

**CABINET SECRETARY FOR RURAL AFFAIRS AND ISLANDS**  
**Briefing for Rural Affairs, Islands and Natural Environment Committee**  
**Appearance**

<b>What</b>	<p>The Cabinet Secretary has been invited to provide evidence on this made affirmative Scottish Statutory Instrument (SSI):</p> <p><b>The Common Organisation of the Markets in Agricultural Products (Poultrymeat) (Miscellaneous Temporary Amendments) (Scotland) Regulations 2022</b></p> <p>The SSI will be considered by the Rural Affairs, Islands and Natural Environment (RAINE) Committee.</p> <p>A speaking note is provided at Annex B.</p>
<b>Where</b>	Scottish Parliament, Committee Room 2
<b>When</b>	<p>Wednesday 14 December 2022</p> <p>9.00 – 9.30</p>
<b>Key Message(s)</b>	<p>The Scottish Government is taking forward this instrument in response to representations made by the poultrymeat industry and retailers to allow temporary marketing of defrosted poultrymeat.</p> <p>This is due to the current threat to the poultrymeat industry posed by Avian Influenza (AI).</p>
<b>Who</b>	Rural Affairs, Islands and Natural Environment Committee.
<b>Why</b>	<p>To provide evidence on this made affirmative Scottish Statutory Instrument (SSI) <b>The Common Organisation of the Markets in Agricultural Products (Poultrymeat) (Miscellaneous Temporary Amendments) (Scotland) Regulations 2022.</b></p>
<b>Supporting officials</b>	<p>(Redacted), Scottish Government Legal Directorate, (Redacted)</p> <p>Ramona Branza, Head of Food and Drink Industry Growth, Food &amp; Drink Division (Redacted)</p>
<b>Briefing contents</b>	<p><b>Annex A:</b> Agenda / Summary Page  <b>Annex B:</b> Opening Statement  <b>Annex C:</b> Committee Hearing Q&amp;A  <b>Annex D:</b> SSI  <b>Annex E:</b> Policy Note  <b>Annex F:</b> Regulation (EU) 1308/2013, Annex VII, Part V and the Poultrymeat (Scotland) Regulations 2011, schedule, showing the amendments made by the SSI.</p>

**AGENDA**

9.00 – 9.30

- Cabinet Secretary invited to make an opening statement
- Question and Answer Session
- Cabinet Secretary invited to move the motion to recommend approval of the SSI and Committee consider motion

**SUMMARY PAGE**

**The Common Organisation of the Markets in Agricultural Products (Poultrymeat) (Miscellaneous Temporary Amendments) (Scotland) Regulations 2022** is to be considered by the RAINE Committee. The purpose of this SSI is to temporarily amend poultrymeat marketing standards legislation to allow the marketing of defrosted poultrymeat for a short period - from 28 November until 31 December 2022. This is due to the potential impact of AI on the poultrymeat market.

England and Wales, while not amending legislation, are also allowing the same defrosted poultrymeat products to be marketed for the same period, relying on Local Authorities not enforcing the prohibition on marketing of defrosted poultrymeat. This SSI will allow the temporary marketing of certain poultrymeat products as defrosted in Scotland, thus ensuring that the practice in Scotland is compliant with the legislation.

The provisions of retained Regulation (EU) 2013/1308 (the Single CMO Regulation) only allow poultrymeat to be marketed as either fresh, frozen or quick-frozen. The Regulations temporarily amend the Single CMO Regulation to allow marketing of certain types of defrosted poultrymeat, and amend the Poultrymeat (Scotland) Regulations 2011 to provide that the marketing of these types of poultrymeat as defrosted is not an offence. The poultry meat that is allowed to be marketed in this way covers the following (both whole birds and crowns, stuffed and not stuffed):

- (a) *Gallus domesticus* (chickens) – capons only,
- (b) turkeys,
- (c) ducks,
- (d) geese.

These poultry products would be required to be labelled in compliance with the general Food Labelling Regulations with the “defrosted” declaration being prominent on the front of the packaging.

