

POLICY NOTE

THE COMMON AGRICULTURAL POLICY (DIRECT PAYMENTS ETC.) (SCOTLAND) AMENDMENT REGULATIONS 2015

SSI 2015/215

Introduction

1. The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to negative resolution procedure. It was made on 26 May 2015, laid before the Scottish Parliament on 28 May 2015 and certain of its provisions will come into force on 1 June 2015, namely regulations 2 and 3, and the remainder on 27 June 2015.

Non-compliance with 28-Day Laying Period

2. Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 has not been complied with in respect of regulations 2 and 3, which extend deadlines (from 15 May to 15 June) to allow more time for farmers to submit their applications for subsidy under the Common Agricultural Policy (CAP) in 2015.

3. The Scottish Ministers recognise that this is an exceptional but necessary step because the Instrument could not be made until Commission Implementing Regulation (EU) 2015/747 (derogating from Regulation (EU) No 809/2014) (the Commission Implementing Regulation) came into force on 12 May 2015. It was not possible, therefore, to bring the relevant provisions of this Instrument into force before 15 May 2015, but for reasons of transparency and in order to provide legal certainty for farmers, land managers and agents, it was deemed necessary to do so as soon as reasonably possible after 15 May: that is 1 June 2015. Land managers, farmers, and agents have all been made aware through administrative means of the extensions to the deadlines through revised guidance, giving prominence to the change on the Scottish Government CAP website, and liaison with representative farming bodies.

Background

4. The Agriculture Council and the European Parliament reached a political agreement about the reform of the CAP in June 2013. A new direct payments system for farmers replaced the Single Payment Scheme (SFPS) from 1st January 2015 through a revised legislative framework. The new CAP is set out in European Regulations in a series of basic acts (“the Relevant EU Regulations”);

- Regulation (EU) No 1306/2013 of the European Parliament and of the Council;
- Regulation (EU) No 1307/2013 of the European Parliament and of the Council; and
- Regulation (EU) No 1305/2013 of the European Parliament and of the Council.

5. There are also a number of Commission delegated and implementing Regulations supplementing these basic acts. Certain provisions of this European regulatory framework are directly applicable but it also affords some discretion to Member States to adapt some of the arrangements for the implementation of the schemes to their own particular circumstances. As agriculture is a devolved matter and in light of the public engagement

undertaken, the Scottish Ministers have already made certain decisions about how the direct payments regime will be implemented and these were given effect through the Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015 (S.S.I. 2015/58) (“the principal Regulations”). This Instrument amends the principal Regulations.

6. This amending instrument primarily makes provision in Scotland for:-

6.1 the exercise of derogations in respect of deadlines for relevant applications applicable to calendar year 2015, in accordance with Articles 1 and 3 of the Commission Implementing Regulation as regards;

6.1.1 the final date of submission of the single application, aid applications or payment claims; and

6.1.2 the final date for applications for the allocation of payment entitlements or the increase of the value of payment entitlements;

6.2 the removal of the requirement for specific species of grass (as an under-sown crop) as part of compliance with the requirements on a farmer who chooses to establish areas under catch crops to meet his Ecological Focus Area obligations; and

6.3 the implementation, as a matter of discretion exercised by the Scottish Ministers, of voluntary coupled support schemes within the setting of Regulation (EU) No 1307/2013.

7. This amending Instrument also makes provisions to amend the Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014 (S.S.I. 2014/325, as amended by S.S.I. 2015/58). This is necessary to relax the standards for good agricultural and environmental condition in respect of buffer strips and retention of landscape features for those farmers who had sown crops before 1 January 2015 and who would otherwise be expected to observe more onerous conditions.

Outline of Changes to the Direct Payment Scheme

8. The amendments to the the principal Regulations made by regulations 2 and 3 of this Instrument are required to make provision for the exercise of derogations in respect of deadlines for relevant applications under the CAP applicable to calendar year 2015, in accordance with Articles 1 and 3 of the Commission Implementing Regulation.

9. Regulation 6 of the principal Regulations states that the final date for submission of a single application, aid application, or payment claim for aid or support under the CAP to the Scottish Ministers is 15th May in each calendar year. Regulation 9(3) of the principal Regulations also sets 15 May in each calendar year as the final date of submission of applications for the allocation of payment entitlements under the CAP.

10. Articles 1 and 3 of the Commission Implementing Regulation permit Member States to fix new deadlines in respect of these two aspects of the CAP in relation to 2015. The new CAP is extremely complex and Member States have had some difficulty in their practical implementation of payment schemes and rural development schemes under it. In recognition of that fact, it was considered appropriate to offer applicants more to time to submit applications for support or aid, or for allocation of or increase in value of payment entitlements under the CAP. Articles 1 and 3 permit Member States to fix new deadlines up

to and including the 15 June. The Instrument accordingly amends the two deadlines from 15 May to 15 June, for 2015 only. The deadlines for subsequent calendar years remain 15 May.

