parliament Rural Economy and Connectivity Committee at its meeting on 30 January 2019 recommended that the Common Agriculture Policy (Financing, Management and Monitoring) (Miscellaneous Amendments) (EU Exit) Regulations 2019 and the Common Agriculture Policy (Financing, Management and Monitoring Supplementary Provisions) (Miscellaneous Amendments) (EU Exit) Regulations 2019 should both include Scottish devolved matters, as set out in the notification to the Parliament.

The notification indicated that both of the Common Agriculture Policy (Financing, Management and Monitoring) (Miscellaneous Amendments) (EU Exit) Regulations 2019 and the Common Agriculture Policy (Financing, Management and Monitoring Supplementary Provisions) (Miscellaneous Amendments) (EU Exit) Regulations 2019 would be laid under the negative procedure on 14 January 2019, however on the recommendation of the UK Commons sitting committee, the SIs were laid again in draft under the affirmative procedure in the UK Parliament on 13 February 2019.

I can now confirm that the Common Agriculture Policy (Financing, Management and Monitoring Supplementary Provisions) (Miscellaneous Amendments) (EU Exit) Regulations 2019 are consistent with the consent granted.

I can also confirm that the Common Agriculture Policy (Financing, Management and Monitoring) (Miscellaneous Amendments) (EU Exit) Regulations 2019 varies in some respects from the original proposal but that the variation is not so significant as to need any further process.

The notification did not include the amendment of the EU regulation 639/2014 to correct an inappropriate reference to ensure it can operate effectively following the UK’s exit from the EU.

It should be noted we have been told by UK Government officials that those SIs as detailed above to be laid as draft in terms of the affirmative procedure will be debated in the UK Parliament in early March. I can confirm that I will of course inform the Committee if the SIs are withdrawn as a result of this.

It should also be noted that the Common Agricultural Policy (EU Exit) (Scotland) (Amendment) Regulations 2019 was recently laid, which dovetails the amendments contained in the UK SIs detailed above all so as to ensure our own Scottish regulations continue to operate effectively following the UK’s Exit from the EU in a no deal scenario.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

FERGUS EWING