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 the same date last

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year, there had been no AI cases. If industry is potentially able to freeze and defrost around 1 million birds, marketing them as “defrosted” 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.

Scotland has a relatively small turkey production industry, with approximately 200 producers in total and just a handful of owners with flocks of over 1000 birds each. Total number of birds is estimated to be approximately 19,000. So the numbers are small, but the temporary change in the legislation still gives the Scottish producers the same ability to market defrosted poultrymeat as the rest of the GB as well as allowing products from the rest of GB to be marketed as defrosted in Scotland. In addition, the production of duck and geese is negligible in Scotland and is unlikely to have any impact due to the size of the sector.

**Key Lines**

In response to industry requests, Defra and the Welsh Government are allowing the marketing of defrosted poultrymeat between 28 November and 31 December 2022. Following a brief engagement with industry representatives, the Scottish Government has decided to adopt a similar approach in Scotland.

England and Wales are allowing defrosted poultrymeat to be marketed without amending the legislation, and are instead relying on Local Authorities’ discretion not to take action.

Scotland’s approach does not rely on Local Authorities’ discretion not to take action and instead provides reassurances to our industry on compliance with the legislation. Thus, Scottish Government has introduced this short term SSI to allow the temporary marketing of defrosted poultrymeat in Scotland, in compliance with legislation. The rest of GB, while not amending legislation, are covering the same period and products.

This instrument is aimed at assisting the sector at a time of concern in the industry and the potential of market disturbance due to AI, and to mitigate the possibility of on-farm culling being required due to AI outbreaks. It is also aimed at safeguarding the supply of poultrymeat available to the consumer over the festive period.

**Legal powers and parliamentary procedure**

This instrument is made under powers in Article 219 of the Single CMO Regulation, which allow Scottish Ministers to take measures to address the market situation, in order to react efficiently and effectively against threats of market disturbance.

This power takes the made affirmative procedure. Unlike some powers which allow the option of the made affirmative procedure in cases of urgency as an alternative to the affirmative procedure, the power in Article 219 only allows for the made affirmative procedure. The instrument was therefore made and laid on 24 November

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and came into force on 28 November 2022. However, it still requires to be approved by the Scottish Parliament within 28 days of being made, in order to continue in force.

**Consultation**

Given there was insufficient time for a consultation, the Scottish Government contacted those who approached Defra and other associated industry contacts by email, to inform them of the proposal to take forward this temporary change in legislation and asking for any comments on the proposal. One positive comment, from a Scottish craft butcher and no negative comments, have been received. In addition, we have liaised with Food Standards Scotland who have also informed enforcement authorities.

**EU Alignment**

EU marketing standards legislation only permits poultrymeat to be marketed in fresh, frozen or quick-frozen condition. This instrument will diverge from EU law for the period 28 November to 31 December only, to the extent that it will 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.

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.

**Business Regulatory Impact Assessment**

The BRIA has been signed by the Cabinet Secretary and has been provided alongside this briefing.

## **OPENING STATEMENT**

Good morning and thank you for inviting me to speak about  
**The Common Organisation of the Markets in Agricultural  
Products (Poultrymeat) (Miscellaneous Temporary  
Amendments) (Scotland) Regulations 2022**

This instrument allows the marketing of certain poultrymeat in defrosted condition for the temporary period of 28 November to 31 December 2022 inclusive.

Regulation 1308/2013 (the Single CMO Regulation) makes provision about poultrymeat marketing standards. In particular, it stipulates that poultrymeat and poultrymeat preparations shall only be marketed in fresh, frozen or quick-frozen condition, and the Poultrymeat (Scotland) Regulations 2011, schedule 1, Part 1, provide that contravention of this requirement is an offence.

Due to the current threat from Avian Influenza, some retailers as well as all the larger turkey processors, who together account for around 90% of poultrymeat production, contacted Defra to request temporary approval for poultrymeat to be frozen and then sold as a defrosted product.

