

Rural Affairs, Islands and Natural Environment Committee

15th Meeting, 2022 (Session 6), Wednesday 11 May

Subordinate legislation

Introduction

1. This paper supports the Committee's consideration of the [Rural Support \(Controls\) \(Coronavirus\) \(Scotland\) Regulations 2022](#) (SSI 2022/107). The policy note is set out in **Annexe A**.
2. The instrument is subject to the negative parliamentary procedure. Further information about this procedure is set out in paragraphs 13 and 14.

The Rural Support (Controls) (Coronavirus) (Scotland) Regulations 2022

3. The instrument was laid on 24 March 2022 and came into force on 9 May 2022. The deadline for subject committee consideration is 16 May 2022.
4. The policy note explains that—
 - the amendments made by Regulations 2 and 3(7)(b) will “simplify and improve” the operation of the provisions of the CAP retained EU legislation by removing provisions which are “no longer appropriate or workable for Scotland”. They will also help mitigate the impacts of the coronavirus pandemic and support adherence to the Scottish Government’s payment strategy; and
 - the remaining Regulations make derogations from inspection requirements and reduce control rates for rural support schemes in Scotland in light of the impacts of the coronavirus pandemic and to support adherence to the Scottish Government’s payment strategy.

Regulation 2

5. The policy note explains that Regulation 2 amends Article 75(2) of the Horizontal Regulation (the retained EU regulation that sets out administrative rules for CAP schemes, for example around monitoring and compliance). The amendment allows payments to be made for direct payment schemes and those rural development schemes specified in Article 67(2) of the Horizontal Regulation *after* the completion of all administrative checks. According to the policy note, the Scottish Government does not intend to cease inspections ‘on the ground’ but the SSI will provide the option, if necessary, to commence payments for schemes validated by

administrative checks if on the ground inspections are not complete and must continue beyond the target date for commencing payments.

6. Members may wish to note that Regulation 2 makes a *permanent* change to the Horizontal Regulation.

Regulation 3(7)(b)

7. Regulation 3(7)(b) amends Commission Implementing Regulation (EU) No. 809/2014 which sets the rules for the application of the Horizontal Regulation with regard to the integrated administration and control system, rural development measures and cross-compliance. Regulation 3(7)(b) removes the obligation to increase automatically the cross-compliance inspection rate in the year following any significant non-compliance.
8. 'Cross-compliance' refers to the rules which require farmers and crofters to adhere to both [statutory and good practice requirements](#) in order to receive payments under either direct support or rural development schemes. These rules include good practice for protecting soil and water quality, and statutory requirements around animal welfare, food and feed safety and environmental protection.
9. Members may wish to note that Regulation 3(7)(b) also makes a *permanent* change.
10. **Members may wish to ask the Scottish Government why it has chosen to make permanent changes through Regulations 2 and 3(7)(b).**

Temporary derogations

11. The policy note explains these derogations are in line with the EU's 2021 derogations Regulation for CAP schemes¹ and will ensure that the current inspection requirements and control rates for all rural development beneficiaries continue in order to help reduce the risk of confusion and assist compliance.
12. The policy note states that "adequate controls for the 2020, 2021 and 2022 claim years are still applied notwithstanding the derogations and the simplifications and improvements in the 2022 Regulations". It goes on to assert that "the risks for audit, non-compliance and loss of funds are adequately managed and reduced by applying our new approach of targeted inspections using relevant data and improved education and engagement with applicants".
13. **Members may wish to ask the Scottish Government what the "new approach of targeted inspections using relevant data and improved education and engagement with applicants" means in practice, including what data the targeting is based on.**

¹ Under the UK-EU Withdrawal Agreement, the EU 2021 derogations Regulation has direct effect in Scotland in relation to any inspections related to rural development legacy contracts entered into during the 2014-2020 Multiannual Financial Framework until the closure of those programmes and activities.

14. The policy note also contends that, the 2022 Regulations will have no impact on stakeholders or members of the public as they “simply assist and enable officials to carry out controls despite the coronavirus pandemic and related restrictions”.

