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House of Lords
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My Lords,

Direct Payments to Farmers (Reductions and Simplifications) (England) (Amendment) Regulations 2021

Agriculture (Financial Assistance) Regulations 2021

I am grateful to noble Lords for their contributions in the House of Lords debate on 22 March on the above regulations. I said that I would write on several matters raised.

Direct payments

Baroness Jones of Whitchurch questioned the timing of reductions to direct payments. It is appropriate to begin the agricultural transition now because we are phasing out Direct Payments over seven years to give the sector time to adapt and prepare. Also, there are already schemes that farmers can access to generate income for providing public goods, such as Countryside Stewardship, and we are working to extend and improve these. We will offer support to help farmers make their businesses more efficient and productive and support them through the transition. For example, farmers will be able to apply for grants from this year to help them invest in equipment and technology and boost their productivity under the Farming Investment Fund. The savings from the 2021 reductions to Direct Payments will be used to support agriculture; there will be no overall cut in funding.

Agricultural Transition

The Earl of Devon asked what steps the government is taking to monitor impact on productivity and on the environment during the transition period. We currently publish a range of statistics covering environmental impacts and improvements in productivity. These include estimates of Total Factor Productivity of farming at a UK level and also farming's environmental impacts, published within the Environment chapter of Agriculture in UK.

Defra is developing its Monitoring and Evaluation Plan for assessing the impact of policies during the Agricultural Transition Period and this will be published alongside our Future Farming and Countryside Programme Business Case in the autumn. This will detail how we will be measuring changes specifically relating to a range of new schemes aimed to improve productivity and environmental outcomes.

Lord Whitty asked for assurances that environmental and agricultural standards would be properly directed and enforced during the agricultural transition. The government is committed to maintaining standards and we have domestic legislation which protects the environment, animal health and welfare, and plant health. We will maintain a robust inspection and enforcement approach throughout the agricultural transition as we prepare the sector for a move away from CAP and cross compliance. Enforcement will be firm but fair, with appropriate and effective action being taken where legal requirements are breached.

Until we delink, farmers in receipt of payments under the Basic Payment Scheme or most agri-environment schemes will continue to be subject to the cross-compliance rules. Rules within cross compliance are mostly in domestic legislation and we will continue to apply these as we move away from CAP schemes. Compliance with applicable domestic regulations continues to be mandatory now that we have left the EU.

Where there are gaps in the legislation, we will act to maintain these standards. This does not automatically mean there will be more legislation to fill this gap. We will look to use the most effective mechanism to deliver against environmental goals. It may be that another, non-regulatory mechanism is the most effective means to ensure that standards currently in cross compliance are maintained.

We want to develop a modern regulatory system that will effectively address breaches but is also flexible, proportionate and is developed through partnership with the sector. This is why we have an ongoing commitment to co-designing and establishing a new system, working with those that interact with and use regulation. We remain committed to developing a future system that supports people to meet the regulatory standards and that enables farms to be sustainable, resilient and competitive.

The Earl of Caithness and Baroness Jones of Whitchurch asked if the timeframe for the national pilots and the full rollout of Environmental Land Management and other schemes by 2027 is feasible, and whether Defra has engaged with land managers and other stakeholders on the design of environmental land management schemes and the transitional arrangements. Defra is absolutely committed to co-design and involving all impacted by change, whether end users or key stakeholders in everything from identification of the problems and issues that need to be resolved through to the design of the solution.

The steady flow of information and learning from the scheme pilots from 2021 to 2024 will help the sector prepare for full launch in 2024. Already over 3,000 farmers are actively involved in tests and trials helping to co-design the new schemes.

We are taking an iterative, incremental approach so that we can learn and adapt as we go. This includes starting to make improvements to existing schemes and rules from January 2021, based on addressing the issues that we know, from feedback, exist.

Alongside this, the Farm Resilience scheme will provide help for the first three years of the agricultural transition period. This will help farmers plan and manage their businesses through the transition. It will ensure that experts are on hand to provide any advice and support needed by those who have been most affected by the removal of Direct Payments.

