POLICY NOTE

THE COMMON AGRICULTURAL POLICY (LESS FAVOURED AREA SUPPORT) (EU EXIT) (SCOTLAND) AMENDMENT REGULATIONS 2020

SSI 2020/XXX

The above instrument was made in exercise of the powers conferred by paragraph 1(1) and (3) of Schedule 2 of the European Union (Withdrawal) Act 2018 and sections 2, 3 and 4 of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020(**1**). The instrument is subject to *affirmative procedure*.

Purpose of the instrument. To provide the basis for the continuation of the Less Favoured Area Support Scheme (LFASS) from 2021 by amending retained EU law, and to correct a deficiency in that law.

Policy Objectives

LFASS is part of the Scottish Rural Development Programme for the purposes of Regulation (EU) No 1305/2013 ("the Rural Development Regulation").

It provides for the area based support scheme for areas facing natural constraints permitted under the Rural Development Regulation, which includes areas with handicaps as previously determined under Regulation (EU) 1698/2005.

The policy objective is to ensure that the LFASS operates effectively under retained EU law from 31 December 2020.

Changes made by this regulation

The changes made by this instrument fix a deficiency in EU law, and modify the LFASS Regulations with effect from 1 January 2021.

Deficiency in retained EU law

Regulation 3(4) of this instrument addresses a failure of retained EU law relating to the LFASS to operate effectively from IP completion day (31 December 2020).

The Less Favoured Area Support Scheme (Scotland) Regulations 2010 ("the LFASS Regulations") are prospectively modified by the Common Agricultural Policy (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/60) (the "2019 Regulations").

The modifications were due to come into force on exit day (31 January 2020), but the measures implementing the subsequent Withdrawal Agreement applied a gloss to the commencement provisions in the 2019 Regulations with the effect that they now come into force on IP completion day.

(**1**) 2020 asp 17.

The gloss does not however apply to other references to exit day in the 2019 Regulations. The further change in this instrument therefore modifies a reference to exit day so that it instead refers to IP completion day.

LFASS from 2021 onwards

The other measures in this instrument modify both the LFASS Regulations and the retained EU law version of the Rural Development Regulations in order to ensure that LFASS payments can continue in the period from 2021 to 2024.

These changes are necessary as there is no power to continue LFASS payments after the end of this year, as the payments are currently linked to the EU multi-annual financial framework for 2014 to 2020.

The EU is in the process of making transitional arrangements in respect of areas facing natural constraints which will apply from 2021 until such time as a new MFF is agreed, and in place. Those transitional arrangements will not apply in Scotland.

The policy objective for the LFASS is to ensure that payments will continue between 2021 and 2024 under retained EU law, at the higher rate that applied in 2018 before that rate had to be reduced by 20% in 2019 and 60% in 2020 under EU law proper.

LFASS payments compensate farmers for income foregone and for additional costs linked to natural constraints in order to encourage the use of agricultural land, thus contributing to the maintenance of the countryside as well as to the maintenance and promotion of sustainable farming systems.

This additional funding will be a vital support to the Scottish rural economy during Brexit and the recovery from the Covid-19 pandemic.

Payment Rates

The changes made by this instrument to schedule 5 of the LFASS Regulations have the effect that from Scheme year 2021 the 2018 rates as set out below are reinstated:

More disadvantaged land

Fragility Category	**Rate/ha**
Very Fragile (islands)	£71.35
Fragile (mainland)	£62.10
Standard	£52.16

Less disadvantaged land

Fragility Category	**Rate/ha**
Very Fragile (islands)	£63.00
Fragile (mainland)	£54.51
Standard	£34.12

Reasons for and effect of the proposed change or changes on retained EU law

This instrument changes a references from "exit day" to "IP completion day" to reflect the end of the transitional period.

The 2019 Regulation are due to come into force on IP completion day. Therefore, the deficiency fix in this instrument require to come in immediately before IP completion day so that the change is effective from that day.

The amendment is of a technical nature, and do not introduce any policy change.

Statements required by the European Union (Withdrawal) Act 2018 and Additional Information required by the Protocol between the Scottish Government and the Scottish Parliament

Regulation 3(4) of this instrument is made in exercise of powers in the 2018 Act to deal with deficiencies in retained EU law (paragraphs 1(1) and (3) of Part 1 of schedule 2).

The Statements set out below relate to the exercise of the deficiencies powers.

The Additional Information set out below relates to the deficiencies powers and the powers in sections 2 to 4 of the 2020 Act to modify the main CAP legislation as defined in section 1 of that Act.

Statements required by European Union (Withdrawal) Act 2018

The following statements are required under paragraph 29 of Schedule 7 of the 2018 Act as this instrument contains Regulations under Part 1 of the 2018 Act.

Statement that in their opinion Scottish Ministers consider that the regulations do no more than is appropriate

The Cabinet Secretary for the Rural Economy and Tourism has made the following statement:

"In my view the Common Agricultural Policy (Less Favoured Area Support) (EU Exit) (Scotland) Amendment Regulations 2020 do no more than is appropriate. This is because the Regulations address necessary changes arising from leaving the EU".