11. Regulation 6 amends regulation 18(5)(a) of the principal Regulations in order to closer align the requirement in respect of under-sown grass in areas with catch crops to normal farming practice, by replacing “under sowing perennial rye grass (*Lolium perenne*) or Italian rye grass (*Lolium multiflorum*)” with “under-sowing grass”.

Outline of Voluntary Coupled Support Arrangements

12. The term ‘direct payments’ refers to the total amount available for direct support to farmers that will be delivered through a number of funding streams. The support an eligible farmer will receive will be made up of a number of elements as set out in the principal Regulations. The principal Regulations did not include provision on payments under voluntary coupled support (VCS) schemes for the beef and sheep sectors because the Scottish Ministers intended that implementation should occur later in 2015. The VCS schemes have different eligibility criteria, application periods, and obligations compared to the Schemes currently provided for in the principal Regulations. Hence these VCS support arrangements being set out in this amending Instrument by inserting new Schedules 3 and 4 into the principal Regulations.

13. The VCS scheme for beef producers to be known as the Scottish Suckler Beef Support Scheme, will give direct support to specialist beef producers. It has an annual budget of €44.6 million (£31.7 million at current exchange rate). Payments in sterling will depend on the exchange rate in force at the time.

14. The scheme year will run from 1 January to 31 December each year of the CAP and result in a premium payable on male and female calves that are genetically at least 75 per cent beef bred, born on a Scottish holding and kept on that holding for 30 days. In return for support, farmers will be expected to observe specific requirements of the Cattle Identification (Scotland) Regulations 2007 and co-operate with inspections undertaken by the Scottish Government Rural Payments and Inspections Division (see regulation 9 of the principal Regulations and in accordance with the Relevant EU Regulations).

15. The VCS scheme for sheep producers to be known as the the Scottish Upland Sheep Support Scheme will give direct support to help maintain sheep flocks in farm businesses reliant on poorer quality rough grazing found in Scotland’s Basic Payment region three. (Businesses that rely on poor quality rough grazing are defined as those which have 80 per cent or more of their agricultural land in Scotland’s Basic Payment region three and no more than 200 hectares of good quality agricultural land in Scotland’s Basic Payment region one.) It has an annual budget of €8 million (£5.7 million at current exchange rates). Payments in sterling will depend on the exchange rate in force at the time.

16. Payments will be made on eligible ewe hoggs born on Scottish holdings and which are retained on the holding of birth (which may include away winterings) from 17 October in the year of claim to 31 March in the following year. The animals must also be less than 12 months old at the start of that retention period. In return for support, farmers in addition must comply with specific requirements of the Sheep and Goats (Records, Identification and Movement) (Scotland) Order 2009 and co-operate with inspections with inspections undertaken by the Scottish Government Rural Payments and Inspections Division (see

regulation 9 of the principal Regulations and in accordance with the Relevant EU Regulations).

Effect of Instrument

12. The Scottish Government has brought forward this secondary legislation to implement appropriate scheme criteria to land in Scotland. It is supplemented by the principal Regulations 2014 Orders under the Scotland Act 1998 (sections 30(3) and 106 Orders) to deal with cross border producers, and the European Integrated Administration and Control System (IACS) protocol between administrations so that the effect of these Orders, secondary legislation and administrative arrangements, will be to allow Scottish Ministers to apply Scottish rules to Scottish land, and, with advice from the respective administrations, their rules to their land for cross-border producers.

Impact Assessments

13. A Business and Regulatory Impact Assessment (BRIA) is being undertaken and is expected to be completed before the instrument comes into force. An assessment could not have been completed in advance because the latest deadline for notification of decisions was 31 January 2015 and stakeholder engagement could not have been undertaken whilst these decisions were pending. A partial BRIA was completed at the time of the public consultation and was published on the Scottish Government website and can be assessed using this link:- <http://www.scotland.gov.uk/Resource/0044/00440744.pdf>

14. It terms of the assessment of the impact of the implementation of the reformed CAP in Scotland, on people with 'protected characteristics' (age, disability, sex, gender reassignment, race, religion or belief, sexual orientation) an Equality Impact Assessment has been undertaken and can be accessed using the following link:- <http://www.scotland.gov.uk/Topics/People/Equality/18507/EqualityImpactAssessmentSearch>

Financial Effects

15. The Schemes covered by this instrument will contribute to enabling the Scottish Ministers to pay around £450 million per annum.

Scottish Government Rural Payments and Inspections Division

26 May 2015