Introduction

1. This paper supports the Committee’s consideration of a consent notification sent by the Scottish Government relating to the following UK statutory instruments (SIs)—

- The Rules for Direct Payments to Farmers (Amendment) Regulations 2020
- The Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020

2. These regulations are being laid in relation to the Direct Payments to Farmers (Legislative Continuity) Bill. To assist the consideration of such instruments, a protocol has been put in place between the Scottish Government and Scottish Parliament. Further detail on this protocol is available in a letter from the Cabinet Secretary for Government Business and Constitutional Relations. Whilst this protocol does not strictly apply to this notification, the Scottish Government has undertaken to act as if the protocol does apply.

3. As set out in the protocol, referred to above, the Scottish Parliament normally has a maximum of 28 days in which to consider the notification. The Parliament is being asked to consider this in shorter timescales, as the SIs are intended to be laid in the UK Parliament on 31 January. More information can be found in paragraph 11 of the notification (see Appendix A).

4. Under the protocol, the Committee has the following two options following its consideration of the UK SIs—

   a) Write to the Scottish Government to confirm it is content for consent for a UK SI to be given; or
   
   b) Consider the matter further, take evidence if appropriate and make a report to parliament.

5. If it chooses to report, it may make one of the following three recommendations—

   a) it is content for consent to be given for a UK SI to be made in the UK Parliament only.
   
   b) it is not content with the Scottish Government granting its consent and that the proposals should be made by an SSI; or
c) it is not content with the Scottish Government granting its consent and that the proposals should be included as a UK SI in both parliaments made under the joint procedure.

6. The Committee’s role in the protocol is to decide whether it agrees to the Scottish Government offering its consent to the UK Government to make regulations on its behalf. However, there are broader policy issues which may arise in future, not as a direct consequence of the notification, but due to Brexit itself. The Committee may wish to note these issues in its response to the Scottish Government and request that it be kept up to date on any developments on these matters.

INSTRUMENTS

7. This table is intended to give a brief overview only. The notification letters and documentation for the instruments are included in annexes to this paper.

<table>
<thead>
<tr>
<th>Instrument</th>
<th>Category</th>
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<td>• The Rules for Direct Payments to Farmers (Amendment) Regulations 2020</td>
<td>In general A</td>
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<tr>
<td>• The Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020</td>
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<td>(see Appendix A)</td>
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DECISION

8. The Committee is asked to consider the consent notification referred to in this paper and determine whether it is content to write to the Scottish Government to confirm it is content for consent for the UK SIs referred to in the notification to be given.

Rural Economy and Connectivity Committee Clerks
January 2020
Edward Mountain MSP
Convener
Rural Economy and Connectivity Committee
Scottish Parliament
Edinburgh
EH99 1SP

23 January 2020

POLICY AREAS: COMMON AGRICULTURAL POLICY
EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT
The Direct Payments to Farmers (Legislative Continuity) Bill
The Rules for Direct Payments to Farmers (Amendment) Regulations 2020
The Financing, Management and Monitoring of Direct Payments to Farmers
(Amendment) Regulations 2020

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to
the exercise of powers by UK Ministers in relation to proposals within the legislative
competence of the Scottish Parliament.

I refer to my letter to you of 19 December regarding the above SIs a copy of which I attach
for your ease of reference.

I was pleased to note that following the granting of your Committee’s support on 15 January,
the Scottish Parliament approved on 16 January the Legislative Consent Motion that I had
lodged for the Bill.

The Direct Payments to Farmers (Legislative Continuity) Bill requires that the Secretary of
State must obtain the consent of Scottish Ministers before making these SIs. I therefore
attach a Notification of Intention to Consent which sets out the details of the above SIs which
the UK Government propose to make and the reasons why I am content that Scottish
devolved matters are to be included in these UK SIs. The SIs are due to be made, laid and
come into force on 31 January using the made affirmative procedure and will therefore have
to be approved by both Houses of Parliament within 28 days of the date on which they are
made in order to remain in force. Please note, we are yet to have sight of the final SIs and
they are not available in the public domain at this stage. We will, in accordance with the

Scottish Ministers, special advisers and the Permanent Secretary are covered by
the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew’s House, Regent Road, Edinburgh EH1 3DG
www.gov.scot
protocol, confirm when the SIs are made and laid and advise you as to whether the final SIs are in keeping with the terms of the attached notification.

