POLICY NOTE

THE RURAL DEVELOPMENT (EU EXIT) (SCOTLAND) (AMENDMENT) REGULATIONS 2020

SSI 2020/XXX

The Rural Development (EU Exit) (Scotland) (Amendment) Regulations 2020 (the "2020 Regulations") are made in exercise of the powers conferred by paragraph 1(1) and (3) of Schedule 2 of the European Union (Withdrawal) Act 2018(**1**) (the "2018 Act") and sections 2, 3 and 4 of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020(**2**) (the "2020 Act"). The 2020 Regulations are subject to *affirmative procedure*.

Purpose of the instrument. The 2020 Regulations:

- ensure the continuation of rural development support and the Scottish Rural Development Programme ("SRDP") from 2021,
- simplifies and improves the operation of Common Agricultural Policy ("CAP") retained EU legislation, and
- corrects deficiencies in that legislation arising from withdrawal from the UK.

For that purpose, the 2020 Regulations provide for the method under which the Scottish Ministers will determine the annual core contribution funding for rural development, and allow for the amendment of the SRDP without the need to use legislation to do so.

Policy Objectives

The 2020 Regulations do not make significant changes to the SRDP. The changes are instead intended to ensure stability and continuity for farmers, crofters and land managers in the period from 2021 to 2024.

In particular, they use the powers in the 2020 Act to enable the SRDP and rural support generally to continue to operate effectively under retained EU law from 1 January 2021. This is required as the current (EU) CAP schemes are only designed to work during the period of the 2014 to 2020 multi-annual financial framework.

This is achieved by maintaining the current structure of the SRDP, as far as is practicable, and on the assumption that HM Treasury will wholly replace funding that would otherwise have come from the EU through the European Agricultural Fund for Rural Development (EARDF).

Separately, the 2020 Regulations use the powers in the 2018 Act to correct a number of deficiencies that would otherwise exist in retained EU law as it will have effect on IP completion day.

(**1**) 2018 c.16.
(**2**) 2020 asp 17.

Changes made by the 2020 Regulations

Regulations 2 and 3

Regulations 2 and 3 make technical amendments to Regulation (EU) No 1303/2013 (the "Common Provisions Regulation") and Commission Delegated Regulation (EU) No 240/2014 to allow the rural development support scheme to function effectively from 2021 onwards, and make changes that are consequential upon amendments under the 2020 Regulations to other retained CAP EU legislation.

These regulations also simplify and improve those Regulations where appropriate, and correct outstanding deficiencies resulting from EU exit to ensure they can operate from the end of the transition period.

The footnote in regulation 2 refers to the State Aid (Revocations and Amendments) (EU Exit) Regulations 2020 which prospectively amends retained EU law, and amends previous EU exit SIs that prospectively amend retained EU law that is also being amended in the 2020 Regulations. That SI was laid in draft in the UK Parliament on 29 September 2020.

Regulations 4 and 5

Regulations 4 and 5 amend Regulation (EU) No 1305/2013 (the "Rural Development Regulation") and Commission Implementing Regulation (EU) No 808/2014 (the "Rural Development Implementing Regulation") to allow rural development support schemes to function after 2020. They also make improvements, and regulation 5 corrects an outstanding deficiency resulting from EU exit.

As of IP completion day, Article 11 of the Rural Development Regulation (as 'deficiency fixed' by S.I. 2019/748) will require the Scottish Ministers to make secondary legislation amending Commission Decision C(2015) 3489 in order to amend a rural development programme (in Scotland, the SRDP).

This process is aligned with the method for making such changes under EU law, where proposals made by the Member States are, if agreed, approved by a Commission decision under that Article.

Regulation 4 of the 2020 Regulations simplifies that process by enabling administrative changes to a programme. The normal preparation and consultation processes involved in making amendments to the SRDP will remain unaffected, as do the limitations on the frequency and type of changes that can be made to the SRDP.

Regulation 4 replaces Article 58 of the Rural Development Regulation, with the effect that the Scottish Ministers will determine the core contribution to rural development and sets out the manner in which the core contribution is to be determined from 2021 onwards.

Regulation 4 also amends Article 59 of the Rural Development Regulation to ensure the continued functionality from 2021 of the rules on fund contribution for rural development.

