

2020 No. 1387

AGRICULTURE, ENGLAND

**The Direct Payments to Farmers and Cross-Compliance
(Simplifications) (England) (Amendment) Regulations 2020**

<i>Made</i>	- - - -	<i>30th November 2020</i>
<i>Laid before Parliament</i>		<i>1st December 2020</i>
<i>Coming into force</i>	- -	<i>1st January 2021</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 9, 14(1) and (2) and 50(3) of the Agriculture Act 2020(a).

Citation, commencement and application

1.—(1) These Regulations may be cited as the Direct Payments to Farmers and Cross-Compliance (Simplifications) (England) (Amendment) Regulations 2020 and come into force on 1st January 2021.

(2) The amendments contained in the regulations specified in paragraph (4) apply only in relation to an application for direct payments made in 2021 or in any subsequent year.

(3) These Regulations apply in England only.

(4) The regulations specified in this paragraph are—

- (a) regulation 2(3);
- (b) regulation 4(2) – (5);
- (c) regulation 5(2), (4), (6) – (10);
- (d) regulation 6(2) – (4);
- (e) regulation 7(2) – (4), (6), (7);
- (f) regulation 8(2), (4);
- (g) regulation 9(3), (4)(b), (5) – (8), (10), (15) – (17), (19).

(5) In these Regulations, “direct payments” means payments made to farmers under support schemes under Regulation (EU) No 1307/2013(b) 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.

(a) 2020 c. 21.

(b) EUR 2013/1307. The relevant amending instruments are S.I. 2019/748, 2020/91, 576 and 760 and the Direct Payments to Farmers (England) (Amendment) Regulations 2020. EUR 2013/1307 was amended by section 5 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c. 2). 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). Those instruments were revoked by the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 immediately before IP completion day.

Amendment of the Common Agricultural Policy Basic Payment and Support Schemes (England) Regulations 2014

2.—(1) The Common Agricultural Policy Basic Payment and Support Schemes (England) Regulations 2014(a) are amended as follows.

(2) In regulation 5—

- (a) the existing text becomes paragraph (1);
- (b) at the beginning of renumbered paragraph (1), insert “Subject to paragraph (2),”;
- (c) after renumbered paragraph (1), insert—

“(2) Direct payments may be granted to a farmer where the eligible area of the holding referred to in paragraph (1) is less than five hectares where in 2020 direct payments were claimed by or due to be granted to that farmer—

- (a) before the application of Article 63 of Regulation (EU) No 1306/2013; and
- (b) in respect of such a holding (as defined for the 2020 claim year)—
 - (i) the eligible area was situated in England and at least one other constituent nation;
 - (ii) where the eligible area situated in England of that holding was less than five hectares; and
 - (iii) for which a payment was claimed or due to be granted in respect of the eligible area situated in England.”.

(3) Omit regulations 11 to 13 and the Schedule.

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

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

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

(3) In regulation 3—

- (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 Regulation (EU) No 1306/2013

4.—(1) Regulation (EU) No 1306/2013(c) 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 is amended as follows.

(2) Insofar as it relates to direct payments, in Article 12(d)—

(a) S.I. 2014/3259. The relevant amending instruments are S.I. 2015/1997, 2017/1198, 2018/1026, 2019/733 and 2020/91.
(b) S.I. 2014/3263. The relevant amending instruments are S.I. 2015/1325 and 1997, 2019/733 and 785, and 2020/90.
(c) EUR 2013/1306. The relevant amending instruments are S.I. 2020/90 and 576 and the Direct Payments to Farmers (England) (Amendment) Regulations 2020. EUR 2013/1306 was incorporated into domestic law by section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020. This Regulation is also amended prospectively with effect from IP completion day by S.I. 2019/748 (as amended by S.I. 2019/831), 763 (as amended by S.I. 2019/812), 831 and 1402. However, by virtue of the amendments in The Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020, these prospective amendments do not have effect in relation to direct payment schemes.
(d) Article 12 was substituted by S.I. 2020/90.

