

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

EXPLANATORY NOTES

COMMENTARY ON PROVISIONS

Part 2 – Collection and processing of data

Section 13 – Defined terms

135. Subsection (2) defines “agricultural activity” to have the same meaning as in Article 4(1)(c) of the Direct Payments Regulation.¹ However, this is subject to subsection (10) which enables the Scottish Ministers to amend this definition by regulations subject to the affirmative procedure.
136. Subsection (3) defines “animal” as meaning a vertebrate (other than a human) or invertebrate but does not include fish.
137. Subsection (4) defines an “agri-food supply chain” as a supply chain for providing individuals with items of food or drink. It further provides that the products in such a supply chain must have been produced using anything grown, or any animal kept, for agriculture or any animal taken from the wild.
138. Subsection (5) defines the persons who are in an agri-food supply chain. These are the persons who originally farmed (or took from the wild) the raw agricultural products, the persons who finally consume the products, and every person in between.
139. Subsection (6) defines the persons who are “closely connected” with an agri-food supply chain. These are persons who provide goods as specified, persons who provide services relating to animal or plant health or the safety or quality of food and drink, persons carrying on activities capable of affecting such health, safety or quality, and representative bodies.
140. Subsection (7) provides that persons carrying out activities capable of affecting such health, safety or quality as is mentioned in subsection (6)(b), are to be treated as connected with the supply chain for the purposes of section 14(1) and (2), but does not limit the generality of what is meant by “connected” with the supply chain.
141. Subsection (8) defines “processing” by reference to an operation performed on information, and sets out a non-exhaustive list of the types of such operations.
142. Subsection (9) provides definitions for “agriculture”, “plants”, and “seeds” in relation to this section of the Act.
143. Subsection (10) provides that the Scottish Ministers may, by regulations subject to the affirmative procedure, amend the definition of “agricultural activity”.

¹ Regulation (EU) No 1307/2013

Section 14 – Agri-food supply chains: requirement to provide information

144. This section provides the Scottish Ministers with a power to require, in writing, any person in or closely connected with an agri-food supply chain to provide information about their activities connected with the supply chain.
145. Subsection (2) provides for the Scottish Ministers to be able, by regulations subject to the affirmative procedure, to impose requirements on persons in, or closely connected with, an agri-food supply chain to provide information about their activities connected with the supply chain.
146. The direct power in subsection (1) and measures under the regulation-making power in subsection (2) will attach to the same categories of persons and the same types of data. However, the two powers are appropriate as in some circumstances the most effective way to collect data is to request it by notice. This would be the case, for example, where data is to be requested from a group of persons and the identity of each of those persons is known. However, there are other cases where data cannot be collected directly as the details of the persons to whom the request relates are unknown or subject to change. In that case, the data would be more effectively gathered using the regulation-making power.²
147. Subsection (3) provides that the requirements under subsection (1) or (2) may not be imposed on individuals in the supply chain if they are in the supply chain for the reason that they or a member of their household are the ultimate consumers.
148. Subsection (4) provides that requirements under subsection (1) or (2) may not be imposed on persons in relation to any of their activities connected with the supply chain if the activity is not carried on for profit or reward. This exempts persons who are in an agri-food supply chain but only as a hobbyist or in an amateur capacity. For example, an allotment keeper who gives vegetables to a neighbour is in an agri-food supply chain but is excluded from this provision. However, subsection (5) provides that the exemption in subsection (4) does not apply where the activity being carried on other than for profit or reward is capable of affecting a matter mentioned in section 13(6)(b)(i) or (ii), namely animal or plant health, or the quality or safety of food.

Section 15 – Agricultural activity: requirement to provide information

149. This section provides the Scottish Ministers with a power to require, in writing, any person who carries on an agricultural activity in Scotland (and who is not a person in, or closely connected with, an agri-food supply chain) to provide information about that activity.
150. Subsection (2) provides for the Scottish Ministers to be able, by regulations subject to the affirmative procedure, to impose requirements on persons who carry on agricultural activities to provide information about those activities.
151. The reasons for including a direct power and a regulation-making power in this section are the same as for section 14. As with section 14, the distinction between the two powers is not the data which can be collected but rather the most effective way to collect it.
152. Subsection (3) provides that requirements under subsection (1) or (2) may not be imposed on persons in relation to an agricultural activity if the activity is not carried on for profit or reward. Similar to section 14(4), this exempts persons who are carrying on agricultural activities as a hobby or pastime. For example, a person who keeps a few animals to produce a small amount of wool or hides.

