

EXPLANATORY NOTES

Agriculture and Rural Communities (Scotland) Act 2024 (asp 11)

£8.14

AGRICULTURE AND RURAL COMMUNITIES (SCOTLAND) ACT 2024

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Agriculture and Rural Communities (Scotland) Act 2024. They do not form part of the Act and have not been endorsed by the Parliament.

2. These Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND AND CONTEXT

3. At the time the Bill for the Act went through Parliament, support for farmers, the rural economy, rural communities and for the marketing etc. of agricultural products was provided in and under the former EU Common Agricultural Policy (CAP) rules for the multi-annual financial framework (MFF) for 2014 to 2020.

Background on the Common Agricultural policy

4. The CAP is the EU policy to provide financial support to farmers in Member States. It is managed and funded at European level from the resources of the EU budget. The majority of CAP funds are allocated to direct payments, which is based on the amount of land the recipient owns. Its declared objectives are: (i) to support farmers and improve agricultural productivity, ensuring a stable supply of affordable food, (ii) to safeguard European Union farmers to make a reasonable living, (iii) to help tackle climate change and the sustainable management of natural resources, (iv) to maintain rural areas and landscapes across the EU, and (v) to keep the rural economy alive by promoting jobs in farming, agri-foods industries and associated sectors.

5. EU CAP rules are often described as falling into one of two 'pillars'. Direct payments to farmers and market measures/support fall under Pillar 1 (P1), and rural development schemes fall under Pillar 2 (P2). This reflects the fact that direct payments were wholly funded by the EU while rural payments were co-funded by the EU and the Member State.

6. The EU CAP rules are negotiated between the Member States and the EU Commission by way of successive multi-annual frameworks. Each framework sets out in legislation the objectives to be achieved through farm and rural development payment programmes.

Operation of the rules by the Scottish Government since leaving the EU

7. The Scottish Government currently operates the MFF 2014/2020 framework rules, which after modification by UK and Scottish Governments have legal effect as retained/assimilated EU law. The current domestic CAP rules are a mix of EU basic acts and EU delegated and implementing legislation. Section 1 of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020[1] defines the main CAP legislation, including the five basic acts[2] which together form the basis of the CAP.

8. The former EU CAP rules generally set out both the objectives to be achieved, and the detailed rules by which that will be done. For example, the Rural Development Regulation requires each Member State to prepare a rural development programme for approval by the Commission for the purpose of co-funding from the European Agricultural Fund for Rural Development ("EAFRD") for the schemes adopted under the programme.

9. The Scottish Rural Development Programme[3] was first adopted after approval by the Commission for the purposes of MFF 2014/2020, and is now being operated to at least an extent on a hybrid basis with a mix of EU and domestic funding (broadly, EU law proper follows EU funding).

10. The EU rolled over their 2014/2020 MFF rules during a short transition period but has now adopted new rules and objectives for the 2023/2027 MFF. As set out in the policy memorandum, the Scottish Government intention is to align with the outcomes to be achieved by the 2023 to 2027 EU rules and that may involve replicating all or part of new EU measures.

THE NEW SUPPORT FRAMEWORK

11. The powers in the Act will enable Ministers to make new payments and create new payment schemes. Collectively, this will form a framework of support for agriculture, forestry and in respect of rural communities more generally. The intention is for the transition from the support provided under retained/assimilated EU law CAP rules to new schemes under this Act. However, this will take time, and it is expected that some CAP schemes will continue to operate over a transition period with a minimum two to three-year duration. The Act therefore also contains powers to enable the Scottish Ministers to modify the existing CAP rules to the extent they remain in force.

THE ACT

12. The Act is divided into 5 Parts.

- Part 1 sets out the key objectives of agricultural and rural policy and imposes a duty on the Scottish Ministers to prepare and lay before the Scottish Parliament a 5-year Rural Support Plan setting out the strategic priorities of the Scottish Ministers for that period.

[1] https://www.legislation.gov.uk/asp/2020/17/contents
[2] The Direct Payments Regulation, the Rural Development Regulation, the Horizontal Regulation, the Common Provisions Regulation, and the CMO Regulation. The Act amends the Agriculture (Retained EU Law and Data (Scotland) Act as explained in detail below.
[3] https://www.gov.scot/policies/agriculture-payments/scottish-rural-development-programme-srdp/

- Part 2 confers the power on the Scottish Ministers to provide support for the purposes set out in schedule 1 and makes a range of provisions in connection with the support framework.
- Part 3 makes provision enabling the Scottish Ministers to amend and adjust the enactments which contain the CAP rules.
- Part 4 contains a variety of measures relating to agriculture, including a power for the Scottish Ministers to impose continuing professional development (CPD) requirements and the identification of animals.
- Part 5 contains general provisions that apply to the whole Act, including interpretative provisions and commencement.
- Schedule 1 sets out the purposes for which the Scottish Ministers may provide support.
- Schedule 2 contains a variety of repeals and minor amendments. Many of the repeals relate to spent (i.e. no longer relevant) enactments.

Key terminology

13. In these Notes, the following words and expressions should be read in accordance with this paragraph.

- ARELDS means the Agriculture (Retained EU Law and Data) (Scotland) Act 2020.
- EU means the European Union.
- "Rural" is not defined in the Act and so takes its ordinary meaning (that is, of or relating to, or characteristic of the country as opposed to a town or city; situated or occurring in the country).
- "Support" is defined in section 6. It means support provided by the Scottish Ministers of any kind, including, but not limited to financial assistance. Financial support may include making grants or loans or underwriting debts. Non-financial support might include providing services such as advice or guidance directly to a person.
- CAP means the Common Agricultural Policy.

14. It is also worth noting that the Interpretation and Legislative Reform (Scotland) Act 2010 applies to the Act. That legislation provides for definitions of commonly used words and expressions as well as describing the procedures for the making of Scottish statutory instruments. Of particular note for this Act is the definition of "person", which is defined in schedule 1 and includes not only individuals, but also non-natural persons such as companies, partnerships and unincorporated associations.

Part 1: Objectives and Planning

Section 1 – Overarching objectives of agricultural policy

15. This section sets out the objectives of Scottish agricultural policy for the purposes of the Act. These objectives set the overall direction for policy and will form the basis for determining, among other things, the strategic priorities of the Scottish Ministers' provision of support in each 5-year rural support plan. The objectives are derived from the Scottish Government's 'Vision for Agriculture'[4] and are:

- the adoption and use of sustainable and regenerative agricultural practices,
- the production of high-quality food,
- the promotion and support of agricultural practices that protect and improve animal health and welfare,
- the facilitation of on-farm nature restoration, climate mitigation and adaptation, and
- enabling rural communities to thrive.

16. The Scottish ministers may by regulation amend the objectives, subject to the affirmative procedure.

Section 2 – Rural support plan

17. This section requires the Scottish Ministers to prepare, lay before the Scottish Parliament and publish a rural support plan (RSP) setting out their strategic priorities for support over the coming five years, along with details of each scheme that is in operation or is expected to come into operation during that period. It is expected that this 5-year cycle will broadly coincide with the parliamentary terms. Once the RSP is in force, the Scottish Ministers are required to have regard to it in the exercise of their functions under the Act.

18. The Scottish Ministers can amend the plan if their strategic priorities change during the period or it appears to them that any information given in the plan is inaccurate or incomplete. This is designed to enable the RSP to be changed in light of any significant events (such as an energy crisis or conflict) which have a major impact on the support required. In those circumstances they must again lay the plan before Parliament and publish it. However, subsection (8) confirms that an amended plan does not change the 5-year cycle.

