HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

Number CBP 8795, 12 February 2020

Direct Payments to Farmers (Legislative Continuity) Bill (2019-20)

By Sarah Coe

Contents:

Contents

Contributing Authors: Lukas Audickas, Philip Brien, Statistics

Summary

The Direct Payments to Farmers (Legislative Continuity) Bill 2019-20 (HC Bill 5) was published on 9 January 2020. Second Reading of the Bill in the House of Commons took place on 21 January 2020. The Bill will be considered by a Committee of the Whole House and have its remaining stages on 28 January 2020.

The Bill does two main things: it makes provision firstly for the incorporation of the Direct Payments Regulation into domestic law for 2020, and secondly it will enable increase in the total maximum amount of direct payments.

An accompanying Explanatory Memorandum was published.

This briefing explains what the Bill does and sets out the wider context on farm support. UK farmers currently receive about £3.5 billion annually in farm support under the EU's Common Agricultural Policy (CAP). More than 80% of this support is paid as direct payments, based broadly on the amount of land farmed. Library analysis of funding by constituency is published in this briefing.

The UK leaves the CAP when it leaves the EU. Under the terms of the UK-EU Withdrawal Agreement, most EU regulations governing CAP farm support will cease to apply to the UK from exit day. A new legal basis will therefore be required to enable Ministers to continue direct farm support payments in 2020. The *Direct Payments to Farmers (Legislative Continuity) Bill* sets out that new legal basis. It provides that on exit day the EU legislation, as it then stands, governing the 2020 CAP direct payment schemes becomes part of domestic law. This will ensure that the scheme can continue in each part of the UK for the claim year 2020.

The Bill includes time-limited powers. It contains a power to make secondary legislation to make corrections to the direct payments body of law to make it operable once the UK has left the EU. It also contains a discretionary power for the Secretary of State or the devolved administrations to replicate amendments the EU makes in that period.

This Bill also includes powers for Ministers to increase the total maximum amount of direct payments in 2020. The Bew Review recommended changes to the way in which UK CAP funds are distributed among the UK nations. Following the Bew Review, the Government increased the amount of direct payments for Scotland and Wales. An increase in the overall UK budget for direct payments will prevent that change from impacting negatively on allocations for Scotland and Wales.

This Bill applies to all parts of the UK. Legislative consent for this Bill is needed from the devolved administrations. This is because the Bill contains provisions affecting Scotland, Wales and Northern Ireland.

The wider picture

The Government has guaranteed the annual farm budget for each year of this Parliament. Nearly £3 billion of funding has been provided for 2020. The UK Government funding of £2.852 billion will top up the remaining EU funding to match the total funding for direct payments that was available for 2019.

Agriculture is a devolved issue. Each UK nation is developing its own agricultural policy to apply in the longer term after the UK leaves the CAP.

The Queen's Speech in December 2019 included an Agriculture Bill which was introduced on 16th January (HC Bill 7). A similar Agriculture Bill completed its Commons' Committee Stage during the last Parliament but failed to progress further before the October 2019 dissolution. The Agriculture Bill will reform farm support. It will do so in England by phasing out direct payments over a seven-year period expected to start in 2021. It will also introduce payments for public goods such as environmental and animal welfare improvements. The Labour Party and Liberal Democrat Party Manifestos both broadly support payments based on such an approach. The Labour Party Manifesto also committed to maintaining "agricultural and rural structural funds".

Farmers have called for Government agricultural policies to put food production at the centre. Specifically, they want production of food itself to be included as a public good eligible for support. Farmers have also called for certainty on future funding levels. The NFU welcomed the £3 billion commitment to 2020 farm funding and the provisions of this Bill. But it would like long term clarity. It has called for a "multi-annual budgetary framework that provides certainty for farmers and allows them to plan and invest for the future".

The *Direct Payments to Farmers Bill* received its Second Reading on 21 January 2020. Members from all Parties welcomed the certainty for farm payments the Bill brought in the short-term. However, Opposition Members criticised the delay in progressing the Agriculture Bill in the last Parliament which they said had led to the need for this Bill to fill a legislative gap for 2020. Ministers noted that the Agriculture Bill provided for new schemes from 2021. A number of wider issues were raised which are the subject of Agriculture Bill provisions. These include agriculture's role in combatting climate change and the need for longer-term certainty in farm funding.

1. Support payments for farmers

1.1 What does the Bill propose?

Farmers in the UK currently receive support under the EU's Common Agricultural Policy (CAP). CAP subsidies aim to guarantee minimum levels of EU food production and give farmers a fair standard of living. UK farmers receive around £3.5 billion in CAP payments annually, with more than 80% paid as direct payments, based on how much land they farm. The remainder pays mainly for rural and environmental farm management schemes.[1]

House of Commons Library Briefing Brexit: Future UK Agricultural Policy provides further background on the CAP.[2]

The UK will leave the CAP when it exits the EU on 31 January (providing the current withdrawal legislation is agreed). However the Government has guaranteed the current annual budget to farmers in every year of this Parliament.[3] Agriculture is devolved and each UK nation, including England, is developing its own agricultural policy to apply in the longer term after the UK leaves the CAP. Legislation has already been introduced in Scotland.[4] The December 2019 Queen's Speech included a UK Agriculture Bill with measures on farm support which would provide a new legislative basis for making payments. On 8 January 2020, Defra Secretary of State Teresa Villiers said the Bill would be introduced by the end of January.[5]

However there is a legislative gap in the short-term which the *Direct Payments to Farmers Bill* aims to fill. It does this by providing powers to Ministers to continue to make direct payments to farmers across the UK in 2020. These powers are required since the main CAP payments regulations which provide the legal basis for current payments (the EU Direct Payments Regulation),[6] will not apply to the UK after exit day. The UK's new Withdrawal Agreement (WA) (Article 137) disapplies CAP direct payment regulations to UK farm support payments for the claim year 2020. This Bill provides for EU legislation governing the 2020 CAP direct payments scheme to become part of domestic law (Clause 1(1)) to provide continuity in the legislative powers necessary to make 2020 payments.

