

POLICY NOTE

THE AGRICULTURE (RETAINED EU LAW AND DATA) (SCOTLAND) ACT 2020 (CONSEQUENTIAL MODIFICATIONS) AND AGRICULTURAL PRODUCTS, AQUATIC ANIMAL HEALTH AND GENETICALLY MODIFIED ORGANISMS (EU EXIT) (AMENDMENT) REGULATIONS 2022

SSI 2022/361

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 23(1) of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020, paragraphs 1(1) and (3) and 11M(1) of schedule 2 and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018 and all other powers enabling them to do so.

The instrument is subject to the made negative procedure.

Purpose of the Instrument

The purpose of the instrument is to:

- make amendments to marketing standards legislation for agricultural products; aquatic animal health; and to genetically modified organisms to address deficiencies arising from the withdrawal of the United Kingdom from the European Union and matters arising out of, or related to, the Protocol on Ireland/Northern Ireland in the EU Withdrawal Agreement.
- make amendments to marketing standards legislation for agricultural products consequential on the Agriculture (Retained EU Law and Data) (Scotland) Act 2020.

Policy Objectives

The policy objectives of this instrument are to make amendments to retained EU law in the fields of marketing standards for agricultural products, aquatic animal health and genetically modified organisms to ensure operability and effective functioning of the legislation amended, and an accurate and up to date statute book. **The instrument has no impact on the policy of the individual pieces of legislation and no impact on the delivery or implementation methods.** The changes are both consequential on new provisions under the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (“the 2020 Act”), and minor amendments arising from EU exit to address deficiencies and matters arising out of, or related to, the Protocol on Ireland/Northern Ireland in the EU Withdrawal Agreement.

The EU derived domestic regulations that are being amended are:

- The Hops Certification Regulations 1979
- The Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002
- The Eggs and Chicks (Scotland) (No. 2) Regulations 2008
- The Aquatic Animal Health (Scotland) Regulations 2009
- The Marketing of Horticultural Produce (Scotland) Regulations 2009

All other amendments are in connection to direct retained EU legislation

Explanation of the law being amended by the regulations

Operability amendments to address deficiencies arising from the withdrawal of the United Kingdom from the European Union, and matters arising out of, or related to, the Protocol on Ireland/Northern Ireland in the EU Withdrawal Agreement

Regulations 2, 3(3) and (5), 6(3), (11)(a) and (b), 13, 14 and 16 of this instrument make operability amendments to retained direct EU legislation and EU derived domestic legislation to address deficiencies arising from the withdrawal of the United Kingdom from the European Union, and matters arising out of, or related to, the Protocol on Ireland/Northern Ireland in the EU Withdrawal Agreement. These amendments are to the following retained direct and EU derived domestic regulations in the fields of marketing standards for agricultural products, aquatic animal health and genetically modified organisms –

- Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products, Article 113a, 114(2), 117(1), Annex XIV and Annex XV. Council Regulation (EC) No 1234/2007 was repealed and replaced by the CMO Regulation, however the provisions amended continue to apply. These provisions relate to marketing standards for certain agricultural products.
- Commission Regulation (EC) No 543/2008 laying down detailed rules for the application of Council Regulation (EC) 1234/2007 as regards marketing standards for poultrymeat, Article 9(12) and 20(4). Article 9(12) makes provision about indications of weight on packaging. Article 20(4) makes provision about water content checks.
- Retained Regulation (EU) 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (“the CMO Regulation”), Article 13(4) and 230(1)(c). Article 13(4) makes provision about the reference threshold relevant to beef and veal public intervention. Article 230(1)(c) provides that, despite repeal of Regulation (EC) No 1234/2007, certain provisions continue to apply.
- The Hops Certification Regulations 1979, regulation 3(1). This makes provision requiring that hops and hops products must be certified in order to be sold.
- The Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002, schedule 1, paragraph 6(4)(a) sets out the requirements for the facilities which may provide toxicological studies to assess risk to human or animal health in environmental risk assessments, depending on whether this is done in the UK, EU, or elsewhere.
- The Aquatic Animal Health (Scotland) Regulations 2009 (“the 2009 Regulations”), regulation 3 and schedule 1E in connection with the definition of the term “processing establishment” at regulation 3(1) of the 2009 Regulations and the cross-reference which that definition makes to Article 33 of Chapter V of Directive 2006/88/EC on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals.

