

*Draft Regulations laid before the Scottish Parliament under 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.**

**AGRICULTURE**

**The Direct Payments to Farmers (Miscellaneous Amendments) (Scotland) Regulations 2020**

*Made* - - - - 2020  
*Coming into force* - - 1st January 2021

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 2, 3 and 4 of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020<sup>(1)</sup> and all other powers enabling them to do so.

In accordance with sections 2(3), 3(4) and 4(3) of that Act<sup>(2)</sup>, 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 Direct Payments to Farmers (Miscellaneous Amendments) (Scotland) Regulations 2020.

(2) These Regulations come into force on 1 January 2021.

**Amendments to the Direct Payments Regulation**

2.—(1) The Direct Payments Regulation<sup>(3)</sup> is amended as follows.

(2) Omit Article 1(b)(iii).

(3) In Article 4(1), after point (s) insert—

“(t) “total ceiling” means the amount determined in accordance with Article 5A.”.

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(1) [2020 asp 17](#).

(2) Section 2(3) provides that regulations under section 2 are subject to the negative procedure if they have not been subject to the affirmative procedure. The Regulations are subject to the affirmative procedure by virtue of sections 3(4) and 4(3).

(3) EUR 2013/1307, amended by section 5 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c.2), S.I. 2020/91, S.I. 2020/576 and S.I. 2020/760. This Regulation was incorporated into domestic law by section 1 of that Act. It was also prospectively amended with effect from IP completion day by S.I. 2019/207 (as amended by S.I. 2019/812). These amendments were revoked by the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 (S.I. 2020/xx) immediately before IP completion day.

(4) After Article 5, insert—

*“Article 5A*

*The total ceiling for Scotland*

1. In determining the total ceiling for Scotland, the Scottish Ministers must determine an amount equivalent to Scotland’s share of the 2020 national ceiling set out in Annex II.
2. The Scottish Ministers must determine the total ceiling before the start of the relevant financial year.
3. When the total ceiling has been determined, the Scottish Ministers must publish that amount as soon as practicable after that determination has been made.
4. The total ceiling, for any claim year, is to be distributed among all allocated payment entitlements, the national reserve or the regional reserves, and ceilings fixed in accordance with Articles 47, 51 and 53, as they apply in Scotland.
5. Where the Scottish Ministers make a decision under Article 22(2) to increase the basic payment scheme ceiling, the total ceiling for that claim year may be exceeded by the increase decided pursuant to that Article.
6. In this Article—
  - (a) “claim year” means a period of 12 months beginning with 1 January,
  - (b) “financial year” means a period of 12 months beginning with 1 April.”.

(5) Omit Articles 6, 7 and 7A.

(6) In Article 11—

- (a) omit paragraph 3,
- (b) after paragraph 4 insert—

**4A.** For each calendar year, the estimated product of the reductions made in accordance with this Article must be made available as support for measures under rural development.

**4B.** References to “rural development” in this Article and Article 14 include measures which are conducive to—

- (a) the conservation or enhancement of the natural beauty or amenity of the countryside (including its flora and fauna and geological and physiographical features) or of any features of archaeological interest there,
- (b) the promotion of the enjoyment of the countryside by the public,
- (c) starting, or improving the productivity of, an agricultural, horticultural or forestry activity or rural business, or
- (d) starting, promoting or improving rural services.”.

(7) In Article 14—

- (a) for “national ceiling” substitute “total ceiling”,
- (b) for “calendar year 2020 provided that such a decision was taken and notified to the Commission by 31 December 2019” substitute “a given calendar year”.