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The UK and Welsh Governments have indicated that this will be permitted during the period 28 November to 31 December. The Scottish Government sought the views of the Scottish industry and we wish to address the threat of market disturbance to the poultrymeat sector by permitting this in Scotland.

This instrument therefore temporarily amends the Single CMO Regulation and the Poultrymeat (Scotland) Regulations 2011 to allow certain poultrymeat to be marketed as defrosted.

In Scotland 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.

It is important to note that this does not present a food safety risk and also that, under the Food Information to Consumers Regulations, any defrosted poultrymeat must comply with the labelling regulations which require that the name of the food shall be accompanied by the designation “defrosted” on the label.

Of course, marketing of poultrymeat as defrosted is not something that is mandatory, as poultrymeat can still be

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marketed as fresh, frozen or quick-frozen during this period. It does, however, give industry the option to sell defrosted poultrymeat, if they so wish.

It is the Scottish Government's understanding that this option will be welcomed by the poultry sector, since it was an industry ask.

A full public consultation has not taken place due to the urgency of temporarily amending this legislation. However, the Scottish Government contacted industry to inform them of the proposal to be taken forward and invited comments on the proposal.

We received one positive comment, and had no negative comments. We have also liaised with Food Standards Scotland, who have informed enforcement authorities on behalf of Scottish Government.

I hope these remarks are helpful in setting out the rationale for this draft instrument. I am happy to take any questions that members may have.

Thank you.

**Following Questions, please move the following motion -**

I move that the Committee recommends that the **The Common Organisation of the Markets in Agricultural Products (Poultrymeat) (Miscellaneous Temporary Amendments) (Scotland) Regulations 2022** be approved.



## **COMMITTEE HEARING Q&A**

### **General Q&A**

#### **Q. Why is this amendment considered necessary?**

**A.** Turkeys are particularly susceptible to AI, regardless of the strain. Between 1-16 of October alone, in the UK, over half a million turkeys, ducks and geese have been affected by AI, either died of the disease or had to be culled.

In comparison, by the same date last year, there had been no AI cases. If industry are able to freeze and defrost 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.

The amendment is considered necessary to address the threat of disruption to the poultrymeat market caused by AI, ensuring that legislation permits marketing of defrosted poultrymeat in Scotland for the temporary period mentioned.

#### **Q. What are England and Wales doing?**

**A.** England and Wales are allowing the same defrosted poultrymeat products to be marketed for the same period, which is 28 November to 31 December. They are not amending the legislation, they are instead relying on Local Authorities’ discretion not to take action.

#### **Q. Why has Scotland taken a different approach to the rest of GB?**

**A.** Whilst I cannot speak for the approach taken in England and Wales, I believe this is the best approach for Scotland, as it provides absolute clarity to the Scottish industry on what is allowed, and reassurances that it is fully compliant with the legislation.

**Q. What consultation/communication has there been with industry and retailers?**

**A.** The proposal to allow temporary marketing of poultrymeat came from the poultrymeat industry and retailers. Defra and the Welsh Government subsequently issued guidance indicating that they would support this. Given the urgency, we were not able to do a full public consultation in Scotland.

We did email the main retailers and producers to present the Scottish Government's proposal to take the same approach as England and Wales in allowing the temporary marketing of defrosted poultrymeat, with the addition that we were proposing to make a temporary change to the legislation. We invited any comments on this proposal and received only one response, which was positive. We have also liaised closely with Food Standards Scotland and they have informed Scottish enforcement authorities about this.

**Q. What evidence is there of a threat of market disturbance due to AI?**

As I'm sure we are all aware AI is a big issue and not just in the UK. We know that 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 alone, in the UK, over half a million turkeys, ducks and geese have been affected by AI, so either died of the disease or had to be culled. In comparison, by the same date last year there had been no AI cases. So given these stark figures, there was a real threat of market disturbance should producers not be able to slaughter their birds early. I am confident that the measure we are taking to address this concern is to the benefit of our industry.

**Q. AI is also an issue in Europe. Are the EU allowing temporary marketing of defrosted poultrymeat?**

**A.** We are not aware of the EU making any changes. The temporary change we are making reflects the particular circumstances of the GB poultrymeat market at this time of year and the impact of AI in GB.

