

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Third Delegated Legislation Committee

**RULES FOR DIRECT PAYMENTS TO FARMERS
(AMENDMENT) REGULATIONS 2020**

**FINANCING, MANAGEMENT AND MONITORING
OF DIRECT PAYMENTS TO FARMERS
(AMENDMENT) REGULATIONS 2020**

Monday 24 February 2020

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Friday 28 February 2020

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The Committee consisted of the following Members:

Chair: CAROLINE NOKES

- | | |
|--|---|
| † Anderson, Stuart (<i>Wolverhampton South West</i>)
(Con) | † Oppong-Asare, Abena (<i>Erith and Thamesmead</i>)
(Lab) |
| † Ansell, Caroline (<i>Eastbourne</i>) (Con) | † Oswald, Kirsten (<i>East Renfrewshire</i>) (SNP) |
| † Bailey, Shaun (<i>West Bromwich West</i>) (Con) | Pollard, Luke (<i>Plymouth, Sutton and Devonport</i>)
(Lab/Co-op) |
| † Blackman, Bob (<i>Harrow East</i>) (Con) | † Prentis, Victoria (<i>Parliamentary Under-Secretary of</i>
<i>State for Environment, Food and Rural Affairs</i>) |
| † Blunt, Crispin (<i>Reigate</i>) (Con) | Winter, Beth (<i>Cynon Valley</i>) (Lab) |
| † Cartlidge, James (<i>South Suffolk</i>) (Con) | † Zeichner, Daniel (<i>Cambridge</i>) (Lab) |
| † Daly, James (<i>Bury North</i>) (Con) | |
| † Debbonaire, Thangam (<i>Bristol West</i>) (Lab) | Ben Street, <i>Committee Clerk</i> |
| † Dorans, Allan (<i>Ayr, Carrick and Cumnock</i>) (SNP) | |
| † Double, Steve (<i>St Austell and Newquay</i>) (Con) | |
| † Morris, James (<i>Lord Commissioner of Her</i>
<i>Majesty's Treasury</i>) | † attended the Committee |

Third Delegated Legislation Committee

Monday 24 February 2020

[CAROLINE NOKES *in the Chair*]

Rules for Direct Payments to Farmers (Amendment) Regulations 2020

4.30 pm

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Victoria Prentis): I beg to move,

That the Committee has considered the Rules for Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020, No. 91).

The Chair: With this it will be convenient to consider the Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020, No. 90).

Victoria Prentis: That was crystal clear, as you promised, Ms Nokes. It is a pleasure to serve as a new Minister under your chairmanship in your first Committee.

These two statutory instruments concern the European Union law governing the 2020 direct payments schemes. They were brought into UK law on exit day by the Direct Payments to Farmers (Legislative Continuity) Act 2020, which most of us will remember. The matters in the two statutory instruments are closely related, so it is sensible that we consider them together. They make technical amendments to address deficiencies in the retained EU law, so that the direct payment schemes can work effectively in the UK for this year. They do not introduce policy change.

I will deal first with the Rules for Direct Payments to Farmers (Amendment) Regulations 2020. I should explain why it was necessary to use the made affirmative procedure for these instruments: they needed to come into force on exit day at the same time that the relevant direct payments legislation became incorporated into UK law. The scheme runs throughout the entire calendar year. Without these instruments, the UK Government and the devolved Administrations would not be able to administer the direct payments schemes effectively for the remainder of the 2020 year.

These SIs ensure that the UK Government are able to meet their commitments to funding in the agricultural sector. I am pleased that the Government have announced funding of nearly £3 billion for direct payments for the 2020 scheme year, matching the total funding that was available for direct payments in 2019.

As the Committee will be aware, agriculture is a devolved policy area. We have worked closely with the devolved Administrations to produce these instruments, which contain provisions that apply across the UK, and I am pleased to say that they have given their consent to the provisions.

