

POLICY NOTE

THE COMMON AGRICULTURAL POLICY (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2018

SSI 2018/122

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 and laid before the Scottish Parliament on 16 April 2018 and its provisions come into force on 15 May 2018.

Background

2. This instrument primarily makes provision in Scotland for the implementation of Regulation (EU) No 2017/2393 of the European Parliament and of the Council, referred to as “the Omnibus Regulation”, which applies from 1 January 2018. The Regulation builds on Commissioner Hogan’s commitment to simplify the Common Agricultural Policy (CAP) and includes a series of measures aimed at further simplifying the policy with a view to easing the burden on, and making life easier, for both farmers and national authorities.

3. The Omnibus Regulation amends the following EU Regulations which are the basic acts underpinning the CAP:

- Regulation (EU) No 1305/2013, “the Rural Development Regulation”;
- Regulation (EU) No 1306/2013, “the Horizontal Regulation”;
- Regulation (EU) No 1307/2013, the “Direct Payments Regulation”; and
- Regulation (EU) No 1308/2013, the “Common Market Organisation” Regulation.

These EU Regulations are supplemented by a number of EU delegated and implementing Regulations and those, as well as the basic acts, are implemented in Scotland through a suite of domestic regulations. This instrument primarily makes amendments to those domestic implementing regulations necessary to reflect changes made to the Direct Payments Regulation by the Omnibus Regulation and options the Scottish Ministers may exercise under it. Whilst the Omnibus Regulation applies from 1 January 2018, under the EU rules, applicants have until 15 May in that year, and subsequent Scheme years, to make an application to the Scottish

Ministers in respect of the schemes affected by the amendments made by this instrument.

4. The instrument also makes some changes:
 - to reflect changes made to Commission Delegated Regulation (EU) 639/2014 in respect of the “greening” component of Direct Payments under the Common Agricultural Policy;
 - in relation to the cross-compliance component of Direct Payments under the Common Agricultural Policy (CAP); and
 - in relation to the Less Favoured Area Support Scheme.

Outline of Changes and effect of the instrument

5. The instrument amends the following domestic regulations-
 - the Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015;
 - the Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014; and
 - the Less Favoured Area Support Scheme (Scotland) Regulations 2010.

The amendments made to the Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015 are outlined in the following paragraphs 6 to 13. The amendments made to the Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014 and the Less Favoured Area Support Scheme (Scotland) Regulations 2010 are outlined in paragraphs 14 and 15.

6. The definitions of “arable land” and “permanent grassland” are amended to align to the revised definitions and options provided by the Omnibus Regulation. Where fallow land has, prior to 1 January 2018, been accepted as arable land it can continue to be accepted as arable land, however, from 2023 it must be considered permanent grassland if it meets the basic criteria, at that point, to be considered as such. The amendment makes clear that land that has not been ploughed up for 5 years or more, is used to grow grasses or other herbaceous forage and has not included in the crop rotation for 5 years or more is to be considered permanent grassland . It also includes, from 2023, land which was fallow and accepted as arable but has become permanent grassland.

7. In addition to the mandatory payment reduction of 5 per cent on all Basic Payment Scheme (BPS) payments in excess of €150,000, the Scottish Government opted in 2014 to implement a further cap on BPS payments with effect from scheme year 2018 to reduce amounts in excess of €600,000 by 100 per cent. This additional payment reduction will impact a limited number of businesses (less than 10) and the amounts in excess of the thresholds are transferred to Pillar 2 to fund Rural Development.

8. For scheme year 2018 onwards, the percentage reduction made to the annual unit value of each BPS payment entitlement transferred without land will reduce from 50 per cent to 30 per cent in line with the Direct Payments Regulation. The value of the siphon applied is used to replenish the National Reserve which is used to fund New Entrants and Young Farmers.

