

POLICY NOTE

The Rural Support (Simplification and Improvement) (Scotland) Regulations 2023

SSI 2023/308

The Rural Support (Simplification and Improvement) (Scotland) Regulations 2023 (the “2023 Regulations”) are made in exercise of the powers conferred by section 2 of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (the “2020 Act”)¹.

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 2023 Regulations are subject to the negative procedure because they make a relatively minor modifications to 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 2023 Regulations will come into force on 1 January 2024.

Purpose of the Instrument

The amendments made by regulation 2 will simplify and improve the operation of the provisions of CAP legislation by removing the provisions in Article 31(1) of the Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payment to farmers under support schemes within the framework of the common agricultural policy (the “Direct Payments Regulation”) for the replenishment of national or regional reserves from payment entitlements not giving right to payments during two consecutive years due to the application of the specified provisions, and from payment entitlements not activated for two consecutive years.

The amendments made by regulations 3 and 4 are consequential upon the changes made by regulation 2.

The amendments made by regulation 5 will simplify and improve the operation of the provisions of the CAP legislation by omitting the provisions in paragraph 9(4) of the Common Agricultural Policy (Direct Payments etc) (Scotland) Regulations 2015 (the “2015 Regulations”) to remove the requirements relating to reversion to the national reserve of (a) 50% of the annual unit value of payment entitlements that are transferred without land that applied up to 2018 and (b) 30% of the annual unit value of payment entitlements that are transferred without land that currently applies as from 2018.

All of these amendments will take effect for the 2024 claim year onwards.

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1. Policy Objectives

The 2023 Regulations simplify and improve the operation of the Direct Payments Regulation by removing the provisions in Article 31(1) of that Regulation for the replenishment of national or regional reserves from payment entitlements not giving right to payments during two consecutive years due to the application of the specified provisions, and from payment entitlements not activated for two consecutive years.

The 2023 Regulations also simplify and improve the operation of the 2015 Regulations by omitting regulation 9(4) to remove the requirements relating to reversion to the national reserve of (a) 50% of the annual unit value of payment entitlements that are transferred without land that applied up to 2018 and (b) 30% of the annual unit value of payment entitlements that are transferred without land that currently applies as from 2018.

These provisions will simplify our payments entitlements process to make it easier for applicants to use, reducing their administrative burden.

All of these amendments will take effect for the 2024 claim year onwards.

2. Explanation of the law being amended by the 2023 Regulations

Regulation 2 amends Article 31 (1) of the Direct Payments Regulation to omit points (a) and (b).

Regulation 3 omits Article 24(2) of Commission Delegated Regulation (EU) No 639/2014.

Regulation 4 omits Article 9 of Commission Implementing Regulation (EU) No 641/2014.

Regulation 5 omits regulation 9(4) of the 2015 Regulations.

3. Reasons for and effect of the proposed change

Regulation 2 removes Article 31(1)(a) and (b) of the Direct Payments Regulation which concern the replenishment of national or regional reserves from payment entitlements not giving right to payments during two consecutive years due to the application of the specified provisions, and from payment entitlements not activated for two consecutive years. This is to simplify our payments process to make it easier for our applicants to use, some of whom will otherwise be obliged to take action to avoid this such as selling or leasing their entitlements, all adding to the administrative burden for applicants. The removal of these provisions from Article 31 will have no material impact on our young farmer and/or new entrant categories of the National Reserve and the levels of BPS payments for applicants.

Regulation 3 is consequential upon the change made by regulation 2 and omits Article 24(2) of Commission Delegated Regulation (EU) No 639/2014. Article 24(2) sets out how over-declarations of payment entitlements are to be considered for the purposes of Article 31(1)(b) of the Direct Payments Regulation. As a consequence of the omission of Article 31(1)(a) and (b) of the Direct Payments Regulation by regulation 2, Article 24(2) is no longer necessary or applicable.

Regulation 4 is consequential upon the change made by regulation 2, and omits Article 9 of Commission Implementing Regulation (EU) No 641/2014. Article 9 sets out when payment

entitlements revert to the national or regional reserve as a consequence of the operation of Article 31(1)(a) and (b) of the Direct Payments Regulation. As a consequence of the omission of Article 31(1)(a) and (b) of the Direct Payments Regulation by regulation 2, Article 9 is no longer necessary or applicable.

Regulation 5 omits regulation 9(4) of the 2015 Regulations to remove the requirements relating to reversion to the national reserve of (a) 50% of the annual unit value of payment entitlements that are transferred without land that applied up to 2018 and (b) 30% of the annual unit value of payment entitlements that are transferred without land that currently applies as from 2018. This is to simplify our payments process to make it easier for our applicants to use and to remove some of the administrative burden for applicants. The removal of these provisions from regulation 9(4) will have no material impact on our young farmer and/or new entrant categories of the National Reserve and the levels of BPS payments for applicants.

EU Alignment

Following the UK's exit from the EU it is no longer necessary to retain Article 31 of the Direct Payments Regulation and regulation 9(4) of the 2015 Regulations. These minor technical simplifications and improvements will not contravene the policy of alignment to EU law. These changes will have no material impact on our young farmer and/or new entrant categories of the National Reserve and the levels of BPS payments for applicants.

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. The 2023 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 2023 Regulations and we understand they will support them.

Impact Assessments

The 2023 Regulations aim to simplify and improve the operation of CAP legislation and do not introduce any significant new policy. The proposal is for current CAP legislation 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 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 2023 Regulations as they only make a minor modification to simplify and improve the delivery of the existing CAP legislative provisions.

Financial Effects

The Cabinet Secretary for Rural Affairs Land Reform and Islands, Mairi Gougeon, has approved the BRIA for the 2023 Regulations.

Scottish Government
Agriculture and Rural Economy Directorate
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