Delegated Powers and Law Reform Committee Consideration

15. The Delegated Powers and Law Reform Committee (DPLRC) considered the instrument at its meeting on [26 April 2022](#).

16. The Committee drew the instrument to the attention of the Parliament on reporting ground (h) (meaning could be clearer) and highlighted difficulties from there being parallel texts, or parallel versions, of some of the legislation which is being amended.

Parliamentary procedure – negative instruments

17. The negative parliamentary procedure is set out in Chapter 10 of the Parliament’s Standing Orders. Instruments subject to the negative procedure come into force on a specified date and remain in force unless it is annulled by the Parliament. Thus, the Parliament does not need to agree to the instrument in order for it to come into force.

18. The Parliament may, however, and on the recommendation of the lead committee, recommend the instrument be annulled within 40 days of the instrument being laid. Any MSP may by motion propose to the lead committee that the committee recommends “that nothing further is to be done under the instrument”. Any motion for annulment would be debated by the lead committee and a report made to Parliament.

For decision

19. **The Committee is invited to consider whether it wishes to make any recommendations on the instrument.**

20. **The Committee is also invited to write to the Scottish Government to ask—**

- **why it has chosen to make permanent changes through Regulation 2 and Regulation 3(7)(b) (paragraphs 5 to 10); and**
- **in relation to the temporary derogations, what the “new approach of targeted inspections using relevant data and improved education and engagement with applicants” means in practice, including what data the targeting is based on (paragraphs 11 to 14).**

POLICY NOTE

THE RURAL SUPPORT (CONTROLS) (CORONAVIRUS) (SCOTLAND) REGULATIONS 2022

SSI 2022/107

The Rural Support (Controls) (Coronavirus) (Scotland) Regulations 2022 (the “2022 Regulations”) are made in exercise of the powers conferred by both Article 62(2)(a) and (b) of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council of 13 December 2013 on the financing, management and monitoring of the common agricultural policy (the “Horizontal Regulation”) and section 2 of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020¹.

Section 2(3) of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 provides that “Regulations under this section are (if they have not been subject to the affirmative procedure) subject to the negative procedure”.

The 2022 Regulations are subject to the negative procedure because regulations 2 and 3(7)(b) that rely on section 2 of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 make relatively minor modifications to the Common Agricultural Policy (“CAP”) legislation to simplify and improve the operation of existing schemes. They remove provisions which are no longer appropriate or workable for Scotland and do not introduce any significant new policy. Regulations made under Article 62(2)(a) and (b) of the Horizontal Regulation are also subject to the negative procedure.

In addition, there are other factors that clearly point to negative being the more appropriate procedure for regulations 2 and 3(7)(b) instead of affirmative. In particular, these regulations do not create or amend a criminal offence, do not amend an Act of the Scottish Parliament and do not contain any matter with material financial impact or financial implications.

The 2022 Regulations will come into force on 19 May 2022.

Purpose of the Instrument

The amendments made by regulations 2 and 3(7)(b) will simplify and improve the operation of the provisions of the CAP retained EU legislation by removing provisions which are no longer appropriate or workable for Scotland. They will also help mitigate the impacts of the coronavirus pandemic and support adherence to our payment strategy.

The remaining regulations make derogations from inspection requirements and reduce control rates for rural support schemes in Scotland in light of the impacts of the coronavirus pandemic and to support adherence to our payment strategy.

1. Policy Objectives

The 2022 Regulations are essential to safeguard and minimise the risks posed by coronavirus in the conduct of rural support scheme inspections.

¹The Agriculture (Retained EU Law and Data) 2020 Act of Scottish Parliament number 17

Due to the coronavirus lockdown restrictions, the commencement of inspections was delayed. As a result of this, and the additional safeguarding measures put in place, the number of inspections which could take place in the time available has been reduced significantly. Given the back log of work and the impact of restrictions, our payment strategy for our schemes is at risk.