**Q. Does this affect Northern Irish and imported poultrymeat?**

**A.** Poultrymeat from Northern Ireland or a third country could be sold in Scotland in defrosted condition. However, due to the Northern Ireland Protocol, Northern Ireland has not amended the regulations nor will they be allowing the marketing and sale of defrosted poultrymeat there. If Scottish poultrymeat was moving to Northern Ireland or being exported to a third country, it would require to comply with the rules in that country.

**Q. How will this affect the poultry producers particularly in Scotland?**

**A.** Scotland has a relatively small turkey production industry, with approximately 200 producers in total and just a handful of owners with flocks of over 1000 birds each. Total number of birds is estimated to be approximately 19,000.

So the numbers are small, but the temporary change in the legislation still gives the Scottish producers the same ability to market defrosted poultrymeat as the rest of GB as well as allowing products from the rest of GB to be marketed as defrosted in Scotland. In addition, the production of duck and geese is negligible in Scotland and is unlikely to have any impact due to the size of the industry here.

**Q. Why can't the poultrymeat just be sold as frozen?**

**A.** The underlying issue is the storage for retail of approximately a further 20% of frozen poultrymeat. This is simply not feasible for the retail sector at this time of the year, as the amount of traditionally frozen poultrymeat is estimated to be approximately the same as other years. This measure supports the availability of poultrymeat that would normally be prepared later and sold as fresh.

**Q. What happens to defrosted turkeys that are still in the supermarket chillers on 31 December?**

**A.** The legislation stipulates that the marketing of defrosted poultrymeat ends on 31 December (inclusive), so anything still on supermarket shelves would **not** be able to be sold beyond that point. This is also consistent with the guidance provided by Defra.

**Q. Given that there appears to be no safety issue with the marketing of defrosted poultrymeat, do we know why the legislation does not allow this and will you be looking to amend the legislation on a permanent basis?**

**A.** EU marketing standards legislation has not permitted marketing of defrosted poultrymeat for many years. Anecdotally, we believe that the reason for this was an EU trading issue - there were concerns around high numbers of imported frozen poultrymeat that was then sold as defrosted. As such the EU changed the marketing regulations to disallow defrosted poultrymeat to be marketed in the EU.

At this time, it is not our intention to amend the Regulations on a permanent basis.

## **AI Housing Order**

**Q. The rest of the UK has introduced housing orders, why has the Scottish Government not followed suit and introduced a housing order?**

**A.** The Scottish Government is keeping the situation under constant review. The current evidence does not yet justify imposing a housing order in Scotland. The decision on whether a housing order is introduced is a matter for Scotland's Chief Veterinary Officer and follows the analysis of a wide range of available evidence.

This includes numbers and geographical distribution of poultry cases, epidemiological reports on risk pathways, risk assessments on disease risk level, alongside case numbers and geographical distribution of wild bird findings.

No cases of HPAI in outdoor birds have been confirmed in Scotland since the 4 November as all recent cases in Aberdeenshire occurred in housed sites.

**Q.** If there had been a housing order in place in Scotland, could we have avoided the need to slaughter birds early and therefore have avoided the *need* to market defrosted poultrymeat?

**A.** The advice of the CVO is that current evidence does not justify a housing order. Allowing producers and retailers to market previously

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frozen birds means that they were able to slaughter a proportion of birds early, as a precaution against potential AI infection.

Whilst England and Wales do have housing orders in place, they have still opted to allow the marketing of certain defrosted poultrymeat.

## **Food Safety**

**Q. Are there safety concerns for consumers buying defrosted turkeys, geese etc.?**

**A.** Consumers need not be concerned about the safety of these products. The safety message remains the same as for other poultry purchases – consumers should ensure that the product is thoroughly cooked, including any stuffing, following the product storage and cooking guidance and maintaining good food hygiene practices.

