

Rural Affairs, Islands and Natural Environment Committee

34th Meeting, 2022 (Session 6), Wednesday, 14 December

Subordinate legislation

1. This paper supports the Committee's consideration of [the Common Organisation of the Markets in Agricultural Products \(Poultrymeat\) \(Miscellaneous Temporary Amendments\) \(Scotland\) Regulations 2022](#).
2. The SSI is a made affirmative, which means the instrument has come into effect before, rather than after, the conclusion of the 40-day period for parliamentary scrutiny. The SSI was laid on 24 November 2022, came into force on 28 November 2022 and the lead Committee report date is 19 December. Information about the affirmative procedure is set out in paragraphs 14 to 17; as set out above, the made affirmative procedure only differs in that parliamentary scrutiny takes place after the instrument has come into effect. If the Parliament did not approve the instrument, it would cease to have effect and the Scottish Government would need to take a decision about what alternative measures to put in place.

The Common Organisation of the Markets in Agricultural Products (Poultrymeat) (Miscellaneous Temporary Amendments) (Scotland) Regulations 2022

3. The instrument makes temporary amendments to—
 - Regulation (EU) No 1308/2013; and
 - The Poultrymeat (Scotland) Regulations 2011
4. Regulation (EU) No 2013/1308 relates to the marketing standards for poultrymeat and allows for poultrymeat to be marketed in fresh, frozen or quick-frozen condition. The Poultrymeat (Scotland) Regulations 2011 enforce these provisions.
5. The instrument would allow, for a limited period between 28 November and 31 December, poultry to be slaughtered and prepared and then for the poultrymeat and poultrymeat preparations to be marketed in a defrosted condition. This would include whole birds and crowns of turkey, duck, goose and capon; stuffed whole birds and crowns of those species; 2-3 bird roasts of those species.
6. The policy note explains that, due to concerns that a significant amount of birds may need to be culled because of the threat from avian flu, some retailers and

the larger turkey processors (together accounting for around 90% of production), contacted Defra to request temporary approval for poultrymeat to be frozen and then sold as a defrosted product.

7. Turkeys are particularly susceptible to avian flu, regardless of the strain. According to the policy note, over the Christmas period approximately 10 million turkeys, 200,000 geese and 100,000 ducks are sold in GB, with about 50% of these usually sold frozen. From 1-16 October 2022, in the UK, circa 302,000 turkeys, 200,000 ducks and 17,000 geese have been affected (died and culled).
8. The policy note contends that, were the industry to have the ability to freeze and defrost around 1m birds, marketing them as “defrosted”, this could safeguard the domestic supply and would mitigate potential loss of income due to any large avian flu outbreak. The policy note goes on to explain that, since supermarkets are currently unable to accommodate these extra birds in frozen condition, the proposal that they be defrosted would avoid significant losses to producers.
9. These products must be labelled in compliance with the Food Information to Consumers Regulation (retained EU Regulation (EU) No 1169/2011) which requires the name of the food to be accompanied by the designation “defrosted”.
10. The policy note also explains that this temporary policy will apply across GB. England and Wales, while not amending legislation, are also permitting the same poultrymeat and poultrymeat preparations to be marketed in defrosted condition for the same period, reflecting the GB-wide nature of the poultrymeat industry.
11. More information on the instrument is set out in the policy note attached at Annexe A.

Consideration by the Delegated Powers and Law Reform Committee

12. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [6 December](#) and agreed that no points arose.

Parliamentary procedure – affirmative instruments

13. The affirmative parliamentary procedure is set out in Chapter 10 of the [Parliament’s Standing Orders](#). Instruments subject to the affirmative procedure cannot come into force unless they are approved by Parliament.
14. It is usual practice for subject committees to take evidence from the Scottish Government in advance of considering the instrument. The Committee will take evidence from the Cabinet Secretary and Scottish Government officials at **agenda item 1**.
15. During its formal consideration, a member of the Scottish Government proposes, by motion, that the lead committee recommend that the instrument or draft instrument be approved.

