POLICY NOTE

THE COMMON ORGANISATION OF THE MARKETS IN AGRICULTURAL PRODUCTS (FRUIT AND VEGETABLES) (MISCELLANEOUS AMENDMENT) (SCOTLAND) REGULATIONS 2026

SSI 2026/41

The above instrument was made in exercise of the powers conferred by section 7(1) and 21(1) of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 Act[(1)], Article 37(c) of the 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 and repealing Council Regulations (EEC) No 922/72, (EEC) No 243/79, (EC) No 1307/2001 and (EC) No 1234/2007[(2)] and all other powers enabling them to do so[(3)].The instrument is subject to affirmative procedure.

Summary Box

The purpose of The Common Organisation of the Markets in Agricultural Products (Fruit and Vegetables) (Miscellaneous Amendment) (Scotland) Regulations 2026 ('the 2026 Regulations') is to make changes to the Fruit and Vegetables Aid scheme, which will allow the Scottish Government greater control over the budget for the scheme, whilst still providing funding for all eligible Scottish producers. The instrument also creates a right to appeal for producer organisations against funding decisions.

Policy Objectives

The Fruit and Vegetables Aid Scheme is a legacy EU Common Agricultural Policy (CAP) scheme. It provides aid to groups of fruit and vegetable growers, recognised as producer organisations, to encourage collaboration and strategic planning to increase output quality and competitiveness.

The Fruit and Vegetables Aid Scheme is established by and under Regulation (EU) No 1308/2013, which is supplemented by Commission Delegated Regulation (EU) 2017/891 and Commission Implementing Regulation (EU) 2017/892. This EU legislation is now assimilated law, and subject to some technical amendments, has carried on in domestic law as was originally intended.

Since leaving the EU, the Fruit and Vegetables Aid Scheme in Scotland has been funded by the Scottish Government. Changes are now required so that the scheme can continue to operate under the constraints of a limited budget now that it is no longer funded by the European Commission.

(**1**) 2020 asp 17, relevantly amended by 2024 asp 11.
(**2**) EUR 2013/1308, relevantly amended by S.I. 2019/831.
(**3**) The powers to make this Order are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). The Order is subject to the affirmative procedure by virtue of section 33(3) of that Act.

The 2026 Regulations make changes to Regulation 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 and repealing Council Regulations (EEC) No 922/72, (EEC) No 243/79, (EC) No 1307/2001 and (EC) No 1234/2007[(4)]. The 2026 Regulations also make changes to Commission Delegated Regulations (EU) 2017/891 and 2017/892, which supplemented Regulation (EU) 1308/2013. The 2026 Regulations also amend the Common Agriculture Policy Non-IACS Support Schemes (Appeals) (Scotland) Regulations 2004.

Basing aid on Scottish production

There are not currently any restrictions on growers based in other parts of the UK being members of a producer organisation with a Head Office in Scotland. While 'cross border' producer organisations have been supported under the existing scheme to date, this is not considered sustainable nor appropriate going forward now that there is no longer a UK-wide approach to the Scheme.

Whilst we recognise the strength a producer organisation can have with growers from outside Scotland, we must protect Scottish growers from the risk that significant budget is taken to benefit growers from outside of Scotland and who may be able to access other forms of horticultural support in their own nations.

It is proposed that a legislative change is introduced so that the funding provided is based on production grown only in Scotland. A transitional provision is included in the 2026 Regulations to allow non-Scottish growers (i.e. those who grow produce outwith Scotland) who are members of existing Scottish POs, to still receive funding during the 2026-2028 operational programmes. This transitional provision gives POs time to adjust and adapt before the transitional period comes to an end on 31 December 2028. The 2025 Regulations also make changes to the application window for new operational programmes. The application window to submit a new operational programme for approval will be opened only every three years, rather than there being an annual deadline. This change would see continued alignment of operational programme start and end dates. This is considered beneficial from an administrative perspective for officials reviewing/approving applications and with regards to the Scottish Government process that is required to secure multi-annual funding.

Moving to a set duration for operational programmes

In line with the changes set out above, in order to be able to provide more certainty to growers and the Scottish Government, as well as enabling all operational programmes to be on the same schedule, the legislation is amended so that the duration of an operational programme is fixed at three years.