19. Subsection (2) sets out the matters that the plan must cover, including—

- what 5-year period the plan applies to ("the plan period") as calculated by reference to subsection (7),
- the Scottish Ministers' strategic priorities,
- an overview of the support that the Scottish Ministers expect to provide over the plan period. This will include what the Scottish Ministers think will be the available funding over the period and how that funding will be divided between different schemes. It will also include any measures that are intended to benefit

[4] https://www.gov.scot/publications/next-step-delivering-vision-scotland-leader-sustainable-regenerative-farming/

small producers, tenant farmers and crofters and any other specific outcomes that the Scottish Ministers are seeking to achieve within the plan period (for example, encouraging the adoption of a particular practice).

20. Subsection (3) sets out other matters that the plan may include. These matters primarily focus on environmental objectives and how the Scottish Ministers consider the support expected to be provided under the plan will achieve them. It is not mandatory for the plan to include this material. The plan may also include such other information as the Scottish Ministers consider appropriate. The list of matters that may be included in a rural support plan may be adjusted by the Scottish Ministers making regulations under subsection (11).

Section 3 – Rural support plan: matters to be considered

21. This section lists a number of matters to which the Scottish Ministers must have regard to when preparing the plan. This includes:

- the key objectives set out in section 1,
- the proposals and policies contained in the climate change plan, produced under the Climate Change (Scotland) Act 2009, so far as those proposals and polices relate to agriculture, forestry and rural land,
- various other statutory duties relating to agriculture, forestry, rural land use, biodiversity or the environment,
- changes in the EU which may be relevant to the strategic priorities or approach to support for the plan period,
- the desirability of operating in line with fair work principles[5],
- the objectives set out in a plan produced under the Good Food Nation (Scotland) Act 2022,
- the need for sustainable food systems and supply chains in delivering food security, and
- the benefits of a diverse and resilient agricultural sector, specifying in particular cohorts more greatly impacted by higher input to output costs and constrained due to distance to market and geography, including small producers, tenant farmers, crofters and agricultural co-operative societies.

Section 4 – Rural support plan: engagement

22. Section 4 deals with engagement and consultation when preparing or amending a rural support plan.

23. When preparing a rural support plan, the Scottish Ministers must consult the persons listed in subsection (2). These include:

- such persons as they consider representative of the interests of farmers (including tenant farmers), crofters, land managers, and those who live and work in rural communities,

[5] The 'fair work principles' are not defined in the Act, but relate to the fair work policies and practices that are published by the Scottish Government.

- Food Standards Scotland,
- Historic Environment Scotland,
- Scottish Environment Protection Agency
- Scottish National Heritage,
- the Scottish Food Commission, and
- such other persons that the Scottish Ministers may consider appropriate.

24. When amending the rural support plan, the Scottish Ministers must consult such persons as they consider likely to have an interest in, or be affected by, the amendments to the rural support plan (subsection (4)).

25. Subsection (5) provides that, when laying a rural support plan, or an amended rural support plan, before the Scottish Parliament, the Scottish Ministers must also lay a statement describing the consultation they have undertaken.

Section 5 – Reports on rural support plan

26. This section deals with monitoring, evaluating and reporting on the support provided during the period of the relevant rural support plan ("the plan period")[6].

27. As soon as practicable after the end of each plan period, the Scottish Ministers must prepare a report (subsection (1)) covering the matters set out in subsection (2). These include:

- the total amount of support or other relevant assistance[7] provided during the plan period,
- a breakdown of the amount of support provided under each scheme as well as under provided otherwise than under a scheme and to third party schemes,
- how non-financial support has been provided,
- the distribution of support. This information may relate, for example, to the geographic areas which support has been provided to, or to the sectors which have been supported. It may also described how the distribution of who has received support has changed, for example, it can cover how powers under the Act have been used to prioritise the available support toward particular types of recipients in line with the strategic objectives of the plan, and
- assessments of efficacy of strategic priorities, whether outcomes have been achieved, and any progress in respect of the objectives in section 1 of the Act. An assessment is also required of the impact (if any) of the Scottish Ministers using their powers under section 11 to cap or progressively reduce the amount of support that recipients receive. This information may be relevant in assessing the distribution (and redistribution) of support.

[6] The rural support plan must set out the "plan period" to which it relates (section 2(2)(a)) which is determined under section 2(7).

[7] "Relevant assistance" is defined in subsection (4) and means financial assistance provided under or by virtue of another enactment (including assimilated law). This means payments made under the legacy CAP system are also to be reported on.

28. The report may also include any other information that the Scottish Ministers consider appropriate (subsection (3)).

29. In addition to the report required at the end of each plan period, subsection (4) enables the Scottish Ministers to also prepare interim reports about the amount of support provided during any period within the plan period and other reports about the support that has been provided. For example, it may be appropriate to provide annual reports in respect of some or all of the support or relevant assistance provided, particularly if the total amount of support is going to be different from that initially expected in the rural support plan for the plan period.

30. Any report prepared under this section must be laid before the Scottish Parliament and published (see subsection (5)).

Part 2: Support for agriculture, rural development and related matters

31. This Part of the Act provides for a power to provide support, typically in the form of payments, for a wide variety of purposes connected with agriculture, forestry, rural economies and the environment.

32. The intention is to create a new framework for supporting agricultural and rural development which will comprise schemes made under this Part. The detail of the individual schemes (such as the particular activities that are supported, what eligibility criteria apply, the specific conditions etc.) will largely be contained in regulations to be made under section 15.[8] Those regulations will be supplemented by a variety of guidance as to their application.

33. Though not referred to in the Act, the intention is to use the powers in a manner that effectively creates a framework enabling conditional payments to be made under 4 tiers—

- Tier 1 – Base Level Direct Payments
- Tier 2 – Enhanced Level Direct Payments
- Tier 3 – Elective Payments
- Tier 4 – Complementary Support

34. Tiers 1 and 2 are intended to be a form of direct payments, while tiers 3 and 4 will be indirect payments. A full explanation of what is intended by the tiers may be found in the policy memorandum that accompanied the Bill at introduction.

Section 6 and schedule 1 - Power to provide support and purposes of support

35. Section 6 is the basis for the Scottish Ministers to provide support for or in connection with the purposes that are set out in schedule 1. While the specific purposes of the schedule are described in more detail below, in broad terms, the Scottish Ministers will be able to provide support, typically in the form of financial assistance, to persons in a wide range of circumstances. These purposes include traditional agricultural subsidies, forestry, supporting rural (and island) communities and development, and adapting to and mitigating against climate change. In each purpose, the support is described as being to assist a person[9] to carry

[8] The Policy Memorandum that accompanied the the Bill at introduction contains more detail about the particular schemes and types of support that may be created under the new framework.

[9] As noted above, a person has an extended legal meaning and includes individuals, companies, organisations, partnerships and unincorporated associations.

out an activity or achieve an outcome. This reflects that the ultimate beneficiary of the support should be individuals and organisations carrying out activities in agriculture or rural communities.

36. However, the reference to being able to provide support 'in connection with' a purpose provides the Scottish Ministers with the ability to fund the development of systems which will be relevant to the provision of support and also to support activities which are linked to the purposes described in the schedule. This provides latitude to the Scottish Ministers should they consider it necessary to take a holistic approach to achieving a particular purpose. For example, it may be appropriate for the Scottish Ministers to set up initiatives that promote Scottish produce. This may involve providing financial assistance to the organiser of that initiative, rather than directly to producers. But it is ultimately for the benefit of those producers and the sector at large.

37. The section also provides the Scottish Ministers with the power to make regulations which modify the schedule in order to add, amend or remove a purpose. While it is not expected to be used often, this ensures that the schedule can be adjusted over time to take account of any changes that may be necessary, for example to add or remove specific products that require protection or to reflect changes being made to the subsidy regime in the EU.

38. Subsection (4) defines "support" for the purposes of the Act as being support provided under this section (unless it is a reference to support provided by a third party as described in section 7). It also provides that a reference to financial support is to support that is provided financially (in respect of which, see section 8(1)(a)).