Current EU regulations on Direct Payments have state aid exemptions. Although CAP regulations in general will not apply, under the terms of the WA these state aid exemptions will continue to apply to any UK

1 Direct Payments for Farmers (Legislative Continuity) Bill Explanatory Memorandum, p3
2 Commons Library Briefing, Brexit: Future UK Agricultural Policy, CBP 8218, September 2018
3 HM Treasury press release, Farmers' £3 billion support confirmed in time for 2020, 30 December 2019
4 Agriculture (Retained EU law and data) (Scotland) Bill
5 Rt Hon Teresa Villiers, A vision for future farming, speech to the Oxford Farming Conference, 8 January 2020
6 Reg (EU) No.1307/2013

scheme in 2020 provided it is equivalent to CAP regulations.[7] The WA also requires expenditure on UK schemes during any extended transition period to be limited to overall CAP spend levels in 2019 if state aid exemptions are to apply.[8]

Further information on the Withdrawal Agreement is provided in the Commons Library Briefing The UK's EU Withdrawal Agreement.[9]

The UK will also have to comply with World Trade Organisation (WTO) commitments which set ceilings for aggregate market support. Commons Library Briefing Brexit: Trade issues for food and agriculture contains further information on WTO subsidy rules.[10]

1.2 How are farmers currently supported?

The CAP funding is divided into two pillars:

- **Pillar 1:** The vast majority of CAP Pillar 1 is the Direct Payments scheme. This scheme makes a payment to farmers each year based on the amount of land they manage. This mainly comprises the Basic Payment Scheme (BPS), including a 'greening' component which is 30% of the Direct Payment total, and the Young Farmers Scheme.

  Farmers apply from March each year and are paid from October in Northern Ireland and from December elsewhere in the UK.

- **Pillar 2** schemes deliver rural development and multi-year environmental projects. Priority themes for the rural development programme are set at EU level. Member Sates submit Rural Development Programmes to the Commission outlining how they are going to meet these and spend their allocation with additional public funds. Each administration has its own scheme. For example, the Rural Development Programme for England (RDPE) runs from 2014 to 2020, overseen by Defra. It is funded through the European Agricultural Fund for Rural Development (EAFRD) fund with match funding from the Exchequer.

House of Commons Library Briefing Brexit: Future UK Agricultural Policy provides further background.[11]

Table 1 below shows the total payments in each of the four UK nations and their breakdown by pillar.

---

7 .GOV.UK, Department for Exiting the European Union, The New Withdrawal Agreement and Political Declaration, 19 October 2020

8 Ibid. Article 137. CAP schemes also cover other types of payment. Pillar 2 CAP schemes fund rural development activities and agri-environment

9 Commons Library Briefing, The UK's EU Withdrawal Agreement, CBP 8453, 8 July 2019. [Note: The new Withdrawal Agreement, October 2019, does not change the provisions on CAP regulations]

10 Commons Library Briefing, Brexit: Trade issues for food and agriculture, CBP 7974, November 2019

11 Commons Library Briefing, Brexit: Future UK Agricultural Policy, CBP 8218, September 2018

Table 1: Total CAP payments by country and UK CAP payments by pillar

Euros million, EU financial years [a]

									2018 provisional	
	2010	2011	2012	2013	2014	2015	2016	2017	Euros	Pounds [b]
Total England CAP payments	2,761	2,696	2,777	2,792	2,714	2,533	2,626	2,525	2,474	2,210
Total Wales CAP payments	413	417	426	406	413	367	338	356	397	355
Total Scotland CAP payments	779	826	840	819	757	799	584	732	698	623
Total Northern Ireland CAP payments	384	388	390	400	415	410	379	361	365	326
Total UK CAP payments	**4,337**	**4,327**	**4,433**	**4,417**	**4,299**	**4,109**	**3,927**	**3,974**	**3,934**	**3,514**
Of which:										
Pillar 1	**3,424**	**3,309**	**3,348**	**3,326**	**3,234**	**3,150**	**3,121**	**3,171**	**3,174**	**2,835**
of which:										
Direct Aids	3,325	3,304	3,290	3,285	3,195	3,112	3,035	3,080	3,126	2,792
Market price support [c]	99	5	58	41	39	38	86	91	48	43
Pillar 2 [d]	**913**	**1,018**	**1,085**	**1,091**	**1,065**	**959**	**806**	**803**	**760**	**679**
of which:										
EAFRD [e]	512	653	742	752	798	709	641	542	581	519
Co-financing	401	365	343	339	267	250	165	261	179	160

Notes:

a. Information based on EU financial year 16th October – 15th October. Figures exclude financial corrections/penalties.

b. Estimates based on average Sterling to Euro exchange rate for September 2018 (see ONS, Average Sterling exchange rate: Euro)

c. Market price support covers interventions in agricultural markets, e.g. public intervention and private storage aid. Payments are made by RPA in England on behalf of the UK.

d.Pillar 2 funds rural development, e.g. for agri-environment schemes, competitiveness of agriculture and economic diversification and quality of life in rural areas.

e. EAFRD is the European Agricultural Fund for Rural Development. Member states are required to co-finance these receipts with a contribution from their exchequer. Figures are based on in-year quarterly returns, rather than the annual account (in order to provide the split between EAFRD and co-financing)

Source: Defra, Agriculture in the UK datasets: Chapter ten - public payments, Table 10.7, 23 September 2019.

The relationship between the Pound and Euro has a key bearing on the fortunes of UK farming. Direct subsidies received by farmers are set in Euros then converted to Sterling in September each year. The average Pound to Euro exchange for September 2018 was 1.1195.[12] A strong Euro increases the value in Pounds of the payments for that year. In addition, the majority of UK exports of agricultural commodities are made to the Eurozone. The Pound weakened against the Euro throughout 2016 and 2017. It remained stable but weak in 2018, increasing the competitiveness of UK exports but also pushing up the price of imports, including inputs such as fertilisers and pesticides.[13]

Data shows many UK farms would not have made a profit without CAP support. Defra estimated in 2018 that without direct payments some 42% of farms had costs exceeding their revenue (19% if depreciation is excluded).[14]

---

12 ONS, Average Sterling exchange rate: Euro. DEFRA does not provide specific dates for Pound to Euro exchange rates in September, therefore, the monthly average provides a good indication.

13 Defra, Agriculture in the United Kingdom 2018, July 2019, p1

14 Defra/Government Statistical Service, Moving away from Direct Payments, Agriculture Bill: Analysis of the impacts of removing Direct Payments, September 2018. [Data refers to 2014-15 to 2016-17 period]

On average, direct payments made up 9% of UK farm gross revenue for the 2014/15 - 2016/17 period. However, there is a concentration of direct payments to some farmers with larger farms. Some 10% of claimants received half of the funding in England in 2016, and 33% of farms received less than £5,000 each.[15]

The relative importance of support payments varies by sector. For example, the payments make up a large part of farm income for hill farmers, but not for poultry farmers.[16] CAP support is also of varying importance across the UK nations, with farmers in Wales most reliant, and farmers in England least reliant on CAP payments. Table 2 below shows national CAP payments and their proportion of the Total Income from Farming (TIFF) in the four nations. The TIFF represents the net income from farming combining gross earnings from outputs and subsidies, but excluding taxes, interest, production and staff costs.

