These notes relate to the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (asp 17) which received Royal Assent on 1 October 2020

AGRICULTURE (RETAINED EU LAW AND DATA) (SCOTLAND) ACT 2020

EXPLANATORY NOTES

BACKGROUND

Pillar 1

Direct payments

12. Direct payments are a form of income support and are aimed at helping to protect a farmer's or crofter's income from market volatility. The payments are generally decoupled from production, and are not means tested. They are based on the area farmed and accompanying payment "entitlements".

13. Direct payments rules for the 2020 claim year were rolled over into domestic law on 31 January 2020 by section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c.2).

14. Direct payments schemes deliver annual payments to farmers in return for compliance with certain conditions. Some of these schemes are mandatory, while others are run at the discretion of the Member States who have a degree of flexibility on, for example, eligibility conditions, calculation of payments, and scheme conditions.

15. Member States have the option to apply direct payment schemes on a regional basis, which the UK has done in order to reflect devolution. Thus, Scottish direct payment schemes are different from those in the rest of the UK, although they share common features as they are based on the EU framework.

16. The current Scottish direct payment schemes are:

    - The "Basic Payment Scheme" (BPS), which is the main direct payment scheme. It is an area-based scheme with payments calculated according to the area of land claimed upon, and acts as a safety net for farmers and crofters by providing a basic level of income support.

    - The "Greening" payment, which provides a top-up payment in return for carrying out agricultural practices beneficial for the climate and the environment.

    - The Young Farmer Scheme, which provides a top-up payment to young farmers under 40 years of age.

    - Voluntary Coupled Support (VCS), which includes the "Scottish Suckler Beef Support Scheme" (SSBSS) and the "Scottish Upland Sheep Support Scheme" SUSSS). These schemes provide a payment linked to farm production to maintain livestock numbers.

17. In order to be eligible to receive a direct payment, farmers, crofters and land managers must submit an application form every year and meet the BPS eligibility criteria and,

where relevant, the additional conditions for the greening payment, the Young Farmer Scheme and the VCS schemes.

18. Eligible farmers, crofters and land managers must comply with greening practices and rules concerning food safety, animal health, plant health, the environment, the protection of water resources, animal welfare and the condition in which farmland is maintained. This is referred to as “cross compliance”. Failure to meet cross compliance requirements could result in a reduction of payments or, in extreme cases, no payments.

19. Payments are calculated in accordance with a range of additional factors including the payment region, greening payment rates, young farmer payment and the VCS schemes. There are three payment regions in Scotland:

- Payment Region 1, which includes better quality agricultural land that has been used for arable cropping, temporary grass and permanent grass,
- Payment Region 2, which includes higher quality rough grazing in a Less Favoured Area (“LFA”), and
- Payment Region 3, which includes lower quality rough grazing in an LFA.

Eligibility for BPS

20. Regulation 1307/2013 includes several conditions that farmers and crofters have to meet each year in order to be eligible to receive payments; these include being an “active farmer”, having eligible land, and valid payment entitlements. Farmers can apply every year.

The Young Farmers’ Scheme

21. The Young Farmer scheme is designed to encourage generational renewal and attract new entrants to the industry. Under the scheme, young farmers, who must also be newcomers to the industry or have set up their farms in the previous five years, can apply for an extra payment on top of their BPS payment for the first five years of their business.

22. It is mandatory for Member States to apply this scheme and to use up to 2% of their national budget allocation to fund the payments.

23. In Scotland, the young farmer payment is worth up to 25% of the average value of the payment entitlements held by the young farmers, multiplied by the number of entitlements they use to claim BPS (up to a maximum of 90). The exact percentage, however, will depend on how many farmers apply each year.

Greening

24. Greening was introduced from 2015 as part of the 2013 CAP reforms to improve the environmental performance of farming. A new Greening payment “for agricultural practices beneficial for the climate and environment” was introduced, and is paid on top of the BPS payment.

25. It is mandatory for applicants to the BPS to comply with the Greening requirements, which cover permanent grassland, crop diversification and ecological focus areas (where relevant on their land) in order to receive the Greening payment.

26. It is also a mandatory requirement for Member States to allocate 30% of their direct payment budget to the Greening payment.

Voluntary Coupled Support (VCS)

27. Under the CAP, the link between the receipt of income support payments and the production of specific products has been progressively removed (‘decoupled’). This

is to avoid overproduction of certain products and to make sure that farmers are responding to genuine market demand.

