

DRAFT STATUTORY RULES OF NORTHERN
IRELAND

2021 No. 0000

AGRICULTURE

**The Direct Payments to Farmers (Simplifications) Regulations
(Northern Ireland) 2021**

Made - - - - *00th April 2021*

Coming into operation in accordance with regulation 1(1)

The Department of Agriculture, Environment and Rural Affairs makes these Regulations in exercise of the powers conferred by section 50(3) of, and paragraphs 2, 4 and 5 of Schedule 6 to, the Agriculture Act 2020(a).

PART 1

Preliminary

Citation, commencement and application

1.—(1) These Regulations may be cited as the Direct Payments to Farmers (Simplifications) Regulations (Northern Ireland) 2021 and come into operation on the day following the day on which they are made.

(2) The Interpretation Act (Northern Ireland) 1954(b) shall apply to these Regulations as it applies to an Act of the Assembly.

Interpretation

2. In these Regulations—

“the Direct Payments Implementing Regulation” means Commission Implementing Regulation (EU) No 641/2014 of 16 June 2014 laying down rules for the application of the Direct Payments Regulation(c);

“the Direct Payments Regulation” means Regulation (EU) No 1307/2013 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(d).

(a) 2020 c. 21.

(b) 1954 c. 33 (N.I.).

(c) EUR 2014/641, as amended by S.I. 2020/91.

(d) EUR 2013/1307, as amended by S.I. 2020/91 576 and 760 and 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.

PART 2

Removal of the payment for agricultural practices beneficial to the climate and the environment

Amendment of Regulation (EU) No. 1306/2013

3.—(1) Regulation (EU) No 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy(a) is amended as follows.

(2) In Article 12—

(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) 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) In Article 70, omit paragraph 2.

(5) In Article 77, omit paragraph 6.

Amendment of the Direct Payments Regulation

4.—(1) The Direct Payments Regulation is amended as follows.

(2) In Article 1, omit point (b)(iv).

(3) 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”.

(4) After Article 32, insert—

“Article 32A

1. Farmers shall not convert or plough permanent grassland situated in areas which, prior to exit day, have been designated by the relevant authority as permanent grasslands which are environmentally sensitive.

2. Without prejudice to Directive 2004/35/CE of the European Parliament and of the Council where a farmer has converted or ploughed permanent grassland that is subject to the obligation referred to in paragraph 1 the relevant authority shall provide for the obligation to reconvert the area into permanent grassland and may, on a case by case basis, issue precise instructions to be respected by the farmer concerned on how to reverse the environmental damage caused in order to restore the environmentally sensitive status.

3. The farmer shall be informed without delay after the non-compliance has been established of the obligation to reconvert and of the date before which that obligation is to be complied with. That date shall not be later than the date for the submission of the single application for the following year.

4. By way of derogation from Article 4(1)(h) of Regulation (EU) No 1307/2013, the land reconverted shall be considered as permanent grassland as of the first day of reconversion and be subject to the obligation referred to in paragraph 1.”

(5) In Title III, omit Chapter 3.

(a) EUR 2013/1306 as amended in relation to direct payment schemes by S.I. 2020/90 and 576. EUR 2013/1306 is also amended 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 amendments do not have effect in relation to direct payment schemes

(6) In Annex I, in the table, omit the entry relating to “Title III, Chapter 3 of this Regulation” across all three columns.

(7) Omit Annex IX.

(8) Omit Annex X.

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

5.—(1) Commission Delegated Regulation (EU) No 639/2014 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(a) 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

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

(2) In Article 2, in paragraph 1, in sub-paragraph (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) In Article 5, in paragraph 2—

(a) omit point (c);

(b) for point (d) substitute—

“(d) determine whether areas covered with permanent grassland which are environmentally sensitive as referred to in Article 32A of Regulation No 1307/2013 apply.”.

(4) In Article 16, in paragraph 1, in the second subparagraph for “Article 28(2)” substitute “Article 18a(2)”.

(5) Insert Article 18a—

“1. If a non-compliance with Article 32a(1) of Regulation No 1307/2014 has been determined, the area calculated in relation to the basic payment in accordance with Article 18 of this Regulation shall be reduced by the area determined as non-compliant with the requirements of Article 32a(1) of Regulation (EU) No 1307/2013.