For 2018, £3.3bn in CAP payments is 12% of £26.7bn in gross revenue, but after subtracting taxes and production cost, the CAP share of £4.7bn in TIFF is much greater at 71% (see Table 2).

Table 2: CAP payments and the Total Income from Farming, 2018 (£ million)

Country	Total direct CAP payments	Total Income from Farming (TIFF)[a]	% of total income from CAP payments[b]
United Kingdom	3,331	4,697	71%
England	2,177	3,358	65%
Wales	298	308	97%
Scotland	549	672	82%
Northern Ireland	307	360	85%

Notes:

a. Figures for the Total Income From Farming (TIFF) in 2018 are provisional. TIFF equals to:

- Gross output at basic prices *plus*
- Other subsidies *less* taxes *less*
- Total intermediate consumption, rent, paid labour *less*
- Total consumption of fixed capital (depreciation) *less* interest

b. Payments made in the 2018 EU financial year as proportion of income in the 2018 calendar year

Sources: Data sets accompanying Agriculture in the United Kingdom 2018:

- Chapter 3 - farming income (ODS 73.3KB), Table 3.2 and
- Chapter 10 - public payments (ODS, 56.2KB), Table 10.3 Total Direct Payments to farmers

1.3 Constituency breakdown of funding

The CAP funding data provided by Defra includes partial postcodes of recipients, which enables the Library to estimate how much funding each Parliamentary constituency receives. The analysis indicates that almost all constituencies received at least some funding in each year from 2015 to 2018. Data on the estimated amount of CAP funding

15 Defra/Government Statistical Service, Moving away from Direct Payments, Agriculture Bill: Analysis of the impacts of removing Direct Payments, September 2018. [Data refers to 2014-15 to 2016-17 period]

16 Defra, Agriculture Bill: Analysis and Economic Rationales for Government intervention, Figure 12

received by each constituency can be downloaded from this briefing's webpage.

CAP claimants do not necessarily live in the same place as the land they are claiming for; in some cases, claimants live in places with very little farmland, such as cities. This does show up in the data; for example, in 2018 the Library estimates that recipients in the Cities of London and Westminster constituency received a total of around £2.8 million in CAP payments, despite there being no agricultural land at all in this constituency.

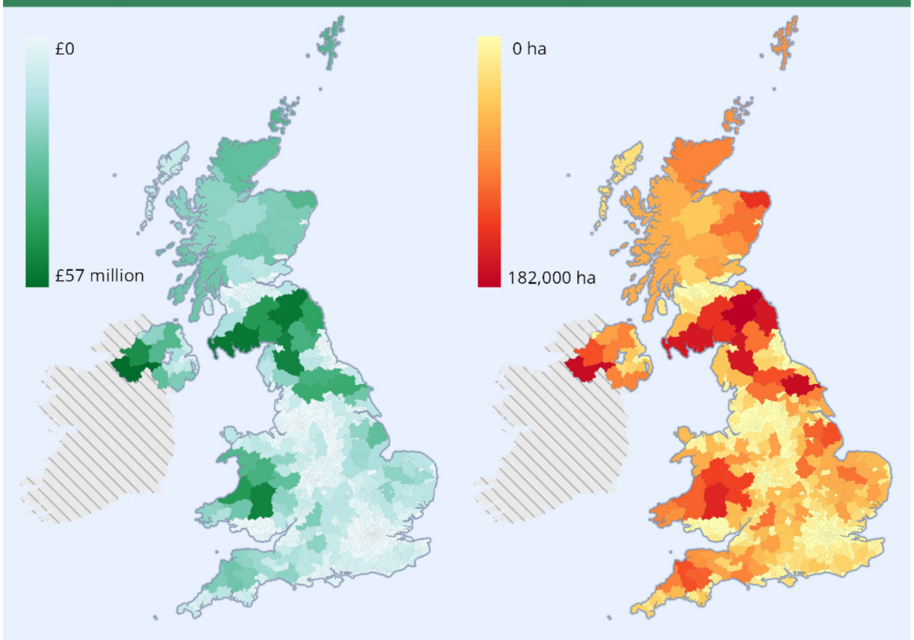
However, payments like this make up a very small proportion of CAP funding overall; in 2018, only 0.3% of all payments went to constituencies with less than one hectare of agricultural land. In general, most CAP payments go to places which also have large amounts of farmland. This reflects the underpinning basis for allocating the large part of farm payments according to the area of land farmed.

The maps below show the link between agricultural funding and the area of agricultural land in the UK – areas which have large amounts of agricultural land also tend to receive large amounts of CAP funding, and vice versa.

EU agricultural funding goes to the most agricultural parts of the UK

EU agricultural funding, 2018, by Parliamentary constituency

Hectares of agricultural land in each constituency



Source: Library calculations based on Defra, [CAP payments](), and Copernicus [CORINE Land Cover]() 2018 dataset

1.4 Payment performance

EU rules provide for a 'payment window' which opens on 1 December each year. This remains open until the following summer for farmers to be paid their Basic Payment Scheme (BPS) claims. In England payments are made by the Rural Payments Agency (RPA). The RPA has targets to make payments well before the window closes. For example, for 2018 the target was to make 90% of payments by 31 December 2018.[17] However the RPA has received extensive criticism about its performance in recent years, including by the Environment, Food and Rural Affairs Committee.[18] In May 2018 the Committee noted that "problems with timely payments have become a recurring theme in our sessions with the RPA". The Committee was particularly critical of performance levels in 2017–18. The RPA met its target of paying 90% of customers by the end of December 2017 but Members considered it "fell far short of earlier service levels".[19]

However, the RPA's 2018-19 Annual Report noted considerable improvement in payment performance judging 2018 to be:

> our most successful year for Basic Payment Scheme (BPS) since its introduction, 65% of customers receiving their payment on the first day (a 23% increase on last year), rising to over 93% being paid in the first month and to over 99% [by July 2019].

