



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

1 October 2020

EU-exit SIs that were made by DEFRA as UK-wide legislation, and it would be problematic to legislate for Northern Ireland separately. It also creates a consistent approach to common issues and makes efficient use of resources across the four nations. It simply would not be possible to have stand-alone Northern Ireland legislation made by 31 December.

AGS/05 addresses the operability issues in retained EU and domestic legislation in order to reflect the withdrawal agreement as well as to update previous exit SIs to correct errors and terminology. It ensures that the EU regulations that deal with the governance of former common agricultural policy (CAP) funding schemes will operate after transition. It makes operability amendments to EU legislation that was incorporated into UK law as of exit day and amended to make direct payment schemes operable in 2020. The SI strips out any references to direct payments in previous exit SIs, as those are included in separate legislation that is already in force. Those technical amendments will have little practical effect on the operation of rural development regulations and common market organisation (CMO) schemes, such as school milk, but will ensure that legislation continues to function effectively after transition. The SI also provides powers for DAERA to fund and carry out checks on producer organisations. It also includes a few other technical amendments to earlier exit SIs.

By way of update, AGS/05 was not laid yesterday as previously planned. It is now due to be laid in draft form early next week. We have also brought a reserved SI forward for the Committee's attention. To update the Committee, that SI was laid in draft form yesterday, as devolved Administration (DA) consent is not required.

To sum up, changes that are made by AGS/05 are technical amendments in order to ensure that relevant legislation can operate at the end of transition. Subject to the Committee's views, the Minister is minded to give consent to extending the provisions in AGS/05 to Northern Ireland. Last week, the Committee asked a number of questions, and Elaine and I are happy to take any further questions that you would like to ask. Thank you.

The Chairperson (Mr McAleer): Thank you for that briefing, Colette. I should say that, in the wider context of the SI process, Committee members feel almost uncomfortable because it is difficult for us to scrutinise. I understand that you are also working at pace and that this is coming at you like a train. This morning, I noted the comments that the Speaker of the House of Commons in Westminster made in which he highlighted the misuse of SIs by the Prime Minister and said that that was undermining parliamentary scrutiny. It is a really challenging process.

DAERA does not dispute that AGS/04 is a reserved matter, but what is the view of the Scottish Parliament on that?

Mrs McMaster: I cannot comment on the detail of the Scottish Parliament's view. I know that it has disputed aspects of the reserved nature of that SI. As I said, the SI, being reserved, does not require DA consent for DEFRA to lay it, and that is what happened. It was laid in draft form at Westminster without DA consent, which was not requested because the SI is reserved. I am not sure what the conclusion of the Scottish Parliament has been on that. Our assessment is that, from a legal perspective, we do not dispute the reserved nature of that reserved SI.

The Chairperson (Mr McAleer): No formal consultation has taken place on AGS/05.

Mrs McMaster: There has been no formal consultation on AGS/05. Some previous consultation was undertaken by DEFRA on it in 2018, when, as part of the preparation for laying EU exit legislation, it ran a targeted stakeholder engagement exercise on aspects of the common market organisation. There was some consultation at that stage, but there has been no further consultation on AGS/05. The reason that DEFRA has for that is that there is no statutory requirement for consultation, and there are no policy options now through which to seek the views of stakeholders.

Mr McGuigan: I totally agree, Chair, with your dissatisfaction with the process. Can we get some clarification on why it is an SI and not an SR and on what would happen if the Committee indicated that it would prefer a legislative route for those provisions through the Assembly?

Mrs McMaster: OK. The rationale for it being an SI is that it is UK-wide legislation. It amends earlier EU-exit SIs that were made by DEFRA as UK-wide legislation. It also ensures a consistent approach to common issues in previous UK-wide legislation. It is also about making efficient use of resources.

At this stage, our assessment is that, if we were to seek to remove Northern Ireland from the SI, we would not have time to have the stand-alone legislation in place in Northern Ireland for 31 December. That would then risk our schemes in Northern Ireland not operating. That is the key rationale for it.

Mr Irwin: The changes that are made by SI AGS/05 are necessary in order to ensure that the EU can retain law on the financing, managing and monitoring of CMO and rural development programme (RDP) schemes as well as to ensure that some aspects of those schemes can function effectively. In effect, it is necessary for the change on 1 January: is that right? Is it to allow everything to function properly?

Mrs McMaster: Yes. The amendments are largely technical. They are a necessary consequence of the UK's withdrawal from the EU and are needed to allow the schemes to function effectively. If they are not in place by the end of the transition period, that could, ultimately, affect DAERA's ability to pay beneficiaries. This is primarily about making technical amendments, but if those are not made, that could impact on the functionality of the legislation in Northern Ireland — absolutely.

Mr Irwin: OK, that cleared it up for me.

The Chairperson (Mr McAleer): The last thing that we want to see is any negative impact on the level of payments that farmers and wider rural communities get. When we scrutinised the Agriculture Bill, we heard from Dr Gravey and Dr Dobbs, who told us that at least 30% of farmers in the North would disappear if they did not have that type of support. In the absence of the likes of the SI being rural proofed, is the Department content that it will not have any detrimental impact on the social and economic well-being of our farming and rural communities?

