



Northern Ireland
Assembly

Committee for Agriculture, Environment and Rural Affairs

OFFICIAL REPORT (Hansard)

Common Organisation of the Markets in Agricultural Products
(Producer Organisations and Wine) (Amendment etc.) (EU Exit)
Regulations 2020 and Agriculture (Payments) (Amendment, etc)
(EU Exit) Regulations 2020:
Department of Agriculture, Environment and Rural Affairs

24 September 2020

NORTHERN IRELAND ASSEMBLY

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Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2020 and Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020:
Department of Agriculture, Environment and Rural Affairs

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Members present for all or part of the proceedings:

Mr Declan McAleer (Chairperson)
Mr Philip McGuigan (Deputy Chairperson)
Mrs Rosemary Barton
Mr John Blair
Mr Maurice Bradley
Mr Harry Harvey
Mr William Irwin
Mr Patsy McGlone

Witnesses:

Ms Elaine McCrory	Department of Agriculture, Environment and Rural Affairs
Mrs Colette McMaster	Department of Agriculture, Environment and Rural Affairs

The Chairperson (Mr McAleer): I welcome Colette McMaster and Elaine McCrory. I invite you to give your presentation, after which Committee members will, no doubt, have some questions for you.

Mrs Colette McMaster (Department of Agriculture, Environment and Rural Affairs): Thank you for the opportunity to speak to the Committee today about two Department for Environment, Food and Rural Affairs statutory instruments (SIs). The first SI title is the Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2020 or AGS/04. The second SI title is the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 or AGS/05. Elaine McCrory, the main policy lead for most of the changes proposed in these SIs is also online, as you are aware.

You heard an update from my colleague, Rosemary Agnew, earlier on the Department's approach to EU exit updates and the secondary legislation programme. I understand that the Committee is considering its role in respect of these UK-wide SIs. I know that you wish to consider your role, but I am seeking the Committee's agreement that the provisions in the devolved SI AGS/05 be extended to Northern Ireland.

The two SIs are being made by DEFRA, on a UK-wide basis, as part of the 2020 legislative programme aimed at ensuring that a functioning statute book with some degree of risk is in place at the end of the transition period on 31 December 2020. Both SIs are due to be laid in draft form at

Westminster on 30 September, with debates in both Houses to follow in the autumn. My sincere apologies that the Committee has had such limited time to consider the information shared on the devolved SI AGS/05. DAERA officials only received near-final drafts of the SIs from DEFRA last week and, indeed, received notice of a further minor amendment yesterday.

Turning to the territorial extent, the devolved SI AGS/05 has been drafted on a UK-wide basis. This is because it would not be possible to have stand-alone Northern Ireland legislation made in time for the end of the transition period due to the complexity of the changes needed, the volume of legislation to be made in a tight time frame and the limited resources to make the necessary amendments on a Northern Ireland-only basis. Making the SI on a UK-wide basis also helps ensure a consistent approach across the four nations, where appropriate.

I will turn to the matter of equality and human rights screening in relation to the UK SIs. We considered the food and farming group (FFG) programme of legislation, with devolved content being made at Westminster before the end of the transition period, in terms of its equality impacts and concluded that, as these amendments are required to implement the withdrawal agreement and, on the whole, to make existing legislation operable, they would have no significant impact on equality or human rights. As my colleague, Rosemary Agnew, committed to this morning, we will provide that information to the Committee.

I will now give an overview of the content of the SIs, the proposed changes that they make and a summary of the rationale for making this legislation on a UK-wide basis. We will reflect the views of the Committee to the Minister so that it may inform his response to DEFRA on extending the provisions of this SI to Northern Ireland.

I will give a bit of background to the EU exit legislation. The European Union (Withdrawal) Act 2018 converts EU law, as it stands at the transition period, into UK domestic law. This legislation is known as retained direct EU legislation. Powers in the European Union (Withdrawal) Act 2018 enable amendments to be made to EU and UK law to ensure that such legislation can work properly in the context of the UK no longer being a member of the EU. Over the last two years, DEFRA has developed a programme of legislation to amend retained EU law on the basis that the UK would be leaving the EU without a negotiated deal.

