Strategic Planning and Corporate Services Group
Strategic Support Division

Department of
Agriculture, Environment and Rural Affairs
An Roinn
Talmhaíochta, Comhshaoil agus Gnóthaí Tuaithe
Depairtment o'
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Dear Janice,

The Agriculture Bill.

Thank you for your letter of 4 April seeking further clarification on matters arising from the Committee's ongoing deliberations on the Agriculture Bill and seeking the Minister's view on potential amendments. I will deal with each matter in the order in which it is raised in your letter, including the potential proposals to amend the Bill.

Clause 1 Aid in the fruit and vegetables sector: amendment of CMO Regulation

The Minister has confirmed he is not minded to amend clause 1 to set support at 4.1% of the value of the marketed production (VMP), above which baseline he could then exercise discretionary powers. He recognises the aim of such an amendment would be to provide reassurance around maintaining the current level of support under the FVAS. However, he has already provided assurance that he will not end the existing scheme until there is a suitable successor in place, co-designed with the horticulture sector.

Furthermore, he does not believe this amendment is in keeping with the policy aim of the Bill, agreed by the Executive, to make support discretionary. The suggested amendment does the opposite to the policy aim and fixes, in primary legislation, a minimum level of support/match funding.

The level of support available to a PO under the FVAS (the lesser of 50% of actual expenditure incurred or 4.1% of VMP) is already set out in secondary legislation (Article 34 of Assimilated Regulation 1308/2013), along with the scope to increase it in certain

circumstances. This is the sort of technical matter that is normally best left to secondary legislation, thereby providing flexibility for future amendments. If the 4.1% of VMP was included on the face of the Bill, further primary legislation would be needed to amend it which is considered an inappropriate use of Assembly time for such a technical matter.

Such changes may be deemed necessary, for example, because there could be a more appropriate mechanism for determining the level of support in Northern Ireland, rather than using a complex legacy EU mechanism. The exact origin of the 4.1% VMP figure is unclear but the Department understands that its main purpose was to act as a cap or ceiling on Member States' expenditure, thereby protecting the overall EU budget. Details of how VMP is calculated are set out in Articles 22 and 23 of Regulation 2017/891. POs must declare the correct VMP and once this declaration is submitted, it cannot normally be amended. While the VMP mechanism works for the mushroom sector, an alternative mechanism may be more attractive to other sub-sectors.

Of course, any changes to the level of FVAS support as it stands would be subject to draft affirmative legislation.

Clause 2 - Aid in the fruit and vegetables sector: power to modify

As set out in your letter, the Committee seeks clarity as to how DAERA envisages or intends to use these powers in the future, and also on the Department's specific intentions in relation to revocation or repeal of the assimilated legislation within Clause 2(1). Work on the replacement scheme to be developed in co-design with the sector, informed by the ongoing policy review of the current FVAS, will take some time, during which the enabling power could allow for changes that would improve the existing scheme. These could include the changes advocated by stakeholders. Whether there is time to do so before submission of the 2026 to 2028 operational programme(s) will depend on if and when such powers are in place.

As has been noted previously, no decision has been made on how these powers will be used and any proposed changes to existing FVAS rules will be subject to draft affirmative regulations and therefore require further (consultation and) scrutiny by the Committee and Assembly.

With respect to the 'repeal' and 'revoke' aspects of the powers to modify, it is necessary to have these for when a suitable alternative scheme is introduced. In that case, it may be considered inappropriate to maintain the legacy legislation as it stands on the statute book. However, these powers do not only provide for repeal (of primary legislation) and revocation (of secondary legislation) in whole but also provide for repeal/revocation of parts of existing legislation. This may be necessary, for example, if such parts are considered redundant, unworkable, or simply unhelpful, for a NI only scheme. However, until work on a successor scheme is advanced it is not possible to be definitive as to how these powers will be used. However, as noted the future use of these powers would be subject to approval of the Assembly.

The Committee asks for confirmation that if the Department approves a new operational programme which begins in 2026, but the PO does not then meet the criteria, or does not apply, to any replacement scheme, would the Department continue to support the approved operational programme until the end of its three years. The current FVAS legislation provides for a programme with a maximum duration of three years. Therefore, if a PO submits a suitable three-year programme, the Department would be expected to

match-fund eligible expenditure incurred for the full three years up to the approved maximum funding available for that programme. Business decisions made by the PO itself would also have a bearing on the level and duration of funding.