The RPA also announced that more than 90% of 2019 claim year payments were made within the first two weeks of the payment window opening on 1 December 2019.[20] Farm organisations have been concerned however that some 2019 payments remain outstanding.[21]

There have been delays in Countryside Stewardship (CS) payments dating from previous years which the RPA has now addressed and it announced in July 2019 that all outstanding payments had been made. Natural England was previously responsible for CS schemes.[22]

There have also been problems with processing 2017 and 2018 payments in Scotland where loans were provided when an IT system caused delays in making payments.[23] The Scottish Government introduced early loans of up to 95% of claim values from October 2019 for claims for the 2019 claim year.[24]

1.5 Future farm support funding commitments

The Government has guaranteed the annual farm budget in each year of this Parliament, ending by 2024.[25] From 2020, direct payments will be funded domestically. Under the Withdrawal Agreement, the UK will continue to participate in all EU programmes financed under the EU's

17 Farmers Weekly, RPA hits 90% BPS target, but thousands remain unpaid , 8 January 2019
18 EFRA Committee, Performance of the RPA, May 2018
19 Ibid.
20 Rural Payments Agency press release, RPA makes full payments to thousands of rural businesses, 17 December 2019
21 Yorkshire Post, New Farm Payments Bill is welcomed by farming organisations, 11 January 2020
22 Defra, RPA confirms overdue agri-environment claims paid, 31 July 2019
23 The Scotsman, Farmers 'forced off their lands' due to SNP's failed farm payments system, 17 February 2018
24 Scottish Government, CAP loans underway, 1 October 2019
25 HM Treasury press release, Farmers' £3 billion support confirmed in time for 2020, 30 December 2019

2014-2020 budget. However, the UK will leave the EU's CAP Direct Payments scheme in 2020, earlier than all other EU programmes. This is because CAP Direct Payments are funded in arrears so 2020 Direct Payments would have been funded from the 2021 EU budget.[26]

Funding for CAP pillar 2 is different to direct payment arrangements. Pillar 2 projects are co-funded by the EU and the UK. The previous Government guaranteed that any projects where funding had been agreed before the end of 2020 would be funded for their full lifetime.[27] Remaining EU funding under CAP Pillar 2 will continue until the current EU funding is used up or 2023, whichever is earliest.[28]

Funding for 2020

The Government announced in December 2019 that nearly £3 billion of funding was being provided for 2020. The UK Government funding of £2.852 billion will top up the remaining EU funding and match the total funding for Direct Payment available for 2019. HM Treasury (HMT) said that:

> The cash injection will allow the funding for Direct Payments for 2020 to continue at the same level as 2019 and supplement the remaining EU funding that farmers will receive for development projects until 2023 at the latest.

HMT said that this funding was is in addition to the £206.6 million of funding awarded since the Spending Round to support the farming sector in Scotland and Wales.[29]

The funding is spread across two financial years. HMT says this is to provide flexibility for Defra and the devolved administrations. The allocations for each nation of the UK for 2020-21are:

- £1,751 million for the Department for the Environment, Food and Rural Affairs
- £449 million for the Scottish Government
- £231 million for the Welsh Government
- £279 million for the Northern Ireland administration.

And for 2021-22:

- £92 million for the Department for the Environment, Food and Rural Affairs
- £24 million for the Scottish Government
- £12 million for the Welsh Government

[26] HM Treasury press release, Farmers' £3 billion support confirmed in time for 2020, 30 December 2019

[27] Defra, Receiving rural development funding if there's no Brexit deal, 23 August 2018

[28] HM Treasury press release, Farmers' £3 billion support confirmed in time for 2020, 30 December 2019

[29] The Spending Round 2019 distributed funding linked to CAP convergence funding to resolve a dispute about funds allocated by the EU during 2014-20. See section 1.6 of this brief.

- £15 million for the Northern Ireland administration.[30]

1.6 Funding allocations for the UK nations (Bew Review)

As noted above, HMT has already set out the national farm funding allocations for 2020 schemes. Whilst the Government has guaranteed the overall annual farm budget for each year of this Parliament, the amount of future funding that each part of the UK receives in future will depend on the outcomes of negotiations between the devolved administrations and the UK Government. This will form part of the UK Government's future Spending Review. Treasury Minister Liz Truss said in July 2019 that the Government would not apply the Barnett formula to farm funding in England and that funding "will not just be allocated according to the population of each nation".[31]

The distribution of EU CAP funding between the UK nations has been contentious. In the Spending Round 2019, the Chancellor of the Exchequer confirmed a one-off uplift of £160 million for Scotland in relation to historic allocations of convergence funding, which had for some years been disputed.[32] In October 2018 the Government announced an independent review to "deliver fair funding for farmers in all four parts of the UK when we leave the EU". This Review was chaired by the cross-bench peer Lord Bew. The Bew Review reported in September 2019 and the Government response was also published.[33] The Government accepted the recommendations that in 2020-22 a greater allocation of convergence funding should be allocated to Scotland. The Prime Minister announced that an extra £51.4 million would be allocated to Scottish farmers for 2020-22 (on top of the one-off historic convergence uplift). The Government also said that to implement Lord Bew's recommendations while making sure farmers in England and Northern Ireland are not penalised and their funding allocations are unchanged, the UK Government would commit over £56 million of new money. This included over £5 million for farmers in Wales.[34] This Bill will enable the Government to implement this decision by providing for Ministers to increase the overall budget for direct payments.

---

30 HM Treasury press release, Farmers' £3 billion support confirmed in time for 2020, 30 December 2019

31 Agricultural subsidies, Written Question 27032, 5 July 2019

32 Convergence funding is an uplift of the financial ceiling for Direct Payments given by the EU to the UK reflecting adjustments made for the 2014-20 CAP scheme. For more information see briefing by Scottish Parliament Information Centre (SPICe) A review of convergence funding for agriculture in Scotland, June 2019

33 Defra, HM Treasury, Northern Ireland Office, Office of the Secretary of State for Scotland, Office of the Secretary of State for Wales, Domestic farm support funding (Bew Review): Government response, 6 September 2019

34 .GOV.UK Prime Minister's Office/Scottish Office press release, Multi-million pound boost for Scottish farmers, 6 September 2020

1.7 Longer-term reform of farm support

In the UK, agriculture is devolved and the implementation of CAP and distribution of funds are administered by national governments.

The UK, Scottish and Welsh Governments and the Northern Ireland Executive have consulted on the future of farm policy in their nations after the UK leaves the CAP:

England

The Government is planning longer-term reform of farm support. The December 2019 Queen's Speech included an Agriculture Bill which would phase out direct payments in England and replace them over a transition period with payments for public goods, such as environmental or animal welfare improvements.[35] The Agriculture Bill 2020 [Bill 7] was introduced on 16 January 2020. The Bill will also include measures for all the UK nations on some issues such as meeting World Trade Organisation limits on subsidies.

The new approach of supporting the provision of public goods was set out in Defra's February 2018 consultation Health and Harmony: The Future for Food, Farming and the Environment in a Green Brexit and the White Paper, A Green Future: Our 25 Year Plan to Improve the Environment (January 2018).