2. If a beneficiary does not declare all his permanent grassland which is environmentally sensitive in accordance with Article 32a(1) of Regulation No 1307/2013 and the non-declared area is more than 0,1 ha, the area to be used for the calculation of the basic payment after application of paragraph (1) shall be further reduced by 10 %.”

(6) In Title II, in Chapter IV—

(a) 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 as amended by S.I. 2020/91 and 576.

(b) EUR 2014/640 as amended in relation to direct payment schemes by S.I. 2020/90. EUR 2014/640 is also amended by S.I. 2019/765. However, by virtue of the amendments in The Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020, these amendments do not have effect in relation to direct payment schemes.

Amendment of the Direct Payments Implementing Regulation

7.—(1) The Direct Payments Implementing Regulation is amended as follows.

(2) In Article 1, omit point (c).

(3) Omit Article 11.

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

8.—(1) Commission Implementing Regulation (EU) No 809/2014 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^(a) is amended as follows.

(2) In Article 15, in paragraph 2, omit the third subparagraph.

(3) In Article 17—

(a) in paragraph 4, in the second subparagraph, omit the final sentence;

(b) in paragraph 5—

(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.

(4) Omit Article 18.

(5) In Article 26, in paragraph 4, omit the second sub-paragraph.

(6) In Article 27, omit from “The relevant authority shall also ensure” to the end of that Article.

(7) Omit Article 31.

(8) Omit Article 31a.

(9) In Article 37, omit paragraph 3.

(10) In Article 38, omit paragraph 6.

(11) In Article 39, omit paragraph 3.

(12) Omit Article 44.

Amendment of the Common Agricultural Policy Basic Payment and Support Schemes Regulation (Northern Ireland) 2015

9.—(1) The Common Agricultural Policy Basic Payment and Support Schemes Regulations (Northern Ireland) 2015^(b) are amended as follows—

(2) Omit regulation 18.

(3) Omit regulation 19.

(4) Omit regulation 21.

(5) Omit the Schedule.

(a) EUR 2014/809 as amended in relation to direct payment schemes by S.I. 2020/90 and 576. EUR 2014/809 is also amended by S.I. 2019/765. However, by virtue of the amendments in The Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020, these amendments do not have effect in relation to direct payment schemes.

(b) S.R. 2015/191 as amended by S.R. 2018/122, S.R. 2019/11 and S.R. 2020/22.

PART 3

Young Farmers Payment/Regional Reserve

Amendment of the Direct Payments Regulation

10.—(1) The Direct Payments Regulation is amended as follows.

(2) In Article 30, after paragraph 10, insert—

“(10a) When applying paragraph 6, points (a) and (b) of paragraph 7, and paragraph 10, the sum of the number of payment entitlements allocated to a farmer and the number of existing entitlements held by that farmer where their unit value is increased to the national or regional average value shall not exceed 90.”.

(3) After Article 50(2) insert—

“(2a) A farmer as defined in Article 4(1)(a) who has been rejected for the payment for young farmers in three or more scheme years shall no longer be eligible for the payment for young farmers.

A young farmer as defined in Article 50(2) who has been rejected for the payment for young farmers, in three or more scheme years shall no longer be eligible for a payment for young farmers. For the purpose of this sub paragraph, a young farmer shall include those who make an application for the payment for young farmers but are rejected due to not meeting the requirements of Article 50(2)(a).

This paragraph shall not apply in the 2021 scheme year.”.

PART 4

Administrative penalties in cases of over-declaration

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

11. In Commission Delegated Regulation (EU) No 640/2014 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, for Article 19a substitute—

“Article 19a

Administrative penalties in cases of over-declaration of areas for the basic payment scheme, the re-distributive payment, the young farmers scheme and voluntary coupled support

1. If, in respect of a crop group as referred to in Article 17(1), the area declared for the aid schemes provided for in Chapters 1, 2 and 5 of Title III and in Title IV of Regulation (EU) No 1307/2013 exceeds the area determined in accordance with Article 18 of this Regulation, the aid or support shall be calculated on the basis of the area determined reduced by 1,5 times the difference found if that difference is more than either 3 % of the area determined or 2 hectares.