39. Schedule 1 sets out the various purposes for which support may be provided. These fall into 5 broad themes, which form Parts of the schedule, and are subdivided within that into individual purposes. The themes are:

- Agriculture, food and drink
- Forestry
- Rural communities and economy
- Rural land management and the environment
- Administrative and technical support and monitoring

40. Taken together, the purposes provide a basis for supporting the full range of activities, people, businesses and organisations that were previously supported under the CAP and rural development programme as well as accommodating future rural support needs which may not have been covered previously. The ability to add, amend or remove purposes from the schedule provides a means of adjusting the schedule in light of experience or in respect of emergent areas which need to be supported.

41. As is made clear in Part 1 of schedule 1, the purposes may be combined to such extent as the Scottish Ministers consider appropriate. This ensures that support schemes may take a holistic approach and do not need to be based on one particular purpose. The grouping of purposes into themes is not intended to imply any restriction on how the purposes are to be interpreted.

42. For example, a single scheme might combine elements to provide support for certain agricultural activities under paragraph 2 of schedule 1, particular products under paragraph 3, the adoption of organic practices under paragraph 4 and adaptation to climate change under paragraph 17. Equally, support for new entrants into farming might draw on both paragraph 2 and paragraph 9.

43. This approach is intended to facilitate the Scottish Government's 'Vision for Agriculture'[10] which proposes the four tiers outlined above.

44. Part 2, dealing with agriculture, food and drink, contains the main agricultural purpose. This could form the basis for several different types of scheme, either based on existing CAP schemes (like the Basic Payment Scheme) or otherwise. As noted below, the regulations creating the relevant support scheme could establish a system of payment entitlements on a regional (or other) basis and incorporate specific payments for new entrants or sustainable or regenerative practices.

45. The purpose relating to particular products or sectors allows for support to be provided based on a particular product or sector of agriculture or food (rather than being focused on the activity). This purpose facilitates, among other things, the possibility of 'coupled support'. This purpose is outcome focused, with paragraph 3(1) setting out the relevant outcomes that are sought. The products in question are listed in the paragraph.

46. Under EU rules, the Scottish Ministers elected to provide coupled support to the Scottish sheep and beef sectors through two administrative schemes: the Scottish Upland Sheep Support Scheme and the Scottish Suckler Beef Support Scheme. Assistance was also provided under the Less Favoured Area Support Scheme which was an income support scheme that was partly linked to production levels (based on historic livestock numbers).

47. The food and drink purpose (paragraph 4 of schedule 1) allows for support in connection with food and drink production, processing, packaging and marketing. While this support overlaps with the preceding purposes, it is intended to reflect the whole agri-food chain. This ranges from support provided to the growing or making of the original product, through processing, packaging and marketing, to the point that the final product is bought by consumers. For example, it could be used to support abattoirs or animal haulage services or farmers' markets.

48. Support for food production may also involve funding research and innovation (for example, seeking improved efficiency or productivity or more resilient crops). This purpose may therefore often be used alongside the purpose set out in paragraph 10(1)(c) of schedule 1, which specifically deals with developing and testing new crops etc.

49. The food and drink purpose specifically references the use of organic practices and obtaining certification for those practices. This latter aspect reflects that organic food production and processes are the subject of international co-operation and are protected by law

[10] https://www.gov.scot/publications/next-step-delivering-vision-scotland-leader-sustainable-regenerative-farming/

in many jurisdictions. Regulation where applicable is based in large part on the standards set by the International Federation of Organic Agricultural Movements,[11] an international umbrella organisation for organic farming organisations.

50. The definition of food includes drinks and therefore allows for the provision of support to a range of beverages.

51. Part 3 of schedule 1 deals with support for forestry. This purpose is primarily focused on woodland creation and management, but it may also be used in conjunction with other purposes (such as integrated land management). This purpose includes supporting woodland infrastructure and access to woodlands. This element encompasses both access for forestry management purposes and also access for recreational purposes by members of the public. This purpose is without prejudice to the duties contained in section 2 of the Forestry and Land Management (Scotland) Act 2018 which require the Scottish Ministers and Scottish public authorities to promote sustainable forest management[12].

52. The support for the creation of woodland under paragraph 5(1)(a) may be limited by the Scottish Ministers making regulations under section 15 to specify land which is not to be considered suitable for woodland, or to limit the extent to which woodland may be created on such land. For example, it may be considered unsuitable to create woodland on high quality arable land that is better suited to food production.

53. Part 4 of schedule 1 deals with the rural communities and economy. Though not expressly provided in the Act, the Scottish Government regards rural communities and economies as including island communities for these purposes.

54. Paragraph 6 sets out that working in, operating or establishing venison supply chains are purposes which may be supported. There is some overlap here with the support for venison that may be provided under paragraphs 2 and 3 of Part 1.

55. The purposes in paragraph 7(1) to (4) relate specifically to rural communities and take in a broad range of circumstances and activities which may be supported. These are free-standing purposes and are intended to provide a basis for supporting people to live, work or operate[13] in rural Scotland. This may take a variety of forms and may include supporting those who wish to invest in rural infrastructure and services.

56. The purposes also include assisting people who live, work or operate in rural areas to produce and implement strategies for the development of their area and also the forming of networks and groups of people who are involved in rural development. This is intended to support community-led planning and improvement activity. The identification of rural anchor institutions may support this by identifying organisations or businesses which have a particular significance to a community.

---

[11] https://www.appropedia.org/International_Federation_of_Organic_Agriculture_Movements#:~:text=The%20International%20Federation%20of%20Organic%20Agriculture%20Movements%20%28IFOAM%29,organic%20agriculture%20movement%2C%20in%20one%20way%20or%20another.

[12] The Scottish Ministers must also have regard to these duties (and others) when preparing the rural support plan by virtue of section 3(2)(c) of the Act.

[13] In this context, 'operate' refers to non-natural persons such as companies or organisations which are based or provide services in or for the rural community.

57. Paragraph 8 sets out other community purposes that may be supported, including creating community benefits such as clean air and water, biodiversity gains, carbon sequestration, access to nature, and wider economic and social benefits. These purposes are not defined and may be read as complementing other purposes in schedule 1.

58. The purpose, in paragraph 9, of supporting investing in rural businesses and enterprises (including co-operative societies and similar organisations) enables the Scottish Ministers to support people who are working or operating in agriculture, forestry, nature restoration, or other land use activity or which is based in or serving a rural area. This purpose is intended to cover the key stress-points for a business or enterprise including start up, growth, diversification, and changes necessitated by external factors (both natural and man-made). The purpose also facilitates support for insurance or activities designed to mitigate the risk of adverse events.

59. The purposes contained in paragraph 10 relate to knowledge, innovation, education and training. As well as generally providing a basis for support for training, learning and sharing information, paragraph 10(1)(a) provides (among other things) a clear basis to support any continuing professional development requirements that the Scottish Ministers may impose under or by virtue of section 30. It is worth noting that the sharing of information envisages supporting collaboration and networks, whether in person or online.

60. Paragraph 10(1)(b) enables people to both seek and provide advice in relation to agriculture and other rural sectors. This would cover support for the existing Farm Advisory Service as well as support for individuals, businesses or enterprises that need advice.

61. Paragraph 10(1)(c) relates to the research or development of crops, forestry products and systems and methods relating to agriculture, forestry and food production and processing.

62. Paragraph 10(1)(d) and (2) make clear that research activities or the development of systems and resources which are required to be able to deliver the core purposes described in the preceding paragraphs (including digital systems) are also supportable.

63. Paragraph 10(1)(e) enables support for people to undertake ancillary activities which might, for example, include benchmarking.

