

EXPLANATORY MEMORANDUM TO

THE COMMON AGRICULTURAL POLICY (CONTROL AND ENFORCEMENT, CROSS-COMPLIANCE, SCRUTINY OF TRANSACTIONS AND APPEALS) (CORONAVIRUS) (AMENDMENT) (ENGLAND) REGULATIONS 2020

2020 No. 477

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“Defra”) 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 This instrument amends the Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 (“the Control Regulations”).¹ It extends the application deadline for Direct Payments for 2020 and the 2020 payment claim deadline for Countryside Stewardship (“CS”), Environmental Stewardship (“ES”) and woodland grant schemes (“WGS”)² from 15 May to 15 June to help farmers and land managers who are feeling the impact of Covid-19.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument has been drafted to come into force on 15 May and is therefore in breach of the 21-day rule for making instruments by negative resolution. The reasons for this are as follows:
 - This instrument had to be introduced urgently as a direct response to Covid-19 in order to mitigate the impact of Covid-19 on the farming sector;
 - This instrument needs to come into force before the existing 15 May application and payment claim deadline. This will allow Defra to accept applications and claims after this time and prevent legal uncertainty for those land managers who have not yet submitted their applications or claims. Defra considers it essential to avoid any such uncertainty, particularly given that there are financial penalties attached to the late submission of claims;
 - Defra could not extend the deadline in relation to aid applications and payment claims until the European Commission had legislated to allow the derogation. The derogating Regulation was brought into force on 6 April 2020; and
 - This instrument could not be laid until the Direct Payments to Farmers (Legislative Continuity) Act (Consequential Amendments) Regulations 2020 (“the Consequential Amendments Regulations”) had come into force on 30 April. This is because the Direct Payments deadline change is made under

¹ <http://www.legislation.gov.uk/uksi/2014/3263/contents>

² Farm Woodland Scheme, Farm Woodland Premium Scheme and English Woodland Grant Scheme

powers in the Direct Payments legislation which was incorporated into domestic law on exit day. The Consequential Amendments Regulations make amendments to ensure that Regulations made under those powers are treated in the same way as regulations made under powers in retained EU law under the European Union (Withdrawal) Act 2018;

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As this instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 CS, ES and the WGS operate as part of the Rural Development Programme for England, which comes under Pillar 2 of the European Union's ("EU") Common Agricultural Policy ("CAP"). Commission Implementing Regulation (EU) 809/2014 ("Regulation 809/2014")³ states that there must be a set deadline for annual payment claims and that this may be no later than 15 May. The annual payment claim deadline in England is set as 15 May in the Control Regulations.
- 6.2 In order to mitigate the impact of Covid-19 on CAP funding recipients the Commission published a derogating regulation on 6 April 2020 allowing the current deadlines to be extended to 15 June for 2020.⁴ This derogating regulation allows Member States to extend the payment claim deadline for CS, ES and the WGS to 15 June and the application deadline for Direct Payments to 15 June, to give farmers and land managers more time. The vast majority of CS, ES and WGS agreement holders also apply for Direct Payments and are used to the payment claim and application deadlines being the same, so retaining a 15 June deadline across all these schemes helps avoid confusion.
- 6.3 Direct Payments made for 2020 will be domestically funded and operate under domestic legislation (retained EU law) because of the UK's withdrawal from the EU. The application deadline is currently set as 15 May in the Control Regulations and Regulation 809/2014, mirroring the payment claim deadline for CS, ES and the WGS. The Secretary of State can amend the Direct Payments application deadline in Regulation 809/2014 using powers contained in Regulation 1306/2013 which are

³ <http://www.legislation.gov.uk/eur/2014/809/contents>

⁴ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2020.109.01.0008.01.ENG&toc=OJ:L:2020:109:TOC

conferred on the appropriate authority by virtue of the Direct Payments to Farmers (Legislative Continuity) Act 2020 and regulations made under it.⁵

- 6.4 This instrument amends Regulation 5 of the Control Regulations for both rural development and direct payments purposes. Regulation 5 refers to the Horizontal Implementing Regulation and the Horizontal Delegated Regulation. Insofar as the amendments relate to rural development, these terms refer to the EU version of those Regulations. Insofar as the amendments relate to direct payments, the terms refer to the domesticated versions. This is by virtue of the definitions in Regulation 2(1) and (1B) of the Control Regulations.
- 6.5 Decisions about the deadlines that apply in Northern Ireland, Scotland and Wales fall to the Devolved Administration concerned.

7. Policy background

What is being done and why?