28. In some situations, however, targeted aid to a specific agricultural sector or sub-sector may be needed as it is undergoing economic difficulties. The VCS scheme aims to prevent the escalation of these difficulties, which could cause abandonment of production with a knock-on effect on other parts of the supply chain or associated markets.

29. The Direct Payments Regulation allows Member States to continue to link (couple) a limited amount of income support payments to certain sectors or products, subject to various conditions and strict limits to mitigate the risk of market distortion. This support scheme is known as Voluntary Coupled Support.

30. The sectors that are potentially eligible for VCS are cereals, oilseeds, protein crops, grain legumes, flax, hemp, rice, nuts, starch potato, milk and milk products, seeds, sheepmeat and goatmeat, beef and veal, olive oil, silkworms, dried fodder, hops, sugar beet, cane and chicory, fruit and vegetables and short rotation coppice.

31. In Scotland, the two VCS schemes designed to try and address declining livestock numbers are the:

- Scottish Suckler Beef Support Scheme (SSBSS), and
- Scottish Upland Sheep Support Scheme (SUSSS).

32. The SSBSS provides additional support, on top of the BPS, to specialist beef producers. Payments are made based on the numbers of eligible animals declared. Eligible animals are male and female calves, with at least 75% beef genetics, born on a Scottish holding and kept there for at least 30 days.

33. The SUSSS provides additional support, on top of the BPS, to help sheep producers farming in Scotland's rough grazing areas maintain their sheep flocks. Payments are made based on the numbers of eligible animals declared. Eligible animals are ewe hoggs (female sheep) born on Scottish holdings with poor quality rough grazing. The ewe hoggs must be less than 12 months old at the start of a retention period.[1] Payments will be made up to a maximum of one ewe hogg per four hectares of land claimed.

34. For that purpose, a holding qualifies as being in a rough grazing area if:

- 80% or more of the agricultural land is in basic payment region three, and
- no more than 200 hectares is good quality agricultural land in basic payment region one.

Payments and reductions

35. Direct payments are made annually, with the payment window opening in December. The amount to be paid to a farmer or crofter depends upon a number of factors including the number of payment entitlements and eligible hectares, the payment region, the greening payment rate, whether that farmer is a young farmer, and whether that farmer is eligible for a VCS payment.

36. There is a mandatory requirement in Article 11 of the Direct Payments Regulation, that where a BPS payment to be granted to a farmer for a given calendar year exceeds €150,000, the sum in excess of that amount must be reduced by 5%. In addition, Scotland has applied a cap, or upper limit, of €600,000 on all BPS payments.

1 A retention period is where claimed animals must be retained on the holding from 1 December in the year of the claim to 31 March the following year.

Cross-compliance rules, inspections and penalties

37. Cross-compliance is described in paragraph 18 above.

38. Cross-compliance rules are as set out in Articles 91 to 95 of, and Annex II to, the Horizontal Regulation and comprise the:

- statutory management requirements, and
- good agricultural and environment conditions.

39. There are also national implementing rules in the Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014 (S.S.I. 2014/325).

40. The Scottish Government's Rural Payments and Inspections Division (SGRPID) carries out inspections in Scotland to verify that all cross-compliance requirements are being met. Failure to meet these requirements will lead to financial penalties being applied to the payments.

41. Under existing CAP rules, there is no ability to waive penalties unless there is an event outside the farmer's control. This is known as force majeure or exceptional circumstances, and penalties can be waived if appropriate. For example, inspections were suspended during the 2007 Foot and Mouth Disease outbreak but penalties were still applied where breaches were discovered.

42. A false declaration, whether made deliberately or recklessly, may lead to criminal prosecution.

Common Organisation of Markets (CMO)

43. The common organisation of agricultural markets, known as the CMO, is an integral element of the CAP.[2] It is part of Pillar 1, as more fully described in the Policy Memorandum[3] that accompanied the Bill for this Act.