64. The purpose relating to integrated land management (in paragraph 11) is intended to support a strategic approach to the use of land and natural resources. Integrated land management aims to balance or trade-off benefits and risks when planning and managing resource extraction activities, land use activities, and environmental conservation and management.

65. An authority such as the Scottish Ministers, a local authority or a national parks authority might, for example, come to a voluntary agreement to adopt a land management plan as a way of working with land managers and other stakeholders on objectives set out in the plan.

66. A land management plan might be agreed with a particular person or collective in order to deliver smaller scale objectives such as better integration of peatland and woodland management on agricultural holdings. Support for activities under the plan may be available as a connected purpose to the plan, or under other purposes in schedule 1, depending on the context.

67. The purpose relating to quality schemes and producer groups (in paragraph 12) is intended to enable support in order to facilitate the setting up (and ongoing support) of quality schemes in respect of particular products and producer groups and organisations in the agriculture and forestry sectors.

68. Support for participation by persons in quality schemes may cover:

- protected designations of origin, protected geographical indications and traditional specialities guaranteed in the food sector,
- farm certification schemes, and
- voluntary agricultural product certification schemes recognised by the competent authority.

69. Producer groups are generally seen as a means of supporting producers in relation to:

- adapting production to market requirements,
- jointly placing goods on the market (including preparation for sale, centralisation and bulk sales),
- establishing common rules on production information, and
- other activities of such groups, such as the development of business/marketing skills and facilitating innovation.

70. The purpose relating to the preservation of historic and culture sites (in paragraph 13) provides a means to support people who have such a site, particularly where it may be financially detrimental to maintain it.

71. The purpose relating to recreational access to land (in paragraph 14) enables support to be given to improve public access to the land including, for example, by supporting landowners to ensure access rights under the Land Reform (Scotland) Act 2003 are able to be exercised in a responsible way.

72. The purpose in paragraph 15 enables support for investment in nature-based enterprises in rural areas.

73. Part 5 relates to rural land management and the environment and brings together a range of purposes relating to plant and animal heath, the environment and climate change. These purposes have a significant interaction with a range of other statutory duties relating to the environment and climate change. The purpose in paragraph 18(4) is slightly different from the other purposes in that it provides a means to compensate people who have had to implement environmental measures as a result of domestic legislation or an international treaty. Similarly, paragraph 18(6) allows for assistance to be provided to those who have sustained loss or damage as a result of the reintroduction of native species of plant or animal (including those which have previously been extinct in all or part of Scotland) or the activity of wild animals with conservation value, the killing of which is limited or prohibited either by an enactment or agreement. This might include species such as white-tailed eagles, beavers or geese.

74. Part 6 deals with administrative and technical support and monitoring. These purposes are designed primarily to assist recipients (or potential recipients) of support in a range of situations. This includes applying for support, understanding what is needed in terms of

compliance with conditions and actually managing such compliance. It also may assist them to provide such information as the Scottish Ministers may need to assess whether the support provided is effective. This purpose may also be used by the Scottish Ministers to fund activities for the monitoring of support more generally.

Section 7 – Funding of third Party support

75. This section enables the Scottish Ministers to provide support not only to individuals and businesses that are directly undertaking an activity, but also to persons and organisations who, in turn, support people and organisations in pursuit of that purpose, whether through funding or direct assistance.

76. This is best illustrated by means of some examples. At present, through the CAP Pillar 2 support scheme LEADER,[14] the Scottish Ministers provide funding to the rural Local Action Groups[15] ("LAGs"). The LAGs in turn use those funds to award grant funding to initiatives within their local area (as LAGs are best placed to understand the needs and opportunities of their communities and thus best placed to manage and deliver the funding). This provision ensures that this kind of funding can continue.

77. Similarly, the Scottish Ministers sometimes fund co-operative and credit societies so that they may make micro-loans to their members for farming equipment etc. This activity will also be able to continue by virtue of this provision.

Section 8 - Form of support and conditions

78. This section elaborates on the power to provide support contained in section 6.

79. Support may be provided in such manner as the Scottish Ministers consider appropriate, including financial support by way of grant, loan or guarantee. This reflects that the usual practice is for support to be in the form of financial assistance paid to farmers etc. However, support may also be provided by other means, such as providing advice, equipment or assistance.

80. While it will be usual for support to be provided under a formal scheme, typically set up by regulations made under section 15, the section confirms that this need not always be the case. There may be situations where the Scottish Ministers choose to provide support without a formal scheme being in place. This might arise, for example, in the event of unforeseen circumstances causing exceptional hardship in a particular rural or island community or where a key part of the agri-supply chain needs urgent assistance.

81. It is a key part of the provision of support that conditions may be imposed and subsection (2) provides for this. Section 15 is also relevant as regulations about a scheme (or indeed schemes generally) may require or even automatically apply conditions in respect of support for particular purposes. Conditions may relate to a very wide range of matters, including requirements on farmers to keep land in good agricultural or environmental condition or to take certain steps in order to mitigate climate change. Where conditions are not complied with, the Scottish Ministers can require the repayment of the support, including with interest.

[14] https://www.ruralnetwork.scot/funding/leader
[15] https://www.ruralnetwork.scot/funding/leader/local-action-groups

Section 9 - Guidance

82. Guidance in relation to support schemes can have a particularly important role in determining whether a person is eligible to receive support (or repay it). While the Scottish Ministers may always issue guidance (and may delegate that to others, see section 10) this section enables them to make regulations that set out the consequences of not following guidance relating to support (or support of a particular type) and make regulations for appropriate scrutiny. In particular, subsection (2) makes clear regulations will be able to require people to have regard to the guidance and for the guidance to be admissible in certain cases and have particular evidential value in any proceedings that relate to support (such as whether a person is eligible for support or has complied with conditions).

83. Any regulations made under this section are subject to the negative procedure.[16]

Section 10 - Delegation

84. This section provides that the Scottish Ministers may delegate their functions relating to support, including where those functions relate to the giving of guidance or the exercise of discretion. This enables the Scottish Ministers to use other organisations and bodies to administer support schemes. It also allows the Scottish Minsters to have public bodies like NatureScot prepare guidance where that is appropriate. Regulations made under section 9 can be used to impose requirements for scrutiny of such guidance (see, in particular, subsection (2)(a) of that section).

85. The Scottish Ministers remain responsible for any delegated functions.

Section 11 - Power to cap support and assistance

86. This section provides the Scottish Ministers with the power to make regulations capping or tapering the amount of support that would otherwise require to be granted in respect of a given payment period (typically a scheme year). The power is expressed in general terms, but would not be required in relation to discretionary payments under administrative schemes where the Scottish Ministers can apply a cap as part of their discretion.

87. In particular, the Scottish Ministers are able to set a level of payment above which the amount will be capped or tapered, and how the tapering will have effect.

88. While a cap on payments is self-explanatory, tapering means the progressive reductions of payments by bands above a specified threshold. For example, the taper threshold might be set at £100,000 and the payments otherwise due would reduce by 25% in the band to £120,000 and by 50% in the band between £120,000 and £150,000. A payment could be subject to both a taper and a cap.

89. The Scottish Ministers must consult such persons as they consider appropriate before making regulations under this section and the sections are subject to the affirmative procedure. The consultation requirements do not specify a fixed set of consultees as the different schemes of support that may be affected mean that there is not a single set of stakeholders that will be relevant in all circumstances. However, it would be expected to be appropriate trade and industry representatives and those individuals who wish to contribute to the consultation.

[16] See section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010.

Section 12 - Refusal or recovery of support where in the public interest

90. The section provides power for regulations to be made about circumstances in which the Scottish Ministers should be able to refuse to provide support where they consider that it is not in the public interest for the potential recipient to receive it (where the recipient otherwise would have been entitled to). It also enables regulations to be made about the recovery of support from a recipient which it was not in the public interest to have made. This may arise where the Scottish Ministers become aware of relevant evidence that was not reasonably available to them at the time of providing the support. The regulations may also contain the review and appeals processes to be followed by someone who has had support refused or from whom it has been recovered.

