

## POLICY NOTE

### THE AGRICULTURE MARKET MEASURES (EU EXIT) (SCOTLAND) (AMENDMENT) (No. 2) REGULATIONS 2019

SSI 2019/347

The above instrument was made in exercise of the powers conferred by paragraph 1(1) and (3) of schedule 2 to the European Union (Withdrawal) Act 2018 (“the 2018 Act”) and section 2(2) of and paragraph 1A of Schedule 2 to the European Communities Act 1972. The instrument is subject to negative procedure.

#### **Purpose of the Instrument**

To amend the Registration of Establishments Keeping Laying Hens (Scotland) Regulations 2003, the Reporting of Prices of Milk Products (Scotland) Regulations 2005, the Eggs and Chicks (Scotland) (No. 2) Regulations 2008, the Poultrymeat (Scotland) Regulations 2011 and the Milk and Other Products (Pupils in Educational Establishments) (Scotland) Regulations 2017 to ensure that they continue to operate effectively following the UK’s exit from the EU in a no deal scenario.

#### **Policy Objectives**

Where practical and appropriate, European legislation is being retained in UK law on the UK’s exit from the EU.

The potential deficiencies in directly applicable EU legislation, which will become retained EU law after exit, are being corrected by statutory instruments prepared by DEFRA. The Scottish Parliament requires to agree proposed changes so far as devolved.

The Scottish Ministers are correcting any deficiencies in EU derived domestic legislation, including adjusting cross-references to EU instruments as necessary in order to take account of the DEFRA changes.

It is as part of that process sometimes necessary to update Scottish legislation in order to ensure that references to EU instruments are to the most recent versions of those instruments.

In the fields of eggs and chicks, poultrymeat, price reporting for milk, and school milk the Scottish Government plans to retain the current standards set out in EU legislation and EU-derived domestic legislation to ensure, following a ‘no deal’ United Kingdom exit from the European Union, the continued and proper regulation under – in the case of this instrument – the following legislation:

- Registration of Establishments Keeping Laying Hens (Scotland) Regulations 2003,
- Reporting of Prices of Milk Products (Scotland) Regulations 2005,
- Eggs and Chicks (Scotland) (No. 2) Regulations 2008,
- Poultrymeat (Scotland) Regulations 2011, and
- Milk and Other Products (Pupils in Educational Establishments) (Scotland) Regulations 2017.

The instrument is required to protect human health and the environment, and provide continuity for businesses and consumers. Upon exit day a number of technical corrections are required for each of these pieces of legislation, ensuring their appropriate operability within Scotland's egg, poultry and dairy sector.

The instrument does not reflect a change in policy.

The UK Statutory instruments and this instrument have been brought forward in exercise of powers in the 2018 Act in order to address failures of retained EU law to operate effectively after the UK's exit from the EU. This instrument also corrects out-of-date references to EU instruments.

### **Amendment of the Registration of Establishments Keeping Laying Hens (Scotland) Regulations 2003**

The Registration of Establishments Keeping Laying Hens (Scotland) Regulations 2003 implement EU rules regarding the registration of establishments keeping laying hens.

The 2003 Regulations apply to establishments keeping 350 or more laying eggs and require the setting up and maintenance of a register of such establishment by Scottish Ministers.

The instrument makes amendments to ensure the correct functioning of the 2003 Regulations on a 'no deal' exit by –

- Updating and replacing the references to the Directive in regulations 2, 4, and 5 and making consequential amendments as needed by replicating provisions of the Directive and by inserting appropriate cross-references .
- Inserting a schedule to replicate provisions of the Directive which it is appropriate to retain in the 2003 Regulations

### **Amendment of the Reporting of Prices of Milk Products (Scotland) Regulations 2005)**

The Reporting of Prices of Milk Products (Scotland) Regulations 2005 implements EU regulations regarding the notification of prices of milk products to the Scottish Ministers, and regarding communications between the current Member states and the Commission in the milk and milk product sector.

The instrument makes amendments to ensure the correct functioning of the 2005 Regulations on a 'no deal' exit by –

- Amending regulation 2(1) (interpretation) by omitting the definition of "Commission Regulation" and substituting the definition of "milk products" by replicating the definition in the Commission Regulation.
- Amending regulation 3 (provision of information on prices of milk products) to omit cross-references to the "Commission Regulation".

### **Amendment of the Eggs and Chicks (Scotland) (No. 2) Regulations 2008**

The Eggs and Chicks (Scotland) (No. 2) Regulations 2008 revoke and remake, with modifications, the Eggs and Chicks (Scotland) Regulations 2008 and implements EU regulations on the production and marketing of eggs for hatching, other eggs and farmyard poultry chicks. The 2008 Regulations set out offence provisions and provides the required enforcement powers to ensure compliance with the 2008 Regulations.

