

POLICY NOTE

THE COMMON AGRICULTURAL POLICY (EU EXIT) (SCOTLAND) (AMENDMENT) (NO. 2) REGULATIONS 2019

SSI 2019/209

The Common Agricultural Policy (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019 (“the 2019 No. 2 Regulations”) are made in exercise of the powers conferred by section 2(2) and paragraph 1A of schedule 2 of the European Communities Act 1972 and paragraph 1(1) and (3) of schedule 2 and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018 (“the 2018 Act”). The 2019 No. 2 Regulations are subject to negative procedure.

Purpose of the Instrument

To amend the following regulations:

- The Marketing of Horticultural Produce (Scotland) Regulations 2009
- The Rural Development (Scotland) Regulations 2015 (“the Rural Development 2015 Regulations”)
- The Common Agricultural Policy (EU Exit) (Scotland) (Amendment) Regulations 2019 (“the 2019 Regulations”)
- The Marketing of Horticultural Produce and Bananas (EU Exit) (Scotland) (Amendment) Regulations 2019

Part of the amendments to the Rural Development 2015 Regulations ensure that, insofar as they have been saved, the following revoked regulations are to be read as if amendments have taken effect which update out of date references and correct deficiencies:

- The Leader Grants (Scotland) Regulations 2008
- The Rural Development Contracts (Land Managers Options) (Scotland) Regulations 2008
- The Rural Development Contracts (Rural Priorities) (Scotland) Regulations 2008.

The amendments are to ensure that the above-mentioned SSIs continue to operate effectively following the UK’s Exit from the EU in a no deal scenario.

1. Policy Objectives

Where practical and appropriate, directly applicable EU legislation (“direct EU legislation”) is being retained as part of UK law (“retained EU law”) upon the UK’s exit from the EU (which under the 2018 Act is currently 31 October 2019 (“exit day”). As regards the EU Common Agricultural Policy (“CAP”), the UK Government, the Scottish Government and the other Devolved Administrations plan to retain the current regulatory approach set out in the relevant direct EU legislation and EU-derived domestic legislation to ensure, in the event of a ‘no deal’ UK exit from the EU, the continued operation and administration of the CAP schemes within

Scotland. The 2019 No. 2 Regulations are necessary in order to correct deficiencies in retained EU law and thereby protect the interests of, and provide continuity for, farmers, land managers, businesses and consumers and enable the Scottish Government to continue to make payments and administer the CAP schemes.

On exit day a number of UK-wide statutory instruments and the 2019 Regulations will enter into force alongside the 2019 No. 2 Regulations, which together will make technical amendments to correct deficiencies in retained EU law. Additionally the 2019 No. 2 Regulations correct out of date references in applicable domestic legislation. Together these measures are technical and seek to preserve the status quo so far as possible to ensure the continued operability of Scotland's CAP regulatory framework, including in relation to marketing of horticultural produce, post-EU exit.

2. Explanation of the law being amended by the regulations

The Leader Grants (Scotland) Regulations 2008 make provision for the purposes of implementation of Council Regulation (EC) No. 1698/2005 ("the Council Regulation") and supplementary Commission Regulations laying down detailed rules for the application of the Council Regulation. These Regulations provide for LEADER funding being made available by the Scottish Ministers from the Scotland Rural Development Programme 2007–13 to local action groups.

The Rural Development Contracts (Rural Priorities) (Scotland) Regulations 2008 introduce measures to supplement the Council Regulation and supplementary Commission Regulations laying down detailed rules for the application of the Council Regulation. They also implement Article 74(1) of the Council regulation and Article 9(1) of Council Regulation (EC) No. 1290/2005. These Regulations provide for the payment of aid to be made available by the Scottish Ministers from the Scotland Rural Development Programme 2007–13 to any person who enters into an undertaking with the Scottish Ministers to carry out and maintain the activities relevant to at least one of the rural priorities options, and where relevant one or more than one of the capital items set out in relation to a particular rural priorities option. These Regulations also provide for further compliance requirements in relation to certain rural priorities options activities.