Legislation to implement this approach was set out in an *Agriculture Bill 2017-19* introduced during the last Parliament. It included measures for England with similar measures in a schedule for Wales. Measures were also included for Northern Ireland. The Scottish Government did not take up the option for a schedule in that Bill but has introduced legislation into the Scottish Parliament (see below). The 2017-19 Agriculture Bill did not complete its Parliamentary stages and fell at the end of the session in October 2019. A new Bill was included in the October 2019 Queen's Speech but was not introduced prior to dissolution for the General Election.

Farmers and environmentalists welcomed the 'Environmental Land Management' approach in the 2017-19 Bill, but farmers wanted food production to be eligible for support in its own right. This will be a key question for the new Parliament.

Commons Insight on Farm Futures,[36] and Commons Library Briefing on the Agriculture Bill 2017-19 provide further information.[37]

---

35 The Queens Speech 2019, p17

36 Commons Library Briefing, Insights for the New Parliament: Farm Futures: A changing landscape for UK agriculture, 20 December 2019

37 The Agriculture Bill 2019-20 is awaiting a date for second reading and has not yet been published. The background briefing to the Queen's Speech in December 2019 indicates the Bill will contain measures for England and some for the whole of the UK similar to those in the Agriculture Bill 2017-19. The Commons Library Briefing on the Agriculture Bill 2017-19, CBP 8405, 25 October 2018, contains further details on the measures in that Bill.

Scotland

The Scottish Government has introduced the *Agriculture (Retained EU law and data) (Scotland) Bill* and proposes to keep farm support approaches largely the same until 2024.[38] This makes provision from 2021 and goes wider than the Direct Payments Bill as it would allow amendment of any part of CAP legislation, not just direct payment rules.[39] However, in the context of the ramifications of the Withdrawal Agreement provisions that disapply CAP regulations, the Cabinet Secretary for Rural Development, Fergus Ewing, has said that he has asked Defra Ministers for primary legislation. He called for this to reapply and amend the relevant CAP regulation across the UK to enable payments to continue in 2020.[40]

Wales

Measures in Schedule 3 of the *Agriculture Bill 2017-19* broadly replicated the proposed approach for England of phasing out direct payments and bringing in payments for public goods. It also included provisions to allow payments for rural community support. These have not been included in the *Agriculture Bill 2019-2021*. The Welsh Assembly considers an Assembly Bill would be more appropriate.[41] The Welsh Minster for Environment, Energy and Rural Affairs Lesley Griffiths said that powers in the UK Agriculture Bill would no longer be appropriate given the time since the introduction of the previous Bill.[42] She would be publishing a White Paper in 2020 to pave the way for a new Welsh Agriculture Bill. The Welsh Government has consulted on its approach in two main consultations. Firstly, its 2018 Brexit and our land consultation,[43] and then in a further consultation on Sustainable Farming and our Land in 2019.[44] The Welsh Government is planning for complete reform by 2025 and wants legislation in place to ensure a phased transition period can take effect. Lesley Griffiths has however said she wanted Basic Payment Scheme to stay in place in 2020 and 2021 (subject to sufficient UK Government funding) to give assurances to Welsh farmers and to allow them to plan ahead.[45]

Northern Ireland

The Northern Irish Department for Agriculture, Environment and Rural Affairs (DAERA), consulted in its document Northern Ireland Future Agriculture Policy Framework: Stakeholder Engagement, in August

---

38 Scottish Government, Stability and simplicity: proposals for a rural funding transition period, 20 June 2018
39 Anna Brand, Scottish Parliament Information Centre (SPICe) briefing, UK Direct Payments to Farmers (Legislative Continuity) Bill 2020, 15 January 2020
40 Letter from Fergus Ewing, Cabinet Secretary for the Rural Economy, UK 2020 Direct Payments Bill, 19 December 2019
41 National Assembly for Wales, In brief blog, Assembly to debate giving consent to the UK Direct Payments to Farmers Bill, 15 January 2020
42 Welsh Government, Written Statement, UK Agriculture Bill, 16 January 2020
43 Welsh Government, Brexit and Our Land: Securing the future of Welsh Farming, July 2018
44 Welsh Government, Sustainable Farming and Our Land, 30 October 2019
45 Further details on Welsh farm policy are included in the Welsh Assembly Research Paper, Diversification and resilience of Welsh farming: prospects after Brexit, December 2019

2018.[46] The *Agriculture Bill 2017-19* provisions were intended to enable DAERA to continue to make payments to farmers and land managers after the UK leaves the EU and to "ensure that future Executive Ministers have the flexibility to develop policy once an Assembly is returned".[47]

1.8 What have the Parties said?

In the context of ramifications from the Withdrawal Agreement provisions that disapply EU Direct Payments Regulations, the SNP called for primary legislation to reapply and amend the relevant CAP regulation across the UK to enable payments to continue.[48]

The Labour Manifesto pledged to maintain agricultural and rural structural funds, repurposed to support environmental land management and sustainable food production.

The Liberal Democrats said public goods and "effective land management" would be supported by reducing payments to larger farmers.

1.9 Industry views

Farming representatives have welcomed the Bill. The NFU said they requested this legislation and called it a "critical step" to increase certainty for farmers waiting for details of future trade deals.[49]

In December 2019, the NFU welcomed the Government's commitment for £3 billion of farm funding in 2020 since this brought "a degree of certainty and stability for farmers as we enter the critical stage of negotiating our future trading relationships with the EU and other countries in the coming year".[50] Food standards in future trade deals remain a key issue for farmers.

The NFU's President Minette Batters has called for food production to be at the heart of a future agriculture policy which "can ensure farmers continue to deliver sustainable food while maintaining our high environmental and animal welfare standards". The NFU has called for a "multi-annual budgetary framework that provides certainty for farmers and allows them to plan and invest for the future".[51]

The farming sector expressed frustration in 2019 at the Government's delay in progressing the *Agriculture Bill 2017-19*. The Bill concluded its Committee Stage in November 2018 but was not scheduled for further

46 DAERA, Northern Ireland Future Agriculture Policy Framework: Stakeholder Engagement,
47 Agriculture Bill 2017-19, 266-EN para 254 -255
48 Letter from Fergus Ewing, Cabinet Secretary for the Rural Economy, UK 2020 Direct Payments Bill, 19 December 2019
49 Yorkshire Post, New Farm Payments Bill is welcomed by farming organisations, 11 January 2020
50 National Farmers' Union press release, NFU responds to Treasury's £3 billion funding for farming for 2020, 30 December 2019
51 National Farmers' Union press release, Food production must be at the heart of the Agriculture Bill, October 2018

consideration during the 2017-19 Session. The NFU have called for the timetable for changing farm payments to be delayed by at least a year (to start from 2022 rather than 2021) as a result.[52]

[52] National Farmers' Union press release, NFU calls for delay to farm support changes after Agriculture Bill falls, 10 September 2019

2. The Bill in detail

The summaries below highlight key points in the Bill's clauses. The Explanatory Memorandum accompanying the Bill sets out full commentary on the Bill.

