

## EXPLANATORY MEMORANDUM TO

### THE COMMON AGRICULTURAL POLICY (CONTROL AND ENFORCEMENT, CROSS-COMPLIANCE, SCRUTINY OF TRANSACTIONS AND APPEALS) (AMENDMENT) (ENGLAND) REGULATIONS 2018

2018 No. 591

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

#### 2. Purpose of the instrument

- 2.1 These Regulations amend The Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 [SI 3263/2014] (“the Control Regulations”). They extend the deadline for farmers and land managers to submit payment claims under the Rural Development Programme for England (RDPE). The extension applies only to 2018 payment claims for area based support in respect of Countryside Stewardship agreements.
- 2.2 These Regulations require payment claims for 2018 under the relevant rural development land based scheme to be made by 15 June 2018.
- 2.3 These Regulations do not extend the deadline for holders of Environmental Stewardship, Habitat Scheme, English Woodland Grant Scheme and the Farm Woodland Premium Scheme agreements. They also do not extend the deadline for the Basic Payments Scheme. These deadlines remain 15 May.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 The Regulations have been drafted to come into force on the day after the day on which they are made and exceptionally they are therefore in breach of the 21 day rule for making instruments by negative resolution. The reasons for this are as follows:
  - These Regulations could not be made until the European Commission Implementing Regulation (EU) 2018/701<sup>1</sup> (“EU Implementing Regulation”) came into force on 14 May 2018. Article 1 of the Implementing Regulation allows Member States to fix new deadlines, up to 15 June, for the submission of payment claims in 2018.
  - The Department considered it essential to make and commence these Regulations before expiry of the existing deadline (15 May) in order to

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<sup>1</sup> COMMISSION IMPLEMENTING REGULATION (EU) 2018/701 of 8 May 2018 derogating from Implementing Regulation (EU) No 809/2014 as regards the final date of submission of the single application, aid applications or payment claims, the final date for notification of amendments to the single application or payment claim and the final date for applications for allocation of payment entitlements or the increase of the value of payment entitlements under the basic payment scheme for the year 2018

provide legal certainty to farmers, land managers and agents. Delaying the legislation to comply with the 21-day rule would result in a period of legal uncertainty and potential confusion for those claimants with Countryside Stewardship agreements who have yet to submit a claim.

- The Department considers it essential to avoid any such uncertainty, particularly given that there are financial penalties attached to the late submission of claims.

#### *Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

#### **4. Legislative Context**

- 4.1 The RDPE implements Pillar 2 of the Common Agricultural Policy (CAP). The legislative framework of the RDPE is set out in European Regulations and in the Statutory Instrument, SI 3263/2014. The programme is approved by the Commission under Regulation (EU) No 1305/2013 of the European Parliament and of the Council<sup>2</sup>.
- 4.2 Area-based payments are made through agri-environment and forestry measures set out in Regulation (EU) 1305/2013 following submission of a payment claim made by the farmer or land manager concerned.
- 4.3 The legal basis for the submission of payment claims is in Article 72 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council<sup>3</sup>. There are also a number of delegated and implementing Commission regulations supplementing Regulation 1306/2013. While the European Regulations are directly applicable, they afford some discretion to Member States to adapt some of the arrangements for the implementation of the schemes to their own particular circumstances.
- 4.4 Article 13 of Commission Implementing Regulation 809/2014<sup>4</sup> requires Member States to fix the deadline for submitting rural development area based payment claims (as well as applications relating to other CAP schemes), leaving them some discretion as to when that date should be fixed. However, they provide that the deadline set by Member States may not be later than 15 May in any given year.
- 4.5 The deadline for England is set out in the Control Regulations, which make supplementary provision for the administration and enforcement of the CAP in England.
- 4.6 The new EU Implementing Regulation now permits Member States to extend the claim deadlines, for the year 2018 only, to 15 June 2018. It is necessary to amend the

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<sup>2</sup> REGULATION (EU) No 1305/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005

<sup>3</sup> REGULATION (EU) No 1306/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008

<sup>4</sup> COMMISSION IMPLEMENTING REGULATION (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance

Control Regulations in order to give effect to the decision to extend the deadline in England, for a particular category of payment claim.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England only.

