

AGRICULTURE (RETAINED EU LAW AND DATA) (SCOTLAND) BILL

AMENDMENTS TO BE MOVED AT STAGE 2

In section 2, page 2, line 22

Leave out <negative> and insert <affirmative>

Effect

This amendment will provide that regulations under section 2(1) will be subject to affirmative procedure.

Reason

Ensuring that regulations which concern modification of the main CAP legislation are subject to affirmative procedure ensures a higher standard of Parliamentary scrutiny in the making of these regulations.

AGRICULTURE (RETAINED EU LAW AND DATA) (SCOTLAND) BILL

AMENDMENTS TO BE MOVED AT STAGE 2

In section 2, page 2, line 22

At end insert –

<() Before laying a draft of a Scottish statutory instrument containing regulations under subsection (1) before the Scottish Parliament, the Scottish Ministers must consult such persons as they consider appropriate.>

Effect

This amendment would impose a duty on Scottish Ministers to consult with relevant stakeholders when making regulations to modify the main CAP legislation.

Reason

Consultation will provide an additional layer of scrutiny. A requirement for Scottish Ministers to consult will help to ensure openness and transparency in relation to the provisions of the Bill relating to modifications of the main CAP legislation under section 2(1). Imposing a duty to consult will ensure that any regulations are exposed to critical comment from stakeholders, which may improve an instrument and help to avoid future difficulties when it is progressing through the Scottish Parliament.

AGRICULTURE (RETAINED EU LAW AND DATA) (SCOTLAND) BILL

AMENDMENTS TO BE MOVED AT STAGE 2

In section 2, page 2, line 22

At end insert –

<() Before making regulations under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate.>

Effect

This amendment would impose a duty on Scottish Ministers to consult with relevant stakeholders when making regulations to modify the main CAP legislation.

Reason

Consultation will provide an additional layer of scrutiny. A requirement for Scottish Ministers to consult will help to ensure openness and transparency in relation to the provisions of the Bill relating to modifications of the main CAP legislation under section 2(1). Imposing a duty to consult will ensure that any regulations are exposed to critical comment from stakeholders, which may improve an instrument and help to avoid future difficulties when it is progressing through the Scottish Parliament.

AGRICULTURE (RETAINED EU LAW AND DATA) (SCOTLAND) BILL

AMENDMENTS TO BE MOVED AT STAGE 2

In section 3, page 2, line 33

After <any> and insert <appropriate>

Effect

This amendment will provide that functions relating to a national ceiling may be conferred on any appropriate person.

Reason

Section 3 provides regulation making powers for Scottish Ministers to modify the main CAP legislation in order to secure the operation of the legislation in relation to Scotland beyond 2020. The regulation making power includes a power to make provision for determining a national ceiling (of the kind referred to in Article 6 of the Direct Payments Regulation) to be applicable in Scotland.

As the Bill is currently drafted, functions relating to a provision to determine a national ceiling can be conferred on any person in connection with, or with the making of, a determination in respect of a year (subsection (3)(b)). This amendment provides that the functions could only be conferred on any appropriate person.

AGRICULTURE (RETAINED EU LAW AND DATA) (SCOTLAND) BILL

AMENDMENTS TO BE MOVED AT STAGE 2

In section 3, page 2, line 35

At end insert –

<() Before laying a draft of a Scottish statutory instrument containing regulations under subsection (1) before the Scottish Parliament, the Scottish Ministers must consult such persons as they consider appropriate.>

Effect

This amendment would impose a duty on Scottish Ministers to consult with relevant stakeholders before making regulations to provide for the operation of CAP legislation beyond 2020.

Reason

Consultation will provide an additional layer of scrutiny. A requirement for Scottish Ministers to consult will help to ensure openness and transparency in relation to the provisions of the Bill relating to the operation of CAP legislation beyond 2020 under section 3(1). Imposing a duty to consult will ensure that any regulations are exposed to critical comment from stakeholders, which may improve an instrument and help to avoid future difficulties when it is progressing through the Scottish Parliament.