Turning to the SIs themselves, the rules for direct payments regulations amend three retained EU regulations, which together establish the direct payments schemes and set scheme eligibility rules, including rules for the

basic payment scheme, the greening payment, the young farmers payment, the redistributive payment and voluntary coupled support. Those EU regulations have been brought into UK law only for the 2020 scheme year.

The financing, management and monitoring of direct payments to farmers regulations amend five retained EU regulations relating to the administration, inspection, enforcement and monitoring of the schemes. It is worth explaining that those EU regulations apply across the whole common agricultural policy, but have been brought into UK law only in relation to 2020 direct payments. Therefore, this SI makes amendments only in relation to 2020 direct payments.

Each SI also makes amendments to existing domestic legislation in England. Many of the amendments are of a uniform type across both instruments, such as merely changing EU-specific terms to domestic equivalents. For instance, references to “member states” will, in most instances, be replaced with the term “relevant authorities”.

Some amendments remove administrative processes that lose their purpose outside the EU context, such as requirements to send notifications to the European Commission about our implementation of the schemes. We have domestic provisions in their place. As the retained EU law covers only the 2020 direct payment schemes, some amendments are needed to make that clear. There are also amendments that update cross-references to EU legislation and remove provisions not relevant to the UK.

Other amendments are different for each statutory instrument. The rules for direct payments regulations remove the process of setting financial ceilings for each direct payment scheme, because it is unnecessary in a domestic context to have legislation setting out ceilings, especially when those are administered at a devolved level. The financing, management and monitoring of direct payments to farmers regulations remove the EU’s auditing and accounting rules to enable suitable domestic equivalents to take their place. They also remove the EU’s budget management processes, where those do not work in a domestic context, and make amendments to clarify how the domestic 2020 direct payment schemes interact with the cross-cutting common agricultural policy provisions, which will continue to apply to the UK during the transition period.

Without the changes made by these statutory instruments, domestic legislation would be unclear and not function effectively for the 2020 scheme year. The instruments provide important and necessary continuity for farmers, the Rural Payments Agency and the devolved Administrations. I therefore commend them to the Committee.

4.36 pm

Daniel Zeichner (Cambridge) (Lab): It is a pleasure to serve with you in the Chair, Ms Nokes. It is also a pleasure to welcome the Minister to her place. I am sure we will spend many happy hours together discussing these points in the coming weeks. She is well placed to do so as a farmer and an experienced lawyer, and I am sure that she enjoyed as much as I did spending the recess reading EU regulations 1307/2013, 639/2014 and so on. For those hon. Members who are hoping that our sitting will be quick, I am afraid I did read those regulations, and I would not want all that time to be wasted. It struck me that things do not seem entirely

oven-ready or “got done” at this point; it will take a little time. However, I must pay tribute to those who drafted the regulations before us, who, quite frankly, must have the patience of saints.

I was also struck by some rather understated humour that emerged at some points, particularly in the explanatory memorandum that accompanies these regulations. If you do not mind, Ms Nokes, I intend to go through points raised in it before going into the detail of the regulations. Those who have read the explanatory memorandum will notice how it quickly becomes a complicated explanation, particularly of how this legislation interacts with EU retained law. By the time one gets to paragraph 2.5, one reads:

“As a result, existing law would either be unclear or would not function effectively.”

That it could be unclear is potentially an understatement, but we will try to develop clarity, as that is why we are here.

The memorandum goes on to talk about the danger of potentially “inoperable provisions”. In paragraph 2.9 it describes the regulations as the “appropriate legislative ‘fixes’”, which

“will maintain a *status quo* position”.

Of course, on Second Reading of the Direct Payments to Farmers (Legislative Continuity) Act 2020, the Opposition pointed out exactly that: the first act after exit day was to keep the status quo. We understand why that was necessary—because of the unfortunate delays in bringing forward legislation—but all of these measures would be unnecessary if we already had the Agriculture Bill in place.

