



Direct Payments to Farmers (Legislative Continuity) Act 2020

2020 CHAPTER 2

Incorporation of Direct Payments Regulation etc

1 Incorporation of EU legislation governing the CAP direct payment schemes

- (1) On exit day the EU legislation governing the 2020 CAP direct payment schemes becomes part of domestic law.
- (2) In subsection (1), “the EU legislation governing the 2020 CAP direct payment schemes” means the EU legislation listed in subsection (3)—
 - (a) as it has effect in EU law immediately before exit day for the claim year 2020, and
 - (b) ignoring for this purpose the disapplication of any of its provisions in the United Kingdom by the EU withdrawal agreement.
- (3) The EU legislation mentioned in subsection (2) is—
 - (a) the Direct Payments Regulation, apart from article 13;
 - (b) Commission Delegated [Regulation \(EU\) No 639/2014](#) of 11 March 2014 supplementing the Direct Payments Regulation;
 - (c) Commission Implementing [Regulation \(EU\) No 641/2014](#) of 16 June 2014 laying down rules for the application of the Direct Payments Regulation;
 - (d) in so far as relating to the CAP direct payment schemes—
 - (i) the Horizontal Regulation;
 - (ii) Commission Delegated [Regulation \(EU\) No 907/2014](#) of 11 March 2014 supplementing the Horizontal Regulation with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro;
 - (iii) Commission Implementing [Regulation \(EU\) No 908/2014](#) of 6 August 2014 laying down rules for the application of the Horizontal Regulation with regard to paying agencies and other bodies, financial

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management, clearance of accounts, rules on checks, securities and transparency;

- (iv) Commission Implementing [Regulation \(EU\) No 809/2014](#) of 17 July 2014 laying down rules for the application of the Horizontal Regulation with regard to the integrated administration and control system, rural development measures and cross compliance;
 - (v) Commission Delegated [Regulation \(EU\) No 640/2014](#) of 11 March 2014 supplementing the Horizontal Regulation 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.
- (4) This section brings that EU legislation into domestic law only in the form of the English language version of that legislation, but this does not affect the use of other language versions for the purposes of interpretation.
- (5) This section does not affect any rights, powers, liabilities, obligations, restrictions or other matters arising in relation to the CAP direct payment schemes for the claim year 2019 or earlier claim years.
- (6) But for the purposes of any rights, powers, liabilities, obligations, restrictions or other matters arising in relation to the CAP direct payment schemes for the claim year 2020, that EU legislation is to be treated as if it had formed part of domestic law from the beginning of 2020.
- (7) In this Act—
- “CAP direct payment schemes” means the support schemes under the Direct Payments Regulation;
 - “claim year” means a period of 12 months beginning with 1 January (and “claim year”, followed by a year, means the period of 12 months beginning with 1 January in that year);
 - the “Direct Payments Regulation” means [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;
 - the “Horizontal Regulation” means [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.

2 Interpretation and status

- (1) Section 6 of the European Union (Withdrawal) Act 2018 (interpretation) applies for the purposes of this Act as it applies for the purposes of that Act and, in particular, it applies when a court or tribunal is deciding a question as to the validity, meaning or effect of retained EU law governing the CAP direct payment schemes as it applies when a court or tribunal is deciding a question as to the validity, meaning or effect of EU law retained under that Act.
- (2) In its application as mentioned in subsection (1), section 6 of that Act has effect with the modifications in subsections (5) and (6).
- (3) The following provisions of the European Union (Withdrawal) Act 2018 apply in relation to the modification by domestic law of retained direct EU CAP legislation

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as they apply in relation to the modification by domestic law of direct EU legislation retained under that Act—

- (a) section 7(2) and (3) (modification of retained direct EU legislation), and
 - (b) paragraphs 3 to 8 and 10 to 12 of Schedule 8 (existing and future powers to make subordinate legislation).
- (4) In their application as mentioned in subsection (3), the provisions mentioned in paragraphs (a) and (b) have effect with the modifications in subsection (5).
- (5) To the extent that they are applied for the purposes of subsections (1) and (3), the provisions of the European Union (Withdrawal) Act 2018 in question have effect as if any reference in them to an expression listed in the first column of the following Table were a reference to the corresponding expression in the second column.