Lord Lilley asked how new financial assistance schemes will compare financially to direct payments, and Viscount Trenchard asked for assurances regarding the profitability of farming under the new system. Direct Payments are untargeted, can inflate land rent prices and can stand in the way of new entrants. Some of our most successful and vibrant food-producing sectors of agriculture have never been subsidised. For example, the poultry industry, the pig industry, the horticulture industry or fruit and veg producers. Phasing out Direct Payments will free up money to support agriculture in different ways. We will pay farmers to improve the environment, improve animal health and welfare and reduce carbon emissions.

Defra is carrying out a grant funding project to provide resilience support to farmers and land managers in England to help them prepare for the agricultural transition taking place from 2021-2027. In the initial phase, we invested £1 million with rural facing organisations to work with 1,700 farmers throughout England who represent different farming types, businesses and personal situations. The initial phase ended in March 2021 and we are planning to offer support at a larger scale going forwards. The grant application process for the next round of funding (interim phase) opened on 25 March 2021. Further information about successful bids will be provided leading up to the launch of the support being available to farmers and land managers in August 2021.

Baroness McIntosh of Pickering asked for assurances regarding the rural economy, particularly livestock farming. We know that certain areas, in particular the north-east, are currently on average more reliant on Direct Payments than others. This is mainly due to the high prevalence of grazing livestock and tenant farmers in those areas. However, the agricultural transition will provide time for upland farmers to adjust to the new system of paying for public goods.

Farms in the uplands should be well placed to deliver the environmental outcomes which will be rewarded under our new environmental land management schemes. These include the Sustainable Farming Incentive, some core elements of which will be rolled out in 2022, and which will be open to all Basic Payment Scheme recipients. In its early years the scheme will focus on supporting and maintaining environmentally sustainable farming improvements that most farmers can make, such as soil and livestock management, pesticide use and fertiliser use.

Scheme participation

The Earl of Devon and Baroness Bakewell of Hardington Mandeville asked for further detail on who can participate in the Sustainable Farming Incentive pilot, or in environmental land management. It will be possible for a land manager with a Countryside Stewardship agreement to be involved in the Sustainable Farming Incentive pilot as long as they do not enter the same land parcels into both schemes.

Baroness McIntosh of Pickering and Lord Berkeley of Knighton asked for confirmation that active farmers, including tenant farmers, will continue to benefit from agricultural support, and that financial assistance will, going forward, be distributed fairly between landlords, tenants, and agents. I can confirm that tenant farmers will be eligible for each of the schemes in these SIs and will be able to benefit from the financial support they provide. Environmental Land Management Pilot payments will be made to the person delivering the outcomes of the scheme.

Tenant and landlord arrangements vary between agreements and Defra wants to design the scheme that is flexible to work with those varied arrangements. Defra is engaging with a wide range of different types of farmer and land manager to inform the development of Environmental Land Management, including tenant farmers and landlords, to ensure that it is designed in a way that works for all to maximise the delivery of environmental benefits.

Baroness Bakewell of Hardington Mandeville asked if agreement holders under these schemes would have more paperwork. There will be some record keeping requirements for specific activities. These will be minimal, designed to reduce burdens on agreement holders. Defra has introduced a number of simplifications to the Countryside Stewardship scheme, including simplifying the record keeping and evidence requirements to reduce the amount of paperwork required from agreement holders.

Definitions and limits, appeals, publication

The Earl of Devon asked for definitions of the terms 'reasonable hour' and 'authorised person.' In line with the Home Office Code of Practice on Powers of Entry, 'reasonable hours' should be determined by reference to the normal working practices of the particular business concerned. For example, entry at night may be considered reasonable for a business that has overnight deliveries. In most cases, reasonable hours would be interpreted as normal business working hours. 'Authorised persons' will be Rural Payments Agency inspectors, who farmers are used to having out on farm. In certain circumstances, for example to deal with capacity issues or to provide technical expertise, The Rural Payments Agency occasionally uses colleagues from across Defra or contractors to support the inspection effort. This is something farmers are used to and we do not expect it will cause any specific concern.

The Earl of Devon asked further how inspectors will gain access to the records they need and what safeguards would be in place as concerns family privacy and family computers. In the context of these regulations (taking into account the Home Office Code of Practice on Powers of Entry), a 'private dwelling' means any premises wholly or mainly used as a place of residence or abode (including any garden, yard, garage or outhouse). The relevant authority must obtain the farmer's consent or obtain a warrant from the Magistrates Court in order to enter premises used as a private dwelling. Unless there was a specific concern regarding fraudulent behaviour, the relevant authority would not normally be seeking to take a copy of the contents of a personal computer, mobile phone or other such personal device. This is in line with normal current practice. Utilising the new powers to conduct inspections remotely, an inspector may ask to see a specific file on a computer during the virtual inspection, being the equivalent of seeing the same type of record were the inspector present in person.

