

AGRICULTURE (RETAINED EU LAW AND DATA) (SCOTLAND) ACT 2020

EXPLANATORY NOTES

COMMENTARY ON PROVISIONS

Part 1 – Retained EU law

Section 1 – Defined terms

97. This section defines terms used in Part 1 for the purposes of that Part.
98. It defines the “main CAP legislation” as being:
- the Direct Payments Regulation, the Rural Development Regulation, the Horizontal Regulation, and – so far as relating to the Rural Development Regulation - the Common Provisions Regulation (each of which are further defined in the section),
 - delegated or implementing regulations made by the EU in respect of those Regulations, and
 - subordinate legislation made in the UK, implementing or otherwise relating to those Regulations.
99. It also defines the “CMO Regulation”, which forms part of the CAP, but is not included in the main CAP legislation for the purposes of the Act.
100. All references in the Act to EU regulations are to be read as references to the regulations as incorporated into domestic law (i.e. as part of “retained EU law”) by virtue of section 3 of the European Union (Withdrawal) Act 2018 or section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (see section 24(1) of the Act).
101. It provides for “modify” to include amend, revoke and repeal, and states that any related expressions are to be interpreted accordingly. This in particular covers revocation in relation to subordinate instruments.

Section 2 – Power to simplify or improve CAP legislation

102. This section provides for the Scottish Ministers to be able, by regulations, to modify the main CAP legislation, but only if they consider that the modification would simplify or improve the operation of the legislation.
103. An example of the type of simplification or improvement that could be made using this power involves the CAP Pillar 2 support for less favoured areas (LFA). Under EU CAP legislation the options currently open to the Scottish Government are to continue with the “Less Favoured Area Support Scheme” (LFASS) but with a much reduced payment available to farmers in 2020, and then move to a replacement “Areas of Natural Constraint” (ANC) scheme from 2021. This power in the Act would provide an additional option as it would enable the Scottish Ministers to modify the retained CAP legislation to ensure that support can continue for farmers whose land is designated as

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being in an LFA under the current CAP, and who receive payments under LFASS. This will allow any changes to support for constrained areas to be considered as part of the future overall income support package for farmers and crofters.

104. Regulations made under this section which have not been subject to the affirmative procedure, are subject to the negative procedure. This is sometimes known as an ‘either way’ power, and the effect is that the Scottish Ministers can choose which procedure is to apply to any particular use of the power.

Section 3 – Power to provide for the operation of CAP legislation beyond 2020

105. This section provides for the Scottish Ministers to be able, by regulations subject to the affirmative procedure, to modify the main CAP legislation in order to ensure that the provisions of the CAP legislation can continue to operate in Scotland for one or more years beyond 2020.
106. Subsections (2) and (3) provide that the power extends to determining for any year a national ceiling as referred to in Article 6 of the Direct Payments Regulation.¹ This ceiling sets a limit on the amount that can be paid out as direct payments.
107. The national ceiling for each Member State is as specified in Annex II to that Regulation, and that ceiling became part of retained EU law after exit (but see paragraph 109 below). Article 6, as it has effect as retained EU law, has also been modified so that it can be adapted by regulations made by the Secretary of State with the consent of each of the relevant authorities for Wales, Scotland and Northern Ireland. The Scottish Ministers are the relevant authority for Scotland.
108. Subsection (3)(b) allows the Scottish Ministers to confer functions on any appropriate person in the making of such a determination for any year.
109. As set out above, the current CAP framework provides for the period 2014 to 2020. The power will therefore enable the Scottish Ministers to modify the main CAP legislation for the purpose of ensuring that it will operate after 2020. For example, there is currently no ceiling for direct payments in respect of any year after 2020. The power can be used to specify a new ceiling or ceilings for the purposes of Article 6 of the Direct Payments Regulation so ensuring that direct payments can be made from 2021 onwards.
110. A separate power is required as provision extending the operation of the main CAP legislation may require to do more than just simplify or improve the operation of that legislation (for which see section 2).

Section 4 – Power to modify financial provision in CAP legislation

111. This section provides for the Scottish Ministers to be able, by regulations subject to the affirmative procedure, to modify any provision of the main CAP legislation relating to the setting or determining of ceilings on the amounts of any payments or expenditure for any purpose under the legislation, or to the reallocation or transfer of amounts or proportions of such ceilings between or among different purposes under the legislation. Subsection (2) lists some of the specific provisions that may be modified under this power.
112. Provision that might be made under this power will include reducing the sum available to be spent under a particular ceiling (also known as “capping”), or provision giving effect to flexibility between the CAP Pillars (also known as “Pillar to Pillar Transfer”). It might also include changing the ceiling on the total amount of a rural development programme that may be devoted to technical assistance, currently set at 4% by Article 51 of the Rural Development Regulation.

¹ See <http://www.legislation.gov.uk/eur/2013/1307/article/6> for the EU law version of that Article.

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113. A modification of a “financial” provision may also be a simplification or improvement of the main CAP legislation (for which see section 2), but this power will be available when that is not the case which might for example be a consideration when capping a ceiling.

