

Draft Regulations laid before the Scottish Parliament under paragraph 1(7) of schedule 7 of the European Union (Withdrawal) Act 2018 and sections 2(3), 3(4) and 4(3) of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2020 No.

**EXITING THE EUROPEAN UNION
AGRICULTURE**

**The Rural Development (EU Exit)
(Scotland) (Amendment) Regulations 2020**

Made - - - - 2020

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraph 1(1) and (3) of schedule 2 of the European Union (Withdrawal) Act 2018⁽¹⁾ (the “2018 Act”) and sections 2, 3 and 4 of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020⁽²⁾ (the “2020 Act”) and all other powers enabling them to do so.

In accordance with paragraph 1(7) of schedule 7 of the 2018 Act and sections 2(3), 3(4) and 4(3) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1.—(1) These Regulations may be cited as the Rural Development (EU Exit) (Scotland) (Amendment) Regulations 2020 and come into force as follows.

(2) Subject to paragraph (3), these Regulations come into force on 1 January 2021.

(3) This regulation and regulations 2(3), 3, 5(4)(b) and 7 come into force on IP completion day.

Amendment of the Common Provisions Regulation

2.—(1) The Common Provisions Regulation⁽³⁾ is amended as follows.

(1) 2018 c.16.

(2) 2020 asp 17.

(3) EUR 1303/2013. See section 1(7) of the 2020 Act for the definition of “Common Provisions Regulation”. The Regulation is relevantly prospectively amended by S.I. 2019/748 and S.I. 2019/785. The amending instruments, which bear to come into force on exit day, will come into force on IP completion day by virtue of paragraph 1 of schedule 5 of the European Union (Withdrawal Agreement) Act 2020 (c.1). The Regulation may be amended further from IP completion day by the State Aid (Revocations and Amendments) (EU Exit) Regulations 2020, which have been laid in draft for approval by Parliament.

- (2) In Article 2(10)(a) (definitions), for “EUR 200 000” substitute “GBP 166,667”.
- (3) Omit Article 5(4).
- (4) For Article 26 (preparation of programmes) substitute—

“Article 26

Support for rural development under the programme

Support for rural development must be implemented through a programme until 31 December 2024.”.

- (5) In Article 50(1) (implementation reports), for “2023” substitute “2024”.
- (6) In Article 61(7) (operations generating net revenue after completion), in both places it occurs, for the words “EUR 1 000 000” substitute “GBP 833,333”.
- (7) In Article 65 (eligibility)—
 - (a) for paragraph 2 substitute—

“2. Expenditure is eligible for support for rural development if it has been incurred by a beneficiary and paid between 1 January 2021 and 31 December 2024.”,
 - (b) in paragraph 4—
 - (i) for “2014” substitute “2021”,
 - (ii) for “2023” substitute “2024”,
 - (c) in paragraph 8, in the third subparagraph, in point (i), for “EUR 100 000” substitute “GBP 83,333”,
 - (d) in paragraph 9, in the first subparagraph, for the words from “submission” to the end substitute “adoption of that amendment by the Scottish Ministers.”.
- (8) In Article 67(5)(aa) (forms of grants and repayable assistance), for “EUR 100 000” substitute “GBP 83,333”.
- (9) In Article 80 (use of the euro)—
 - (a) for the heading substitute “Currency”,
 - (b) for “payment applications, accounts” substitute “statutory reporting”,
 - (c) for “euros” substitute “sterling (GBP)”.

Amendment of Commission Delegated Regulation (EU) No 240/2014

3.—(1) Commission Delegated Regulation (EU) No 240/2014 of 7 January 2014 on the European code of conduct on partnership in the framework of the European Structural and Investment Funds⁽⁴⁾ is amended as follows.

(2) In Article 4(1)(c)(iii) (identification of relevant partners for programmes), for “the ESI Funds” substitute “support for rural development”.

Amendment of the Rural Development Regulation

4.—(1) The Rural Development Regulation⁽⁵⁾ is amended as follows.

(4) EUR 240/2014, as relevantly prospectively amended by [S.I. 2019/783](#). The amending instrument, which bears to come into force on exit day, will come into force on IP completion day by virtue of paragraph 1 of schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c.1).

