

POLICY NOTE

THE AGRICULTURE (EU EXIT) (SCOTLAND) (AMENDMENT) REGULATIONS 2020

SSI 2020/368

The above instrument was made in exercise of the powers conferred by paragraphs 1(1) and (3) and 11M of Schedule 2, and paragraph 21(b) of Schedule 7, to the European Union (Withdrawal) Act 2018. The instrument is subject to negative procedure.

Purpose of the instrument.

The proposed Agriculture (EU Exit) (Scotland) (Amendment) Regulations 2020 amend Scottish domestic legislation to ensure retained EU law relating to poultrymeat, school milk, eggs and chicks, fruit and vegetables and Common Agricultural Policy (“CAP”) schemes operates effectively at the end of the implementation period and to implement the provisions of the Northern Ireland Protocol (“the Protocol”).

Policy Objectives

Explanation of the law being amended by the regulations

Egg and Chicks (Scotland) (No. 2) Regulations 2008 – Marking of class B eggs

The instrument amends the Eggs and Chicks (Scotland) (No. 2) Regulations 2008. The instrument replaces the reference in regulation 9(1) (derogations relating to the marking of eggs) to “exclusively in the United Kingdom” with a reference to “in Great Britain”. This means that the provisions in the second sub paragraph of point III(1) of Part VI of Annex VII to Council Regulation 2013 (requiring class B eggs to be marked) shall not apply where class B eggs are to be marketed in Great Britain (i.e. it removes Northern Ireland from the scope of this derogation in order to comply with the Protocol).

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

The instrument amends the Common Agricultural Policy (EU Exit) (Scotland) (Amendment) Regulation 2019. In Regulations 3(3), 7(2) and (5) we are substituting references to “exit day” with references to “IP completion day” in two domestic SSIs dealing with CAP schemes, namely the Crofting Counties Agricultural Grants (Scotland) Scheme 2006 (reg 3(3)) and the Rural Development (Scotland) Regulations 2015 (regs 7(2) and (5)). These are technical amendments to reflect the fact that exit day has passed and therefore the deficiency fixes to retained EU law will now come into force at the end of the implementation period. In Regulation 6 we are omitting several amendments to the Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015 because these changes have already been implemented through the Direct Payments to Farmers (Legislative Continuity) (Scotland) (Miscellaneous Amendments) Regulations 2020. In Regulation 8 we are changing the number of the amendment being inserted into the Rural Payments (Appeals) (Scotland) Regulations 2015 as a result of amendments already made to this regulation by the Direct Payments to Farmers (Legislative Continuity) (Scotland) (Miscellaneous Amendments) Regulations 2020.

In addition, we are substituting references to “exit day” with references to “IP completion day” for the same reason as noted above.

Marketing of Horticultural Produce and Bananas (EU Exit) (Scotland) (Amendment) Regulations 2019

The instrument amends the Marketing of Horticultural Produce and Bananas (EU Exit) (Scotland) (Amendment) Regulations 2019 (the “2019 Horticulture Regulations”), which in turn amends the Marketing of Horticultural Product (Scotland) Regulations 2009 (“the 2009 Regulations”) and the Marketing of Bananas (Scotland) Regulations 2012 (“the 2012 Regulations”). The amendments to the 2009 Regulations and the 2012 Regulations in the 2019 Horticulture Regulations were made in light of changes to directly applicable EU instruments becoming retained EU law. Those EU instruments include in particular Commission Implementing Regulation (EU) No 543/2011 laying down detailed rules in respect of the fruit and vegetables and processed fruit and vegetables sectors and Commission Implementing Regulation (EU) No 1333/2011 laying down marketing standards for bananas, rules on the verification of compliance with those marketing standards and requirements for notifications in the banana sector, both of which are being amended by UK Statutory Instruments. The changes to the fruit and vegetables and bananas marketing regimes effected by the UK SIs and the 2019 Horticultural Regulations, as amended by this instrument, will in some respects be subject to transitional arrangements which will maintain the efficient trade in horticultural produce, allow the measured and organised conversion of EU produce to third country status and provide the opportunity to collect evidence to influence longer term arrangements.