Regulation 5 inserts a new Article 13 into the Rural Development Implementing Regulation. This reinstates – with technical changes for post-EU functionality – the information and

publicity requirements that are prospectively repealed from IP completion day by deficiency fixes in the Rural Development (Rules and Decisions) (Amendment) (EU Exit) Regulations 2019/770. Article 13 will then apply in respect of the Managing Authority and Monitoring Committee which for Scotland are, respectively, the Scottish Government and the Rural Development Operational Committee.

Regulations 6 and 7

Regulation 6 amends Regulation (EU) No 1306/2013 (the "Horizontal Regulation") to simplify and improve that regulation and to ensure that it functions effectively from 2021 onwards.

Regulation 7 amends Commission Implementing Regulation (EU) No 908/2014 (the "Horizontal Implementing Regulation") to correct outstanding deficiencies resulting from EU exit.

The Horizontal Regulation and Horizontal Implementing Regulation contain some of the rules governing rural development schemes as well as other schemes under the CAP. The 2020 Regulations amend the Horizontal Regulation and Horizontal Implementing Regulation only insofar as they do not relate to direct payments.

This is necessary as former EU CAP rules are being rolled over in two phases. EU legislation governing the 2020 CAP direct payment schemes became domestic law on exit day under section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020(**3**). Remaining EU CAP rules will become retained EU law on IP completion day under sections 2 to 4 of the 2018 Act.

The 2020 Regulations do not change direct payment rules, with the effect that there will be two versions of some horizontal CAP legislation from IP completion day.

In that respect, the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 was laid in draft in the UK Parliament on 5 October 2020. In accordance with notification procedures, the Scottish Parliament were notified on 28 August and provided their recommendation to consent on 23 September on those regulations. Regulation 2 of those Regulations will, if approved, provide for how the horizontal regulations are to be interpreted from IP completion day.

Reason for and effect of the proposed changes

<u>SRDP from 2021 onwards</u>

The 2020 Regulations seek to preserve the status quo in so far as possible, making necessary technical amendments, removing spent or inappropriate provisions and making consequential amendments. These changes help ensure we can continue to make payments and operate our rural support schemes and the SRDP in Scotland for 2021 and subsequent years.

(**3**) 2020 c.2.

The 2020 Regulations set out the process for determining the core contribution (which will replace the previous EU funding from the European Agricultural Fund for Rural Development) in Scotland for rural development from 2021 onwards, linking this process to the annual Scottish Government budget procedure. Scottish Ministers will be required to determine the core contribution for Scotland each year before the beginning of the Scottish Government financial year on 1 April. When the core contribution for Scotland has been determined, the Scottish Ministers must publish that amount as soon as practicable after that determination has been made. The process also retains the ability for funds to be transferred to support for rural development as at present under Regulation (EU) No 1307/2013 should that be required.

The 2020 Regulations also make provision for the rules on rate of funding from the core contribution to continue as at present, but are adjusted to remain functional for the new domestic core contribution approach, determined by Scottish Ministers, and reflect rural support schemes that operate in Scotland.

Deficiencies in retained EU law

The 2020 Regulations make amendments to correct deficiencies in retained EU law arising by virtue of EU withdrawal. The purpose of these changes is simply to ensure that the CAP regulatory framework operates effectively in domestic law from IP completion day.

The deficiency fixes in this instrument come into effect on IP completion day so that the change is effective from that day.

The amendments in that respect are of a technical nature, and do not introduce any policy change.

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

Regulations 2(3), 3, 5(4)(b) and 7 of the 2020 Regulations are made in exercise of powers in the 2018 Act to deal with deficiencies in retained EU law (paragraphs 1(1) and (3) of Part 1 of schedule 2). The Statements set out below relate to the exercise of the deficiencies powers.

The additional information set out below relates to the deficiencies powers, and the powers in sections 2 to 4 of the 2020 Act to modify the main CAP legislation as defined in section 1 of that Act.

Statements required by European Union (Withdrawal) Act 2018

The following statements are required under paragraph 29 of Schedule 7 of the 2018 Act as this instrument contains Regulations under Part 1 of schedule 2 of the 2018 Act.

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

The Cabinet Secretary for the Rural Economy and Tourism has made the following statement:

"In my view the Rural Development (EU Exit) (Scotland) (Amendment) Regulations 2020 do no more than is appropriate. This is because the Regulations address necessary changes arising from leaving the EU".