Establishing a legal right to appeal decisions

A gap has been identified around the statutory right to appeal for Scottish POs involved in the Fruit and Vegetables Aid Scheme. As is stands, there is currently no easy mechanism for a Scottish business who believes they have been adversely affected by a decision taken in relation to scheme activities to have that decision reviewed. Instead, the only route available is to raise legal proceedings through judicial review which is expensive and time consuming for all parties involved.

(**4**) EUR 1308/2013.

The Common Agricultural Policy Non-IACS Support Schemes (Appeals) (Scotland) Regulations 2004 ("2004 Regulations"), as amended, set out the process for review and appeals of decisions under various Common Market Organisation support schemes. However, the 2004 Regulations don't currently include the relevant Fruit and Vegetables Aid Scheme legislation. As such, the 2026 Regulations will amend the 2004 Regulations to include reference to the relevant legislation relating to the Fruit and Vegetables Aid Scheme to apply the route of appeal and review set out in the 2004 Regulations.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights:

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, the **Common Organisation of the Markets in Agriculture Products (Fruit and Vegetables) (Miscellaneous Amendment) (Scotland) Regulations 2025** is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

Statement required by paragraph 16(2) and (3) of Part 1 of schedule 8 of the European Union (Withdrawal) Act 2018

The Minister for Agriculture and Connectivity has made the following statement under paragraph (2) and (3) of Part 1 of schedule 8 of the European Union (Withdrawal) Act 2018:

This statement will set out why, in my view, there are good reasons for the amendment or revocation by this instrument of regulations made under section 2(2) of the European Communities Act 1972. It will also set out the law which is relevant to the amendments/revocation and the effect of the amendment/revocation on assimilated law.

The Common Organisation of Markets in Agricultural Products (Fruit and Vegetables) (Miscellaneous Amendment) (Scotland) Regulations 2026 ("2026 Regulations") amend The Common Agricultural Policy Non-IACS Support Schemes (Appeals) (Scotland) Regulations 2004 ("Appeals Regulations") which were made under section 2(2) of the European Communities Act 1972.

The Appeals Regulations provide for a multi-stage review and appeal process for decisions made by or on behalf of the Scottish Ministers in relation to the administration of support schemes under the Common Agricultural Policy. The process first allows applicants to request the Scottish Ministers to review their decision, following this a person appointed by the Scottish Ministers and finally, if the applicant remains dissatisfied, the Scottish Land Court. The appeals process is available to those persons whose principal trading address is in Scotland.

The schedule to the Appeals Regulations lists the applicable EU instruments in respect of which decisions are amenable to review and appeal. The 2026 Regulations will amend this schedule, by adding a further EU delegated regulation and an EU implementing regulation. By amending the Appeals Regulations to include these two additional EU regulations, the Fruit and Vegetables Aid Scheme will then be within scope of the Appeals Regulations. As such, the effect of this amendment on assimilated law is that following the enactment of the

2026 Regulations, the Appeals Regulations will provide producer organisations ("POs") who have been adversely affected by a decision taken in relation to the scheme, a right to request a review or an appeal of a decision taken by or on behalf of Scottish Ministers.

There are good reasons for this amendment. Firstly, the Appeals Regulations should always have included Regulations relating to the Fruit and Vegetables Aid Scheme. The omission of the two EU Regulations mentioned above, was an oversight which is now being addressed. Secondly, the Appeals Regulations have been amended previously, notably by The Common Agricultural Policy Non-IACS Support Schemes (Appeals) (Scotland) Amendment Regulations 2015. This illustrates that amendments are made where appropriate and necessary to ensure this piece of assimilated law remains effective and fit for purpose. Finally, currently POs do not have any clear legislative route to challenge decisions made by Scottish Ministers. Consequently, should a PO look to challenge, they must raise judicial review proceedings. This process is time consuming and expensive for all parties involved. By amending the Appeals Regulations, POs will be able to request a review of a decision made by the Scottish Ministers and follow the multi-stage process set out in the Appeals Regulations.

EU Alignment Consideration

This instrument is compatible with the Scottish Government's policy to maintain alignment with the EU. The Fruit and Vegetable Scheme, as amended by the 2026 Regulations, will remain aligned to the EU scheme in terms of general principles and the objectives being pursued. The changes being brought forward reflect Scotland's position outside the EU and, in particular, the fact that the Scheme no longer operates across the whole of Great Britain. It is not considered that the changes included in this instrument would give rise to any difficulties were Scotland to seek to re-join the EU in the future.