In my letter to you of 19 December, I explained that it is essential that we have a legal basis for direct payments to be made to Scottish farmers beyond 31 January and that we would regrettably be unable to give the Parliament the full 28 days to consider Scottish Ministers’ proposal to consent to the SIs as they will be made and laid on 31 January.

I would be grateful if the Committee could please consider and respond to the Notification of Intention to Consent before 31 January since I need to respond to the UK Government’s consent request in time for the SIs to be made on that date. I apologise for the short notice, but as explained in my letter of 19 December this is due to the late stage at which the UK Government introduced the Bill and the need to have the legal powers in place for 31 January.

I am copying this letter to the Convenors of the Environment, Climate Change & Land Reform Committee and of the Delegated Powers and Law Reform Committee.

I look forward to hearing from you further.

FERGUS EWING

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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www.gov.scot
NOTIFICATION TO THE SCOTTISH PARLIAMENT

COMMON AGRICULTURAL POLICY (“CAP”)

1. Name of the SIs

The Rules for Direct Payments to Farmers (Amendment) Regulations 2020

The Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020

2. A brief explanation of the law that the SIs amend

It is intended that these SIs will be made under what is currently the Direct Payments to Farmers (Legislative Continuity) Bill (the “2020 Act”) once it has received royal assent and the relevant powers are in force. It is anticipated the Bill will come into force before the end of January 2020. As soon as we have confirmation that the Bill has received royal assent, we will notify this to the REC committee as soon as possible.

At the time of writing the 2020 Act is currently before the UK Parliament. On 16 January 2020 the Scottish Parliament approved the Legislative Consent Motion lodged by the Cabinet Secretary for the Rural Economy in respect of the 2020 Act following approval being obtained from the REC committee on the previous day.

The 2020 Act and these SIs are required as a result of Article 137 of the Withdrawal Agreement for the UK to leave the EU on 31 January 2020 which disappplies EU Regulation 1307/2013 for the 2020 claim year. Without the 2020 Act and the SIs, there will be no legal basis in the UK for the direct payment schemes for the 2020 claim year. This would affect all aspects of the schemes, from scheme application to payment. The 2020 Act proposes to retain the necessary direct payments EU law by converting it into UK law at the point of EU exit. These SIs made under the 2020 Act propose to make the necessary operability amendments to that retained EU law to ensure the continued functionality of direct payments schemes for the claim year 2020.

For the avoidance of any doubt, we confirm the 2020 Act and associated SIs only affect the 2020 claim year for direct payments not any other years.

The UK Government is also intending to make further SIs under the 2020 Act that will provide for example for an exchange rate for the 2020 claim year and to increase ceilings for direct payments following the Bew review. The Scottish Government remains in discussion with the Defra and the other devolved administrations regarding these matters. Any additional statutory instruments proposed will of course be the subject of separate notifications to the Scottish Parliament in due course.
Some provisions are expected to be incorporated into the SIs that will only affect England but we can confirm that they don't engage Scottish devolved interests and do not require our consent so are irrelevant for the purposes of this notification.

The Rules for Direct Payments to Farmers (Amendment) Regulations 2020

This proposed SI would apply throughout the UK. It would amend Regulation (EU) No 1307/2013 on direct payments for the 2020 claim year to correct any deficiencies and ensure its continued functionality. Regulation 1307/2013 establishes rules for direct payments to farmers and land managers under support schemes within the framework of the CAP. It also proposes to amend the delegated and implementing Regulations made under Regulation 1307/2013.

The Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020

This proposed SI would apply throughout the UK. It would amend Regulation (EU) No 1306/2013 which lays down provisions for the financing, management and monitoring of direct payments insofar as the provisions of that Regulation relate to the 2020 direct payments claim year to correct any deficiencies and ensure its continued functionality. It would also amend the delegated and implementing Regulations made under Regulation 1306/2013 insofar as their provisions relate to the 2020 direct payments claim year.

