

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

# Agriculture (Retained EU Law and Data) (Scotland) Bill

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## Explanatory Notes

### Introduction

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Agriculture (Retained EU Law and Data) (Scotland) Bill, introduced in the Scottish Parliament on 6 November 2019.
2. The following other accompanying documents are published separately:
  - a Financial Memorandum (SP Bill 59–FM);
  - a Policy Memorandum (SP Bill 59–PM);
  - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 59–LC).
3. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

## Background

### **Common agricultural policy (cap)**

5. The description of the Common Agricultural Policy (“CAP”) that follows is to aid the understanding of the effect of Part 1 of this Bill, which makes provision in respect of European Union CAP legislation as it will have effect as retained EU law<sup>1</sup> following the UK’s withdrawal from the EU under the terms of the European Union (Withdrawal) Act 2018.<sup>2</sup>

6. The legal basis of the CAP is captured in Articles 38 to 44 of the Treaty on the Functioning of the European Union<sup>3</sup> (“the TFEU”). This meant that after the TFEU came into force, the agricultural policies of individual “Member States” were replaced by intervention mechanisms at a European Community level.

7. The CAP was launched in 1962 as a partnership between agriculture and society, and between Europe and its farmers. It is a common policy across all EU countries, and is managed and funded at European level from the resources of the EU budget.

8. The declared objectives of the CAP are as follows<sup>4</sup>:

- To support farmers and improve agricultural productivity, ensuring a stable supply of affordable food.
- To safeguard European Union farmers to make a reasonable living.
- To help tackle climate change and the sustainable management of natural resources.

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<sup>1</sup> See paragraphs 71 to 85 below.

<sup>2</sup> Exit day was originally scheduled for 29 March 2019, and has been changed three times following extensions agreed by the EU and the UK in the Article 50 withdrawal process.

<sup>3</sup> The consolidated version of the TFEU can be found here:

[https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC\\_2&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_2&format=PDF)

<sup>4</sup> [https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/cap-glance\\_en](https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/cap-glance_en)

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

- To maintain rural areas and landscapes across the EU.
- To keep the rural economy alive by promoting jobs in farming, agri-foods industries and associated sectors.

9. Within the UK, because agriculture is a devolved area of policy, decisions under the CAP which are at the discretion of the Member State are taken for Scotland by the Scottish Government.

10. The CAP is said to have two “Pillars”. Pillar 1 provides for direct payments, and also covers common market organisation (CMO). Pillar 2 is for Rural Development, and supports environmental outcomes, farming productivity, socio-economic outcomes and rural growth.

11. The CAP is broadly divided into four subject areas, each governed by one or two directly applicable EU regulations. These regulations are also known as the “basic acts”. There are five basic acts in the current CAP, two covering rural development, with the others covering direct payments, the CMO and the general financing, monitoring and management of all CAP payments, as set out below:

- Regulation 1305/2013<sup>5</sup> (“the Rural Development Regulation”): This Regulation establishes support for Rural Development by the European Agricultural Fund for Rural Development,
- Regulation 1303/2013<sup>6</sup> (“the common provisions Regulation”): This Regulation lays down common provisions on EU funds, and in particular on the European Agricultural Fund for Rural Development,

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<sup>5</sup> The EU law version can be found here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R1305>. The version that will become retained EU law on exit day will include ‘deficiency fixes’ made under the European Union (Withdrawal) Act 2018. The same is true for all the basic acts.

<sup>6</sup> The EU law version can be found here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R1303>.

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

- Regulation 1306/2013<sup>7</sup> (“the Horizontal Regulation”): This Regulation covers the financing, management and monitoring of the Common Agricultural Policy, and in particular it provides for cross-cutting measures that apply to all areas of the CAP,
- Regulation 1307/2013<sup>8</sup> (“the Direct Payments Regulation”): This Regulation establishes rules for Direct Payments to farmers under support schemes within the framework of the CAP, and
- Regulation 1308/2013<sup>9</sup> (“The Single CMO Regulation”): This Regulation establishes a common organisation of the markets in agricultural products (“CMO”).

12. In addition, Regulation 1370/2013 provides for measures in respect of, and rules on, aid and refunds and similar matters as regards agricultural products and the CMO.

13. There is a body of EU subordinate legislation in the shape of delegated and implementing acts made under powers in the basic acts, which set out further detailed provisions in relation to the CAP.

14. There is also a body of national implementing legislation, including Scottish statutory instruments made by the Scottish Ministers as regards devolved matters in Scotland.

## Pillar 1

### Direct payments

15. Direct payments are a form of income support and are aimed at helping to protect a farmer or crofter’s income from market volatility. The payments are decoupled from production and are based on the area

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<sup>7</sup> The EU law version can be found here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013R1306>.

<sup>8</sup> The EU law version can be found here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013R1307>.

<sup>9</sup> The EU law version can be found here: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013R1308>.

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

(number of hectares) farmed and accompanying payment “entitlements”. Direct payments are not means tested.

16. Direct payments are a set of schemes run by the Member State administrations which deliver annual payments to farmers in return for compliance with certain conditions. Some of these schemes are mandatory, while others are run at the discretion of the Member State. Within the EU framework of rules for direct payments, there is a degree of discretion for Member States, for example on eligibility conditions, calculation of payments, and scheme conditions.

17. Member States have the option to apply direct payment schemes on a regionalised basis, which the UK has done in order to reflect devolution; thus, Scotland has a set of direct payment schemes which are different from those in the rest of the UK, albeit they naturally share some common features because they are all based on the EU framework.

18. In Scotland the following direct payment schemes apply:

- The “Basic Payment Scheme” (BPS), which is the main direct payment scheme. It is an area-based scheme with payments calculated according to the area of land claimed upon, and acts as a safety net for farmers and crofters by providing a basic level of income support.
- The “Greening” payment, which provides a top-up payment in return for carrying out agricultural practices beneficial for the climate and the environment.
- The Young Farmer Scheme, which provides a top-up payment to young farmers under 40 years of age.
- Voluntary Coupled Support (VCS), which includes the “Scottish Suckler Beef Support Scheme” (SSBSS) and the “Scottish Upland Sheep Support Scheme” (SUSSS). These schemes provide a payment linked to farm production to maintain livestock numbers.