The instrument updates references to EU instruments in the 2008 Regulations, to ensure that the references to those instruments are to the most recent versions of those instruments or to ensure that the references are to the current EU requirements.

The instrument makes amendments to ensure the correct functioning of the 2008 Regulations on a 'no deal' exit by –

- Amending regulation 2(1) (interpretation) to omit definitions which will be redundant as a result of the deficiency fixes to the 2008 Regulations, and to insert definitions of “Scottish welfare regulations” and “third country”, which are required as a result of the deficiency fixes to the 2008 Regulations.
- Amending regulations 4, 7, and 12A to omit reference to “EU” as it will be redundant post-exit.
- Amending regulation 5(1) (registration of establishments) to replace the reference to “agency” to “authority” as a result of deficiency fixes to the relevant EU instruments.
- Amending regulations 11(3) (derogation relating to free range eggs) and regulation 12(3) (derogation relating to barn eggs) so that references to Council Directives are replaced with references to “Scottish Welfare regulations”.
- Amending schedules 1 and 2 so that references to “Community” or “EU” become a references to “retained EU”.
- Amending Part 2 of schedule 1 and Part 2 of schedule 2 to omit offences which are now redundant as a result of the deficiency fixes to the EU instruments, or to omit references to EU instruments which are now redundant..
- Amending Part 2 of schedule 2 to replace references to Directives with references to the provisions replicated in other domestic legislation as a result of deficiency fixes, including fixes to the Registration of Establishments Keeping Laying Hens (Scotland) Regulations 2003 and the Scottish welfare regulations.

### **Amendment of the Poultrymeat (Scotland) Regulations 2011**

The Poultrymeat (Scotland) Regulations 2011 implement EU regulations regarding the marketing of poultrymeat. It sets out offence provisions and provides the required enforcement powers to ensure compliance with the regulation.

The instrument updates references to EU instruments in the 2011 Regulations to ensure that the cross-references in the 2011 Regulations are to the current EU requirements.

The instrument makes amendments to ensure the correct functioning of the 2011 Regulations on a 'no deal' exit by –

- Amending regulation 2(1), 3, 8, 13, and schedule 1 to replace references to “European” with references to “retained EU”.
- Amending regulation 10 (powers of entry) to allow authorised officers to be accompanied by such persons as considered necessary and to remove references to representatives of the European Commission.
- Amending regulation 11 (powers of an authorised officer) to replace references to “European Union” with “United Kingdom” and to omit paragraph (12) which will be redundant after exit.
- Amending Part 2 of schedule 1 to remove redundant references to Annexes of the relevant EU instrument, or to replace references to Annexes as required by the deficiency fixes to the associated EU instruments.

### **Amendment of the Milk and Other Products (Pupils in Educational Establishments) (Scotland) Regulations 2017**

The Milk and Other Products (Pupils in Educational Establishments) (Scotland) Regulations 2017 allowed for the continuation of the EU school milk scheme in Scotland following the introduction of Commission Implementing Regulation (EU) 2017/39 and Commission Delegated Regulation 2017/40. The 2017 regulations permit Scottish Ministers to pay national “top ups” in addition to Union aid subject to the same rules as Union aid and also provide for the withholding or recovery of Union aid or national aid if the applicant is not entitled or where breach of commitments is found.

The instrument makes amendments to ensure the correct functioning of the 2017 Regulations on a ‘no deal’ exit by –

- Amending regulation 2(1) (interpretation) by omitting definition of “national aid” and substituting the definition of “Union Aid” with a definition of “Aid” as the definition is redundant, and the new definition includes aid granted before or after exit day.
- Omitting regulation 3 (additional payment under article 23a(6) and 217 of the “Council Regulation”) and omitting regulation 7(2) (revocation and saving provision) and references to regulation 7(2) as they are redundant.
- Amending regulation 4 (withholding or recovery) so that reference to “Union aid or National aid” is substituted with “Aid”.

### **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 Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view the Agriculture Market Measures (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019 does 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, 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 Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, 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 and effective regulation of agriculture market measures within Scotland in order to protect human health and the environment 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 Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view the Agriculture Market Measures (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 Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view the Agriculture Market Measures (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 Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view the Agriculture Market Measures (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019 have had due regard to the need to 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 Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view the Agriculture Market Measures (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 and effective regulation of agriculture market measures within Scotland in order to protect human health and the environment 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 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 any transitional provisions which fall within paragraph 1(2) of schedule 7 of the European Union (Withdrawal) Act 2018.

**Further information  
Consultation**

To comply with the requirements of Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, the Scottish Government has consulted with representative bodies during the preparation, evaluation and revision of food law contained in these Regulations.

**Impact Assessments**

Full impact assessments have not been prepared for this instrument, as it is 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 Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Directorate for International Trade and Investment  
Scottish Government  
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