

Agriculture and Rural Communities (Scotland) Bill

[As amended at Stage 2]

Supplementary Delegated Powers Memorandum

Purpose

1. This Supplementary Delegated Powers Memorandum has been prepared by the Scottish Government in accordance with rule 9.7.9 of the Parliament's Standing Orders to assist the Delegated Powers and Law Reform Committee in its consideration of the Agriculture and Rural Communities (Scotland) Bill ("the Bill"). This memorandum describes provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or amended at Stage 2. It should be read in conjunction with the Delegated Powers Memorandum published to accompany the Bill on introduction.
2. The contents of this memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

Provisions conferring power to make subordinate legislation introduced or amended at Stage 2

3. The amended or new delegated powers in the Bill 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 has been considered appropriate.

Section 1: Overarching objectives of agricultural policy

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or new power: New

Provision

4. Section 1(1) of the Bill as amended at Stage 2 sets out the objectives of Scottish agricultural policy for the purposes of the Bill, which were previously contained in section 1 of the Bill as introduced.

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5. Following amendment of the Bill at Stage 2, section 1(2) was introduced which provides for the Scottish Ministers to be able to amend those section 1(1) objectives by regulations. Section 1(3) provides that regulations made under section 1(2) are subject to the affirmative procedure.

Reason for taking power

6. Section 1(2) of the Bill as amended at Stage 2 gives the Scottish Ministers the power to make regulations amending the section 1(1) objectives. This will provide flexibility that allows the Scottish Ministers to ensure that those objectives stay aligned with future Scottish agricultural policy needs. This ensures that the section 1(1) objectives can remain relevant over time.

Choice of procedure

7. Section 1(3) of the Bill as amended at Stage 2 makes the exercise of the section 1(2) enabling power subject to the affirmative procedure. It is considered appropriate that such regulations be subject to affirmative procedure in order to ensure that the Scottish Parliament is afforded the opportunity to fully consider proposed changes to section 1(1).

Section 9: power to cap support and assistance

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or new power: Revised

Provision

8. Section 9(1) allows the Scottish Ministers to make provision by way of regulations to limit or progressively reduce the amount of support or relevant assistance which a person may receive.

9. Section 9(3) of the Bill as amended at Stage 2 provides that regulations made under section 9(1) are subject to the affirmative procedure.

Reason for taking power

10. The reason for taking the power has not changed and remains as set out in the Delegated Powers Memorandum published to accompany the Bill on introduction.

Choice of procedure

11. Section 9(3) of the Bill as introduced provided for the section 9(1) power to be subject to the negative procedure. Following amendment at Stage 2, section 9(3) now provides that section 9(1) is subject to the affirmative procedure.

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12. This reflects the views of the Delegated Powers and Law Reform Committee and stakeholders that a higher level of scrutiny is appropriate in these circumstances.

Section 10: Refusal or recovery of support where in the public interest

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Revised or new: Revised

Provision

13. The power under section 10(2) of the Bill allowing the Scottish Ministers to make provision in connection with their powers under section 10(1) remains unchanged from introduction and as set out in the Delegated Powers Memorandum accompanying the Bill on introduction.

14. Section 10(3) of the Bill as amended at Stage 2 now requires the Scottish Ministers, before making regulations, to consult such persons as they consider likely to be affected by provisions in that section.

Reason for taking power

15. The reason for taking the power has not changed and remains as set out in the Delegated Powers Memorandum published to accompany the Bill on introduction.

Choice of procedure

16. The section 10(2) power is subject to the negative procedure under section 10(4).

Section 13: regulations about support

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative if regulations make significant provision, otherwise negative

Revised or new: Revised

Provision

17. Section 13(1) provides for the Scottish Ministers to be able to make provision, by way of regulations, for and in connection with the provision of support or support for a particular purpose.

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18. As introduced, section 13(3) required the Scottish Ministers to consult with such persons as they consider appropriate. Following amendment at Stage 2, section 13(3) now requires the Scottish Ministers to consult with such persons as they consider likely to be interested in, or affected by, provisions in this section.

Reason for taking power

19. The reason for taking the power has not changed and remains as set out in the Delegated Powers Memorandum published to accompany the Bill on introduction.

Choice of procedure

20. Regulations under section 13 are subject to the affirmative procedure if the regulations in question in the opinion of the Scottish Ministers would make significant provision, and otherwise are subject to the negative procedure.

Section 14: Eligibility criteria for support

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative if regulations make significant provision, otherwise negative

Revised or new: Revised

Provision

21. Section 14(1)(g) of the Bill was added at Stage 2 and sets out that the Scottish Ministers may – by regulations under section 13 – in particular make provision for, or in connection with, criteria for support by reference to the ability of grazing committees and co-operatives to claim support as a collective for joint projects separate to individual support.

Reason for taking power

22. The reason for taking the section 13 enabling power to which section 14(1)(g) directly relates has not changed and remains as set out in the Delegated Powers Memorandum published to accompany the Bill on introduction.

Choice of procedure

23. Regulations under section 13 to which section 14(1)(g) directly relates are subject to the affirmative procedure if the regulations in question in the opinion of the Scottish Ministers would make significant provision, and otherwise are subject to the negative procedure.

Section 15: Payment entitlements

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative if regulations make significant provision, otherwise negative

Revised or new: Revised

Provision

24. Section 15(1)(f) of the Bill as amended at Stage 2 sets out that the Scottish Ministers – by regulations under section 13 – may in particular make provision for, or in connection with, the surrender of payment entitlements to, or the reclamation or cancelling of payment entitlements by, the Scottish Ministers.

Reason for taking power

25. The reason for taking the section 13 enabling power to which section 15(1)(f) directly relates has not changed and remains as set out in the Delegated Powers Memorandum published to accompany the Bill on introduction.

Choice of procedure

26. Regulations under section 13 to which section 15(1)(f) directly relates are subject to the affirmative procedure if the regulations in question in the opinion of the Scottish Ministers would make significant provision, and otherwise are subject to the negative procedure.

Section 18: Processing of information

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Revised or new: Revised

Provision

27. Section 18(1) of the Bill allows the Scottish Ministers to make regulations making provision about the processing of information for and in connection with the provision of support under the Bill or other relevant assistance, and the carrying out of functions in relation to continuing professional development activities under the Bill.

Reason for taking power

28. The reason for taking the power has not changed and remains as set out in the Delegated Powers Memorandum published to accompany the Bill on introduction.

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However, section 18(3A) of the Bill as amended at Stage 2 clarifies how certain duties or powers to disclose or use information that are created under regulations made using the section 18(1) enabling power can operate with respect to disclosure of information that would contravene data protection legislation.

Choice of procedure

29. The section 18(1) power is subject to negative procedure under section 18(5).

Section 27: Continuing professional development

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Revised or new: Revised

Provision

30. The enabling powers in section 27(1) allows the Scottish Ministers to make regulations making provision for or in connection with the continuing professional development of the persons set out in paragraphs (a) to (e) of section 27(1).

31. Following amendment of the Bill at Stage 2, section 27(1)(ca) expands that list of persons in respect of whom continuing professional development regulations can be made to include persons who work in agriculture (whether as employees or otherwise). Subsection (3)(e) is also adjusted to mention that a person providing CPD activities may be required to have particular skills or qualifications.

Reason for taking power

32. The reason for taking the power has not changed and remains as set out in the Delegated Powers Memorandum published to accompany the Bill on introduction.

Choice of procedure

33. Regulations made under section 27(1) are subject to the negative procedure.

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