3. Summary of the proposals and how these correct deficiencies

The direct payment schemes are a key part of the EU CAP. They are the largest source of farm subsidy in Scotland. Many farmers and land managers are reliant on this income to support their businesses. The corrections introduced by the proposed SIs will help ensure that CAP scheme recipients continue to be paid direct payments for the 2020 claim year following EU Exit on 31 January. This will provide clarity and certainty to farmers, land managers, rural businesses and communities, and the public sector at the point of exit from the EU.

The SIs being notified propose to use powers in the 2020 Act to make predominantly technical amendments to the above legislation to achieve these aims. The SIs avoid policy changes, maintain the status quo in so far as possible and will have no noticeable impacts on the ground for farmers.

We have extensive experience of working collaboratively with the UK Government and other devolved administrations in these areas. Maintaining this UK wide approach is beneficial for stakeholders and for all four UK administrations to help provide clarity for the future.

The Rules for Direct Payments to Farmers (Amendment) Regulations 2020

The Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020

Direct payments provide farmers and land managers with a safety net against volatile agricultural market prices and are made on condition that the beneficiary
respects “cross-compliance” rules on human and animal health and welfare, plant health and the environment. Direct payments are currently made under the EU CAP Regulations described above, and are administered and controlled in the UK by the national authorities of each constituent nation including the Scottish Ministers in relation to Scotland.

The SIs propose to amend the relevant EU legislation that the 2020 Act proposes to retain in order to provide a functioning direct payments framework for the UK. In turn, this framework will ensure that current CAP direct payments scheme recipients will continue to be paid following EU-Exit for the 2020 claim year on the basis of the existing EU CAP Regulations as retained EU law and as modified by these proposed SIs.

The proposed SIs respect the UK devolution settlements and will empower the Scottish Ministers and other UK relevant authorities to maintain the direct payments framework, make payments and enforce the rules surrounding direct payments.

The instruments propose to enable the following CAP direct payments farming support schemes to continue to work effectively across the UK after EU-Exit, for the 2020 claim year including (in relation to Scotland) the following schemes:

- **Basic Payment** – this is a non-competitive payment that is based on land area. Certain minimum standards on animal and public health and environmental standards must be met (known as “cross-compliance”);
- **Greening payment** – this is a 30% portion of the Basic Payment, paid to farmers who voluntarily meet certain environmental standards;
- **Young farmer payment** – this is a payment for claimants qualifying as a “Young Farmer”; and
- **Voluntary Coupled Support** – this is a payment made to incentivise production in a particular sector. It is used in Scotland to support livestock farmers in both the beef and sheep sectors to help compensate the additional costs incurred associated with livestock production.

The legislative amendments proposed by the SIs will maintain the status quo, as far as possible, and are largely minor and technical. No substantive policy changes are being made and the beneficiaries of direct payments in Scotland as elsewhere in the UK will see no significant operational change.

The key amendments to the relevant legislation can be summarised as:

i. **Changes to direct payment scheme notification and reporting requirements**: These currently place requirements on Member States to routinely provide notifications and reports to the European Commission to set out how they are administering the direct payments schemes. Such notifications and reports are necessary for the Commission to manage and monitor the EU CAP as a whole. The notification and reporting requirements include a Member State having to supply information on: the funding allocations it sets for each direct payments scheme; the extent of CAP “active farmer” rules applied; any equivalent practices implemented in relation to greening scheme requirements; and the commencement of any direct
payment schemes that a Member State may not have previously utilised, for example Voluntary Coupled Support.

After EU-Exit, some of these notification and reporting requirements will no longer be appropriate and they will cease to be required. The SIs will therefore remove these provisions from the retained EU legislation. For example, the UK’s annual notification to the European Commission of the outcome of CAP greening measures is required for the Commission to assess the success of the greening policy across the EU, but this would not be required in a UK context as agriculture is a devolved matter and it is for each UK administration to assess the success of policies within its territory. Other notification and reporting requirements will, however, still be necessary to ensure that, after EU-Exit, the domestic framework for direct payments continues to operate effectively across the UK. These particular notification and reporting requirements will also be removed from the retained EU legislation and, instead, the collection and sharing of key information will form part of an administrative joint-working agreement that will be developed between the UK administrations, for example through a Memorandum of Understanding. This approach will reduce the reporting requirements of UK administrations.