9. Under current rules, payments in respect of the Young Farmer Payment (YFP) can be made for a period of up to 5 years, to be reduced by the number of calendar years elapsed since the applicant set up as head of the holding and the date of their first submission of an application for payment. The Omnibus Regulation introduces a change to the YFP whereby payments are to be made for a 5 year period from the date of first submission of an application for payment. A policy decision has been made to apply the derogation provided in the Omnibus Regulation and limit the impact of the change to young farmers setting up from 2014 onwards. The effect is that where a young farmer has set up in the period 2010-2013, the 5 year payment period will continue to be reduced by the number of calendar years which have elapsed between the date of setting up and the date of first submission of an application for payment. The application of the derogation provides better budget stability for Direct Payments 2018-2019.

10. Persons operating airports, railway services, waterworks, real estate services and permanent sports and recreation grounds (“negative list” activities) are no longer automatically barred from receiving Direct Payments and no longer have to satisfy readmission tests to be eligible to receive Direct Payments.

11. In respect of the minimum activity requirements, amendment is made to the definition of “livestock unit” to include farmed stags aged 27 months and over.

12. Amendments are made in respect of the Ecological Focus Areas (EFA) requirements of Greening. These are:

- amendments to reflect field margins no longer counting as an EFA landscape feature but, rather, that they have been merged with EFA buffer strips (see the and the explanation at recital 10 of Commission Regulation (EU) 2017/1155 and the amendments made by that Regulation to Commission Regulation (EU) 639/2014, Article 45(4) and (5));
- introduction of hectares of agro-forestry and hedges, wooded strips and trees in line as EFAs, along with conversion and weighting factors for hedges, wooded strips and trees in line and a weighting factor for areas of agro forestry;
- to allow buffer strips, field margins, hedges, wooded strips and trees in line to be located adjacent to the arable land of the holding as opposed to on the arable land of the holding.
- amends the periods for sowing catch crops and green cover, and the date before which the crops cannot be harvested.
- breaking down the genus clover into red and white clover species for the purposes of green cover crop species mixtures and nitrogen fixing crops species
- permitting, for the purpose of establishing areas with nitrogen-fixing crops as EFAs, mixtures of nitrogen-fixing crops with other crops provided the nitrogen-fixing crops are predominant by weight of seed.

13. The submission date for claims under the Scottish Upland Sheep Support Scheme (SUSSS) is amended from 16 October to 30 November from 2018 onwards. This extends the derogation already applied in relation to the 2017 scheme year by S.S.I 2017/317. In addition, certain Scheme eligibility conditions are amended to align to the amended submission date: the retention period is amended to start on 1 December instead of 17 October and eligible animals must be less than 12 months old on 1 December instead of 17 October.

14. The Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014 make provision in Scotland for the administration and enforcement of the Horizontal Regulation in relation to cross-compliance. The amendments to the Regulations are to reflect domestic policy decisions which are unrelated to amendments made by the Omnibus Regulation to the Horizontal Regulation. The amendments are required to provide:

- clarification on the meaning, and storage, of field heaps;
- that a beneficiary must limit rather than prevent the erosion of the banks of watercourses, at watering points or feeding areas from overgrazing or heavy poaching by livestock; and
- further exemptions to the trimming of hedges and cutting of trees.

15. The amendments made to the Less Favoured Area Support Scheme (Scotland) Regulations 2010 are necessary to make provision for LFASS payments in 2018. Under the Rural Development Regulation, it was intended that LFASS would be replaced in 2018 by a new scheme for payments in respect of areas facing natural or other specific constraints, however, the Omnibus Regulation allows Member States to defer that until 2019.

Impact Assessments

16. No business and regulatory impact assessment has been prepared for these Regulations as no impact upon business, charities or voluntary bodies is foreseen. In 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 was undertaken in 2015 and the findings are still applicable in full. A copy can be accessed using the following link:-

<http://www.scotland.gov.uk/Topics/People/Equality/18507/EqualityImpactAssessmentSearch>

Financial Effects

17. The Direct Payment schemes covered by this instrument will contribute to enabling the Scottish Ministers to pay around €528 (approx. £470) million per annum plus an additional £60 million in respect of the Less Favoured Area Support Scheme (Scotland) (LFASS).

Agriculture and Rural Economy (ARE): Rural Payments and Inspections Division (RPID)

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