2.1 Clause 1: Incorporation of EU legislation governing the CAP direct payment schemes

The purpose of **Clause 1** is to incorporate EU legislation governing the 2020 CAP direct payment schemes into domestic law. This comes into effect on exit day under 1(1). Provisions are excluded from relating to 2019 or previous claim years by subsection 1(5).

Subsection 1(3) specifies which specific EU law is being incorporated, listing the key EU Directives that legislate for CAP functioning.

Subsection (6) ensures continuity between January 2020 and the rest of the claim year in 2020 by treating the incorporated EU legislation as having formed part of domestic law from 1 January 2020.

2.2 Clause 2: Interpretation and status

Clause 2 sets out the rules for interpreting retained EU law governing CAP direct payment schemes in the domestic courts and makes provision about the status of that law. This clause applies the relevant provisions of the *EU Withdrawal Act 2018* but with modifications for the purposes of this Bill.

Library briefings on the *EU Withdrawal Act 2018* explain how EU retained law will operate under the terms of the Withdrawal Agreement during the implementation period in 2020. The 2018 Act ends the application of the *European Communities Act 1972*, which gives UK effect to EU law, on exit day. However, to honour the Withdrawal Agreement during the implementation period (due to end in December 2020), the Withdrawal Agreement Bill currently undergoing Parliamentary scrutiny provides for the 1972 Act to continue to have effect despite its repeal on exit day.[53] This means most UK law continues to align dynamically with EU law during the implementation period.

The position for CAP direct payments schemes is different as the Withdrawal Agreement provides that CAP rules will no longer apply from exit day (rather than the end of the implementation period). So, this Bill modifies the expression of the 2018 Act with regards to CAP rules. The Bill sets out in a table in Clause 2(5) how terms in the 2018 Act are modified by this Bill. For example, references to Implementation Period Completion Day (i.e. the end of the transition/implementation

---

53 Commons Library Insight, Withdrawal Agreement Bill: Implementing the transition period, 22 October 2019

period) in the 2018 Act are modified to "exit day" where they relate to key clauses in this Bill.[54]

2.3 Clause 3: Regulations in connection with the retention of EU legislation under section 1

Clause 3 gives the Secretary of State the power to make necessary operability changes to make sure that the law works properly for the 2020 claim year.

3 (5) lists the types of deficiencies (such as where retained EU law on CAP confers functions on EU bodies which no longer have UK functions).

The powers are also mirrored for the Devolved Administrations (DAs). The Secretary of State may use the powers UK-wide but only with the consent of the DAs.

Schedule 2 sets out the arrangements to apply to Regulations made under the Act. The Regulations to remedy deficiencies in EU law (under Clause 3(1)(a) or 3(a)) are to be subject to the made affirmative procedure. The Delegated Powers Memorandum states that the made affirmative resolution procedure is sought as "it is critical that the regulations are in force directly the UK leaves the EU so that there is no gap while operational legislation is put in place".[55]

There is also a power to make amendments during 2020 if the equivalent EU law is amended and the UK or DAs similarly wish to make the amendment. These powers mirror the powers set out in sections 8 and 11 of the *Withdrawal Act 2018* with modifications. There is also a power for DAERA to enable them to continue to move towards a uniform unit value of payment entitlements.[56] The Regulations to make these modifications (under 3 (1)(b), 3(b) or (4)) are to be subject to the affirmative procedure.

The Delegated Powers Memorandum notes that 3(1) (a) and 3 (1)(b) are Henry VIII clauses.

3 (7) clarifies that the provisions made by regulations in this clause may apply in relation to matters arising in relation to the CAP direct payment schemes for the whole of the 2020 claim year. This ensures that provisions can cover matters arising in January 2020 whilst still under EU law.

3 (8) makes clear that the powers are temporary and will expire after 31 December 2020. This does not affect the continuation of regulations made before that date so, for example, any outstanding payments to

54 The Department for Exiting the European Union publication on the Implementation Period provides an overview of how the EU Withdrawal Agreement Bill will amend the EU Withdrawal Act 2018 with respect to the Implementation Period.
55 Ibid. para 13
56 From 2020-21 Northern Ireland will apply a uniform rate per hectare but previously payments have contained an element of the historic value and a flat rate element, the flat rate payment gradually increasing until it makes up the whole payment.

farmers in relation to the 2020 scheme year can continue to be paid after 31 December 2020.

2.4 Clause 4: Publication and rules of evidence

Clause 4 makes provision for the domestic publication of certain EU regulations relating to Direct Payments, ahead of exit day. It also contains provision on rules of evidence.

2.5 Clause 5: Power to increase direct payments ceilings for 2020

Clause 5 amends the retained EU Direct Payments Regulation, brought back into UK effect by this bill, to allow the Secretary of State, having regard to the Bew Review, to decide to increase the UK national and net Direct Payments ceilings for 2020.[57] It also widens the scope of regulation-making powers that already exist in the Direct Payments Regulation to enable the 2020 national and net ceilings to be increased. This will mean that where, as a consequence of the Government's decision following the Bew Review, the amount of direct payments would go above the limit set by the national and net ceilings for 2020, these powers can be used to increase those ceilings to ensure they are not breached and payments can be made within the legislative framework.

Scrutiny of changes to the Regulation will be under the affirmative procedure.

2.6 Clause 6: Consequential and transitional provision

Clause 6 sets out a number of provisions including providing the Secretary of State or relevant national authority with powers to make regulations which he or she considers appropriate as a consequence of this Bill. Subsection (2) clarifies that consequential provision might include modifying both primary and secondary legislation. 6(1) is a Henry VIII power. The Delegated Powers and Regulatory Reform Committee in the Lords which considers powers taken in bills has previously commented that any Henry VIII power, when changing primary legislation, should be subject to the affirmative resolution procedure.[58] Notably, the clause 6(1) power is subject to the negative resolution procedure. The Delegated Powers Memorandum states that:

> This power can only be exercised in consequence of existing Bill provisions and its purpose is to bring certainty to the statute book where a provision of the Bill might otherwise give rise to legal

[57] Defra, HM Treasury, Northern Ireland Office, Office of the Secretary of State for Scotland, Office of the Secretary of State for Wales, Domestic farm support funding (Bew Review): Government response, 6 September 2019

[58] See for example para 11, Delegated Powers and Regulatory Reform Committee, HL Paper 3, 1st Report of Session 2019–20 , EU (Withdrawal Agreement) Bill, 9 January 2020

> uncertainties or gaps. As the scope of the Bill is narrow and as any consequential provisions made are likely to be highly technical matters, the negative resolution procedure is appropriate.[59]

2.7 Extent and commencement

Territorial extent

The Bill extends to the whole of the UK.