ii. *Removal of redundant provisions:*

Some articles in the retained EU direct payment legislation will be redundant or irrelevant to a UK setting after EU-Exit and so the SIs will remove these articles. For example, Articles 20 and 27 of Regulation (EU) No. 1307/2013, which relate to de-mining reserves in Croatia.

iii. *Correcting references to the EU, EU institutions and “Member State(s)”:*

After EU-Exit, certain terms will be outmoded and need correction. The SIs will make technical amendments throughout the retained EU direct payments legislation to ensure that it remains operable and does not contain any ambiguity. References to “Member State(s)” will be amended so that, in most instances, this will be replaced with the phase “relevant authority” (meaning the Scottish Ministers in Scotland) in order to align with the UK devolved settlements and enable each constituent nation to make its own policy choices within the limits of the retained EU direct payments regulations.

iv. *Correcting EU procedures to reflect appropriate UK processes:*

Certain articles in the EU legislation give the European Commission the power to make implementing acts to fix spending ceilings for individual direct payments schemes, in order to reflect a Member State’s spending choices. This approach will no longer appropriate after EU exit. The proposed SIs make amendments which will empower the Secretary of State to make regulations, with the consent of Scottish Ministers and the other devolved administrations, adapting the net and national ceilings. As a result of clause 5 of the 2020 Act, when making these regulations the Secretary of State may decide to increase the net and national ceilings to take account of the Bew Review recommendations.
The UK Government, following approval from HM Treasury, will retain references to Euros in the retained EU direct payments legislation at the point of EU-Exit. This is because, as agreed with the Scottish Government as well as the other Devolved Administrations, it is considered that undertaking such currency conversion mid-way through the existing CAP programme and its schemes would be problematic from an operational perspective and also risk causing confusion for beneficiaries, including those who receive direct payments.

The proposed SIs will provide a clear and robust continuing legal basis for payments and the application of current CAP scheme rules as retained EU law for direct payments for the 2020 claim year on exit from the EU. Separately, following the Scottish Government’s “Stability and Simplicity” consultation (discussed further in section 7 below), the Scottish Government is continuing to explore all the necessary adjustments and any other options for creating new legal powers which Scotland will need to amend, improve and, in due course, replace the current schemes at a suitable point after exit day.

4. An explanation of why the change is considered necessary

The proposed changes are considered to be necessary to ensure that CAP direct payments legislation remains functional. They ensure operability of the CAP regulatory regime for direct payments for the 2020 claim year after EU exit, and provide a clear and robust legal basis to continue making payments to beneficiaries and to apply current scheme rules by maintaining the current UK-wide legal framework. Failure to implement the proposed changes will likely result in inability of these regimes to operate.

5. Scottish Government categorisation of significance of proposals

The Scottish Government considers that in general the proposed SIs fall within Category A, as the changes are minor and technical in nature and notwithstanding the changes, policy change is being avoided to preserve in so far as possible the current status quo.

6. Impact on devolved areas

The Scottish Government agree that the changes in the proposed SIs constitute a pragmatic approach to addressing deficiencies in CAP direct payments legislative provisions, arising as a result of EU Exit, and are the best option in the circumstances to ensure continued effective operation of these provisions to minimise the risk in the short term of disruption to devolved territories.

The proposed Regulations respect the current devolution settlement by ensuring that Scottish Ministers can exercise all applicable functions under the retained EU law as modified by these SIs as the relevant authority in relation to Scotland.

No significant, impact on business, charities or voluntary bodies is anticipated. Beneficiaries will continue to receive direct payments similarly to before EU exit.
No significant impact on the public sector is anticipated. There may be a negligible increase in administration cost as notifications may go to responsible bodies within the UK rather than European institutions, but this is not expected to be a significant impact.

7. Summary of stakeholder engagement/consultation

As these SIs are being proposed to avoid deficiencies arising as a result of the UK’s withdrawal from the EU and are aimed at preserving the functioning of the CAP regulations for direct payments for the 2020 claim year as at present, we have not undertaken any formal public consultation.

The UK Government have published a series of technical notices which provide details on how UK businesses and individuals should prepare in the event of the UK leaving the EU, including the following:

A technical notice titled “Guidance : Farm payments if there is no Brexit deal” was published on 23 August 2018

In June 2018 the Scottish Government published a consultation “Stability and simplicity”

This consultation invited comments on Scottish Government proposals for dealing with the implications associated with coming out of the Common Agricultural Policy (CAP) which explained that the first stage would be retained EU law in domestic legislation.