It has been necessary to revisit the previous exit legislation to ensure that it reflects the withdrawal agreement, including the Ireland/Northern Ireland protocol. As detailed in the departmental Assembly liaison officer (DALO) letter of 18 September to the Committee, the two SIs were presenting issues in relation to the common market organisation (CMO) and the common agricultural policy (CAP), in particular, the governance of Rural Development Programme (RDP) and CMO funding schemes, geographical indications (GIs) in the wine sector and producer organisations.

The SIs address operability issues in the retained EU and domestic legislation to reflect updates to EU and domestic law during the intervening period, correct errors in terminology, previous EU exit SIs and, as noted, ensure alignment with provisions of the withdrawal agreement, including the protocol.

I move now to a summary of the proposals. The focus of our discussion today is on the devolved SI AGS/05. The bulk of the SI deals with operability changes to the retained EU regulations dealing with the financing, management and monitoring of former CAP funding schemes, chiefly EU regulation 1306/2013 and its supplementing and implementing regulations, known collectively as horizontal regulations. Horizontal regulations set the rules for funding, checks, penalties for non-compliance etc, which were previously incorporated into UK law as of exit day and amended in relation to the direct payment scheme via the Direct Payments to Farmers (Legislative Continuity) Act 2020 and a number of associated SIs, the latter having previously been considered by the Committee.

However, horizontal regulations also cover the financing, management and monitoring arrangements for the RDP and CMO schemes. AGS/05 therefore makes amendments to the retained horizontal regulations for the purposes of RDP and CMO. The SI amends previous EU exit SIs made by DEFRA on a UK-wide basis. The main effect of the SI is to strip out any references to the direct payments regime, which is catered for separately. These are largely technical amendments that will have *[Inaudible]* practical effect on the operation of the current *[Inaudible]* schemes, such as school milk.

AGS/05 also makes a small number of additional amendments to ensure that rural development rules continue to function effectively at the end of the transition period. The SI also includes a few other amendments to previous exit SIs to correct minor errors in relation to the operation of public intervention and private storage *[Inaudible]* schemes, to change "exit day" to "IP completion day" —

that is, the end of the implementation or transition period — to make consequential amendments and to revoke a number of previous direct payments SIs that are no longer needed. Finally, the SI rolls forward and amends some provisions on notifications of agricultural marketing information, compelling this information to be provided to UK authorities rather than to the Commission.

AGS/04 is a UK-wide SI containing purely reserved provisions, and therefore Northern Ireland consent is not being sought. We have, however, brought this SI to the attention of the Committee because of the changes that it makes in relation to producer organisations and closely linked *[Inaudible]* AGS/05. These changes have potentially significant implications for Northern Ireland, which the Committee will wish to be aware of. It is because of its links to AGS/04 that we consider *[Inaudible]* SI to be *[Inaudible]* this presentation to the Committee.

I will outline the changes made by these SIs in relation to the producer organisations (POs). These changes largely replicate proposed changes to EU retained legislation in respect of POs that were previously *[Inaudible]* UK-wide made affirmative SIs, one reserved and one devolved, which fell as they were not debated in time by both Houses of Parliament. AGS/05 contains non-controversial operability amendments that were laid mainly to the rules around head office, membership, operational programmes and funding of POs and incorporate current UK rules on these into domestic law. However, the devolved SI needs to be considered with the reserved SI, AGS/04, which deals with provisions in respect of recognition and funding of POs, specifically transnational producer organisations (TPOs). Under the current EU regime, producers from other EU countries may come together in transnational POs. As a result of the proposed amendments to retained EU legislation contained in AGS/04, future scope to *[Inaudible]* TPOs will be removed from the UK statute book. In addition, changes will be made to the formula for calculation of aid to TPOs so that it is based on the value of the marketing production for UK members alone. These policy changes will impact TPOs across the UK. Therefore, as a result of proposed changes in the legislation, a PO based in Northern Ireland could potentially lose a significant portion of its future funding in respect of its non-UK members. Recognition of POs is a matter that is reserved to the EFRA Secretary of State. While the funding of POs is largely a devolved matter, the international relations element of funding for non-UK members is an excepted matter under the Northern Ireland Act 1998, and that is the reason *[Inaudible.]* The timing of the impact of those changes is *[Inaudible.]* That is because article 138 of the withdrawal agreement provides for EU law to continue to apply to the UK in respect of certain programmes and activities:

"committed under the MFF 2014-2020 or previous financial perspectives ... after 31 December 2020"

until their closure or until the application of article 138 ends. That provision applies to rural development measures and also certain CMO schemes, including aid to fruit and vegetable POs *[Inaudible]* five-year operational programmes. During the preparation of the previous DEFRA SIs, which made similar changes to retained law, DAERA raised concerns about the potential impact of *[Inaudible]* AERA Ministers *[Inaudible.]* As was previously indicated, those are reserved matters, and Northern Ireland consent is not being sought to the territorial extent of AGS/04. We are briefing the Committee on this matter for information only.