91. Regulations under this section could cover cases where:

- the recipient has an unspent conviction for an offence of dishonesty or animal cruelty,
- there is credible evidence of fraud,
- there is evidence of financial unsoundness such as insolvency or tax arrears,
- there is evidence of consistent regulatory failures, or
- there is other evidence such that the Scottish Ministers are satisfied that the recipient lacks honesty or integrity.

92. A disallowance under these regulations will be separate from any cross-compliance penalty[17] that the Scottish Ministers may be entitled to apply in respect of the recipient, but it is intended that they will be required to have regard to the cumulative effects of a disallowance before imposing one.

93. The Scottish Ministers must consult such persons as they consider likely to be affected before making regulations under this section and such regulations are subject to the negative procedure. The consultation requirements do not specify a fixed set of consultees as the different schemes of support that may be affected mean that there is not a single set of stakeholders that will be relevant in all circumstances. However, it would be expected to be appropriate trade and industry representatives and those individuals who wish to contribute to the consultation.

Intervention in agricultural markets

Section 13 - Exceptional market conditions: powers available to Scottish Ministers

94. This section makes powers available to the Scottish Ministers to intervene in agricultural markets in the event of a severe market disturbance, or the threat of such a disturbance, by:

- providing financial assistance to farmers whose incomes are being affected by those exceptional market conditions (subsection (2)), or
- operating public intervention and private storage aid schemes (see section 6 of ARELDS as modified by section 26 of the Act).

[17] A cross-compliance penalty typically requires recipients of support to ensure that they comply with a range of environmental and good husbandry rules. A failure to do so can lead to a reduced payment (or no payment). Cross-compliance currently falls into two categories: good environmental and agricultural conditions and statutory management requirements.

95. Similar provisions have been enacted in England and Wales. In both cases, the intention is that the Scottish Ministers will be able to apply the appropriate measures at short notice to resolve the exceptional situation at hand.

96. Under this provision, during a period of exceptional market conditions, the Scottish Ministers may give or agree to give financial assistance by way of grants, loans, guarantees or in any other form. This assistance may target payments to particular sectors or geographical areas. Subsections (5) and (6) provide that the assistance may be subject to any conditions the Scottish Ministers consider appropriate, including as to repayment or making good any payment.

97. The Scottish Ministers may also exercise the public intervention and private storage aid powers which are available to them by virtue of the CMO Regulation (Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013) which now forms part of assimilated EU law and which section 26 amends to be triggered by a declaration under section 14.

98. By virtue of subsection (7), the Scottish Ministers may give or agree to give financial assistance after the declaration has ceased to have effect, as long as the application for this assistance was submitted while the declaration was in force.

Section 14 - Declaration relating to exceptional market conditions

99. This section provides for the Scottish Ministers to make a declaration stating that exceptional market conditions exist which warrant the use of the financial assistance or intervention powers under section 13.

100. As set out in subsection (2), exceptional market conditions may exist where there is a severe disturbance, or a serious threat of such a disturbance, in the agricultural (or horticultural) markets that has or could have a significant adverse effect on farmers.

101. Subsection (3) sets out what must be included in the declaration. This includes:

- the statement that the Scottish Ministers consider that there are exceptional market conditions,
- a description of the market conditions in question (including what is causing it and the products that are, or are likely to be affected),
- an explanation of why the Scottish Ministers consider an intervention is justified, and
- how long the powers will be available for use in relation to the declaration.

102. Declarations made under this section must be published and then laid before the Scottish Parliament as soon as practicable after publication.

103. The powers provided for in section 13 are available for use until the declaration is no longer in effect (which can't be more than 3 months unless extended). However, the Scottish Ministers may revoke the declaration earlier if it is no longer needed by making a further declaration stating that it is so revoked.

Administrative matters, eligibility and enforcement

Section 15 - Regulations about support

104. This section enables the Scottish Ministers to make regulations about the provision of support. It is intended to be read with sections 16, 17, 18, and 19 which contain further details about particular aspects of how the power to provide support might be used. This power in section 15 to make regulations provides the basis for the creation of the new payment framework (though the actual power to make the payments itself is contained in section 6).

105. It is anticipated that this regulation-making power will be used in a variety of ways. For example:

- to make regulations about support generally, such as how financial support is to be paid to applicants, setting a minimum level for support, the systems that are to be used for the majority of schemes, or steps that can be taken to check compliance with a scheme,
- to create particular schemes of support. For example, a set of regulations might provide for a successor scheme to replace the Basic Payment Scheme (BPS),
- to create a system of payment entitlements,
- to set out requirements around the imposition of conditions in particular circumstances,
- to set up systems which monitor how the payment of support is working and inform future plans for the framework.

106. The different purposes for support may be combined in the creation of a scheme (see para 1(2) of schedule 1). This means that, for example, regulations creating a scheme to support forestry and woodland related activities can draw on different purposes in schedule 1 in order to create a comprehensive support framework taking in not only support for establishing woodlands, but also investing in innovation and technology, upskilling the workforce and building networks of landowners and communities.

107. Equally, regulations may establish a scheme independently of other schemes or sharing common components. For example, schemes relating to agriculture should typically have consistent application processes. However, such processes may not be suitable for applications for support rural communities or forestry activities. The power in this section, read with section 35, therefore ensures that it is possible to tailor regulations in that way.

108. The Scottish Ministers must consult such persons as they consider likely to be interested in or affected by provisions in this section before making regulations under this section. The consultation requirements do not specify a fixed set of consultees as the breadth of regulations that may be made under this power means that there is not a single set of stakeholders that will be relevant in all circumstances. However, it would be expected to be appropriate trade and industry representatives and those individuals who wish to contribute to the consultation.

109. The procedure for these regulations is designed to reflect that the provision in question may relate to small administrative matters or minor adjustments of existing regulations up to creating substantial new schemes. Accordingly, anything that the Scottish Ministers consider significant (by reference to the criteria in subsection (5)) is subject to the affirmative procedure

whereas more routine matters are subject to the negative procedure. This aims to strike a balance to ensure that appropriate scrutiny is given to the different types of regulations. The criteria in subsection (5) require the Scottish Ministers to consider the number of potential recipients, the amount of land that may be affected, the value of the support. In addition, the affirmative procedure will apply where the Scottish Ministers use the regulations to create a criminal offence.

Section 16 - Eligibility criteria for support

110. This section elaborates on the type of provision that may be made in regulations under section 15. It does not represent a power to make regulations in its own right.

111. The setting of eligibility criteria is an important feature of support schemes and the section clarifies that criteria may be set by reference to a broad range of things – from the activities in question, how they are carried out, the land (or the location of land) on which activities are conducted etc. to the applicant's personal circumstances (such as a person starting a new farming business or meeting a threshold for turnover from agricultural activity) and the collective nature of an applicant (to enable collective support for joint projects by grazing committees and co-operatives separate from individual support).

112. However, it is worth noting that this list of possible criteria is not exhaustive. There may be other criteria that are appropriate in the range of purposes covered and it is open to the Scottish Minsters to make provision in relation to such criteria. Further, the examples given in parenthesis are included only to aid understanding by giving a flavour of the kind of criteria being described.

Section 17 - Payment entitlements

113. This section elaborates on the type of provision that the Scottish Ministers may make in relation to payment entitlements under section 15. Payment entitlements are part of a system where eligible persons, typically farmers, are allocated an entitlement to a payment under a scheme and are able to claim support for that entitlement provided that they meet a variety of conditions in relation to it. It is envisaged that the Scottish Ministers will use the power to create a new system of payment entitlements which is similar to that which already exists in relation to the BPS.