We do not have to go much further through the explanatory memorandum to find yet more problems. In paragraph 6.3 the dreaded concept of equivalence pops up, when we are made aware that we need to maintain equivalence to continue to benefit from state aid exemption rules. I suspect we will talk much further about that in the coming weeks.

We learn in paragraph 6.6 that the regulations are laid under powers in the 2020 Act, which basically provided for the Secretary of State to do what is necessary to make this stuff work. One wonders how many more measures will be needed to sort out what is a considerably complicated set of proposals.

If one was beginning to think it could not get any worse, paragraph 6.8 points out the further difficulty—I will return to this in my detailed account—that different rules apply for January. Until exit day, EU law applied, but retained EU law relates to the whole of the claim year, including January. This may not be for today, but at some point it may be helpful for the Minister to explain how anybody is going to be able to work out exactly how this works. A potential infringement on 31 January may well be treated differently on 1 or 2 February. That could well be quite complicated; all I observe is that it would be good times for lawyers. This was supposed to be about giving certainty, but as Labour warned on Second Reading, some of this may be difficult to sort out quickly, and by the middle of this year farmers will be wanting to make decisions for next year. As we have said, we worry that far from giving certainty, this process will carry on for some time yet. In paragraph 7.8 of the explanatory memorandum, there is a glorious phrase:

“The Government remains committed to beginning ambitious agricultural reforms”.

I am sure that will reassure lots of people. “Remaining committed to beginning” is hardly encouraging.

Turning to annex 2 of that memorandum and looking at the detail of the SIs and the pieces of EU law that they amend, further concerns arise—again, some of this will be discussed in detail later. The Minister made this point tangentially in her introduction, but basically, we will withdraw a level of scrutiny from the whole process by taking out the EU level. Many people, of course, will be delighted by that—they will be cheering—but huge sums of public money are involved here, and we need to be sure that appropriate mechanisms are in place to replicate some of that scrutiny, although not necessarily the bits we do not like. The Minister may be confident that those mechanisms are in place, but not everyone has total confidence in the Rural Payments Agency, or feels it has the necessary resources in place to do this extra job. I seek some reassurance regarding that.

It is also striking that we are now outside the EU crisis reserve. To laypeople, that would look remarkably like moving out of an insurance system and into an uninsured position. Of course, we may well think that that is fine because we have the full weight of the Treasury behind us, but the basic point is that if we are part of something bigger, we are pooling the risk. Obviously, we hope that reserve is not needed, and some of the money is on the way to coming back to us, which is fine. However, we should at least be aware of what we are doing.

I will now move on to the detail, beginning by looking at Regulation (EU) No. 1307/2013—I apologise to Members who do not have the full details at their fingertips, because this will possibly be a little tricky, but that regulation is the legislation that SI 91 amends. I have to say, I have had a crash course in learning how the CAP works; in a previous life, I used to do local government finance, and would joke that the only thing that was more complicated was the CAP. I have come to regret that particular line now.

What struck me about Regulation (EU) No. 1307/2013, which was the EU’s attempt to improve the CAP last time around, was just how much of what the EU was trying to do was the same as what we are now trying to do. The preamble talks about the absolute necessity of reducing administrative burdens, and about tackling abuse. Interestingly, it also talks about the ability to transfer funds between what, in EU jargon, are described as “the first and second pillars”.

Broadly speaking, that means the opportunity to put more money into environmental goods, which is exactly what we want to do. It is striking that in England, when the Government had the opportunity to exercise their full discretion to move to 15%, they chose not to do so. Without reopening past debates, it is worth noting in passing that we have not exercised the full flexibilities that were available to us.

As the Minister has said, many of the changes made by the SIs are simply changes to wording. I am sure it would be wonderful to do a replace all, changing “member state” to “relevant authority” and so on, but alas, it is never that simple. In the more pernicky points that I will get to in a moment, I will point out some areas that do not make sense to me, where those changes have not

[Daniel Zeichner]

been made. Those may, of course, be minor drafting errors, or there may be reasons for them. It would be useful to tease out why those decisions have been made.