In regulations 3 and 4 of the 2019 Horticulture Regulations amending respectively the 2009 Regulations and the 2012 Regulations, we intend to replace the reference to “United Kingdom” with a reference to “Great Britain” to account for the Northern Ireland Protocol (so the relevant provision in regulation 15(7) of the 2009 Regulations and regulation 4(7) the 2012 Regulations will relate to imports from outside Great Britain).

Common Agricultural Policy (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019

The instrument also amends the Common Agricultural Policy (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019. Regulation 3 of the Common Agricultural Policy (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019 provides for a transitional provision to be inserted into the 2009 Regulations relating to labelling requirements for fruit and vegetables packages. We intend to substitute the reference to “exit day” with a reference to “IP completion day”. This is a technical amendment to reflect that fact that exit day has passed and that labelling in accordance with existing EU rules will continue to be accepted for a period of 21 months following IP completion day.

In Regulation 4(4) we are substituting references to “exit day” with references to “IP completion day” in the Rural Development (Scotland) Regulations 2015. This is a further technical change required to reflect the fact that exit day has passed and therefore the deficiency fixes to retained EU law will now come into force at the end of the implementation period.

Agriculture Market Measures (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019 – poultrymeat and milk

The instrument also amends the Agriculture Market Measures (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019 (the “2019 Regulations”).

The instrument replaces the reference in regulation 5(7)(a) (amendment of the Poultrymeat (Scotland) Regulations 2011) to “United Kingdom” with a reference to “Great Britain”. This has the effect that regulation 11(9)(a) of the Poultrymeat (Scotland) Regulations 2011 will allow authorised officers to give directions to prevent a batch of poultrymeat being marketed in Great Britain, as opposed to the entire United Kingdom. This change is necessary to implement the Protocol.

The instrument amends regulation 6 of the 2019 Regulations. In regulation 6 (amendment of the Milk and other Products (Pupils in Educational Establishments) (Scotland) Regulations 2017), in both paragraphs (2)(a) and (4)(b), the reference to “exit day” is substituted with a reference to “IP completion day”. This is a technical amendment to reflect the fact that exit day has passed and therefore the deficiency fixes to retained EU law will now come into force at the end of the implementation period.

Reasons for and effect of the proposed change or changes on retained EU law

After the end of the implementation period, without amendment, the above retained EU legislation would contain inoperable provisions. Without these technical drafting amendments to the retained EU legislation, the current regimes relating to poultrymeat, school milk, eggs and chicks, fruit and vegetables, and CAP schemes would not operate effectively. Furthermore, without amendment, the legislation amended by this instrument would not reflect the Protocol. The instrument uses powers in the European Union (Withdrawal) Act 2018 to correct these deficiencies to ensure that the regimes outlined above will continue to function smoothly after IP completion day; and to implement the NI Protocol.

Statements required by the European Union (Withdrawal) Act 2018 and Additional Information required by the Protocol between the Scottish Government and the Scottish Parliament

The Regulations are made in exercise of powers in the 2018 Act both to deal with deficiencies in retained EU law (paragraphs 1(1) and (3) of Part 1 of schedule 2) and to implement the Northern Ireland Protocol (paragraph 11M of Part 1C of schedule 2). The Regulations also exercise the powers in paragraph 21(b) of schedule 7 in relation to transitional etc. provision.

Regulations 2 and 4 are made in exercise of the power to implement the Northern Ireland Protocol.

Regulations 3 and 5 are made in exercise of the deficiencies powers (as expanded by paragraph 21(b) of schedule 7).

Regulation 6 is made in exercise of the deficiencies powers and the power to implement the Northern Ireland Protocol (specifically the Northern Irish Protocol powers for regulation 6(2) and the deficiency powers for regulation 6(3)).

The Statements set out below relate to the exercise of the deficiencies powers.

The Additional Information set out below relates, except where indicated, to the deficiencies powers and the power to implement the Northern Ireland Protocol.