114. Under the existing system, a farmer participating in the BPS is allocated 'payment entitlements'. To receive a payment for any given year, the farmer must activate an entitlement against their 'eligible land' at the rate of one entitlement per hectare. This is done in an annual claim in the single application form for the particular year. New entrants to farming are eligible to participate in the BPS after receiving an allocation of entitlements from the national reserve, of entitlements that the Scottish Ministers hold. Payment entitlements under current arrangements can also be traded, which enables businesses to buy or sell entitlements, and this provides an alternative route into BPS eligibility for new entrants.

115. Section 17(1) sets out several key aspects of payment entitlements (though this is not an exhaustive list) about which regulations may be made to enable the creation of a replacement system for the one described above. However, the new power may be used to adjust or create a different system that is tailored to the Scottish context.

Section 18 - Checking, enforcing and monitoring support

116. This section elaborates on the type of provision that the Scottish Ministers may make in relation to monitoring compliance, enforcement and related matters under section 15. As with the other provisions of this nature in the Act, it is not exhaustive but is intended to provide further clarity on the type of provision that is expected to be made, particularly where that provision may touch on such topics as powers of entry and the ability to inspect or search premises and seize information that might point to offences, fraudulent claims or non-compliance with conditions.

117. The provision is not solely about compliance however. It also makes clear that regulations may monitor the extent to which the provision of support has achieved its purpose. This may be particularly relevant to schemes which are focused on achieving a particular outcome, such as the restoration of a natural habitat or developing skills in a particular region (like an island community).

Section 19 - Publication of information about support

118. This section elaborates on the type of provision that the Scottish Ministers may make in relation to payment entitlements under section 15. As with other provisions of this nature in the Act it is not exhaustive, but is intended to provide further clarity. In this case, it is intended to ensure that it is possible to publish details of who receives support (including those who own or control a recipient[18]), the amount of support received and what it is for. The regulations may impose requirements on people (including the Scottish Ministers) and it is expected this will typically be in connection with the provision of information for publication. However, it may also be used to require rectification of incorrect information that has been published in error.

Section 20 - Processing of information

119. This section provides the Scottish Ministers with the power to make regulations about the processing of information for or in connection with the provision of support (under this Act or otherwise) or the carrying out of functions in relation to CPD. Subsection (2) elaborates on the types of things the Scottish Ministers may make provision about. However, subsection (3) provides that the regulations may not require or authorise the disclosure or use of information which would contravene data protection legislation. Any regulations made under this section are subject to the negative procedure and will only be brought forward after appropriate consultation with, among others with an interest, the Information Commissioner.

Section 21 – Monitoring and evaluation of schemes

120. This section provides for monitoring and evaluation of schemes, support provided otherwise than under a scheme, and other relevant assistance (as defined in section 11(4) of the Act).

121. Subsection (1) deals with support schemes. The Scottish Ministers must monitor the impact of each support scheme and prepare one or more reports on the impact and effectiveness of the scheme, having regard to the findings of the monitoring. This is designed to strike a balance between effective monitoring of the main schemes with a lighter touch approach for smaller or less significant schemes.

[18] This will be relevant where there are complex ownership structures such as holding companies or trusts or where a person has significant control over a recipient.

122. Subsection (2) deals with relevant assistance and other forms of support provided otherwise than under a support scheme. The Scottish Ministers may monitor these forms of support or assistance and prepare one or more reports on the impact and effectiveness of the assistance, having regard to the findings of the monitoring. This is a discretionary power to monitor as it may not always be appropriate to report on support that has, for example, been provided on a one-off or occasional basis.

123. The methodology and length of monitoring are not specified in this section, as the different schemes and methods of support and assistance available mean that there is not a single set of considerations that will be relevant in all circumstances. However, the monitoring must be carried out in such a manner and for such period(s) as the Scottish Ministers consider appropriate for the particular scheme or other support. Similarly, the number and frequency of reports are not specified, but must again be appropriate for the circumstances. Reports produced must be laid before the Scottish Parliament and published.

Part 3: Powers to modify existing legislation relating to support

124. This Part amends the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 ("ARELDS").[19] The intention of doing so is to provide the Scottish Ministers with the ability to adjust and use the existing CAP rules beyond 7 May 2026. This enables the continuation and adjustment of existing payment rules and schemes. As noted elsewhere, this facilitates the transition to the new payment framework.

125. Since ARELDS was passed, the UK Parliament has passed the Retained EU Law (Revocation and Reform) Act 2023. Among other things, that changes the status of, and restrictions on, the body of law now known as 'assimilated law' and allows the Act to provide for a wider range of modifications to be made to that law.

Section 22 - Power to simplify, improve or update relevant CAP legislation

126. This section amends sections 1 and 2 of ARELDS.

127. The amendment to section 1 (defined terms) adds Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 (establishing a common organisation of the markets in agricultural products) ("the CMO Regulation") to the list of "relevant CAP legislation" (which list is also being renamed: it was previously the "main CAP legislation"). The effect of this (coupled with the consequential amendments mentioned below) is to broaden the effect of several of the subsequent sections of ARELDS (namely sections 2, 3 and 4) to permit a range of changes to be made to the CMO Regulation in addition to the other pieces of CAP legislation listed in subsection (1), and any subordinate legislation implementing or otherwise referred to. This latter aspect means the legislation implementing the CMO Regulation may also be amended.

128. The "relevant CAP legislation" is therefore—

- Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy (sometimes called the Direct Payments Regulation),

[19] The Explanatory Notes for ARELDS may be found at: https://www.legislation.gov.uk/asp/2020/17/notes/contents

- Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (sometimes called the Rural Development Regulation),
- The CMO regulation (defined above),
- Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy (sometimes called the Horizontal Regulation),
- Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund etc. (often called the Common Provisions regulation). However, this is only part of the relevant legislation in so far as it relates to the operation of the Rural Development Regulation,
- any delegated or implementing Regulations made (whether by the Commission or the Council) under any of the Regulations referred to above,
- any subordinate legislation implementing or otherwise relating to any of the Regulations referred to above (including the delegated or implementing regulations).

129. The amendments to section 2:

- adjust subsection (1) to link to the new definition of relevant CAP legislation (that incorporates the CMO regulation) and enable the restatement (in addition to modification) of that legislation,
- the amendment to subsection (2) creates a new paragraph structure with the new material in paragraph (b) permitting modifications of the relevant CAP legislation to take account of changes in technology or developments in scientific understanding,
- the new subsection (2A) provides the parameters for restatement to the relevant CAP legislation. This may be done to improve the clarity or accessibility of the legislation (including by removing doubts or ambiguities) and also for the purposes of taking account of changes in legislation or developments in scientific understanding,
- the new subsection (2B) makes clear the restatement can use different words or concepts from what is being restated. This allows greater flexibility of approach in any restatement,
- lastly, the section title of section 2 is updated to reflect its expanded content.

Section 23 - Power to continue or end the operation of relevant CAP legislation

130. This section amends section 3 of ARELDS. The amendments allow for the Scottish Ministers to make regulations modifying any of the relevant CAP legislation in order to either (i) enable it to continue to operate or to (ii) cease to have effect in Scotland. The amendments also change the parliamentary procedure to the negative procedure.

Section 24 - Power to modify financial provision in relevant CAP legislation

131. This section amends section 4 of ARELDS. This expands the existing provision such that the Scottish Ministers may make regulations in relation to financial provision for all relevant CAP legislation and removes the illustrative list of CAP legislation that may, in particular, be amended.

132. The kind of financial provision that may be modified relates to the setting or determining of ceilings on the amounts of any payments or expenditure for any purpose under the relevant CAP legislation, or to the reallocation or transfer of amounts or proportions of such ceilings between or among different purposes under the legislation.