I suspect that we will come back to the active farmer debate another day, possibly even tomorrow. However, I ask today why we are deleting the reference to granting payments to airports, rail, water services and sports areas in article 9.2 of Regulation (EU) No. 1307/2013, and replacing it with a much more general provision. I believe it has been discussed in the past, but some clarification would be helpful. I do not expect the Minister to know the answer to all my questions instantly. If she is unable to reply today, I would be perfectly happy with a written reply later.

I do not understand why the article 28 provision on windfall profit has been deleted. There are many paragraphs on the regional and national reserves. The term “regional reserves” is not to be understood in the way that many of us would understand it. I ask the Minister for some details on the reserves and how they will be used in the future. It does not seem entirely clear. The point I am making throughout my remarks is that, although the top-level message is that nothing changes, as we dig down into the detail we begin to find that it is not quite as straightforward as it seems.

In article 43, which is an important set of paragraphs, the EU sets out something not dissimilar from the work that we will do going forward. The EU tries to define the agricultural practices that are beneficial for the environment and the climate, with a series of details in annex IX. I return to my point about who will check all of that. It seems that we are potentially now checking our own homework.

Turning to the second instrument, which amends Regulation (EU) No. 639/2014, it is not entirely clear to me why articles 62, 63 and 72 have been left in, and there are one or two articles where the “Member States” amendment does not seem to have been made: articles 16.2 and 33. In article 45, I do not see the logic in detailing the list of pollen and nectar-rich species when land is lying fallow. There may be a reason, but it is not clear to me. Perhaps more significantly, article 45.5 changes—I would say weakens—the rules on governing the sizes of buffer strips. There is no reason to believe that there is any desire to weaken them, but as I read the legislation it potentially will do so.

Moving on to Regulation (EU) No. 1306/2013, article 9 talks about certification bodies. I think that this matter has been controversial in the past. Again, I seek clarification from the Minister on where the Government think that we are going. It looks to me like a potential change. Articles 12 to 15 on farm advisory systems are effectively deleted, which seems significant. I would welcome some reflections on the impact of that. Article 29 is a detailed account of how the exchange rate issues would have been dealt with, which are of course potentially very important for people. We do not know how the currency will go this year, but it will make a significant difference and the provisions have, obviously, been taken out.

In a number of places, I do not understand why articles have been retained: 30 to 39, 65 to 66, and 79 to 91. Within those, there are references to “Member States”. I suspect that they should have been taken out, but I may be misreading them. Article 46 includes a reference

to article 42, which seems to have been deleted. Article 97 goes to the heart of the claim year issue and the complexities around January. Again, some detail would be welcome. It is not clear to me why in Regulation (EU) No. 907/2014 articles 3 and 4 have survived, nor why in Regulation (EU) No. 908/2014 articles 16 to 24 and 45 to 57 have survived.

We are told that nothing has changed, and that this is the status quo. I think I have demonstrated that that is not entirely the case because, as we look into the detail, we find tweaks and changes. I am not sure that we understand what the exact impact will be on the way in which the schemes will work, but it is our duty to at least ask. I hope that we get clarification on some of that. Who knows? We may at some point get the long-awaited policy paper on how the new systems will work, which I think was promised for the Second Reading and Committee stages. If it turns up in the middle of the night it will be no help to many of us, but we look forward to it with relish.

4.49 pm

Kirsten Oswald (East Renfrewshire) (SNP): In a practical sense, it is clear why we are here. The statutory instruments amend retained European law governing the direct payment schemes for farmers established under the common agricultural policy, in relation to the claim year 2020, allowing us to address the operability issues created by the UK’s regrettable leaving of the EU. The orders will enable the retained EU law to operate effectively in the UK after EU exit for the claim year 2020. That matters because under the withdrawal agreement the EU direct payments legislation will not apply in the UK for that claim year, so it is necessary to make sure that the legal basis for payment exists.

