

## Instrument Responses

### Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) Regulations 2026 (SSI 2026/Draft)

**On 19 December 2025 the Committee asked the Scottish Government:**

1. Does regulation 5(3)(i) and (4) correct previous errors rather than implement new policy? If so, should this have been mentioned in the Explanatory Note or Policy Note?
2. Regulation 5(3)(i) amends references in regulation 33(a) of the Civil Legal Aid (Scotland) Regulations 2002 to “the 2024 Regulations” so that they refer instead to “the 2025 Regulations”. There are other references to “the 2024 Regulations” in schedule 2, paragraph 7(ba) and (bb) of the 2002 Regulations (“Scottish adult disability living assistance given in accordance with the 2024 Regulations” and “short-term assistance given in accordance with... the 2024 Regulations”). Should these references also be to the 2025 Regulations?
3. Regulation 6(4)(b) inserts new paragraph (1A) into regulation 13 of the Advice and Assistance (Assistance by Way of Representation (Scotland) Regulations 2003, to provide “Paragraph (1) does not apply in relation to proceedings under regulation 3A where the applicant is a child.” Should this refer instead to the proceedings “described in” (or similar) rather than “under” regulation 3A? This would also be consistent with “described in” in regulation 13(1).
4. Please confirm whether any corrective action is proposed, and if so, what action and when.

**On 5 January 2026 the Scottish Government responded:**

1. Regulation 5(3)(i) and (4) does address minor errors in the previous Civil Legal Aid (Scotland) Regulations 2002 – correcting the year of cited regulations and reordering to remove duplicated numbering. We would propose to amend the Policy Note to explain the intention.
2. The Scottish Government agrees the references to “the 2024 Regulations” in schedule 2, paragraph 7(ba) and (bb) of the Civil Legal Aid (Scotland) Regulations 2002 should also be changed to “the 2025 Regulations”. We thank the Committee for bringing this to our attention.

The Disability Assistance (Scottish Adult Disability Living Allowance) (Consequential Amendment, Revocation and Saving Provision) Regulations 2024 (S.S.I. 2024/311) which introduced these sub-paragraphs into the list of disregards in the 2002 Regulations set out its aim, to: “ensure that individuals who are entitled to Scottish adult disability living allowance [by way of the Social Security (Scotland) Act 2018] have the same entitlements and disregards under that legislation as individuals who are entitled to Disability Living Allowance payable under the Social Security Contributions and Benefits Act 1992”.

We understand the Scottish Legal Aid Board is aware of the discrepancy and in context is satisfied that it is clear from the description of the payments that the relevant disregards can be applied in practice, notwithstanding the numerical referencing error. The Scottish Government intends to make further amendments at the next suitable legislative opportunity.

3. We consider that while the provision inserted at paragraph (1A) of regulation 13 of the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003 is clear and effective, there would be merit in following the approach taken in paragraph (1) of that regulation. We would propose a minor amendment to that effect at the next suitable legislative opportunity.

## **Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2026 (SI 2026/Re-laid Draft)**

NB: the instrument to which these questions relate was re-laid on 2 December 2025 and withdrawn on 11 December, following these questions sent by the Committee (the first version of the instrument, laid 27 November 2025 having also previously been withdrawn by the Scottish Government, on its own initiative, to correct another issue). The instrument considered by the Committee at this meeting was re-laid on 17 December 2025.

### **On 5 December 2025 the Committee asked the Scottish Government:**

1. In the new Annex 9 of the Free Allocation Regulation (inserted by article 26 of the instrument), near the bottom of the table on page 18 relating to the iron and steel sector, the code "25.99.29.25" appears twice. Is this a duplication or is one of these entries intended to have a different code?
2. The codes listed in column 3 of the tables in the new Annex 9 do not appear to correspond to the codes in the legislation cited in the opening paragraph of new Annex 9), namely, Annex I to Regulation (EC) No 1893/2006, as amended by Regulation (EU) 2019/1243. Could an explanation be provided for as to why these do not appear to match, and are the tables considered sufficiently clear in light of this?
3. Please confirm whether any corrective action is proposed, and if so, what action and when.