- (a) omit “the agricultural practices beneficial for the climate and the environment laid down in Chapter 3 of Title III of Regulation (EU) No 1307/2013 and”;
 - (b) for “that Regulation” substitute “Regulation (EU) No 1307/2013”.
- (3) Insofar as it relates to direct payments, in Article 67 (integrated administration and control system – scope and terms used) in paragraph 4(b) omit “; the payment for agricultural practices beneficial for the climate and the environment referred to in Chapter 3 of Title III of Regulation (EU) No 1307/2013;”.
- (4) Insofar as it relates to direct payments, in Article 70, omit paragraph 2.
- (5) Insofar as it relates to direct payments, in Article 77 omit paragraph 6.
- (6) In Article 91, in paragraph (3)(a), in the definition of “holding” for “the United Kingdom” substitute “England”.
- (7) In Article 99(2)(a)—
- (a) in the second subparagraph—
 - (i) omit “, given their minor severity, extent and duration,”;
 - (ii) after the words “remedial action”, insert “where it is possible”;
 - (iii) after the words “has not been remedied”, insert “as required”;
 - (b) after the second subparagraph, insert—

“Duly justified cases as referred to in the second subparagraph may be determined by the relevant authority based on the severity, extent and duration of the non-compliance in question, and on the beneficiary’s overall engagement with the cross-compliance rules.”.

Amendment of Regulation (EU) No 1307/2013

5.—(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 is amended as follows.

- (2) In Article 1, omit point (b)(iv).
- (3) In Article 4, in paragraph 1—
 - (a) in subparagraph (a) in the definition of “farmer” for “the United Kingdom” substitute “England”;
 - (b) in subparagraph (b) in the definition of “holding” for “the United Kingdom” substitute “England”.
- (4) In Article 22, in paragraph 5, after “as a result of”, insert “the removal of the payment for agricultural practices beneficial for the climate and the environment or”.
- (5) In Article 31, in paragraph 1 omit points (a) and (b).
- (6) In Title III, omit Chapter 3.
- (7) In Article 50, in paragraph 6, in subparagraph (a) for “between 25% and 50%” substitute “17.5%”.
- (8) In Annex I, in the table, omit the entry relating to “Title III, Chapter 3 of this Regulation” across all three columns.
- (9) Omit Annex IX.
- (10) Omit Annex X.

(a) Under Article 138 of the withdrawal agreement and section 7A of the European Union (Withdrawal) Act 2018 (c. 16), certain common organisation of the markets and rural development measures committed under the Multiannual Financial Framework (MFF) 2014-20 and previous financial perspectives continue to be governed by directly applicable EU law.

Amendment of Commission Delegated Regulation (EU) No 639/2014

6.—(1) Commission Delegated Regulation (EU) No 639/2014(a) 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 is amended as follows.

- (2) In Article 1, omit point (d).
- (3) Omit Chapter 3.
- (4) Omit Annex II.

Amendment of Commission Delegated Regulation (EU) No 640/2014

7.—(1) Commission Delegated Regulation (EU) No 640/2014(b) 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, is amended as follows.

(2) Insofar as it relates to direct payments, in Article 2, in paragraph 1, in subparagraph (22) omit “use of area in terms of the type of crop as referred to in Article 44(4) of Regulation (EU) No 1307/2013.”.

(3) Insofar as it relates to direct payments, in Article 4, in paragraph 2 for “fifteen working days” substitute “eight weeks”.

(4) Insofar as it relates to direct payments, in Article 5, in paragraph 2—

- (a) omit point (c);
- (b) omit point (d).

(5) Insofar as it relates to direct payments, in Article 13—

(a) in paragraph (1), in the second subparagraph, for “the first subparagraph” to the end of that subparagraph substitute “an applicant may submit documents which are constitutive for the eligibility for the aid in question to the relevant authority by no later than 25 calendar days after the final date for submission of an aid application as fixed by Article 13 of Regulation (EU) No 809/2014.”;

(b) for paragraph (3) substitute—

“(3) Except in cases of force majeure and exceptional circumstances as referred to in Article 4, no amendment to the single application may be admissible after the final date for submission of amendments as specified in Article 15(2) of Commission Implementing Regulation (EU) No 809/2014.”.

(6) Insofar as it relates to direct payments, in Article 16, in paragraph 1, omit the second subparagraph.

(7) In Title II, in Chapter IV—

- (a) insofar as it relates to direct payments, in the title to Section 2, omit “, except the payment for agricultural practices beneficial for the climate and the environment”;
- (b) omit Section 3.