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

The Cabinet Secretary for the Rural Economy and Tourism has made the following statement:

"In my view there are good reasons for the provision in this instrument, and I have concluded that making the provision is a reasonable course of action. It is the case that deficiencies arising from the withdrawal of the UK from the EU need to be addressed".

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

The Cabinet Secretary for the Rural Economy and Tourism has made the following statement:

"In my view the Rural Development (EU Exit) (Scotland) (Amendment) Regulations 2020 do not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

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

The Cabinet Secretary for the Rural Economy and Tourism has made the following statement:

"In my view the Rural Development (EU Exit) (Scotland) (Amendment) Regulations 2020 have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

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

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

This is not applicable.

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

This is not applicable.

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

This instrument is categorised as low in relation to the change made under the 2018 Act, which are technical amendments that will ensure the law is effective after IP completion day. There is no significant policy choice involved.

This instrument is categorised as medium in relation to the changes made under the 2020 Act, as without those changes it will not be possible to continue SRDP payments from 2021 to 2024.

However, the instrument does not make any significant policy change to the rural development support which will broadly continue to operate as at present.

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

This instrument makes changes under sections 3 and 4 of the 2020 Act which are subject to the mandatory affirmative procedure.

The powers in paragraph 1(1) and (3) of Schedule 2 of the 2018 Act and section 2 of the 2020 Act are 'either way' powers, and the Scottish Ministers consider that it is appropriate for the changes made under those powers to be made in a single affirmative instrument.

Further information

Consultation

The SRDP, which funds economic, environmental and social measures for the benefit of rural Scotland, was developed in conjunction with stakeholders over a 3 year period which included three stakeholder events, eight stakeholder thematic working groups, two public consultations, a series of public roadshows and regular bilateral meetings with key stakeholders.

There was an external ex-ante evaluation and it was fully impact assessed including a Strategic Environmental Assessment (SEA), Business and Regulatory Impact Assessment (BRIA) and an Equality Impact Assessment (EQIA). It received formal approval by the European Commission.

Subsequent programme modifications involved stakeholder engagement, predominantly via the Agriculture and Rural Development (ARD) Stakeholder Group, and consultation with the Rural Development Operational Committee (RDOC) which formally acts as the monitoring committee for the SRDP. Parliament and REC Committee were informed and the modifications were approved by the European Commission.

A full public consultation was conducted on the period of "Stability and Simplicity" to 2024 and engagement with stakeholders and delivery partners is an on-going process primarily via the ARD Stakeholder Group and the RDOC.

Further consultation took place in relation to the Agriculture (Retained EU Law and Data) (Scotland) Act and the 2020 Regulations will be used to deliver on the stated objective of the 2020 Act that "From 1 January 2021, to enable the continued operation of current CAP schemes and policies, but also to allow them to be progressively improved and simplified".

Engagement will continue to take place on any future proposals for simplification and improvement between 2021-2024 and during the development of future rural policy, post-CAP.

The importance of continuing rural support through the SRDP in order to provide stability in payments is widely acknowledged and will help the rural economy in its recovery from the impact of COVID-19 and from the uncertainty of Brexit.

Impact Assessments

The CAP was formally approved by the European Commission and the SRDP was developed in conjunction with stakeholders, robustly consulted on and fully impact assessed.

SRDP schemes apply across Scotland, both the mainland and islands.

It is not considered appropriate or proportionate to undertake full impact assessments for the 2020 Regulations as they do not introduce new policy, or a change in policy, but simply enable the continued functioning of retained EU CAP legislation pertaining to rural development and the continuation of the SRDP and rural development support from 2021. This will deliver on the "Stability and Simplicity" consultation that proposed existing CAP schemes continue until 2024 and on the main policy objective of the Agriculture (Retained EU Law and Data) (Scotland) Act that "from 1 January 2021, to enable the continued operation of current CAP schemes and policies, but also to allow them to be progressively improved and simplified".

The 2020 Regulations will not have a significant impact on the environment.

The 2020 Regulations are not expected to have any impact on business, charities or voluntary bodies.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) was completed when the SRDP was introduced. The continuation of this support will provide stability to help the sector to recover from the impact of both EU exit and the COVID pandemic.

The Cabinet Secretary for the Rural Economy and Tourism, Fergus Ewing, confirms that no BRIA is necessary as the 2020 Regulations have no financial effects on the Scottish Government, local government or on business.

Scottish Government
Agriculture and Rural Economy Directorate
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