The Earl of Devon and Baroness Bakewell of Hardington Mandeville asked for further information about notice provisions, including those which would apply to remote sensing. 'Remote sensing' is defined in regulation 15(3)(a) of the regulations, and means any type of aerial photography, satellite imagery or imagery that is captured remotely from an airborne vehicle including an aeroplane, helicopter or remotely piloted aircraft system. As at present we expect that most remote sensing will be done by satellite or by aerial photography, and thus will not intrude on the farmer in any way. In some cases a remotely piloted aerial device may be used. This would be at a time agreed in advance with the farmer and at a reasonable hour.

Remote sensing by a remotely piloted aerial device 'without notice' may only take place if (1) entry to the farm has been refused or the relevant authority has reasonable grounds to suspect entry will be refused; (2) entry is required urgently; or (3) the premises is unoccupied. If the premises are a private dwelling, the relevant authority will need to obtain a warrant from the Magistrates Court before carrying out remote sensing and inform the occupier in advance that a warrant is being applied for.

Baroness Bakewell of Hardington Mandeville asked for further explanation on how the three-stage process for appeals on non-compliance will work. It will reflect the process currently used for CAP schemes. This involves an initial review of the decision by the original processing team within the relevant authority, following receipt of a query by an agreement holder. If the agreement holder is still dissatisfied, they may complain. The decision will then be reviewed by a different team within the authority, giving the opportunity to have the decision reassessed. If the agreement holder remains dissatisfied, they may appeal to the Secretary of State, through a formal appeal involving the Independent Agricultural Appeals Panel.

Baroness Jones of Whitchurch asked if a new database of payments for new financial assistance schemes will be required. Defra is planning a new database, which will be published on Gov.uk. This will provide us with opportunities to adapt our approaches to meet any future publication needs, for example the provision of accessible geospatial data. We acknowledge and recognise the need to ensure the security of personal information when publishing data in this database, including its coordination, storage and protection across two separate sites and will ensure this is managed appropriately.

Tree health

Baroness Bakewell of Hardington Mandeville asked for clarification on how the tree health pilot will be funded, and how funding will be allocated. The Tree Health pilot will be delivered by the Forestry Commission using savings from reductions made by direct payments as set out in the Agricultural Transition Plan. Eligibility for the tree health pilot is still in development and is being explored as part of our co-design process. We hope to benefit tree, woodland and forest managers with tree health issues, and expand eligibility beyond the current Countryside Stewardship offer which may include hedgerows, roadside trees and trees in parks and parklands. Grants will be issued to eligible participants based on the confirmation by the Forestry Commission of a tree pest or disease. The pilot is only looking to test the new aspects of the future scheme and so eligibility will be limited to specific tree pests and diseases. Furthermore, the pilot is small and will have a maximum of 100 agreements during its duration of three years. We will provide further details about eligibility when we publish scheme guidance ahead of applications opening in August 2021.

Baroness Bakewell of Hardington Mandeville asked for assurances healthy trees will not be felled. The tree health pilot will be testing new elements of the future tree health package of support through grants and the provision of advice and guidance. The pilot will allow us to explore and refine future payment rates and structures. For eligible participants, there will be support for:

- felling and treatment of diseased trees in certain situations to slow the spread of tree pests and disease, protecting the wider treescape;

- restocking following felling due to pest or disease to ensure no net loss of trees. This will enable landscape recovery and improve the resilience of the future treescape to pests and disease and climate change by supporting appropriate restocking.

We can confirm that support to fell will only be available for trees infected by specific tree pests or disease where it is a suitable response.

Farming Investment Fund

Baroness Bakewell of Hardington Mandeville asked how a supplier of equipment and technology get on to the Farming Investment Fund's specified list. The Farming Equipment and Technology Fund will follow a similar approach to that used in the RDPE Countryside Productivity scheme. Farmers will be able to select items from a prescribed list of items. It is right that items for inclusion on the list are driven by farmers and their representatives and as such we will keep the list under review to ensure it remains relevant to their needs. Defra will also work closely with suppliers, in advance of launching the Fund, to ensure that any potential issues regarding the supply of items can be kept to a minimum so that it effectively meets the needs of farmers.