19. In order to be eligible to receive a direct payment, farmers, crofters and land managers must submit an application form every year and meet

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

the BPS eligibility criteria and, where relevant, the additional conditions for the greening payment, the Young Farmer Scheme and the VCS schemes.

20. Eligible farmers, crofters and land managers must comply with greening practices and rules concerning food safety, animal health, plant health, the environment, the protection of water resources, animal welfare and the condition in which farmland is maintained; this is referred to as “cross compliance”. Failure to meet cross compliance requirements could result in a reduction of payments or, in extreme cases, no payments.

21. Payments are calculated in accordance with a range of additional factors including the payment region, greening payment rates, young farmer payment and the VCS schemes. There are three payment regions in Scotland:

- Payment Region 1, which includes better quality agricultural land that has been used for arable cropping, temporary grass and permanent grass,
- Payment Region 2, which includes higher quality rough grazing in a Less Favoured Area (“LFA”), and
- Payment Region 3, which includes lower quality rough grazing in a LFA.

## **Eligibility for BPS**

22. Regulation 1307/2013 includes several conditions that farmers and crofters have to meet each year in order to be eligible to receive payments; these include being an “active farmer”, having eligible land and payment entitlements. Farmers can apply every year.

## **The Young Farmers’ scheme**

23. The Young Farmer scheme is designed to encourage generational renewal and attract new entrants to the industry. Under the scheme, young farmers, who must also be newcomers to the industry or have set up their farms in the previous five years, can apply for an extra payment on top of their BPS payment for the first five years of their business.

24. It is mandatory for Member States to apply this scheme and to use up to 2% of their national budget allocation to fund the payments.

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

25. In Scotland, the young farmer payment is worth up to 25% of the average value of the payment entitlements held by the young farmers, multiplied by the number of entitlements they use to claim BPS (up to a maximum of 90). The exact percentage, however, will depend on how many farmers apply each year.

## **Greening**

26. Greening was introduced from 2015 as part of the 2013 CAP reforms to improve the environmental performance of farming. A new Greening payment “for agricultural practices beneficial for the climate and environment” was introduced, and is paid on top of the BPS payment.

27. It is mandatory for applicants to the BPS to comply with the Greening requirements, which covers permanent grassland, crop diversification and ecological focus areas (where relevant on their land) in order to receive the Greening payment.

28. It is also a mandatory requirement for Member States to allocate 30% of their direct payment budget to the Greening payment.

## **Voluntary coupled support (vcs)**

29. Under the CAP, the link between the receipt of income support payments and the production of specific products has been progressively removed (‘decoupled’). This is to avoid overproduction of certain products and to make sure that farmers are responding to genuine market demand.

30. In some situations, however, targeted aid to a specific agricultural sector or sub-sector may be needed as it is undergoing economic difficulties. The VCS scheme aims to prevent the escalation of these difficulties, which could cause abandonment of production with a knock-on effect on other parts of the supply chain or associated markets.

31. The Direct Payments Regulation allows Member States to continue to link (couple) a limited amount of income support payments to certain sectors or products, subject to various conditions and strict limits to mitigate the risk of market distortion. This support scheme is known as Voluntary Coupled Support.

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

32. The sectors that are potentially eligible for VCS are cereals, oilseeds, protein crops, grain legumes, flax, hemp, rice, nuts, starch potato, milk and milk products, seeds, sheepmeat and goatmeat, beef and veal, olive oil, silkworms, dried fodder, hops, sugar beet, cane and chicory, fruit and vegetables and short rotation coppice.

33. In Scotland, the two VCS schemes designed to try and address declining livestock numbers are the:

- Scottish Suckler Beef Support Scheme (SSBSS), and
- Scottish Upland Sheep Support Scheme (SUSSS).

34. The SSBSS provides additional support, on top of the BPS, to specialist beef producers. Payments are made based on the numbers of eligible animals declared. Eligible animals are male and female calves, with at least 75% beef genetics, born on a Scottish holding and kept there for at least 30 days.

35. The SUSSS provides additional support, on top of the BPS, to help sheep producers farming in Scotland's rough grazing areas maintain their sheep flocks. Payments are made based on the numbers of eligible animals declared. Eligible animals are ewe hoggs (female sheep) born on Scottish holdings with poor quality rough grazing. The ewe hoggs must be less than 12 months old at the start of a retention period.<sup>10</sup> Payments will be made up to a maximum of one ewe hogg per four hectares of land claimed.

36. For that purpose, a holding qualifies as being in a rough grazing area if:

- 80% or more of the agricultural land is in basic payment region three, and
- no more than 200 hectares is good quality agricultural land in basic payment region one.

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<sup>10</sup> A retention period is where claimed animals must be retained on the holding from 1 December in the year of the claim to 31 March the following year.

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

## **Payments and reductions**

37. Direct payments are made annually, with the payment window opening in December. The amount to be paid to a farmer or crofter depends upon a number of factors including the number of payment entitlements and eligible hectares, the payment region, the greening payment rate, whether that farmer is a young farmer, and whether that farmer is eligible for a VCS payment.

38. There is a mandatory requirement in Article 11 of the Direct Payments Regulation, that where a BPS payment to be granted to a farmer for a given calendar year exceeds €150,000, the sum in excess of that amount must be reduced by 5%. In addition, Scotland applied a cap, or upper limit, of €600,000 on all BPS payments.

## **Cross compliance rules, inspections and penalties**

39. Cross-compliance is described in paragraph 20 above.

40. Cross-compliance rules are as set out in Articles 91 to 95 of, and Annex II to, the Horizontal Regulation and comprise the:

- statutory management requirements, and
- good agricultural and environment conditions.

41. There are also national implementing rules in the Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014/325.

42. The Scottish Government's Rural Payments and Inspections Division (SGRPID) carries out inspections in Scotland to verify that all cross-compliance requirements are being met. Failure to meet these requirements will lead to financial penalties being applied to the payments.

43. Under existing CAP rules, there is no ability to waive penalties unless there is an event outside the farmer's control. This is known as force majeure or exceptional circumstances and if this applies, the penalty can be waived. However, as an example, during the Foot and Mouth Disease outbreak in 2007, while inspections were suspended, where breaches of regulations were identified penalties were still applied.

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

44. A false declaration, whether that be made deliberately or recklessly, may lead to criminal prosecution.

### **Common organisation of markets (CMO)**

45. The common organisation of agricultural markets, known as the CMO, is an integral element of the CAP.<sup>11</sup> It is part of Pillar 1, as more fully described in the Policy Memorandum.