(5) EUR 1305/2013. See section 1(4) of the 2020 Act for the definition of “Rural Development Regulation”. The Regulation is relevantly prospectively amended by [S.I. 2019/764](#) and [S.I. 2019/748](#). The amending instruments, which bear to come into

- (2) In Article 2(1) (definitions)—
- (a) omit ““less developed regions” and”,
 - (b) for “points (a) and (b)” substitute “point (b)”.
- (3) In Article 3 (mission) omit “and to less developed regions”.
- (4) In Article 8(1) (content of rural development programmes)—
- (a) for point (h)(i) substitute—
 - “(i) a table setting out the total core contribution, as determined by the Scottish Ministers in accordance with Article 58. When applicable this table shall indicate separately within the total core contribution the funds transferred to the support for rural development in application of Article 11(4A) of Regulation (EU) No 1307/2013;”,
 - (b) in point (j) omit “national”.
- (5) In Article 11 (amendment of rural development programmes), for the words from “The appropriate authority” to “the following:” substitute—
“The Scottish Ministers may supplement or amend the rural development programme for the following purposes:”.
- (6) In Article 28(5) (agri-environment-climate), for “five” substitute “one”.
 - (7) In Article 29(3) (organic farming), for “five” substitute “one”.
 - (8) In Article 39b(5) (exceptional temporary support to farmers and SMEs particularly affected by the COVID-19 crisis)—
 - (a) for “EUR 7 000” substitute “GBP 5,833”,
 - (b) for “EUR 50 000” substitute “GBP 41,667”.
 - (9) In Article 45(5) (investments), for “EUR 200 000” substitute “GBP 166,667”.
 - (10) Omit Article 51(3).
 - (11) For Article 58 (resources and their distribution) substitute—

“Article 58

Resources and their distribution

1. Without prejudice to paragraphs 3, 5 and 7 of this Article, the core contribution to rural development under this Regulation (“core contribution”) is the amount determined by the Scottish Ministers.
2. The Scottish Ministers must determine the core contribution before the start of the relevant financial year.
3. The Scottish Ministers must include in the core contribution any funds transferred, or to be transferred, in respect of the relevant year under Articles 11(4A) and 14 of Regulation (EU) No 1307/2013.
4. When the core contribution has been determined, the Scottish Ministers must publish that amount as soon as practicable after that determination has been made.
5. The Scottish Ministers may review the core contribution determined under paragraph 2, and for that purpose may have regard to:

- (a) any transfer of funds under Articles 11(4A) and 14 of Regulation (EU) No 1307/2013;
- (b) any legislative change after the determination; and
- (c) such other matters as they consider appropriate.

6. A review under paragraph 5 (including a further review) may be carried out before or during the relevant financial year.

7. The Scottish Ministers may adjust the core contribution after carrying out a review under paragraph 5 provided that they do so before the end of the relevant financial year.

8. When the Scottish Ministers adjust the core contribution under paragraph 7 they must publish the adjusted amount as soon as practicable after making that adjustment.

9. In this Article, “financial year” means a period of 12 months beginning with 1 April.”.

(12) In Article 59 (fund contribution)—

- (a) omit paragraphs (1) and (2),
- (b) in paragraph 3—
 - (i) omit “less-developed regions, as well as for”,
 - (ii) omit points (a) and (b),
 - (iii) in point (c), omit the words from “other” to the end,
- (c) in paragraph 4—
 - (i) in point (a)—
 - (aa) omit “less developed regions and of”,
 - (bb) for “points (b) and” substitute “point”,
 - (ii) in point (e), for “Article 136a(1) of Regulation (EC) No 73/2009 and Article 7(2) and 14(1)” substitute “Article 11(4A) and Article 14”,
- (d) for paragraphs 5 and 6 substitute—

“5. The funding allocated to LEADER must be equivalent to at least 5% of the total core contribution to the rural development programme.

6. The funding allocated to measures under the following Articles must be equivalent to at least 30% of the total core contribution to the rural development programme: Article 17 for environment and climate related investments; Articles 21, 28, 29 and 30, with the exception of Water Framework Directive related payments; and Articles 31, 32 and 34.”.