Baroness Bakewell of Hardington Mandeville asked further what happens if a farmer requires a grant for investment but for something which is not on the list. The specific list of items will be set out in scheme guidance. Unfortunately, it cannot support everything a farmer wants to run their business, but Defra will ensure the list is kept under review so that future rounds of the scheme continue to include items which help deliver improved productivity, air and water quality and animal health and welfare.

Imports and Exports

Lord Northbrook asked for assurances about imports and exports between the European Union and the United Kingdom. Livestock farmers initially faced a challenging time with exports following the end of the Transition Period with many producers deciding not to export livestock in January, but most of the delays have now been resolved. Impacts of Covid-19 outbreaks in processing plants have caused considerable problems with regards pig exports to China. However, beef prices are at a 5-year high for the time of year and, adjusted for inflation, are above the 5-year average. Lamb prices continue to perform strongly and have been at inflation-adjusted 10-year highs since mid-January this year.

Lord Northbrook asked for an update on movement of live farm animals between Great Britain and Northern Ireland. As the Northern Ireland Secretary set out to Parliament on Wednesday 3 March 2021, the government is taking several temporary operational steps to avoid disruptive cliff edges as engagement with the EU continues through the Joint Committee. These recognise that appropriate time must be provided for businesses to implement new requirements - and that action needs to be taken now to avoid disruption for critical goods flows, such as food supplies, into Northern Ireland.

As part of the operational plan we committed to provide at the 24 February 2021 Joint Committee, we have set out that the current Scheme for Temporary Agri-food Movements for Northern Ireland will continue until 1 October 2021, when a four stage process of phased compliance based on categories of products will be begin. This gives further preparation time for supermarkets and their suppliers, and aligning with the planned implementation of the new Digital Assistance Scheme.

We are also extending the temporary arrangements that we set out in December on parcels, giving further time to operators and retailers to become compliant, minimising the impact on day-to-day lives in Northern Ireland. This means no customs declarations will be needed for these movements until later this year.

We have set out updated guidance on the pragmatic arrangements we will apply for moving goods like bulbs, vegetables, plants and machinery - ensuring those goods can move without compromising biosecurity on the island of Ireland.

We have also confirmed, as has been the case since 1 January 2021, that there is no requirement for traders moving agri-food goods through ports in Northern Ireland to be charged for the use of those facilities, recognising the unique context of Northern Ireland

These are temporary, practical measures that allow discussions to continue without the threat of significant disruption in areas - like food supplies and parcel deliveries - that are hugely important to lives and livelihoods. This is entirely in line with the aim of the Protocol to minimise its impact on day-to-day lives in Northern Ireland.

Other legislation

Baroness Bennett of Manor Castle asked for an update on the progress of the Environment Bill. The Environment Bill will be carried over to the Second Parliamentary Session. The Covid-19 pandemic has resulted in exceptional pressure on the Parliamentary timetable which has reduced the amount of Parliamentary time available for the scrutiny of legislation. However, the government remains fully committed to the Bill, with Report Stage recommencing early in the Second Session and Royal Assent expected in the Autumn.

Key work on implementing the Bill's measures will continue at pace, including establishing the Office for Environmental Protection, setting long-term legally-binding targets for environmental protection and introducing a new Deposit Return Scheme for drinks containers which Defra is currently consulting on. In addition, the public consultation on the Environmental Principles Policy Statement was launched on 10 March 2021, and we continue to engage stakeholders and other departments on this key document.

Baroness McIntosh of Pickering asked for assurances regarding self-sufficiency and food security. The UK's high degree of food security is built on access to a range of sources including robust supply chains across a range of countries, in addition to strong domestic production. Our self-sufficiency is only, and has only ever been, one part of our food security. We supplement our excellent produce with exotic fruits and other products that are difficult to grow and rear here.

I hope noble Lords find this information helpful. I am copying this letter to all noble Lords who took part in the debate and I shall be placing copies in the Libraries of both Houses.

*Yours ever,
John*