

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

Delegated Powers Memorandum

Introduction

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament's Standing Orders, in relation to the Agriculture (Retained EU Law and Data) (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

Outline of Bill provisions

2. European Union (EU) law, including the legal framework for the Common Agricultural Policy (CAP), will no longer apply in Scotland when the UK leaves the EU. The EU (Withdrawal) Act 2018 (EUWA) will however roll most EU law into domestic law as "retained EU law" with effect from exit day. The term "retained EU law" is defined in EUWA¹ section 6(7), and is more fully explained in the Explanatory Notes².

3. New powers in primary legislation are needed in order to ensure that CAP retained EU law can be modified after exit. The Bill provides those powers for the Scottish Ministers.

4. The Bill also provides powers that will enable the Scottish Ministers to improve the collection of information about agricultural activities and agri-

¹ <http://www.legislation.gov.uk/ukpga/2018/16/section/6>

² <http://www.legislation.gov.uk/ukpga/2018/16/notes>

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food supply chains. It replaces the equivalent powers in the Agriculture Act 1947.

5. The Bill contains 24 sections and 1 schedule, and is arranged in three Parts as follows:

Part 1: Retained EU Law

6. Section 1 defines relevant terms, and includes definitions for each of the five EU regulations that comprise the current CAP framework legislation. It provides for the “main CAP legislation” to mean all of those regulations other than that the Common Organisation of Markets (CMO) Regulation.

7. Sections 2 to 10 set out a series of delegated powers that will enable the Scottish Ministers to make subordinate legislation:

- Simplifying and improving the main CAP legislation (section 2),
- Continuing the main CAP legislation beyond 2020 (section 3),
- Modifying the financial provisions in the main CAP legislation including, for example, pillar to pillar transfer (section 4),
- To modify the operation of certain parts of the CMO Regulation, including for example to respond to changes in market regulation in the rest of the UK under a UK Agriculture Bill (sections 5 and 6),
- To revoke the EU Food Promotion Scheme (section 7), and
- To enable the Scottish Ministers to establish marketing standards for products marketed in Scotland, and to provide for the marketing standards/carcass classifications, currently regulated under the CMO Regulation (sections 8, 9 and 10).

8. Section 11 introduces the schedule which provides for amendments to the CMO Regulation, as it would have effect as retained EU law, consequential on sections 8 and 10.

Part 2: Collection and Processing of Data

9. Section 12 provides for relevant definitions.

10. Sections 13 to 18 provide the Scottish Ministers with powers to compel persons involved in an agricultural activity, as defined in section

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12(2), and persons in, or closely connected to, an agri-food supply chain, as defined in section 12(4), to provide information about their activities. They also restrict the use of the collected information to the purposes listed in section 16, and place limits on the processing of that information.

11. Section 19 repeals the relevant sections of the Agriculture Act 1947.

Part 3: General Provisions

12. Sections 20 to 24 make provision on regulations made under this Bill, on interpretation and effect, and for commencement and the short title.

13. Section 20 is an important provision, and provides for each of the delegated powers in this Bill (other than the commencement power) to include power to make—

- different provision for different purposes, and
- incidental, supplementary, consequential, transitional, transitory or savings provision.

14. Section 20 imposes a limit on any power to provide for offences punishable by imprisonment.

15. Section 20 also provides that the powers include power to modify any enactment, which will include primary legislation (and for any such exercise of the principle power to be subject to affirmative procedure if that is not already the case).

Rationale for subordinate legislation

16. The Scottish Government has, in deciding whether provisions should be in the Bill or in subordinate legislation, and in deciding on the appropriate level for scrutiny of subordinate legislation, given due regard to:

- The need to strike a balance between the importance of the issue and providing the flexibility to respond to changing circumstances (particularly given the ongoing uncertainty around the UK exit from the EU),
- The need to make proper use of valuable Parliamentary time, and

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- The need to deal with the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by the Parliament.

17. The decisions in respect of Part 1 of the Bill have been informed in particular by the policy objective of broadly maintaining the operation of current CAP schemes for a transitional period after exit day, subject to making simplifications and improvements. This does not require the wholesale replacement of the retained EU law. Rather, further consultation and engagement with stakeholders and the sector on the development of long term future rural policy is ongoing.