Mrs McMaster: It has not been rural proofed because it was made by Whitehall Ministers. They do not carry out rural needs assessments under the Rural Needs Act (Northern Ireland) 2016. However, the Department considered whether any of the provisions might have negative rural impacts. Given that the amendments in the SI are largely technical and are a necessary consequence of the UK's withdrawal from the EU, it is not foreseen that the legislation will have any specific impacts on the needs of rural dwellers. As I said, there would be more implications for rural dwellers if the legislation were not made by the end of the transition period, and if the legislation is not in place, that could affect our ability to pay beneficiaries, for example.

Mrs Barton: Thank you very much. I was just looking at the SI in relation to the protocol. What manner of impact might it have on the Internal Market Bill, or how might the Internal Market Bill impact on it?

Mrs McMaster: Under the terms of the protocol, Northern Ireland will continue to be bound by EU regulations that cover certain goods until such times as the Northern Ireland Executive democratically decide to leave that arrangement. We talked about the two SIs when we were here last week, but I will focus on AGS/05 today, which is the devolved one. AGS/05 makes minor amendments to the legislation regarding funding schemes, which are largely outwith the protocol and which intersect with devolved policy. Those matters in the legislation that are to do with devolved issues are outwith the protocol.

I previously talked about the reserved matter, so I will just mention it, although it is not the focus of today's discussion. AGS/04 includes some content on geographical indications (GIs) appeals procedures that reflect the protocol and will apply only to decisions that are made by the Secretary of State for Environment, Food and Rural Affairs on the protection of GIs in GB. GIs are a reserved matter.

You also asked about the impact that the Internal Market Bill might have on our common market organisation schemes here. The expenditure under the CMO, rural development and direct payments to farmers schemes may be covered in any UK subsidy-control regime. The Internal Market Bill reserves the powers for a UK subsidy-control regime to the UK Government, but it does not create one. The controls that there will be on subsidies in the UK will be subject to consultation at a later date. EU state aid rules will continue to apply in Northern Ireland, and they will include a limit on the amount of support that can be given to our farmers. In order to avoid the competitiveness of our business in the GB market being adversely affected, our interest is that the state aid in GB is not more generous or trade-distorting compared with what can be provided in Northern Ireland.

Mr McGlone: State aid was raised previously, but we are not going in that direction. We are, basically, being asked to note a lot of these instruments and legislation. Is that not right, Colette?

Mrs McMaster: It is because AGS/05 is a devolved matter that DA consent is requested to lay the SIs in Westminster. They are covering UK-wide matters, some of which are devolved. In this case, in line with procedure, the Minister has been asked to agree to the territorial extent or to give his consent to the territorial extent, and he is seeking the view of the Committee on that in order to inform his final decision. We are seeking the Committee's views on extending the territorial extent to include Northern Ireland in this SI.

Mr McGlone: OK. What weight will be given to the Committee's view on any issue?

Mrs McMaster: The Minister will take account of the Committee's view in making his decision.

Mr McGlone: Secondly, you may or may not be aware of this, and I certainly do not expect you to give an answer, but in about an hour's time the EU will announce that it is launching legal action against Britain on the Internal Market Bill and the withdrawal agreement and that there is potential for clashes between the two. I am not asking you for an answer. It would be stupid of me to ask that, and maybe it would be inappropriate for you to answer given that we do not know the basis of the legal action in the first instance. Presumably, the Department will take advice on that and on the potential implications and ramifications for our situation here as we look at the protocol and at how the North is being affected by all this. I presume that the Department will look at that. All I am asking is for someone to confirm that. Maybe somebody could answer that.

Mrs McMaster: We are not in a position to confirm that, as you will appreciate.

Mr McGlone: Yes.

Mrs McMaster: This SI is getting back to what we explained about the purpose of all these SIs. They are part of the 2020 legislative programme to ensure that there is a functioning statute book at the end of the transition period on 31 December. In a sense, this continues and needs to continue in any case.

Mr McGlone: I do not want to labour this, and you may not be in a position to say yes or no, but I presume that the Department will watch the development in Europe between Europe and GB and the Westminster Government and keep a close watch on what the legal ramifications of that could be. We would not like to think that all or some of what we are doing would be just rendered null and void. I presume that the Department will take advice on these matters, but maybe you are not in a position to answer that.

Mrs McMaster: I am not in position to answer you on that, but I see this instrument as part of a functioning statutory rule book, which we need in any case in Northern Ireland. If you set aside the concerns that you clearly have about the Internal Market Bill, the purpose of the legislative programme that we are discussing is to have a functioning rule book in place in Northern Ireland by the end of the transition period.

Mr McGlone: That is grand. Maybe you could reflect my concerns, and there may be others in the Committee who have them, that the Department should keep a very closely watching brief on legal matters as they roll out. That would be very important.

OK, thanks very much for that, Colette.

The Chairperson (Mr McAleer): Thank you, Colette.