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SCOTTISH STATUTORY INSTRUMENTS

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**2019 No. 60**

**EXITING THE EUROPEAN UNION  
AGRICULTURE  
CROFTERS, COTTARS AND  
SMALL LANDHOLDERS**

**The Common Agricultural Policy (EU Exit)  
(Scotland) (Amendment) Regulations 2019**

*Made - - - - 19th February 2019*  
*Laid before the Scottish*  
*Parliament - - - - 21st February 2019*  
*Coming into force in accordance with regulation 1*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(1), paragraph 1(1) and (3) of schedule 2 and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018(2) and all powers enabling them to do so.

**PART 1**

**INTRODUCTION**

**Citation, commencement and extent**

**1.—(1)** These Regulations may be cited as the Common Agricultural Policy (EU Exit) (Scotland) (Amendment) Regulations 2019 and come into force as follows—

(a) as regards this Part and Part 2, on 28 March 2019,

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- (1) [1972 c.68](#). Section 2(2) was amended by paragraph 15(3) of schedule 8 of the Scotland Act [1998 \(c.46\)](#) (“the 1998 Act”) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act [2006 \(c.51\)](#) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by section 3(3) and Part 1 of the schedule of the European Union (Amendment) Act [2008 \(c.7\)](#) (“the 2008 Act”). The functions conferred upon the Minister of the Crown under section 2(2), insofar as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. It is prospectively repealed by the European Union (Withdrawal) Act [2018 \(c.16\)](#), section 1 from exit day (see section 20 of that Act). The powers in section 2(2) are exercised in relation to Part 2 of these Regulations.
- (2) [2018 c.16](#).

- (b) as regards Part 3, on exit day.
- (2) These Regulations extend to Scotland only.

## PART 2

### Amendment of references in secondary legislation

#### **The Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014**

2. In paragraph 6(3) (maintenance of soil organic matter) of Part 2 (standards for good agricultural and environmental condition) of the schedule to the Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014<sup>(3)</sup>, for “the Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006” substitute “the Agriculture, Land Drainage and Irrigation Projects (Environmental Impact Assessment) (Scotland) Regulations 2017<sup>(4)</sup>”.

## PART 3

### Amendment of secondary legislation relating to withdrawal from the European Union

#### **The Crofting Counties Agricultural Grants (Scotland) Scheme 2006**

3.—(1) The Crofting Counties Agricultural Grants (Scotland) Scheme 2006<sup>(5)</sup> is amended as follows.

(2) In paragraph 2(1) (interpretation), in the definition of “Commission Regulation 65/2011”, at the end insert “(except in relation to paragraph 6(4)(c))”.

(3) In paragraph 6(4)(c) (restrictions on payment of grant), after “65/2011” insert “as that Article of that Commission Regulation had effect immediately before exit day”.

(4) In paragraph 11A (power of authorised persons), for sub-paragraph (5) substitute—

“(5) An authorised person entering any land under sub-paragraph (1) may be accompanied by such other person as the authorised person considers necessary, and sub-paragraphs (3) and (4) shall apply to that person when acting under the instructions of an authorised person as they apply to an authorised person.”.

#### **The Less Favoured Area Support Scheme (Scotland) Regulations 2010**

4. In regulation 13(1) (powers of authorised persons) of the Less Favoured Area Support Scheme (Scotland) Regulations 2010<sup>(6)</sup>, for paragraph (a) substitute—

“(a) verification of the accuracy of an application by carrying out administrative and periodic checks which are required under—

(i) Article 11 of Commission Regulation 65/2011;

(ii) Articles 12 and 20 of Commission Regulation 65/2011 as it had effect immediately before exit day; or

(iii) Titles III and V of the Horizontal Delegated Regulation; or”.

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(3) S.S.I. 2014/325, to which there are amendments not relevant to these Regulations.

(4) S.S.I. 2017/114, amended by S.S.I. 2017/168.

(5) S.S.I. 2006/24; relevant amending instruments are S.S.I. 2008/58 and S.S.I. 2015/105.

(6) S.S.I. 2010/273; relevant amending instruments are S.S.I. 2011/73 and S.S.I. 2015/185.

### **The Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014**

5. In regulation 5 (powers of authorised persons) of the Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014, for paragraph (5) substitute—

“(5) An authorised person entering any premises by virtue of this regulation may be accompanied by such other person as the authorised person considers necessary.”.

### **The Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015**

6.—(1) The Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015(7) are amended as follows.

(2) In regulation 4 (minimum eligible area of holding), after “Regulation” insert “as it had effect immediately before exit day”.

(3) In regulation 7 (short rotation coppice), for “and (2)(c)” substitute “and, as it had effect immediately before exit day, (2)(c)”.

(4) In regulation 14(1) (windfall profit), for “Article 28” to “Delegated Regulation” substitute—  
“Article 28 of the Direct Payments Regulation and as determined in accordance with Article 27 of the Direct Payments Delegated Regulation, as those Regulations had effect immediately before exit day.”.

(5) In regulation 17(1) (permanent grassland), after “Direct Payments Regulation” insert “as it had effect immediately before exit day”.

(6) In regulation 19 (powers of authorised persons), for paragraph (5) substitute—

“(5) An authorised person entering any premises by virtue of this regulation may be accompanied by such other person as the authorised person considers necessary.”.