46. The basic act is the CMO Regulation.<sup>12</sup> It is a complex piece of legislation containing 232 Articles and 14 Annexes supplemented by a number of delegated and implementing acts. The European Commission describes the CMO Regulation as follows:

“The main purpose of the new CMO Regulation, is to provide a safety net to agricultural markets through the use of market support tools, exceptional measures and aid schemes for certain sectors (in particular fruit and vegetables and wine), as well as to encourage producer cooperation through producer organisations and specific rules on competition, and to lay down marketing standards for certain products.”<sup>13</sup>

47. The CMO has an internal aspect covering market intervention and rules on marketing standards and producer organisations, and an external one covering trade with third countries (for example import and export certificates, import duties, administration of tariff quotas, export refunds). The CMO deals with the competition rules applicable to businesses, rules on State Aid for agriculture, and the reserve fund for crises in the agricultural sector.

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<sup>11</sup> Prior to 2007, there were 21 separate common market organisations covering different markets and making different rules. These have now been brought together but the CMO acronym remains in use.

<sup>12</sup> See the footnotes to paragraph 11 for links to the EU law versions of the CAP basic acts, including the CMO Regulation.

<sup>13</sup> [https://eur-lex.europa.eu/summary/glossary/common\\_agricultural\\_markets.html](https://eur-lex.europa.eu/summary/glossary/common_agricultural_markets.html)

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

48. For the purposes of understanding the provisions of this Bill, the key parts of the CMO Regulation (and relevant delegated and implementing regulations) are:

### **Market disturbance**

49. Articles 219 to 222 of the CMO Regulation provide for market disturbance. Generally, market disturbance describes periods when prices are either fluctuating or rapidly increasing or decreasing. There can be various causes of market disturbance. For example, a fall in demand due to animal disease risks or a sudden increase in supply due to a major export market refusing to accept certain goods.

### **Market intervention**

50. Articles 8 to 21 of the CMO Regulation provide for market intervention in the form of public intervention and private storage aid. There are also a number of delegated and implementing acts which sit beneath these Articles. These provisions aim to reduce supply when prices are low and increase supply when prices rise. They are, therefore, closely linked to the market disturbance provisions. These measures are used far less than in previous decades, but have been used to deal with market disturbance such as the closure of Russian markets to pigmeat in 2014 which led the European Union to provide private storage aid in 2015.<sup>14</sup> The only current use of these interventions in the UK is in relation to skimmed milk powder.

51. As a general description, through public intervention the Member State (or States) will purchase and store the products directly until such time as they can be disposed of. The granting of aid for private storage is a form of financial assistance paid by the Commission to private operators so that they will store produce rather than sell it on the market until such time as the price rises.

### **Aid in the fruit and vegetable sector**

52. Articles 32 to 38 of the CMO Regulation allow Member States to provide financial aid to the fruit and vegetable sector, known as the Fruit

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<sup>14</sup> [https://ec.europa.eu/agriculture/newsroom/193\\_en](https://ec.europa.eu/agriculture/newsroom/193_en)

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

and Vegetable Scheme. Under this scheme, aid can be granted to producer organisations in these sectors.

53. The granting of the aid is subject to conditions contained in these Articles. In order to qualify, the producer organisation must implement a structured plan called an operational programme. The aim of an operational programme is to improve the producer organisation's performance and skills in marketing, product quality and environmental considerations.

### **Marketing standards and carcass classification**

54. Marketing Standards in the CMO are a body of detailed rules which govern the quality of agricultural products and ensure that certain information is provided to consumers. Carcass classification is a process which takes place in a slaughterhouse, and is used to calculate payments due to the producer from the slaughterhouse and also to support the market intervention powers.

55. In the CMO Regulation, the provisions on marketing standards are contained in Articles 73 to 91. These provisions are a mix of obligatory and discretionary rules. The rules do not apply to all products but only to the sectors and products listed in Article 75, which also lays down the standards which can be established for those products. Examples include technical designations and sales descriptions, criteria for appearance, and specific substances used in production. Where marketing standards apply to a product, Article 73 states that they "may only be marketed in the European Union if they conform to those standards". Other provisions of the CMO Regulation provide detailed rules for the setting of marketing standards, including for specific products. The marketing standards themselves are set out in product specific implementing or delegated regulations, and there is a regime of domestic implementing legislation.

56. Provision on carcass classification is contained in Article 10<sup>15</sup> which defines the Union scales for classification of carcasses. These scales are mandatory for beef, veal and pigmeat and at the discretion of the Member States for goatmeat and sheepmeat (and are not currently applied in the

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<sup>15</sup> <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32013R1308>

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

UK). The Union scales provide a classification for the meat derived from a carcass, and therefore is a gauge for the price that the farmer receives.

## **The EU Food Promotion Scheme**

57. The EU Food Promotion Scheme is established by EU Regulation 1144/2014, and provides funding for information provision and promotion measures to increase the competitiveness and consumption of EU products.

## **Pillar 2**

### **Rural development**

58. Pillar 2 of the CAP is the financial support provided through the European Agricultural Fund for Rural Development (“the EAFRD”) to promote sustainable rural development throughout the EU.

59. The EAFRD operates through programmes prepared by Member States and adopted by the Commission. Member States submit either a single rural development programme, or a set of regional rural development programmes, for each seven-year programming period.

60. The majority of Pillar 2 expenditure is on environmental schemes which bring public benefit and that the market would not always consider, for example environmental land management through agri-environment and forestry schemes.

61. As with direct payments, the Rural Development Regulation may be regionalised, and has been in the UK in line with devolution. The UK therefore submits four rural development programmes under Article 11 of the Rural Development Regulation,<sup>16</sup> one for each country in the UK. The

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<sup>16</sup> See <http://www.legislation.gov.uk/eur/2013/1305/article/11> for the EU law version.

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

current Scottish programme is the “Scottish Rural Development Programme” (SRDP) 2014 – 2020.<sup>17</sup>

62. The SRDP sets out the measures, in line with Articles in the Rural Development Regulation, under which financial support is provided. The support is generally made available in the form of a non-refundable grant, although Member States have the option to use financial instruments and loans.