18. In addition, it is expected that the Bill will be introduced to Parliament before any exit terms are agreed between the EU and the UK. Flexibility is needed to respond to any such terms.

19. The delegated powers provisions are listed below with a short explanation of what each power allows, why the power has been taken in the Bill, and why the selected form of Parliamentary procedure is considered appropriate.

Delegated powers

Section 2(1) – Power to simplify or improve CAP legislation

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative

Provision

20. This section provides that the Scottish Ministers may make regulations to modify the main CAP legislation (as defined in section 1), and specifies that they may do so only where they consider that such modifications would simplify or improve the operation of that legislation.

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Reason for taking power

21. There is a significant risk that leaving the EU will have a severe adverse impact on the rural economy. The Scottish Government considers therefore that there is a strong argument for a period of stability in the operation of the CAP after exit, and this approach was endorsed by stakeholders in an extensive consultation in 2018.

22. Even so, there is also a clear argument for using the scope to make new arrangements that will follow from exit to simplify and improve the CAP in ways that are not possible as an EU Member State. Again, stakeholders endorsed this approach.

23. It is essential however that stakeholders are fully engaged in the process of making those simplifications and improvements, and time is needed to ensure full engagement. It may be appropriate, for example, to run pilot schemes to test new processes. It may also be necessary to react quickly to changing circumstances, particularly if there is a “no deal” exit.

24. For all those reasons the Scottish Ministers consider that it is appropriate to take a power to modify retained EU law in the main CAP legislation.

25. The Scottish Ministers expect to use the power to ensure continued support for areas of land designed as a “less favoured area” (LFA) under the current CAP. This support is vital for Scottish farming as around 85% of agricultural land is in a LFA. Some of this LFA support is at risk because the EU is rolling out a less advantageous “Areas of Natural Constraint” (ANC) scheme that will replace LFA support (this is explained further in the Policy Memorandum). The power could be used to improve the CAP by delaying, modifying, or rolling back the shift to ANC support.

26. The Scottish Ministers also expect to use the power to modify financial provision in the main CAP legislation, where doing so is for the purpose of simplification and improvement rather than for the purposes of the power in section 4 of the Bill.

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Choice of procedure

27. It is considered appropriate that regulations made using this power are subject to negative procedure, as they may only be used to make changes that are considered to simplify or improve the operation of the current main CAP legislation. They are not intended to be used to make major changes of the type that might be appropriate for affirmative procedure.

Section 3(1) – Power to provide for the operation of CAP legislation beyond 2020

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

28. This section provides that the Scottish Ministers may make regulations to modify the main CAP legislation (as defined in section 1) in order to ensure that it can continue to operate in Scotland for one or more years after 2020, including the express power to determine, for any year, a National Ceiling (the maximum amount that can be paid each year under the Basic Payment Scheme (which provides farmers, crofters and land managers with payments calculated according to the area of land being claimed upon – further detail on this scheme can be found in the Explanatory Notes for this Bill, and on the European Commission website³)) in relation to Scotland.

Reason for taking power

29. As explained in the Policy and Financial Memorandums, and in the Explanatory Notes, the current CAP framework covers the period 2014 to 2020.

³ https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/income-support/basic-payment_en

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30. The legal framework for the CAP will require to be modified and updated in order to operate after 2020, which will include for example determining new national ceilings for the payments under the pillars. The EU has yet to enact any legislation for that purpose, and so none of the necessary provision will roll over into retained EU law.

31. It will be necessary for the appropriate UK authorities to make the provision needed to ensure the continuation of CAP support, and that includes the Scottish Ministers as regards Scotland. This power is needed for that purpose as the measures in question will extend beyond simplifying or improving the current CAP (for which see the comments on the power in section 2).

32. The purposes for which the power will be used are however still limited to the effective operation of the current CAP (simplified or improved as appropriate). The power will not enable a wholesale restructuring of the CAP, which is not a matter that the Scottish Ministers consider would be appropriate for a delegated power in this Bill.

Choice of procedure

33. It is considered that regulations made using this power should be subject to affirmative procedure, as the decisions on how to continue the CAP will be a significant policy process, and so a high level of Parliamentary scrutiny is appropriate.

Section 4(1) – Power to modify financial provision in CAP legislation

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

34. This section provides that the Scottish Ministers may make regulations to modify any provision of the main CAP legislation (as defined

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in Section 1) 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.