Simplifications and Improvements

Regulations 2 and 3(7)(b) aim to simplify and improve the operation of inspections for CAP rural support schemes by removing provisions which are no longer appropriate or workable for Scotland and these provisions will also help mitigate the impact of the coronavirus pandemic and support adherence to our payment strategy.

Derogations

The 2022 Regulations (apart from regulations 2 and 3(7)(b)) make derogations from inspection requirements and reduce control rates for rural support schemes in Scotland to help address the effects of the coronavirus pandemic and to support adherence to our payment strategy.

2. Explanation of the law being amended by the 2022 Regulations

Simplifications and Improvements

Regulation 2 amends Article 75(2) of the Horizontal Regulation, to allow payments to be made for direct payment schemes and those rural development schemes specified in Article 67(2) of the Horizontal Regulation after completion of all administrative checks.

Regulation 3(7)(b) amends Commission Implementing Regulation (EU) No. 809/2014 laying down rules for the application of the Horizontal Regulation and with regard to the integrated administration and control system, rural development measures and cross compliance (“Regulation 809/2014”). This provision omits paragraph 4 of Article 68 to remove the obligation to automatically increase the cross compliance inspection rate in the year following any significant non-compliance.

Derogations

The 2022 Regulations (apart from the regulation 2 and 3(7)(b)) amend Articles 24(4), 26(4), 33(1), 49(1), 52(2) and 68(1) in Regulation 809/2014 to insert temporary derogations. These temporary derogations are limited in their application, in respect of the following claim years:

- to allow for physical checks to be replaced by other forms of evidence, including new technologies for inspections (including those for both cross compliance and livestock) related to direct payments and rural development schemes for claim year 2021
- to reduce the control rate for inspections related to animal aid schemes to 1% for claim years 2020 and 2021
- to reduce the control rate for ex post checks to at least 0.6 % for calendar year 2021 and to allow for physical checks to be replaced by other forms of evidence, including new technologies, for inspections related to investment operations
- to reduce, for claim year 2021, the cross compliance control rate to 0.5%

- to derogate, for claim years 2021 and 2022, from the requirement to substitute the control rate for certain cross compliance acts and standards from 1% to a higher rate, if such a rate is set out in separate legislation applicable to that specific act or standard.

The majority of the temporary derogations apply to claim year 2021 but the reduction in the control rate for animal aid schemes applies also to claim year 2020 and the derogation from the requirement to substitute a higher control rate for certain cross compliance acts and standards also applies to claim year 2022 (this only applies to livestock inspections). During livestock inspections both the scheme requirements and the cross compliance requirements are inspected together. Cross compliance inspections take place in the same calendar year as the claim year whereas animal aid scheme inspections take place in the calendar year following the claim year. That means that the livestock inspections taking place in calendar year 2021 covered scheme requirements related to claim year 2020 and livestock inspections covering scheme requirements related to claim year 2021 will take place in 2022 and also cover cross compliance requirements related to claim year 2022.

3. Reasons for and effect of the proposed change

Simplifications and improvements

Regulation 2 simplifies and improves the retained EU law on CAP rural support schemes by allowing payments to be made for direct payment schemes and those rural development schemes specified in Article 67(2) of the Horizontal Regulation (such as the Forestry Grant Scheme, the Agri-Environment Climate Scheme, the Less Favoured Area Support Scheme and the Rural Priorities Scheme) after completion of all administrative checks. This does not mean that we will cease inspections on the ground as we will continue these checks. But it will provide us with additional flexibility and give us the option, if necessary, to commence payments for schemes validated by administrative checks if on the ground inspections are not complete and must continue beyond the target date for commencing payments.

