

Rural Affairs, Islands and Natural Environment Committee

29th Meeting, 2022 (Session 6), Wednesday, 9 November 2022

Subordinate legislation

1. This paper supports the Committee's consideration of the [Rural Support \(Simplification and Improvement\) \(Scotland\) \(No. 2\) Regulations 2022](#) (SSI 2022/279).
2. The Scottish statutory instrument (SSI) is subject to the negative parliamentary procedure and further information relating to the procedure is set out in paragraphs 21 and 22.

The Rural Support (Simplification and Improvement) (Scotland) (No. 2) Regulations 2022

3. The SSI was laid on 22 September 2022 and comes into force on 10 November 2022. The deadline for subject committee consideration is 14 November 2022. The regulations are made using powers conferred under the Agriculture (Retained EU Law and Data) (Scotland) Act 2020.
4. According to the policy note, the regulations simplify and improve the retained EU law relating to the operation of the provisions of the CAP retained EU legislation. The simplification and improvements are made to allow Scottish Ministers to amend the afforested areas option under the Ecological Focus Area (EFA) Greening element of the direct payment schemes with effect from the 2023 claim year onwards. This new option, according to the policy note, enables small areas of woodland on farms and crofts to be used as EFAs to provide environmental benefits.
5. The policy note explains that regulation 2 removes the existing afforested areas EFA option that has never been exercised in Scotland and is, therefore, considered no longer appropriate and applicable from the Direct Payments Regulation. It is replaced by a new option that enables small areas of woodland on farms and crofts to be used as EFAs to encourage the planting of small areas of woodland on farms and crofts. The policy note highlights the requirement that farmers and crofters who want to take advantage of this EFA option should have a forestry grant agreement in place as this ensures the appropriate conditions will be applied to the areas of farm woodland to provide the necessary environmental benefits.
6. Regulation 3 provides details of the requirements to be met under the afforested areas option. In particular, the policy notes states that Scottish Ministers will determine in guidance what will be made available to applicants and the particular species that will qualify under the EFA afforested areas option. The

policy note goes on to explain that the forestry grant scheme agreement must have been issued after 1 January 2015. This means that farmers and crofters who have already planted small areas of woodland on their holdings under the forestry grant scheme are not discriminated against in favour of applicants who choose to do this now.

7. The policy note explains the Scottish Government conducted a full public consultation as part of its Stability and Simplicity : proposals for a rural funding transition period and in relation to the Agriculture (Retained EU Law and Data) (Scotland) Act 2020. According to the policy note, these Regulations will be used to deliver on the stated objective of the Act “to enable the continued operation of current CAP schemes and policies, but also to allow them to be progressively improved and simplified”.
8. The policy note also highlights that the Scottish Government “informally advised NFU Scotland of its proposals for the 2022 Regulations and understand they will support them”. The NFU Scotland has confirmed its support for the instrument and states that –

“It means that some small areas of woodland created on farms and crofts will soon be eligible for inclusion in support claims following planned changes to legislation. ... NFU Scotland asked for this change to be considered, recognising the valuable contribution that woodlands can make to farms and crofts and we have been working with Scottish Government Rural Payment and Inspectorate Division (SGRPID) and Scottish Forestry to deliver this woodland option into the EFA options within Greening.”

Committee consideration

9. To support the Committee’s scrutiny of the instrument, the Convener [wrote](#) to the Scottish Government seeking further information about the regulations.

The Agriculture (Retained EU Law and Data) (Scotland) Act 2020

10. The Agriculture (Retained EU Law and Data) (Scotland) Act 2020 provides the power “to simplify and improve the operation of CAP legislation”. There was some discussion about the interpretation of this power during the passage of the bill last session and officials and Ministers emphasised that the power would only be used to provide for process and/or operational changes. The Committee asked for clarification about why the Scottish Government considers these regulations introduce a process and/or operational change, rather than a policy change.
11. In her [response](#), the Cabinet Secretary gave her view that the change made by this instrument is operational and does not introduce any significant new policy. She stated that—

“during the passage of the Bill it was acknowledged that the section 2 power could be used both for technical or housekeeping matters as well as more substantive changes provided what was being done was a simplification or

improvement. It is for this reason that the government supported changing the procedure for the section 2 power to “either way” during stage 3.”

Timing of regulations

12. The regulations, as well as the overall current CAP and greening provisions, will “continue until 2024 or such time as they are replaced by new schemes to be introduced”. The Committee asked why the Scottish Government seeks to legislate for this provision now, rather than as part of the replacement CAP scheme and, whether the Scottish Government anticipates this change will be continued as part of the replacement CAP scheme.
13. The Scottish Government’s response states these regulations will provide “a welcome opportunity for a positive discussion with stakeholders regarding additional opportunities for growing of trees on farms/ crofts and should encourage the planting of woodland on farms and crofts”.
14. The Cabinet Secretary states she cannot confirm whether these specific provisions will remain part of the replacement CAP schemes.
15. She does, however, say that “it is likely that land use for the planting of trees on farms and crofts, such as is encouraged by these provisions, will continue to feature as part of those future options”.