44. The basic act is the CMO Regulation.[4] It is intended to provide a safety net for agricultural markets through the use of market support tools, exceptional measures and aid schemes for certain sectors (in particular fruit and vegetables and wine). It is also intended to encourage producer cooperation through producer organisations and specific rules on competition, and to lay down marketing standards for certain products.[5]

45. The CMO has an internal aspect covering market intervention and rules on marketing standards and producer organisations, and an external one covering trade with third countries (for example import and export certificates, import duties, administration of tariff quotas, export refunds). The CMO deals with the competition rules applicable to businesses, rules on State Aid for agriculture, and the reserve fund for crises in the agricultural sector.

46. For the purposes of understanding the provisions of this Act, the key parts of the CMO Regulation (and relevant delegated and implementing regulations) are:

Market disturbance

47. Articles 219 to 222 of the CMO Regulation provide for market disturbance. Generally, market disturbance describes periods when prices are either fluctuating or rapidly increasing or decreasing. There can be various causes of market disturbance. For

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2 Prior to 2007, there were 21 separate common market organisations covering different markets and making different rules. These have now been brought together but the CMO acronym remains in use.

3 https://betaproxy2.parliament.scot/-/media/files/legislation/bills/current-bills/agriculture-retained-eu-law-and-data-scotland-bill/introduced/policy-memorandum-agriculture-retained-eu-law-and-data-scotland-bill.pdf

4 See the footnotes to paragraph 8 for links to the EU law versions of the CAP basic acts, including the CMO Regulation.

5 https://eur-lex.europa.eu/summary/glossary/common_agricultural_markets.html example, a fall in demand due to animal disease risks or a sudden increase in supply due to a major export market refusing to accept certain goods.

Market intervention

48. Articles 8 to 21 of the CMO Regulation provide for market intervention in the form of public intervention and private storage aid. There are also a number of delegated and implementing acts which sit beneath these Articles. These provisions aim to reduce supply when prices are low and increase supply when prices rise. They are, therefore, closely linked to the market disturbance provisions. These measures are used far less than in previous decades, but have been used to deal with market disturbance such as the closure of Russian markets to pigmeat in 2014 which led the European Union to provide private storage aid in 2015.[6] The only current use of these interventions in the UK is in relation to skimmed milk powder.

49. As a general description, through public intervention the Member State (or States) will purchase and store the products directly until such time as they can be disposed of. The granting of aid for private storage is a form of financial assistance paid by the Commission to private operators so that they will store produce rather than sell it on the market until such time as the price rises.

Aid in the fruit and vegetable sector

50. Articles 32 to 38 of the CMO Regulation allow Member States to provide financial aid to the fruit and vegetable sector, known as the Fruit and Vegetable Scheme. Under this scheme, aid can be granted to producer organisations in these sectors.

51. The granting of the aid is subject to conditions contained in these Articles. In order to qualify, the producer organisation must implement a structured plan called an operational programme. The aim of an operational programme is to improve the producer organisation’s performance and skills in marketing, product quality and environmental considerations.

Marketing standards and carcass classification

52. Marketing standards in the CMO are a body of detailed rules which govern the quality of agricultural products and ensure that certain information is provided to consumers. Carcass classification is a process which takes place in a slaughterhouse, and is used to calculate payments due to the producer from the slaughterhouse and also to support the market intervention powers.

53. In the CMO Regulation, the provisions on marketing standards are contained in Articles 73 to 91. These provisions are a mix of obligatory and discretionary rules. The rules do not apply to all products but only to the sectors and products listed in Article 75, which also lays down the standards which can be established for those products. Examples include technical designations and sales descriptions, criteria for appearance, and specific substances used in production. Where marketing standards apply to a product, Article 73 states that they “may only be marketed in the European Union if they conform to those standards”. Other provisions of the CMO Regulation provide detailed rules for the setting of marketing standards, including for specific products. The marketing standards themselves are set out in product specific implementing or delegated regulations, and there is a regime of domestic implementing legislation.

54. Provision on carcass classification is contained in Article 10[7] which defines the Union scales for classification of carcases. These scales are mandatory for beef, veal and pigmeat and at the discretion of the Member States for goatmeat and sheepmeat (and are

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6 https://ec.europa.eu/agriculture/newsroom/193_en

7 https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32013R1308 not currently applied in the UK). The Union scales provide a classification for the meat derived from a carcase, and therefore is a gauge for the price that the farmer receives.

The EU Food Promotion Scheme

55. The EU Food Promotion Scheme is established by EU Regulation 1144/2014, and provides funding for information provision and promotion measures to increase the competitiveness and consumption of EU products.