<i>Expression in applied provision of the European Union (Withdrawal) Act 2018</i>	<i>Modification</i>
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IP completion day	exit day
retained EU law	retained EU law governing the CAP direct payment schemes
retained direct EU legislation	retained direct EU CAP legislation
retained direct principal EU legislation	the Direct Payments Regulation and the Horizontal Regulation so far as they form part of domestic law by virtue of section 1(1)
retained direct minor EU legislation	retained direct EU CAP legislation other than the Direct Payments Regulation and the Horizontal Regulation

- (6) In the definitions in section 6(7) of the European Union (Withdrawal) Act 2018 of “retained domestic case law”, “retained EU case law” and “retained general principles of EU law” (as applied for the purposes of subsection (1) above)—
- (a) references to anything to which section 2, 3 or 4 of that Act applies are to be read as references to anything to which the EU legislation listed in section 1(3) of this Act applies, and
 - (b) references to the principles and decisions excluded by section 5 of, or Schedule 1 to, that Act are to be read as references to the principles and decisions that would be excluded if that Act were to operate to save and incorporate EU law with exceptions on exit day (instead of IP completion day).
- (7) When a court or tribunal is deciding any question as to the validity, meaning or effect of subordinate legislation which is both—
- (a) retained EU law governing the CAP direct payment schemes, and
 - (b) retained EU law within the meaning given by section 6 of the European Union (Withdrawal) Act 2018,
- section 6 of that Act applies with the modifications made by this section so far as the question relates to the validity, meaning or effect of the subordinate legislation as retained EU law governing the CAP direct payment schemes.

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- (8) For the purposes of the Human Rights Act 1998—
- (a) the Direct Payments Regulation and the Horizontal Regulation so far as they form part of domestic law by virtue of section 1(1) are to be treated as primary legislation, and
 - (b) other retained direct EU CAP legislation is to be treated as primary legislation so far as it amends any primary legislation but otherwise is to be treated as subordinate legislation.
- (9) In subsection (8), “amend”, “primary legislation” and “subordinate legislation” have the same meaning as in the Human Rights Act 1998.
- (10) In this Act—
- “retained EU law governing the CAP direct payment schemes” means—
- (a) the EU legislation listed in section 1(3) that forms part of domestic law by virtue of section 1(1), and
 - (b) any subordinate legislation relating to that legislation,
- as that body of law is added to or otherwise modified by domestic law from time to time;
- “retained direct EU CAP legislation” means the EU legislation listed in section 1(3) that forms part of domestic law by virtue of section 1(1) (as modified by domestic law from time to time, and including any instruments made under it on or after exit day).
- (11) The following provisions come into force (to the extent that they are not already in force) for the purposes of their application under this section at the same time as this section comes into force—
- (a) the provisions of the European Union (Withdrawal) Act 2018 applied by this section,
 - (b) any provision of that Act so far as is necessary for the operation of the applied provisions, and
 - (c) any provision of the European Union (Withdrawal Agreement) Act 2020 which amends the applied provisions.

3 Regulations in connection with the retention of EU legislation under section 1

- (1) The Secretary of State may by regulations—
- (a) make such provision as the Secretary of State considers appropriate to prevent, remedy or mitigate—
 - (i) any failure of retained EU law governing the CAP direct payment schemes to operate effectively, or
 - (ii) any other deficiency in that body of law,
 arising from the withdrawal of the United Kingdom from the EU;
 - (b) modify retained EU law governing the CAP direct payment schemes so as to make provision corresponding to any modification of the EU legislation listed in section 1(3) having effect in EU law on or after exit day for the claim year 2020.
- (2) Before making regulations under subsection (1), the Secretary of State must obtain the consent of—

