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SCOTTISH STATUTORY INSTRUMENTS

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**2020 No. 349**

**AGRICULTURE**

**The Common Agricultural Policy (Simplifications  
and Improvements) (Miscellaneous  
Amendments) (Scotland) Regulations 2020**

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|--|---------|--------------------------|
| <i>Made</i>                                    | - - - - | <i>3rd November 2020</i> |
| <i>Laid before the Scottish<br/>Parliament</i> | - - - - | <i>5th November 2020</i> |
| <i>Coming into force</i>                       | - -     | <i>1st January 2021</i>  |

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2 of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020(1), and all other powers enabling them to do so.

**Citation and commencement**

1. These regulations may be cited as the Common Agricultural Policy (Simplifications and Improvements) (Miscellaneous Amendments) (Scotland) Regulations 2020 and come into force on 1 January 2021.

**Amendment of Regulation (EU) 1307/2013**

2.—(1) Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009(2) is amended as follows.

(2) In Article 4 (definitions and related provisions), in paragraphs 1(a) and 1(b), for “the United Kingdom” substitute “Scotland”.

(3) In Article 43 (payment for agricultural practices beneficial for the climate and environment: general rules)—

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(1) 2020 asp 17.

(2) EUR 2013/1307. Relevantly amended by S.I. 2020/91 and S.I. 2020/576. This Regulation was incorporated into domestic law on exit day by section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c.2). It was also relevantly prospectively amended with effect from IP completion day by S.I. 2019/207 (paragraph 1 of schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c.1) means that this instrument would have come into force on IP completion day rather than on exit day as drafted) but it is to be prospectively revoked by the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 immediately before IP completion day.

- (a) in paragraph 2, omit point (a),
- (b) in paragraph 9, omit “44.”.
- (4) Omit Article 44 (crop diversification).

#### **Amendment of Regulation (EU) 1306/2013**

**3.—(1)** Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008**(3)** is amended as follows.

(2) In Article 59 (general principles of checks), in paragraph 5, omit “, and shall increase that minimum level where necessary”.

(3) In Article 62 (powers as regards checks), in paragraph 2(b), omit “on the obligation to increase it or”.

(4) In Article 91 (cross compliance: general principle), in paragraph 3(a), for “the United Kingdom” substitute “Scotland”.

#### **Amendment of Commission Delegated Regulation (EU) 639/2014**

**4.—(1)** Commission Delegated Regulation (EU) No 639/2014 of 11 March 2014 supplementing 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 common agricultural policy and amending Annex X to that Regulation**(4)** is amended as follows.

- (2) Omit Article 40 (calculation of shares of different crops for crop diversification).

#### **Amendment of the Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015**

**5.—(1)** The Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015**(5)** are amended as follows.

(2) In regulation 15A (obligations to comply with agricultural practices beneficial for the climate and environment), omit paragraph (2)(a).

- (3) Omit regulation 16 (crop diversification).

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(3) EUR 2013/1306. This Regulation was incorporated into domestic law on exit day, insofar as it relates to direct payment schemes, by section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c.2). The remainder of this Regulation, insofar as it relates to rural development and common market organisation, is incorporated into domestic law on IP completion day by section 3 of the European Union (Withdrawal) Act 2018 (c.16). The Regulation was relevantly amended, in relation to direct payments, by S.I. 2020/90. The Regulation, in relation to rural development and common market organisation, is relevantly amended prospectively with effect from IP completion day by S.I. 2019/748, S.I. 2019/763, and S.I. 2019/1402 (paragraph 1 of schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c.1) means that these instruments come into force on IP completion day rather than on exit day as drafted).

(4) EUR 2014/639, relevantly amended by S.I. 2020/91. This Regulation was incorporated into domestic law on exit day by section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c.2). EUR 2014/639 is relevantly prospectively amended with effect from IP completion day by S.I. 2019/208 (para 1 of schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c.1) means that this instrument would have come into force on IP completion day rather than on exit day as drafted), but those amendments are prospectively revoked by the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 immediately before IP completion day.

(5) S.S.I. 2015/58. Relevantly amended by S.S.I. 2016/104.

## **Amendment of the Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014**

6.—(1) The Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014(6) are amended as follows.

(2) In regulation 2 (interpretation), in the definition of “competent authority” omit “, except as otherwise provided by regulation 3,”.

(3) In regulation 3 (competent authority)—

(a) omit paragraphs (2) to (3A),

(b) for paragraph (4) substitute—

“(4) In this regulation “holding” has the meaning given by Article 4(1)(b) of the Direct Payments Regulation.”.

## **Amendment of Commission Implementing Regulation (EU) 809/2014**

7.—(1) Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance(7), is amended as follows.