AGRICULTURE (RETAINED EU LAW AND DATA) (SCOTLAND) BILL

AMENDMENTS TO BE MOVED AT STAGE 2

In section 4, page 3, line 8

At end insert –

<() Before laying a draft of a Scottish statutory instrument containing regulations under subsection (1) before the Scottish Parliament, the Scottish Ministers must consult such persons as they consider appropriate.>

Effect

This amendment would impose a duty on Scottish Ministers to consult with relevant stakeholders before making regulations to modify the financial provisions in CAP legislation.

Reason

Consultation will provide an additional layer of scrutiny. A requirement for Scottish Ministers to consult will help to ensure openness and transparency in relation to the provisions of the Bill concerning the modification of CAP legislation relating to—

- (a) the setting or determining of ceilings on the amounts of any payments or expenditure for any purpose under the legislation, and
- (b) the reallocation or transfer of amounts or proportions of such ceilings between or among different purposes under the legislation,

under section 4(1). Imposing a duty to consult will ensure that any regulations are exposed to critical comment from stakeholders, which may improve an instrument and help to avoid future difficulties when it is progressing through the Scottish Parliament.

AGRICULTURE (RETAINED EU LAW AND DATA) (SCOTLAND) BILL

AMENDMENTS TO BE MOVED AT STAGE 2

In section 5, page 3, line 36

Leave out <negative> and insert <affirmative>

Effect

This amendment will provide that regulations under section 5(1) will be subject to affirmative procedure.

Reason

Ensuring that regulations which concern modification of the CAP legislation on public intervention and private storage aid are subject to affirmative procedure ensures a higher standard of Parliamentary scrutiny in the making of these regulations.

AGRICULTURE (RETAINED EU LAW AND DATA) (SCOTLAND) BILL

AMENDMENTS TO BE MOVED AT STAGE 2

In section 5, page 3, line 36

At end insert –

<() Before laying a draft of a Scottish statutory instrument containing regulations under subsection (1) before the Scottish Parliament, the Scottish Ministers must consult such persons as they consider appropriate.>

Effect

This amendment would impose a duty on Scottish Ministers to consult with relevant stakeholders when making regulations to modify the CAP legislation on public intervention and private storage aid.

Reason

Consultation will provide an additional layer of scrutiny. A requirement for Scottish Ministers to consult will help to ensure openness and transparency in relation to the provisions of the Bill relating to modifications of the CAP legislation on public intervention and private storage aid under section 5(1). These matters were not consulted upon in the '*Stability and simplicity: proposals for a rural funding transition period*' consultation¹. Consultation with relevant parties would enhance the opportunity for scrutiny. Imposing a duty to consult will ensure that any regulations are exposed to critical comment from stakeholders, which may improve an instrument and help to avoid future difficulties when it is progressing through the Scottish Parliament.

¹ <https://www.gov.scot/publications/stability-simplicity-proposals-rural-funding-transition-period/>

AGRICULTURE (RETAINED EU LAW AND DATA) (SCOTLAND) BILL

AMENDMENTS TO BE MOVED AT STAGE 2

In section 5, page 3, line 36

At end insert –

<() Before making regulations under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate.>

Effect

This amendment would impose a duty on Scottish Ministers to consult with relevant stakeholders when making regulations to modify the CAP legislation on public intervention and private storage aid.

Reason

Consultation will provide an additional layer of scrutiny. A requirement for Scottish Ministers to consult will help to ensure openness and transparency in relation to the provisions of the Bill relating to modifications of the CAP legislation on public intervention and private storage aid under section 5(1). These matters were not consulted upon in the '*Stability and simplicity: proposals for a rural funding transition period*' consultation². Consultation with relevant parties would enhance the opportunity for scrutiny. Imposing a duty to consult will ensure that any regulations are exposed to critical comment from stakeholders, which may improve an instrument and help to avoid future difficulties when it is progressing through the Scottish Parliament.

² <https://www.gov.scot/publications/stability-simplicity-proposals-rural-funding-transition-period/>

AGRICULTURE (RETAINED EU LAW AND DATA) (SCOTLAND) BILL

AMENDMENTS TO BE MOVED AT STAGE 2

In section 6, page 4, line 21

Leave out <negative> and insert <affirmative>

Effect

This amendment will provide that regulations under section 6(1) will be subject to affirmative procedure.