Reason for taking power

35. The risks and opportunities, however unwelcome, that come from leaving the EU are as described in respect of the power in section 2.

36. There are however other risks to maintaining the desired level of support for the rural economy. In particular, the UK government will need to replace EU funding with UK funding. The current UK administration has given some reassurance in that respect, but the arrangements are still uncertain, and are in any event vulnerable to any changes that might be made by a future administration.

37. It is possible, for example, that a future UK administration will cap or reduce funding for all or part of the current CAP. This power is needed in order to be able to respond quickly to such an eventuality, as the Scottish Ministers consider that some at least of the necessary measures would not constitute either a simplification or improvement of the current CAP.

38. The power could also be used to reallocate funds between CAP pillars, or individual schemes within the pillars, without changing the overall amount of support payable under the CAP. There may be compelling reasons for doing so in order to meet challenges after exit, but the necessary measures might not be considered a simplification or improvement.

39. A modification of a “financial” provision will often be a simplification or improvement of the main CAP legislation. Where this is the case, the negative power in section 2 would then be available.

Choice of procedure

40. It is considered that regulations made using this power should be subject to affirmative procedure, as any changes could have a significant impact, for better or worse, on individuals and rural businesses, and so a high level of Parliamentary scrutiny is appropriate.

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Section 5(1) – Power to modify CAP legislation on public market intervention and private storage aid

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

41. This section provides that the Scottish Ministers may make regulations to modify the CAP legislation governing public intervention and private storage aid (as defined in subsection (3)), and specifies that they may only make these modifications in order to either temporarily or permanently disapply the provisions, or to simplify and improve them.

Reason for taking power

42. Public intervention involves the purchase of a product by public authorities in order to remove it from the market, and private storage aid involves paying private sector undertakings to store a product that would otherwise go immediately to the market.

43. Public intervention and private storage were major features of the CAP in the period up to the millennium (for example, the so-called “butter mountain”). They are now little used, and the enabling measures in the CAP legislation may be repealed for the rest of the UK by the UK Agriculture Bill (this fell when the UK Parliament was prorogued on 8 October 2019, and as a General Election has now been called it will be for the incoming Government to decide whether to bring forward an Agriculture Bill in the next session of Parliament).

44. The Scottish Ministers are unlikely to support the routine use of these tools after exit day, except possibly in exceptional circumstances. Without these powers to modify the CAP legislation there is a risk that the Scottish Ministers could be obliged to intervene in a market in Scotland in circumstances where, as a result of changes made by a UK Agriculture Bill, the Secretary of State is not obliged to intervene in England or the other devolved authorities in Wales and Northern Ireland. This could occur if, for

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instance, the other administrations disapplied public intervention for a product such as skimmed milk (or made it optional rather than mandatory) – in these circumstances, Scotland would be obliged to continue with mandatory market support and would effectively be acting alone in support of the entire UK market.

Choice of procedure

45. It is considered that regulations made using this power should be subject to negative procedure, as any changes are expected to either modest or of an essentially technical nature. As noted at paragraph 43, the public intervention and private storage aid powers themselves are now little used (with other powers in the CMO Regulation used instead to deal with problems in the market), so disapplication of the provisions is in line with existing practice and does not merit a higher level of Parliamentary scrutiny.

Section 6(1) – Power to simplify or improve CAP legislation on aid for fruit and vegetable producer organisations

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

46. This section provides that the Scottish Ministers may make regulations that they consider would simplify or improve the operation of legislation governing aid for fruit and vegetable producer organisations (as defined in subsection (3)).

Reason for taking power

47. The existing EU Fruit and Vegetables Aid Scheme enables officially recognised Producer Organisations (PO), formed on the initiative of a group of growers, to receive financial assistance to help increase their competitiveness in the supply chain. To qualify for financial assistance the PO must draw up a 3 to 5 year operational programme aimed at achieving

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pre-set objects, for example improving the quality, marketing and end value of their produce, promoting the use on environmentally sound cultivation practices or reducing production costs.

48. While provision has been made in retained EU law for this Aid Scheme to continue, this power is required to enable Scottish Ministers to simplify and improve the scheme, if considered necessary during the transitional period.

49. The Scottish Ministers consider that the argument in favour of taking this power is the same as for the similar power in section 2 respect of the main CAP legislation (as defined in section 1).

