

Rural Affairs and Islands Committee

30th Meeting, 2023 (Session 6), Wednesday, 22 November

Subordinate legislation

Introduction

1. This paper supports the Committee's consideration of three negative SSIs—
 - The Rural Support (Simplification and Improvement) (Scotland) Regulations 2023 (SSI 2023/308);
 - The Common Organisation of the Markets in Agricultural Products (Fruit and Vegetables) (Amendment) (Scotland) Regulations 2023 (SSI 2023/311); and
 - The Animal Welfare and Food Safety (International Professional Qualification Recognition Agreement Implementation) (Miscellaneous Amendment) (Scotland) Regulations 2023 (SSI 2023/312).
2. All three SSIs are subject to the negative parliamentary procedure. 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.
3. 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.

The Rural Support (Simplification and Improvement) (Scotland) Regulations 2023

Title of Instrument:	Rural Support (Simplification and Improvement) (Scotland) Regulations 2023
Type of Instrument:	Negative (see paras 2 +3)
Laid date:	30 October 2023
Reporting deadline:	4 December 2023
Coming into force:	1 January 2024
Instrument drawn to Parliament's attention by DPLRC:	No
Instrument made using powers conferred by:	Agriculture (Retained EU Law and Data) (Scotland) Act 2020
Supporting documentation:	Policy note attached Annexe A

Purpose of the instrument

4. The policy note states the purpose of the instrument is to simplify and improve the operation of the provisions of CAP legislation by removing the provisions in Article 31(1) of the Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013. These provisions established rules for direct payment to farmers under support schemes within the framework of the common agricultural policy (the "Direct Payments Regulation").
5. Under the existing regime, certain payment entitlements will revert to the national or regional reserve if unused, unclaimed or ineligible, in order to replenish the funds in the national reserve. This instrument removes that mechanism in relation to some of those entitlements.
6. Regulation 2 omits two points in Article 31(1) of Regulation (EU) No 1307/2013. This change will remove the requirement for certain entitlements to revert to the reserve if they are not activated or do not give right to payments for two consecutive years.
7. Other regulations make amendments which are consequential on this change:
 - Regulation 3 omits Article 24(2) of Commission Delegated Regulation (EU) No 639/2014 which provides for reverting to the reserve for entitlements exceeding eligible levels;

- Regulation 4 omits Article 9 of Commission Implementing Regulation (EU) No 641/2014 which provides for unused payment entitlements reverting to the reserve.
8. Regulation 5 omits parts of paragraph 9(4) of the Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015 which provides that a proportion of the value of a payment entitlement will revert to the national reserve where payment entitlements are transferred (e.g. sold, leased, inherited) without land (i.e. where the payment entitlement changes hands but the land it was previously used to claim payment on is not sold or transferred with it).
 9. According to the policy note, the purpose of these changes is to simplify the payments process to make it “easier for our applicants to use, some of whom will otherwise be obliged to take action to avoid this such as selling or leasing their entitlements, all adding to the administrative burden for applicants.”
 10. The policy note states that the removal of these provisions from Article 31 will have no material impact on young farmers in Scotland and/or new entrant categories of the National Reserve and the levels of Basic Payment Scheme (BPS) payments for applicants.
 11. No formal consultation on the instrument has been undertaken but the policy notes states that the Scottish Government has “informally advised NFUS and stakeholders of our proposals for the Regulations and we understand they will support them given they simplify and improve our application process.”

Background

12. Direct payments are paid to farmers and crofters who hold ‘payment entitlements’ for eligible hectares of their land. Land managers can either use payment entitlements that they hold to claim funding from the Basic Payment Scheme (BPS) on eligible hectares of land, or they can sell, lease, or otherwise transfer them (e.g. as a gift or inheritance) to another farmer or crofter who can then activate them on appropriate land to claim BPS funding. Payment entitlements can either be transferred with the land they currently apply to, or they can be transferred without the land and then activated on another appropriate piece of land.
13. The [‘national reserve’ is a pool of money within the total Basic Payment Scheme budget](#) which is used to allocate payment entitlements to farmers and crofters who wish to claim BPS but do not have entitlements. This is generally prioritised towards allocating entitlements to young farmers and new entrants.
14. If recipients do not use, sell, lease or otherwise transfer a payment entitlement within a two-year period, the value of that entitlement reverts to the national reserve. This rule is provided for in Article 31(1) of Regulation (EU) No 1307/2013 and is what is being removed by Regulation 2 of this instrument.
15. [The Rural Payments website states that the national reserve is ‘replenished’ annually](#) from:

- a. any Basic Payment Scheme entitlements that have not been activated for payment during two consecutive years;
 - b. any Basic Payment Scheme entitlements voluntarily returned or found to have been unduly allocated;
 - c. reducing the value of already allocated Basic Payment Scheme entitlements.
16. Regulation 9(4) of the Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015 provides for reductions in the value of entitlements that are sold without land. There is a reversion to the national reserve of (a) 50% of the annual unit value of payment entitlements that are transferred without land that applied in relation to a calendar year up to 2018, and (b) 30% of the annual unit value of payment entitlements that are transferred without land in relation to a calendar year from 2018 onwards.
17. Officials were in touch with the Scottish Government to clarify the existing rules and have been advised that Regulation 9(4) has become redundant. This is because of a period of 'convergence' from 2015 to 2019, which aimed to ensure that all payment entitlements in the same region were paid a flat rate.
18. [The Rural Payments website explains](#) that "Because of the way entitlements were calculated in the past, their value in 2015 will have differed from business to business. Convergence was introduced to make this fairer, with the aim of paying everyone the same entitlement value per Payment Region by 2019. We carried out a convergence calculation, comparing the 2015 entitlement values with the 2019 target, and adjusted the value of entitlements from 2015 to 2019 in equal percentage steps."
19. Prior to 2019, a transfer of entitlements without land would be initially reduced by 30-50% (depending on when the entitlement was sold) and would then over the remaining period to 2019 converge to the 2019 flat payment rate. From 2019 all payment entitlements within the same region are the same flat payment rate. As a result, Regulation 9(4) no longer has practical effect.

Consideration by the Delegated Powers and Law Reform Committee

20. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [7 November 2023](#) and agreed that no points arose.

The Common Organisation of the Markets in Agricultural Products (Fruit and Vegetables) (Amendment) (Scotland) Regulations 2023

Title of Instrument:	Common Organisation of the Markets in Agricultural Products (Fruit and Vegetables) (Amendment) (Scotland) Regulations 2023
Type of Instrument:	Negative (see paras 2 + 3)
Laid date:	2 November 2023
Reporting deadline:	4 December 2023
Coming into force:	15 December 2023
Instrument drawn to Parliament's attention by DPLRC:	No
Instrument made using powers conferred by:	Agriculture (Retained EU Law and Data) (Scotland) Act 2020
Supporting documentation:	Policy note attached Annexe B

Purpose of the instrument

21. The policy note states the purpose of the instrument is to clarify the minimum duration of an Operational Programme that is available to a Producer Organisation within the Fruit and Vegetables Aid scheme. It does so by amending Article 33 (operational programmes) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 to explicitly state that Operational Programmes for Scottish Producer Organisations (POs) in the fruit and vegetables sector can have a minimum duration of two years and a maximum duration of three years.
22. The policy note states that the SSI will enable the synchronisation of the cycles of Operational Programmes being submitted for approval this year with the cycles of other existing Scottish and UK POs with all current programmes having an end date of 31 December 2025.
23. Given the nature and scale of the instrument, no formal public consultation on the SSI has been undertaken but the Scottish Government has engaged with existing Scottish POs in the scheme, the Rural Payments Agency (RPA) and other UK Governments to ensure they are aware of the requirement for and purpose of the amendment.

Background

24. The EU Fruit and Vegetables Aid Scheme enables officially recognised Producer Organisations (POs), formed on the initiative of a group of growers, to receive financial assistance to help increase their competitiveness in the supply chain.
25. To qualify for financial assistance the PO must draw up an operational programme aimed at achieving pre-set objectives, for example improving the quality, marketing and end value of their produce, promoting the use of environmentally sound cultivation practices or reducing production costs.

Consideration by the Delegated Powers and Law Reform Committee

26. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [14 November 2023](#) and agreed that no points arose.

The Animal Welfare and Food Safety (International Professional Qualification Recognition Agreement Implementation) (Miscellaneous Amendment) (Scotland) Regulations 2023

Title of Instrument:	Animal Welfare and Food Safety (International Professional Qualification Recognition Agreement Implementation) (Miscellaneous Amendment) (Scotland) Regulations 2023
Type of Instrument:	Negative (see paras 2+3)
Laid date:	2 November 2023
Reporting deadline:	4 December 2023
Coming into force:	1 December 2023
Instrument drawn to Parliament's attention by DPLRC:	No
Instrument made using powers conferred by:	Agriculture (Retained EU Law and Data) (Scotland) Act 2020
Supporting documentation:	Policy note attached Annexe C