Clause 3 - Information provision and promotion measures: power to modify

With respect to the Department's intentions to modify (including repeal or revoke) the assimilated legislation named in clause 3 of the Bill, the Committee will be aware that these powers are being sought on the basis of the same rationale as that for saving the law in question from sunsetting under the Retained EU Law (Revocation and Reform) Act 2023. That is, it may prove a useful foundation for support for food promotion in the future.

Having a Bill at the Assembly now provides the opportunity to take these powers, should they be needed in the future. It is not clear whether, or how, the new powers may be used in the future, limited as they are to the amendment of the existing assimilated law. The powers could be used to amend the rules before opening a scheme under this legislation including potentially revoking any part deemed unhelpful to a NI-only call for applications. The powers, could also be used to revoke the legislation in its entirety, as has already been done is the rest of the UK, should it be decided they are not needed and therefore it would be considered inappropriate to maintain the legislation as it stands on the statute book. Any revocation in part, or in whole, would of course be subject to the approval of the Assembly.

Clause 4 – Regulations

With respect to how the Department intends to use the powers in clause 4, as set out in your letter dated 4 April, this provision is related to the powers to modify the assimilated law referred to in clauses 2 and 3. The provision sets out that the powers in those clauses allow for amendments that are consequential to, incidental upon, etc., the other legislative powers delegated under the Bill, and as a result of the definition in clause 5, such modifications could include repeal or revocation.

As set out above, it is not possible to be definitive as to what changes might be proposed to the named assimilated law until the future policy position is clear. Similarly, it is not possible to say what impacts that may in turn have on other legislation and the resulting need for consequential etc. changes – nor indeed revocation in whole or in part, to ensure a fully operational statute book. But as noted by officials in evidence, the powers in clauses 2 and 3 are narrow in that they only allow for changes to the named legislation, and therefore any consequential etc. amendments will also be very narrow.

Again, any such changes will be subject to draft affirmative regulations.

Clause 5 – Interpretation

The Committee has asked for further explanation and clarity under what circumstances DAERA would intend to use the modification powers in clause 2 or 3, and specifically in relation to the 'repeal' or 'revoke' provisions.

As set out above, the work on a replacement scheme to be developed in co-design with the sector, informed by the ongoing policy review of the current FVAS, will take some time, during which the Department could use the enabling power in order to make improvements to the scheme. As noted above, subject to the review, the revocation

powers may be needed to remove redundant provisions, for example, as part of such improvement. Similar circumstances apply to the use of powers in Clause 3. Once again, it is stressed that any such changes will be subject to draft affirmative regulations.

The Committee also asks if the Minister would be minded to amend the Bill to ensure that the current FVAS legislation could only be repealed or revoked once a suitable co-designed replacement scheme is in place, with the same baseline support which is available under the FVAS. However, as the Minister has already made it clear that the FVAS will not close at the end of the year and has set in motion plans for co-design of a suitable successor scheme, he is not minded to bring forward such an amendment. Furthermore, as noted, it may be necessary to have the powers to revoke specific parts of the legislation in advance of any replacement scheme, as part of any work to improve the existing scheme. Given that any plans to use these powers in the future would be subject to the approval of the Assembly, he considers this an adequate safeguard while any successor scheme is being developed.

Finally, as set out in previous correspondence on the Bill, the Department does not think it is appropriate to earmark support for one sector/sub-sector or another. The Executive has agreed to earmark funding for agriculture, agri-environment, fisheries, and rural development in 2025/26 and future years, and it is important that the Minister has as much flexibility as possible within this finite funding envelope to allocate support according to DAERA priorities.

Clause 6 – Commencement and short title

With respect to the Bill's Short Title, it is the Minister's understanding that the Bill adequately covers the content of the Bill in that its subject relates to agriculture. This is the main requirement of the Short Title. There are other Bills currently in the Assembly that have a similar short subject title, which describes the subject, and the specific content relates to that subject, made clear in the Long Title. The format is therefore neither unusual nor inappropriate.

It is also the Minister's understanding that to change a Bill's name during passage would however be unusual and would normally only be done when it was necessary to do so to reflect changes to a Bill during its passage, whereby the Short Title no longer reflects the content. That is not the case in this instance at this point.

I hope this is of assistance to the Committee and provides further clarity on the issues raised. Officials are on hand to discuss these matters further at the forthcoming Committee meeting, in the hope of expediting the Bill as quickly as possible thereafter. In the meantime, should you require anything further, please contact me directly.

Yours sincerely,

SHAUNA RODGERS
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