**Q. Extra care is required when freezing and defrosting at home – do the same concerns apply here?**

**A.** The poultry products in question will be frozen and defrosted at a commercial level using well established processes within producers' food safety management systems. The food industry has special equipment to quickly freeze and then defrost products more efficiently and safely than at home.

**Q. Can these products be re-frozen?**

**A.** Consumers should follow the guidance for storage provided on products' packaging, including whether the product can be re-frozen. Generally, consumers are recommended to keep the products chilled and use within the stated shelf life, which will be clearly marked on the product.

## **Labelling**

**Q.** How will consumers know if the turkey or other poultry product has been previously frozen and defrosted before being put on the market for sale?

**A.** Under the general labelling provisions that apply to prepacked foods, it is mandatory for previously frozen meat, including poultrymeat

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products, that are sold defrosted, to include the designation 'Defrosted' in the name of the product. Similar provisions apply to non-prepacked food, therefore all affected products should be clearly labelled as 'Defrosted'.

**Q. Will there be date mark considerations and what other labelling information should consumers check?**

**A.** Under the general labelling provisions that apply to prepacked foods, an appropriate date mark and any special storage conditions and/or conditions of use should be on the label. For example 'use by' followed by a date, "Keep refrigerated" and "Suitable for freezing".

It is the responsibility of the Food Business Operator (FBO) to ensure the presence and accuracy of the food information provided and to determine the appropriate shelf life of their food products.

This is done as part of the FBO's food safety management plan to demonstrate that the food they produce is safe to eat.

**[Officials can provide further information if required]**

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SCOTTISH STATUTORY INSTRUMENTS

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**2022 No.**

**AGRICULTURE**

**FOOD**

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

<i>Made</i>	- - - -	2022
<i>Laid before Parliament</i>		2022
<i>Coming into force</i>	- -	28th November 2022

The Scottish Ministers make the following Regulations 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<sup>(1)</sup> (“the Regulation”), and all other powers enabling them to do so.

These Regulations are made in order to react efficiently and effectively against a threat of market disturbance, where that situation or its effects on the market is likely to continue or deteriorate. These Regulations take the measures necessary to address that market situation. Any other measures available under the Regulation appear to be insufficient to address the market situation.

There has been consultation as required by Article 9 of Regulation (EC) 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety<sup>(2)</sup>.

**Citation, commencement and expiry**

1.—(1) These Regulations may be cited as the Common Organisation of the Markets in Agricultural Products (Poultrymeat) (Miscellaneous Temporary Amendments) (Scotland) Regulations 2022 and come into force on 28 November 2022.

(2) These Regulations expire on 1 January 2023.

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(1) EUR 1308/2013, relevantly amended by S.I. 2019/831. Under Article 219 the appropriate authority may make regulations. Article 3(5)(c) provides that the “appropriate authority” means, in relation to Scotland, the Scottish Ministers, or the Secretary of State if consent is given by the Scottish Ministers.  
(2) EUR 2002/178, relevantly amended by S.I. 2019/641. S.I. 2019/641 was amended by S.I. 2020/1504.

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**Amendment of Regulation (EU) 1308/2013 of the European Parliament and of the Council**

2. Annex VII (definitions, designations and sales description of products referred to in Article 78), Part V (products of the poultrymeat sector) of the Regulation is to be read as if—

(a) in point II—

(i) after paragraph (4) there were inserted—

“(4A) “defrosted poultrymeat” means poultrymeat which has been frozen or quick-frozen and subsequently defrosted prior to being kept at a temperature not below -2 °C and not higher than +4 °C;”,

(ii) after paragraph (6) there were inserted—

“(6A) “defrosted poultrymeat preparation” means a poultrymeat preparation for which defrosted poultrymeat has been used;”,

(b) after point III there were inserted—

“III(A).

1. The poultrymeat and poultrymeat preparations to which paragraph (2) applies may be marketed in defrosted condition.

2. The poultrymeat and poultrymeat preparations to which this paragraph applies are one or more of the following species of poultry carcase, as defined in Article 1(1), and poultry cuts – breast, as defined in Article 1(2), of Commission Regulation (EC) No 543/2008 laying down rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultrymeat(3)—

- (a) *Gallus domesticus* – capons only,
- (b) turkeys,
- (c) ducks,
- (d) geese.”.

