

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

EXPLANATORY NOTES

COMMENTARY ON PROVISIONS

Part 3 – General

Section 21 – Regulations: supplementary

170. This section provides in subsection (1) for the powers of the Scottish Ministers in this Act to make regulations to include the power to make different provision for different purposes.
171. Subsection (1) also provides for the powers of the Scottish Ministers in this Act to make regulations to include a power to make incidental, supplementary, consequential, transitional, transitory or saving provision. Subsection (2) has the effect that provision made by virtue of that power may amend enactments, and subsection (3) has the effect that any regulations that modify any part of the text of an Act will always be subject to affirmative procedure.
172. Subsection (4), provides that regulations under this Act that create an offence may not provide for the offence to be punishable with imprisonment for a period exceeding 5 years in the case of conviction on indictment, and 12 months in the case of summary conviction.
173. Subsection (5) provides that this section does not apply to commencement regulations under section 26.

Section 22 – Requirement for new Scottish agricultural policy

174. Subsection (1) of this section requires the Scottish Ministers to lay a report before the Scottish Parliament on progress towards establishing a new Scottish agricultural policy.
175. Subsection (2) specifies what must be included in that report. In particular, the report must include details of the Scottish Ministers' policies and proposals in relation to the six matters that are listed in paragraph (a). It must also include an outline of any legislation required to implement those policies and proposals, a timeline for when any such legislation will be introduced (as defined by subsection (4)), details of any consultations undertaken on proposed policies and legislation, and any other matter related to Scottish agriculture that the Scottish Ministers consider appropriate.
176. Subsection (3) provides that a report under subsection (1) must be laid before the Scottish Parliament no later than 31 December 2024.

Section 23 – Ancillary provision

177. Subsection (1) of this section provides for the Scottish Ministers to be able to make by regulations such incidental, supplementary, consequential, transitional, transitory or

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

saving provision that they consider appropriate for the purpose of, or in connection with, or for giving full effect to the Act or any provision made under it.

178. Subsection (2) has the effect that such regulations may modify enactments.
179. Subsection (3) has the effect that regulations made under this section will be subject to the negative procedure, unless they modify the text of an Act in which case they will be subject to the affirmative procedure.

Section 24 – Interpretation and effect

180. The powers in Part 1 of the Act provide for the Scottish Ministers to be able to make provision that modifies or relates to retained EU law.
181. This section makes certain interpretative provision and also makes it clear that no provision in this Act may have an effect that is incompatible with EU law, as defined by section 126(9) of the Scotland Act 1998.
182. Subsection (1) provides that a reference in this Act to any EU regulation will be a reference to that regulation as it forms part of domestic law (that is, retained EU law) by virtue of either section 3 of the European Union (Withdrawal) Act 2018 or section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020.
183. This section also provides for the Scottish Ministers to be able, by regulations subject to the negative procedure, to specify any other enactment that ‘rolls over’ EU law into domestic law.
184. Subsection (2) provides that any provision of this Act, or any provision made under it, that could be incompatible with EU law can only come into effect after the provision of EU law with which it would be incompatible has ceased to have effect in Scots law by virtue of the UK’s withdrawal from the EU.

Section 25 – Crown application

185. Subsection (1) of this section has the effect that nothing in or under this Act makes the Crown criminally liable.
186. By virtue of subsection (2), however, the Lord Advocate may apply to the Court of Session for a declarator of unlawfulness in respect of any act or omission for which the Crown would be criminally liable but for this section.
187. Subsection (3) provides that the Crown exemption from criminal liability in subsection (1) does not affect the criminal liability of persons in the service of the Crown.

Section 26 – Commencement

188. This section provides for sections 5 and 21 to 27 to come into force on the day after Royal Assent, and for the Scottish Ministers to be able to commence by regulations the other provisions of the Act. The power to make regulations under this section includes the power to make different provision for different purposes, and to make transitional, transitory or saving provision.

Section 27 – Short title

189. This section provides for the short title of the Act, Agriculture (Retained EU Law and Data) (Scotland) Act 2020, by which it may be cited.