Choice of procedure

50. It is considered appropriate that regulations made using this power are subject to negative procedure, as any changes made are expected to be technical or minor in nature, and will be restricted to simplifying or improving the operation of the current scheme and so are unlikely to be controversial.

Section 7(1) – Power to revoke the EU Food Promotion Scheme

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

51. This section provides that the Scottish Ministers may make regulations to modify the legislation establishing the EU Food Promotion Scheme (as defined in subsection (2)) in order to abolish the Scheme in relation to Scotland.

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Reason for taking power

52. The Scheme, currently worth €200m across Europe, aims to promote food from the EU, both within the EU and internationally. While the deficiencies corrections under the European Union (Withdrawal) Act 2018 will mean that the Scheme can operate within the UK only, it will be cumbersome. The Scottish Ministers propose to abolish the Scheme in relation to Scotland and rely instead on existing domestic powers, such as those used to support Quality Meat Scotland campaigns.

53. The Scheme legislation, as defined in the section, is not part of the main CAP legislation. A separate power is therefore needed in order to repeal the Scheme

Choice of procedure

54. It is considered appropriate that regulations made using this power are subject to negative procedure, as the power can only be exercised for one purpose, and any exercise of the power would on that basis be in effect agreed by Parliament should it approve the power.

Section 8(1) – Marketing standards

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

55. This section provides that the Scottish Ministers may make regulations in relation to products that fall within certain agricultural sectors (as listed in section 9) and that are marketed in Scotland, concerning the standards with which those products must conform. These are known as “marketing standards”. They can cover the range of issues set out in section 8(2), such as production methods, grading by weight, size or age, presentation, labelling, packaging, and disposal or use of non-conforming products. Regulations may also include provision about the enforcement of

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these standards, including provision about record keeping and provision of information, investigative powers, offences and penalties.

56. Before making regulations under this section, the Scottish Ministers are required to consult representatives of those likely to be affected by the regulations.

Reason for taking power

57. Under the CMO Regulation provision is made for marketing standards, supplemented where required by domestic legislation. However, the provisions in the CMO Regulation are restrictive and the changes that can be made to standards under the powers are limited.

58. This power will enable the Scottish Ministers to establish marketing standards in Scotland in a way which is more flexible and reactive. The power will also ensure that the Scottish Ministers have the ability to quickly replicate changes that may be made elsewhere in the UK under a UK Agriculture Bill, if doing so is necessary to avoid barriers to the free movement and sale of goods within the UK after exit.

Choice of procedure

59. It is considered appropriate that regulations made using this power are subject to negative procedure, as it is not the intention of the Scottish Ministers to make radical changes to marketing standards in Scotland, but rather to ensure for example that, should the rest of the UK make changes to standards, those applying in Scotland can be adjusted as needed.

60. In addition, the Scottish Ministers are required to consult persons likely to be affected by any regulations, and so those persons will have the opportunity to give their views on any new or modified standards.

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Section 9(2) – Marketing standards: agricultural sectors

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

61. This section provides that the Scottish Ministers may make regulations to add or remove an agricultural sector from the list in section 9(1), and/or specify products that fall within each sector or otherwise give further details on the sectors.

Reason for taking power

62. This power is needed to enable the Scottish Ministers to alter, as required, the extent to which the provisions in section 9 apply to reflect any changes in the Scottish agriculture.

63. The Scottish Ministers consider that taking a power will enable them to respond quickly and flexibly to changes in market conditions, which may be a particular issue after the UK exit from the EU.

Choice of procedure

64. It is considered appropriate that regulations made using this power are subject to negative procedure as they will simply change the list of products in respect of which marketing standards may be established, or set out in more detail precisely which products are covered (e.g. by reference to customs codes).

65. The establishment of marketing standards over those products will be by regulations made under section 8, and so will be subject to the consultation requirement of that section.

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Section 10(1) – Carcass classification

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

66. This section provides that the Scottish Ministers may make regulations about the classification, identification and presentation of bovine, pig and sheep carcasses by slaughterhouses in Scotland (“carcass classification”). These regulations may also include provision about enforcement of this classification.

67. Before making regulations under this section, the Scottish Ministers are required to consult representatives of those likely to be affected by the regulations.

Reason for taking power

68. The current CMO Regulation provide scales and rules for carcass classification. The measures in that respect are both technical and detailed, and therefore the type of matter which the Scottish Ministers consider to be appropriate for regulation under a delegated power.