**Amendment of The Poultrymeat (Scotland) Regulations 2011**

3. The Poultrymeat (Scotland) Regulations 2011(4) are to be read as if in schedule 1 (retained EU poultrymeat provisions contravention of which is an offence), in Part 1 (provisions of the Single CMO Regulation or the Council Regulation 2013), in the third row of the Table—

(a) in column 2, after “Point II(6) of Part V of Annex VII to Council Regulation 2013 in relation to fresh poultrymeat preparation”, in a new line there were inserted—

“Points II(4A), II(6A) and III(A) of Part V of Annex VII to Council Regulation 2013 in relation to defrosted poultrymeat and defrosted poultrymeat preparation,”,

(b) in column 3, for “or quick-frozen” there were substituted “, quick-frozen or defrosted”.

A member of the Scottish Government

St Andrew’s House,  
Edinburgh

2022

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(3) EUR 543/2008, relevantly amended by S.I. 2019/1422.

(4) S.S.I. 2011/318, relevantly amended by S.I. 2013/3235.



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**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make temporary, non-textual amendments to Commission Regulation (EU) No 1308/2013 (“EUR 1308/2013”) and the Poultrymeat (Scotland) Regulations 2011 (“the 2011 Regulations”). These Regulations come into force on 28 November 2022 and expire on 1 January 2023.

Regulation 2 amends Annex VII, Part V of EUR 1308/2013 to provide that during the period beginning on 28 November 2022 and expiring on 1 January 2023, certain poultrymeat and poultrymeat preparations may be marketed in defrosted condition. Definitions are provided of “defrosted poultrymeat” and “defrosted poultrymeat preparation”.

Regulation 3 amends the 2011 Regulations in the third row of the Table in schedule 1, Part 1. The amendments provide that the offence of contravening point III of Annex VII, Part V of EUR 1308/2013 is to be read with the amendments to that Part made by these Regulations.

A Business and Regulatory Impact Assessment has been prepared and will be placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government Agriculture and Rural Economy Directorate, St Andrew’s House, Edinburgh EH1 3DG.

**POLICY NOTE**

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

**SSI 2022/XXX**

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**

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**

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.

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.

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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.

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.

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”.

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**

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.

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.

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**Statements required by European Union (Withdrawal) Act 2018**

**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**

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**

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**

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.

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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**

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**

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

**Financial Effects**

A short Business and Regulatory Impact Assessment (BRIA) has been completed and provided. 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

**Regulation (EU) 1308/2013, Annex VII, Part V – showing (in red) temporary amendments made by The Common Organisation of the Markets in Agricultural Products (Poultrymeat) (Miscellaneous Temporary Amendments) (Scotland) Regulations 2022**

**PART V**

**Products of the poultrymeat sector**

I. This Part shall apply in relation to the marketing within Great Britain by way of business or trade, of certain types and presentations of poultrymeat, and poultrymeat or poultry offal preparations and products, of the following species

- Gallus domesticus ,
- ducks,
- geese,
- turkeys,
- guinea fowls.

These provisions shall also apply to poultrymeat in brine falling within CN code 02109939.

**II.**

**Definitions**

- (1) "poultrymeat" means poultrymeat suitable for human consumption, which has not undergone any treatment other than cold treatment;
- (2) "fresh poultrymeat" means poultrymeat which has not been stiffened at any time by the cooling process prior to being kept at a temperature not below – 2 °C and not higher than + 4 °C. However, nothing in this Regulation prevents the appropriate authority in England, Wales or Scotland from using any power the authority has to lay down slightly different temperature requirements for the minimum length of time necessary for the cutting and handling of fresh poultrymeat performed in retail shops or in premises adjacent to sales points, where the cutting and handling are performed solely for the purpose of supplying the consumer directly on the spot;
- (3) "frozen poultrymeat" means poultrymeat which must be frozen as soon as possible within the constraints of normal slaughtering procedures and is to be kept at a temperature no higher than – 12 °C at any time;
- (4) "quick-frozen poultrymeat" means poultrymeat which is to be kept at a temperature no higher than – 18 °C at any time within the tolerances as provided for in Council Directive 89/108/EEC39;