² Please see paragraph 94 for information regarding the distinction between these powers.

Section 16 – Provision of information etc.

153. This section relates to a requirement to provide information imposed under section 14(1) or (2) or 15(1) or (2). It sets out what a requirement under those sections may specify, such as how and when the information is to be provided, the types of processing the information may be subjected to, and the form in which information may be disclosed.

Section 17 – Purposes for which information may be required and processed

154. This section relates to a requirement to provide information imposed under section 14(1) or (2) or 15(1) or (2).
155. Subsection (2) provides that any requirement must specify the purposes for which the information is required and may be processed, and subsection (3) provides that they must be purposes which are listed in subsection (4). The information cannot be used for purposes which fall outside those stated in the requirement to provide information.
156. Subsection (5) defines the terms “plants” and “public authority” in relation to subsection (4).

Section 18 – Limitations on the processing of required information

157. This section provides for limitations on the use of information provided in response to a requirement imposed under section 14(1) or (2) or 15(1) or (2).
158. Subsection (2) provides that information given in response to a requirement can only be processed for the purpose that was set out in that requirement, and subsection (3) states that this applies both to the person to whom the information is initially provided (which may be the Scottish Ministers or any other person specified in the requirement in accordance with section 16(2)(a)(i)) and any person to whom it is subsequently disclosed.
159. Subsection (4) specifies that any person to whom the information is subsequently disclosed cannot process the information in a way that is contrary to the terms on which it was disclosed.
160. Subsection (5) sets out that, where a requirement specifies a certain type (or types) of processing that information may be used for, that information may not be used for any other types of processing except in circumstances specified in the requirement.
161. Subsection (6) provides that the additional safeguards in subsections (7) and (8) apply where a person proposes to disclose information collected under the powers of this Part. They place restrictions on its disclosure, as a specific type of data-processing. The restrictions apply to any person making such a disclosure. Similar to the purpose limitation in subsection (2), this includes both:
- the initial recipient of the information (for example, the Scottish Ministers), and
 - any subsequent recipient who proposes to further disclose the information (for example, a contracted data processor operating in accordance with a data-sharing agreement).
162. So, for instance, the restrictions in this section would apply to any company or expert consultant contracted by the Scottish Government to conduct analysis of agricultural data on its behalf (for the purposes, say, of developing analysis to provide evidence for a range of policy options or modelling scenarios for contingency planning such as disease outbreak).
163. Subsection (7) safeguards certain commercially sensitive information from being disclosed in a non-anonymised form. It requires that, where the person making the disclosure considers that doing so would or might prejudice the commercial interests of

These notes relate to the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (asp 17) which received Royal Assent on 1 October 2020

any person (which includes both the person who provided the information and any other person), the information must be disclosed in anonymised form. The only exception to this is if the Scottish Ministers consider that it is in the public interest for the disclosure to be in some other form.

164. Subsection (8) clarifies that where a disclosure is not considered commercially harmful, but the requirement specified the form in which information may be disclosed, disclosure must not be in any other form (except where circumstances specified in the requirement apply to the disclosure).

Section 19 – Enforcement of information requirements

165. Subsection (1) provides for the Scottish Ministers to be able, by regulations subject to the affirmative procedure, to make provision for the enforcement of information requirements imposed under section 14(1) or (2) or 15(1) or (2). This will enable sanctions to be applied where any person fails to provide information, or provides false information.
166. Subsection (2) clarifies that the provisions for enforcement include how compliance will be monitored and how non-compliance will be investigated and addressed.
167. Subsection (3) has the effect that, amongst other matters, the regulations may provide for the imposition of monetary penalties for non-compliance, and for the recovery of those penalties. A monetary penalty is a civil penalty rather than a criminal fine.
168. Subsection (4) defines “specified” and “specified manner”, and has the effect in particular that regulations may provide that the amount of a monetary penalty is framed by reference to the income, turnover or profits of a person.

Section 20 – Consequential repeals

169. This section repeals sections 78 to 81 of the Agriculture Act 1947 (power to obtain agricultural statistics, etc.). The repealed provisions provide for data-gathering powers which are replaced by the powers in Part 2 of the Act.