The remainder of AGS/04 deals with reserved provisions in relation to protected geographical indications, protected designations of origin and traditional terms in the wine sector. The changes that are made by this SI simply align appeals procedures in relation to decisions that are made by the EFRA Secretary on wine GIs with those for other GI categories. Since GI legislation is included in annex 2 of the Northern Ireland protocol, the changes in this SI apply to GIs *[Inaudible.]* The main legislative changes in relation to GIs will be made via a separate SI on which the Department hopes to brief the Committee in the next few weeks. Finally, AGS/04 makes minor corrections to a previous DEFRA exit SI, changing "exit day" to "IP completion date".

To sum up, the changes that are to be made by the devolved SI AGS/05 are necessary to ensure that EU retained law in relation to the financing, management and monitoring of former CMO and RDP schemes, as well as some aspects of the schemes themselves, function effectively at the end of the transition period. Subject to the views of the Committee, the Minister is minded to give consent to extending the provisions in AGS/05 to Northern Ireland. The SI has a scheduled laying date at Westminster *[Inaudible.]* Therefore, the Minister will wish to respond to his DEFRA counterpart as soon as he has had a chance *[Inaudible]* the Committee's view.

I trust that the Committee has found the presentation useful and that it has helped to clarify the rationale for extending the SI to Northern Ireland. Along with Elaine, I will be happy to take any questions or to provide further details *[Inaudible.]*

The Chairperson (Mr McAleer): Thank you for that presentation, Colette. I suppose there is one thing I will ask. Having looked through AGS/04 and AGS/05, I did not see any reference to the Rural Needs Act 2016, which we implemented here. How can you be certain that this SI proposal will abide by rural proofing, which is a legislative requirement here in the North?

Mrs McMaster: I think you are asking about AGS/04? *[Inaudible]* a DEFRA SI that is being brought forward by the EFRA Secretary of State. That means that it is not part of the legislation that is covered by the 2016 Act in Northern Ireland, which relates to Northern Ireland legislation that we would bring forward in Northern Ireland or changes that we would make in Northern Ireland.

Mrs Barton: Thank you for your presentation. What would happen — I would like your thoughts or further information — if the Committee indicated that it would prefer that the legislation for the provisions was made in Northern Ireland rather than elsewhere?

Mrs McMaster: Well, as Rosemary mentioned earlier, there are a number of reasons that the UK-wide SIs are including the Northern Ireland provisions. One is to ensure a consistent approach across the four nations on common issues. Traditionally, these have been UK-wide matters. It is also very much to do with the fact that, at this stage in the programme, towards the end of the transition period, there is very little time left to make separate, stand-alone Northern Ireland legislation. The concern, from our point of view, is that, if the provision for Northern Ireland were not included in the UK-wide SI, it may not be possible to have them in place by the end of the transition period.

Mrs Barton: How are the issues raised with SIs being dealt with in the other devolved Administrations?

Mrs McMaster: They are being considered in other devolved Administrations in a similar way to how they are being considered here, in that the SIs themselves are not available for scrutiny by their devolved Parliaments. They are considering the content. However, the intention is that they will go forward as UK-wide SIs, which will include Scotland, Wales, Northern Ireland and England.

I invite Elaine to come in at any point should she want to clarify further anything that I am saying.

The Chairperson (Mr McAleer): Elaine has been frozen out.

The Committee Clerk: Do you have a question, William?

Mr Irwin: No. I am happy enough. It is straightforward enough.

The Chairperson (Mr McAleer): Patsy, do you want to come in?

Ms Elaine McCrory (Department of Agriculture, Environment and Rural Affairs): *[Inaudible.]*

The Chairperson (Mr McAleer): We cannot hear you, Elaine. We have lost you. We cannot get you.

Patsy, did you want to come in? Patsy, can you hear us?

Mr McGlone: Yes, Chair. Sorry. I thought that you were waiting for Elaine to come in.