Reason

Ensuring that regulations which concern modification of the CAP legislation on governing aid for fruit and vegetable producer organisations are subject to affirmative procedure ensures a higher standard of Parliamentary scrutiny in the making of these regulations.

AGRICULTURE (RETAINED EU LAW AND DATA) (SCOTLAND) BILL

AMENDMENTS TO BE MOVED AT STAGE 2

In section 6, page 4, line 21

At end insert –

<() Before laying a draft of a Scottish statutory instrument containing regulations under subsection (1) before the Scottish Parliament, the Scottish Ministers must consult such persons as they consider appropriate.>

Effect

This amendment would impose a duty on Scottish Ministers to consult with relevant stakeholders when making regulations to modify the CAP legislation on governing aid for fruit and vegetable producer organisations.

Reason

Consultation will provide an additional layer of scrutiny. A requirement for Scottish Ministers to consult will help to ensure openness and transparency in relation to the provisions of the Bill relating to modifications of the CAP legislation governing aid for fruit and vegetable producer organisations under section 6(1). These matters were not consulted upon in the *'Stability and simplicity: proposals for a rural funding transition period'* consultation³. Consultation with relevant parties would enhance the opportunity for scrutiny. Imposing a duty to consult will ensure that any regulations are exposed to critical comment from stakeholders, which may improve an instrument and help to avoid future difficulties when it is progressing through the Scottish Parliament.

³ <https://www.gov.scot/publications/stability-simplicity-proposals-rural-funding-transition-period/>

AGRICULTURE (RETAINED EU LAW AND DATA) (SCOTLAND) BILL

AMENDMENTS TO BE MOVED AT STAGE 2

In section 6, page 4, line 21

At end insert –

<() Before making regulations under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate.>

Effect

This amendment would impose a duty on Scottish Ministers to consult with relevant stakeholders when making regulations to modify the CAP legislation on governing aid for fruit and vegetable producer organisations.

Reason

Consultation will provide an additional layer of scrutiny. A requirement for Scottish Ministers to consult will help to ensure openness and transparency in relation to the provisions of the Bill relating to modifications of the CAP legislation governing aid for fruit and vegetable producer organisations under section 6(1). These matters were not consulted upon in the *‘Stability and simplicity: proposals for a rural funding transition period’* consultation⁴. Consultation with relevant parties would enhance the opportunity for scrutiny. Imposing a duty to consult will ensure that any regulations are exposed to critical comment from stakeholders, which may improve an instrument and help to avoid future difficulties when it is progressing through the Scottish Parliament.

⁴ <https://www.gov.scot/publications/stability-simplicity-proposals-rural-funding-transition-period/>

AGRICULTURE (RETAINED EU LAW AND DATA) (SCOTLAND) BILL

AMENDMENTS TO BE MOVED AT STAGE 2

In section 8, page 6, line 6

Leave out line 6 and insert –

- <() Regulations under this section that include provision about enforcement, including in particular provision–
- (a) about the provision of information,
 - (b) conferring powers of entry,
 - (c) conferring powers of inspection, search and seizure,
 - (d) conferring powers to restrict the movement of anything,
 - (e) about keeping records,
 - (f) imposing monetary penalties,
 - (g) creating offences,
 - (h) about appeals,
 - (i) conferring functions, including functions involving the exercise of a discretion, on a person,
- are subject to the affirmative procedure.
- () Otherwise, regulations under this section are subject to the negative procedure.>

Effect

This amendment will provide that regulations under section 8(1) will be subject to affirmative procedure if they include provision about enforcement, and otherwise, they will be subject to the negative procedure.

Reason

Ensuring that regulations which contain provision about are subject to affirmative procedure ensures a higher standard of Parliamentary scrutiny in the making of these regulations. This is particularly significant as the regulations could include the creation of offences.