- 7.1 Direct Payments provides income support directly to farmers. The scheme aims to provide economic growth and stability, encourage farmers to grow a variety of crops, deliver affordable food for consumers, and support farmers into more environmentally-friendly farming practices. It also includes the “young farmer payment” which provides additional financial support for those who are eligible. Farmers must apply into the scheme annually and show that land is being used for either agricultural purposes or “greening” options.
- 7.2 CS and ES are agri-environment schemes, which provide funding for farmers and other land managers to make environmental improvements through activities such as conserving and restoring wildlife habitats and managing flood risk. CS, together with other woodland schemes, such as the Farm Woodland Scheme, also provides funding for creating and managing woodland. The funding is provided through a multiannual agreement and the agreement holder submits a payment claim for each year of their agreement, outlining the work they have carried out and are claiming for that year.
- 7.3 In a standard year the initial application deadline for Direct Payments and the payment claim deadline for CS, ES and the WGS is 15 May.
- 7.4 Applications and payment claims are made to the Rural Payments Agency (“RPA”) for Direct Payments, CS and ES, and to the Forestry Commission (“FC”) for the WGS. The RPA and FC process these claims on behalf of the Government. This instrument extends the initial application deadline for Direct Payments and the payment claim deadline for CS, ES and the WGS to 15 June in 2020, providing farmers and land managers with additional time to submit the necessary paperwork. The purpose of this is to mitigate difficulties arising from Covid-19, such as farmers being unable to complete forms and gather evidence due to illness or meet with agents because of social distancing measures. In line with Government Covid-19 guidance, the RPA has closed offices, meaning that farmers and land managers are unable to hand in correspondence and supporting documents at drop-in centres.

⁵ Article 3 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 allows deficiencies in retained EU law relating to CAP to be remedied. Regulation 14 of The Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020 (<http://www.legislation.gov.uk/uksi/2020/90/made>) amends the power in Article 78 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council (<http://www.legislation.gov.uk/eur/2013/1306/contents>) so that it is conferred on the appropriate authority in the UK.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union or the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 This instrument amends the Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) (England) Regulations 2014. Defra has no intention to consolidate the legislation at this time.

10. Consultation outcome

10.1 Defra has discussed proposals for extending the deadlines for schemes with key stakeholders from the farming sector, the agent community and environmental bodies at weekly meetings in late March and April. Some stakeholders, such as the National Farmers' Union, would prefer that the Government maintains the 15 May deadline, because they are concerned that extending the deadline will cause delays in making Direct Payments from December 2020. Other stakeholders, such as the Central Association of Agricultural Valuers, one of the main agent bodies, have asked for an extension, because they expect significant difficulties in completing applications and claims by 15 May due to issues caused by Covid-19.

10.2 Defra has told stakeholders that it will extend the deadline to 15 June, because it is concerned that not extending the deadline will unfairly disadvantage farmers and land managers making an application or claim. However, to help mitigate the impact of making payments on the RPA, it will continue to urge stakeholders to encourage their members to make the applications as soon as possible and preferably to aim for 15 May.

11. Guidance

11.1 The change in dates will be advertised on GOV.UK and communicated directly to stakeholders. Defra will alert the farming press to the changes and post updates on social media. Defra will also brief RPA helplines and equip them with updated Q&A to respond to any customer queries.

12. Impact

12.1 The impact on business, charities and voluntary bodies is advantageous because it extends the time available for farmers and land managers to submit applications and payment claims for schemes without incurring a penalty.

12.2 The impact on the public sector is in relation to the RPA, which processes the applications and payment claims. The change to the deadlines does not alter the number of applications or claims which the RPA is expected to receive. It may have some impact on when the RPA makes payments, but these should remain within the published period, which for 2020, is from December 2020 to June 2021.

12.3 An Impact Assessment has not been prepared for this instrument because there are no additional costs to businesses, charities, voluntary bodies or the public sector.

13. Regulating small business

13.1 This instrument applies to activities that are undertaken by small businesses.

- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that this instrument extends the period during which applications and payment claims are valid and reduces the risk of financial penalty, which will be advantageous for small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that Defra will monitor and review the impact of the provisions as part of its standard policy-making procedure.
- 14.2 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Victoria Prentis MP, Parliamentary Under of State, has made the following statement:
“A statutory review clause is not appropriate because this instrument amends provisions for the giving of grants by a public authority.”

15. Contact

- 15.1 Jenny Hewlett at Defra Telephone: 02078 955438 or email: jenny.hewlett@defra.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Andrew Robinson, Deputy Director for the Common Agricultural Policy, Direct Payments and Sector Interventions, at Defra can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Victoria Prentis MP, Parliamentary Under Secretary of State at Defra can confirm that this Explanatory Memorandum meets the required standard