Agriculture is a devolved matter and within the competence of the devolved administrations. The Bill provides the Secretary of State with the power to make regulations on a UK-wide basis, on behalf of Scotland, Wales and Northern Ireland but only with their consent. The Government will seek legislative consent for the Bill from the Scottish Parliament and National Assembly for Wales. The Bill also contains provisions which would be within the competence of the Northern Ireland Assembly and for which legislative consent would ordinarily be sought.

Annex A to the Bill summarises its territorial extent and application.

Commencement

Clause 5 [Power to increase direct payments ceilings for 2020] will come into force on exit day. The remaining provisions come into force on Royal Assent.

2.8 Schedules

This Bill has two schedules:

Schedule 1 – Consequential provision (including how references to EU legislation are to be interpreted on or after exit day).

Schedule 2 – Regulations under this Act (including procedures under which regulations can be made and scrutinised, by the Secretary of State and devolved administrations).

[59] Delegated Powers Memorandum, para 35

3. Second Reading

The Bill received its Second Reading in the House of Commons on 21 January 2020. Secretary of State for the Environment, Food and Rural Affairs, Theresa Villiers, said that Bill was a short, technical piece of legislation that empowered her and Devolved Administration Ministers to make Basic Payment Scheme payments in 2020. This would maintain the status quo for Pillar 1 (direct) farm payments for the "final period" before starting to move away from CAP rules .[60]

None of the Opposition Parties opposed the Bill. Members from all Parties welcomed the certainty for farm payments the Bill brought in the short-term. However, Opposition Members criticised the delay in progressing the *Agriculture Bill 2017-19* in the last Parliament. This, they said, meant the Bill now under consideration was needed to fill a legislative gap for 2020. Labour Shadow Secretary of State Luke Pollard said that this Bill should be unnecessary.[61] He also asserted that the Government was legislating for another "cliff edge" since the complexity of new farm support funding under the Agriculture Bill could require the 2020 provisions to be extended.[62] Liberal Democrat Tim Farron noted that the Bill provided some certainty for one year. There were questions over farmers' ability to plan for the medium and long term however if delays in the new Environmental Land Management Scheme meant there was a need to "bodge together extensions of one year at a time".[63]

Responding to the debate, Defra Minister George Eustice said that the Agriculture Bill had been delayed during protracted debate on the Withdrawal Agreement but that it was "back on track" for the agricultural transition period to begin from 2021 as always envisaged.[64]

A number of wider issues were raised during the debate which are the subject of Agriculture Bill provisions. These include agriculture's role in combatting climate change, the need for longer-term certainty in farm funding, and the need to support food production. Luke Pollard (Lab) supported a public money for public goods approach as in the previous Agriculture Bill with the addition of food as a public good.[65] Mr Pollard however raised concerns about lowering of food standards in future trade deals.[66] SNP Spokesperson Deirdre Brock also expressed concerns over food standards in trade deals. Further to the Bew review she also argued that Scottish farmers had not received enough compensation.[67] Mr Pollard added that implementing the Bew Review to "correct the

60 Direct Payments to Farmers (Legislative Continuity) Bill, HC Deb 21 January 2020, c173
61 Ibid. c178
62 Ibid. c179
63 Ibid. c191
64 Ibid. c217 & c218
65 Ibid. c178
66 Ibid. c180
67 Ibid. c178 and c180

historical wrongs for farmers in Scotland, Wales and Northern Ireland" was long overdue.[68]

Plaid Cymru Spokesman Ben Lake supported the Bill which offered "some certainty to farmers in Wales". He argued that co-decision making was needed between the four UK nations on future regulation and finances to prevent excessive market distortion within the UK.[69]

Former Chair of the Environment, Food and Rural Affairs Committee, Neil Parish, welcomed the Bill. He raised concerns that the new Agriculture Bill, whilst being "better than it was" did not have enough in it on farming and food production. Additionally, he said that farming should not be undermined by lower environmental or animal welfare standards in future trade deals.[70]

---

68 Direct Payments to Farmers (Legislative Continuity) Bill, HC Deb 21 January 2020, c178
69 Ibid. c201-203
70 Ibid. c183

4. Committee of the Whole House

The *Direct Payments to Farmers (Legislative Continuity) Bill* passed its Committee stage on 28 January 2020 unamended. The Government tabled no amendments. Three Opposition amendments were selected for debate but were not divided on. These proposed a stronger scrutiny procedure for Regulations made under provisions in the Bill.

Government position

Defra Minister George Eustice said that the Bill's measures were part of extracting the UK from the EU's next multi-annual budget cycle (which starts in 2021). He said this allowed the UK to "take back control of agriculture policy and domestic agricultural funding".[71] He added that:

> The UK has typically received back roughly half of what it put into the EU budget, and our contribution to the common agricultural policy on average has been double what we have received from it, historically.[72]

Questioned by Members on what changes the Bill made to CAP policy, the Minister noted that the Bill brought across the existing EU legislation exactly as it is. However, as funding would no longer be from an EU budget, there would now be no EU auditor scrutiny (of programme delivery). This could remove the Whitehall "risk aversion" to the threat of disallowance and "arbitrary fines slapped on by EU auditors". The UK currently pays around £100 million a year in disallowance fines for errors made in scheme delivery. With the UK taking responsibility for direct farm payments in 2020, Mr Eustice said that it meant that:

> we may be able to have a margin of appreciation in how we interpret some of these regulations, so that we can, for instance, send farmers a warning letter, rather than stinging them with a fine as we are required to under EU law.[73]

Mr Eustice also referred to work in progress with the Rural Payments Agency to look at changes that could be made to make the application of the payments scheme easier with the ending of EU auditor scrutiny.[74]

Opposition views

The Opposition amendments selected for debate related to the procedures for scrutinising secondary legislation made using the powers in the Bill. Labour agriculture Spokesman Daniel Zeichner reiterated the Opposition's support for the main purpose of the Bill since the measures would give famers certainty while the *Agriculture Bill* was being progressed. However, he was concerned the Bill would allow Ministers to make regulations using procedures with weaker parliamentary scrutiny than the 'affirmative' procedure.[75] The affirmative procedure