Purpose of the instrument

27. The policy note states the purpose of this instrument is to extend the recognition of relevant professional qualifications in slaughter and food safety to those issued in EEA-EFTA states to comply with the UK-EEA EFTA Free Trade Agreement (FTA).
28. The instrument amends the definition of “qualification certificate” in the Welfare of Animals at the Time of Killing (Scotland) Regulations 2012 (“the WATOK(S) Regulations”), to include a qualification recognised under Part 2 of the Recognition of Professional Qualifications and Implementation of International Recognition Agreements (Amendment) Regulations 2023 (“the Professional Qualifications Regulations 2023”) in relation to slaughter operations, and provides for a right of appeal against a decision by the competent authority not to recognise such a qualification.
29. The proposed instrument also amends the Food Safety (Sampling and Qualifications) (Scotland) Regulations 2013 (“the Food Safety Regulations”), to include a qualification recognised under the Professional Qualifications Regulations 2023 in relation to food examination.
30. The policy note explains that the Professional Qualifications Regulations 2023 implement the UK’s obligations arising from the Free Trade Agreement made between the UK and Iceland, Liechtenstein and Norway in London on 8 July 2021. The amendments are necessary to ensure that Scottish legislation complies with the UK’s commitments under the Free Trade Agreement in respect of the mutual recognition of professional qualifications.

Background

31. The FTA sets out the future trading relationship between the UK and Iceland, Liechtenstein and Norway. According to the Department for International Trade, the FTA “builds on the existing arrangements for goods trade with Iceland and Norway”. The department states that it also sets out “new arrangements on services, investment and digital trade between the United Kingdom and Iceland, Liechtenstein, and Norway”.
32. The FTA includes provisions on:
 - trade in goods and services, including provisions on tariff rate quotas, customs and rules of origin;
 - sanitary and phytosanitary measures;
 - technical barriers to trade; and
 - trade remedies
33. Part of the agreement includes a framework for the recognition of professional qualifications, which ensures professionals with qualifications obtained in the United Kingdom seeking to practise in a regulated profession in Norway, Iceland, and Liechtenstein can access a smooth and transparent system to have their professional qualifications recognised. This applies vice versa, allowing

professionals to practise in Norway, Iceland, and Liechtenstein who are seeking to practise in the United Kingdom.¹

Consideration by the Delegated Powers and Law Reform Committee

34. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [14 November 2023](#) and agreed that no points arose.

For decision

35. The Committee is invited to consider any issues that it wishes to raise in relation to these instruments.

**Rural Affairs and Islands Committee Clerks
November 2023**

¹ [Free Trade Agreement between the United Kingdom, and Norway, Iceland, and Liechtenstein, Parliamentary Report, Department for International Trade](#)

Policy note

The Rural Support (Simplification and Improvement) (Scotland) Regulations 2023

SSI 2023/308

1. The Rural Support (Simplification and Improvement) (Scotland) Regulations 2023 (the “2023 Regulations”) are made in exercise of the powers conferred by section 2 of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (the “2020 Act”).
2. Section 2(3) of the 2020 Act provides that “Regulations under this section are (if they have not been subject to the affirmative procedure) subject to the negative procedure”.
3. The 2023 Regulations are subject to the negative procedure because they make a relatively minor modifications to Common Agricultural Policy (“CAP”) legislation to simplify and improve the operation of existing schemes and do not introduce any significant new policy.
4. 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.
5. The 2023 Regulations will come into force on 1 January 2024.

Purpose of the Instrument

The amendments made by regulation 2 will simplify and improve the operation of the provisions of CAP legislation by removing the provisions in Article 31(1) of the Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payment to farmers under support schemes within the framework of the common agricultural policy (the “Direct Payments Regulation”) for the replenishment of national or regional reserves from payment entitlements not giving right to payments during two consecutive years due to the application of the specified provisions, and from payment entitlements not activated for two consecutive years.

The amendments made by regulations 3 and 4 are consequential upon the changes made by regulation 2.

The amendments made by regulation 5 will simplify and improve the operation of the provisions of the CAP legislation by omitting the provisions in paragraph 9(4) of the Common Agricultural Policy (Direct Payments etc) (Scotland) Regulations 2015 (the “2015 Regulations”) to remove the requirements relating to reversion to the

national reserve of (a) 50% of the annual unit value of payment entitlements that are transferred without land that applied up to 2018 and (b) 30% of the annual unit value of payment entitlements that are transferred without land that currently applies as from 2018.

All of these amendments will take effect for the 2024 claim year onwards.

