

Delegated Powers and Law Reform Committee
Tuesday, 14th January 2025
2nd Meeting, 2025 (Session 6)

Instrument Responses

Rural Support (Improvement) (Miscellaneous Amendment) (Scotland) Regulations 2025 (SSI 2025/Draft)

NB: the original instrument to which these questions relate was withdrawn by the Scottish Government on 9 January 2025. The instrument considered by the Committee at this meeting was re-laid on the same day to replace it.

On Thursday 19th December 2024, the Committee asked the Scottish Government:

1. Regulation 3 of the instrument modifies the Direct Payments Regulation (Regulation (EU) 1307/2013) to impose a new requirement on farmers who are entitled to a payment under the basic payment scheme. The new requirement, in new Article 43a, is to prepare plans and/or reports. There are five available types of plan/report, specified in new Annex IXa. The farmer must prepare at least two of the five. The plans/reports must be “in respect of the claim year to which the payment relates” (Article 43a(1)). “Claim year” for this purpose means “a period of 12 months beginning with 1 January” (Article 43a(4), with reference to Article 5A(6)). As required by sub-paragraph (1) of each of paragraphs 1 to 5 of new Annex IXa, the farmer is required to have prepared the plan/report either:
 - no later than one year before the claim year to which it relates (for an animal health and welfare plan or an integrated pest management plan, or
 - no later than five years before the claim year to which it relates (for a carbon plan, habitats report or soil report),

The first claim year to which this requirement could apply is claim year 2025 (January to December 2025), and the Policy Note and BRIA indicate that the policy intention is for the requirement to apply from and including claim year 2025. The instrument is due to come into force on 1 March 2025 (if approved by the Parliament).

It appears that, in order for a farmer to meet the new requirement in relation to claim year 2025, the farmer will have to have prepared these plans/reports by 1 January 2024 and 1 January 2019 respectively. This is before the instrument comes into force.

Does the instrument have retrospective effect in this regard? If so, is this intentional? If so, do the Scottish Ministers have the power to make this provision?

2. Regulation 4 of the instrument modifies Regulation (EU) 809/2014 to insert reference to these plans/reports in the information that a farmer/collective must provide in their application or claim. It modifies Articles 14(1) and 14a(1) so that this information must include, “where appropriate, a statement by the beneficiary specifying which plans or reports will be prepared for the purposes of Article 43a(1)” (emphasis added).
 - Should this be “have been prepared” given the requirement (above) to have done this one year/five years before the relevant claim year, or does this indicate a different policy intention?
 - Should the reference to “beneficiary” in new Article 14a(1)(ga) be to “collective”?
3. Regarding sub-paragraphs (9) and (10)(c) of the provision relating to the animal health and welfare plan (Annex IXa of the Direct Payments Regulation, paragraph 1, inserted by regulation 3(3)):
 - is the wording of sub-paragraph (9) sufficiently clear?
 - separately, would it be clearer to refer either to “a person who manages an animal” or the “manager” in sub-paragraphs (9) and (10)(c), but not to both?
4. Please advise whether any corrective action is proposed, and if so, what action and when.

On Wednesday 8th January 2025, the Scottish Government responded:

1. The policy intention is to ensure that farmers are able to use a plan or report prepared before a claim year, provided that it meets the requirements in the Regulations and that it is sufficiently up to date in relation to the claim year. It will also be possible for a plan to be prepared during the claim year.

The plans or reports in question should therefore have been prepared not more than one year or five years respectively before the start of the claim year that they relate to, for which see paragraphs 1(1), 2(1), 3(1), 4(1) and 5(1) of Annex IXa of Regulation (EU) 1307/2013 as introduced by regulation 3(3) of the draft Regulations.

In other words, the intention is that a plan or report may have been first prepared either in the one or five year period specified in Annex IXa of the Direct Payments, but not before such a period.

We now consider that the requirement in the draft Regulations that a plan or report ‘must have been prepared no later’ than one or five years before the claim year does not achieve the policy intention. We therefore intend to withdraw the instrument, and re-lay with provision that sets out that the plan or report must not have been prepared more than one or five years before the start of the claim year.

Given that farmers will not require to have prepared the plans/reports before the instrument comes into effect but may simply use existing plans/reports where appropriate, we do not consider that the measures are retrospective.

2. On the first bullet, the obligation is in effect to state which plans are selected for the claim year to which the SAF relates.

We agree that the reference to which plans/reports “will be prepared” risks implying that existing plans cannot be used. The amended draft will be revised to indicate that the statement should specify which plans or reports are selected for the claim year to which the SAF relates.

On the second bullet, an eligible person who wishes to claim a basic payment must do so through the SAF. However, the SAF is also be used for making other types of payment claim.

It follows that a claim by a collective may relate to more than one type of support, and even in respect of a particular type of support that not all the members of the collective are equally eligible.

We therefore think that it is appropriate to refer to the beneficiary in the context of a collective claim.

3. On the first bullet, we consider that the wording is sufficiently clear but note that there are two typographical errors with the word “make” and the first reference to ‘the manager’ and we will remove these words in the revised instrument.

On the second bullet, we note that in most cases one person is the keeper an animal, but that a number of persons other than the keeper may carry out management activities in respect of the animal. We think that it is clear that the plan relates to the activities of all such persons (see sub-paragraph 10(c)in that respect).

4. As noted above we propose to withdraw the instrument and lay an amended draft.