NOTIFICATION TO THE SCOTTISH PARLIAMENT

COMMON AGRICULTURAL POLICY (“CAP”)
MARINE AND FISHERIES

1. Name of the SI`s

The Common Agricultural Policy and Agriculture and Horticulture Development Board (Amendment etc.) (EU Exit) Regulations 2018

The Common Provisions (Implementing and Delegated Acts) (Amendment) (EU Exit) Regulations 2018

2. A brief explanation of law that the proposals amend

Common agricultural policy

These instruments are part of a set of statutory instruments that propose to make corrections to the EU Common Agriculture Policy (“CAP”) regulatory regime becoming retained EU law so that it can continue to operate effectively in the UK in the event of a ‘no deal’ UK exit from the EU on 29 March 2019.

Pillar 2 of the CAP, which is currently funded by the European Agricultural Fund for Rural Development (“EAFRD”), is part of the EU Structural and Investment Funds (“ESIF”). ESIF is governed by the ‘Common Provisions’ regulations. Therefore, corrections to the Common Provisions regulations are proposed, alongside corrections to the CAP regulations, to allow Pillar 2 of the CAP to continue to operate in the event of a ‘no deal’ UK exit.

In addition to these instruments, the UK Government is also planning to introduce other statutory instruments (that will be the subject of separate later notifications) as part of the EU-Exit process that will interact with the legislation amended by these instruments. These other instruments will be laid between late-November 2018 and February 2019 and cover the following CAP-related areas: the “Horizontal” (cross-cutting) financing, management and monitoring of framework, the market intervention measures under the Common Organisation of Agricultural Markets (“CMO”), the transfer of CAP/CMO functions previously vested in the EU Commission to the Scottish Ministers and the other UK administrations, and state aid.

With reference again to the transfer of functions statutory instrument, the Scottish Government remains in discussions with Defra and the other devolved administrations about this. The Scottish Parliament will be separately notified in relation to the transfer of functions statutory instrument in due course.

These proposed linked instruments are interconnected with those instruments above being notified and the horizontal regulations provide for the management and monitoring of the CAP/CMO schemes. UK and Scottish Government officials are now finalising the terms of these linked instruments to ensure they respect the
devolved competence of the Scottish Ministers but these discussions do not affect the rationale or justification for this notification.

These proposed linked instruments will also make amendments to retained EU legislation to ensure these function effectively after the UK has left the EU.

Common Fisheries Policy
The Common Provisions (Implementing and Delegated Acts) (Amendment) (EU Exit) Regulations 2018 amend directly applicable EU legislation that provides greater detail regarding the provision of aid from EU programmes. More specifically, the legislation provides greater detail about the application of certain provisions of the Common Provisions Regulation (Regulation (EU) No 1379/2013).

In relation to fisheries and marine matters, the relevant fund is the European Maritime and Fisheries Fund ("EMFF"). These Regulations correct deficiencies in the EU legislation, which will become part of domestic law after the UK exits the EU, to ensure that it remains operable after exit day. The amendments made in relation to EMFF are minor and technical in nature, for example to replace references to “Member States” to “relevant authority” (more on which is below) and to change references from “EMFF” to “support under Regulation 508/2014”.

The principal EMFF Regulation is being amended by another Exit SI, the Common Fisheries Policy (Amendment) (EU Exit) Regulations 2018, which will be notified separately.

The principal Common Provisions Regulations will also be amended by another Exit SI, which will be notified separately.

The Common Agricultural Policy and Agriculture and Horticulture Development Board (Amendment etc.) (EU Exit) Regulations 2018

The Common Agricultural Policy and Agriculture and Horticulture Development Board (Amendment etc.) (EU Exit) Regulations 2018 propose to amend seven pieces of existing domestic legislation, some of which have a UK-wide application and some of which apply to England and Wales only.

The following instruments have UK-wide application.

The Agriculture and Horticulture Development Board Order 2008 establishes the Agriculture and Horticulture Development Board (“AHDB”), which has functions and duties relating to the red meat (for England only), cereals and oilseeds, horticulture, milk and potato industries. The Order contains provisions for the constitution and proceedings of the Board, together with levy-making powers.

The Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 include provision for: control and enforcement arrangements for Direct Payments to farmers and land managers and Rural Development Programme payments; cross-compliance requirements; scrutiny arrangements for ensuring that CAP payments meet EU requirements; provisions for the recovery of undue payments; and the right of farmers to appeal against decisions.
The Common Agricultural Policy (Competent Authority and Coordinating Body) Regulations 2014 provide for the administration of the CAP by defining and implementing the EU concepts of a “competent authority” and a “coordinating body” for certain purposes, to support the effective financing, management and monitoring of CAP schemes.

**The Common Provisions (Implementing and Delegated Acts) (Amendment) (EU Exit) Regulations 2018**

This instrument will apply throughout the UK.