63. Funding is generally grouped together in “schemes”, and the SRDP includes the following:

- Less Favoured Area Support Scheme (LFASS), providing support to farming businesses in remote and constrained rural areas,
- Forestry Grant Scheme, providing a range of grants for woodland creation, agro-forestry, tree health, woodland improvement, processing and marketing and sustainable management of forests,
- Agri-Environment Climate Scheme (including support for organics and footpaths), which provides targeted support for land managers to undertake management and capital work for environmental purposes,
- Beef Efficiency Scheme, to deliver economic and environmental improvements in the beef sector,
- New Entrants, which provides start-up grants for new entrant young farmers of up to 40 years old, and capital funding for new entrants regardless of age to improve their business,
- Crofting Agricultural Grant Scheme, which provides grants to improve crofts in order to help to sustain crofting business,
- Small Farms Grant Scheme, which provides targeted support for small farms that face similar issues to crofters regarding sustainability,

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<sup>17</sup> More information can be found at <https://www.gov.scot/policies/agriculture-payments/scottish-rural-development-programme-srdp/>.

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

- Food Processing, Marketing and Co-operation, which supports small and medium sized enterprises in the food and drink sector with start-up grants for new enterprises, and business development grants,
- LEADER,<sup>18</sup> which provides opportunities for individuals, businesses and communities to come together and support rural development and provide long lasting benefits to the local area (and includes support for non-agricultural small businesses including farm diversification),
- Knowledge Transfer and Innovation Fund (KTIF), which supports the sharing of innovative ways of improving working practices along with continuing support for Monitor Farms,
- Farm Advisory Service, which provides advice and assistance to farmers, crofters and other land managers,
- Broadband, which provides support for broadband provision in rural areas, and
- Scottish Rural Network, which supports and promotes rural development through the sharing of ideas and best practice.

64. Financial support provided through each programme is intended to contribute to meeting the EU's priorities for Rural Development, which include objectives such as restoring, preserving and enhancing ecosystems related to agriculture and forestry.

65. The money for the support comes from both Europe through the EAFRD, and the Member States. Financial support must comply with the rules on state aid, except where a particular exemption operates for agricultural activities provided through the programme.

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<sup>18</sup> The acronym is French in origin i.e. liaison entre actions de développement rural. This translates as 'links between actions of rural development', as set out in this basic guide from the European Commission: [https://ec.europa.eu/agriculture/sites/agriculture/files/publi/fact/leader/2006\\_en.pdf](https://ec.europa.eu/agriculture/sites/agriculture/files/publi/fact/leader/2006_en.pdf).

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

## **Financing of the CAP**

66. For many years, the CAP was financed from a single fund, the European Agricultural Guidance and Guarantee Fund (EAGGF). On 1 January 2007, the EAGGF was replaced by two funds which form part of the EU's general budget: the European Agricultural Guarantee Fund ("the EAGF") which finances measures under Pillar 1; and the European Agricultural Fund for Rural Development (EAFRD) which finances measures under Pillar 2.

67. The legal basis for the setting up of the funds is Article 40(3) of the TFEU.

68. The Financial Memorandum for this Bill explains how the CAP is funded in Scotland.

## **CAP reforms**

69. The CAP has undergone five major reforms in recent decades, the most recent dating from 2013 when the legal framework was set for the current CAP in respect of the period 2014-2020.

70. On 1 June 2018, the European Commission presented legislative proposals for the CAP beyond 2020.<sup>19</sup> These proposals aim to make the CAP more responsive to current and future challenges such as climate change or generational renewal, while continuing to support European farmers for a sustainable and competitive agricultural sector. These proposals are still subject to agreement by the Member States.

## **Exiting the European Union**

71. EU law has effect in Scotland by virtue of the European Communities Act 1972 (the "1972 Act"). The European Union (Withdrawal) Act 2018 ("EUWA") repeals the 1972 Act with effect from exit day. In so doing, it removes the constitutional basis for EU law having effect in the United Kingdom.

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<sup>19</sup> [https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/future-cap\\_en](https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/future-cap_en)

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

72. The basis in international law for EU law having effect in the UK will simultaneously have been extinguished by the operation of Article 50 of the Treaty on European Union.

73. EUWA also provides for the retention of most of that law, as it stands on exit day, by converting it into a new body of domestic law. The effect is to adopt a rulebook and set of institutional arrangements that is – at least at first – close to that which currently exists under EU law.

74. This new body of domestic law is called “retained EU law”, and rolls the former EU law into national law under three distinct provisions:

- section 2 of EUWA preserves EU-derived domestic legislation. This typically concerns the subordinate legislation made (usually but not always under the 1972 Act) or any primary legislation passed in order to implement one or more EU directives,
- section 3 EUWA preserves direct EU legislation. This is defined as all EU regulations, decisions or tertiary legislation and certain parts of the EEA Agreement,<sup>20</sup> and
- section 4 EUWA preserves any directly effective residual rights, powers, liabilities, obligations, restrictions, remedies and procedures in EU law, subject to several specified exceptions.

75. The effect is that the UK is also retaining:

- most general principles of EU law as they existed on exit day,
- most rights and obligations that currently exist in domestic law because of section 2(1) of the 1972 Act as they existed on exit day, and
- relevant case law of the Court of Justice of the European Union issued before exit day (though the UK Supreme Court and High Court of Justiciary need no longer follow it).

76. The UK is not, however, retaining the Charter of Fundamental Rights of the European Union, EU directives themselves, the principle of

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<sup>20</sup> See <https://www.efta.int/eea/eea-agreement>.

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

the supremacy of EU law, or the Francovich principle of state liability (in relation to post-exit facts).

77. The EUWA also provides a scheme that determines the constitutional status of these elements of former EU law. Whereas previously the principle of supremacy of EU law would have given all EU law priority over any domestic law or legislation, the same is not true for retained EU law.

78. EU law retained under section 2 of the EUWA already has a domestic status, as it is either in an act of the UK or Scottish parliaments or in subordinate legislation (mainly but not exclusively made under the 1972 Act).

79. EU law retained under sections 3 and 4 of the EUWA however, is neither primary nor secondary legislation. It is instead a new category of domestic law subject to bespoke rules determining how it may be modified. Section 7 of and schedule 8 to the EUWA sets out those rules.

80. The status of retained EU law not falling into existing domestic categories is defined by section 7 of the EUWA. It subdivides retained direct EU legislation into two categories:

- retained direct “principal” EU legislation, and
- retained direct “minor” EU legislation.

