Direct Payments to Farmers (Legislative Continuity) Bill

Law Society of Scotland briefing for second reading in the House of Commons

January 2020

Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

We welcome the opportunity to comment on the Direct Payments to Farmers (Legislative Continuity) Bill which was introduced on 9 January 2020. The Bill awaits second reading. We have the following comments to put forward for consideration.

General remarks

We welcome the introduction of this Bill which gives the Secretary of State and devolved administrations powers to administer Direct Payments to farmers for the 2020 scheme year. This will help to ensure continuity and stability for farmers across the UK following the UK's withdrawal from the EU.

Article 137(1) of the Withdrawal Agreement[1] disapplies the Common Agricultural Policy (CAP) Direct Payments legislation[2] in the UK for the 2020 claim year (except for Article 13 which is the state aid exemption). This disapplication will take effect when the UK leaves the EU at 11pm on 31st January 2020. The CAP Direct Payments are paid in arrears and so payments for the 2020 claim year will be funded from the EU's 2021 budget[3].

The Bill's Explanatory Notes conclude "that without new legislation, HM Government and the devolved administrations (DAs) cannot continue to make Direct Payments to farmers for the 2020 claim year. The scheme will have no basis in law." [4] We therefore welcome the intention of this Bill to facilitate the

[1] https://www.gov.uk/government/publications/new-withdrawal-agreement-and-political-declaration
[2] Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009.
[3] Explanatory Notes, paragraph 11.
[4] Paragraph 12.

continuing provision of financial support by way of Direct Payments to farmers in the UK for the 2020 claim year.

We recognise that time is short for the passage of this Bill. Section 5 of the Bill will come into force on exit day and the other provisions of the Bill will come into force on the day on which the Bill is passed. The opportunity for scrutiny of this legislation will therefore be restricted. While the Bill is limited in scope and the provisions of sections 1 – 4 seek only to address a legislative gap which would otherwise be created, there is a risk that scrutiny may give way to speed. It is important that the law is clear, coherent, and effective and therefore engagement with stakeholders and the devolved administrations is important to ensure that the legislation is robust and appropriately framed.

Comments on the Bill

Clause 1 of the Bill provides for the incorporation of the existing EU law in relation to Direct Payments for the 2020 claim year into domestic law on exit day. Clause 1(6) provides that, in respect of the 2020 claim year, the direct payments legislation is to be treated as if it had formed part of domestic law from the "beginning of 2020". As referred to above, we welcome the clarity and continuity which this provision provides. We consider that there would be merit in clarifying in the Bill what is meant by the "beginning of 2020" – '1 January 2020 at 00.01' would be a suitable alternative.

Clause 3(1) provides the Secretary of State with the power to make secondary legislation to fix any deficiency or failure in retained EU law governing the CAP direct payment schemes that arises from EU exit, or to keep pace with any changes made to the CAP direct payments scheme by the EU for the 2020 claim year. The Secretary of State must obtain the consent of the devolved administrations before making UK-wide regulations (clause 3(2)).

Clause 3(3) gives the same powers as those in section 3(1) to the devolved authorities.

The powers provided for in clauses 3(1) and (3) will help to ensure that the law operates effectively.

Clause 3(8) provides that the powers under 3(1) and 3(3) will expire after 31 December 2020. This does not affect the continuation of regulations made before that date. This sunset provision is appropriate given the Bill is intended to allow for the continuation of Direct Payments to farmers for the 2020 claim year only.

Clause 5 of the Bill supports the implementation of the recommendations of the Bew Review which reported in 2019[5]. The review concerned levels of direct payments to the constituent parts of the UK and the way in which funding is allocated. The Government accepted the recommendations of the Review, including a recommendation that "the convergence element of the 2020-22 farm support budget be

[5] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/829757/intra-allocation-uk-review.pdf

allocated according to the proportion of land in each part of the UK that in 2013 received less CAP funding per hectare than the EU average."

Section 5 allows the Secretary of State to "increase the total maximum amount of direct payments that could otherwise be granted in relation to the claim year 2020" which will ensure the current national and net ceilings are not breached by the allocation of these funds.

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