Statements required by European Union (Withdrawal) Act 2018

Statement that in their opinion Scottish Ministers consider that the regulations do no more than is appropriate

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon has made the following statement “In my view the *Agriculture (EU Exit) (Scotland) (Amendment) Regulations 2020* do no more than is appropriate”. This is the case because the amendments set out above are limited to what is necessary to correct deficiencies in the relevant legislation. The amendments do not introduce policy changes.

Statement as to why the Scottish Ministers consider that there are good reasons for the regulations and that this is a reasonable course of action

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon has made the following statement “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. Without these technical drafting amendments to the retained EU legislation, the current regimes relating to, school milk, , fruit and vegetables and CAP schemes would not operate effectively. The instrument uses powers in the European Union (Withdrawal) Act 2018 to correct these deficiencies to ensure that the regimes outlined above will continue to function smoothly after IP completion day.”

Statement as to whether the SSI amends, repeals or revokes any provision of equalities legislation, and, if it does, an explanation of that amendment, repeal or revocation

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon has made the following statement “In my view the *Agriculture (EU Exit) (Scotland)(Amendment) Regulations 2020* do not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

Statement that Scottish Ministers have, in preparing the regulations, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon has made the following statement “In my view the *Agriculture (EU Exit) (Scotland)(Amendment) Regulations 2020* have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010”.

Additional information provided for EU Exit instruments in terms of the protocol agreed between the Scottish Government and the Scottish Parliament

Statement that Scottish Ministers have, in preparing the regulations, had due regard to the guidance principles on the environment and animal welfare

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view the *Agriculture (EU Exit) (Scotland) (Amendment) Regulations 2020* have had due regard to the need to the guiding principles on the environment and animal welfare as derived from the equivalent principles provided for in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union”.

Statement explaining the effect (if any) of the regulations on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence)

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view the *Agriculture (EU Exit) (Scotland) (Amendment) Regulations 2020* do not alter current policy on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence). The instrument is made to ensure the continued and effective regulation of agriculture market measures and Common Agricultural Policy (CAP) schemes in Scotland at the end of the implementation period”.

An indication of how the regulations should be categorised in relation to the significance of the change proposed

Low – The amendments made by this instrument are minor and technical and for the purpose of ensuring continuity of law and operability following the implementation period. There are no significant policy decisions for Ministers to make.

Statement setting out the Scottish Ministers’ reasons for their choice of procedure

In relation to the exercise of the Northern Irish Protocol powers, this instrument is subject to negative procedure under Schedule 7, paragraph 8F(6) of the European Union (Withdrawal) Act 2018.

In relation to the exercise of the deficiencies powers (paragraphs 1(1) and (3) of Part 1 of schedule 2 of the European Union (Withdrawal) Act 2018) where there is a choice of procedure in terms of paragraph 1(7) of schedule 7 of that Act, negative procedure is considered appropriate as the instrument contains minor and technical amendments and does no more than is necessary to ensure continuity of law and operability at the end of the implementation period.

Further information

Consultation

To comply with the requirements of Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council, public consultation is required during the

preparation, evaluation and revision of food law, except where the urgency of the matter does not allow it. Accordingly, a consultation document was circulated to representative bodies on 14 October 2020, with a request for any responses by 28 October. No concerns were raised in relation to these amendments.

Insofar as this instrument will amend existing EU Exit Regulations the amendments will need to come into force before the Regulations being amended and therefore before IP completion day. Accordingly, to the extent this instrument is required to come into force before IP completion day, consultation with the Secretary of State is required under paragraph 4 of Schedule 2 of the European Union (Withdrawal) Act 2018. Therefore we have consulted with the Secretary of State in relation to the relevant amendments in this instrument.

Impact Assessments

Full impact assessments have not been prepared for this instrument as the instrument aims to ensure continuity of law and the operability and regulatory regimes at the end of the implementation period. The amendments do not alter the Scottish Government's current environmental policies and priorities and, therefore, do not have a significant impact on the environment. The impact on business, charities or voluntary bodies is expected to be minimal.

Financial Effects

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Directorate for International Trade and Investment
Scottish Government
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