The Rural Development Contracts (Land Managers Options) (Scotland) Regulations 2008 introduce measures to supplement the Council Regulation and supplementary Commission Regulations laying down detailed rules for the application of the Council Regulation. These Regulations also implement Article 74(1) of the Council Regulation and Article 9(1) of Council Regulation (EC) No. 1290/2005. These Regulations provide for the payment of aid to be made available by the Scottish Ministers from the Scotland Rural Development Programme 2007–13 to any person who enters into an undertaking with the Scottish Ministers to carry out and maintain the activities relevant to at least one of the land managers options. These Regulations also provide for further compliance requirements in relation to certain land managers options.

The three abovementioned 2008 Regulations were revoked, subject to savings, by the Rural Development 2015 Regulations. Those savings reflect the fact that certain legacy schemes under those 2008 Regulations and the previous Scottish Rural Development Programme ("SRDP") continue to be funded under the current SRDP.

The Marketing of Horticultural Produce (Scotland) Regulations 2009 as they stand make provision for enforcement of Commission Implementing Regulation (EU) No 543/2011. They designate Scottish Ministers as the inspection body for Scotland and create offences and

penalties for non-compliance with EU marketing standards. They confer powers to Scottish Government inspectors to issue compliance notices and stop notices to control the movement of horticultural produce that does not comply. They also give powers to inspectors to enter, inspect buildings, equipment and records and to obtain samples of horticultural produce.

The Rural Development 2015 Regulations make provision for the purposes of implementation of the current SRDP, and Regulation (EU) No 1305/2013, as well as the related Regulation (EU) No 1303/2013 (as supplemented by associated EU delegated and implementing regulations). These make provision for EU-funded support for measures in Member States through the framework of rural development programmes. In respect of Scotland, the relevant programme as administered by the Scottish Ministers is the SRDP, as approved by the European Commission prior to exit day.

The 2019 Regulations were laid before the Scottish Parliament on 21 February 2019. Part 3 of the regulations will come into force on exit day, and amends secondary legislation in relation to the withdrawal of the UK from the European Union to ensure the continued operability of the CAP regime in Scotland.

The Marketing of Horticultural Produce and Bananas (EU Exit) (Scotland) (Amendment) Regulations 2019 were laid before the Scottish Parliament on 17 May 2019. Part 3 of the Regulations will come into force on exit day, and amends secondary legislation, including the Marketing of Horticultural Produce (Scotland) Regulations 2009 to ensure that they continue to operate effectively following the UK's Exit from the EU in a no deal scenario.

3. Reasons for and effect of the proposed change

(a) Part 2 corrections of out of date references

Part 2 of the 2019 No. 2 Regulations amends the Rural Development 2015 Regulations to correct a number of out of date references in the Rural Development Contracts (Rural Priorities) (Scotland) Regulations 2008 and the Rural Development Contracts (Land Managers Options) (Scotland) Regulations 2008 insofar as those Regulations continue to apply. This is to ensure the relevant secondary legislation is up to date before becoming retained EU law on exit day. Part 2 comes into force on 26 September 2019.

(b) Part 3 corrections relating to withdrawal from the EU

Part 3 of the 2019 No. 2 Regulations corrects deficiencies in EU-derived domestic legislation arising from the UK's withdrawal from the EU. Part 3 of the 2019 No. 2 Regulations also includes amendments that reflect changes being made to retained EU law by the Rural Development (Amendment) (EU Exit) Regulations 2019¹, being one of a number of UK statutory instruments relating to the CAP which has been made by the UK Government under the 2018 Act. Part 3 comes into force on exit day.

⁽¹⁾ <http://www.legislation.gov.uk/ukdsi/2019/9780111181140/contents>. In terms of the applicable Protocol agreed with the Parliament, the Scottish Government provided details about this UK SI to the Parliament (in particular, the Rural Economy and Connectivity Committee), for the purpose of obtaining the Parliament's agreement to this UK SI as it extends to Scotland.

The amendments made by Part 3 of the 2019 No. 2 Regulations include:

- updating references to a number of EU instruments;
- updating a number of definitions;
- removing redundant references to European Commission Officials in relation to the exercise of enforcement powers;
- updating references to the European Union.
- Amending a transitional provision in relation to EU exit.