The Common provisions (Implementing And Delegated Acts) (Amendment) (EU Exit) regulations 2018 propose to amend retained EU legislation to allow programmes currently funded by the EAFRD and EMFF to continue to receive funding for the 2014-2020 programme in the event of a no-deal EU exit. To achieve this the instrument proposes to revoke or amend Regulations 184/2014, 480/2014, 215/2014, 240/2014, 821/2014, 964/2014, 1011/2014, 2015/1076, 2015/1516 and Commission Decision 2014/660. The EU Regulations and Decision amended by the instrument set out additional rules applicable to the European Regional Development Fund (“ERDF”), the European Social Fund (“ESF”), the Cohesion Fund, the EAFRD and the EMFF and, in particular, concern financial instruments, financing arrangements, the calculation of milestones, partnerships, publicity requirements and data handling.

These EU regulations provide greater detail on the application of the Common Provisions Regulation (Regulation (EU) No. 1303/2013), which is being amended by a different exit SI, and will be notified separately.

3. **Summary of the proposals and how these correct deficiencies**

In 2016, UK agriculture received €3,927m through the EU CAP regime, with €3,035m of that being allocated as Direct Payments to farmers and land managers, and €806m via Rural Development schemes, including the Scottish Rural Development Programme schemes, and €85m as market support measures. Many farmers and land managers are reliant on this income to support their businesses, while wider rural development support provides environmental and socio-economic benefits to Scotland. The corrections introduced by the proposed instruments will help ensure that CAP scheme recipients continue to be paid following EU-Exit.

At the point of EU-Exit, European legislation relating to the CAP will be converted into UK law and corrected so that it can continue to operate in a UK setting. It is also important that existing domestic legislation which supports implementation of the CAP in the UK is similarly corrected to ensure that it can continue to operate effectively. It is therefore proposed that these instruments will make such corrections to both EU and domestic CAP-related legislation to help deliver a smooth EU-Exit transition and provide clarity and certainty to farmers, land managers, rural business and communities, and the public sector.
Both of these instruments being notified propose to use powers in the European Union (Withdrawal) Act 2018 to make predominantly technical changes to the above legislation to achieve the abovementioned aims.

These changes are necessary to create a UK rather than an EU regulatory regime. However, subject to this proviso, the drafting approach for the proposed amending instruments is to avoid policy changes and to maintain the status quo in so far as possible.

We have extensive experience of working collaboratively with the UK Government and other devolved administrations in these areas. Maintaining this UK wide approach is beneficial for stakeholders and for all 4 UK administrations to help provide clarity for the future.

**The Common Agricultural Policy and Agriculture and Horticulture Development Board (Amendment etc.) (EU Exit) Regulations 2018**

It should be noted that the amendments proposed by this instrument are predominantly minor and technical in nature.

**The Agriculture and Horticulture Development Board Order 2008**

The instrument proposes to make a technical amendment to address the reference to “another member State” reflecting that, after EU-Exit, the UK will no longer be a “member State”. This amendment will ensure the AHDB Order remains operable and will provide post-Exit continuity of the current regulatory regime concerning accountants that are eligible to certify horticulture returns to AHDB.

**The Common Agricultural Policy (Control and Enforcement, Cross Compliance, Scrutiny of Transactions and Appeals) Regulations 2014**

The instrument proposes to make some technical changes: amending references to European funds which the UK will not be able to access after EU-Exit; removing the rights of representatives of the European Commission to enter premises and removing inappropriate EU references, for example references to “EU” debts and “EU” requirements, which will be unenforceable following EU-Exit.

**The Common Agricultural Policy (Competent Authority and Coordinating Body) Regulations 2014**

The instrument proposes to revoke these regulations as they contain deficiencies that would make them inoperable post EU exit. It is proposed that the best way to ensure the continued effect of those provisions pertaining to functions of the Competent Authority, which will still be required going forward, is through amendments to the horizontal regulations referred to above that will be made separately. The UK Government have confirmed to us that the horizontal regulations amendments proposed shall ensure that the role and definition of the Coordinating Body and Competent Authority are maintained. This will include the concept of the Competent Authority and Coordinating Body as the relevant agriculture Ministers in each part of the UK acting jointly being retained, and
ensure that they will continue to work in the same way as they do now and use the same mechanisms for joint working in relation to the administration of paying agency functions.

The Common Provisions (Implementing and Delegated Acts) (Amendment) (EU Exit) Regulations 2018

This instrument does not propose to make any significant policy changes and ensures that the retained EU instruments will continue to function in the event of a no-deal situation on EU exit applying to programmes currently funded by the EAFRD and the EMFF. This would be done to enable existing programmes in the UK currently funded by the EAFRD and the EMFF to continue to receive funding for the remainder of the 2014-2020 programme.