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- (a) the Scottish Ministers, if the regulations relate to retained EU law governing the CAP direct payment schemes as it applies in or as regards Scotland;
 - (b) the Welsh Ministers, if the regulations relate to that body of law as it applies in or in relation to Wales;
 - (c) DAERA, if the regulations relate to that body of law as it applies in or as regards Northern Ireland.
- (3) A devolved authority may by regulations—
 - (a) make such provision as the authority considers appropriate to prevent, remedy or mitigate—
 - (i) any failure of retained EU law governing the CAP direct payment schemes to operate effectively, or
 - (ii) any other deficiency in that body of law,
arising from the withdrawal of the United Kingdom from the EU;
 - (b) modify retained EU law governing the CAP direct payment schemes so as to make provision corresponding to any modification of the EU legislation listed in section 1(3) having effect in EU law on or after exit day for the claim year 2020.
- (4) DAERA may by regulations modify retained EU law governing the CAP direct payment schemes, so far as it applies in or as regards Northern Ireland, for the purpose of ensuring that all payment entitlements, or all payment entitlements within a region, have, or over a period of time reach or move towards, a uniform unit value.
- (5) For the purposes of subsections (1)(a)(ii) and (3)(a)(ii), deficiencies in retained EU law governing the CAP direct payment schemes are where the Secretary of State or a devolved authority considers that retained EU law governing the CAP direct payment schemes—
 - (a) contains anything which has no practical application in relation to the United Kingdom or any part of it or is otherwise redundant or substantially redundant,
 - (b) confers functions on, or in relation to, EU entities which no longer have functions in that respect under EU law in relation to the United Kingdom or any part of it,
 - (c) makes provision for, or in connection with, reciprocal arrangements between—
 - (i) the United Kingdom or any part of it or a public authority in the United Kingdom, and
 - (ii) the EU, an EU entity, a member State or a public authority in a member State,which no longer exist or are no longer appropriate,
 - (d) makes provision for, or in connection with, other arrangements which—
 - (i) involve the EU, an EU entity, a member State or a public authority in a member State, or
 - (ii) are otherwise dependent upon the United Kingdom's membership of the EU,and which no longer exist or are no longer appropriate,
 - (e) makes provision for, or in connection with, any reciprocal or other arrangements not falling within paragraph (c) or (d) which no longer exist, or are no longer appropriate, as a result of the United Kingdom ceasing to be a party to any of the EU Treaties,

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- (f) contains EU references which are no longer appropriate, or
 - (g) contains anything which is of a similar kind to any deficiency which falls within paragraphs (a) to (f).
- (6) Section 8(5) to (7), apart from subsection (7)(e), of the European Union (Withdrawal) Act 2018 (provision that may be made by regulations) apply in relation to regulations under subsections (1) and (3) but as if—
 - (a) references in those subsections to section 8(1) of that Act were to subsections (1) and (3) of this section, and
 - (b) the reference in section 8(7)(g) to paragraph 21(b) of Schedule 7 to that Act were to subsection (9)(b) of this section.
- (7) Despite the application of section 8(7)(b) of the European Union (Withdrawal) Act 2018 (regulations may not make retrospective provision), provision made by regulations under subsection (1) or (3) may apply in relation to any rights, powers, liabilities, obligations, restrictions or other matters arising in relation to the CAP direct payment schemes for the whole of the claim year 2020.
- (8) No regulations may be made under subsection (1) or (3) after 31 December 2020 (but this does not affect the continuation in force of regulations made before that date, including the exercise after that date of any power conferred by regulations made before that date).
- (9) A power to make regulations under this section includes power—
 - (a) to make different provision for different purposes;
 - (b) to make supplementary, incidental, consequential, transitional or saving provision (including provision re-stating any retained EU law governing the CAP direct payment schemes in a clearer or more accessible way).
- (10) In this section—
 - “devolved authority” means—
 - (a) the Scottish Ministers, so far as the retained EU law governing the CAP direct payment schemes applies in or as regards Scotland,
 - (b) the Welsh Ministers, so far as that body of law applies in or in relation to Wales, or
 - (c) DAERA, so far as that body of law applies in or as regards Northern Ireland;
 - “payment entitlements” has the same meaning as in the Direct Payments Regulation;
 - “public authority” means a public authority within the meaning of section 6 of the Human Rights Act 1998.

4 Publication and rules of evidence

- (1) The duty in paragraph 1(1) of Schedule 5 to the European Union (Withdrawal) Act 2018 (things that must be published) does not apply in relation to—
 - (a) the Direct Payments Regulation;
 - (b) Commission Delegated [Regulation \(EU\) No 639/2014](#) of 11 March 2014 supplementing the Direct Payments Regulation;
 - (c) Commission Implementing [Regulation \(EU\) No 641/2014](#) of 16 June 2014 laying down rules for the application of the Direct Payments Regulation.

