

## POLICY NOTE

# The Rural Support (Simplification and Improvement) (Scotland) (No. 2) Regulations 2022

**SSI 2022/279**

The Rural Support (Simplification and Improvement) (Scotland) (No.2) Regulations 2022 (the “2022 Regulations”) are made in exercise of the powers conferred by section 2 of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020<sup>1</sup>.

Section 2(3) of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 provides that “Regulations under this section are (if they have not been subject to the affirmative procedure) subject to the negative procedure”.

The 2022 Regulations are subject to the negative procedure because they make a relatively minor modification to the Common Agricultural Policy (“CAP”) legislation to simplify and improve the operation of existing schemes and do not introduce any significant new policy.

In addition, there are other factors that clearly point to negative being the more appropriate procedure for these regulations. In particular, these regulations do not create or amend a criminal offence, do not amend an Act of the Scottish Parliament and do not contain any matter with material financial impact or financial implications.

The 2022 Regulations will come into force on 10 November 2022.

### **Purpose of the Instrument**

The amendments made by regulations 2 and 3 will simplify and improve the operation of the provisions of the CAP retained EU legislation by amending the afforested areas option under the Ecological Focus Area Greening element of the direct payment schemes with effect for the 2023 claim year onwards.

This new option enables small areas of woodland on farms and crofts to be used as Ecological Focus Areas to provide environmental benefits.

## **1. Policy Objectives**

The 2022 Regulations simplify and improve the retained EU law relating to the operation of the provisions of the CAP retained EU legislation to allow Scottish Ministers to amend the afforested areas option under the Ecological Focus Area (“EFA”) Greening element of the direct payment schemes with effect from the 2023 claim year onwards.

This new option enables small areas of woodland on farms and crofts to be used as EFAs to provide environmental benefits.

## **2. Explanation of the law being amended by the 2022 Regulations**

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<sup>1</sup> The Agriculture (Retained EU Law and Data) 2020 Act of Scottish Parliament number 17

Regulation 2 amends Article 46(2)(h) of Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for the EFA Greening direct payments under support schemes within the framework of the CAP (the “ Direct Payments Regulation”) to create a new afforested areas option under the EFA element of Greening.

Regulation 3 amends Article 45 of the Commission Delegated Regulation (EU) No. 639/2014 of 11 March 2014 supplementing 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 amending Annex X to that Regulation (“Regulation (EU) No. 639/2014”) to provide, in more detail, the requirements to be met for the afforested areas EFA option under Article 46(2)(h) of the Direct Payments Regulation.

### **3. Reasons for and effect of the proposed change**

Regulation 2 removes the existing afforested areas EFA option from the Direct Payments Regulation that has never been exercised in Scotland and is, therefore, no longer appropriate and applicable. It is replaced by a new option that enables small areas of woodland on farms and crofts to be used as EFAs. This is designed to encourage, the planting of small areas of woodland on farms and crofts. The requirement that farmers and crofters who want to take advantage of this EFA option should have a forestry grant agreement in place ensures the appropriate conditions will be applied to the areas of farm woodland to provide the necessary environmental benefits.

Regulation 3 provides, in more detail, the requirements to be met under Article 46(2)(h) of the Direct Payments Regulation. In particular the Scottish Ministers will determine in guidance that will be made available to applicants the particular species that will qualify under the EFA afforested areas option. This planting must be on arable land and fulfil the conditions under the small farm or woodland creation option of the forestry grant scheme applied to the specified species. The forestry grant scheme agreement referred to in Article 46(2)(h) must have been issued after 1 January 2015. This means that farmers and crofters who have already planted small areas of woodland on their holdings under the forestry grant scheme are not discriminated against in favour of applicants who choose to do this now.

### **Further information**

#### **Consultation**

We conducted a full public consultation on our period of Stability and Simplicity to 2024 and further consultation took place in relation to the Agriculture (Retained EU Law and Data) (Scotland) Bill and the 2022 Regulations will be used to deliver on the stated objective of the Bill “to enable the continued operation of current CAP schemes and policies, but also to allow them to be progressively improved and simplified”.

We have informally advised NFU Scotland of our proposals for the 2022 Regulations and we understand they will support them.

#### **Impact Assessments**

The 2022 Regulations aim to simplify and improve the operation of the existing EU CAP and

do not introduce any significant new policy. The proposal is for the current CAP and greening provisions to continue until 2024 or such time as they are replaced by new schemes to be introduced.

The CAP was formally approved by the European Commission and the Pillar 2 Scottish Rural Development Programme was developed in conjunction with stakeholders, robustly consulted on and fully impact assessed. It is not considered appropriate or proportionate to undertake full impact assessments for the 2022 Regulations as they only make a minor modification to simplify and improve the delivery of the existing CAP provisions.

The 2022 Regulations have been subject to a Strategic Environmental Assessment Pre Screening report (Reference PRE 01177) .

### **Financial Effects**

The Cabinet Secretary for Rural Affairs and Islands, Mairi Gougeon, has approved the BRIA for the 2022 Regulations.

Scottish Government  
Agriculture and Rural Economy Directorate

September 2022