(13) In Article 86 (processing and protection of personal data), in paragraphs 3 and 4, in both places it occurs, for “Directive 95/46/EC and Regulation (EC) No 45/2001” substitute “Regulation (EU) No 2016/679 and the Data Protection Act 2018(6)”.

(14) Omit Annex I.

(15) In Annex II (amounts and support rates)—

- (a) in the heading to the third column, for “EUR” substitute “GBP”,
- (b) in each place where the following figures occur—
 - (i) for “600” substitute “500”,
 - (ii) for “900” substitute “750”,
 - (iii) for “450” substitute “375”,

- (iv) for “200” substitute “167”,
- (v) for “500” substitute “417”,
- (c) in the row for Article 15(8)—
 - (i) for “1 500” substitute “1,250”,
 - (ii) for “200 000” substitute “166,667”,
- (d) in the row for Article 16(4), for “3 000” substitute “2,500”,
- (e) in the row for Article 19(6)—
 - (i) in both places it occurs, for “70 000” substitute “58,333”,
 - (ii) for “15 000” substitute “12,500”,
- (f) in the row for Article 27(4), for “100 000” substitute “83,333”,
- (g) in the row for Article 30(7), for “50” substitute “42”,
- (h) in the row for Article 31(3)—
 - (i) for “25” substitute “21”,
 - (ii) for “250” substitute “208”.

Amendment of Commission Implementing Regulation (EU) No 808/2014

5.—(1) Commission Implementing Regulation (EU) No 808/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)(7) is amended as follows.

- (2) In Article 4 (amendments of rural development programmes)—
 - (a) in paragraph 2—
 - (i) in the second subparagraph, in point (a), for “2023” substitute “2024”,
 - (ii) in the third subparagraph, in point (d)—
 - (aa) omit “planned for each year”,
 - (bb) for the words from “developments” to “referred to in” substitute “adjustments to the core contribution under”,
 - (b) in paragraph 3—
 - (i) for “2020” substitute “2024”,
 - (ii) for “2023” substitute “2027”.
- (3) After Article 12 (national rural network), insert—

“Article 13

Information and publicity

The Managing Authority must submit any amendments to the information and publicity strategy to the Monitoring Committee for information. The Managing Authority must inform the Monitoring Committee at least once a year on the progress in the implementation of the information and publicity strategy and on its analysis of the results as well as on the planned information and publicity to be carried out in the following year.”.

(7) EUR 808/2014, as relevantly prospectively amended by [S.I. 2019/770](#). The amending instrument, which bears to come into force on exit day, will come into force on IP completion day by virtue of paragraph 1 of schedule 5 of the European Union (Withdrawal Agreement) Act [2020 \(c.1\)](#).

- (4) In Annex I, Part I (presentation of the content of rural development programmes)—
- (a) in paragraph 10—
- (i) for point (a)(ii) substitute—
- “(ii) for funds transferred to support for rural development under Article 11(4A) of Regulation (EU) 1307/2013, referred to in Article 58(3) of Regulation (EU) No 1305/2013,”
- (ii) in point (c)—
- (aa) in the first subparagraph, omit points (iii) and (iv),
- (bb) in the second subparagraph, after “core” insert “contribution”,
- (b) in paragraph 12, in both places it occurs omit “national”.

Amendment of the Horizontal Regulation

6.—(1) The Horizontal Regulation(8), insofar as it does not relate to support for direct payments, is amended as follows.

- (2) Omit Article 32.

Amendment of Commission Implementing Regulation (EU) No 908/2014

7.—(1) Commission Implementing Regulation (EU) No 908/2014 of 6 August 2014 laying down rules for the application of 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, rules on checks, securities and transparency(9), insofar as it does not relate to support for direct payments, is amended as follows.

(2) In Article 27(2) (interest applicable to recovery of undue payments), for “national law” substitute “the law applying in the constituent nation”.

(3) In Article 52(2) (negotiable collateral), for “national law” substitute “the law applying in the constituent nation”.