Amendments consequential on the Agriculture (Retained EU Law and Data) (Scotland) Act 2020

The remainder of the regulations in this instrument make amendments consequential on sections 9 to 12 and the schedule of the Agriculture (Retained EU Law and Data) (Scotland)

Act 2020 (“the 2020 Act”), to retained EU law in the area of marketing standards for agricultural products. The CMO Regulation establishes the common organisation of markets in agricultural products. It sets out general marketing standards and contains powers to make and amend marketing standards. A number of retained direct minor EU Regulations were made under these powers. The retained direct and EU derived domestic regulations to which these amendments apply are as follows –

- Commission Regulation (EC) No 543/2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards marketing standards for poultrymeat, Articles 1 and 13.
- Commission Regulation (EC) 617/2008 laying down detailed rules for implementing Regulation (EC) No 1234/2007 as regards marketing standards for eggs for hatching and farmyard poultry chicks, Article 3(5).
- Commission Regulation (EC) No 543/2011 laying down detailed rules for the application of Council Regulation (EC) 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors, Articles 3(2), 8, 10(1) and 11(1).
- The CMO Regulation, Articles 11, 17, 76(1), 80(1), 83(1), 85(1) and (2), 90(2), 228(9), 230(1), and Annex VII, Part II(1), (3), (6), (12), (13) and (14), Part VI I(1) and Part VIII(1) to (6), Annex VIII, Part 1(C) and (D) and Part 2(D).
- Regulation (EU) No 251/2014 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products, Article 4(4).
- Commission Delegated Regulation (EU) 2018/273 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the scheme of authorisations for vine plantings, the vineyard register, accompanying documents and certification, the inward and outward register, compulsory declarations, notifications and publication of notified information, and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards the relevant checks and penalties, amending Commission Regulations (EC) No 555/2008, (EC) No 606/2009 and (EC) No 606/2009 and repealing Commission Regulation (EC) No 436/2009 and Commission Delegated Regulation (EU) 2015/560, Articles 29(1), 45 and 47.
- Commission Implementing Regulation (EU) 2018/274 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the scheme of authorisations for vine plantings, certification, the inward and outward register, compulsory declarations and notifications, and of Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards the relevant checks, and repealing Commission Implementing Regulation (EU) 2015/561, Article 14(1).
- Commission Delegated Regulation (EU) 2019/33 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation, Article 40(1).

- Commission Delegated Regulation (EU) 2019/934 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards wine-growing areas where the alcoholic strength may be increased, authorised oenological practices and restrictions applicable to the production and conservation of grapevine products, the minimum percentage of alcohol for by-products and their disposal, and publication of OIV files, Article 4(1), 7(1) and 9(1).
- Commission Implementing Regulation (EU) 2019/935 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards analysis methods for determining the physical, chemical and organoleptic characteristics of grapevine products and notifications of Member States decisions concerning increases in natural alcoholic strength, Article 2.
- The Eggs and Chicks (Scotland) (No.2) Regulations 2008, schedule 2.
- The Marketing of Horticultural Produce (Scotland) Regulations 2009, regulation 2(1).

Reasons for and effect of the proposed change or changes on retained EU law

Operability amendments to address deficiencies arising from the withdrawal of the United Kingdom from the European Union and matters arising out of, or related to, the Protocol on Ireland/Northern Ireland in the EU Withdrawal Agreement

Regulation 2 amends Council Regulation (EC) 1234/2007. The amendments replace references to “Member States” “and “Community” with appropriate domestic terms, provide definitions of “third country” and “appropriate authority”, substitute reference to an obsolete directive with the relevant retained EU law provision, and omit redundant provision. These amendments are to ensure operability, clarity and effective functioning of marketing standards legislation for agricultural products.

Regulation 3 amends Commission Regulation (EC) 543/2008 on poultrymeat marketing standards. The amendment to Article 9(12) substitutes reference to a directive regarding indications of weight with the corresponding domestic legislation. The amendment to Article 20(4) removes a cross-reference to a provision which has been omitted. These amendments are to ensure operability, clarity and effective functioning of poultrymeat marketing standards legislation.

Regulation 6 amends the CMO Regulation. The amendment to Article 13(4) omits a cross-reference to a redundant provision regarding reference thresholds which has been omitted and substitutes a reference to the relevant retained EU law provision. The amendment to Article 230(1)(c) removes a cross-reference to a redundant power of the Commission to make marketing standards rules regarding poultrymeat. These amendments are to ensure operability, clarity and effective functioning of marketing standards legislation for agricultural products.

