



Edward Mountain MSP
Convenor
Rural Economy and Connectivity Committee
Scottish Parliament
Edinburgh
EH99 1SP

21 October 2019

Dear Edward,

**POLICY AREAS: COMMON AGRICULTURAL POLICY AND COMMON FISHERIES
POLICY
EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT
The European Union (Payments) (Transitional Provisions) (EU Exit) Regulations 2019
The European Union (Payments) (Transitional Provisions) (EU Exit) (No 2) Regulations
2019
Programme 1 (Common Agricultural Policy “CAP”) and 2 SIs (Common Fisheries
Policy)**

I am writing to you about the protocol for obtaining the approval of the Scottish Parliament to the exercise of powers by UK Ministers under the European Union (Withdrawal) Act 2018 in relation to proposals within the legislative competence of the Scottish Parliament.

As you are aware, the Scottish Government has been working to respond to the UK Government’s preparations for a No-Deal scenario to protect Scottish interests, despite the inevitable widespread damage and disruption that would cause. It is our unwelcome responsibility to ensure that devolved law continues to function on and after EU withdrawal.

Moreover, it is not helpful that I am still writing to you to advise of SIs (and in some cases, consequent SSIs) which still require to be made to provide this continuity. The issue which I am writing about today is of significant concern, for it involves the ability to continue to make CAP payments beyond 1 December, should the UK leave the EU before then without a deal in place.

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As soon as I became aware of this unacceptable state of affairs, I wrote to the Secretary of State to press for it to be rectified. A copy of that letter is attached. Scottish Government officials have now been advised that the UK Government intends to lay in Westminster the above named regulations in the week commencing 28 October 2019. I understand that the UK Government intends to pass these SIs using affirmative emergency procedure and by adopting this approach the SIs will come into effect when laid, but they will cease to have effect unless debated and approved by the House of Lords and Commons within 28 days.

Clearly this is not an ideal approach. The Scottish Government has not yet received the letter from the UK Government asking for the consent of Scottish Ministers on these matters and, this means that we will not have time to notify the Scottish Parliament about the SIs prior to October recess. I regret that this has occurred but I am sure you will appreciate that these matters are completely out-with my control. However, I am sure you will agree that for these particular regulations, it is vital that we have these instruments in place in case we leave the EU at the end of October without a deal.

It is the intention of DEFRA to lay the SIs so that the UK has the correct legislative processes in place in response to the EU budget regulation proposals for 2019 and 2020 to cover both CAP and the Common Fisheries policy/EMFF payments. Whilst the final decision as to whether to accept the continued EU funding post-exit has still yet to be taken by UK Government Ministers, DEFRA have told us that the SIs are still required to ensure the retained EU law in these policy areas complies with the HM Treasury guarantee conditions, and so the SIs will be necessary whether or not the EU funding proposals are accepted. It is most unsatisfactory that at this late stage we have still not yet seen the detailed provisions of the SIs. But my officials will liaise with Defra to seek to ensure that we can agree any changes that would apply to Scotland, so that the CAP/EMFF schemes will deliver full value after exit and all provisions will respect the devolution settlement.

The Scottish Government will also need to draft an SSI, covering devolved responsibilities in respect of EMFF, which cannot start until we have seen full details of the Programme 2 SI, as both instruments need to cohere with one another.

My officials continue to press Defra for progress on these SIs as a matter of urgency.

I can confirm that if the UK Government does decide to lay the above SIs and I am satisfied as to the policy content, I will be writing to you with a notification, however it is likely that the SIs will have been made before the Parliament has a chance to consider the notification. The notification would set out the details of the SIs and the reasons why I am content that Scottish devolved matters are to be included in these UK SIs notwithstanding the terms of the protocol.

I do regret that the Scottish Parliament will be given very little or possibly no time for scrutiny of these SIs but I would emphasise that these are for reasons out with my control, and the SIs must be in place in time for exit from the EU. My overriding concern and priority is to make sure that the UK Government has laid and passed the necessary regulations to enable CAP payments to be made from 1 December and I am sure committee members would concur.

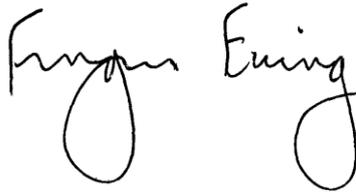
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www.gov.scot



I am copying this letter to the Convenor of the Environment, Climate Change & Land reform Committee and the Delegated Powers and Law Reform Committee.

Yours sincerely,

A handwritten signature in black ink that reads "Fergus Ewing". The signature is written in a cursive style with a large loop under the letter 'F' and another large loop under the letter 'E'.

FERGUS EWING

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