81. These two categories do not directly correspond to “primary” and “secondary” legislation, which are the normal distinctions drawn in domestic law. Instead, the EUWA sets out the rules that govern how those two categories of law can be modified or repealed, and by what type of conventional domestic legal instrument.

82. The key difference between “minor” and “principal” retained direct EU legislation is that minor legislation can be modified by secondary legislation, but principal legislation must be modified by primary legislation unless and to the extent that the provisions under which any secondary legislation is made provide otherwise.

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

83. The CAP Regulations as defined in section 1 of the Bill are principal EU legislation, and it follows that the express powers in Part 1 of the Bill are required in order to enable the Scottish Ministers to modify those Regulations after exit.

84. EU law applies in all the Member States, and so confers duties and powers on the European Commission including, for example, the power to make EU implementing and delegated legislation. It follows that retained EU law needs to be modified to correct any provisions which would cease to operate, or not be appropriate, outside of the EU. These changes (known as ‘deficiency fixes’) have effect from exit day in measures made by and under the EUWA.

85. The CAP rules as they form part of retained EU law from exit day will therefore have effect subject to those deficiencies fixes, which include for example powers for the Scottish Ministers to make subordinate legislation on matter formerly delegated to the Commission.

## Overview of the Bill

86. The Bill provides powers for the Scottish Ministers to modify the effect of retained EU law relating to the CAP, and to collect and process agricultural data. A more detailed explanation of the Bill’s purpose can be found in the Policy Memorandum.

87. The Bill contains 24 sections, in 3 Parts.

### **Part 1 – Retained EU law**

88. Part 1 provides the Scottish Ministers with powers to modify CAP legislation, which it defines for that purpose. It enables the Scottish Ministers—

- to simplify and improve the legislation,
- to extend the operation of the CAP legislation beyond 2020,
- to modify financial provision in the legislation, and to modify the CMO Regulations for specified purposes,

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

- to modify CAP legislation in respect of public intervention and private storage aid, and aid for fruit and vegetable producer organisations, and
- to revoke the EU Food Promotion Scheme.

89. Part 1 also provides powers for the Scottish Ministers to regulate marketing standards in the agriculture sector, and the classification, identification and presentation of carcasses by slaughterhouses.

90. Part 1 also provides for consequential modifications of the CMO Regulation.

## **Part 2 – Collection and processing of data**

91. Part 2 provides the legal powers for the Scottish Ministers to be able to collect information from persons in or closely connected with an ‘agri-food supply chain’, and from those carrying out an ‘agricultural activity’ (both terms as defined in this Part). Although the powers in respect of agri-food supply chains and agricultural activities are related, i.e. they both relate to agricultural production, they are distinct. An agri-food supply chain captures every stage of production where agricultural products are intended for human consumption as food or drink. The farmer who grows the crop, the miller who grinds the flour, the baker who bakes the dough and the shopkeeper who sells the bread will all be part of the same agri-food supply chain. On the other hand, a person involved in the production of agricultural products will be carrying on an agricultural activity regardless of whether or not those products are destined for human consumption as food or drink. However, the definition of agricultural activity (which applies the definition used in the Basic Payment Regulation) doesn’t extend to onward supply chains. Of course, a person may be both part of an agri-food supply chain and carrying out an agricultural activity and so the Bill explicitly provides that, in those circumstances, only the agri-food supply chain provision will apply to such a person.

92. The data collection powers in relation to both agri-food supply chains and agricultural activities are twofold. Firstly, a direct power for the Scottish Ministers to compel applicable persons to supply data and, secondly, a regulation-making power. The direct power allows the Scottish Ministers to compel known persons to provide data. For example,

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

businesses that the Scottish Government can use business records to contact directly. The regulation-making power may be used to make regulations which compel the provision of data from defined categories of persons where the particular individuals or businesses who fall into that category are unknown. For example, any person who is part of a co-operative that runs a community abattoir.

93. It also provides for the purpose for which such information may be required and processed (including limitations on processing), and for a power for the Scottish Ministers to make regulations providing for the enforcement of information requirements.

### **Part 3 – General**

94. Part 3 provides for supplementary and ancillary powers, for commencement, and for the short title.

## **Commentary on sections**

### **Part 1 – Retained EU law**

#### **Section 1 – Defined terms**

95. This section provides defined terms for the purposes of Part 1.

96. It defines the “main CAP legislation” as being:

- the Direct Payments Regulation, the Rural Development Regulation, the Horizontal Regulation, and the Common Provisions Regulation (so far as relating to the operation of the Rural Development Regulation) each of which are further defined in the section,
- delegated or implementing regulations made by the EU in respect of those Regulations, and
- subordinate legislation made in the UK, implementing or otherwise relating to those Regulations.

97. It also defines the “CMO Regulation”, which forms part of the CAP, but is not included in the main CAP legislation for the purposes of the Bill. All references in the Bill to EU regulations are to be read as references to

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

the regulations as incorporated into domestic law (i.e. as part of “retained EU law”) by virtue of section 3 of the European Union (Withdrawal) Act 2018 – see section 22(1) of the Bill.

98. It also provides for “modify” to include amend, revoke and repeal, and states that any related expressions are to be interpreted accordingly. This in particular covers revocation in relation to subordinate instruments.

## **Section 2 – Power to simplify or improve CAP legislation**

99. This section provides for the Scottish Ministers to be able, by regulations subject to the negative procedure, to modify the main CAP legislation, but only if they consider that the modification would simplify or improve the operation of the legislation.

100. An example of the type of simplification or improvement that could be made using this power involves the CAP Pillar 2 support for less favoured areas (LFA). Under EU CAP legislation the options currently open to the Scottish Government are to continue with the “Less Favoured Area Support Scheme” (LFASS) but with a much reduced payment available to farmers in 2020, and then move to a replacement “Areas of Natural Constraint” (ANC) scheme from 2021. This power in the Bill would provide an additional option as it would enable the Scottish Ministers to modify the retained CAP legislation to ensure that support can continue for farmers whose land is designated as being in an LFA under the current CAP, and who receive payments under LFASS. This will allow any changes to support for constrained areas to be considered as part of the future overall income support package for farmers and crofters.

