

POLICY NOTE

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

SSI 2020/XXX

The Direct Payments to Farmers (Miscellaneous Amendments) (Scotland) Regulations 2020 (“the 2020 Regulations”) are made in exercise of the powers conferred by sections 2, 3 and 4 of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020.¹ The instrument is subject to affirmative procedure.

Section 2(3) of the Agriculture (Retained EU Law and Data) Act 2020 provides that “*regulations under this section are (if they have not been subject to the affirmative procedure) subject to the negative procedure*”. Sections 3 and 4 require that the Regulations be made subject to the affirmative procedure.

The 2020 Regulations will apply to the whole of Scotland and come into force on 1 January 2021.

Purpose of the Instrument

This instrument specifies the manner by which Scottish Ministers will determine the annual financial ceiling which will provide the basis for calculating payments to farmers and crofters in Scotland from 2021 onwards. In addition, this instrument makes amendments to retained EU law governing the direct payment schemes to ensure their continued operability in Scotland and removes provisions from that body of retained EU law which are not relied upon in Scotland.

Policy Objectives

The 2020 Regulations do not aim to implement policy change. Instead they aim to give farmers and crofters stability and continuity in the period from 2021 to 2024 by preserving the status quo in so far as possible on the assumption the requisite funding will be provided by HM Treasury. They make those technical changes to enable the direct payment schemes to continue to operate. In particular, they specify the manner in which the Scottish Ministers will determine the annual financial ceiling (“the total ceiling”) as a part of the annual Scottish Government budget process and make provision in retained EU law governing the direct payment schemes in order to ensure continuity for those schemes in Scotland for 2021 and subsequent claim years.

The 2020 Regulations also amend retained EU law relating to the direct payment schemes to remove provisions which are spent or not in use in Scotland. This includes provisions relating to redistributive payments schemes (which do not operate in Scotland) and financial discipline (which is not applied in Scotland).

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Explanation of the law being amended by the 2020 Regulations

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 provision into the Direct Payments Regulation which provides the manner in which to determine the total ceiling for Scotland in 2021 and beyond. The total ceiling replaces the national and net ceilings which were determined annually for the UK by the European Commission.

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, removing references to schemes not operating in Scotland and provisions which no longer have effect post-EU exit.

Regulations 8, 9 and 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 remove provisions which were inserted to clarify the relevant legislation applicable to direct payments during the claim year 2020 and are no longer required.

Reasons for and effect of the proposed change

The 2020 Regulations seek to preserve the status quo in so far as possible, making necessary technical amendments as well as removing spent provisions all to help ensure we can continue to make payments and operate our direct payments schemes in Scotland for 2021 and subsequent years.

The 2020 Regulations set out the process for determining the total ceiling in Scotland for 2021 and subsequent years, linking this process to the annual Scottish Government budget procedure. Scottish Ministers will be required to determine the total ceiling for Scotland each year before the beginning of the Scottish Government financial year on 1 April. When the total ceiling for Scotland has been determined, the Scottish Ministers must publish that amount as soon as practicable after that determination has been made. This will enable the payments to be calculated in time for issuing to applicants later on in the year.

The 2020 Regulations remove the provisions relating to net ceilings in the Direct Payments Regulation, which are no longer necessary given the manner in which funding is being provided by HM Treasury. Instead, as agreed with DEFRA and the other UK devolved administrations, the Scottish Ministers will determine the total ceiling for Scotland which will form the basis for calculating payments.

The 2020 Regulations make provision for the direct payments schemes to continue in Scotland at the same levels as in previous years. For example, provision is made for the voluntary coupled support to continue at its current level of funding by amending the scheme ceiling from 8% of the UK national ceiling to 10% of the total ceiling for Scotland, as determined by Scottish Ministers.

Further information

Consultation

We conducted a full public consultation on our period of Stability and Simplicity to 2024 and continue to engage with stakeholders and delivery partners through the Agriculture and Rural Development Stakeholder Group and the Rural Development Operation Committee.

Further consultation took place in relation to the Agriculture (Retained EU Law and Data) (Scotland) Bill and the 2020 Regulations will be used to deliver on the stated objective of the Bill *“to enable the continued operation of current CAP schemes and policies, but also to allow them to be progressively improved and simplified”*.

We have also liaised closely with DEFRA and the other UK devolved administrations regarding the 2020 Regulations, in particular regarding the provisions for determining the total ceiling for future claim years.

Impact Assessments

The 2020 Regulations do not introduce new policy. The proposal is for the direct payments schemes to continue to operate until 2024 provided that the required annual settlement is issued by HM Treasury.

The Common Agricultural Policy was formally approved by the EU institutions having been developed in conjunction with stakeholders, robustly consulted on and fully impact assessed. It is not considered appropriate or proportionate to undertake full impact assessments for the 2020 Regulations, which make administrative changes relating to the delivery of the existing schemes.

Financial Effects

The Cabinet Secretary for the Rural Economy and Tourism, 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

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