AGRICULTURE (RETAINED EU LAW AND DATA) (SCOTLAND) BILL

AMENDMENTS TO BE MOVED AT STAGE 2

In section 8, page 6, line 7

Leave out lines 7 - 9 and insert –

<() Before—

(a) laying a draft of a Scottish statutory instrument containing regulations under subsection (1) to which subsection () applies before the Scottish Parliament, or

(b) making regulations under subsection (1) to which subsection () applies,

the Scottish Ministers must consult such persons as they consider are representative of the interests of persons likely to be affected by the regulations as they consider appropriate.>

Effect

This is a consequential amendment which would amend the duty to Scottish Ministers to consult under section 8 in order to reference the appropriate Parliamentary procedure.

Reason

Section 8(5) as presently drafted includes a requirement for Scottish Ministers to consult “such persons as they consider are representative of the interests of persons likely to be affected by the regulations”. This amendment alters the current provisions to take account of the appropriate Parliamentary procedure for regulations in the event that the preceding amendment is approved.

AGRICULTURE (RETAINED EU LAW AND DATA) (SCOTLAND) BILL

AMENDMENTS TO BE MOVED AT STAGE 2

In section 10, page 7, line 9

Leave out line 9 and insert –

- <() Regulations under this section that include provision about enforcement, including in particular provision–
- (a) about the provision of information,
 - (b) conferring powers of entry,
 - (c) conferring powers of inspection, search and seizure,
 - (d) conferring powers to restrict the movement of anything,
 - (e) about keeping records,
 - (f) imposing monetary penalties,
 - (g) creating offences,
 - (h) about appeals,
 - (i) conferring functions, including functions involving the exercise of a discretion, on a person,
- are subject to the affirmative procedure.
- () Otherwise, regulations under this section are subject to the negative procedure.>

Effect

This amendment will provide that regulations under section 10(1) will be subject to affirmative procedure if they include provision about enforcement, and otherwise, they will be subject to the negative procedure.

Reason

Ensuring that regulations which contain provision about are subject to affirmative procedure ensures a higher standard of Parliamentary scrutiny in the making of these regulations. This is particularly significant as the regulations could include the creation of offences.

AGRICULTURE (RETAINED EU LAW AND DATA) (SCOTLAND) BILL

AMENDMENTS TO BE MOVED AT STAGE 2

In section 10, page 7, line 10

Leave out lines 10 - 12 and insert –

<() Before—

(a) laying a draft of a Scottish statutory instrument containing regulations under subsection (1) to which subsection () applies before the Scottish Parliament, or

(b) making regulations under subsection (1) to which subsection () applies,

the Scottish Ministers must consult such persons as they consider are representative of the interests of persons likely to be affected by the regulations as they consider appropriate.>

Effect

This is a consequential amendment which would amend the duty to Scottish Ministers to consult under section 10 in order to reference the appropriate Parliamentary procedure.

Reason

Section 10(4) as presently drafted includes a requirement for Scottish Ministers to consult “such persons as they consider are representative of the interests of persons likely to be affected by the regulations”. This amendment alters the current provisions to take account of the appropriate Parliamentary procedure for regulations in the event that the preceding amendment is approved.

AGRICULTURE (RETAINED EU LAW AND DATA) (SCOTLAND) BILL

AMENDMENTS TO BE MOVED AT STAGE 2

In section 12, page 8, line 35

At end insert –

<() Before laying a draft of a Scottish statutory instrument containing regulations under subsection (10) before the Scottish Parliament, the Scottish Ministers must consult such persons as they consider appropriate.>

Effect

This amendment would impose a duty on Scottish Ministers to consult with relevant stakeholders when making regulations to amend the definition of “agricultural activity”.

Reason

Consultation will provide an additional layer of scrutiny. A requirement for Scottish Ministers to consult will help to ensure openness and transparency in relation to any amendment of the definition of “agricultural activity” under section 12(10). Consultation with relevant parties would enhance the opportunity for scrutiny. Imposing a duty to consult will ensure that any regulations are exposed to critical comment from stakeholders, which may improve an instrument and help to avoid future difficulties when it is progressing through the Scottish Parliament.

AGRICULTURE (RETAINED EU LAW AND DATA) (SCOTLAND) BILL

AMENDMENTS TO BE MOVED AT STAGE 2

In section 16, page 10, line 11

After <risks> in the second place it occurs
insert <risks to animal or human health>

Effect

This would expand the list of specific purposes concerning the management of risk for which information under sections 13 or 14 may be required and processed.

