

POLICY NOTE

THE RURAL DEVELOPMENT (MISCELLANEOUS AMENDMENT) (SCOTLAND) REGULATIONS 2021

SSI 2021/33

The Rural Development (Miscellaneous Amendment) (Scotland) Regulations 2021 (the “2021 Regulations”) are made in exercise of the powers conferred by paragraph 1(1) and (3) of schedule 2 of the European Union (Withdrawal) Act 2018⁽¹⁾ (the “2018 Act”) and section 2 of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020⁽²⁾ (the “2020 Act”). The 2021 Regulations are subject to negative procedure.

The 2021 Regulations will apply to the whole of Scotland and come into force on 15 March 2021.

Purpose of the instrument.

The amendments made by the 2021 Regulations correct deficiencies in retained EU legislation pertaining to the Common Agricultural Policy (“CAP”) arising as a result of the withdrawal of the UK from the EU. In particular the 2021 Regulations correct deficiencies in retained EU CAP legislation on rural development that stem from Regulation (EU) 2020/2220 which provides for transitional arrangements for the EU CAP in the years 2021 and 2022.

The 2021 Regulations also simplify and improve the operation of retained EU CAP legislation.

Policy Objectives

The 2021 Regulations do not make significant changes to retained EU law on rural development. The changes are instead intended to ensure the continued operability of retained EU CAP legislation, and to ensure stability and continuity for farmers, crofters and land managers in the period from 2021 to 2024.

The 2021 Regulations use the powers in the 2018 Act to correct a number of deficiencies pertaining to rural development that would otherwise exist in retained EU law. The majority of the deficiencies concerned were introduced late in 2020 by Regulation (EU) 2020/2220.

The 2021 Regulations also use the power in section 2 of the 2020 Act to make minor simplifications and improvements to the retained CAP EU legislation pertaining to rural development.

(1) 2018 c.16.

(2) 2020 asp 17.

Changes made by the 2021 Regulations

Regulation 2 - Amendment of the Rural Development Regulation

Regulation 2 makes amendments to correct deficiencies in retained EU law arising as a result of EU exit and to simplify and improve the Rural Development Regulation. The deficiencies concerned have not previously been addressed because they were introduced late in 2020 as a consequence of amendments to EU CAP legislation pertaining to rural development by Regulation (EU) 2020/2220.

Regulation 3 - Amendment of Commission Implementing Regulation (EU) No 808/2014

Regulation 3 makes an amendment to simplify and improve, and correct a deficiency in, the second subparagraph of Annex I, Part I, paragraph 10, point (c) of Commission Implementing Regulation (EU) No 808/2014. It substitutes the second subparagraph, which relates to the presentation of the financing plan as part of the content of rural development programmes. This ensures that the drafting of this provision is clear. This substitution also removes the cross-reference to points (b) and (c) of Article 38(1) of Regulation (EU) No 1303/2013, which were removed by the European Structural and Investment Funds Common Provisions (Amendment) (EU Exit) Regulations 2019(3).

Regulation 4 - Amendment of Regulation (EU) 2020/2220

Regulation 4 makes amendments to correct deficiencies in retained EU law arising as a result of EU exit. It omits Articles 1 to 4 and 6 of Regulation (EU) 2020/2220 which concern the extension of current CAP rural development support within the EU beyond the 2014-2020 Multiannual Financial Framework for the EU Member States.

Reason for and effect of the proposed changes

Without amendment, the above retained EU legislation would contain deficiencies arising by virtue of the UK's withdrawal from the EU. The 2021 Regulations seek to make only necessary technical amendments to correct those deficiencies in, and also to make minor simplifications and improvements to, retained CAP EU legislation pertaining to rural development. Those changes will help ensure that the retained EU CAP legislation pertaining to rural development operates effectively.

The amendments made by the 2021 Regulations are of a technical nature, and do not introduce any policy change.

Statements required by the European Union (Withdrawal) Act 2018 and Additional Information required by the Protocol between the Scottish Government and the Scottish Parliament

The 2021 Regulations are made in exercise of powers in the 2018 Act to deal with deficiencies in retained EU law (paragraph 1(1) and (3) of Part 1 of schedule 2). The Statements set out below relate to the exercise of the deficiencies powers.

The additional information set out below relates to the deficiencies powers, and the power in section 2 of the 2020 Act to modify the main CAP legislation as defined in section 1 of that Act.

Statements required by European Union (Withdrawal) Act 2018

The following statements are required under paragraph 29 of Schedule 7 of the 2018 Act as this instrument contains Regulations under Part 1 of schedule 2 of the 2018 Act.

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

The Cabinet Secretary for the Rural Economy and Tourism has made the following statement:

“In my view the Rural Development (Miscellaneous Amendment) (Scotland) Regulations 2021 do no more than is appropriate. This is because the Regulations address necessary changes arising from leaving the EU”.