133. 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.

134. The section is also amended to change the parliamentary procedure for regulations to what is referred to as 'either way' procedure by providing that regulations made under the section which have not been subject to the affirmative procedure, are subject to the negative procedure. The effect is that the Scottish Ministers can choose which procedure is to apply to any particular use of the power.

Section 25 – Repeal of section 5 of ARELDS

135. This section repeals section 5 of ARELDS. Doing so removes the automatic sunsetting of the Scottish Ministers' powers to make regulations under section 2(1), 3(1) or 4(1) of that Act, with the effect being that the modification powers will continue to be available after 7 May 2026.

Section 26 - Public intervention and private storage aid

136. This section amends section 6 of ALREDS which deals with public intervention and private storage aid. It should be read alongside sections 13 and 14 (which deal with interventions in markets in exceptional conditions). Public intervention and private storage aid are designed to allow for the removal of surplus products from the market (and so stabilise market prices). The price of certain goods is monitored, so that when the market situation so requires, eligible goods may be bought in, stored and resold once prices have risen, or producers may be paid to store products for an agreed period to remove them from the market.

137. The amendments to section 6:

- remove the restrictions on the modifications that may be made to the legislation governing public intervention and private storage aid (the PIPSA legislation),
- confirms that the power to modify the PIPSA legislation includes the power to make provision for (i) the purposes of altering the effect of the PIPSA legislation where there are an exceptional market conditions that are subject to a declaration under section 14 of the Act, (ii) securing that the PIPSA legislation ceases to have effect otherwise than in connection with the exceptional market conditions, and (iii) otherwise altering the operation of the PIPSA legislation,

- provide that, for the purposes of this section (i.e. public intervention and private storage aid) the definition of exceptional market conditions includes a reference to circumstances which are the subject of measures under Articles 219, 220 and 221 of the CMO regulation. This expands the circumstances from what is set out in section 14 of the Act.

138. Taken together, this allows the Scottish Ministers to adjust the PIPSA legislation to adapt it to the Scottish context. Similar powers exist in England and Wales.

Section 27 - Power to modify CAP legislation on aid for fruit and vegetable producer organisations

139. This section amends section 7 of ARELDS, which currently confers power on the Scottish Ministers to simplify or improve certain CAP legislation governing aid for fruit and vegetable producer organisations. Section 27 expands this power by removing the restriction in subsection (2) of section 7 of ARELDS so that the Scottish Ministers may make modifications of any kind.

Section 28 - Apiculture

140. This section inserts a new section 7A into ARELDS dealing with apiculture. The new section enables the Scottish Minsters to modify the legislation governing apiculture (which includes, but is not limited to, the legislation listed in subsection (2)). These modifications are not restricted. It is also possible to modify the legislation in relation to apiculture in the manner described in sections 2 and 3 of ARELDS.

141. Regulations under this section are subject to the 'either way' procedure described above.

Part 4: Miscellaneous

Section 29 - Code of Practice on Sustainable and Regenerative Agriculture

142. This section places a duty on the Scottish Ministers to prepare and publish guidance on sustainable and regenerative agriculture within one year of this section coming into force. The guidance is to be known as the Code of Practice on Sustainable and Regenerative Agriculture and is to contain, among other things:

- an explanation of what the Scottish Ministers are classifying as sustainable and regenerative agriculture,
- the agriculture activities and methods that they consider best practice for sustainable and regenerative agriculture,
- and such other information about sustainable and regenerative agriculture as they consider appropriate.

143. As the code is to set out what the Scottish Ministers consider to be sustainable and regenerative agriculture, no definitions are contained in the Act. Part of the reason for this approach is to enable the definitions and guidance to adapt over time in light of changing practices and what is considered sustainable and regenerative in this context.

144. While what constitutes sustainable agriculture is reasonably self-explanatory, regenerative farming is broadly any form of farming activity which both generates production and improves the environment. Practitioners try, for example, to disturb the soil as little as possible, following 'no-till' methods which do not disturb the complex network of wormholes and fungal hyphae in the soil. That, in turn, improves the capacity of the soil as a carbon store, and should help reduce reliance on artificial fertilisers.

145. The Code is to be reviewed by the Scottish Ministers on a 5-year cycle and they are to consult such people as they consider likely to be interested in or affected by it. Once published (or republished), the Scottish Ministers must promote the awareness of the code as they consider appropriate. They must also do so at other times that they consider appropriate.

Section 30 - Continuing professional development

146. This section enables the Scottish Ministers to make regulations that impose continuing professional development (CPD) requirements on farmers, crofters, land managers, those who work in agriculture (whether or not as employees) such as farm workers or family members or friends who assist with farming activities or other persons directly or indirectly connected with farming etc. or the wider rural economy.

147. Subsection (3) sets out a non-exhaustive list of various requirements and other rules that the Scottish Ministers may make provision about, from the imposition of the amount of CPD that a particular category of person (such as farmers) must carry out as well as exemptions, the types of activity that qualify, who may provide the activity, how it is to be monitored and enforced, and any circumstances in which someone ordinarily required to undertake particular CPD activities, or a particular amount of CPD, is not required to do so etc. Compliance with the relevant CPD requirements may be made a condition of certain support schemes.

148. Financial and other assistance for the completion of such CPD requirements is a supportable purpose contained in schedule 1.

149. It is open to the Scottish Ministers to provide for CPD schemes, or aspects of them, to be provided by other persons or organisations (such as agricultural colleges).

150. Before making regulations under this section, the Scottish Ministers must consult such persons as they consider appropriate.

Section 31 – Monitoring and evaluation of continuing professional development

151. This section introduces a duty on the Scottish Ministers to monitor the impact of each CPD scheme made under section 30, and to prepare at least one report on the impact and effectiveness of each scheme. The section gives Ministers flexibility in the manner and the timescales to undertake monitoring and reporting, including the number and frequency of reports. However, for the purposes of monitoring a CPD scheme, the Scottish Ministers must, in particular, consider the matters in subsection (2). These relate to accessibility, appropriateness and proportionality, and may be altered, by regulations subject to the affirmative procedure.

152. For these purposes, a CPD scheme is a set of CPD activities which a person of a certain description (such as a farmer) may or must undertake as a result of the regulations under that section. This reflects that there are likely to be a range of activities that a person may undertake to maintain any CPD requirements.

Section 32 - Prescribing and regulating means of identifying animals

153. This section amends section 8 of the Animal Health Act 1981 to allow for the Scottish Ministers to make provision generally in relation to the identification of animals (rather than just the "marking" of animals, as is currently the case). This reflects that identification of animals is now broader than the "marking" of animals or the application of identification devices. In particular, it may involve the keeping of passports, records and databases and the procedures for scanning identification devices and this amendment ensures provision can be made for that.

Section 33 – Food security statements

154. Section 33 requires the Scottish Ministers to prepare a statement about food security in Scotland, at least once in every period of three years, a copy of which must be laid before the Scottish Parliament and published. The first statement must be published within three years of the commencement of the provision. This requirement is expected to sit alongside (but not duplicate) the similar duty that exists in relation to UK food security under section 19 of the Agriculture Act 2020.

Section 34 and schedule 2 - Repeals and minor modifications

155. This section and the accompanying schedule make a variety of repeals and minor modifications. Part 1 of schedule 2 repeals legislation that is typically spent – that is, no longer relevant or has been superseded in some way. However, three repeals of note are:

- the repeal of section 6 of the Small Landholders (Scotland) Act 1911,
- the repeal of section 17 of the Agriculture Act 1986, and
- the repeal of section 8 of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020.

156. The repeal of section 6 of the 1911 Act removes a power to make or guarantee advances, either directly or indirectly to land banks or co-operative or credit societies having for their object or one of their objects the assistance of tenants, landholders or statutory small tenants, in the stocking, equipment, and profitable working of their holdings. This was used for a wide range of purposes but is now redundant given the powers in the Act.