## **Section 3 – Power to provide for the operation of CAP legislation beyond 2020**

101. This section provides for the Scottish Ministers to be able, by regulations subject to the affirmative procedure, to modify the main CAP legislation in order to ensure that the provisions of the CAP legislation can continue to operate in Scotland for one or more years beyond 2020.

102. Subsections (2) and (3) provide that the power extends to determining for any year a national ceiling as referred to in Article 6 of the

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

Direct Payments Regulation.<sup>21</sup> This ceiling sets a limit on the amount that can be paid out as direct payments.

103. The national ceiling for each Member State is as specified in Annex II to that Regulation, and that ceiling will become part of retained EU law after exit (but see paragraph 105 below). Article 6 will also be modified at exit so that it can be adapted by regulations made by the Secretary of State with the consent of each of the relevant authorities for Wales, Scotland and Northern Ireland. The Scottish Ministers are the relevant authority for Scotland.

104. Subsection (3)(b) allows the Scottish Ministers to confer functions on any person in the making of such a determination for any year.

105. As set out above, the current CAP framework provides for the period 2014 to 2020. The power will therefore enable the Scottish Ministers to modify the main CAP legislation for the purpose of ensuring that it will operate after 2020. For example, there is currently no ceiling for direct payments in respect of any year after 2020. The power can be used to specify a new ceiling or ceilings for the purposes of Article 6 of the Direct Payments Regulation so ensuring that direct payments can be made from 2021 onwards.

106. A separate power is required as provision extending the operation of the main CAP legislation may require to do more than just simplify or improve the operation of that legislation (for which see section 2).

## **Section 4 – Power to modify financial provision in CAP legislation**

107. This section provides for the Scottish Ministers to be able, by regulations subject to the affirmative procedure, to modify any provision of the main CAP legislation relating to the setting or determining of ceilings on the amounts of any payments or expenditure for any purpose under the legislation, or to the reallocation or transfer of amounts or proportions of such ceilings between or among different purposes under the legislation. Subsection (2) lists some of the provisions that may be modified under this

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<sup>21</sup> See <http://www.legislation.gov.uk/eur/2013/1307/article/6> for the EU law version of that Article.

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

power. A modification may have effect at any time, including in the period before 2021 (for which see section 3).

108. Provision that might be made under this power will include reducing the sum available to be spent under a particular ceiling (also known as “capping”), or provision giving effect to flexibility between the CAP Pillars (also known as “Pillar to Pillar Transfer”). It might also include changing the ceiling on the total amount of a rural development programme that may be devoted to technical assistance, currently set at 4% by Article 51 of the Rural Development Regulation.

109. A modification of a “financial” provision will often be a simplification or improvement of the main CAP legislation (for which see section 2), but this power will be available when that does not apply as might for example be the case when capping a ceiling.

## **Section 5 – Power to modify CAP legislation on public intervention and private storage aid**

110. This section provides for the Scottish Ministers to be able, by regulations subject to the negative procedure, to modify the CAP legislation governing public intervention and private storage aid,<sup>22</sup> as specified in subsection (3).

111. The power in section 5 of the Bill allows these measures to be disapplied temporarily or permanently, or to be otherwise simplified and improved.

## **Section 6 – Power to simplify or improve CAP legislation on aid for fruit and vegetable producer organisations**

112. This section provides for the Scottish Ministers to be able, by regulations subject to the negative procedure, to modify the CAP legislation

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<sup>22</sup> See paragraph 45 of the Policy Memorandum for information about market intervention under the CMO, “private storage aid” is the purchase of product by public authorities and its removal from the market (“intervention purchasing”), or by paying private companies to store product rather than placing it immediately on the market.

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

governing aid for fruit and vegetable producer organisations, as specified in subsection (3).

113. Subsection (2), provides that the power in subsection (1) may only be used to make such modifications which the Scottish Ministers consider would simplify or improve the operation of provisions of that legislation.

## **Section 7 – Power to revoke the EU Food Promotion Scheme**

114. This section provides for the Scottish Ministers to be able, by regulations subject to the negative procedure, to modify the CAP legislation establishing the EU Food Promotion Scheme<sup>23</sup> as specified in subsection (2), for the purpose of ensuring that it ceases to have effect in Scotland.

115. The Scheme aims to promote food from the EU, both within the EU and internationally. It combines programmes operating within single Member States and multi-national programmes. Quality Meat Scotland (QMS) received €1.2 million in the period 2015 to 2017 for a campaign to enhance knowledge of protected geographical indication symbols, and to stimulate demand for Scotch beef and Scotch lamb in northern Europe. There is however no significant ongoing benefit for Scotland, such that Ministers may consider it appropriate to revoke the Scheme.

## **Section 8 – Marketing standards**

116. This section provides the Scottish Ministers with a power to make provision by regulations subject to the negative procedure about standards to which products that fall within an agricultural sector listed in section 9(1) must conform when marketed in Scotland. The powers to establish marketing standards which are contained in the CMO regulation will cease to have effect and this power will become the sole legal basis for doing so (please see section 11 below).

117. Subsection (2) provides that regulations made under this section may in particular include provision about the matters specified in this subsection. These matters are a non-exclusive list of the types of standards to which the products may be subject. The list mirrors the types of marketing standards which may be established in EU law under the

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<sup>23</sup> See paragraph 49 of the Policy Memorandum.

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

CMO Regulation. These matters may affect how products are marketed to consumers, for example how they are described at the point of sale, or may impose requirements during production, for example the type of production method used or the use of specific substances in production.

118. Subsection (3) provides that regulations made under this section may provide for enforcement. It includes a non-exhaustive list of the forms that enforcement may take. These include powers of entry and inspection and also the power to restrict the movement of goods. Regulations made under this subsection may also impose monetary penalties and create offences.

119. Subsection (5) has the effect that the Scottish Ministers must consult such persons as they consider representative of the interests of persons likely to be affected before making any regulations under this section.

## **Section 9 – Marketing standards: agricultural sectors**

120. This section lists the agricultural sectors in respect of which the Scottish Ministers are able to make regulations under section 8. These sectors mirror the sectors which may be subject to marketing standards in EU law under the CMO Regulation.

121. Subsection (2) provides for the Scottish Ministers to be able, by regulations subject to the negative procedure, to amend the list of sectors in subsection (1) by adding or removing sectors, or specifying products that fall within each sector, or by giving further details on the sectors.