(a) EUR 2014/639, amended by S.I. 2020/91 and 576 and the Direct Payments to Farmers (England) (Amendment) Regulations 2020. EUR 2014/639 was incorporated into domestic law by section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020. EUR 2014/639 was prospectively amended with effect from IP completion day by S.I. 2019/208 and 763 (as amended by S.I. 2019/812), but those prospective amendments were revoked by The Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 immediately before IP completion day.

(b) EUR 2014/640, amended in relation to direct payment schemes by S.I. 2020/90 and in relation to direct payment schemes in England by S.I. 2020/551 and the Direct Payments to Farmers (England) (Amendment) Regulations 2020. EUR 2014/640 was incorporated into domestic law by section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020. EUR 2014/640 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, these prospective amendments do not have effect in relation to direct payment schemes.

(8) In Article 39(1)(a)—

- (a) in the first subparagraph, for “, as a general rule, be 3%” substitute “be a percentage”;
- (b) in the second subparagraph—
 - (i) for “However, the” substitute “The”;
 - (ii) for “either to reduce that percentage to 1% or increase it to 5%” substitute “that the percentage reduction will be 1%, 2%, 3%, 4% or 5%”.

Amendment of Commission Implementing Regulation (EU) No 641/2014

8.—(1) Commission Implementing Regulation (EU) No 641/2014(b) of 16 June 2014 laying down rules for the application 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 common agricultural policy is amended as follows.

- (2) In Article 1, omit point (c).
- (3) Omit Article 9.
- (4) Omit Article 11.

Amendment of Commission Implementing Regulation (EU) No 809/2014

9.—(1) Commission Implementing Regulation (EU) No 809/2014(c) 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 is amended as follows.

- (2) Insofar as it relates to direct payments, in Article 1, omit point (c).
- (3) Insofar as it relates to direct payments, in Article 4, for the second subparagraph substitute—

“The competent authority may recognise obvious errors only if they can be identified by—

 - (a) a basic review of the information given in the documents referred to in the first subparagraph; or
 - (b) at the beneficiary’s request, where such a request is reasonable, a basic review of information gathered from cross-checks of data relating to the case at the competent authority’s disposal.”.
- (4) Insofar as it relates to direct payments, in Article 15, in paragraph 2—
 - (a) in the first subparagraph, for “31 May of the year concerned” substitute “no later than 25 calendar days after the final date for submitting the single application fixed in accordance with Article 13(1)”;
 - (b) omit the third subparagraph.
- (5) Insofar as it relates to direct payments, in Article 17—
 - (a) in paragraph 4, in the second subparagraph, omit the final sentence;
 - (b) in paragraph 5—

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- (a) Under Article 138 of the withdrawal agreement and section 7A of the European Union (Withdrawal) Act 2018, certain common organisation of the markets and rural development measures committed under the MFF 2014-20 and previous financial perspectives continue to be governed by directly applicable EU law.
 - (b) EUR 2014/641. Relevant amending instruments are S.I. 2020/91 and the Direct Payments to Farmers (England) (Amendment) Regulations 2020. EUR 2014/641 was incorporated into domestic law by section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020. EUR 2014/641 was also prospectively amended with effect from IP completion day by S.I. 2019/208, although that instrument was revoked by The Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 immediately before IP completion day.
 - (c) EUR 2014/809. Relevant amending instruments are S.I. 2020/90, 576 and the Direct Payments to Farmers (England) (Amendment) Regulations 2020. EUR 2014/809 is also amended in relation to direct payment schemes in England by S.I. 2020/510 and 575. EUR 2014/809 was incorporated into domestic law by section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020. 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, these prospective amendments do not have effect in relation to direct payment schemes.

- (i) in the first subparagraph—
 - (aa) in the first sentence, omit “and, where applicable, the type, size and location of the ecological focus areas”;
 - (bb) omit the second sentence;
- (ii) in the second subparagraph, in the second sentence, omit “or, where applicable, the size and location of the ecological focus areas”;
- (c) omit paragraph 6.
- (6) Omit Article 18.
- (7) Insofar as it relates to direct payments, in Article 26, in paragraph 4, omit the second subparagraph.
- (8) Insofar as it relates to direct payments, in Article 27, omit from “The relevant authority shall also ensure” to the end of that Article.
- (9) Omit Article 30.
- (10) Omit Article 31.
- (11) Insofar as it relates to direct payments, omit Article 33a.
- (12) Insofar as it relates to direct payments, omit Article 34.
- (13) Insofar as it relates to direct payments, omit Article 35.
- (14) Insofar as it relates to direct payments, omit Article 36.
- (15) Insofar as it relates to direct payments, in Article 37, omit paragraph 3.
- (16) Insofar as it relates to direct payments, in Article 38, omit paragraph 6.
- (17) Insofar as it relates to direct payments, in Article 39, omit paragraph 3.
- (18) Insofar as it relates to direct payments, omit Article 40a.
- (19) Omit Article 44.
- (20) In Article 68(a), omit paragraph 4.
- (21) Omit Article 70a.