(7) In regulation 23 (recovery of undue payments)—

(a) in paragraph (2)(b), for “or the coordinating body” substitute “, the coordinating body or, on or after exit day, the appropriate authority”,

(b) for paragraph (3) substitute—

“(3) In this regulation—

“the appropriate authority” means the Secretary of State, the Department of Agriculture, Environment and Rural Affairs, the Scottish Ministers and the Welsh Ministers acting jointly; and

“the coordinating body” means the coordinating body referred to in regulation 3 of the Common Agricultural Policy (Competent Authority and Coordinating Body) Regulations 2014(8) as those Regulations had effect immediately before exit day.”.

### **The Rural Development (Scotland) Regulations 2015**

7.—(1) The Rural Development (Scotland) Regulations 2015(9) are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) for the definition of “service level agreement” substitute—

““service level agreement”, except in relation to regulation 21(3) (agency arrangements), means an agreement between the Scottish Ministers and an accountable body for the purposes of—

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(7) [S.S.I. 2015/58](#); relevant amending instrument is [S.S.I. 2017/98](#).

(8) [S.I. 2014/3260](#). This instrument is being revoked on exit day by [S.I. 2019/XXX](#).

(9) [S.S.I. 2015/192](#).

- (a) Article 7(1) of the Horizontal Regulation, and
  - (b) Article 1 of, and Annex I(1)(C) to, Commission Delegated Regulation (EU) No 907/2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro<sup>(10)</sup> as it had effect immediately before exit day;”,
- (b) for the definition of “SRDP” substitute—
- ““SRDP” means the Scottish Rural Development Programme—
- (a) as approved by the European Commission in respect of Scotland in accordance with Article 10(2) of the Rural Development Regulation and Article 29(4) of the Common Provisions Regulation, as those Regulations had effect immediately before exit day<sup>(11)</sup>,
  - (b) as amended pursuant to Article 11 of the Rural Development Regulation and Article 30 of the Common Provisions Regulation, as those Regulations had effect immediately before exit day<sup>(12)</sup>, and
  - (c) as may from time to time be supplemented or amended, on or after exit day, by the Scottish Ministers in accordance with Article 11 of the Rural Development Regulation and Article 30 of the Common Provisions Regulation;”.
- (3) In regulation 11 (powers of entry), for paragraph (6) substitute—
- “(6) An authorised person entering any land or premises by virtue of this regulation may be accompanied by such other person as the authorised person considers necessary.”
- (4) For regulation 16(1)(d) (breaches of conditions of grant/undertakings etc.), substitute—
- “(d) the whole or any part of the sum paid or payable in relation to an approval duplicates assistance provided or to be provided out of monies made available—
- (i) by the European Union in respect of an application for European Union assistance approved before exit day; or
  - (ii) under any enactment, including an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;”.
- (5) In regulation 18 (recovery of undue payments, interest and set-off)—
- (a) in paragraph (2)(b), for “or the coordinating body” substitute “, the coordinating body or, on or after exit day, the appropriate authority”,
  - (b) in paragraph (5)—
    - (i) before the definition of “the Bank of England base rate”, insert—
 

““the appropriate authority” means the Secretary of State, the Department of Agriculture, Environment and Rural Affairs, the Scottish Ministers and the Welsh Ministers acting jointly;”,
    - (ii) in the definition of “the coordinating body”, at the end insert—
 

“as those Regulations had effect immediately before exit day.”.

<sup>(10)</sup> OJ L 255, 28.8.2014, p.18, as last amended by Commission Delegated Regulation (EU) 2018/967 (OJ L 174, 10.7.2018, p.2).

<sup>(11)</sup> As approved pursuant to Commission Implementing Decision C(2015) 3489 approving the rural development programme of Scotland for support from the European Agricultural Fund for Rural Development.

<sup>(12)</sup> As last amended pursuant to Commission Implementing Decision C(2018) 8463 approving the amendment of the rural development programme of Scotland (UK) for support from the European Agricultural Fund for Rural Development.

## **The Rural Payments (Appeals) (Scotland) Regulations 2015**

8. In the Rural Payments (Appeals) (Scotland) Regulations 2015(13), after regulation 10 insert—

### **“Transitional provision for decisions on or after exit day in relation to EU instruments**

**10A.** For the purposes of these Regulations, a “relevant decision” includes a decision made on or after exit day under and in accordance with any EU instrument specified in any of the paragraphs of the Schedule, so far as that EU instrument had effect immediately before exit day.”.

St Andrew’s House,  
Edinburgh  
19th February 2019

*FERGUS EWING*  
A member of the Scottish Government

**Status:** This is the original version (as it was originally made).

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are principally made in exercise of the powers conferred by paragraph 1(1) and (3) of schedule 2 of the European Union (Withdrawal) Act 2018 (c.16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(d) and (g)) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to legislation in the field of the common agricultural policy.

Part 2 (regulation 2), made in exercise of powers under the European Communities Act 1972 (c.68), updates a reference in relation to secondary legislation.

Part 3 (regulations 3 to 8) make amendments to secondary legislation consequential on the UK's withdrawal from the European Union.

No Business and Regulatory Impact Assessment has been prepared in relation to these Regulations, as no, or no significant, impact upon business, charities or voluntary bodies is foreseen.