

*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 1313/1307, 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”.