69. The current EU rules are mandatory for beef, veal and pigmeat, and may be applied to goatmeat and sheepmeat at the discretion of the Member State (the UK has so far chosen not to apply these discretionary scales). The rules, and the discretion, will roll over into retained EU law from exit.

70. The Scottish Ministers consider that taking the power in this Bill will enable the Scottish Ministers to regulate those inherently technical matters after exit, and in particular to respond quickly and flexibly to market changes. Those changes may include new regulations elsewhere in the UK following from the exercise of similar powers that may be taken in a UK Agriculture Bill.

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Choice of procedure

71. It is considered appropriate that regulations made using this power are subject to negative procedure as they will make technical changes to classification rules, including for example any changes that might be needed in response to developments elsewhere in the UK.

72. Before making regulations under this section, the Scottish Ministers are required to consult representatives of those likely to be affected by the regulations.

Section 12(10) – Defined terms

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

73. This section provides that the Scottish Ministers may make regulations to amend the definition of “agricultural activity” in section 12(2). This subsection defines “agricultural activity” to have the same meaning as in Article 4(1)(c) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the Common Agricultural Policy (“the Direct Payments Regulation”).

Reason for taking power

74. The definition of “agricultural activity” is the same as in the Direct Payments Regulation. This power has been taken to allow the Scottish Ministers to amend the definition if it ceases to operate effectively. For example, if the underlying definition in the Direct Payments Regulation was to be changed or repealed, or if farming practices changed (such as in response to climate change, technological advances, etc.).

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Choice of procedure

75. It is considered appropriate that regulations made using this power are subject to affirmative procedure, as any change to the definition will alter the scope of who can be compelled to supply information to the Scottish Government (see the below paragraphs on sections 13(2) and 14(2) for more detail), and so the Scottish Parliament should be able to consent to any change of that nature.

Section 13(2) – Agri-food supply chains: requirement to provide information

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

76. This section provides that the Scottish Ministers may make regulations to compel persons in, or closely connected with, an agri-food supply chain to provide information about any of their activities connected with the supply chain in Scotland.

Reason for taking power

77. The provision of public money to agriculture also requires monitoring and evaluation of the effectiveness of spending that public money to deliver desired outcomes. Also, to estimate the economic output of the whole industrial economic sector for GDP and other national accounting figures, the Scottish Government requires data from farm businesses and businesses connected with agriculture to monitor these purposes. From time to time, as a functioning nation with the Global world, Scotland may be required to contribute data to help the Organisation for Economic Co-ordination and Development (OECD), United Nations (UN) or other international organisations estimate statistics and develop policies to deliver effective global food production.

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78. The Scottish Ministers currently use powers under the Agriculture Act 1947 to collect such agricultural data for these purposes. The ability to collect accurate and up-to-date statistical information related to agriculture is important so that the Scottish Government can regulate and develop policy effectively for the agricultural sector. That is why this Bill contains a power to compel persons in, or closely connected with, an agri-food supply chain to provide information to the Scottish Government. These powers are intended to make this process of data collection more explicit and transparent, and clearly linked to the principles of the EU General Data Protection Regulation (GDPR).

79. The provision in section 13(1) is a general power exercisable by the Scottish Ministers, and is intended to allow them to compel data from known persons (i.e. where the Scottish Government can use business records to contact them directly).

80. The provision in section 13(2) is intended to enable the Scottish Ministers, through subordinate legislation, to compel the provision of information from defined categories of persons where the identity of the particular individuals within the category who holds the information is not known (for example, any person who is part of a co-operative that runs a community abattoir).

Choice of procedure

81. It is considered appropriate that regulations made using this power are subject to affirmative procedure, so as to give the Scottish Parliament sufficient opportunity to scrutinise any requirements to provide information which are provided by the Regulations. This aligns with the stated policy intention behind these provisions, namely to make the process of collecting agricultural data more open and transparent.

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Section 14(2) – Agricultural activity: requirement to provide information

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

82. This section provides that the Scottish Ministers may make regulations to compel persons who carry out an agricultural activity (and who are not in, or closely connected with, an agri-food supply chain) to provide information about matters connected with that activity (where that activity takes place in Scotland).

