



Direct Payments to Farmers (Legislative Continuity) Act 2020

2020 CHAPTER 2

An Act to make provision for the incorporation of the Direct Payments Regulation into domestic law; for enabling an increase in the total maximum amount of direct payments under that Regulation; and for connected purposes. [30th January 2020]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

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—

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- (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 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,

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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 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).

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- (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.
- (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,

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- 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—
- (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