The statutory instruments finally solve a problem that the UK Government created, and do something that is required as a direct result of the withdrawal agreement that they signed up to. So in these exceptional circumstances the Scottish National party and the Scottish Government believe that the support should be provided. Scotland’s farmers and crofters have witnessed broken promises after broken promises from the Tory Government, and the Brexit agenda has been damaging to Scotland. The present case is another example of that, so our support is based on the understanding that the payments are critical for our agriculture sector, and provide a basic level of support for our farmers and crofters.

It is, however, important to emphasise that the emergency passage of the Bill, and the delegated legislation Committees, characterise the reckless and damaging Brexit that the UK Government are pursuing. That has left our farmers suffering crippling uncertainty, because of the reckless and last-minute approach to the issues. That is regrettable.

4.51 pm

Allan Dorans (Ayr, Carrick and Cumnock) (SNP): The statutory instrument is of great interest to me. My constituency is hugely rural. It is 50 miles long and 20 miles wide. The agriculture and farming industry is critical to our national and local economy, in terms of the production of beef, lamb, dairy produce, and crops such as cereals and potatoes. The issue is therefore hugely important to us.

I welcome the continuity, but the direct payments made by the UK Government under the common agricultural policy amounted to about £400 million per annum. The Scottish Government recognise that direct payment schemes are critical to Scottish farmers, and have therefore been pressing the UK Government to address the issue since last year. The statutory instruments are a last-minute fix for a problem that was flagged up to the UK Government last year. They are representative of their reckless approach, and show contempt for our farming and crofting communities.

Scottish Government farm business income statistics show that without the support of the direct payments about 60% of agricultural businesses would record a loss. Without the measures to address the legal vacuum in relation to making direct payments to farmers there would be severe financial implications for many of Scotland's agricultural businesses and they would go bankrupt. That would mean many businesses would fold in turn.

We support the statutory instruments reluctantly, because of the circumstances in which they have been imposed on us.

4.53 pm

Victoria Prentis: I should like to start by thanking the hon. Member for Cambridge for his kind words on my new appointment, and say that I too look forward to considering the Agriculture Bill in Committee tomorrow, and to the many hours that we shall spend together, along with the hon. Member for Bristol West and many others who are present in the Room. We will then see more of the framework for future agriculture policy. Like the hon. Gentleman, I am burning with anticipation, which I am hopeful will shortly be assuaged, to see the new policy document for British agriculture. I know that he and I have been doing a lot of reading over the past 10 days, and we may be doing a lot more in the near future. It is very exciting.

I will not be able, as the hon. Member for Cambridge anticipated, to deal with all his drafting points here and now. I shall try to deal with some of the substantive points he raised, but I undertake to write to him in detail on the drafting issues. Even if I become an experienced Minister, I do not know whether I will be able to deal with that sort of drafting issue on the hoof—even though, as he said very kindly, that is my background. Being in front of the hon. Gentleman is rather like being in front of the Court of Appeal, which is never a happy position for a lawyer to be in.

Let me deal with some of the issues that the hon. Gentleman raised. The statutory instruments maintain the status quo and do not change the rules that farmers need to meet. If a farmer breached the scheme's rules in January this year, the Government and the devolved Administrations could still enforce the scheme in exactly the same way as would have happened in the past. That was part of the reason for introducing the Act. The SIs simply enable a smooth transition and allow the payments and the mechanisms about which the hon. Gentleman expressed concern to carry on.

I know that the hon. Gentleman is very interested in transport policy: he and I spent many hours in transport debates when I was the parliamentary private secretary to the Department for Transport and he led the opposition to some of the Government's policies. I am assured that

the provisions on active farmers, including the rules on airports and railway services, have been maintained in a way that allows each part of the UK to continue to operate the rules in exactly the same way as before.

