

POLICY NOTE

THE DIRECT PAYMENTS TO FARMERS (LEGISLATIVE CONTINUITY) (SCOTLAND) (MISCELLANEOUS AMENDMENTS) REGULATIONS 2020

SSI 2020/18

The Direct Payments to Farmers (Legislative Continuity) (Scotland) (Miscellaneous Amendments) Regulations 2020 (“the 2020 Regulations”) are made in exercise of the powers conferred by section 3(3)(a) and (9) of the Direct Payments to Farmers (Legislative Continuity) Act 2020¹ (“the 2020 Act”). That Act received Royal Assent on 30 January 2020. The 2020 Regulations are subject to the made affirmative procedure and come into force on exit day.

Purpose of the Instrument

To amend the following regulations:

- The Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014
- The Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015
- The Rural Payments (Appeals) (Scotland) Regulations 2015

This is to ensure that they continue to operate effectively in respect of the 2020 Direct Payments claim year following the UK’s Exit from the EU at 11.00 pm on 31 January 2020.

1. Policy Objectives

The 2020 Act and the 2020 Regulations are both necessary as a result of the UK’s withdrawal from the EU under the terms of the European Union (Withdrawal) Act 2018 (“the EUWA”) and the European Union (Withdrawal Agreement) Act 2020² (“the EUWAA”) which implement and permit the subsequent ratification of the Withdrawal Agreement³ concluded by the UK and EU on 17 October 2019 (“the Withdrawal Agreement”).

The effect of Article 137 of the Withdrawal Agreement is that there will be no basis in law (whether EU or domestic) for the Direct Payments claim year 2020.

Where practical and appropriate, directly applicable EU legislation (“direct EU legislation”) is being retained as part of UK law (“retained EU law”) upon the UK’s exit from the EU . As regards the EU Common Agricultural Policy (“CAP”) Direct Payment schemes for the 2020 claim year, the UK Government, the Scottish Government and the other Devolved Administrations plan to retain the current regulatory approach set out in the relevant direct

¹ The 2020 Act (c. 2) will be published on the [legislation.gov.uk](http://www.legislation.gov.uk) website.

² The European Union (Withdrawal Agreement) Act 2020 can be viewed here:

<http://www.legislation.gov.uk/ukpga/2020/1/contents/enacted>

The European Union (Withdrawal) Act 2018 can be viewed here:

<http://www.legislation.gov.uk/ukpga/2018/16/contents>

³ A copy of the Withdrawal Agreement and the accompanying Political Declaration is available here:

<https://www.gov.uk/government/publications/new-withdrawal-agreement-and-political-declaration>

EU legislation and EU-derived domestic legislation to ensure, following the UK's exit from the EU, the continued operation and administration of the CAP Direct Payment schemes for the 2020 claim year within the UK. The 2020 Regulations are necessary in order to correct deficiencies in EU-derived Scottish legislation relating to Direct Payments and thereby protect the interests of, and provide continuity for, farmers, land managers, businesses and consumers and enable the Scottish Government to continue to make payments and administer the CAP Direct Payment schemes for the 2020 claim year.

On exit day two UK-wide statutory instruments will enter into force alongside the 2020 Regulations. All amendments being made are technical and seek to preserve the status quo so far as possible to ensure the continued operability of Scotland's CAP regulatory framework post-EU exit for the direct payment schemes for the 2020 claim year.

2. Explanation of the law being amended by the Regulations

The Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014 (the "2014 Regulations") make provision in Scotland for the administration and enforcement of the cross-compliance rules in relation to the CAP, in implementation of Regulation (EU) No 1306/2013 of the European Parliament and of the Council and associated EU delegated and implementing regulations.

The Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015 make provision in Scotland for the administration and implementation of Regulation (EU) No. 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the CAP and associated EU delegated and implementing regulations.

The Rural Payments (Appeals) (Scotland) Regulations 2015 (the "2015 Appeals Regulations") provide for the review of certain decisions of the Scottish Ministers in relation to the payment of certain agricultural subsidies and other rural payments.

3. Reasons for and effect of the changes

Regulations 2, 3 and 4 of the 2020 Regulations make amendments to correct deficiencies in the applicable EU-derived domestic legislation which arise by virtue of EU withdrawal and, as necessary, reflect changes being made to the applicable retained EU law by the UK statutory instruments which are being made by the UK Government under the 2020 Act. The relevant UK statutory instruments⁴ are:

- The Rules for Direct Payments to Farmers (Amendment) Regulations 2020; and
- The Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020.

Neither these UK statutory instruments nor the 2020 Regulations reflect or make a change in policy. Their purpose is simply to ensure that the CAP regulatory framework can continue to operate effectively for Direct Payments for the 2020 claim year in domestic law following the exit of the UK from the EU.

The amendments made by regulations 2, 3 and 4 include:

⁴ On 29 January 2020, the Scottish Parliament (in particular, the Rural Economy and Connectivity Committee) gave its approval for the Scottish Government to consent to those UK SIs extending to Scotland. Both UK SIs listed will be made and laid before the UK Parliament before exit day, and will be published on the legislation.gov.uk website.

- updating cross-references to a number of EU instruments;
- qualifying provisions relating to powers of entry to make clear that European Commission officials will not accompany authorised persons in respect of matters relating to the 2020 claim year;
- incorporating a necessary transitional provision into the 2015 Appeals Regulations; and
- updating references to the UK Coordinating Body to reflect operability fixes made by the Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020.

Further information

Consultation

The 2020 Regulations do not amount to a change in policy and are being made to avoid deficiencies arising as a result of the UK's withdrawal from the EU. There has been no formal public consultation regarding this instrument. The 2020 Regulations are linked to changes to direct EU legislation (which will become retained EU law) which are to be made by the abovementioned UK statutory instruments which are being made with the agreement of the Scottish Government and the Scottish Parliament as well as the other UK devolved administrations.

Impact Assessments

Full impact assessments have not been prepared for the 2020 Regulations because they are aimed at preserving the effect of the current regulatory regimes once the UK leaves the EU. The current amendments do not alter the Scottish Government's current environmental policies and priorities and, therefore, do not have a significant impact on the environment. No impact on business, charities or voluntary bodies is expected.

Financial Effects

The Cabinet Secretary for the Rural Economy, Fergus Ewing, confirms that no BRIA is necessary as the 2020 Regulations have no financial effects on the Scottish Government, local government or on business.

Scottish Government
Agriculture and Rural Economy Directorate
30 January 2020