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(4A) "defrosted poultrymeat" means poultrymeat which has been frozen or quick-frozen and subsequently defrosted prior to being kept at a temperature not below -2 °C and not higher than +4 °C;

(5) "poultrymeat preparation" means poultrymeat including poultrymeat that has been reduced to fragments, which has had foodstuffs, seasonings or additives added to it or which has undergone processes insufficient to modify the internal muscle fibre structure of the meat;

(6) "fresh poultrymeat preparation" means a poultrymeat preparation for which fresh poultrymeat has been used. However, nothing in this Regulation prevents the appropriate authority in England, Wales or Scotland from using any power the authority has to lay down slightly different temperature requirements to be applied for the minimum length of time necessary and only to the extent necessary to facilitate the cutting and handling performed in the factory during the production of fresh poultrymeat preparations;

(6A) "defrosted poultrymeat preparation" means a poultrymeat preparation for which defrosted poultrymeat has been used;

(7) "poultrymeat product" means a meat product as defined in point 7.1 of Annex I to Regulation (EC) No 853/2004 for which poultrymeat has been used.

III. Poultrymeat and poultrymeat preparations shall be marketed in one of the following conditions:

- fresh,
- frozen,
- quick-frozen.

III(A).

1. The poultrymeat and poultrymeat preparations to which paragraph (2) applies may be marketed in defrosted condition.

2.— The poultrymeat and poultrymeat preparations to which this paragraph applies are one or more of the following species of poultry carcass, as defined in Article 1(1), and poultry cuts – breast, as defined in Article 1(2), of Commission Regulation (EC) No 543/2008 laying down rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultrymeat—

(a)

Gallus domesticus – capons only,

(b) turkeys,

(c) ducks,

(d) geese.

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**The Poultrymeat (Scotland) Regulations 2011, Schedule 1 – showing (in red) temporary amendments made by The Common Organisation of the Markets in Agricultural Products (Poultrymeat) (Miscellaneous Temporary Amendments) (Scotland) Regulations 2022**

**1. Schedule 1 RETAINED EU POULTRYMEAT PROVISIONS  
 CONTRAVENTION OF WHICH IS AN OFFENCE**

**2.**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Relevant provision of the Single CMO or Council Regulation 2013</b>	<b>Provisions to be read with the provisions of the Single CMO Regulation or Council Regulation 2013 mentioned in column 1</b>	<b>Subject matter</b>
Article 116 of the Single CMO Regulation	Points I(2) and (3) and III(1) of Part B of Annex XIV to the Single CMO Regulation, and the Commission Regulation	Prohibition on the marketing of poultrymeat except in accordance with the marketing standards laid down in Part B of Annex XIV to the Single CMO Regulation and the Commission Regulation.
Point III(1) of Part B of Annex XIV to the Single CMO Regulation	Article 7 of the Commission Regulation	Quality grading.
point III of Part V of Annex VII to	Point II(2) of Part V of Annex VII to	Marketing of poultrymeat



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Council Regulation 2013	Council Regulation 2013 in relation to fresh poultrymeat,	and poultrymeat preparations in a fresh, frozen, quick-frozen or defrosted.
	Point II(3) of Part V of Annex VII to Council Regulation 2013 in relation to frozen poultrymeat,	
	Point II(4) of Part V of Annex VII to Council Regulation 2013 in relation to quick-frozen poultrymeat	
	Point II(6) of Part V of Annex VII to Council Regulation 2013 in relation to fresh poultrymeat preparation	
	Points II(4A), II(6A) and III(A) of <u>Part V of Annex VII to Council Regulation 2013</u> in relation to defrosted poultrymeat and defrosted poultrymeat preparation	