

POLICY NOTE

THE COMMON AGRICULTURAL POLICY (EU EXIT) (SCOTLAND) (AMENDMENT) REGULATIONS 2019

SSI 2019/60

The Common Agricultural Policy (EU Exit) (Scotland) (Amendment) Regulations 2019 (“the 2019 Regulations”) are made in exercise of the powers conferred by section 2(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 Regulations are subject to negative procedure.

Purpose of the Instrument

To amend the following regulations:

- The Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015
- The Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014
- The Crofting Counties Agricultural Grants (Scotland) Scheme 2006
- The Less Favoured Area Support Scheme (Scotland) Regulations 2010
- The Rural Development (Scotland) Regulations 2015
- The Rural Payments (Appeals) (Scotland) Regulations 2015

This is to ensure that they continue to operate effectively following the UK’s Exit from the EU in a no deal scenario.

The 2019 Regulations also correct an out of date reference in one of the above regulations before it becomes retained EU law.

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 on 29 March 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, following a ‘no deal’ UK exit from the EU, the continued operation and administration of the CAP schemes within Scotland. The 2019 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 will enter into force alongside the 2019 Regulations, which together will make technical amendments to correct deficiencies in retained EU law. Additionally the 2019 Regulations correct an out of date reference in applicable retained EU law. 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 post-EU exit.

2. Explanation of the law being amended by the regulations

The Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015 make provision in Scotland for the administration and implementation of Regulation (EU) No. 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the CAP and associated EU delegated and implementing regulations.

The Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014 (the “2014 Regulations”) make provision in Scotland for the administration and enforcement of the cross-compliance rules in relation to the CAP, in implementation of Regulation (EU) No 1306/2013 of the European Parliament and of the Council and associated EU delegated and implementing regulations.

The Rural Development (Scotland) Regulations 2015 make provision for the purposes of implementation of the Scottish Rural Development Programme (“SRDP”), and Regulation (EU) No 1305/2013 of the European Parliament and of the Council (the “Rural Development Regulation”), as well as the related Regulation (EU) No 1303/2013 of the European Parliament and of the Council (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 Crofting Counties Agricultural Grants (Scotland) Scheme 2006 provides that the Scottish Ministers may make grants to crofters and to certain other occupiers of land in the crofting counties, including in relation to the SRDP under the Rural Development Regulation.

The Less Favoured Area Support Scheme (Scotland) Regulations 2010 make provision for the implementation of the less favoured area support scheme under the SRDP and Rural Development Regulation.

The Rural Payments (Appeals) (Scotland) Regulations 2015 (the “2015 Appeals Regulations”) provide for the review of certain decisions of the Scottish Ministers in relation to the payment of certain agricultural subsidies and other rural payments.

3. Reasons for and effect of the proposed change

Part 2 updates a legislative reference, in reliance of section 2(2) of the European Communities Act 1972, to ensure the relevant secondary legislation is up to date before this becomes retained EU law on exit day. Part 2 comes into force on 28 March 2019.

Part 3 of the 2019 Regulations uses powers under paragraph 1(1) and (3) of schedule 2 and paragraph 21(b) of schedule 7 of the 2018 Act to correct deficiencies in retained EU law arising from the UK’s withdrawal from the EU. Part 3 comes into force on the exit day.

(a) Part 2 corrections of out of date references

Regulation 2 updates an out of date legislative reference in the 2014 Regulations (namely, to the Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006, which has been revoked and replaced by the Agriculture, Land Drainage and Irrigation Projects (Environmental Impact Assessment) (Scotland) Regulations 2017), before those Regulations become retained EU law.