16. The lead committee must report its recommendation to the Parliament within 40 days of the SSI being laid; where the lead committee recommends the instrument be approved, the Parliamentary Bureau will propose a motion that the instrument be agreed. The deadline for the Committee to report on this instrument is 23 May 2022.

For decision

17. The Committee is invited to—

- take evidence from the Cabinet Secretary and Scottish Government officials on the instrument (agenda item 1);
- ask the Cabinet Secretary to move, and then to debate, the motion on the instrument (agenda item 2); and
- delegate authority to the Convenor to sign off the Committee's report to the Parliament on the instrument.

**Rural Affairs, Islands and Natural Environment Committee clerks
December 2022**

Policy note

The Common Organisation of the Markets in Agricultural Products (Poultrymeat) (Miscellaneous Temporary Amendments) (Scotland) Regulations 2022

SSI 2022/352

1. The above instrument was made by the Scottish Ministers in exercise of the power conferred by Article 219 of Commission Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (“Regulation (EU) No 1308/2013”), and all other powers enabling them to do so. The instrument is subject to the made affirmative procedure.

Purpose of the Instrument

2. The purpose of the instrument is to make temporary amendments to –
 - Regulation (EU) No 1308/2013; and
 - The Poultrymeat (Scotland) Regulations 2011

allowing the marketing of certain defrosted poultrymeat for a limited time span starting on 28 November up to and including the 31 December 2022.

Policy Objectives

3. Currently, the provisions in Regulation (EU) No 2013/1308 relating to marketing standards for poultrymeat only allow poultrymeat to be marketed in fresh, frozen or quick-frozen condition. The Poultrymeat (Scotland) Regulations 2011 enforce these provisions, and provide that contravention of this requirement is an offence.
4. Due to concerns that a significant amount of birds may need to be culled because of the current threat from Avian Influenza (“AI”), some retailers (Tesco, Morrisons, M&S) as well as all the larger turkey processors (2 Sisters, Avara and Gressingham, together accounting for around 90% of production) have recently contacted Defra to request temporary approval for poultrymeat to be frozen and then sold as a defrosted product.
5. Turkeys are particularly susceptible to AI, regardless of the strain. Over the Christmas period approximately 10 million turkeys, 200,000 geese and 100,000 ducks are sold in GB, with about 50% of these usually sold frozen. From 1-16

October 2022, in the UK, circa 302,000 turkeys, 200,000 ducks and 17,000 geese have been affected (died and culled) by AI. In comparison, by this date last year there had been no AI cases. If industry is potentially able to freeze and defrost around 1m birds, marketing them as “defrosted” this will not only safeguard the domestic supply, but will also be of assistance to the industry in mitigating potential loss of income due to any large AI outbreak. Supermarkets are unable to accommodate these extra birds in frozen condition, hence the intention that they be defrosted in order to avoid significant losses to producers.

6. This proposal is to enable poultry to be slaughtered and prepared early to avoid the risk of AI outbreaks, and the following poultrymeat and poultrymeat preparations to be marketed in defrosted condition:— whole birds and crowns of turkey, duck, goose and capon; stuffed whole birds and crowns of those species; 2-3 bird roasts of those species.
7. These products must be labelled in compliance with the Food Information to Consumers Regulation (retained EU Regulation (EU) No 1169/2011) which requires that the name of the food shall be accompanied by the designation “defrosted”.
8. The Scottish Government considers that the measures taken by this instrument to allow the marketing of defrosted poultrymeat are necessary to address the threat of market disturbance to the poultrymeat industry caused by the current AI situation in GB.

Alignment

9. Regulation (EU) No 1308/2013, Annex VII, Part V, provides that poultrymeat and poultrymeat preparations shall be marketed in fresh, frozen or quick-frozen condition. This instrument would diverge from EU law for the period 28 November to 31 December only, to the extent that it would additionally allow certain poultrymeat and poultrymeat preparations to be marketed in defrosted condition. This temporary divergence from EU law is considered necessary in order to protect businesses due to the AI outbreak coinciding with the Christmas period, after which time alignment with EU law will resume.
10. This temporary policy will apply across Great Britain, as England and Wales, while not amending legislation, are also permitting the same poultrymeat and poultrymeat preparations to be marketed in defrosted condition for the same period, reflecting the GB-wide nature of the poultrymeat industry.