### **On 11 December 2025 the Scottish Government responded:**

1. Thank you for pointing out this drafting error. The second instance of the code "25.99.29.25" should read "25.99.29.27". The effect of the omission is that manufacturers of products that fall under Prodcom code 25.99.29.27 would not be classified as UK CBAM sub-installations under Article 10(4a) of the Free Allocation Regulation, meaning no CBAM reduction factor would apply, and they would receive full free allocation. However, there are no known UK producers and no known plans for production of products that fall under the omitted code and therefore, at present, the practical effect of the error would be negligible.
2. Column C of Annex 9 uses product benchmark names rather than NACE codes which explains why there is a mismatch with the NACE codes listed in Annex I to Regulation (EC) No 1893/2006, as amended by Regulation (EU) 2019/1243. As all sectors in the table have a corresponding PRODCOM code in column B, we are of the view that the drafting approach does not prevent the instrument from delivering the policy intention. However, on reflection, we are of the view that this could be clearer.
3. In light of these points, it is our intention to withdraw the instrument and a revised version will be laid in due course.

## **Good Food Nation (Scotland) Act 2022 (Commencement No. 4) Revocation Regulations 2025 (SSI 2025/395)**

**On 17 December 2025 the Committee asked the Scottish Government:**

This instrument revokes The Good Food Nation (Scotland) Act 2022 (Commencement No. 4) Regulations 2025. Those regulations were intended to bring section 6 of the Good Food Nation (Scotland) Act 2022 into force on 16 December 2025. Section 6 requires the Scottish Ministers to have regard to the national Good Food Nation Plan when exercising specified functions or functions of a specified description. Section 25 defines “specified” as meaning “specified in regulations made by the Scottish Ministers”.

According to the Policy Note, the associated secondary legislation has been delayed. The [subordinate legislation report](#) from the Rural Affairs and Islands Committee indicates that these functions were intended to be set out in the Good Food Nation (Specified Functions and Descriptions) (Scottish Ministers) Regulations 2025. However, that Committee did not recommend the instrument for approval, and those regulations have subsequently been withdrawn. The report indicates that the decision not to approve the instrument was taken on account of the fact that most of the respondents to the Committee’s call for views on the instrument considered the draft incomplete, and called for amended or additional functions and descriptions.

1. Could you explain why you consider it necessary to revoke the Good Food Nation (Scotland) Act 2022 (Commencement No. 4) Regulations 2025, rather than allowing section 6 to come into force, particularly given that a further commencement instrument will be required once the Good Food Nation (Specified Functions and Descriptions) (Scottish Ministers) Regulations 2025 are re-laid?

Does the Scottish Government have an intended course of action regarding the re-laying of the specified functions and descriptions instrument? Specifically, will the Scottish Government be re-laying these regulations, and if so, what are the proposed timescales?

**On 24 December 2025 the Scottish Government responded:**

### Question 1

As the DPLRC have noted, section 6 of the Good Food Nation (Scotland) Act 2022 (“the Act”) requires the Scottish Ministers to have regard to the national Good Food Nation Plan when exercising specified functions or functions falling within specified descriptions.

These specified functions and descriptions were to be set out in the Good Food Nation (Specified Functions and Descriptions) (Scottish Ministers) Regulations 2025. However, following parliamentary scrutiny from the Rural Affairs and Islands Committee, a decision was taken to withdraw the instrument. Consequently, there are currently no specified functions or descriptions in force.

With no specified functions or descriptions, section 6 of the Act would have no practical legal effect. To avoid any potential legal uncertainty, and in the interests of ensuring an effective statute book, the Scottish Government’s position in this case is that section 6 should not be commenced until a revised SSI setting out the specified functions and descriptions has been prepared and laid before the Scottish Parliament.

This approach prevents any potential confusion of section 6 being in force, but there being no specified functions or descriptions to give meaningful legal effect to the provision.

Question 2

The Scottish Government intends to engage and consult further with relevant stakeholders on the policy areas and statutory functions covered by the SSI. Following this engagement, the Scottish Government intends to re-lay a revised instrument before the Scottish Parliament, but not until after the summer recess.