The consultation closed on 15 Aug 2018 with 137 responses received. Overall, respondents were broadly content for support to continue in its current form to ensure a period of stability for the rural economy.

An external stakeholder panel the “Simplification Task Force” was established to look more closely at the responses to and opportunities for simplification of the retained EU law. The Task Force work is now complete and a report of its findings published.

The Scottish Government has been and continues to be in regular contact with stakeholders in Scotland regarding the implications of leaving the EU. The effect of the SIs described in this notification is consistent with the proposals set out in the consultation.

8. A note of other impact assessments, (if available)

An impact assessment has not been carried out in relation to these regulations as they are aimed at preserving the effect of the current regulatory regimes.
9. Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

If these deficiencies are not corrected before the exit of the UK from the EU, the Scottish Ministers believe that we would no longer have an effectively functioning legal framework for continuing to make payments and the administration of the applicable direct payments schemes for the 2020 claim year. This would cause problems for stakeholders who need as much certainty and continuity as possible to help plan and operate their businesses. This could also pose risks for agriculture and the rural economy in Scotland.

The Scottish Ministers propose to consent to these UK SIs to fix deficiencies in the relevant direct payments legislation. The approach set out in the UK instruments is realistic, achievable and minimises the risk of immediate disruption. The Scottish Ministers believe that, in the circumstances, consenting to the UK SIs would be the most effective way to help ensure continuity of current arrangements for stakeholders to assist them to continue to run their businesses, and ensure the existing regulatory regime can continue to function with scheme payments continuing to be administered and paid for the 2020 claim year.

The Scottish Ministers believe that the changes proposed by these instruments are necessary to secure continuation of effective regulatory regimes. The approach of these SIs respect the devolution settlement and provide for a transition from an EU to UK regulatory framework with devolved options for Scotland.

The Scottish Government has worked constructively with the UK Government and the other Devolved Administrations and, in light of that, we are satisfied that the proposed amendments to the applicable legislation will ensure that it continues to operate effectively as retained EU law whilst respecting Scottish Government’s devolved competence in relation to the implementation of CAP in Scotland.

Given there is a need to prepare for the exit of the UK from the EU, the Scottish Ministers consider that it is appropriate for the fixing legislation to be made on a UK-wide basis by the UK Government. This provides an effective achievable solution in current circumstances of limited resources and significant resource intensive legislative work needing to be completed under extremely tight time constraints. It also reduces the risk of conflicting provisions being produced by UK administrations that could result in confusion.

The Scottish Ministers believe stakeholders need clarity and continuity in the immediate future in so far as possible to continue to operate their businesses during this period of transition and consenting to the proposed UK instruments is the most likely way of achieving that aim at this time.

10. Intended laying date (if known) of instruments likely to arise

It is intended that the Rules for Direct Payments to Farmers (Amendment) Regulations 2020 and the Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020 will be laid at Westminster on
the 31 January 2020. The made affirmative procedure applies to both SIs. If the SIs are to remain in force they will have to be approved by both Houses of Parliament within a 28 day period from the date they are made.

11. Does the Scottish Parliament have 28 days to scrutinise?

No we regret this will not be possible in this case. It is intended that both SIs will be made, laid and come into force on 31 January using the made affirmative procedure.

Timing is exceptionally tight in this case because of the approach taken by the UK Government. As the problem being addressed is a direct result of the contents of the Withdrawal Agreement negotiated by the UK Government, it could not be addressed until it was clear that the Withdrawal Agreement Bill would be passed by Parliament. If the Withdrawal Agreement Bill does not pass, this problem would not exist. Therefore, the UK government delayed the introduction of the Direct Payments Bill until the 9 January 2020 resulting in the current position.

12. Information about any time dependency associated with the proposal

It is essential that these instruments are in force on the day we exit the EU to ensure that retained EU legislation is operable and, in turn, enable the Scottish Government to continue to administer and regulate our direct payment schemes and make direct payments to our stakeholders for the 2020 claim year.

13. Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

Following finalisation of the instruments, the Scottish Government will work with UK Government and other devolved administrations to put in place sound governance arrangements to ensure transparency and accountability for decision making. This work will be designed within the context of the principles, agreed by the UK Government, the Scottish Government and the Welsh Government on 16 October 2017, to apply to common frameworks.

14. Any significant financial implications?

These Regulations are not expected to have any significant financial implications for stakeholders in Scotland.
Appendix A
NOTIFICATION TO THE SCOTTISH PARLIAMENT COMMON AGRICULTURAL POLICY (“CAP”)

1. Name of the SIs

The Rules for Direct Payments to Farmers (Amendment) Regulations 2020

The Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020

2. A brief explanation of the law that the SIs amend

It is intended that these SIs will be made under what is currently the Direct Payments to Farmers (Legislative Continuity) Bill (the “2020 Act”) once it has received royal assent and the relevant powers are in force. It is anticipated the Bill will come into force before the end of January 2020. As soon as we have confirmation that the Bill has received royal assent, we will notify this to the REC committee as soon as possible.

At the time of writing the 2020 Act is currently before the UK Parliament. On 16 January 2020 the Scottish Parliament approved the Legislative Consent Motion lodged by the Cabinet Secretary for the Rural Economy in respect of the 2020 Act following approval being obtained from the REC committee on the previous day.

The 2020 Act and these SIs are required as a result of Article 137 of the Withdrawal Agreement for the UK to leave the EU on 31 January 2020 which disappplies EU Regulation 1307/2013 for the 2020 claim year. Without the 2020 Act and the SIs, there will be no legal basis in the UK for the direct payment schemes for the 2020 claim year. This would affect all aspects of the schemes, from scheme application to payment. The 2020 Act proposes to retain the necessary direct payments EU law by converting it into UK law at the point of EU exit. These SIs made under the 2020 Act propose to make the necessary operability amendments to that retained EU law to ensure the continued functionality of direct payments schemes for the claim year 2020.

For the avoidance of any doubt, we confirm the 2020 Act and associated SIs only affect the 2020 claim year for direct payments not any other years.

The UK Government is also intending to make further SIs under the 2020 Act that will provide for example for an exchange rate for the 2020 claim year and to increase ceilings for direct payments following the Bew review. The Scottish Government remains in discussion with the Defra and the other devolved administrations regarding these matters. Any additional statutory instruments proposed will of
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**3. Summary of the proposals and how these correct deficiencies**

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The legislative amendments proposed by the SIs will maintain the status quo, as far as possible, and are largely minor and technical. No substantive policy changes are being made and the beneficiaries of direct payments in Scotland as elsewhere in the UK will see no significant operational change.

The key amendments to the relevant legislation can be summarised as:

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extent of CAP “active farmer” rules applied; any equivalent practices implemented in relation to greening scheme requirements; and the commencement of any direct payment schemes that a Member State may not have previously utilised, for example Voluntary Coupled Support.

After EU-Exit, some of these notification and reporting requirements will no longer be appropriate and they will cease to be required. The SIs will therefore remove these provisions from the retained EU legislation. For example, the UK’s annual notification to the European Commission of the outcome of CAP greening measures is required for the Commission to assess the success of the greening policy across the EU, but this would not be required in a UK context as agriculture is a devolved matter and it is for each UK administration to assess the success of policies within its territory. Other notification and reporting requirements will, however, still be necessary to ensure that, after EU-Exit, the domestic framework for direct payments continues to operate effectively across the UK. These particular notification and reporting requirements will also be removed from the retained EU legislation and, instead, the collection and sharing of key information will form part of an administrative joint-working agreement that will be developed between the UK administrations, for example through a Memorandum of Understanding. This approach will reduce the reporting requirements of UK administrations.

ii. **Removal of redundant provisions:**

Some articles in the retained EU direct payment legislation will be redundant or irrelevant to a UK setting after EU-Exit and so the SIs will remove these articles. For example, Articles 20 and 27 of Regulation (EU) No. 1307/2013, which relate to de-mining reserves in Croatia.

