

*This draft Statutory Instrument supersedes the draft of the same title which was laid before the Scottish Parliament and published on 5th November 2020 (ISBN 978-0-11-104717-0). It is being issued free of charge to all known recipients of that draft Statutory Instrument.*

*Draft Regulations laid before the Scottish Parliament under paragraph 1(7) of Schedule 7 of the European Union (Withdrawal) Act 2018 and sections 2(3), 3(4) and 4(3) of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020, for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2020 No.**

**EXITING THE EUROPEAN UNION**

**AGRICULTURE**

**The Common Agricultural Policy (Less Favoured Area Support)  
(EU Exit) (Scotland) Amendment Regulations 2020**

*Made* - - - - 2020

*Coming into force in accordance with regulation 1*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraph 1(1) and (3) of Schedule 2 of the European Union (Withdrawal) Act 2018(a) (the “2018 Act”) and sections 2, 3 and 4 of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020(b) (the “2020 Act”), and all other powers enabling them to do so.

In accordance with paragraph 1(7) of Schedule 7 of the 2018 Act and sections 2(3), 3(4) and 4(3) of the 2020 Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

**Citation and commencement**

**1.**—(1) These Regulations may be cited as the Common Agricultural Policy (Less Favoured Area Support) (EU Exit) (Scotland) Amendment Regulations 2020, and come into force as follows.

(2) Subject to paragraph (3), these Regulations come into force on 1 January 2021.

(3) This regulation and regulation 3(4) come into force on IP completion day.

**Amendment of Regulation (EU) No 1305/2013**

**2.**—(1) Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on the support for rural development by the European Agricultural Fund for

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(a) 2018 c.16.  
(b) 2020 asp 17.

Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005(a) is amended as follows.

(2) In Article 31 (payments to areas facing natural or other specific constraints), for paragraph 5 substitute—

“5. In addition to the payments provided for in paragraph 2, the relevant authority may grant payments under this measure between 2014 and 2024 to beneficiaries in areas which were eligible under Article 36(a)(ii) of Regulation (EC) No 1698/2005 during the 2007-2013 programming period.”.

### **Amendment of the Less Favoured Area Support Scheme (Scotland) Regulations**

3.—(1) The Less Favoured Area Support Scheme (Scotland) Regulations 2010(b) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) after the definition of “Scheme 2020 payment” insert—

““Scheme 2021 payment” means the sum to which the applicant is entitled in respect of the period from 1st January 2021 to 31st December 2021;

“Scheme 2022 payment” means the sum to which the applicant is entitled in respect of the period from 1st January 2022 to 31st December 2022;

“Scheme 2023 payment” means the sum to which the applicant is entitled in respect of the period from 1st January 2023 to 31st December 2023;

“Scheme 2024 payment” means the sum to which the applicant is entitled in respect of the period from 1st January 2024 to 31st December 2024;”;

(b) for the definition of “single application” substitute—

““single application”—

(a) in relation to a calendar year before 2015, has the meaning given in Article 2(11) of Commission Regulation 1122/2009(c); and

(b) in relation to a calendar year from 2015, means an application for direct payments (as described in Article 1 of the Direct Payments Regulation) in respect of an area-related direct payment within the meaning of Article 67(4)(b) of the Horizontal Regulation(d);”.

(3) In regulation 10 (enterprise mix), in paragraph (2) for the words from “purposes of the Scheme 2010 payment” to “Scheme 2020 payment” substitute “purpose of determining a Scheme payment in the period from 2010 to 2024”.

(4) In regulation 13 (powers of authorised persons), in paragraph (1)(a)(ii) for “exit day” substitute “IP completion day”.

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(a) EUR 1305/2013.

(b) S.S.I. 2010/273, as amended by S.S.I. 2011/73, 2012/24, 2013/9, 2014/7, 2015/185, 2016/33, 2018/122 and 391, and 2019/98.

(c) EUR 1122/2009. See regulation 2(1) of the Less Favoured Area Support Scheme (Scotland) Regulations 2010 for the definition of “Commission Regulation 1122/2009”.

(d) EUR 1306/2013. See regulation 2(1) of the Less Favoured Area Support Scheme (Scotland) Regulations 2010 for the definition of “Horizontal Regulation”.

(5) In schedule 5 (rates of payment for less favoured area support), in the tables in Part I (more disadvantaged land) and Part II (less disadvantaged land), insert at the end of the second column of the first row—

“Scheme 2021 payment,  
Scheme 2022 payment,  
Scheme 2023 payment,  
Scheme 2024 payment”.

St Andrew’s House,  
Edinburgh  
Date

*Name*  
A member of the Scottish Government

## EXPLANATORY NOTE

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

These Regulations are made by the Scottish Ministers in exercise of the powers conferred by paragraph 1(1) and (3) of Schedule 2 of the European Union (Withdrawal) Act 2018 (c.16) (the “2018 Act”), and by sections 2 to 4 of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (asp 17) (the “2020 Act”).

The Regulations so far as made under the 2018 Act address a failure of retained EU law relating to the Less Favoured Area Support Scheme (“LFASS”) to operate effectively arising as a result of the withdrawal of the UK from the European Union.

These Regulations so far as made under the 2020 Act modify the retained EU law and the Scottish implementing legislation relating to the LFASS for the purpose of ensuring that the legislation continues to operate in relation to Scotland after 2020.

Regulation 2 modifies Article 31 of Regulation (EU) No 1305/2013 (the Rural Development Regulation) with the effect that LFASS payments can continue through to 2024, and of removing references to the requirement for payments to be reduced in 2019 and 2020 (known as degressivity of payments in EU law).

Regulation 3(2) and (3) modifies the Less Favoured Area Support Scheme (Scotland) Regulations 2010 (S.S.I. 2010/273) (the “LFASS Regulations”) with the effect that LFASS payments can be made in further scheme years from 2021 through to 2024.

Regulation 3(4) further modifies regulation 13(1)(a)(ii) of the LFASS Regulations, as it is prospectively modified from IP completion day by the Common Agricultural Policy (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/60), with the result that the prospective modification has effect immediately from IP completion day.

Regulation 3(5) modifies the LFASS Regulations with the effect that the payment rates for scheme years from 2021 onwards are the same as the payment rate for the Scheme 2018 payment.

No Business and Regulatory Impact Assessment has been prepared in relation to these Regulations as no, or no significant, impact upon business, charities or voluntary bodies is foreseen.

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