## **6. European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### *What is being done and why*

- 7.1 The RDPE includes measures to improve the natural environment; increase the productivity and efficiency of farming and forestry businesses; and promote rural economic growth. Funding under the RDPE is generally in the form of grants, including multi-annual area-based payments to farmers and land managers to deliver environmental objectives.
- 7.2 Rural development payments are subject to an initial agreement (between the beneficiary and the Member State) also known as a ‘commitment’, which may last for a number of years. Holders of a multi-annual agreement will submit annual payment claims in relation to that agreement. The submission of payment claims is subject to a deadline which applies to all rural development area-based schemes (including what is known in England as the Countryside Stewardship scheme). Late submission of a payment claim is subject to a financial penalty.
- 7.3 Recognising that some Member States have experienced difficulties in implementing changes to their administrative systems, which caused delays potentially impacting on the ability of applicants to meet existing regulatory deadlines, the European Commission has adopted an Implementing Regulation giving Member States the option of extending the key deadlines in the 2018 claim year.
- 7.4 The Government has decided to extend the 2018 deadline for submitting a payment claim in England, in so far as the payment claim relates to a Countryside Stewardship agreement which takes effect from 1 January 2016, 1 January 2017 or 1 January 2018.
- 7.5 Decisions about the deadlines that apply in Northern Ireland, Scotland and Wales fall to the Devolved Administration concerned.

### *Consolidation*

- 7.6 This instrument amends the Control Regulations. The Department currently has no plans to consolidate the legislation.

## **8. Consultation outcome**

- 8.1 The Commission announced its proposal to extend CAP deadlines on 25 April 2018 and confirmed its intention on 26 April 2018. The Government needed to react quickly to the development. Carrying out a formal consultation would have protracted the decision, which provides certainty to farmers and land managers with existing

Countryside Stewardship agreements, and for new applicants who have applied for a Countryside Stewardship agreement starting in 2018.

- 8.2 The Department was able to discuss the matter informally with key stakeholders. Stakeholders were, and continue to be, supportive of the extension as it gives extra flexibility for farmers and land managers, particularly given that Natural England were still issuing some remaining Countryside Stewardship agreements for 2018 in early May.
- 8.3 The extension is also being applied to all Countryside Stewardship agreements as claimants with agreements starting in 2016 or 2017 will be less familiar with the system and will therefore benefit from the additional time to submit payment claims. The extension is not applied to the 2018 Basic Payment Scheme claims.

## **9. Guidance**

- 9.1 The change in application dates has been advertised on GOV.UK and in discussion with stakeholders. The new deadline for farmers and land managers to submit applications for payment was contained in correspondence sent from 9 May to farmers and land managers receiving a Countryside Stewardship 2018 agreement offer and to all existing Countryside Stewardship agreement holders, including those who have not yet submitted a payment claim.

## **10. Impact**

- 10.1 The impact on business, charities or voluntary bodies is advantageous in extending the time available for farmers and land managers to submit payment claims without incurring a penalty.
- 10.2 The impact on the public sector primarily relates to Natural England. The change to the deadlines does not materially alter the number of claims that Natural England is likely to receive from farmers and land managers but provides for a smoother implementation by allowing extra time for Natural England to receive payment claims.
- 10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to seek to implement the CAP regulations in a way that is simple, affordable and effective. The deadline extension should ease the claims process and reduce the risk of financial penalty for a late claim for many farmers and land managers in 2018.

## **12. Monitoring & review**

- 12.1 The Department will monitor and review the impact of the provisions in the Statutory Instrument as part of its standard business as usual policy-making.

### **13. Contact**

- 13.1 Peter Ogden at the Department for Environment, Food and Rural Affairs Telephone: 0208 026 3874 or email: [Peter.Ogden@defra.gsi.gov.uk](mailto:Peter.Ogden@defra.gsi.gov.uk) can answer any queries regarding the instrument.