iii. **Correcting references to the EU, EU institutions and “Member State(s)”:**

After EU-Exit, certain terms will be outmoded and need correction. The SIs will make technical amendments throughout the retained EU direct payments legislation to ensure that it remains operable and does not contain any ambiguity. References to “Member State(s)” will be amended so that, in most instances, this will be replaced with the phase “relevant authority” (meaning the Scottish Ministers in Scotland) in order to align with the UK devolved settlements and enable each constituent nation to make its own policy choices within the limits of the retained EU direct payments regulations.

iv. **Correcting EU procedures to reflect appropriate UK processes:**

Certain articles in the EU legislation give the European Commission the power to make implementing acts to fix spending ceilings for individual direct payments schemes, in order to reflect a Member State’s spending choices. This approach will no longer appropriate after EU exit. The proposed SIs make amendments which will empower the Secretary of State to make regulations, with the consent of Scottish Ministers and the other devolved administrations, adapting the net and national ceilings. As a result of clause 5 of the 2020 Act, when making these regulations the Secretary of State may decide to increase the net and national ceilings to take account of the Bew Review recommendations.
The UK Government, following approval from HM Treasury, will retain references to Euros in the retained EU direct payments legislation at the point of EU-Exit. This is because, as agreed with the Scottish Government as well as the other Devolved Administrations, it is considered that undertaking such currency conversion mid-way through the existing CAP programme and its schemes would be problematic from an operational perspective and also risk causing confusion for beneficiaries, including those who receive direct payments.

The proposed SIs will provide a clear and robust continuing legal basis for payments and the application of current CAP scheme rules as retained EU law for direct payments for the 2020 claim year on exit from the EU. Separately, following the Scottish Government’s “Stability and Simplicity” consultation (discussed further in section 7 below), the Scottish Government is continuing to explore all the necessary adjustments and any other options for creating new legal powers which Scotland will need to amend, improve and, in due course, replace the current schemes at a suitable point after exit day.

4. An explanation of why the change is considered necessary

The proposed changes are considered to be necessary to ensure that CAP direct payments legislation remains functional. They ensure operability of the CAP regulatory regime for direct payments for the 2020 claim year after EU exit, and provide a clear and robust legal basis to continue making payments to beneficiaries and to apply current scheme rules by maintaining the current UK-wide legal framework. Failure to implement the proposed changes will likely result in inability of these regimes to operate.

5. Scottish Government categorisation of significance of proposals

The Scottish Government considers that in general the proposed SIs fall within Category A, as the changes are minor and technical in nature and notwithstanding the changes, policy change is being avoided to preserve in so far as possible the current status quo.

6. Impact on devolved areas

The Scottish Government agree that the changes in the proposed SIs constitute a pragmatic approach to addressing deficiencies in CAP direct payments legislative provisions, arising as a result of EU Exit, and are the best option in the circumstances to ensure continued effective operation of these provisions to minimise the risk in the short term of disruption to devolved territories.

The proposed Regulations respect the current devolution settlement by ensuring that Scottish Ministers can exercise all applicable functions under the retained EU law as modified by these SIs as the relevant authority in relation to Scotland.

No significant, impact on business, charities or voluntary bodies is anticipated. Beneficiaries will continue to receive direct payments similarly to before EU exit.
No significant impact on the public sector is anticipated. There may be a negligible increase in administration cost as notifications may go to responsible bodies within the UK rather than European institutions, but this is not expected to be a significant impact.

7. Summary of stakeholder engagement/consultation

As these SIs are being proposed to avoid deficiencies arising as a result of the UK’s withdrawal from the EU and are aimed at preserving the functioning of the CAP regulations for direct payments for the 2020 claim year as at present, we have not undertaken any formal public consultation.

The UK Government have published a series of technical notices which provide details on how UK businesses and individuals should prepare in the event of the UK leaving the EU, including the following:

A technical notice titled “Guidance : Farm payments if there is no Brexit deal” was published on 23 August 2018

In June 2018 the Scottish Government published a consultation “Stability and simplicity”

This consultation invited comments on Scottish Government proposals for dealing with the implications associated with coming out of the Common Agricultural Policy (CAP) which explained that the first stage would be retained EU law in domestic legislation.

The consultation closed on 15 Aug 2018 with 137 responses received. Overall, respondents were broadly content for support to continue in its current form to ensure a period of stability for the rural economy.