157. The repeal of section 17 of the 1986 Act removes the duty on the Scottish Ministers to balance certain factors when carrying out their functions in relation to agriculture. This has been replaced by the duties in Part 1 of this Act.

158. The repeal of section 8 of ARELDS is because that section is no longer required. The legislation relating to the EU Food Promotion Scheme, which it provided a power to revoke, has already been revoked by the Retained EU Law (Revocation and Reform) Act 2023.

159. The minor modifications in Part 2 make a number of small changes to agricultural legislation, many as a consequence of the repeals in Part 1.

Part 5: Final provisions

Section 35 - Regulations

160. This section provides that the various regulation making powers under the Act may make different provision for different purposes or areas and includes the power to make a range of ancillary provision (that is, incidental, supplementary, consequential, transitory, transitional or saving provision).

161. The ability to make different provision for different purposes enables a regulation making power to be used in different ways in different circumstances. For example, this means that section 15 can be used to make separate regulations for different types of support scheme. The ability to make different provision for different areas means that regulations can be applied to particular parts of Scotland, which may be relevant to area based schemes or the running of a pilot in one area before rolling that out more broadly.

162. This section does not apply to commencement regulations which have a more limited range of ancillary powers (relating to making transitional, transitory or saving provision).

Section 36 - Ancillary provision

163. This section allows the Scottish Ministers, by regulations, to make 'stand alone' ancillary provision in relation to the Act or any provision made under it. This type of power is used to ensure that the Act has its full intended effect.

164. Where the regulations amend primary legislation, they are subject to the affirmative procedure. Otherwise, the regulations are subject to the negative procedure.

Section 37 - Interpretation

165. This section contains definitions of some commonly used words and expressions (or a signpost to the section that defines them).

Section 38 - Commencement

166. This section deals with the commencement of the Act.

167. Sections 35 to 39 come into force on the day after Royal Assent. The remaining provisions come into force on such days as the Scottish Ministers may appoint by regulations.

168. Commencement regulations may contain transitional, transitory or saving provision. This enables the new regulations to provide for how the new law will come into effect and replace the old legal position.

Section 39 - Short title

169. This section provides for the short title of the resulting Act to be the Agriculture and Rural Communities (Scotland) Act 2024, which is how it is to be referred to and the name by which it may be cited in legal proceedings.

CROWN APPLICATION

170. Section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 provides that the Crown will be bound by an Act of the Scottish Parliament or Scottish statutory instrument unless the provision expressly exempts it. As such, this Act applies to the Crown in the same way as it applies to everyone else. However, except where expressly provided, where the Act amends an existing enactment, it makes no change to the application of the enactment to the Crown.

171. Section 32, dealing with the identification of animals, adjusts the Animal Health Act 1981 to provide that any regulations relating to the identification of animals will apply to the Crown.

PARLIAMENTARY HISTORY

172. The following is a list of the proceedings in the Scottish Parliament on the Bill for the Act and significant documents connected to the Bill published by the Parliament during the Act's parliamentary passage.

Proceedings and reports	***Reference***
INTRODUCTION	
Bill as Introduced (28 September 2023)	SP Bill 33 (Session 6 (2023))
Policy Memorandum (28 September 2023)	SP Bill 33 – PM (Session 6 (2023))
Explanatory Notes (28 September 2023)	SP Bill 33 – EN (Session 6 (2023))
Financial Memorandum (28 September 2023)	SP Bill 33 – FM (Session 6 (2023))
Statements on Legislative Competence (28 September 2023)	SP Bill 33 – LC (Session 6 (2023))
Delegated Powers Memorandum (28 September 2023)	SP Bill 33 – DPM (Session 6 (2023))
SPICe Briefing on the Agriculture and Rural Communities (Scotland) Bill (24 November 2023)	SB 23-44
STAGE ONE	
Rural Affairs and Islands Committee (lead committee)	
Consideration in private (25 October 2023)	Minutes of proceedings (RAIC/S6/23/26)
Consideration in private (1 November 2023)	Minutes of proceedings (RAIC/S6/23/27)
Evidence session (29 November 2023)	Official Report (cols. 1 to 44)

Proceedings and reports	***Reference***
Evidence session (6 December 2023)	Official Report (cols. 1 to 54)
Evidence session (13 December 2023)	Official Report (cols. 5 to 74)
Evidence session (20 December 2023)	Official Report (cols. 2 to 55)
Evidence session (31 January 2024)	Official Report (cols. 2 to 54)
Evidence session (21 February 2024)	Official Report (cols. 2 to 47)
Consideration in private (6 March 2024)	Minutes of proceedings (RAIC/S6/24/7)
Consideration in private (13 March 2024)	Minutes of proceedings (RAIC/S6/24/8)
Stage 1 report (26 January 2024)	SP Paper 553, 5th Report, 2024 (Session 6)
Delegated Powers and Law Reform Committee	
Consideration in private (19 December 2023)	Minutes of proceedings (DPLRC/S6/23/35)
Consideration in private (23 January 2024)	Minutes of proceedings (DPLRC/S6/24/3)
Report on delegated powers provisions in the Agriculture and Rural Communities (Scotland) Bill at Stage 1 (18 March 2024)	SP Paper 515, 6th Report, 2024 (Session 6)
Whole Parliament	
Stage 1 debate (27 March 2024)	Official Report (cols. 22 to 72)
STAGE 2	
First marshalled list of amendments for Stage 2 (2 May 2024)	SP Bill 33 – ML1 (Session 6 (2024))
First groupings of amendments for Stage 2 (2 May 2024)	SP Bill 33 – G1 (Session 6 (2024))
First meeting on amendments (8 May 2024)	Official Report (cols. 1 to 90)
Second marshalled list of amendments for Stage 2 (10 May 2024)	SP Bill 33 – ML2 (Session 6 (2024))
Second groupings of amendments for Stage 2 (10 May 2024)	SP Bill 33 – G2 (Session 6 (2024))

Proceedings and reports	***Reference***
Second meeting on amendments (15 May 2024)	Official Report (cols. 3 to 92)
Bill as amended at Stage 2 (15 May 2024)	SP Bill 33A – amended Bill (Session 6 (2024))
Revised Explanatory Notes (11 June 2024)	SP Bill 33A – EN (Session 6 (2024))3
Consideration in private (11 June 2024)	Minutes of proceedings (DPLRC/S6/24/20)
Report on delegated powers in the Agriculture and Rural Communities (Scotland) Bill (as amended at Stage 2) (14 June 2024)	SP Paper 621, 44th Report, 2024 (Session 6)
STAGE 3	
Marshalled list of amendments for Stage 3 (12 June 2024)	SP Bill 33A – ML (Session 6 (2024))
Timed groupings of amendments for Stage 3 (17 June 2024)	SP Bill 33A – GL (Session 6 (2024))
Consideration of amendments and debate (18 June 2024)	Official Report (cols. 18 to 199)
Bill as passed (18 June 2024)	SP Bill 33B (Session 6 (2024))
ROYAL ASSENT	
Royal Assent (30 July 2024)	Agriculture and Rural Communities (Scotland) Act 2024 (asp 11)

© Crown Copyright 2024

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Saul Nassé, the King's Printer for Scotland.

tso
a Williams Lea company

Published by TSO (The Stationery Office), a Williams Lea company, and available from:

Online
www.tsoshop.co.uk

Mail, Telephone & E-mail
TSO
PO Box 29, Norwich, NR3 1GN
Telephone orders/General enquiries: 0333 202 5070
E-mail: customer.services@tso.co.uk
Textphone: 0333 202 5077

ISBN 978-0-10-592083-0

9 780105 920830