(2) In Article 25 (announcement of on-the-spot checks)—

(a) in paragraph 1—

(i) in the first sentence omit “provided that it does not interfere with their purpose or effectiveness”,

(ii) in the second sentence omit “strictly” and after “days” insert “, except in duly justified cases”,

(b) in paragraph 2 omit from “for” to “Furthermore,”.

(3) In Article 30 (control rate for area-related aid schemes other than the payment for agricultural practices beneficial for the climate and environment)—

(a) in point (a)—

(i) in the first sentence for “5%” substitute “3%”,

(ii) omit the second sentence,

(b) in point (d)—

(i) for “5%” substitute “3%”.

(4) In Article 31(1) (control rate for the greening payment)—

(a) in point (a), for “5%”, in both places it occurs, substitute “3%”,

(b) in points (b)(i) and (ii)—

(i) omit “both the crop diversification and”,

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(6) [S.I. 2014/3263](#). Relevantly amended by [S.I. 2015/1325](#).

(7) EUR 2014/809. This Regulation was incorporated into domestic law on exit day, insofar as it relates to direct payment schemes, by section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c.2). The remainder of this Regulation, insofar as it relates to rural development and common market organisation, is incorporated into domestic law on IP completion day by section 3 of the European Union (Withdrawal) Act 2018 (c.16). The Regulation was relevantly amended, in relation to direct payments, by [S.I. 2020/90](#) and [S.S.I 2020/244](#). The Regulation, in relation to rural development and common market organisation, is relevantly amended prospectively with effect from IP completion day by [S.I. 2019/765](#) (as amended by the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations). Paragraph 1 of schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c.1) means that [S.I. 2019/765](#) comes into force on IP completion day rather than on exit day as drafted. Some provisions that apply to both direct payments and rural development have been amended differently and two versions of the same provision exist in the Regulation.

- (ii) for “Articles 44 and” substitute “Article”.
- (5) In Article 32(1) (control rate for rural development measures)—
  - (a) in the first sentence for “5%” substitute “3%”,
  - (b) omit the second sentence,
  - (c) omit the third sentence.
- (6) In Article 33(1) (control rate for animal aid schemes)—
  - (a) in the first sentence for “5%” substitute “3%”,
  - (b) omit the second sentence,
  - (c) in the third sentence for “5%” substitute “3%”.
- (7) In Article 34 (selection of the control sample)—
  - (a) in paragraph 2—
    - (i) in point (a) for “between 1 % and 1,25 % of the control population referred to in” substitute “between 20% and 25% of the minimum number of beneficiaries subject to on-the-spot checks in accordance with”,
    - (ii) in point (b) for “between 0,6 % and 0,75 % of the control population referred to in” substitute “between 20% and 25% of the minimum number of beneficiaries subject to on-the-spot checks in accordance with”,
  - (b) in paragraph 5, omit point (d).
- (8) Omit Article 35 (increase of the control rate).
- (9) Omit Article 36 (reduction of the control rate).
- (10) In Article 37 (elements of on-the-spot checks), in paragraph 3, for “Articles 44 and” substitute “Article”.
- (11) In Article 38 (area measurement), omit paragraph 6.
- (12) In Article 48 (administrative checks), omit paragraph 5.
- (13) In Article 50 (control rate and sampling of on-the-spot checks)—
  - (a) in paragraph 1 for “5%” substitute “3%”,
  - (b) omit paragraph 5,
  - (c) omit paragraph 6.

### **Amendment of Commission Implementing Regulation (EU) 2020/532**

**8.**—(1) Commission Implementing Regulation (EU) No 2020/532 of 16 April 2020 derogating in respect of the year 2020 from Implementing Regulations (EU) No 809/2014, (EU) No 180/2014, (EU) No 181/2014, (EU) 2017/892, (EU) 2016/1150, (EU) 2018/274, (EU) 2017/39, (EU) 2015/1368 and (EU) 2016/1240 as regards certain administrative and on-the-spot checks applicable within the common agricultural policy<sup>(8)</sup>, is amended as follows.

(2) In Article 4 (coronavirus derogations for on-the-spot checks), in paragraph 4, omit the second sentence.

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(8) EUR 2020/532. This Regulation is incorporated into domestic law on IP completion day by section 3 of the European Union (Withdrawal) Act 2018.

## **Amendment of Commission Delegated Regulation (EU) 640/2014**

9.—(1) Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance<sup>(9)</sup>, is amended as follows.

(2) In Article 2(1)(22) (Definitions)—

(a) omit “type of crop as referred to in Article 44(4) of Regulation (EU) No 1307/2013,”,

(b) for “that Regulation” substitute “Regulation (EU) No 1307/2013”.

(3) In Article 6 (quality assessment of the identification system for agricultural parcels)—

(a) in paragraph 1, subparagraph 3, point (b) for “declared” substitute “claimed”,

(b) in paragraph 3 for “2021” substitute “following the calendar year in question”.