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

Part 3 of the instrument makes amendments to correct deficiencies in the applicable EU-derived domestic legislation which arise by virtue of EU withdrawal and, as necessary, reflect changes being made to the applicable retained EU law by a number of UK statutory instruments which are being made by the UK Government under the 2018 Act. The latter include the following⁽¹⁾:

- the Common Agricultural Policy (Direct Payments to Farmers) (Amendment) (EU Exit) Regulations 2019²;
- the Common Agricultural Policy (Rules for Direct Payments) (Amendment) (EU Exit) Regulations 2019³;
- the Rural Development (Amendment) (EU Exit) Regulations 2019⁴;
- the Rural Development (Rules and Decisions) (Amendment) (EU Exit) Regulations 2019⁵;
- the European Structural and Investment Funds Common Provisions (Amendment) (EU Exit) Regulations 2019⁶;
- the European Structural and Investment Funds Common Provisions Rules etc. (Amendment etc.) (EU Exit) Regulations 2019⁷;
- the Common Agricultural Policy and Agriculture and Horticulture Development Board (Amendment etc.) (EU Exit) Regulations 2019⁸;
- the Common Agricultural Policy (Financing, Management and Monitoring) (Miscellaneous Amendments) (EU Exit) Regulations 2019⁹;

⁽¹⁾ In terms of the applicable Protocol agreed with the Parliament, the Scottish Government provided details about these UK SIs to the Parliament (in particular, the Rural Economy and Connectivity Committee), for the purposes of obtaining the Parliament's agreement to those UK SIs extending to Scotland. All of the UK SIs listed have been laid and the instruments can be viewed on the [legislation.gov.uk](http://www.legislation.gov.uk) website.

⁽²⁾ <http://www.legislation.gov.uk/uksi/2019/207/contents>

⁽³⁾ <http://www.legislation.gov.uk/uksi/2019/208/contents>

⁽⁴⁾ <http://www.legislation.gov.uk/ukdsi/2019/9780111181140/contents>

⁽⁵⁾ <http://www.legislation.gov.uk/ukdsi/2019/9780111181164/contents>

⁽⁶⁾ <http://www.legislation.gov.uk/ukdsi/2019/9780111180884/contents>

⁽⁷⁾ <http://www.legislation.gov.uk/ukdsi/2019/9780111180792/contents>

⁽⁸⁾ <http://www.legislation.gov.uk/ukdsi/2019/9780111178843/contents>

⁽⁹⁾ <http://www.legislation.gov.uk/ukdsi/2019/9780111181133/contents>

- the Common Agricultural Policy (Financing, Management and Monitoring Supplementary Provisions) (Miscellaneous Amendments) (EU Exit) Regulations 2019¹⁰;
- the Agriculture (Legislative Functions) (EU Exit) Regulations 2019¹¹.

Neither the UK statutory instruments nor the 2019 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.

The amendments made by Part 3 of the 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 financial assistance previously provided by the EU;
- incorporating a necessary transitional provision into the 2015 Appeals Regulations;
- updating references to the UK Coordinating Body. The Common Agricultural Policy (Competent Authority and Coordinating Body) Regulations 2014 are being revoked by the Common Agricultural Policy and Agriculture and Horticulture Development Board (Amendment etc.) (EU Exit) Regulations 2019. In addition the Common Agricultural Policy (Financing, Management and Monitoring) (Miscellaneous Amendments) (EU Exit) Regulations 2019 provides that the Scottish Ministers and the other UK administrations should continue to have joint responsibility for the tasks which prior to exit day were dealt with by the UK Coordinating body. The new wording reflects these amendments and allows for actions to be taken by the UK Coordinating body up to exit day and actions to be taken by the Scottish Ministers and the other UK administrations after exit day. The future operation of the UK Coordinating Body is a matter of ongoing discussion between the four UK administrations so it is not possible to say which of the current Common Agricultural Policy provisions will be coordinated centrally for the UK and which will not. Discussions between the four UK administrations on the future role of the UK Coordinating Body are ongoing.

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) 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.”.

(¹⁰) <http://www.legislation.gov.uk/ukdsi/2019/9780111181188/contents>

(¹¹) <http://www.legislation.gov.uk/ukdsi/2019/9780111181089/contents>

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 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) 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) 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) 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 Cabinet Secretary for the Rural Economy, Fergus Ewing, has made the following statement “In my view the Common Agricultural Policy (EU Exit) (Scotland) (Amendment) 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 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 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 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 instruments which are being 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 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 Regulations have no financial effects on the Scottish Government, local government or on business.

Scottish Government
Agriculture and Rural Economy Directorate

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