(8) In Article 22—

- (a) omit paragraph 1,
- (b) for paragraph 2 substitute—

- “2. The basic payment scheme ceiling for any given year is the amount which remains for the basic payment scheme after deducting, from the total ceiling, the ceilings set under Articles 47, 51 and 53 for that year. The relevant authority may decide to increase the amount of the basic payment scheme ceiling. That increase may not exceed 3% of the total ceiling after deduction of the amount resulting from the application of Article 47(1) for the relevant year.”,
- (c) in paragraph 4—
- (i) for “the constituent nation” substitute “Scotland”,
  - (ii) omit “its share of”,
  - (iii) after “ceiling” insert “in Scotland”,
  - (iv) omit the second sentence,
- (d) in paragraph 5—
- (i) for “paragraph 1” substitute “paragraph 2”,
  - (ii) omit “Article 7A,”,
  - (iii) omit “Article 42(1),”.
- (9) In Article 23—
- (a) in the heading, for “national ceilings” substitute “basic payment scheme ceiling”,
  - (b) in paragraph 2, for “its share of” to “Article 22(1)” substitute “the basic payment scheme ceiling in Scotland referred to in Article 22(2)”,
  - (c) in paragraphs 3 and 4, after “regional ceilings” insert “in Scotland”.
- (10) In Article 25—
- (a) in paragraph (1)—
    - (i) in the first subparagraph—
      - (aa) for “Subject to paragraphs 2 and 3, for” substitute “For”,
      - (bb) for “relevant authority’s share of the national ceiling” substitute “total ceiling”,
    - (ii) in the second subparagraph—
      - (aa) for “relevant authority’s share of the basic payment scheme ceiling” substitute “basic payment scheme ceiling in Scotland”,
      - (bb) after “Article 30” insert “, as it had effect immediately before exit day”,
  - (b) omit paragraphs 2, 3 and 8.
- (11) In Article 30—
- (a) for “relevant authority’s share of the basic payment scheme ceiling”, in each place where it occurs, substitute “basic payment scheme ceiling in Scotland”,
  - (b) after “regional ceiling” in each place where it occurs, insert “in Scotland”,
  - (c) in paragraph 7(f), omit “and Article 65(1), (2) and (3)”,
  - (d) in paragraph 8, omit subparagraph 3.
- (12) In Article 32(1)—
- (a) omit “of financial discipline,”,
  - (b) omit “Article 7 and”.
- (13) Omit Articles 41 and 42.
- (14) In Article 43(9) omit from “of linear reductions” to “and to the application”.

- (15) In Article 50(4)—
- (a) omit “of financial discipline,”,
  - (b) omit “and of linear reductions in accordance with Article 7”.
- (16) In Article 51—
- (a) in paragraph 1—
    - (i) in the first subparagraph, for “its share of the annual national ceiling” substitute “the total ceiling”,
    - (ii) for the second subparagraph substitute—
 

“Where the relevant authority decides by 1 August in a calendar year to revise the percentage, that revised percentage will have effect for the following calendar year.”,
  - (b) in paragraph 2, for “relevant authority’s share of the national ceiling” substitute “total ceiling”,
  - (c) in paragraph 3, for “its share of the annual national ceiling” substitute “the total ceiling”.
- (17) In Article 53—
- (a) for paragraph 1 substitute—
 

“1. Up to 10% of the total ceiling may be used to finance the coupled support.”,
  - (b) omit paragraph 3,
  - (c) in paragraph 5, for “percentages set out in paragraphs 1 to 4” substitute “percentage set out in paragraph 1”,
  - (d) omit paragraph 6.
- (18) In Annex I, omit the second entry (redistributive payment) in the table.
- (19) Omit Annex III.

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

**3.** In 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), omit Article 53a(4).

### **Amendments to the Horizontal Regulation**

**4.—(1)** The Horizontal Regulation(5) is amended, insofar as it relates to direct payments, as follows.

- (2) In Article 67(4)(b)—
- (a) omit “the redistributive payment referred to in Chapter 2 of Title III of Regulation (EU) No 1307/2013;”,
  - (b) before “the voluntary coupled” insert “and”.
- (3) Omit Article 108.

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(4) EUR 2014/639, as amended by [S.I. 2020/91](#) and [S.I. 2020/576](#). EUR 2014/639 was prospectively amended with effect from IP completion day by [S.I. 2019/208](#) and [S.I. 2019/763](#) (as amended by [S.I. 2019/812](#)), but those prospective amendments were revoked by the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 (S.I. 2020/xx) immediately before IP completion day.

(5) EUR 2013/1306, as amended by [S.I. 2020/90](#) and [S.I. 2020/576](#). EUR 2013/1306 is also amended prospectively with effect from IP completion day by [S.I. 2019/748](#) (as amended by [S.I. 2019/831](#)), [S.I. 2019/763](#) (as amended by [S.I. 2019/812](#)), [S.I. 2019/831](#) and [S.I. 2019/1402](#). However, by virtue of the amendments in the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 (S.I. 2020/xx), these prospective amendments do not have effect in relation to direct payment schemes.

(4) In Article 112, in the first subparagraph, for “the Funds” to “exit day)” substitute “agricultural support”.

#### **Amendments to Commission Implementing Regulation (EU) No 809/2014**

**5.**—(1) Commission Implementing Regulation (EU) No. 809/2014 laying down rules for the application of Regulation (EU) 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(6), insofar as it relates to direct payments, is amended as follows.

(2) In Article 6—

- (a) omit paragraph 2(f)(v),
- (b) omit paragraph 3(b).

(3) In Article 15(2), in the second subparagraph, for “Member States” substitute “the relevant authority”.

(4) In Article 23(2), omit from “the payments received” to “exit day), or”, in the second place it occurs.

(5) In Article 30, omit point (b).

(6) In Article 36, in paragraphs 2 and 3, omit “and the re-distributive payment”.