This instrument proposes to omit the following provisions which will be deficient following EU exit:

- The requirements for the data exchange system used to transfer information from Member States to the Commission;
- Additional requirements for the partnership agreement, an agreement between a Member State and the Commission which encompasses all of the European Structural and Investment Funds;
- Provisions for the model of funding agreement for the contribution of the European Regional Development Fund and the European Agricultural Fund for Rural Development to joint uncapped guarantee and securitisation financial instruments in favour of small and medium-sized enterprises;
- Additional requirements for financial instruments which are implemented by the European Investment Bank;
- Provisions for the criteria for determining the level of financial correction to be applied under the performance framework;
- Articles establishing milestones and targets for the performance framework and determining the level of financial corrections the Commission may apply under the performance framework and
- EU references generally which will no longer be appropriate post-exit.

Other amendments propose to transfer requirements or obligations that were previously for the Commission, or in some cases Member States, to the relevant authority or constituent territories. The relevant authority is the Secretary of State in England, the Department of Agriculture, Environment and Rural Affairs in Northern Ireland, the Scottish Ministers in Scotland and Welsh Ministers in Wales.

The relevant authority for the purposes of EMFF, as a UK wide scheme will continue to be the Secretary of State, however the responsibilities of Scottish Ministers (and other devolved administrations) will be respected in references to their role as certifying and intermediate bodies in relation to devolved interests. The relevant definitions are not part of these Regulations, but in a different SI and will be notified separately.

These requirements and obligations referred to in the above paragraph are:
• Identifying partners and ensuring that those selected are representative of stakeholders;
• Consulting and involving partners when preparing programmes and the procedure for doing this;
• Promoting equality between men and women and non-discrimination when formulating the rules of membership for the monitoring committee and
• Ensuring that partners are aware of their obligations relating to data protection, confidentiality and conflict of interest.

4. An explanation of why the change is considered necessary

The proposed changes are considered to be necessary to ensure that legislation remains effective and ensures (a) an operable CAP regulatory regime after EU exit and (b) the programmes currently funded by the EAFRD and the EMFF remain operable post-exit and are able to continue making payments to beneficiaries. Failure to implement the proposed changes will likely result in inability of these regimes to operate.

5. Scottish Government categorisation of significance of proposals

The Scottish Government considers that in general the proposed SI’s fall within Category A, as the changes are minor and technical in nature and notwithstanding the changes, policy change is being avoided to preserve in so far as possible the current status quo. However they could be considered Category B to the extent that the transition from an EU to a UK framework would be a major and significant development.

6. Impact on devolved areas

The Scottish Government agree that the changes in the proposed statutory instruments constitute a pragmatic approach to addressing deficiencies in CAP and funding legislative provisions, arising as a result of EU Exit, and are the best option in the circumstances to ensure continued effective operation of these provisions to minimise the risk in the short term of disruption to devolved territories. The proposed Regulations respect the current devolution settlement by ensuring that Scottish Ministers are treated as the relevant authorities in line with existing devolved interests, noting the UK Government`s written confirmation to reflect this in their further draft UK statutory instruments as noted in more detail above in section 3.

*The Common Agricultural Policy and Agriculture and Horticulture Development Board (Amendment etc.) (EU Exit) Regulations 2018*

This SI proposes to make only technical or minor changes to preserve the status quo and the role of the Coordinating Body and Competent Authority are to be maintained. As such the Scottish Government do not believe this SI will have any significant impact on devolved areas.
The Common Provisions (Implementing and Delegated Acts) (Amendment) (EU Exit) Regulations 2018

No significant impact on business, charities or voluntary bodies is anticipated. Beneficiaries will continue to receive funding similarly to before EU exit. The UK’s involvement in the European Investment Bank would be inoperable as a result of EU exit however domestic finance mechanisms should still be accessible to those seeking funding.

No significant impact on the public sector is anticipated. There may be a negligible increase in administration cost as notification roles pass to responsible bodies within the UK rather than European institutions.

7. Summary of stakeholder engagement/consultation

As these instruments are being proposed to avoid deficiencies arising as a result of the UK’s withdrawal from the EU and are aimed at preserving the functioning of the CAP regulations and the programmes currently funded by the EAFRD and EMFF as at present, we have not undertaken any formal public consultation.

The UK Government have published a series of technical notices which provide details on how UK businesses and individuals should prepare in the event of a no deal Brexit scenario, including the following:


A technical notice titled “Guidance: Farm payments if there is no Brexit deal” was published on 23 August 2018. [https://www.gov.uk/government/publications/farm-payments-if-theres-no-brexit-deal/farm-payments-if-theres-no-brexit-deal](https://www.gov.uk/government/publications/farm-payments-if-theres-no-brexit-deal/farm-payments-if-theres-no-brexit-deal)


This consultation invited comments on Scottish Government proposals for dealing with the implications associated with coming out for the Common Agricultural Policy (CAP) which explained that the first stage would be retained EU law in domestic legislation.
The consultation was titled Stability and Simplicity and closed 15 Aug 2018 with 137 responses received. Overall, respondents were broadly content for support to continue in its current form to ensure a period of stability for the rural economy.