Reason for taking power

83. As noted above regarding section 13(2), the collection of accurate and up-to-date statistical information related to agriculture underpins the Scottish Government's ability to regulate and develop agricultural policy effectively, and this collection is currently carried out under the Agriculture Act 1947.

84. The power in this Bill to compel those who carry out an agricultural activity to provide information to the Scottish Government is intended, as with the other powers in this Part, to make this process of data collection more explicit and transparent, and clearly linked to the principles of GDPR. This power differs from the power in section 13(2) as it will apply to persons who are involved in agriculture where agricultural produce will not be used in food or drink.

85. The provision in section 14(1) is a general power exercisable by the Scottish Ministers, and is intended to allow them to compel data from known persons (i.e. where the Scottish Government can use business records to contact them directly), whereas the provision in section 14(2) is intended to enable the Scottish Ministers, through subordinate legislation, to compel data from defined categories of people where individuals within

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the categories may not be known (for example, any person who produces a certain crop above a defined area threshold).

Choice of procedure

86. It is considered appropriate that regulations made using this power are subject to affirmative procedure, so as to give the Scottish Parliament sufficient opportunity to scrutinise any requirements to provide information which are provided by the regulations. This aligns with the stated policy intention behind these provisions, namely to make the process of collecting agricultural data more open and transparent.

Section 18(1) – Enforcement of information requirements

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

87. This section provides that the Scottish Ministers may make regulations to enforce the requirement to provide data under sections 13 and 14. The rest of the section specifies that enforcement includes, in particular, monitoring compliance and investigating and dealing with non-compliance. It also specifies that provision may include in particular such instances as the imposition of monetary penalties for non-compliance, the giving of advice or warnings, and the imposition of restrictions on carrying out activities, among others.

Reason for taking power

88. As noted above in relation to sections 13(2) and 14(2), the collection of accurate and up-to-date statistical information related to agriculture underpins the Scottish Government's ability to regulate and develop agricultural policy effectively, but without an appropriate enforcement mechanism there is a risk that the data collected will be incomplete or not fit for purpose.

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89. A delegated power is considered necessary for the government to implement an effective, proportionate and adaptable regulatory enforcement regime for information collection, which reflects the nature and importance of the information (and the data generated from that information) and ensures compliance with information requests.

Choice of procedure

90. It is considered appropriate that regulations made using this power are subject to affirmative procedure so as to give the Scottish Parliament sufficient opportunity to scrutinise any provisions which may bring into question privacy and competition concerns, and to scrutinise the potential imposition of any monetary penalties for non-compliance.

Section 21(1) – Ancillary provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative if amending primary legislation, otherwise negative

Provision

91. This section provides that the Scottish Ministers may make regulations to make any incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purpose of, in connection with or for giving full effect to any provision of the enacted Bill or provision made under it.

Reason for taking power

92. As with any new body of law, the Bill may give rise to a need for a range of ancillary provisions. It is appropriate to take a power to deal with anything that might emerge in the course of implementing the Bill, to ensure that any unexpected issues which require further changes can be dealt with effectively and so that the purpose of the Bill is not inadvertently obstructed.

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Choice of procedure

93. Regulations made under this section which contain a provision which adds to, replaces or omits any part of the text an Act are subject to the affirmative procedure. Otherwise, regulations made under this section are subject to the negative procedure. This approach is typical for ancillary powers of this type, and is considered to provide an appropriate level of scrutiny where there is a proposal to amend legislation.

Section 23(2) – Commencement

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Laid, no procedure

Provision

94. This section provides that the Scottish Ministers may make regulations to bring the provisions of the Bill, with the exception of Part 3 (which will come into force on the day after the Bill obtains Royal Assent), into force on such day as the Scottish Ministers appoint. That section also provides that such regulations may include transitional, transitory or saving provision, or make different provision for different purposes.

Reason for taking power

95. It is usual practice for commencement provisions to be dealt with by subordinate legislation, and it is appropriate for those provisions in the Bill not coming into effect on Royal Assent to be commenced at such a time as the Scottish Ministers consider suitable.

Choice of procedure

96. As is usual for commencement regulations, the default laying requirement in section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 applies. Commencement regulations bring into force provisions whose underlying policy has already been considered by the Parliament during the passage of the Bill. Any regulations under this

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section will be laid before Parliament as soon as practicable after being made.

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

Delegated Powers Memorandum

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