Policy Objectives

6. The 2023 Regulations simplify and improve the operation of the Direct Payments Regulation by removing the provisions in Article 31(1) of that Regulation for the replenishment of national or regional reserves from payment entitlements not giving right to payments during two consecutive years due to the application of the specified provisions, and from payment entitlements not activated for two consecutive years.
7. The 2023 Regulations also simplify and improve the operation of the 2015 Regulations by omitting regulation 9(4) to remove the requirements relating to reversion to the national reserve of (a) 50% of the annual unit value of payment entitlements that are transferred without land that applied up to 2018 and (b) 30% of the annual unit value of payment entitlements that are transferred without land that currently applies as from 2018.
8. These provisions will simplify our payments entitlements process to make it easier for applicants to use, reducing their administrative burden.
9. All of these amendments will take effect for the 2024 claim year onwards.

Explanation of the law being amended by the 2023 Regulations

10. Regulation 2 amends Article 31 (1) of the Direct Payments Regulation to omit points (a) and (b).
Regulation 3 omits Article 24(2) of Commission Delegated Regulation (EU) No 639/2014.
Regulation 4 omits Article 9 of Commission Implementing Regulation (EU) No 641/2014.
Regulation 5 omits regulation 9(4) of the 2015 Regulations.

Reasons for and effect of the proposed change

11. Regulation 2 removes Article 31(1)(a) and (b) of the Direct Payments Regulation which concern the replenishment of national or regional reserves from payment entitlements not giving right to payments during two consecutive years due to the application of the specified provisions, and from payment entitlements not activated for two consecutive years. This is to simplify our payments process to make it easier for our applicants to use, some of whom will otherwise be obliged to take action to avoid this such as selling or leasing their entitlements, all adding to the administrative burden for applicants. The removal of these provisions from

Article 31 will have no material impact on our young farmer and/or new entrant categories of the National Reserve and the levels of BPS payments for applicants.

12. Regulation 3 is consequential upon the change made by regulation 2 and omits Article 24(2) of Commission Delegated Regulation (EU) No 639/2014. Article 24(2) sets out how over- declarations of payment entitlements are to be considered for the purposes of Article 31(1)(b) of the Direct Payments Regulation. As a consequence of the omission of Article 31(1)(a) and (b) of the Direct Payments Regulation by regulation 2, Article 24(2) is no longer necessary or applicable.
13. Regulation 4 is consequential upon the change made by regulation 2, and omits Article 9 of Commission Implementing Regulation (EU) No 641/2014. Article 9 sets out when payment entitlements revert to the national or regional reserve as a consequence of the operation of Article 31(1)(a) and (b) of the Direct Payments Regulation. As a consequence of the omission of Article 31(1)(a) and (b) of the Direct Payments Regulation by regulation 2, Article 9 is no longer necessary or applicable.
14. Regulation 5 omits regulation 9(4) of the 2015 Regulations to remove the requirements relating to reversion to the national reserve of (a) 50% of the annual unit value of payment entitlements that are transferred without land that applied up to 2018 and (b) 30% of the annual unit value of payment entitlements that are transferred without land that currently applies as from 2018. This is to simplify our payments process to make it easier for our applicants to use and to remove some of the administrative burden for applicants. The removal of these provisions from regulation 9(4) will have no material impact on our young farmer and/or new entrant categories of the National Reserve and the levels of BPS payments for applicants.

EU Alignment

15. Following the UK's exit from the EU it is no longer necessary to retain Article 31 of the Direct Payments Regulation and regulation 9(4) of the 2015 Regulations. These minor technical simplifications and improvements will not contravene the policy of alignment to EU law. These changes will have no material impact on our young farmer and/or new entrant categories of the National Reserve and the levels of BPS payments for applicants.

Further information Consultation

16. 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. The 2023 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".
17. We have informally advised NFU Scotland of our proposals for the 2023

Regulations and we understand they will support them.

Impact Assessments

18. The 2023 Regulations aim to simplify and improve the operation of CAP legislation and do not introduce any significant new policy. The proposal is for current CAP legislation to continue until 2024 or such time as they are replaced by new schemes to be introduced.
19. The CAP was formally approved by the European Commission and 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 2023 Regulations as they only make a minor modification to simplify and improve the delivery of the existing CAP legislative provisions.

Financial Effects

20. The Cabinet Secretary for Rural Affairs Land Reform and Islands, Mairi Gougeon, has approved the BRIA for the 2023 Regulations.

Scottish Government
Agriculture and Rural Economy
Directorate October 2023

Policy Note

The Common Organisation of the Markets in Agricultural Products (Fruit and Vegetables) (Amendment) (Scotland) Regulations 2023

SSI 2023/311

Introduction

1. The above instrument (“the SSI”) is made by Scottish Ministers in exercise of the powers conferred by section 7 of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020(a) and all other powers enabling them to do so. The SSI is subject to negative procedure.