30th November 2020

Victoria Prentis
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments in order to simplify various aspects of the direct payment schemes and cross-compliance provisions in England.

The following legislation is amended in order to remove the requirement for farms which have land in England and Scotland, Wales or Northern Ireland to be treated as one holding for the purposes of direct payments: the Common Agricultural Policy Basic Payment and Support Schemes (England) Regulations 2014 (S.I. 2014/3259) (regulation 2(2)), the Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 (S.I. 2014/3263) (regulation 3), Regulation (EU) No 1306/2013 (regulation 4(6)) and Regulation (EU) No 1307/2013 (“the Direct Payments Regulation”) (regulation 5(3)).

The following legislation is amended in order to remove the rules which provided that if farmers did not activate some or all of their entitlements for two consecutive years in certain circumstances

(a) Under Article 138 of the withdrawal agreement and section 7A of the European Union (Withdrawal) Act 2018, certain common organisation of the markets and rural development measures committed under the MFF 2014-20 and previous financial perspectives continue to be governed by directly applicable EU law.

or if farmers did not activate all their Basic Payment Scheme entitlements at least once every two years, some or all of those entitlements would revert to the Basic Payment Scheme national or regional reserve: the Direct Payments Regulation (regulation 5(5)) and Commission Implementing Regulation (EU) No 641/2014 (“the Direct Payments Implementing Regulation”) (regulation 8(3)).

Regulation 7(3) amends Commission Delegated Regulation (EU) No 640/2014 in order to extend the force majeure deadline from fifteen working days to eight weeks in relation to direct payments.

The following legislation is amended in order to remove the requirements relating to ecological focus areas, crop diversification and permanent grassland (the greening rules): S.I. 2014/3259 (regulation 2(3) to (6)), Regulation (EU) No 1306/2013 (regulation 4(2) to (5)), the Direct Payments Regulation (regulation 5(2), (4), (6) to (10)), Commission Delegated Regulation (EU) No 639/2014 (regulation 6), Commission Delegated Regulation (EU) No 640/2014 (regulation 7(2), (4), (6) and (7)), the Direct Payments Implementing Regulation (regulation 8(2) and (4)) and Commission Implementing Regulation (EU) No 809/2014 (regulation 9(4)(b), (5) to (8), (10), (15) to (17) and (19)).

Regulation 4(7) amends Regulation (EU) No 1306/2013 in order to extend the considerations which the relevant authority may take into account when deciding whether to use the early warning system to deal with cross-compliance breaches, and to allow the relevant authority discretion as to whether or how each consideration is weighted.

Regulation 7(5)(a) amends Commission Delegated Regulation (EU) No 640/2014 in order to allow documents in support of applications for direct payments to be submitted up to 25 days after the deadline for applications for direct payments without incurring any penalty.

Regulations 7(5)(b) and 9(4)(a) amend Commission Delegated Regulation (EU) 640/2014 and Commission Implementing Regulation (EU) No 809/2014 in order to enable farmers to amend their applications for direct payments without penalty up to 25 days after the deadline for submitting the applications.

Regulation 7(8) also amends Commission Delegated Regulation (EU) No 640/2014 to enable a proportionate application of penalties for cross-compliance breaches.

Regulation 9(3) amends Commission Implementing Regulation (EU) No 809/2014 in order to make it easier for certain corrections to be made to applications for direct payments.

Regulation 9(2), (9), (11) to (14) and (18) also amends Commission Implementing Regulation (EU) No 809/2014 in order to remove the requirement for a minimum level of inspections to take place in relation to applications for direct payments.

Regulation 9(20) removes the cross-compliance requirement for the relevant authority to increase on-the-spot checks of compliance with a given act or standard where it has identified a significant degree of non-compliance with that act or standard. Regulation 9(21) removes the option for the relevant authority to carry out on-the-spot checks by monitoring.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

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