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 and Tourism has made the following statement:

“In my view there are good reasons for the provision in this instrument, and I have concluded that making the provision is a reasonable course of action. It is the case that deficiencies arising from the withdrawal of the UK from the EU need to be addressed”.

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 and Tourism has made the following statement:

“In my view the Rural Development (Miscellaneous Amendment) (Scotland) Regulations 2021 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 and Tourism has made the following statement:

“In my view the Rural Development (Miscellaneous Amendment) (Scotland) Regulations 2021 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

This is not applicable.

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)

This is not applicable.

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

This instrument is categorised as low. The changes made are technical amendments that will ensure that retained EU law functions effectively. There is no significant policy change involved.

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

This instrument makes changes under section 2 of the 2020 Act and paragraph 1(1) and (3) of Schedule 2 of the 2018 Act. These powers are ‘either way’ powers.

Section 2(3) of the 2020 Act provides that “Regulations under this section are (if they have not been subject to the affirmative procedure) subject to the negative procedure”. The 2021 Regulations are subject to the negative procedure because they simplify and improve existing policy, amend provisions which are no longer appropriate or workable for Scotland, and do not introduce any new policy.

The Scottish Ministers consider that it is appropriate for the changes made under that power to be made in a single negative instrument because the 2021 Regulations do not contain provisions that would normally make an instrument subject to affirmative procedure. In particular: 1. they do not create or amend a criminal offence; 2. they do not amend an Act of Scottish Parliament or primary legislation - just retained EU law; and 3. they do not contain any matter with material financial impact or financial implications.

In relation to the exercise of the deficiencies powers (paragraphs 1(1) and (3) of schedule 2 of the 2018 Act) where there is a choice of procedure in terms of paragraph 1(7) of schedule 7 of that Act, negative procedure is considered appropriate as the instrument contains minor

and technical amendments and does no more than is necessary to ensure continuity of law and operability following the end of the implementation period.

Further information

Consultation

The 2021 Regulations do not amount to a change in policy. The 2021 Regulations correct deficiencies and make minor simplification and improvement changes in retained CAP EU legislation pertaining to rural development. There has been no formal public consultation regarding this instrument. Broader consultations relating to rural development in Scotland and the 2020 Act have however separately been previously undertaken.

The Scottish Rural Development Programme (“SRDP”), which funds economic, environmental and social measures for the benefit of rural Scotland, was developed in conjunction with stakeholders over a 3 year period which included three stakeholder events, eight stakeholder thematic working groups, two public consultations, a series of public roadshows and regular bilateral meetings with key stakeholders.

There was an external ex-ante evaluation and it was fully impact assessed including a Strategic Environmental Assessment (SEA), Business and Regulatory Impact Assessment (BRIA) and an Equality Impact Assessment (EQIA). It received formal approval by the European Commission.

Subsequent programme modifications involved stakeholder engagement, predominantly via the Agriculture and Rural Development (ARD) Stakeholder Group, and consultation with the Rural Development Operational Committee (RDOC) which formally acts as the monitoring committee for the SRDP. Parliament and REC Committee were informed and the modifications were approved by the European Commission.

A full public consultation was conducted on the period of “Stability and Simplicity” to 2024 and engagement with stakeholders and delivery partners is an on-going process primarily via the ARD Stakeholder Group and the RDOC.

Further consultation took place in relation to the 2020 Act, and the 2021 Regulations will be used to deliver on the stated objective of the 2020 Act that “From 1 January 2021, to enable the continued operation of current CAP schemes and policies, but also to allow them to be progressively improved and simplified”.

Engagement will continue to take place on any future proposals for simplification and improvement between 2021-2024 and during the development of future rural policy, post-CAP.

The importance of continuing rural support through the SRDP in order to provide stability in payments is widely acknowledged and will help the rural economy in its recovery from the impact of COVID-19 and from the uncertainty of Brexit.

Impact Assessments

The CAP was formally approved by the European Commission and the SRDP was developed in conjunction with stakeholders, robustly consulted on and fully impact assessed.

SRDP schemes apply across Scotland, both the mainland and islands.

It is not considered appropriate or proportionate to undertake full impact assessments for the 2021 Regulations as they do not introduce new policy, or a change in policy, but simply correct deficiencies in retained EU law and make minor simplifications and improvements.

The 2021 Regulations will not have a significant impact on the environment.

The 2021 Regulations are not expected to have any impact on business, charities or voluntary bodies.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) was completed when the SRDP was introduced. The continuation of this support will provide stability to help the sector to recover from the impact of both EU exit and the COVID pandemic.

The Cabinet Secretary for the Rural Economy and Tourism, Fergus Ewing, confirms that no BRIA is necessary as the 2021 Regulations have no financial effects on the Scottish Government, local government or on business.

Scottish Government
Agriculture and Rural Economy Directorate
January 2021