Regulation 3(7) also simplifies and improves the retained EU law on CAP rural support schemes by removing the obligation to automatically increase the cross compliance inspection rate in the year following any significant non-compliance. In the Common Agricultural Policy (Simplifications and Improvements) (Miscellaneous Amendments) (Scotland) Regulations 2020 (“the 2020 Regulations”) we removed the overarching obligation to increase control rates from the Horizontal Regulation as well as the Scottish Ministers’ power to amend rules related to these requirements. We also removed the specific provisions from Regulation 809/2014 that required an increase in control rate for direct payment and rural development inspections in the year following any significant non-compliance (see regulation 7(8)). This change brings the rules on cross-compliance in line with these previous amendments. Without this provision we would have been obliged to increase the cross compliance control rate in 2021 (with no power to postpone) due to now historic non-compliance issues from 2019.

Derogations

The temporary derogations in the 2022 Regulations are in line with the EU’s derogations regulation from 2021 for CAP schemes². This regulation has direct effect in Scotland in

² Commission Implementing Regulation (EU) 2021/725 of 4 May 2021 derogating in respect of the year 2021 from Implementing Regulations (EU) No 809/2014, (EU) No 180/2014, (EU) No 181/2014, (EU) 2017/892, (EU) 2016/1150, (EU) 2018/274, (EU) No 615/2014 and (EU) 2015/1368 as regards certain administrative and on-the-spot checks applicable within the common agricultural policy.

relation to any inspections related to rural development legacy contracts entered into during the 2014-2020 Multiannual Financial Framework as a consequence of Article 138 of the UK-EU Withdrawal Agreement. Article 138 states that applicable EU law continues to apply in respect of the implementation of Union programmes and activities committed under the Multiannual Financial Framework for 2014-2020 until closure of those programmes and activities. The 2022 Regulations therefore ensure that the inspection requirements and control rates for all rural development beneficiaries are the same, which will help reduce the risk of confusion and assist compliance.

Derogations / simplifications and improvements

The 2022 Regulations will help mitigate the impact of the coronavirus pandemic and ensure adherence to our payment strategy.

The 2022 Regulations will have no impact on stakeholders or members of the public as they simply assist and enable officials to carry out controls despite the coronavirus pandemic and related restrictions.

Adequate controls for the 2020, 2021 and 2022 claim years are still applied notwithstanding the derogations and the simplifications and improvements in the 2022 Regulations. The risks for audit, non-compliance and loss of funds are adequately managed and reduced by applying our new approach of targeted inspections using relevant data and improved education and engagement with applicants.

This fits in with our approach to recovery from the coronavirus pandemic and current improvements to inspections, by repurposing resources to focus on improving compliance through support, enhanced guidance and better targeting of inspections rather than just focusing on non-compliance.

Without these derogations, the amended inspection requirements, reduced control rates, simplifications / improvements and the support and protection given to staff and scheme beneficiaries, our payment strategy is at risk of being undermined due to the impact of the coronavirus restrictions. This would result in additional uncertainty and potential financial hardship for our scheme beneficiaries.

Further information

Consultation

We conducted a full public consultation on our period of Stability and Simplicity to 2024 and further consultation took place in relation to the Agriculture (Retained EU Law and Data) (Scotland) Bill and the 2022 Regulations will be used to deliver on the stated objective of the Bill “to enable the continued operation of current CAP schemes and policies, but also to allow them to be progressively improved and simplified”.

The 2022 Regulations do not amount to a significant change in policy and are being made to provide limited, temporary and necessary derogations from inspection requirements and reduced control rates for designated claim years as well as simplifications and improvements for the continued operation of schemes. These proposals will help address the effects of the coronavirus pandemic and support adherence to our payment strategy.

We have informally advised stakeholders of our proposals for the 2022 Regulations and we understand they will support them given both the risks relating to, and the challenges presented by, the coronavirus pandemic and the desire that we adhere to our payment strategy.

Impact Assessments

A BRIA has been prepared for the 2022 Regulations but no other impact assessments are considered necessary.

Financial Effects

The Cabinet Secretary for Rural Affairs and Islands, Mairi Gougeon, has approved the BRIA for the 2022 Regulations.

Scottish Government
Agriculture and Rural Economy Directorate

March 2022