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

(8) EUR 1306/2013. See section 1(6) of the 2020 Act for the definition of “Horizontal Regulation”. The Regulation is relevantly prospectively amended by [S.I. 2019/763](#). The amending instrument, which bears to come into force on exit day, will come into force on IP completion day by virtue of paragraph 1 of schedule 5 of the European Union (Withdrawal Agreement) Act 2020 (c.1). The Horizontal Regulation, so far as not already incorporated into domestic law by section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c.2), is incorporated into domestic law on IP completion day by section 3 of the 2018 Act. Regulation 2 of the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020, which have been laid in draft for approval by Parliament, prospectively sets out how CAP horizontal legislation is to be interpreted from IP completion day.

(9) EUR 908/2014, to which there are amendments not relevant to these Regulations. This Regulation, so far as not already incorporated into domestic law by section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c.2), is incorporated into domestic law on IP completion day by section 3 of the 2018 Act. Regulation 2 of the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020, which have been laid in draft for approval by Parliament, prospectively sets out how CAP horizontal legislation is to be interpreted from IP completion day.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in retained EU law governing rural support schemes for securing the continuation of those schemes in Scotland beyond 2020 and to correct deficiencies resulting from EU exit.

EU legislation governing rural development schemes will become domestic law on IP completion day under the European Union (Withdrawal) Act 2018 (c.16) (the “2018 act”). “IP completion day” means 31 December 2020 at 11.00pm (see section 1A(6) of the 2018 Act and section 39(1) to (5) of the European Union (Withdrawal Agreement) Act 2020 (c.1)).

EU legislation governing the 2020 Common Agricultural Policy (“CAP”) direct payment schemes became part of domestic law in the UK on exit day (31 January 2020) under section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c.2) (the “2020 Act”).

The legislation that became domestic law on exit day included EU ‘horizontal’ rules that apply to a range of CAP schemes, so far as those rules related to that domestic law. EU legislation requires to be modified, or deficiency fixed, in order to be effective as domestic law. Legislation governing direct payments has been modified under the 2020 Act, and legislation governing rural development schemes is prospectively modified with effect from IP completion day under the 2018 Act.

It follows that there will be two versions of (for example) Regulation (EU) No 1306/2013: a ‘direct payments’ version as currently in force, and a ‘rural development’ version that will have effect from IP completion day. The changes in this instrument will only affect the horizontal legislation insofar as it does not apply to direct payments.

Regulations 2 and 3 make amendments to simplify, improve and ensure the effective functioning from 2021 of the Common Provisions Regulation and Commission Delegated Regulation (EU) No 240/2014. Regulations 2 and 3 also correct deficiencies in retained EU law arising as a result of EU exit.

Regulations 4 and 5 make amendments to simplify, improve and ensure the effective functioning from 2021 of the Rural Development Regulation and Commission Implementing Regulation (EU) No 808/2014 (the “Rural Development Implementing Regulation”). Regulation 5 also corrects a deficiency in retained EU law arising as a result of EU exit. Regulation 4(11) replaces Article 58 of the Rural Development Regulation to establish that the Scottish Ministers will determine the core contribution to rural development and outline the manner in which the core contribution is to be determined from 2021 onwards. The core contribution constitutes the domestic funding that will replace the funding previously provided by the European Agricultural Fund for Rural Development. Regulation 4(12) amends Article 59 of the Rural Development Regulation to ensure continued functionality of the rules on fund contribution for rural development from 2021 and improve the clarity of this Article. Regulation 5(3) inserts a new Article 13 into the Rural Development Implementing Regulation which replaces the information and publicity requirements that will be omitted on IP completion day by [S.I. 2019/770](#).

Regulation 6 simplifies and improves the Horizontal Regulation and regulation 7 corrects deficiencies in Regulation (EU) No 908/2014 (the “Horizontal Implementing Regulation”) arising as a result of EU exit. Regulations 6 and 7 amend the Horizontal Regulation and Horizontal Implementing Regulation insofar as they do not apply to direct payment schemes.

No business or 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.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: *The Rural Development (EU Exit) (Scotland) (Amendment) Regulations 2020 No. 477*