Consultation

A 12 week consultation was carried out from 23 June 2025 to 14 September 2025. The consultation was sent to relevant stakeholders directly and through the Scottish Government's Horticultural Roundtable discussion group, the Scottish Government's social media, and through the Scottish Government's Rural Payments and Services website which provides information, guidance, and online services for individuals and businesses in rural Scotland, helping them access agricultural funding schemes, manage land and business details, and navigate support systems related to farming and rural development. Discussions have also taken place with the three POs which were recognised at the start of the consultation period, and a potential new PO.

18 valid responses were received and 17 of those respondents gave permission to publish their responses. The responses are available on the Scottish Government's consultation website[(5)].

The consultation was split into two parts. The first part regarding suggested changes to be made to the legislation via the 2026 Regulations, whilst the second part was to gather information for consideration of future changes. The majority of respondents agreed that aid paid by the scheme should be based on production grown in Scotland only. There was a split

(5) https://consult.gov.scot/agriculture-and-rural-economy/future-of-fruit-vegetables-aid-scheme-scotland/

in opinion if funding should be permitted for those POs who have growers outside of Scotland, without including their production in the calculation determining the value of aid to be provided. The responses weighted in favour of allowing non-Scottish producers to remain in a Scottish PO, but not have their value calculated in the value of support. The majority of responses agreed that Scottish Ministers should have discretion over the total budget for the Fruit and Vegetables Aid Scheme in Scotland and that the cap could be set by a percentage of the value of marketed production (VMP).

The consultation asked about the impacts of restricting applications for new operational programmes to every three years, and 44% of respondents indicated that this change would have an impact on their business, however the majority of these responses were from respondents who do not currently receive funding from the scheme. The Scottish Government is grateful for these responses, but at this time it is not considering changes which would include entrants who are not currently eligible for the scheme. Therefore, as few respondents who are eligible to take part in the scheme responded that they would be negatively impacted by restricting the new operational programmes to every three years, the benefits in allowing the Scottish Government to plan the budget for Fruit and Vegetables Aid Scheme outweigh the limited impact on those respondents. The majority of responses agreed there should be a statutory right to appeal within the scheme.

The Consultation Analysis Report is published on the Scottish Government's publications website[(6)].

Impact Assessments

The following impact assessments are published alongside the Regulations:

- Business Regulatory Impact Assessment
- Child Rights and Wellbeing Impact Assessment

As per the requirements set out in the UNCRC (Incorporation) (Scotland) Act 2024 (UNCRC Act), there is a statutory requirement to complete a full Child Rights and Wellbeing Impact Assessment (CRWIA) when laying legislation. A CRWIA has therefore been completed. There are not considered to be any aspects of the proposed SSI that negatively impact on children's rights and/or wellbeing.

A Data Protection Impact Assessment (DPIA) was completed in relation to the information gathered during the consultation referenced above. This assessment can be made available upon request. The proposed Scottish Statutory Instrument (SSI) does not introduce any changes that would require the Scottish Government to collect personal data beyond what is already provided by POs as part of the routine administration of the scheme.

The following impact assessments were also considered, however were deemed not necessary. This is because the proposed SSI makes operational changes to an existing and established aid scheme in Scotland. It does not seek to alter the purpose or intent of the scheme.

(6) http://www.gov.scot/ISBN/9781806433919

- Equality Impact Assessment
- Fairer Scotland Duty Assessment
- Island Communities Impact Assessment
- Human Rights in Policy Making
- Strategic Environment Assessment

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is published alongside the Regulations.

The purpose of the BRIA is to assess the impact of proposed operational changes to the existing Fruit and Vegetables Aid Scheme in Scotland. It does not consider the future, longer-term redevelopment of the scheme.

The BRIA takes into consideration the impact on producer organisations, and members that comprise those producer organisations, that currently receive support via the Fruit and Vegetables Aid Scheme in Scotland. It is considered that there are no direct costs to these businesses expected as a result of the proposed 2026 Regulations.

Scottish Government
Agriculture and Rural Economy Directorate

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