Consultation with stakeholders

16. The Committee also asked why the Scottish Government has not consulted specifically on these regulations. The consultations referred to in the policy note did not include any policy detail and, therefore, it is unclear the extent to which these consultations could have informed these regulations. The Cabinet Secretary’s response outlines that consultation was undertaken in relation to wider proposals for the rural funding transition period and the Agriculture (Retained EU Law and Data) (Scotland) Bill and that, in her view, these regulations will be used to deliver on the stated objective of the Bill.
17. The Cabinet Secretary stated that no formal public or business consultation is necessary or appropriate as—

“the simplification and improvement will provide an improved EFA option for afforested areas on farms/crofts. There is no policy change regarding the remaining options and elements of the EFA Greening scheme, no change regarding beneficiaries and no change regarding the other scheme conditions.”
18. The response also notes that the NFUS in particular had asked for this change at meetings earlier in 2022 and that the proposed changes were covered at the Trees on Farm subgroup of the Scottish Government’s [forestry Customer Representatives Group](#) which includes a wide range of stakeholders with farming interests.

Regulatory alignment

19. The Cabinet Secretary confirmed the regulations maintain alignment with EU policy—

“The EU’s updated CAP retains, and may increase, conditionality requirements for the receipt of direct payments. One of these conditionality requirements is for a minimum share of arable land at farm level to be devoted to non-productive areas and features (see Annex III of Regulation (EU) No. 2021/2115). Furthermore, there are ten key objectives of the EU’s new CAP, which include contribution to climate change mitigation and halting and reversing biodiversity loss. This improvement to the existing EFA options in Scotland is designed to meet these same two key objectives.”

20. More information on the instrument is set out in the policy note attached at **Annexe A**.

Consideration by the Delegated Powers and Law Reform Committee (DPLRC)

21. The DPLRC considered the instrument at its meeting on 4 October 2022 and agreed no points arose. [Link to DPLRC meeting papers on 4 October 2022](#)

Parliamentary procedure – negative instruments

22. 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.

23. 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

24. **The Committee is invited to note the instrument set out above.**

**Rural Affairs, Islands and Natural Environment Committee clerks
November 2022**

POLICY NOTE

The Rural Support (Simplification and Improvement) (Scotland) (No. 2) Regulations 2022 SSI 2022/279

The Rural Support (Simplification and Improvement) (Scotland) (No.2) Regulations 2022 (the “2022 Regulations”) are made in exercise of the powers conferred by section 2 of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020.¹

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 they make a relatively minor modification to the Common Agricultural Policy (“CAP”) legislation to simplify and improve the operation of existing schemes and do not introduce any significant new policy.

In addition, there are other factors that clearly point to negative being the more appropriate procedure for these regulations. 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 10 November 2022.

Purpose of the Instrument

The amendments made by regulations 2 and 3 will simplify and improve the operation of the provisions of the CAP retained EU legislation by amending the afforested areas option under the Ecological Focus Area Greening element of the direct payment schemes with effect for the 2023 claim year onwards.

This new option enables small areas of woodland on farms and crofts to be used as Ecological Focus Areas to provide environmental benefits.

1. Policy Objectives

The 2022 Regulations simplify and improve the retained EU law relating to the operation of the provisions of the CAP retained EU legislation to allow Scottish Ministers to amend the afforested areas option under the Ecological Focus Area (“EFA”) Greening element of the direct payment schemes with effect from the 2023 claim year onwards.

This new option enables small areas of woodland on farms and crofts to be used as EFAs to provide environmental benefits.

¹ The Agriculture (Retained EU Law and Data) 2020 Act (SP Act 17)

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

Regulation 2 amends Article 46(2)(h) of Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for the EFA Greening direct payments under support schemes within the framework of the CAP (the “Direct Payments Regulation”) to create a new afforested areas option under the EFA element of Greening.

Regulation 3 amends Article 45 of the Commission Delegated Regulation (EU) No. 639/2014 of 11 March 2014 supplementing Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the CAP and amending Annex X to that Regulation (“Regulation (EU) No. 639/2014”) to provide, in more detail, the requirements to be met for the afforested areas EFA option under Article 46(2)(h) of the Direct Payments Regulation.

3. Reasons for and effect of the proposed change

Regulation 2 removes the existing afforested areas EFA option from the Direct Payments Regulation that has never been exercised in Scotland and is, therefore, no longer appropriate and applicable. It is replaced by a new option that enables small areas of woodland on farms and crofts to be used as EFAs. This is designed to encourage the planting of small areas of woodland on farms and crofts. The requirement that farmers and crofters who want to take advantage of this EFA option should have a forestry grant agreement in place ensures the appropriate conditions will be applied to the areas of farm woodland to provide the necessary environmental benefits.

Regulation 3 provides, in more detail, the requirements to be met under Article 46(2)(h) of the Direct Payments Regulation. In particular the Scottish Ministers will determine in guidance that will be made available to applicants the particular species that will qualify under the EFA afforested areas option. This planting must be on arable land and fulfil the conditions under the small farm or woodland creation option of the forestry grant scheme applied to the specified species. The forestry grant scheme agreement referred to in Article 46(2)(h) must have been issued after 1 January 2015. This means that farmers and crofters who have already planted small areas of woodland on their holdings under the forestry grant scheme are not discriminated against in favour of applicants who choose to do this now.

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”.

We have informally advised NFU Scotland of our proposals for the 2022 Regulations and we understand they will support them.

Impact Assessments

The 2022 Regulations aim to simplify and improve the operation of the existing EU CAP and do not introduce any significant new policy. The proposal is for the current CAP and greening provisions to continue until 2024 or such time as they are replaced by new schemes to be introduced.

The CAP was formally approved by the European Commission and the Pillar 2 Scottish Rural Development Programme was developed in conjunction with stakeholders, robustly consulted on and fully impact assessed. It is not considered appropriate or proportionate to undertake full impact assessments for the 2022 Regulations as they only make a minor modification to simplify and improve the delivery of the existing CAP provisions.

The 2022 Regulations have been subject to a Strategic Environmental Assessment Pre-screening report (Reference PRE 01177).

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
September 2022