The administrative penalty shall not exceed 100 % of the amounts based on the area determined.

2. The administrative penalty referred to in paragraph 1 will be reduced by 50% if the difference between the area declared and the area determined does not exceed 10% of the area determined.”

PART 5

Removal of cross-border applications

Amendment of Regulation (EU) No 1306/2013

12.—(1) In 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(a), in Article 91(3)(a) in the definition of “holding”, for “the United Kingdom” substitute “Northern Ireland”

Amendment of the Direct Payments Regulation

13.—(1) The Direct Payments Regulation is amended as follows.

(2) In Article 4, in paragraph 1—

- (a) in subparagraph (a) in the definition of “farmer” for “the United Kingdom” substitute “Northern Ireland”;
- (b) in subparagraph (b) in the definition of “holding” for “the United Kingdom” substitute “Northern Ireland”.

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

14.—(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.”.

PART 6

Reduction of Payments

Amendment of the Direct Payments Regulation

15. In the Direct Payments Regulation, in Article 11(1), for “EUR 150 000” substitute “£190 000”.

Amendment of the Common Agricultural Policy Basic Payment and Support Schemes Regulation (Northern Ireland) 2015

16. In the Common Agricultural Policy Basic Payment and Support Schemes Regulation (Northern Ireland) 2015, in regulation 15 for “EUR 150 000” substitute “£190 000”.

(a) EUR 2013/1306 as amended in relation to direct payment schemes by S.I. 2020/90 and 576. EUR 2013/1306 is also amended 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 amendments do not have effect in relation to direct payment schemes.

(b) S.I. 2014/3263. The relevant amending instrument is S.I. 2015/1325.

PART 7

Control rate for on-the-spot checks

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

17.—(1) Commission Implementing Regulation (EU) No 809/2014 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^(a) is amended as follows.

(2) For Article 30 substitute—

“For area- related schemes the control sample for on-the-spot checks carried out each year shall cover at least:

- (a) 1% of all beneficiaries applying for the basic payment scheme in accordance with Chapter 1 of Title III of Regulation (EU) No 1307/2013;
- (b) 1% of all beneficiaries applying for young farmers in accordance with Chapter 5 of Title III of Regulation (EU) No 1307/2013;
- (c) 1% of all beneficiaries applying for a voluntary coupled support in accordance with Chapter 1 of Title IV of Regulation (EU) No 1307/2013;
- (d) 1% of all beneficiaries applying for the basic payment scheme in accordance with Chapter 1 of Title III of Regulation (EU) No 1307/2013 where the beneficiary has declared permanent grassland which is environmentally sensitive and to which Article 32(A) of Regulation (EU) No 1307/2014 applies.”

(3) Omit Article 30a.

(4) Omit Article 33.

(5) Omit Article 33a.

(6) For Article 34 substitute—

“The control samples established in article 30 may be selected randomly or on the basis of a risk analysis.”.

(7) Omit Article 35.

(8) Omit Article 36.

(9) Omit Article 37.

Amendment of Commission Implementing Regulation (EU) No 908/2014

18. In Commission Implementing Regulation (EU) No 908/2014 of 6 August 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency^(b), omit Article 41.

(a) EUR 2014/809 as amended in relation to direct payment schemes by S.I. 2020/90 and 576. EUR 2014/809 is also amended by S.I. 2019/765. However, by virtue of the amendments in The Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020, these amendments do not have effect in relation to direct payment schemes.

(b) EUR 2014/908 as amended by S.I. 2019/765, 1405 and S.I. 2020/90

PART 8

Coupled Support

Amendment of the Direct Payments Regulation

19.—(1) The Direct Payments Regulation is amended as follows.

(2) In Article 52—

- (a) in paragraph 6, omit “to be jointly agreed by the relevant authorities for each constituent nation” and insert “to be determined by the relevant authority.”;
- (b) omit paragraph 7;
- (c) for paragraph 9 substitute—

“9. In order to ensure efficient and targeted use of agricultural support and to avoid double funding under other similar support instruments, DAERA may make regulations laying down the conditions for granting coupled support.”