Section 5 – Duration of the powers under sections 2, 3 and 4

114. Subsection (1) provides that the powers in sections 2, 3 and 4 cannot be exercised by the Scottish Ministers after 7 May 2026, which is the expected date of the elections to follow the 2021 to 2026 session of the Scottish Parliament.
115. Subsection (2) ensures that the expiry of those powers does not affect the continuation in force of any regulations made under those sections prior to 7 May 2026.

Section 6 – Power to modify CAP legislation on public intervention and private storage aid

116. This section provides for the Scottish Ministers to be able, by regulations, to modify the CAP legislation governing public intervention and private storage aid,² as specified in subsection (3).
117. The power in section 6 of the Act allows these measures to be dis-applied temporarily or permanently, or to be otherwise simplified and improved.
118. The Scottish Ministers are able to decide whether regulations made under this section are to be subject to the negative or affirmative procedure (see paragraph 104 in that respect).

Section 7 – Power to simplify or improve CAP legislation on aid for fruit and vegetable producer organisations

119. This section provides for the Scottish Ministers to be able, by regulations, to modify the CAP legislation governing aid for fruit and vegetable producer organisations, as specified in subsection (3).
120. Subsection (2) provides that the power in subsection (1) may only be used to make such modifications which the Scottish Ministers consider would simplify or improve the operation of provisions of that legislation.
121. The Scottish Ministers are able to decide whether regulations made under this section are to be subject to the negative or affirmative procedure (see paragraph 104 in that respect).

Section 8 – Power to revoke the EU Food Promotion Scheme

122. This section provides for the Scottish Ministers to be able, by regulations subject to the negative procedure,³ to modify the CAP legislation establishing the EU Food Promotion Scheme³ as specified in subsection (2), for the purpose of ensuring that it ceases to have effect in Scotland.
123. The Scheme aims to promote food from the EU, both within the EU and internationally. It combines programmes operating within single Member States and multi-national programmes. Quality Meat Scotland (QMS) received €1.2 million in the period 2015 to 2017 for a campaign to enhance knowledge of protected geographical indication symbols, and to stimulate demand for Scotch beef and Scotch lamb in northern Europe. There is however no significant ongoing benefit for Scotland, such that Ministers may consider it appropriate to revoke the Scheme.

2 See paragraph 45 of the Policy Memorandum that accompanied the Bill for this Act for information about market intervention under the CMO, “private storage aid” is the purchase of product by public authorities and its removal from the market (“intervention purchasing”), or by paying private companies to store product rather than placing it immediately on the market.

3 See paragraph 49 of the Policy Memorandum that accompanied the Bill for this Act.

Section 9 – Marketing standards

124. This section provides for the Scottish Ministers to be able, by regulations subject to the affirmative procedure, to make provision about standards to which certain products listed in section 10(1) must conform when marketed in Scotland (see also section 12 below).
125. Subsection (2) provides that regulations made under this section may in particular include provision about the matters specified in this subsection. Those matters are a non-exclusive list of the types of standards to which the products may be subject. The list mirrors the types of marketing standards which may be established in EU law under the CMO Regulation. These matters may affect how products are marketed to consumers (for example, how they are described at the point of sale) or may impose requirements during production (for example, the type of production method used, or the use of specific substances in production).
126. Subsection (3) provides that regulations made under this section may provide for enforcement of the provisions of the regulations, including in particular in respect of the matters specified in this subsection which include the creation of offences and the imposition of monetary penalties. A monetary penalty is a civil penalty rather than a criminal fine.
127. Subsection (5) has the effect that the Scottish Ministers must consult such persons as they consider are representative of the interests of persons likely to be affected before laying a draft of a Scottish statutory instrument containing regulations under this section before the Scottish Parliament.

Section 10 – Marketing standards: agricultural products

128. This section lists the agricultural products in respect of which the Scottish Ministers are able to make regulations under section 9. The list provides further detail of the products covered by reference to the detailed Annexes of the CMO Regulation.
129. Subsections (3) and (4) provide for the Scottish Ministers to be able, by regulations subject to the affirmative procedure, to amend the list of products in subsection (1) by adding or removing products, or by altering the description of the products

Section 11 – Carcass classification

130. This section provides for the Scottish Ministers to be able, by regulations subject to the affirmative procedure, to provide for the classification, identification and presentation of bovine, pig and sheep carcasses by slaughterhouses in Scotland.
131. Subsection (2) provides that regulations made under this section may provide for enforcement of the provisions of the regulations, including in particular in respect of the matters specified in this subsection which include the creation of offences and the imposition of monetary penalties. A monetary penalty is a civil penalty rather than a criminal fine.
132. Subsection (4) has the effect that the Scottish Ministers must consult such persons as they consider are representative of the interests of persons likely to be affected before laying a draft of a Scottish statutory instrument containing regulations under this section before the Scottish Parliament.

Section 12 – Marketing standards and carcass classification: consequential amendments and savings

133. This section gives effect to the schedule of the Act, which makes modifications to the CMO Regulation providing for the effect of any regulations made under sections 9 and 11, and includes a saving provision in connection with those modifications.

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134. Marketing standards in Scotland will be set by regulations made under section 9 of this Act. This section has the effect of removing what would otherwise be concurrent powers to establish marketing standards in the CMO Regulation.