An external stakeholder panel the “Simplification Task Force” is being established to look more closely at the responses to and opportunities for simplification of the retained EU law.

The Scottish Government has been and continues to be in regular contact with stakeholders in Scotland regarding the implications of leaving the EU. The effect of the statutory instruments described in this notification is consistent with the proposals set out in the consultation.

8. A note of other impact assessments, (if available)

An impact assessment has not been carried out in relation to these regulations as they are aimed at preserving the effect of the current regulatory regimes.

9. Summary of reasons for Scottish Ministers’ proposing to consent to UK Ministers legislation

Common agricultural policy
If these deficiencies are not corrected in the scenario of a no-deal EU exit, the Scottish Ministers believe that we would no longer have an effectively functioning legal framework for continuing to provide for payments and the administration of the applicable payment schemes. This would likely cause problems for our stakeholders who need as much certainty and continuity as possible to help plan and operate their businesses. This could also pose risks for agriculture and the rural economy in Scotland.

The Scottish Ministers propose to consent to these UK SI’s detailed above to fix deficiencies in the related domestic and EU legislation. The approach set out in the UK SI’s is realistic, achievable and minimises the risk of immediate disruption. The Scottish Ministers believe that, in the circumstances, consenting to the UK SI’s would be the most effective way to help ensure continuity of current arrangements for stakeholders to assist them to continue to run their businesses, and ensure the existing regulatory regime can continue to function with scheme payments continuing to be administered and paid.

The Scottish Ministers believe that the changes proposed by this SI and the other CAP-related SI’s referred to above are necessary to secure continuation of effective regulatory regimes. The approach of these CAP SI’s respect the devolution settlement and provide for a transition from an EU to UK regulatory framework with devolved options for Scotland.

The Scottish Government has worked constructively with the UK Government and the other Devolved Administrations and, in light of that, we are satisfied that the proposed amendments to the applicable legislation will ensure that it continues to operate effectively as retained EU law whilst respecting Scottish Government’s devolved competence and implementation of CAP in Scotland.
Given there is a need to prepare for a no deal exit from the EU, the Scottish Ministers consider that it is appropriate for the fixing legislation to be made on a UK-wide basis by the UK Government. This provides an effective achievable solution in current circumstances of limited resources and significant resource intensive legislative work needing to be completed in extremely tight time constraints. It also reduces the risk of conflicting provisions being produced by UK administrations that could result in confusion.

The Scottish Ministers believe stakeholders need clarity and continuity in the immediate future in so far as possible to continue to operate their businesses during this period of transition and consenting to the UK SI’s is the most likely way of achieving that aim at this time.

**EU Funding**

If deficiencies relating to existing EU funds are not corrected these schemes would not be operable. The amendments made by the Common Provisions (Implementing and Delegated Acts) (Amendment) (EU Exit) Regulations 2018 in relation to EMFF align with the policy agreement between the Scottish Government and the UK Government regarding the operation of funding under the EMFF Regulation after exit day. The amendments in this instrument are technical in nature and ensure that the funding programme will continue to operate after exit day.

10. **Intended laying date (if known) of instruments likely to arise**

The Common Agricultural Policy and Agriculture and Horticulture Development Board (Amendment etc.) (EU Exit) Regulations 2018 and the Common provisions (Implementing and Delegated Acts) (Amendment) (EU Exit) regulations 2018 are both subject to negative procedure and will both be laid for sifting at Westminster on 21 November 2018. We are working with Defra on the basis no EU Exit statutory instruments will proceed to be made, until after they have been through the consent process agreed with the Scottish Parliament.

11. **Does the Scottish Parliament have 28 days to scrutinise?**

Yes.

12. **Information about any time dependency associated with the proposal**

It is essential that the Regulations are in force on the day we exit the EU in the event of a no deal scenario to ensure that legislation is operable to enable the Scottish Government to continue to administer and regulate our schemes and make payments to our stakeholders.

13. **Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?**
Following finalisation of the draft statutory instruments, the Scottish Government will work with UK Government and other devolved administrations to put in place sound governance arrangements to ensure transparency and accountability for decision making. This work will be designed within the context of the principles, agreed by the UK Government, the Scottish Government and the Welsh Government on 16 October 2017, to apply to common frameworks.

14. **Any significant financial implications?**

These Regulations are not expected to have any significant financial implications for stakeholders in Scotland.