

POLICY NOTE

THE RURAL PAYMENTS (APPEALS) (SCOTLAND) REGULATIONS 2015

SSI 2015/194

Introduction

1. The above instrument was 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. It was laid before the Scottish Parliament on 14 May 2015 and will come into force on 12 June 2015.

Background

2. The Agriculture Council and the European Parliament reached a political agreement about the reform of the Common Agricultural Policy (CAP) in June 2013. The Policy has been updated regularly since it began in 1957 and reform and change are important to help ensure that agriculture and rural communities are given the support they need to respond to the challenges they face now and in the future.

3. In Scotland in 2015, the new Common Agricultural Policy (CAP) period began in earnest, with the start of Direct Payments under Pillar 1 and Scottish Rural Development Programme (SRDP) schemes under Pillar 2. Through Direct Payments, more than £3.3 billion will be injected into Scotland's agricultural sector during the period 2014-2020. There is a budget of over £1.35 billion to support the priorities of the SRDP.

4. As a result of the various administrative and on-site inspections that Scottish Government officials must undertake to ensure that eligibility criteria and conditions or obligations for granting Pillar 1 or Pillar 2 aid or support are being complied with by beneficiaries, it is sometimes necessary to refuse, reduce or recover payments due or already made to those beneficiaries, or to impose administrative penalties. On the Pillar 1 side, in particular, decisions will also be taken by the Scottish Ministers in respect of the allocation, refusal, withdrawal or recovery of payment entitlements in accordance with the EU rules. In respect of the new CAP, the powers for these inspections and any resultant decisions and any decisions on payment entitlements derive largely from the EU rules themselves, most significantly, Regulation (EU) No 1306/2013 and Regulation (EU) No 1307/2013.

5. When such decisions are taken by the Scottish Ministers, some of those affected may wish to challenge those decisions. These Regulations provide for those beneficiaries to be able to request a review of the decision. If their review is unsuccessful, a right of appeal of the decision is provided for to the Scottish Land Court.

6. The Schedule lists the decisions which are subject to the right of review and appeal. Some of those decisions are in relation to the new CAP programme in respect of certain agricultural and other rural grant awards and payments. Some of the decisions are in relation to legacy schemes of previous CAP programmes where the commitments under these schemes continue to apply – see the Schedule, paragraphs 10 to 22.

7. Paragraph 7 of the Schedule provides for decisions under regulation 17 of the Rural Development (Scotland) Regulations to be subject to review and appeal. Those Regulations were laid in the Scottish Parliament on the same day as these Regulations and will also come into force on 12th June 2015.

Policy Objectives and Stakeholder Engagement

8. The policy objective is to ensure that Scottish farmers and producers have the opportunity to be heard at a review and have a right of appeal against CAP decisions taken by Scottish Ministers.

9. These Regulations revoke the Rural Payments (Appeals) (Scotland) Regulations 2009 (S.S.I. 2009/376) (the 2009 Regulations) (subject to savings – see below). The 2009 Regulations set out a two stage process for review and appeal in respect of the previous CAP. Procedurally the substance of the 2009 Regulations is largely being re-enacted by these Regulations and given that these Regulations are being introduced to continue to protect the beneficiaries of support or aid, it was deemed not necessary to discuss this legislative change with stakeholders, other than with the Scottish Land Court. However, there has been substantial stakeholder engagement on the substance of the new Pillar 1 and Pillar 2 rules.

10. Further, this new legislation implements Recommendation 23 of the 2014 Pack Report - Doing Better Initiative to reduce Red Tape for Farmers & Rural Land Managers. Under the 2009 Regulations, the beneficiary of aid or support had 30 days following the date of the Scottish Minister's decision letter to make an application for a review, and complete other actions in respect of the review and appeals process. In contrast, the Scottish Ministers, had 60 days in which to undertake each of their steps in the review and appeal process. In line with that Pack Report recommendation, these Regulations equalise timescales so that both the Scottish Ministers and the beneficiary have 60 days in which to act.

Effect of Instrument

11. As above, the effect of this instruments is to provide for a right of review and appeal for beneficiaries of aid or support under the new CAP or legacy schemes under a previous CAP in order that decisions by the Scottish Ministers to reduce, refuse, recover or withhold support or to impose penalties or in respect of Pillar 1 payment entitlements, are subject to review. They also make provision for appeal and review in relation to legacy schemes. However, the 2009 Regulations as in force before the coming into force of the new instrument will continue to apply and have effect in relation to a review or appeal under those Regulations and in respect of which the date of the decision letter is before the 12 June 2015.

Impact Assessments

12. A Business and Regulatory Impact Assessment (BRIA) is not required for this amending legislation as no impact upon business, charities or voluntary bodies is foreseen.

Financial Effects

13. None.

Alistair Henry Directorate for Agriculture, Food and Rural Communities 8 May 2015.