On exchange rates, the position in the past has been that we in the UK are subject to fluctuations in exchange rates in the same way as other parts of the EU. I am told that the level of funding available for direct payments this year will be the same as it was in 2019. The funding is based on the same financial ceiling and exchange rates that were used in 2019. That may end up being beneficial for us, and the SIs ensure that, at the very least, we have continuity for our farmers.

As the hon. Gentleman rightly anticipated, I am afraid the exchange rates that will be used to calculate BPS payments in 2020 will be set in a statutory instrument that will follow later this year. In line with EU regulations, the exchange rates for BPS have been set out each year based on the average of exchange rates set by the European Central Bank in the month of September, so we are possibly getting a good deal this year. Next year, we will set them out in a statutory instrument. I hope that answers his question.

On inter-pillar transfers, I took the hon. Gentleman's little dig about the 15% rate in the past. This year, each part of the UK will set its own level for direct payments for 2020 under the current rules, which will enable up to 15% of the direct payments budget to be used for rural development. That is a very good step forward.

The hon. Member for Ayr, Carrick and Cumnock talked about the money that has been provided for Scottish farmers and crofters following the Bew review. The extra money that the Government have committed to provide to Scotland and Wales ensures the fair allocation of farm support funding. We will amend the UK financial ceilings for direct payments to take account of the extra funding in relation to the 2020 scheme year. We will do that by producing a further statutory instrument and, in advance, we will seek the consent of, and work closely with, the devolved Administrations to ensure that that consent is forthcoming. The Government will continue to engage with the devolved Administrations to agree the longer term funding position.

On exchange rates and funding generally, the level of funding available for direct payments for each part of the UK in 2020 will be exactly the same as it was in 2019. The funding is based on the exchange rate that was used last year, which should ensure continuity. On future schemes, we know very well that farmers need stability, certainty and a smooth transition to move to a replacement system, so we will not switch off direct payments overnight. We have provided an agricultural transition period of seven years, beginning next year in 2021, so that farmers have time to adapt to the new provisions. During that period, we will offer schemes to boost industry productivity and improve animal and plant health and animal welfare. There will be schemes to enable farmers, foresters and growers to invest in new equipment and improved technology. We will talk about that a great deal over the coming weeks in the Agriculture Bill Committee.

The new environmental land management scheme is being piloted from this year. The full scheme is due to be rolled out across England in 2024, so we have three

[Victoria Prentis]

years to get it absolutely right. I look forward to working with Members from all parties to ensure that we do that.

The hon. Member for Cambridge mentioned crisis reserves. We will rely on our usual domestic powers and procedures to respond to a crisis, as we have done many times before, such as with animal disease.

Any future trade agreements must work for consumers, farmers and businesses in the UK. We will not water down our standards on food safety, animal welfare and environmental protection as part of any future trade deal. Goods seeking access to our markets will have to meet our standards. We will discuss those issues again—probably tomorrow.

The instruments we have discussed correct deficiencies in the legislation that establishes the scheme eligibility rules for farmers' direct payment schemes, as well as the legislation governing the financing, management and monitoring of the schemes. They ensure that the 2020 schemes can continue to run effectively with no disruption

for farmers, providing farmers across the UK with stability and certainty. They pave the way for a smooth transition to our new system of public money for public goods in England. I urge hon. Members to agree the amendments that the instruments propose, and I commend the regulations to the Committee.

Question put and agreed to.

Resolved,

That the Committee has considered the Rules for Direct Payments to Farmers (Amendments) Regulations 2020 (S.I. 2020, No. 91).

THE FINANCING, MANAGEMENT AND MONITORING OF DIRECT PAYMENTS TO FARMERS (AMENDMENT) REGULATIONS 2020

Resolved,

That the Committee has considered the Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020, No. 90).—(*Victoria Prentis.*)

5.2 pm

Committee rose.