(7) In Article 68, in paragraph 1, in the first subparagraph, for “as it had effect in EU law” substitute “as amended for the purpose of agricultural support”.

(8) Omit Article 70b.

#### **Amendments to Commission Delegated Regulation (EU) No 640/2014**

**6.**—(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(7), insofar as it relates to direct payments, is amended as follows.

(2) In Article 6, in paragraph 3, for “2021” substitute “following the calendar year in question”.

(3) In Article 17(1) omit point (b).

(4) In Article 18—

- (a) in paragraph 1, omit “, the re-distributive payment”,
- (b) omit paragraph 3.

(5) In Article 19a—

- (a) in the heading omit “, the re-distributive payment”,
- (b) in paragraph 1, after “Chapters 1” omit “, 2”.

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(6) EUR 2014/809, as amended by [S.I. 2020/90](#), [S.I. 2020/576](#) and [S.S.I. 2020/244](#). EUR 2014/809 is also amended in relation to direct payment schemes in Scotland by [S.I. 2020/510](#) and [S.I. 2020/575](#). EUR 2014/809 is also amended prospectively with effect from IP completion day by [S.I. 2019/765](#). However, by virtue of the amendments in the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 (S.I. 2020/xx), these prospective amendments do not have effect in relation to direct payment schemes.

(7) EUR 2014/907, amended in relation to direct payment schemes by [S.I. 2020/90](#). EUR 2014/907 is also amended prospectively with effect from IP completion day by [S.I. 2019/765](#). However, by virtue of the amendments in the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 (S.I. 2020/xx), these prospective amendments do not have effect in relation to direct payment schemes.

### **Amendments to Commission Implementing Regulation (EU) No 908/2014**

7.—(1) Commission Implementing Regulation (EU) No 908/2014 of 6 August 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency<sup>(8)</sup>, insofar as it applies to direct payment schemes, is amended as follows.

- (2) In Article 28, omit from “under direct” to “Rural Development”.
- (3) In Article 58, for “third” substitute “second”.

### **Amendment to the Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014**

8. In the Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014<sup>(9)</sup> omit regulation 2(2A).

### **Amendments to the Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015**

9.—(1) The Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015<sup>(10)</sup> are amended as follows.

- (2) Omit regulation 2(1A).
- (3) In regulation 23(2)(b), for “in respect of claim year 2020” insert “on or after exit day”.

### **Amendment to the Rural Payment (Appeals) (Scotland) Regulations 2015**

10. In the Rural Payments (Appeals) (Scotland) Regulations 2015<sup>(11)</sup>, omit regulation 2(1A).

St Andrew’s House,  
Edinburgh  
Date

*Name*  
A member of the Scottish Government

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(8) EUR 2014/908 amended in relation to direct payment schemes by [S.I. 2020/90](#). EUR 2014/907 is also amended prospectively with effect from IP completion day by [S.I. 2019/765](#). However, by virtue of the amendments in the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 (S.I. 2020/xx), these prospective amendments do not have effect in relation to direct payment schemes.

(9) [S.S.I. 2014/325](#) as relevantly amended by [S.S.I. 2020/18](#). There are other amendments not relevant to these Regulations.

(10) [S.S.I. 2015/58](#) as relevantly amended by [S.S.I. 2020/18](#). There are other amendments not relevant to these Regulations.

(11) [S.S.I. 2015/194](#) as relevantly amended by [S.S.I. 2020/18](#). There are other amendments not relevant to these Regulations.

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## EXPLANATORY NOTE

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

These Regulations make provision in retained EU law governing the direct payment schemes for securing the continuation of those schemes in Scotland beyond 2020.

Regulations 2 and 3 amend Regulation (EU) No 1307/2013 (the “Direct Payments Regulation”) and Regulation (EU) No 639/2014 to allow the direct payment schemes to function effectively beyond 2020. Regulation 2 introduces a new Article 5A to the Direct Payments Regulation which provides the manner in which to determine the direct payments ceiling beyond 2020.

Regulations 4 to 7 modify Regulations (EU) Nos 1306/2013, 809/2014, 640/2014 and 908/2014 to the extent necessary for the basic payment scheme to function effectively beyond 2020. Those EU Regulations contain some of the rules governing the direct payment schemes as well as other schemes under the common agricultural policy. These Regulations amend that body of law insofar as it relates to the direct payment schemes.

Regulations 8 to 10 amend the Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014, the Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015 and the Rural Payments (Appeals) (Scotland) Regulations 2015 to ensure that cross-references to retained EU legislation insofar as it applies to direct payments operate effectively beyond the 2020 claim year.

Regulations 2 to 10 contain provision to simplify and improve retained EU law relating to the direct payment schemes by removing provisions which are spent or not in use in Scotland.

No business or 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.