## **Section 10 – Carcass classification**

122. This section provides for the Scottish Ministers to be able, by regulations subject to the negative procedure, to provide for the classification, identification and presentation of bovine, pig and sheep carcasses by slaughterhouses in Scotland.

123. Subsection (2) provides that regulations made under this section may provide for enforcement of the provisions of the regulations, including in particular in respect of the matters specified in this subsection (which includes the creation of offences and the imposition of monetary penalties).

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

124. Subsection (4) has the effect that the Scottish Ministers must consult such persons as they consider representative of the interests of persons likely to be affected before making any regulations under this section.

## **Section 11 – Marketing standards and carcass classification: consequential amendments and savings**

125. This section gives effect to the schedule which makes modifications to the CMO Regulation providing for the effect of any regulations made under sections 8 and 10, and includes a saving provision in connection with those modifications. The CMO Regulation in retained EU law contains provisions about the establishment of marketing standards subject to certain limitations. Going forward, the legal basis for establishing marketing standards in Scotland will be by regulations made under section 8 of this Bill. As a result, these provisions will be superfluous and should cease to have effect. This will avoid a position of there being concurrent powers to establish marketing standards.

## **Part 2 – Collection and processing of data**

### **Section 12 – Defined terms**

126. Subsection (2) defines “agricultural activity” to have the same meaning as in Article 4(1)(c) of the Direct Payments Regulation.<sup>24</sup> However, this is subject to subsection (10) which enables the Scottish Ministers to amend this definition by regulations subject to the affirmative procedure.

127. Subsection (3) defines “animal” as meaning a vertebrate (other than a human) or invertebrate but does not include fish.

128. Subsection (4) defines an “agri-food supply chain” as a supply chain for providing individuals with items of food or drink. It further provides that the products in such a supply chain must have been produced using anything grown, or any animal kept, for agriculture or any animal taken from the wild.

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<sup>24</sup> Regulation (EU) No 1307/2013

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

129. Subsection (5) defines the persons who are in an agri-food supply chain. These are the persons who originally farmed (or took from the wild) the raw agricultural products, the persons who finally consume the products, and every person in between.

130. Subsection (6) defines the persons who are “closely connected” with an agri-food supply chain. These are persons who provide goods as specified, persons who provide services relating to animal or plant health or the safety or quality of food and drink, persons carrying on activities capable of affecting such health, safety or quality, and representative bodies.

131. Subsection (7) provides that persons carrying out activities capable of affecting such health, safety or quality as is mentioned in subsection (6)(b), are to be treated as connected with the supply chain for the purposes of section 13(1) and (2), but does not limit the generality of what is meant by “connected” to the supply chain.

132. Subsection (8) defines “processing” by reference to an operation performed on information, and sets out a non-exhaustive list of the types of such operations.

133. Subsection (9) provides definitions for agriculture, plants, and seeds in relation to this section of the Bill.

134. Subsection (10) provides that the Scottish Ministers may, by regulations subject to the affirmative procedure, amend the definition of “agricultural activity”.

### **Section 13 – Agri-food supply chains: requirement to provide information**

135. This section provides the Scottish Ministers with a power to require, in writing, any person in or closely connected with an agri-food supply chain to provide information about their activities connected with the supply chain.

136. Subsection (2) provides for the Scottish Ministers to be able, by regulations subject to the affirmative procedure, to impose requirements on

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

persons in, or closely connected with, the agri-food supply chain to provide information about their activities connected with the supply chain.

137. The direct power in subsection (1) and the regulation-making power in subsection (2) will attach to the same categories of persons and the same types of data. However, the two powers recognise that in some circumstances the most effective way to collect data is to request it by notice. This would be the case, for example, where data is to be requested from a group of persons and the identity of each of those persons is known. However, there are circumstances where data cannot be collected directly as the details of the persons to whom the request relates are unknown or subject to change. In that case, the data would be more effectively gathered using the regulation-making power.<sup>25</sup>

138. Subsection (3) provides that the requirements under subsections (1) or (2) may not be imposed on individuals in the supply chain if they are in the supply chain for the reason that they or a member of their household are the ultimate consumers.

139. Subsection (4) provides that requirements under subsections (1) and (2) may not be imposed on persons in relation to any of their activities connected with the supply chain if the activity is not carried on for profit or reward. This exempts persons who are in an agri-food supply chain but only in a hobbyist or amateur capacity. For example, an allotment keeper who gives vegetables to a neighbour is in an agri-food supply chain but is excluded from this provision. However, subsection (5) provides that the exemption in subsection (4) does not apply where the activity being carried on other than for profit or reward is capable of affecting a matter mentioned in section 12(6)(b)(i) or (ii), namely animal or plant health, or the quality or safety of food.

## **Section 14 – Agricultural activity: requirement to provide information**

140. This section provides the Scottish Ministers with a power to require, in writing, any person who carries out an agricultural activity in Scotland

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<sup>25</sup> Please see paragraph 92 for information regarding the distinction between these powers.

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

(and who is not a person in, or closely connected with, an agri-food supply chain) to provide information about that activity.

141. Subsection (2) provides for the Scottish Ministers to be able, by regulations subject to the affirmative procedure, to impose requirements on persons who carry on agricultural activities to provide information about those activities.

142. The reasons for including a direct power and a regulation-making power in this section are the same as in section 13. As with section 13, the distinction between the two powers is not the data which can be collected but rather the most effective way to collect it.

143. Subsection (3) provides that requirements under subsections (1) and (2) may not be imposed on persons in relation to an agricultural activity if the activity is not carried on for profit or reward. Similar to section 13(4), this exempts persons who are carrying on agricultural activities as a hobby or pastime. For example, a person who keeps a few animals to produce a small amount of wool or hides.

## **Section 15 – Provision of information etc.**

144. This section relates to a requirement to provide information imposed under section 13(1) or (2), or 14(1) or (2). It sets out what a requirement under those sections may specify, such as how and when the information is to be provided, the types of processing the information may be subjected to, and the form in which information may be disclosed.

## **Section 16 – Purposes for which information may be required and processed**

145. This section relates to a requirement to provide information imposed under section 13(1) or (2) or 14(1) or (2).

146. Subsection (2) provides that any requirement must specify the purposes for which the information is required and may be processed, and subsection (3) provides that they must be purposes which are listed in subsection (4). The information cannot be used for purposes which fall outside those stated in the requirement to provide information.