(c) Part 4 revocation relating to withdrawal from the EU

Part 4 of the 2019 No. 2 Regulations makes revocations.

Regulation 5 revokes regulation 7(4) of the 2019 Regulations² in consequence of the amendment to regulation 16(1)(d) of the Rural Development 2015 Regulations made by regulation 4 of the 2019 No. 2 Regulations. The EU is currently considering a proposal⁽³⁾ which, in the event of a no deal exit, may provide the UK with the option of continuing to contribute, and draw down, funding in respect of designated EU funds (including those relating to rural development funding under CAP), for the remainder of 2019. The reference to European Union funding in Regulation 16(1)(d) of the Rural Development 2015 Regulations (which makes provision for breaches of conditions of grants/undertakings etc.), as now amended by regulation 5 of the 2019 No. 2 Regulations, is therefore retained and also supplemented to include a reference to funding under any enactment including an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament. This supersedes the amendment previously made to that provision by regulation 7(4) of the 2019 Regulations which as noted is revoked by regulation 5 of the 2019 No. 2 Regulations.

Regulation 6 revokes regulation 3(13) of the Marketing of Horticultural Produce and Bananas (EU Exit) (Scotland) (Amendment) Regulations 2019⁴ in consequence of the amendment to the Marketing of Horticultural Produce (Scotland) Regulations 2009 made by regulation 3 of the 2019 No. 2 Regulations. Regulation 3(13) of the Marketing of Horticultural Produce and Bananas (EU Exit) (Scotland) (Amendment) Regulations 2019 inserted a new regulation 25 into the Marketing of Horticultural Produce (Scotland) Regulations 2009 to make transitional provision in relation to produce placed on the market on or before 31 December 2020, with the aim of maintaining the efficient trade in horticultural produce in a no-deal EU exit and allow the measured and organised conversion of EU produce to third country status. This provision was made to tie in with similar provision being made (by amendments in EU Exit SIs made by the UK Government) to equivalent Regulations elsewhere in the UK⁵ and with related changes made to article 7 of Commission Implementing Regulation (EU) No 543/2011 laying down detailed rules in respect of the fruit and vegetables and processed fruit and vegetables sectors becoming retained EU law⁶ which also made provision based on the date of 31 December 2020. The 31 December 2020 date was chosen by the UK Government as, broadly, a period of 21 months from anticipated exit day on 29 March 2019. EU exit not having taken place on that

⁽²⁾ <http://www.legislation.gov.uk/ssi/2019/60/regulation/7/made> This SSI was laid before the Scottish Parliament on 21 February 2019.

⁽³⁾ https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST_6823_2019_REV_1&from=EN

⁽⁴⁾ <http://www.legislation.gov.uk/ssi/2019/169/contents/made> .This SSI was laid before the Scottish Parliament on 17 May 2019.

⁽⁵⁾ <http://www.legislation.gov.uk/uksi/2019/824/contents/made> (see regulation 5(14)).

⁽⁶⁾ <http://www.legislation.gov.uk/uksi/2019/822/contents/made> (see regulation 8(15) to (17)).

date, and with a view to future proofing the provision in light of any further changes in exit day, the UK Government now intends to amend the provision to specify a period of 21 months beginning with exit day, rather than a period of time to a fixed date of 31 December 2020. To align with this approach, regulation 3 of the 2019 No. 2 Regulations inserts a revised regulation 25 into the Marketing of Horticultural Produce (Scotland) Regulations 2009 specifying a period of 21 months beginning with exit day, rather than a period of time to a fixed date of 31 December 2020. This supersedes the amendment previously made by regulation 3(13) of the Marketing of Horticultural Produce and Bananas (EU Exit) (Scotland) (Amendment) Regulations 2019 which as noted is revoked by regulation 6 of the 2019 No. 2 Regulations.

Part 4 comes into force on 26 September 2019.

Neither the UK statutory instruments nor the 2019 No. 2 Regulations reflect or make a change in policy. Their purpose is simply to ensure that the CAP regulatory framework can continue to operate effectively in domestic law in the event of a no deal exit from the EU.