Statement as to why the Scottish Ministers consider that there are good reasons for the regulations and that this is a reasonable course of action

The Cabinet Secretary for the Rural Economy and Tourism has made the following statement:

"In my view there are good reasons for the provision in this instrument, and I have concluded that making the provision is a reasonable course of action. It is the case that deficiencies arising from the withdrawal of the UK from the EU need to be addressed and that "exit day" needs to be amended to "IP completion day"." .

Statement as to whether the SSI amends, repeals or revokes any provision of equalities legislation, and, if it does, an explanation of that amendment, repeal or revocation

The Cabinet Secretary for the Rural Economy and Tourism has made the following statement:

"In my view the Common Agricultural Policy (Less Favoured Area Support) (EU Exit) (Scotland) Amendment Regulations 2020 do not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

Statement that Scottish Ministers have, in preparing the regulations, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010

The Cabinet Secretary for the Rural Economy and Tourism has made the following statement:

"In my view the Common Agricultural Policy (Less Favoured Area Support) (EU Exit) (Scotland) Amendment Regulations 2020 have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

Additional information provided for EU Exit instruments in terms of the protocol agreed between the Scottish Government and the Scottish Parliament

Statement that Scottish Ministers have, in preparing the regulations, had due regard to the guidance principles on the environment and animal welfare

This is not applicable.

Statement explaining the effect (if any) of the regulations on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence)

This is not applicable.

An indication of how the regulations should be categorised in relation to the significance of the change proposed

This instrument is categorised as low in relation to the change made under the 2018 Act, which is a technical amendment that will ensure the law is effective after IP completion day. There is no significant policy choice involved.

This instrument is categorised as medium in relation to the changes made under the 2020 Act, as without those changes it will not be possible to continue LFASS payments from 2021 to 2024. However, the instrument does not make any significant policy change to the LFASS which will broadly continue to operate as at present.

Statement setting out the Scottish Ministers' reasons for their choice of procedure

This instrument makes changes under sections 3 and 4 of the 2020 Act which are subject to the mandatory affirmative procedure.

The powers in paragraph (1) and (3) of the 2018 Act and section 2 of the 2020 Act are 'either way' powers, and the Scottish Ministers consider that it is appropriate for the changes made under those powers to be made in a single affirmative instrument.

Further information

Consultation

There has been continued engagement with stakeholders and businesses through informal discussion and through their involvement in the following groups:

- Agriculture and Rural Development (ARD) Stakeholder Group
- SRDP Governance Groups
- The Rural Development Operational Committee (RDOC)

The ARD Stakeholder Group has been regularly updated on, and consulted with, about support for the less favoured areas (LFA), including options for LFASS and consideration of other options under EU law proper for areas facing natural constraint (ANC).

Extensive analysis and consultation was undertaken on the option to change to an ANC Scheme in 2015 and 2016. This included stakeholder liaison on evidence, key principles and options development through an ANC Working Group. A range of options were then considered at a stakeholder workshop in June 2016. The Cabinet Secretary for the Rural Economy met key stakeholders in October 2016 to discuss the options, with the majority preferring to retain LFASS despite the proposed reduction in payment rates. This was due to the uncertainty caused by the UK referendum on EU exit.

A public consultation on "Stability and Simplicity: proposals for a rural funding transition period" took place in 2018 with a total of 135 direct responses. LFA support was considered important and should be retained. Respondents suggested possible improvements including in relation to improved targeting and an outcome based approach. However the majority of respondents were in favor of the overall approach to stability and simplicity.

Officials and the Cabinet Secretary for the Rural Economy have regular engagement with the NFU Scotland Less Favoured Area Committee, National Sheep Association (NSA) and Scottish Crofting Federation (SCF) who have shared feedback from their respective memberships on the important of continuing support in the Less Favoured Areas.

The decision to retain LFASS unchanged in the short term will please some, but not all. Opinions are split, with those in the crofting communities and extensive sheep grazing units wanting to change to ANC type support, while those receiving increased payments due to historic cattle numbers are keen to see LFASS continue unchanged.

There are benefits of retaining LFASS unchanged and positive reasons to await the outcome of the Farming and Food Production – Future Policy Group (FFP-FPG) and Beef Sector Group before looking at changing the nature of support for areas subject to natural constraints. Further to this, stability in LFASS payments will help the sector in its recovery from the impact of COVID-19.

Impact Assessments

LFASS is part of the Common Agricultural Policy (CAP). The CAP was formally approved by the European Commission and the Pillar 2 Scottish Rural Development Programme, of which LFASS is part, was developed in conjunction with stakeholders, robustly consulted on and fully impact assessed.

LFASS is an area based payment applicable to all areas of LFA across Scotland, both the mainland and islands.

An updated Equality Impact Assessment (EQIA) and Business and Regulatory Impact Assessment (BRIA) was prepared for The Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2019. These specifically considered the impact of the discontinuation of LFASS should it no longer be compliant.

It is not considered appropriate or proportionate to undertake full impact assessments for these Regulations as they do not introduce new policy, or a change in policy, but simply reinstates prior 2018 payment rates.

These Regulations will not have a significant impact on the environment.

These Regulations are not expected to have any impact on business, charities or voluntary bodies.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) was completed on The Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2019. Reinstating payment rates at previous levels to farmers and crofts will provide stability to help the sector to recover from the impact of both EU exit and the COVID pandemic.

The Cabinet Secretary for the Rural Economy and Tourism 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

November 2020