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

147. Subsection (5) defines the terms “plants” and “public authority” in relation to subsection (4).

## **Section 17 – Limitations on the processing of required information**

148. This section provides for limitations on the use of information provided in response to a requirement imposed under section 13(1) or (2), or 14(1) or (2).

149. Subsection (2) provides that information given in response to a requirement can only be processed for the purpose that was set out in that requirement, and subsection (3) states that this applies both to the person to whom the information is initially provided (which may be the Scottish Ministers or any other person specified in the requirement in accordance with section 15(2)(a)(i)) and any person to whom it is subsequently disclosed.

150. Subsection (4) specifies that any person to whom the information is subsequently disclosed cannot process the information in a way that is contrary to the terms on which it was disclosed.

151. Subsection (5) sets out that, where a requirement specifies a certain type (or types) of processing that information may be used for, that information may not be used for any other types of processing except in circumstances specified in the requirement.

152. Subsection (6) provides that the additional safeguards in subsections (7) and (8) apply where a person proposes to disclose information collected under the powers of this Part. They place restrictions on its disclosure, as a specific type of data-processing. The restrictions apply to any person making such a disclosure. Similar to the purpose limitation in subsection (2), this includes both the initial recipient of the information (for example, the Scottish Ministers) and any subsequent recipient who proposes to further disclose the information (for example, a contracted data processor operating in accordance with a data-sharing agreement). So, for instance, the restrictions would apply to any company or expert consultant contracted by the Scottish Government to conduct analysis of agricultural data on its behalf (for the purposes, say, of

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

developing analysis to provide evidence for a range of policy options or modelling scenarios for contingency planning such as disease outbreak).

153. Subsection (7) safeguards commercially sensitive information where there is a proposal to disclose information in a non-anonymised form. It requires that, where the person making the disclosure considers that doing so would, or might, prejudice the commercial interests of any person (which includes both the person who provided the information and any other person), the information must be disclosed in anonymised form. The only exception to this is if the Scottish Ministers consider that it is in the public interest for the disclosure to be in some other form.

154. Subsection (8) clarifies that where a disclosure is not considered commercially harmful, but the requirement specified the form in which information may be disclosed, disclosure must not be in any other form (except where circumstances specified in the requirement apply to the disclosure).

## **Section 18 – Enforcement of information requirements**

155. Subsection (1) provides for the Scottish Ministers to be able, by regulations subject to the affirmative procedure, to make provision for the enforcement of information requirements imposed under section 13(1) or (2) or 14(1) or (2). This will enable sanctions to be applied where any person fails to provide information, or provides false information.

156. Subsection (2) clarifies that the provisions for enforcement include how compliance will be monitored and how non-compliance will be investigated and addressed.

157. Subsection (3) has the effect that, amongst other matters, the regulations may provide for the imposition of monetary penalties for non-compliance, and for the recovery of those penalties. A monetary penalty is a civil penalty rather than a criminal fine.

158. Subsection (4) defines “specified” and “specified manner”, and has the effect in particular that regulations may provide that the amount of a monetary penalty is framed by reference to income, turnover or profits of a person.

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

## **Section 19 – Consequential repeals**

159. This section repeals sections 78 to 81 of the Agriculture Act 1947 (power to obtain agriculture statistics, etc.). The repealed provisions provide for the data-gathering powers which are replaced by the powers in Part 2 of the Bill.

## **Part 3 – general**

### **Section 20 – Regulations: supplementary**

160. This section provides in subsection (1) for the powers of the Scottish Ministers in this Bill to make regulations to include the power to make different provision for different purposes.

161. Subsection (1) also provides for the powers of the Scottish Ministers in this Bill to make regulations to include a power to make incidental, supplementary, consequential, transitional, transitory or saving provision. Subsection (2) has the effect that provision under that power may amend enactments, and subsection (3) has the effect any regulations that modify any part of the text of an Act will always be subject to affirmative procedure.

162. Subsection (4), provides that regulations under this Bill that create an offence may not provide for the offence to be punishable with imprisonment for a period exceeding 5 years in the case of conviction on indictment, and 12 months in the case of summary conviction.

163. Subsection (5) provides that this section does not apply to commencement regulations under section 22.

### **Section 21 – Ancillary provision**

164. Subsection (1) of this section provides for the Scottish Ministers to be able to make by regulations such incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purpose of, or in connection with or for giving full effect to the Bill.

165. Subsection (2) has the effect that such regulations may modify enactments.

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

166. Subsection (3) has the effect that regulations made under this section will be subject to negative procedure, unless they modify the text of an Act in which case they will be subject to the affirmative procedure.

## **Section 22 – Interpretation and effect**

167. This section relates to compatibility with “EU Law”. Subsection (1) provides that a reference in this Bill to any EU regulation will be a reference to that regulation as it forms part of domestic law (retained EU law) as provided for under section 3 of the European Union (Withdrawal) Act 2018.

168. Subsection (2) provides that any provision of this Bill or any provision made under it that could be incompatible with EU law can only come into effect after the provision of EU law with which it would be incompatible has ceased to have effect in Scots law by virtue of the UK’s withdrawal from the EU.

## **Section 23 – Commencement**

169. This section provides for sections 20 to 24 to come into force on the day after Royal assent, and for the Scottish Ministers to be able to commence by regulations the other provisions of the Bill. The power to make regulations includes a power to make different provision for different purposes, and to make transitional, transitory or saving provision.

## **Section 24 – Short title**

170. This section provides for the short title of the Bill, by which it may be cited.

## **Schedule**

171. The schedule is introduced by section 11.

172. It provides for amendments of the CMO Regulation consequential on sections 8 to 10 of the Bill, and for savings provision in respect of the changes made by those sections.

173. The amendments in paragraph 1 have the effect that certain powers in the CMO Regulation will no longer be available in Scotland.

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

174. Paragraph 2 provides a saving provision for measures made by the Commission under the powers being amended. The effect is that those measures will continue to apply as retained EU law, and that any new measures will be made by the Scottish Ministers under the powers in the Bill.

This document relates to the Agriculture (Retained EU Law and Data) (Scotland) Bill (SP Bill 59) as introduced in the Scottish Parliament on 6 November 2019

# Agriculture (Retained Eu Law and Data) (Scotland) Bill

## Explanatory Notes

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