Statements required by European Union (Withdrawal) Act 2018

Statement that in their opinion Scottish Ministers consider that the regulations do no more than is appropriate

The Cabinet Secretary for the Rural Economy, Fergus Ewing, has made the following statement “In my view the Common Agricultural Policy (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019 do no more than is appropriate. This is the case because the amendments are being made only to ensure, following a ‘no deal’ United Kingdom exit from the European Union, the continued and effective functioning of the legislation being amended and do not introduce policy change.”.

Statement as to why the Scottish Ministers consider that there are good reasons for the regulations and that this is a reasonable course of action

The Cabinet Secretary for the Rural Economy, Fergus Ewing, has made the following statement “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. These are to ensure, following a ‘no deal’ United Kingdom exit from the European Union, the continued effective regulation and administration of the CAP schemes and effective operation of legislation in relation to marketing of horticultural produce within Scotland in order to protect and provide continuity for businesses and consumers. The amendments made by the instrument are technical in nature to ensure legislative operability only.”.

Statement as to whether the SSI amends, repeals or revokes any provision of equalities legislation, and, if it does, an explanation of that amendment, repeal or revocation

The Cabinet Secretary for the Rural Economy, Fergus Ewing, has made the following statement “In my view the Common Agricultural Policy (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019 do not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”.

Statement that Scottish Ministers have, in preparing the regulations, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010

The Cabinet Secretary for the Rural Economy, Fergus Ewing, has made the following statement “In my view the Common Agricultural Policy (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019 have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”.

Additional information provided for EU Exit instruments in terms of the protocol agreed between the Scottish Government and the Scottish Parliament

Statement that Scottish Ministers have, in preparing the regulations, had due regard to the guidance principles on the environment and animal welfare

The Cabinet Secretary for the Rural Economy, Fergus Ewing, has made the following statement “In my view the Common Agricultural Policy (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019 have had due regard to the need to follow the guiding principles on the environment and animal welfare as derived from the equivalent principles provided for in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union.”.

Statement explaining the effect (if any) of the regulations on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence)

The Cabinet Secretary for the Rural Economy, Fergus Ewing, has made the following statement “In my view the Common Agricultural Policy (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019 do not alter current policy on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence). The instrument is made to ensure, following a ‘no deal’ United Kingdom exit from the European Union, the continued effective regulation and administration of the CAP schemes and effective operation of legislation in relation to marketing of horticultural produce within Scotland in order to protect and provide continuity for businesses and consumers. The amendments made by the instrument are technical in nature to ensure legislative operability only.”.

An indication of how the regulations should be categorised in relation to the significance of the change proposed.

Low – the amendments are technical in nature to allow continuity of law and do not amount to a change in policy.

Statement setting out the Scottish Ministers’ reasons for their choice of procedure

Negative procedure is considered appropriate as these minor and technical amendments do no more than is necessary to ensure that the legislation continues to operate effectively following the UK’s exit from the EU. The regulations do not include provisions which fall within paragraph 1 (2) of schedule 7 of the European Union (Withdrawal) Act 2018.

Further information

Consultation

The 2019 No. 2 Regulations do not amount to a change in policy and are being made to avoid deficiencies arising as a result of the UK’s withdrawal from the EU and to remove out of date

references. There has been no formal public consultation regarding this instrument. The 2019 No. 2 Regulations are linked to changes to direct EU legislation (which will become retained EU law) which are to be made by the abovementioned UK statutory instrument which has been made with the agreement of the Scottish Government and the Scottish Parliament as well as the other UK devolved administrations.

Impact Assessments

Full impact assessments have not been prepared for the 2019 No. 2 Regulations because they are aimed at preserving the effect of the current regulatory regimes once the UK leaves the EU. The current amendments do not alter the Scottish Government's current environmental policies and priorities and, therefore, do not have a significant impact on the environment. The impact on business, charities or voluntary bodies is expected to be minimal.

Financial Effects

The Cabinet Secretary for the Rural Economy, Fergus Ewing, confirms that no BRIA is necessary as the 2019 No. 2 Regulations have no financial effects on the Scottish Government, local government or on business.

Scottish Government
Agriculture and Rural Economy Directorate

12 June 2019