Purpose of the Instrument

2. The purpose of the SSI is to clarify the minimum duration of an Operational Programme that is available to a Producer Organisation within the Fruit and Vegetables Aid scheme.

Policy Objectives

3. The SSI will explicitly state that Operational Programmes for Scottish Producer Organisations (POs) in the fruit and vegetables sector can have a minimum duration of two years and a maximum duration of three years.
4. The SSI will enable the synchronisation of the cycles of Operational Programmes being submitted for approval this year with the cycles of other existing Scottish and UK POs with all current programmes having an end date of 31 December 2025.
5. The SSI will come into force on 15 December 2023, in line with the regulatory deadline for the Scottish Government to notify approval of proposed operational programmes commencing on 1 January 2024.

EU Alignment Consideration

6. The SSI makes only minor amendments to clarify the length of an operational programme which can be applied for under the Fruit and Vegetables Aid Scheme. The amendment is clarification and does not deviate from the EU programme rules.

Consultation

7. We have engaged with all existing Scottish POs in the Scheme, the RPA, and other UK Governments to ensure they are aware of the requirement for and purpose of the amendment. There has been no formal public consultation on the SSI given the nature and scale of the amendments.

Impact Assessments

8. This is a small simplification and clarification amendment, further impact assessments were not deemed necessary.

Financial Effects

9. There are no additional costs arising from this amendment.

Timing

10. The SSI comes into force on 15 December 2023.

Scottish Government
Agriculture and Rural Economy Directorate SASA, Agriculture Division
October 2023

Policy Note

The Animal Welfare and Food Safety International Professional Qualification Recognition Agreement Implementation) (Miscellaneous Amendment) (Scotland) Regulations 2023

SSI 2023/312

1. The above instrument was made in exercise of the powers conferred by sections 3 and 13(1) of the Professional Qualifications Act 2022, and sections 30(9) and 48(1)(b) of the Food Safety Act 1990. The instrument is subject to negative procedure.

The purpose of this instrument is to extend recognition of relevant professional qualifications in slaughter and food safety to those issued in EEA-EFTA states to comply with the UK-EEA EFTA Free Trade Agreement.

Policy Objectives

2. The proposed instrument amends the definition of “qualification certificate” in the Welfare of Animals at the Time of Killing (Scotland) Regulations 2012 (“the WATOK(S) Regulations”), to include a qualification recognised under Part 2 of the Recognition of Professional Qualifications and Implementation of International Recognition Agreements (Amendment) Regulations 2023 (“the Professional Qualifications Regulations 2023”) in relation to slaughter operations, and provides for a right of appeal against a decision by the competent authority not to recognise such a qualification. The proposed instrument also amends the Food Safety (Sampling and Qualifications) (Scotland) Regulations 2013 (“the Food Safety Regulations”), to include a qualification recognised under the Professional Qualifications Regulations 2023 in relation to food examination.
3. The Professional Qualifications Regulations 2023 implement the UK’s obligations arising from the Free Trade Agreement made between the UK and Iceland, Liechtenstein and Norway in London on 8 July 2021. The above amendments are necessary to ensure that Scottish legislation complies with the UK’s commitments under the Free Trade Agreement in respect of the mutual recognition of professional qualifications.

EU Alignment Consideration

4. The mutual recognition of professional qualifications was formerly within the competence of the EU, when the UK was a Member State. However, the EEA EFTA Free Trade Agreement was made subsequent to EU exit, and the proposed SSI is consequential to the UK’s obligations arising from the Free Trade Agreement. This SSI is therefore not directly relevant to the Scottish

Government's policy to maintain alignment with the EU.

Consultation

5. No consultation was required in relation to the amendment of the WATOK(S) Regulations. In respect of the amendment of the Food Safety Regulations, to comply with the requirements of To comply with the requirements of Article 9 of Regulation (EC) 178/2002, Food Standards Scotland invited comments on the proposed amendments from Public Analysts in Scotland from 29 August 2023 to 20 September 2023. No comments were received.

Impact Assessments

6. No Business and Regulatory Impact Assessment was conducted as the changes will impact only a very small number of individual workers from the countries specified in the UK-EEA EFTA Free Trade Agreement. No Data Protection Impact Assessment was conducted as no new data will be collected. Equality and Child Rights and Wellbeing Impact Assessments have been undertaken in line with current Scottish Government requirements. No issues were identified.

Financial Effects

7. The Minister for Energy and the Environment confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Agriculture & Rural Economy Directorate
October 2023