Statements required by European Union (Withdrawal) Act 2018

11. Statement as to why the Scottish Ministers consider that there are good reasons for the amendments made to regulations made under section 2(2) of the European Communities Act 1972 and that this is a reasonable course of action

12. The Cabinet Secretary for Rural Affairs and Islands has made the following statement,

“In my view there are good reasons for the amendments made by this instrument to the Poultrymeat (Scotland) Regulations 2011, made under section 2(2) of the European Communities Act 1972, and I have concluded that they are a reasonable course of action. This is because the amendments are necessary to address the threat of market disturbance caused by Avian Influenza, by permitting certain poultrymeat and poultrymeat preparations to be marketed in defrosted condition for a temporary period beginning on 28 November 2022 and expiring on 1 January 2023.”

Statement explaining the law which is relevant to the amendments

13. The Cabinet Secretary for Rural Affairs and Islands has made the following statement,

“Annex VII, Part V of Regulation (EU) 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (“Regulation 1308/2013”), makes provision about poultrymeat marketing standards. In particular, point III provides that poultrymeat and poultrymeat preparations shall be marketed in fresh, frozen or quick-frozen condition. The Poultrymeat (Scotland) Regulations 2011, schedule 1, Part 1, provide that contravention of this requirement is an offence. “

Statement explaining the effect of the amendments on retained EU law

14. The Cabinet Secretary for Rural Affairs and Islands has made the following statement,

“The effect of the amendments made by this instrument on retained EU law is as follows. Regulation 2 amends Annex VII, Part V of Regulation 1308/2013 to provide that certain defined poultrymeat and poultrymeat preparations, as set out in regulation 2, may be marketed in defrosted condition. Definitions of “defrosted poultrymeat” and “defrosted poultrymeat preparation” are provided.

Regulation 3 amends schedule 1, Part 1 of the Poultrymeat (Scotland) Regulations 2011 to provide that the offence of contravening Annex VII, Part V, point III of Regulation 1308/2013, which requires poultrymeat and poultrymeat preparations to be marketed in fresh, frozen or quick frozen condition, is to be read with the amendments made at regulation 2, allowing certain poultrymeat and poultrymeat provisions to be marketed in defrosted condition. Regulation 1 provides that the amendments apply during the period beginning on 28 November 2022 and expiring on 1 January 2023.”

Consultation

15. A full consultation has not taken place due to the urgency of this legislation. However, following the approach from industry to allow the temporary marketing of certain poultrymeat, the Scottish Government contacted industry to inform them of the proposal to take forward this temporary change in legislation to allow the marketing of certain defrosted poultrymeat, which was ultimately requested by industry, and asking for any comments on the proposal. One positive comment, and no negative comments, have been received. The Scottish Government has also discussed this proposal with Food Standards Scotland who have in turn informed the enforcement authorities on behalf of the Scottish Government. This change is of course not something that is mandatory, as poultrymeat can still be marketed as fresh, frozen or quick-frozen, but it will allow industry to assess whether they wish to sell defrosted poultrymeat or not. It is the Scottish Government's understanding that due to this being asked for from industry that this will be a welcome move.

Impact Assessments

16. There are no equality/children's/privacy, etc. impact issues. The following action is being taken as a result of avian influenza.

Financial Effects

17. A short Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy and legislation on business is expected to be positive. It will not be compulsory for stakeholders to market defrosted poultrymeat and given the fact that this temporary option was requested by industry, and is not mandatory we expect the impact on stakeholders will be positive. There are no anticipated additional costs associated with this proposal.

Scottish Government
Agriculture and Rural Economy Directorate
23 November 2022