Reason

Section 16 provides that a requirement imposed under section 13(1) or (2) or 14(1) or (2) must specify the purposes for which the information is required and may be processed (section 16(2)). Those purposes are set out in section 16(4) and includes:

“(a) helping persons in agri-food supply chains or persons carrying on agricultural activities to—

.....

(ii) manage risks (including, but not limited to, financial risks, non-financial trading risks, climatic risks and risks of or from disease or pollution)”

This amendment would have the effect of adding to the particular risks listed in section 26(4)(a)(ii) by including risks to animal or human health which are not currently specified. Given the risks of or from disease is specified, it would appear appropriate to specifically refer to animal or health human. Greater specificity will ensure that the law is clear and help to improve comprehensibility of the provision.

AGRICULTURE (RETAINED EU LAW AND DATA) (SCOTLAND) BILL

AMENDMENTS TO BE MOVED AT STAGE 2

In section 19, page 12, line 27

Before section 20 insert –

<() **Expiry of powers relating to CAP**

(1) Sections 2 – 6 expire on 1 May 2026.

(2) When, by virtue of subsection (1), sections 2 – 6 expire, the Scottish Ministers may by regulations repeal—

(a) this section, and

(b) sections 2 – 6.

(3) The Scottish Ministers may by regulations make transitional, transitory or saving provision in connection with the expiry under subsection (1) of any provision of this Act.

(4) Regulations under subsection (2) are subject to the negative procedure.

Effect

This amendment introduces sunset provisions in respect of the regulation-making powers under sections 2 - 6 of the Bill.

Reason

As presently drafted, the powers under sections 2 - 6 of the Bill are not time-limited. The Scottish Government has stated an intention that this is a transition Bill with work ongoing in relation to future policy⁵ and with regards to sections 2 and 6 particularly, has stated that it does "not intend to rely on the powers...any longer than is absolutely necessary"⁶.

Given the stated intention of Scottish Government, we consider that the introduction of sunset provisions in respect of sections 2 – 6 are appropriate. This will enhance scrutiny of the actions of the Government to implement changes. It is appropriate that sunset provisions apply across sections 2 – 6 of the Bill to ensure consistency.

⁵ Policy Memorandum, paragraphs 35-38.

⁶ <https://digitalpublications.parliament.scot/Committees/Report/DPLR/2020/2/6/Agriculture--Retained-EU-Law-and-Data---Scotland--Bill--Stage-1#Annex--Correspondence-with-the-Scottish-Government>

We note the views and recommendations of the Delegated Powers and Law Reform Committee⁷ and the recommendation of the Rural Economy and Connectivity Committee⁸ in respect of the introduction of a sunset clause for section 2.

1 May 2026 would be an appropriate date for these provisions to expire. Such a date reflects the expected end of the next Parliamentary session (expected to commence in 2021) and would allow sufficient time for the Scottish Government to introduce regulations in line with their stated intention for a new long-term policy for agriculture in place from 2024. Such a date would achieve a balance between affording the Scottish Government sufficient flexibility to act as required via delegated powers, while not retaining the power indefinitely and maintaining oversight of the Parliament of the delegated powers.

⁷ [https://www.parliament.scot/S5_Delegated_Powers/General%20Documents/Clerk to SG Legislation - Qns at Stage 1 - Agriculture Bill.pdf](https://www.parliament.scot/S5_Delegated_Powers/General%20Documents/Clerk%20to%20SG%20Legislation%20-%20Qns%20at%20Stage%201%20-%20Agriculture%20Bill.pdf) and Stage 1 Report, paragraphs 65-68, accessed at <https://digitalpublications.parliament.scot/Committees/Report/DPLR/2020/2/6/Agriculture--Retained-EU-Law-and-Data---Scotland--Bill--Stage-1#Introduction>

⁸ Stage 1 report, paragraphs 42-44, accessed at <https://sp-bpr-en-prod-cdnep.azureedge.net/published/REC/2020/3/3/Stage-1-Report-on-the-Agriculture--Retained-EU-Law-and-Data---Scotland--Bill/RECCS052020R3.pdf>