Regulation 13 amends the Hops Certification Regulations 1979. The amendment omits regulation 3(1)(f), which provides that in order to be sold hops and hops products moving from Northern Ireland to Great Britain must be accompanied by an EU certificate or attestation of equivalence issued under Regulation (EU) 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products (“EUR 1308/2013”). Regulation 3(1)(f) is redundant due to provision in the United Kingdom Internal Market Act 2020 for the mutual recognition of goods. This amendment ensures clarity in the legislation amended.

Regulation 14 amends the Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2009, schedule 1, paragraph 6(4)(a). This amendment reflects the Northern Ireland Protocol and that facilities in Northern Ireland will be held to the requirements of EU law rather than UK law, and therefore enables Northern Ireland facilities to meet the requirements of the regulation.

Regulation 16 amends the Aquatic Animal Health (Scotland) Regulations 2009, regulation 3 and schedule 1E. The amendments correct a deficient cross-reference in the definition of the term “processing establishment” at regulation 3(1) of the 2009 Regulations, which cross-refers to Article 33 of Chapter V of Directive 2006/88/EC on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals (“Directive 2006/88/EC”). The amendments ensure that, for the purposes of the definition of the term “processing establishment” in the 2009 Regulations, the reference in Article 33(1) of Directive 2006/88/EC to “the competent authority” is understood to mean “the Scottish Ministers” and the amendments clarify that cross-references in the 2009 Regulations to Directive 2006/88/EC are cross-references to that Directive as it had effect immediately before IP completion day.

Amendments consequential on the Agriculture (Retained EU Law and Data) (Scotland) Act 2020

The 2020 Act necessitates consequential amendments to the CMO Regulation, other retained direct EU legislation and EU derived domestic legislation relating to marketing standards. This is because sections 9 and 11 of the 2020 Act introduce new powers for the Scottish Ministers to make marketing standards regulations. Section 12 and the schedule disapply certain provisions of the CMO Regulation, while providing that regulations previously made under those provisions (in section 1 or section 3 of Chapter 1 of Title 2 of the CMO Regulation) continue to apply to products marketed in Scotland.

The amendments in this instrument that are consequential on the 2020 Act therefore replace references to the disapplied provisions with references to regulations made under those provisions which continue to apply, and to the new powers to make regulations in future. The instrument uses the power to make consequential provision in section 23(1) of the 2020 Act to make these amendments, ensuring the statute book as regards marketing standards for agricultural products is accurate and up to date.

Statements required by European Union (Withdrawal) Act 2018

The statements below are made in relation to regulations 2, 3(3) and (5), 6(3), 11(a) and (b), 14 and 16, which are made under paragraphs 1(1) and (3) of schedule 2 and paragraph 21(b) of schedule 7 of the 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 Rural Affairs and Islands has made the following statement “In my view the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (Consequential Modifications) and Agricultural Products, Aquatic Animal Health and Genetically Modified Organisms (EU Exit) (Amendment) Regulations 2022 do no more than is appropriate. This is because the regulations make only minor, necessary amendments to provisions that currently contain deficiencies. The amendments are made to ensure effective functioning of legislation

in relation to marketing standards for agricultural products, genetically modified organisms and aquatic animal health and do not introduce policy changes.”

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 Rural Affairs and Islands has made the following statement “In my view there are good reasons for the regulations, and I have concluded they are a reasonable course of action. This is because the regulations are to ensure the continued and effective regulation of marketing standards for agricultural products, genetically modified organisms and aquatic animal health. The amendments are minor and 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 Rural Affairs and Islands has made the following statement “In my view the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (Consequential Modifications) and Agricultural Products, Aquatic Animal Health and Genetically Modified Organisms (EU Exit) (Amendment) Regulations 2022 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 Rural Affairs and Islands has made the following statement “In my view the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (Consequential Modifications) and Agricultural Products, Aquatic Animal Health and Genetically Modified Organisms (EU Exit) (Amendment) Regulations 2022 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”.

The statements below are made in relation to regulations 13, 14, 15 and 16, which amend subordinate legislation made under section 2(2) of the European Communities Act 1972

Statement as to why the Scottish Ministers consider that there are good reasons for the amendments

The Cabinet Secretary for Rural Affairs and Islands has made the following statement “In my view there are good reasons for these amendments. This is because the amendments make minor, technical changes to ensure clarity and effective functioning of legislation in relation to marketing standards for agricultural products, genetically modified organisms and aquatic animal health. The amendments do not introduce policy changes.”

Statement explaining the law which is relevant to the amendments

The Cabinet Secretary for Rural Affairs and Islands has made the following statement,

“Regulation 13 amends the Hops Certification Regulations 1979, regulation 3(1). Regulation 3(1) makes provision requiring that hops and hops products must be certified in order to be sold.

