

T: 0300 244 4000
E: scottish.ministers@gov.scot

Finlay Carson MSP
Convener of the Rural Affairs, Islands and Natural
Environment Committee
Scottish Parliament
Edinburgh
EH99 1SP

7 March 2022

Dear Finlay,

THE COMMON AGRICULTURAL POLICY (CROSS-COMPLIANCE EXEMPTIONS AND TRANSITIONAL REGULATION) (AMENDMENT) (EU EXIT) REGULATIONS 2022 (“SI”)

EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to proposals by the Scottish Ministers to consent to the making of UK secondary legislation affecting devolved areas arising from EU Exit.

That protocol, as agreed between the Scottish Government and the Scottish Parliament, accompanied the letter from the then Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, to the Conveners of the Finance and Constitution and Delegated Powers and Law Reform Committees on 4 November 2020 and replaced the previous protocol that was put in place in 2018.

I attach a Type 1 notification which sets out the details of the above SI which the UK Government intend to lay before Parliament on 27 April 2022, subject to the affirmative resolution procedure.

This notification also sets out the reasons why Scottish Ministers are content that Scottish devolved matters are to be included in this SI. Please note, we are yet to have sight of the final SI which is not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SI is laid and advise you as to whether the final SI is in keeping with the terms of this notification.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew’s House, Regent Road, Edinburgh EH1 3DG
www.gov.scot



INVESTORS
IN PEOPLE

Accredited
Until 2020



I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

The Parliament will have at least 28 days to consider the notification, but it would be helpful to have a response by 20 April if at all possible.

Yours sincerely,



MAIRI GOUGEON

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot



INVESTORS
IN PEOPLE

Accredited
Until 2020



THE COMMON AGRICULTURAL POLICY (CROSS-COMPLIANCE EXEMPTIONS AND TRANSITIONAL REGULATION) (AMENDMENT) (EU EXIT) REGULATIONS 2022

1. Is the notification Type 1 or Type 2

Type 1

2. Name of the instrument

The Common Agricultural Policy (Cross-Compliance Exemptions and Transitional Regulation) (Amendment) (EU Exit) Regulations 2022 (the “SI”).

3. Summary of the proposal

The European Union (Withdrawal) Act 2018 (“the Withdrawal Act”) converted and preserved EU law at the end of the transition period between the UK and the EU into UK domestic law (“retained EU law”). This included the EU Regulation 2020/2220 made by the EU on 23 December 2020 (the “EU Transitional Regulation”) which included subsidiary amendments and new provisions to Common Agricultural Policy (“CAP”) Regulation (EU) 1308/2013 of the European Parliament and of the Council of 17 December 2013 that had established a common organisation of the markets in agricultural products that included olive oil and apiculture products (the “Single CMO Regulation”). Common market organisation (CMO), is a part of the wider common agricultural policy (CAP).

In order to ensure retained EU law relating to the CAP would function correctly following the end of the transition period, the UK Government made a number of SIs using the powers in the Withdrawal Act in 2019 and 2020 to correct deficiencies in retained EU law. Where these have contained devolved provision, these have been subject to previous notifications to the Scottish Parliament. However, because the EU made Regulation 2020/2220 so close to the end of the transition period, the UK Government was unable to correct it using its 2020 EU Exit SIs.

Therefore the SI, which is consistent with previous deficiency fixes, is now being made in exercise of the powers conferred by the Withdrawal Act in order to address failures in retained EU law to operate effectively for olive oil and apiculture in the UK, including Scotland, arising from the withdrawal of the UK from the EU.

4. Explanation of law that the proposals amend

The part of the SI applicable in Scotland amends certain provisions of the Single CMO Regulation as amended by the EU Transitional Regulation, to rectify deficiencies in those provisions and to ensure that they are operable in a domestic law context in the UK, including in Scotland. (There are other parts of the SI which deal with provisions not applicable in Scotland.)

In particular, the SI amends the provisions of the Single CMO relating to apiculture to allow a 6 month extension of current apiculture programmes, and ensures this works in a post EU exit, domestic context. This includes the requirement that the appropriate authority (here the Scottish Ministers) shall modify its apiculture programmes to take account of the 6 month extension and removes the requirement to notify the Commission of the modified apiculture programme. Apiculture functions now fall to the appropriate authority (Scottish Ministers), post exit, and hence the transfer of the administrative function in this SI correctly and appropriately respects devolution.

In addition, the SI removes an unnecessary Article on olives and olive oil, newly inserted by EU Regulation 2020/2220.

The remaining provisions of the SI do not apply to Scotland and therefore are not mentioned in this notification.