(4) Omit Article 24 (reduction of the greening payment in case of non-compliance with crop diversification).

(5) In Article 27 (maximum reduction of the greening payment)—

(a) in paragraph 1, for “Articles 24 and” substitute “Article”,

(b) in paragraph 2, for “Articles 24 to” substitute “Articles 25 and”.

(6) In Article 28 (administrative penalties as regards the greening payment)—

(a) in paragraph 1, for “24”, in each place it occurs, substitute “25”,

(b) in paragraph 2—

(i) omit “44,”,

(ii) for “24” substitute “25”.

St Andrew’s House,  
Edinburgh  
3rd November 2020

*MAIRI GOUGEON*  
Authorised to sign by the Scottish Ministers

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(9) EUR 2014/640. This Regulation was incorporated into domestic law on exit day, insofar as it relates to direct payment schemes, by section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c.2). The remainder of this Regulation, insofar as it relates to rural development and common market organisation, is incorporated into domestic law on IP completion day by section 3 of the European Union (Withdrawal) Act 2018 (c.16). The Regulation was amended, in relation to direct payments, by S.I. 2020/90. The Regulation, in relation to rural development and common market organisation, is amended prospectively with effect from IP completion day by S.I. 2019/765 (as amended by the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations). Paragraph 1 of schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c.1) means that S.I. 2019/765 comes into force on IP completion day rather than on exit day as drafted

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## EXPLANATORY NOTE

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

These Regulations make simplifications and improvements to the retained EU law relating to the operation of Common Agricultural Policy (CAP) schemes in Scotland from 2021 onwards.

EU legislation governing the 2020 CAP direct payment schemes became part of domestic law in the UK on exit day (31 January 2020) under section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c.2) (“the 2020 Act”).

All other EU legislation governing CAP schemes will become domestic law on IP completion day under the European Union (Withdrawal) Act 2018 (c.16) (“the 2018 Act”). “IP completion day” means 31 December 2020 at 11.00pm (see section 1A(6) of the 2018 Act and section 39(1) to (5) of the European Union (Withdrawal Agreement) Act 2020 (c.1)).

The law that became domestic law on exit day included EU ‘horizontal’ rules that apply to a range of CAP schemes, so far as those rules related to that domestic law. EU rules require to be modified, or deficiency fixed, in order to be effective as domestic law. Direct payment rules have been modified under the 2020 Act, and all other CAP rules are prospectively modified with effect from IP completion day under the 2018 Act.

It follows that there will be two versions of (for example) Commission Implementing Regulation (EU) No 809/2014: a ‘direct payments’ version as currently in force, and a ‘rural development’ version that will have effect from IP completion day. The changes in this instrument from IP completion day will affect both versions.

Regulation 2(2) amends the definition of “farmer” and “holding” under Regulation (EU) No 1307/2013 (the “Direct Payments Regulation”) so that the definitions extend only to those operating in Scotland, rather than the United Kingdom. This simplifies CAP schemes by removing the concept of cross border applications within the United Kingdom after EU Exit such that the Scottish Government’s Rural Payments and Inspections Division will only be responsible for processing applications related to agricultural activities taking place in Scotland. Regulation 3(4) amends the definition of “holding” in Regulation (EU) No 1306/2013 (the “Horizontal Regulation”) for the same purpose. Regulation 6 amends the Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 to remove related domestic provisions that enable cross border applications.

Regulations 2(3) and (4) simplify and improve the Direct Payments Regulation by removing crop diversification as one of the agricultural practices deemed as beneficial for the climate and the environment (known as “greening”) under the Basic Payment Scheme, the main system of direct payments operating in Scotland. Regulation 4 amends Commission Delegated Regulation (EU) No 639/2014, regulation 5 amends the Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015, regulations 7(4)(b), (10) and (11) amend Regulation (EU) No 809/2014, and regulations 9(2), (4) to (6) amend Regulation (EU) No 640/2014 to remove related provisions that flow from the crop diversification requirement.

Regulations 3(2) and (3) amend the Horizontal Regulation, regulations 7(2) to (4)(a), (5) to (9), (12) and (13) amend Regulation (EU) No 809/2014, and regulation 8 amends Regulation (EU) No 2020/532, to simplify and improve the operation of on-the-spot checks that are undertaken as part of CAP schemes.

Regulation 9(3) makes minor amendments to Regulation (EU) No 640/2014 with regard to quality assessment of the land parcel identification system.

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No business and regulatory impact assessment has been prepared in relation to these Regulations as no impact upon business, charities or voluntary bodies is foreseen.

The removal of the crop diversification requirement was subject to a Strategic Environmental Assessment pre-screening report. These Regulations will have no significant impact on the environment.