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- (2) The Queen's Printer must make arrangements for the publication of the following EU regulations as published in the Official Journal of the European Union before exit day.
- (3) The EU regulations are—
 - (a) the regulations listed in subsection (1);
 - (b) the regulations listed in sub-paragraphs (i) to (v) of section 1(3)(d).
- (4) Subsection (2) does not require the publication of—
 - (a) anything repealed before exit day, or
 - (b) any modifications made on or after exit day.
- (5) Retained direct EU CAP legislation is a “relevant matter” for the purposes of paragraph 4 of Schedule 5 to the European Union (Withdrawal) Act 2018 (power to make provision about judicial notice and admissibility).

Increase in direct payments ceilings for claim year 2020

5 Power to increase direct payments ceilings for 2020

- (1) The Direct Payments Regulation is amended as follows.
- (2) In Article 6(3), for “Article 14” substitute “ Articles 7A and 14 ”.
- (3) In Article 7(3), after “pursuant to” insert “ Article 7A and ”.
- (4) After Article 7 insert—

“Article 7A

7A Increase in national and net ceilings

- (1) *The Secretary of State may, having regard to the recommendations contained in the report of the Bew Review, decide to increase the total maximum amount of direct payments that could otherwise be granted in relation to the claim year 2020.*
- (2) In this Article, the “report of the Bew Review” means the report entitled “Intra-UK Allocations Review” published on 6 September 2019.”
- (5) In Article 22(5), after “paragraph 3 of this Article,” insert “ Article 7A, ”.

Final provisions

6 Consequential and transitional provision

- (1) The Secretary of State or the relevant national authority may by regulations make such provision as the Secretary of State or relevant national authority considers appropriate in consequence of this Act.
- (2) The power to make regulations under subsection (1) may (among other things) be exercised by modifying any provision made by or under an enactment.
- (3) Schedule 1 contains consequential provision.

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- (4) The Secretary of State or the relevant national authority may by regulations make such transitional, transitory or saving provision as the Secretary of State or relevant national authority considers appropriate in connection with the coming into force of any provision of this Act.
- (5) But the Secretary of State may only make regulations under this section that apply (whether or not the regulations also apply in relation to England)—
 - (a) in or as regards Scotland,
 - (b) in or in relation to Wales,
 - (c) in or as regards Northern Ireland,
 if the Secretary of State has obtained the required consent.
- (6) For the purposes of subsection (5), the “required consent” is—
 - (a) the consent of the Scottish Ministers, if the regulations apply in or as regards Scotland,
 - (b) the consent of the Welsh Ministers, if the regulations apply in or in relation to Wales, and
 - (c) the consent of DAERA, if the regulations apply in or as regards Northern Ireland.
- (7) In this section, “the relevant national authority” is—
 - (a) the Scottish Ministers, for regulations that apply only in or as regards Scotland,
 - (b) the Welsh Ministers, for regulations that apply only in or in relation to Wales, and
 - (c) DAERA, for regulations that apply only in or as regards Northern Ireland.

7 Regulations

Schedule 2 makes provision about regulations under this Act.

8 Interpretation

In this Act—

“CAP direct payment schemes” has the meaning given by section 1;

“claim year” has the meaning given by section 1;

“DAERA” means the Department of Agriculture, Environment and Rural Affairs in Northern Ireland;

the “Direct Payments Regulation” has the meaning given by section 1;

“domestic law” means—

- (a) in section 1, the law of England and Wales, Scotland and Northern Ireland, and
- (b) in any other provision, the law of England and Wales, Scotland or Northern Ireland;

“enactment” includes—

- (a) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,
- (b) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales,

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- (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation, and
- (d) any retained direct EU legislation;
 - “EU entity” means an EU institution or any office, body or agency of the EU;
 - the “Horizontal Regulation” has the meaning given by section 1;
 - “modify” includes amend, repeal or revoke (and related expressions are to be read accordingly);
 - “retained direct EU CAP legislation” has the meaning given by section 2;
 - “retained EU law governing the CAP direct payment schemes” has the meaning given by section 2.

9 Extent, commencement and short title

- (1) This Act extends to England and Wales, Scotland and Northern Ireland.
- (2) Section 5 comes into force on exit day.
- (3) The other provisions of this Act come into force on the day on which this Act is passed.
- (4) This Act may be cited as the Direct Payments to Farmers (Legislative Continuity) Act 2020.

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