The Chairperson (Mr McAleer): We have lost Elaine. Hopefully, she will come back in again.

Mr McGlone: That is OK. Colette, maybe you could give me an insight into or examples of the producer organisations. We have been talking about the situation in Scotland. Paragraph 2 of your annex states:

"The changes relate to rules on the recognition of POs which is a reserved matter in the UK. Scotland disputes this reservation."

Have you any idea why that is? Can you outline the types of producer organisation and whether they are transnational? That might give me some insight into why Scotland disputed it. Presumably, that dispute will roll on through to the Scottish Parliament.

Mrs McMaster: I am not sure that I will be able to comment on the Scottish position.

Mr McGlone: That is OK.

Mrs McMaster: What I do know is that we have taken legal advice here, and we have no question about the fact that it is a reserved matter for Northern Ireland in line with our legislative position. The basis of Scotland's legislation is slightly different, and it is making an argument on that basis. However, on the basis of our legal advice, there is no question: it is a reserved matter for Northern Ireland. Did you want me to say a bit about the producer organisations?

Mr McGlone: I wanted to know what that term affects. Is "producer organisations" a general term or does it cover specific organisations?

Mrs McMaster: There are specific operational programmes and support. Generally, producer organisations can be recognised across a number of sectors, including *[Inaudible]* dairy and meat.

Mr McGlone: Right.

Mrs McMaster: Their purpose is to help to strengthen the position of farmers in the supply chain and to provide a means for farmers and others to share knowledge, technical information *[Inaudible]* economies of scale, manage risks and so on. They also provide a mechanism by which to promote and assist with good practice in relation to environmental issues. They also grant an exemption from EU competition rules, allowing collective bargaining prices. So, they are specific new programmes, and we have a small number of producer organisations in Northern Ireland in the horticulture area. There is a small number here at the moment, but there may be more in the future. In fact, it is something that probably benefits producer organisations, as I have outlined, through collaborative working and so on. The legislation is to ensure that the operational programmes can function.

Mr McGlone: Thanks for that, Colette.

Mr M Bradley: Thank you very much, Colette, for your presentation. Both SIs appear, from what I have heard this afternoon, to be an adoption of EU rules into UK law. What impact might both SIs have on the Northern Ireland protocol and on the Internal Market Bill? What impact might the Internal Market Bill have on AGS/04 and AGS/05? Will you give me a rundown on that please, Colette?

Mrs McMaster: Let me deal with the impact on the Northern Ireland protocol first. Under the terms of the protocol, Northern Ireland will continue to be bound by EU regulations that govern certain goods until such times as the Northern Ireland Executive democratically decide to leave the arrangement. Geographical indications (GIs) are a reserved matter. AGS/04 includes some content on GIs on the appeal procedures that reflects the protocol and will only apply to decisions made by the DEFRA Secretary of State in relation to protection *[Inaudible]* GB. AGS/05 makes minor amendments to legislation regarding funding schemes, which are largely outwith the protocol and intersect *[Inaudible]* policy. Therefore, Northern Ireland Ministers are being asked to provide consent to enable DEFRA to lay the legislation. *[Inaudible]* protocol.

You asked about the impact on the Internal Market Bill. Expenditure under the CMO, rural development and direct payments to farmers may be covered in any UK subsidy control regime. The Bill reserves powers for the UK Government in relation to a UK subsidy control regime, but it does not have *[Inaudible]* one. Under the control regime, the subsidies in the UK will be subject to consultation at a later date.

The UK Government have issued a statement saying that, after the transition period, they will abide by WTO subsidy rules, which are looser than the EU's state-aid regime, with a consultation to follow on whether a more restrictive state-aid regime should be put in place. New state-aid rules will continue to apply in Northern Ireland, which will include a limit on the amount of *[Inaudible]* that can be given to farmers. Our interest is in ensuring that state aid in GB is not more generous *[Inaudible]* Compared with what can be provided in Northern Ireland in order to avoid the competitiveness. Our businesses in GB market *[Inaudible].*

The Chairperson (Mr McAleer): We have reached our time limit, as there is another Committee in this room in 10 minutes and it needs to be cleaned up. We will have to close proceedings now and discuss how we complete the remainder of today's business. Thank you, Colette, and sorry for cutting you off, but we are under instruction to get out and make way for the next group. We will revisit this, no doubt.

Mrs McMaster: Thank you.