---

[71] Direct Payments to Farmers (Legislative Continuity) Bill, HC Deb 28 January 2020, vol 670, c671

[72] Ibid. c675

[73] Ibid. c676

[74] Ibid. c678

[75] The Bill provides for certain measures in the Bill to be subject to the negative procedure and others to the 'made affirmative' procedure. A made affirmative SI is made into law before Parliament has considered it, but that cannot remain law

requires an SI to be actively agreed by both Houses. For example, Clause 6(1) contained a broad 'Henry VIII power' to allow primary legislation to be changed using secondary legislation, but this had only a negative procedure attached to it.[76] This, in Mr Zeichner's view would:

> effectively allow the Secretary of State to make any regulations they deemed appropriate as a consequence of the Bill—a wide approach that has been made subject to the negative resolution procedure, which allows for no parliamentary scrutiny of the decisions being made. That comes despite the Lords Delegated Powers and Regulatory Reform Committee having said that any Henry VIII power included when changing primary legislation should be subject to the affirmative resolution procedure to allow proper debate.[77]

Mr Zeichner added that making Clause 3(8) a sunset clause was a "missed opportunity" to allow extension of the Bill's provisions beyond 2020 and to give farmers certainty while the *Agriculture Bill* was passed.[78] He said that the *Agriculture Bill* would be "highly controversial" in relation to food import standards in trade deals and this could be a protracted issue to resolve with the USA.[79] Mr Zeichner also criticised the lack of provision in the Bill for compensation for farmers if payments were late.[80]

Deirdre Brock for the **SNP** asked when the division of monies between the UK nations was to be decided. She criticised the fact that uplift funding for Scotland and Wales would be paid with from new funds and that there would therefore be no loss to BPS payments for English or Northern Ireland farmers:

> That means that there is no levelling of payment, Scottish farmers are being short-changed again, and that severe comparative disadvantage to which the Minister referred remains. Will the Minister give assurances that additional funding will come to Scotland—and, of course, go to Wales—to address that imbalance? That is, after all, what the convergence funding was supposed to do.[81]

unless it is approved by Parliament within a certain time period (usually 28 or 40 sitting days). An SI laid under the negative procedure becomes law on the day the Minister signs it and automatically remains law unless a motion to reject it is agreed by either House within 40 sitting days.

[76] Henry VIII clauses are clauses in a bill that enable ministers to amend or repeal provisions in an Act of Parliament using secondary legislation, which is subject to varying degrees of parliamentary scrutiny.

[77] Direct Payments to Farmers (Legislative Continuity) Bill, HC Deb 28 January 2020, vol 670 c687 and c688

[78] A 'sunset clause' is a provision in a Bill that gives it an expiry date once it is passed into law. Sunset clauses are included in legislation when it is felt that Parliament should have the chance to decide on its merits again after a fixed period.

[79] Direct Payments to Farmers (Legislative Continuity) Bill, HC Deb 28 January 2020, vol 670 c688 and c689

[80] Ibid. c689

[81] Ibid. c694

5. Report and Third Reading

Report Stage and Third Reading of the *Direct Payments to Farmers Bill* took place on 28 January 2020.

Defra Minister George Eustice highlighted the need for the legislation to pass urgently so that the Bill and the necessary secondary legislation were in place and in force by exit day on 31 January. He confirmed that payments to farmers in 2020 would be funded from UK domestic budgets. The UK would not be paying into the EU's 2021 budget from which 2020 payments will be paid to EU Member States:

> Therefore, not only will we not be contributing and getting back money for our farmers—we will pay that ourselves—but we will not be paying into this scheme year for EU farmers, because we will not be contributing to that part of the budget.[82]

Debate covered a wide ranging topics on matters such as future agricultural support schemes and food standards for imports under trade deals.

The Bill passed to the House of Lords without amendment.

[82] Direct Payments to Farmers (Legislative Continuity) Bill, HC Deb 28 January 2020, vol 670, c700

6. House of Lords stages

The House of Lords conducted all its stages of scrutiny of the Bill on 29 January 2020 and passed the Bill unamended. It was certified as a money Bill as its measures concern Government spending.

Peers welcomed the certainty of the legal basis for farm funding in 2020.[83] However, some Peers including Baroness Jones of Whitchurch (Lab), expressed concern that the Bill was legislating for a "cliff edge" in 2021 as the sunset clause prevented the Bill's provisions from continuing to have effect in future years.[84] Others, such as Earl Devon (Lab) were concerned about uncertainty from delay in progressing measures in the *Agriculture Bill*.[85] A number of broader issues relating to the Agriculture Bill were discussed, including payments for public goods and tenant farmers.[86]

Lord Bew referred to the review he had led into distribution of convergence funding. He noted that the recommendations to redistribute funding to the advantage of Scotland could have led to acrimony if they had disadvantaged other nations' farmers. However discussion on the issue had been a "model of the devolved Assemblies working together, with flexibility on the part of the Government".[87]

[83] Direct Payments to Farmers (Legislative Continuity) Bill, HL Deb 29 January 2020, vol 801, Earl Cathcart (Con) c1458
[84] Ibid.c1472
[85] Ibid c1457
[86] For example, Ibid.c1465 (Baroness McIntosh of Pickering, Con)
[87] Ibid.c1459

7. Royal Assent

On 30 January 2020, the Bill received Royal Assent and became the *Direct Payments to Farmers (Legislative Continuity) Act 2020.*

8. Secondary legislation

Some changes were needed to the EU regulations being brought into UK law by the *Direct Payments to Farmers (Legislative Continuity) Act 2020* so that they could operate effectively in the UK after exit day. The Act provided for these changes to be made by secondary legislation.

Accordingly, the *Statutory Instrument (SI) 2020 No. 91 Agriculture* was made on 30 January and laid before Parliament on 31 January 2020. Its measures came into effect on exit day, 31 January. The SI was made under sections 3(1),(7) and (9) of the Act. The Explanatory Note sets out further details of the amendments to EU regulations brought about by this SI.

Similar subordinate legislation under the Act has also been introduced in Wales and Scotland, to come into force on exit day:

- *Scottish Statutory Instrument 2020 No. 18 Agriculture, The Direct Payments to Farmers (Legislative Continuity) (Scotland) (Miscellaneous Amendments) Regulations 2020*.
- *The Common Agricultural Policy (Direct Payments to Farmers) (Miscellaneous Amendments) (Wales) Regulations 2020* and *The Common Agricultural Policy (Direct Payments to Farmers) (Miscellaneous Amendments) (Wales) Regulations 2020*

BRIEFING PAPER
Number CBP 8795
12 February 2020