An external stakeholder panel the “Simplification Task Force” was established to look more closely at the responses to and opportunities for simplification of the retained EU law. The Task Force work is now complete and a report of its findings published.

The Scottish Government has been and continues to be in regular contact with stakeholders in Scotland regarding the implications of leaving the EU. The effect of the SIs described in this notification is consistent with the proposals set out in the consultation.

8. A note of other impact assessments, (if available)

An impact assessment has not been carried out in relation to these regulations as they are aimed at preserving the effect of the current regulatory regimes.
9. **Summary of reasons for Scottish Ministers’ proposing to consent to UK Ministers legislation**

If these deficiencies are not corrected before the exit of the UK from the EU, the Scottish Ministers believe that we would no longer have an effectively functioning legal framework for continuing to make payments and the administration of the applicable direct payments schemes for the 2020 claim year. This would cause problems for stakeholders who need as much certainty and continuity as possible to help plan and operate their businesses. This could also pose risks for agriculture and the rural economy in Scotland.

The Scottish Ministers propose to consent to these UK SIs to fix deficiencies in the relevant direct payments legislation. The approach set out in the UK instruments is realistic, achievable and minimises the risk of immediate disruption. The Scottish Ministers believe that, in the circumstances, consenting to the UK SIs would be the most effective way to help ensure continuity of current arrangements for stakeholders to assist them to continue to run their businesses, and ensure the existing regulatory regime can continue to function with scheme payments continuing to be administered and paid for the 2020 claim year.

The Scottish Ministers believe that the changes proposed by these instruments are necessary to secure continuation of effective regulatory regimes. The approach of these SIs respect the devolution settlement and provide for a transition from an EU to UK regulatory framework with devolved options for Scotland.

The Scottish Government has worked constructively with the UK Government and the other Devolved Administrations and, in light of that, we are satisfied that the proposed amendments to the applicable legislation will ensure that it continues to operate effectively as retained EU law whilst respecting Scottish Government’s devolved competence in relation to the implementation of CAP in Scotland.

Given there is a need to prepare for the exit of the UK from the EU, the Scottish Ministers consider that it is appropriate for the fixing legislation to be made on a UK-wide basis by the UK Government. This provides an effective achievable solution in current circumstances of limited resources and significant resource intensive legislative work needing to be completed under extremely tight time constraints. It also reduces the risk of conflicting provisions being produced by UK administrations that could result in confusion.

The Scottish Ministers believe stakeholders need clarity and continuity in the immediate future in so far as possible to continue to operate their businesses during this period of transition and consenting to the proposed UK instruments is the most likely way of achieving that aim at this time.

10. **Intended laying date (if known) of instruments likely to arise**

It is intended that the Rules for Direct Payments to Farmers (Amendment) Regulations 2020 and the Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020 will be laid at Westminster on
the 31 January 2020. The made affirmative procedure applies to both SIs. If the SIs are to remain in force they will have to be approved by both Houses of Parliament within a 28 day period from the date they are made.

11. Does the Scottish Parliament have 28 days to scrutinise?

No we regret this will not be possible in this case. It is intended that both SIs will be made, laid and come into force on 31 January using the made affirmative procedure.

Timing is exceptionally tight in this case because of the approach taken by the UK Government. As the problem being addressed is a direct result of the contents of the Withdrawal Agreement negotiated by the UK Government, it could not be addressed until it was clear that the Withdrawal Agreement Bill would be passed by Parliament. If the Withdrawal Agreement Bill does not pass, this problem would not exist. Therefore, the UK government delayed the introduction of the Direct Payments Bill until the 9 January 2020 resulting in the current position.

12. Information about any time dependency associated with the proposal

It is essential that these instruments are in force on the day we exit the EU to ensure that retained EU legislation is operable and, in turn, enable the Scottish Government to continue to administer and regulate our direct payment schemes and make direct payments to our stakeholders for the 2020 claim year.

13. Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

Following finalisation of the instruments, the Scottish Government will work with UK Government and other devolved administrations to put in place sound governance arrangements to ensure transparency and accountability for decision making. This work will be designed within the context of the principles, agreed by the UK Government, the Scottish Government and the Welsh Government on 16 October 2017, to apply to common frameworks.

14. Any significant financial implications?

These Regulations are not expected to have any significant financial implications for stakeholders in Scotland.