Regulation 14 amends paragraph 6(4)(a) of schedule 1 of the Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002. This paragraph sets out the requirements for the facilities which may provide toxicological studies to assess risk to human or animal health in environmental risk assessments.

Regulation 15 amends the Eggs and Chicks (Scotland) (No.2) Regulations 2008, schedule 2, Part 1. Schedule 2, part 1, read with regulation 7, provides that it is an offence to contravene certain provisions of Regulation (EC) No 589/2008 laying down detailed rules for implementing Council Regulation (EC) No. 1234/2007 as regards marketing standards for eggs.

Regulation 16 amends the Aquatic Animal Health (Scotland) Regulations 2009 (“the 2009 Regulations”), regulation 3 and schedule 1E in connection with the definition of the term “processing establishment” at regulation 3(1) of the 2009 Regulations and the cross-reference which that definition makes to Article 33 of Chapter V of Directive 2006/88/EC on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals.

Regulation 17 amends the Marketing of Horticultural Produce (Scotland) Regulations 2009, regulation 2(1). Regulation 2(1) provides definitions of “marketing rules” and “specific marketing standards” for the purposes of the regulations.”

Statement explaining the effect of the amendments on retained EU law

The Cabinet Secretary for Rural Affairs and Islands has made the following statement,

“Regulation 13 – amendment of the Hops Certification Regulations 1979 – the amendment omits regulation 3(1)(f), which provides that in order to be sold hops and hops products moving from Northern Ireland to Great Britain must be accompanied by an EU certificate or attestation of equivalence issued under Regulation (EU) 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products (“EUR 1308/2013”). Regulation 3(1)(f) is now redundant due to provision in the Internal Market Act 2020 for the mutual recognition of goods.

Regulation 14 - amendment of the Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 – the amendment provides that, where an environmental assessment for GMO marketing consent contains a toxicological study which has been carried out in a laboratory in Northern Ireland then that laboratory must be subject to the relevant EU laws ensuring good laboratory practice and the verification of the laboratory’s applications for tests on chemical substances.

Regulation 15 – amendment of the Eggs and Chicks (Scotland) (No.2) Regulations 2008 – the amendment omits spent cross-references to EUR 1308/2013, Article 75, which has been dis-applied by section 12 and schedule 1 of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020.”

Regulation 16 – amendments the the Aquatic Animal Health (Scotland) Regulations 2009 (“the 2009 Regulations”) - the amendments correct a deficient cross-reference in the definition of the term “processing establishment” at regulation 3(1) of the 2009 Regulations, which cross-

refers to Article 33 of Chapter V of Directive 2006/88/EC on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals (“Directive 2006/88/EC”). The amendments ensure that, for the purposes of the definition of the term “processing establishment” in the 2009 Regulations, the reference in Article 33(1) of Directive 2006/88/EC to “the competent authority” is understood to mean “the Scottish Ministers” and the amendments clarify that cross-references in the 2009 Regulations to Directive 2006/88/EC are cross-references to that Directive as it had effect immediately before IP completion day.

Regulation 17 – amendment of the Marketing of Horticultural Produce (Scotland) Regulations 2009 – the amendments omit spent cross-references to EUR 1308/2013, Article 75, which has been dis-applied by section 12 and schedule 1 of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020.”

Choice of procedure

Insofar as this instrument is made under the powers conferred by paragraphs 1(1) and (3) of schedule 2 of the European Union (Withdrawal) Act 2018, the Scottish Ministers consider it appropriate that it is made under the negative procedure. The mandatory affirmative procedure in terms of paragraph 1(2) of schedule 7 does not apply. Given the amendments made are minor, are to ensure effective functioning of the legislation amended, and do not introduce policy changes, the negative procedure is considered appropriate.

Consultation

To comply with the requirements of Article 9 of Regulation (EC) 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, a four week targeted consultation was carried out. The consultation explained to industry that the proposals did not change current policy or implementation methods and were technical amendments due to (a) the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 and (b) leaving the EU. No responses were received.

Impact Assessments

Impact assessments have not been carried out because the instrument is aimed at preserving the effect of current regimes and does not introduce policy changes. It does not alter Scottish Government’s current environmental policies and priorities and,

Financial Effects

The Cabinet Secretary for Rural Affairs and Islands confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary for this as the instrument has no financial effects on the Scottish Government, local government or on business. There is no impact to industry due to these changes being strictly of a technical nature.

Scottish Government
Agriculture and Rural Economy Directorate
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