

POLICY NOTE

THE COMMON AGRICULTURAL POLICY (CROSS-COMPLIANCE) (SCOTLAND) REGULATIONS 2014

SSI 2014/325

The above Instrument is made in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972. The Instrument is subject to negative resolution procedure.

Background

The Common Agricultural Policy (CAP) reform agreement of June 2003 recognised that farmers have important responsibilities towards the protection of the environment, animal health and welfare and public health. In order to deliver these public benefits it was agreed that beneficiaries in receipt of certain support payments from CAP (mostly farmers, but also beneficiaries of some rural development schemes) (referred to in this policy note, for ease, as “farmers”) have to meet certain mandatory conditions. Collectively these conditions are known as cross compliance.

There are two elements to cross compliance; Statutory Management Requirements and Good Agricultural and Environmental Condition.

- The Statutory Management Requirements (SMRs) are based on existing European regulatory requirements which are implemented in the same way in all Member States.
- Good Agricultural and Environmental Condition (GAEC) is a set of standards based on a framework in the European Union rules to address land and water related issues. Member States have the flexibility to define minimum requirements at a regional level for each standard taking into account; soil and climatic conditions, existing farming systems, land use, crop rotation, farming practices and farm structures.

The CAP reform agreement of June 2013 implemented by Regulation (EU) No 1306/2013 carries forward the principle that farmers in receipt of support payments have to deliver a range of public benefits under cross compliance. Annex II of (EU) No 1306/2013 sets out the SMRs and provides a revised GAEC framework to address the following issues: water, soil and carbon stock and the landscape.

The new CAP (arising out of the agreement of June 2013) has effect from 1 January 2015 and this Instrument will have effect from that date.

Policy Objectives

The Instrument seeks to implement two main policy objectives.

First of all, it makes provision for the administration and enforcement of cross compliance in Scotland. Scottish Ministers are designated by the Instrument as the competent control authority for cross compliance, bearing responsibility for carrying out controls and checks in relation to cross compliance requirements or standards. The Instrument also enables SEPA (Scottish Environment Protection Agency) to carry out controls. The regulations also give the Scottish Ministers (in practical terms, the Rural Payments and Inspections Division) and SEPA powers of entry onto land to carry out inspections as well as other powers to enable those inspections to be carried out. A criminal offence is created if a farmer obstructs an inspector in the course of his or her duties, fails to provide an inspector with reasonable assistance or provides knowingly false or misleading information. Following a conviction the level of fine will not exceed level 3 on the standard scale (£1000).

Second of all, due to the flexibility given to Member States to define GAEC standards, the Instrument, in its Schedule, defines a new set of Scottish minimum standards in accordance with the framework given in the European Union rules. The Schedule lists 7 GAEC standards. Often the requirements do not ask more than to meet existing legislation or follow 'common sense' farming practice. Most farmers will already be meeting many requirements. Taking each of the GAEC standards in order:

Water

GAEC 1 - Establishment of buffer strips along watercourses

Requirements to restrict cultivations and the application of fertilisers and pesticides along watercourses and other water bodies.

GAEC 2 - Abstraction of Water for Irrigation

Where water is used for irrigation farmers must comply with the authorisation procedures for abstracting water found in the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (SSI 2011/209) ("the 2011 Regulations").

GAEC 3 - Protection of Groundwater against pollution

Farmers must not carry out or permit an activity which is likely to cause pollution of groundwater by a discharge of any of the hazardous substances listed in the Schedule to the Instrument without the appropriate authorisation under the 2011 Regulations. Where an authorisation to dispose a hazardous substance (e.g. waste sheep dip) has been granted farmers must comply with the conditions of the authorisation.

Soil and carbon stock

GAEC 4 - Minimum soil cover

After harvest until the end of winter farmers must either retain the stubble of the previous crop or sow a suitable cover, unless due to agronomic or weather conditions, sowing a cover would be detrimental to the use of the land for agricultural production, or the land is being prepared for sowing the subsequent crop.

GAEC 5 - Minimum land management reflecting site specific conditions to limit erosion

Farmers must prevent the erosion of the banks of water courses, watering points and feeding areas from overgrazing or heavy poaching by livestock.

In the case of late harvested crops where agronomic or weather conditions prevent the subsequent crop or a cover from being sown farmers must put in place measures to limit soil erosion.

GAEC 6 - Maintenance of soil organic matter

Arable stubble must not be burned except for the purposes of disease control or the elimination of plant pests.

Muirburn must be carried out in accordance with the requirements of regulation 25(b) and (d) of the Hill Farming Act 1946.

Rough grazing or semi-natural land must not be ploughed unless approval is granted in the course of an Environmental Impact Assessment.

GAEC 7 – Retention of landscape features

Farmers must not remove or destroy the following landscape features without prior written consent of the Scottish Ministers; hedges (including part of a hedge), drystone or flagstone dykes, turf and stone-faced banks, walls, watercourses, ponds and trees.

Farmers must not cut/trim hedges or lop branches off trees during the bird nesting and rearing season starting 1 March and ending 31 August in any calendar year (there is an exemption for road safety reasons).

There are requirements to restrict cultivations and on the application of fertilisers and pesticides along hedgerows.

Farmers must not alter, damage or destroy Scheduled monuments compiled and maintained under the Ancient Monuments and Archaeological Areas Act 1979.

Appeals Regulations

The Schedule to the Rural Payments (Appeals) (Scotland) Regulations 2009 (SSI 2009/376) defines the Relevant Decisions of the Scottish Ministers under CAP which farmers can appeal against. The Instrument makes a consequential amendment to the Rural Payments (Appeals) (Scotland) Regulations 2009 to ensure that any decisions of the Scottish Ministers to refuse, reduce or recover support payments made in relation to the Instrument are considered a Relevant Decision.

Consultation

Following publication of the European Commission's draft legislative proposals, Scottish Ministers undertook a public consultation exercise which ran from 17 December 2013 to 29 March 2014.

Impact Assessments

No equality impact assessment has been prepared for this instrument as there are no equalities impact issues.

Financial Effects

Richard Lochhead Cabinet Secretary for Rural Affairs and the Environment confirms that no BRIA is necessary as the instrument will not lead to costs or savings for business, third or public sector organisations, regulators or consumers.

Scottish Government
Agriculture, Food and Rural Communities Directorate
Rural Payments and Inspections Division

November 2014