5. Why are these changes necessary?

For apiculture, the SI allows for the 6 month extension of the apiculture programmes to 31 December 2022 with a requirement that the appropriate authority shall modify their national apiculture programmes to take account of that extension. The term appropriate authority is defined as meaning the Scottish Ministers in relation to Scotland. These provisions therefore fix the deficiencies that were left in retained EU law with the administrative functions falling to the appropriate authority (Scottish Ministers) and therefore appropriately respecting devolution. The Scottish Government has made a commitment to continue support for Scotland's apiculture programme. The deficiency fixes in the SI are consistent with prior amendments to the Single CMO, relating to apiculture, made in 2019, in the Agriculture (Legislative Functions) (EU Exit) (No. 2) Regulations 2019, which has been subject to a prior notification and prior consent of the Scottish Ministers.

For olive oil, the SI provides for the removal of Article 167a from the Single CMO Regulation as it applies in Scotland (and the rest of the UK). Article 167a provides for marketing rules to improve and stabilise the operation of the common market in olive oils that have to be applied by all the EU Member States and includes obligations on the EU Member States to notify the EU Commission of any decision taken in relation to these rules. Clearly it is no longer appropriate for these provisions to apply in the UK and in Scotland now that the UK has left the EU and the EU Commission no longer has any authority in the UK. The removal of this article is consistent with prior amendments to the Single CMO, removing provisions on olives and olive oil, made in 2019, in the Common Organisation of the Markets in Agricultural Products Framework (Miscellaneous Amendments, etc.) (EU Exit) Regulations 2019/821, which has been subject to a prior notification and prior consent of the Scottish Ministers.

6. Impact on devolved areas

The SI will have no impact or effect on devolved areas and Scotland as it does not implement any policy change and only corrects deficiencies in the EU Transitional Regulation and UK retained EU law.

7. Does the SI relate to a common framework or other scheme?

The SI relates to schemes covered by the framework for Agricultural Support, but will have no impact or effect on this framework as it does not implement any policy change and only corrects deficiencies in the EU Transitional Regulation and UK retained EU law.

8. Stakeholder engagement/consultation

A consultation was not required because no policy changes are being made in the SI.

The UK Government has worked with all of the UK Devolved Administrations in developing and drafting the SI.

9. Any other impact assessments?

An Impact Assessment has not been prepared for the SI as it only corrects deficiencies in the EU Transitional Regulation and UK retained EU law.

10. Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

The SI only corrects deficiencies in the EU Transitional Regulation and UK retained EU law. The Scottish Ministers consider that consenting to the SI is the most efficient and effective way to correct the deficiencies and ensure the provisions operate effectively at a UK level and in Scotland. Officials have worked with the UK Government to ensure the drafting delivers for and respects devolved competence in Scotland.

11. Intended UK laying date

The current anticipated laying date for the SI is 27 April 2022 and it will be subject to the affirmative resolution procedure.

12. Information about any time dependency associated with the proposal

There is no time dependency associated with the proposals.

13. Any significant financial implications?

There are no financial implications associated with the proposals.

SI NOTIFICATION: SUMMARY

Title of Instrument
The Common Agricultural Policy (Cross-Compliance Exemptions and Transitional Regulation) (Amendment) (EU Exit) Regulations 2022
Proposed laying date at Westminster
27 April 2022
Date by which Committee has been asked to respond
28 days
Power(s) under which SI is to be made
The SI is made in exercise of the powers conferred by section 8 of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c.16)
Categorisation under SI Protocol
Type 1 Notification
Purpose
<p>The European Union (Withdrawal) Act 2018 (“the Withdrawal Act”) converted and preserved EU law at the end of the transition period between the UK and the EU into UK domestic law (“retained EU law”). This included the EU Regulation 2020/2220 made by the EU on 23 December 2020 (the “EU Transitional Regulation”) which included subsidiary amendments and new provisions to Common Agricultural Policy (“CAP”) Regulation (EU) 1308/2013 of the European Parliament and of the Council of 17 December 2013 that had established a common organisation of the markets in agricultural products, including olive oil and apiculture products (the “Single CMO Regulation”).</p> <p>In order to ensure retained EU law relating to the CAP would function correctly following the end of the transition period, the UK Government made a number of SIs using the powers in the Withdrawal Act in 2019 and 2020 to correct deficiencies in retained EU law. However, because the EU made Regulation 2020/2220 so close to the end of the transition period, the UK Government was unable to correct it using its 2020 EU Exit SIs.</p> <p>Therefore the SI is now being made in exercise of the powers conferred by the Withdrawal Act in order to address failures in retained EU law to operate effectively for olive oil and apiculture in the UK and Scotland arising from the withdrawal of the UK from the EU.</p>
Other information
N/A
SG Policy contacts:
Policy lead for olive oil : Bearhop AD (Aileen)
Policy lead for apiculture : Knox AJ (Alison)