- (d) in paragraph 10 for “Secretary of State” substitute “DAERA”;
- (e) omit paragraph 11.

(3) In Article 53, omit paragraph 6.

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

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

(2) In Article 52(1), omit “prior to exit day”.

(3) For Article 53(2) substitute—

“2. Areas and yields and number of animals referred to in Article 52(6) of Regulation (EU) No 1307/2013 shall be fixed by the relevant authority at a regional or sector level.”

PART 9

The total ceiling for Northern Ireland

Amendment of the Direct Payments Regulation

21.—(1) The Direct Payment Regulation is amended as follows.

(2) In Article 5A, in paragraph 4 for “Articles 47 and 51” substitute “Article 51”.

(3) In Article 22, in paragraph 2—

- (a) omit “47 and”;
- (b) omit from “That increase may not exceed 3%” to the end of the paragraph.

(a) EUR 2014/639 as amended by S.I. 2020/91 and 576.

Sealed with the Official Seal of the Department of Agriculture, Environment and Rural Affairs on
xx xxx 2021



Rosemary Agnew
A senior officer of the
Department of Agriculture, Environment and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 50(3) and schedule 6 paragraphs 2, 4 and 5 of the Agriculture Act 2020 (c. 21) in order to make provision in retained EU law governing the direct payment schemes.

Part 2 amends Regulation (EU) No 1307/2013 (the “Direct Payments Regulation”), Regulations (EU) 1306/2013, 639/2014, 640/2014, 641/2014, 809/2014 and the Common Agricultural Policy Basic Payment and Support Schemes Regulations (Northern Ireland) 2015 to remove the Greening requirements for the 2021 scheme year and incorporate the Greening Payment into Basic Payment Scheme (BPS) entitlement unit values. However the ban on ploughing or conversion of Environmentally Sensitive Permanent Grassland is retained as condition of receiving BPS.

Part 3 amends the Direct Payments Regulation to limit the number of entitlements that can be allocated or topped up from the Regional Reserve to 90 for each application, bringing it into line with the Young Farmers Payment. It also limits to 3, the number of times an applicant and the number of times a farm business can submit an application for the Young Farmers Payment and the Regional Reserve.

Part 4 amends Regulation No 640/2014 to remove offset penalties by limiting over declaration penalties to 100% of the amount due based on the area determined (prior to penalty).

Part 5 amends Regulation (EU) 1306/2013, the Direct Payments Regulation and the Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 to make changes to the definition of a farmer and holding so that it is confined to Northern Ireland. This means that in future farmers will make applications to DAERA in relation to land in Northern Ireland and to the relevant authority in relation to land located elsewhere. This change is necessary given that agricultural support policy will diverge in the UK in future. Farmers who have land in Northern Ireland and the Republic of Ireland will continue to make separate applications to the relevant authorities in respect of where land is located.

Part 6 amends the Direct Payments Regulation and the Common Agricultural Policy Basic Payment and Support Schemes Regulation (Northern Ireland) 2015 to make a technical adjustment to capping levels for the 2021 scheme year. This will ensure that the removal of the Greening Payment and the corresponding increase in the Basic Payment will have a largely neutral impact on the deductions made due to capping.

Part 7 amends Regulations (EU) 809/2014 and 908/2014 to set the minimum inspection rate for area related schemes at 1%.

Part 8 amends the Direct Payments Regulation, Commission Delegated Regulation (EU) No 640/2014 and Commission Delegated Regulation (EU) No 639/2014 in relation to coupled support so that it can be used in the future to introduce coupled support schemes in Northern Ireland. The changes include the replacement of the Defra Secretary of State with DAERA as regards regulation making power as future schemes will be the sole responsibility of DAERA.

Part 9 amends the Direct Payments Regulation to remove references to Article 47 of the Direct Payments Regulation as that article relates to the Greening Payment which is being incorporated into the Basic Payment Scheme by Part 2. It also removes the limit of 3% on the increase of the Basic Payment Scheme to provide more flexibility on maximising expenditure within the budget allocation.

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£6.90

<http://www.legislation.gov.uk/id/midsr/2021/9780338015396>

ISBN 978-0-33-801539-6



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