EXPLANATORY MEMORANDUM TO

THE COMMON AGRICULTURAL POLICY (AMENDMENT) REGULATIONS 2015

2015 No. 1325

1. 1.1 This explanatory memorandum has been prepared by the Department of 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 two instruments (identified in paragraph 4.3) to extend key Common Agricultural Policy ("CAP") deadlines and allow more time for farmers to submit their applications in 2015. They require applications for direct payments, payment claims under rural development land based schemes, and applications for allocation of payment entitlements to be made by 15 June 2015, for this scheme year. They also extend the deadline to 15 June 2015, for notifying the Rural Payments Agency ("RPA") of the transfer of payment entitlements, and clarify the deadlines for holdings with land in more than one territory (England, Northern Ireland, Scotland or Wales).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Department has taken the exceptional step of bringing these Regulations into force before they are laid. The Regulations have been drafted to come into force on the day after the day on which they are made and are therefore in breach of the 21 day rule for laying instruments by negative resolution. The reasons for this are as follows.

3.2 These Regulations could not be made until the European Commission Implementing Regulation (EU) 2015/747 ("the Implementing Regulation") came into force on 12 May 2015. Articles 1 and 3 of the Implementing Regulation allow Member States to fix new deadlines, up to 15 June, for the submission of applications in 2015.

3.3 The Department considered it essential to make and commence these Regulations before expiry of the existing deadline (15 May) in order to provide legal certainty to farmers, land managers and agents. Delaying the legislation until Parliament returns, or to comply with the 21-day rule, would have resulted in a period of legal uncertainty and potential confusion for those applicants who submitted applications between the 15 May and the date of coming into force of these Regulations. It would also result in uncertainty for farmers whose holdings are in more than one part of the UK, as these Regulations will affect which application deadline such farmers are required to meet. The Department considers it essential to avoid any such uncertainty, particularly given that there are financial penalties attached to the late submission of applications.

3.4 Parliament was dissolved on 30 March 2015, before the Implementing Regulation came into force, and returns on 18 May 2015. In order to bring these Regulations into force before 15 May, the Department was unable to lay them before Parliament in advance of their commencement.

3.5 These Regulations were therefore brought into force on 15 May, before they were laid; accordingly we have written to the Lord Speaker on 14 May and will write to the Speaker of the House of Commons, when the Speaker of that House is elected, to notify them and explain why copies of these Regulations were not laid before they came into operation. The Regulations will be laid before Parliament at the earliest opportunity.

4. Legislative Context

4.1 The CAP is the system of agricultural subsidies and programmes which covers farming, environmental and rural development measures and controls EU agricultural markets. It is the EU's single largest common policy and accounts for over 40% of the EU budget. The CAP was introduced in 1962 and has undergone several reforms since then. The latest reform is the new CAP which starts from 1 January 2015 (some changes to market management measures had already been introduced) and seeks to strengthen the competitiveness and the sustainability of agriculture in Europe.

4.2 Most of the legislative framework of the new CAP is set out in European Regulations. The relevant overarching basic acts are Regulation (EU) No 1306/2013 of the European Parliament and of the Council[1], Regulation 1307/2013 of the European Parliament and of the Council[2], and Regulation 1305/2013 of the European Parliament and of the Council[3]. There are also a number of delegated and implementing Commission regulations supplementing the basic acts. 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. Article 22(1) of Commission Implementing Regulation 641/2014[4] and

[1] 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

[2] REGULATION (EU) No 1307/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 december 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009

[3] 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

[4] COMMISSION IMPLEMENTING REGULATION (EU) No 641/2014 of 16 June 2014 laying down rules for the application of Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy

Articles 8 and 13 of Commission Implementing 809/2014[5] give Member States discretion to set the period within which transferors must notify the RPA of transfers of entitlements to claim under the Basic Payment Scheme and to fix the deadlines for submitting Basic Payment Scheme applications for payment, rural development area based payment claims and applications for the allocation of payment entitlements.

4.3 The above deadlines for England are set out in the following regulations:

- Regulation 8 of the Common Agricultural Policy Basic Payment and Support Schemes (England) Regulations 2014 (SI 3259/2014) ("the Basic Payment Regulations"), which sets out how certain discretions will be exercised in relation to direct payments; and
- Regulation 5 of the Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 (SI 3263/2014) ("the Control Regulations"), which makes supplementary provision for the administration and enforcement of the CAP.

4.4 The Implementing Regulation now permits Member States to extend the application deadlines, for the year 2015 only, to 15 June 2015. It is necessary to amend the Control Regulations and the Basic Payment Regulations in order to give effect to the decision to extend the deadline in England.

4.5 Regulation 3(1) to (4) of the Control Regulations sets out the arrangements for farmers who are submitting an application for direct payments and have land in more than one part of the UK (England, Northern Ireland, Scotland and Wales). Whilst Scotland has also announced it would be moving its deadlines to 15th June, Wales and Northern Ireland are likely to keep to their existing 15th May deadlines. The Control Regulations are amended to make it clear which application deadline these farmers need to meet.

5. Territorial Extent and Application

5.1 This instrument applies in England apart from paragraphs (1) to (4) of regulation 2, which extends to the UK.

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

7.1 The CAP exists to support farmers in the European Union and has done for over 50 years. 2015 is the first year of the reformed CAP and the new schemes introduce increased complexity compared to preceding schemes. Recognising that Member States have experienced difficulties in implementing the new schemes, which caused delays

[5] 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

potentially impacting on the ability of applicants to meet existing CAP deadlines, the European Commission has adopted an Implementing Regulation giving Member States the option of extending the key deadlines in the opening claim year.

7.2 To give applicants as much time as possible to complete their applications, the Government has decided to extend the deadlines in England. Because the new scheme is so complex, the Department has needed to invest in a new computer system to administer applications as the existing computer system would not have been able to cope. There have been some performance issues with the online interface that enables farmers to input the data directly, although the core of the new system is working well. In order to ensure that farmers are able to submit their applications, RPA has offered farmers and their agents existing paper-based forms to finalise their applications. This pragmatic response applies to this year's applications in the first year of the new scheme, and explains the Government's decision to extend the application deadline, and other associated deadlines.

7.3 Decisions about the deadlines that apply in Northern Ireland, Scotland and Wales fall to the Devolved Administrations.

7.4 The Government needs to legislate in order to give effect to the decision to extend the deadlines in England and to make clear which application deadline farmers with land in more than one part of the UK need to meet. The media and stakeholders have unanimously welcomed the extension as an important step in ensuring that farmers are able to successfully complete their applications and payment claims in the 2015 scheme year.

Deadline extension

7.5 The instrument provides for an extension in England to 15 June 2015 for this scheme year for:

- applications for direct payments
- payment claims under rural development land based schemes
- applications for allocation of payment entitlements
- notifying RPA of the transfer of payment entitlements

Cross-border farmers

7.6 The instrument clarifies the requirements for holdings with land in more than one territory (England, Northern Ireland, Scotland or Wales). It stipulates that for such holdings the deadline for applications for direct payments and for entitlements is the one set in the territory of the competent authority for that holding. It also clarifies which is the competent authority for that holding. This means that, even in the situation where there are different deadlines set in the different UK territories (as is expected to be the case in 2015), cross-border farmers will be clear as to which deadline applies to them.

This had not been an issue prior to the adoption of the Implementing Regulation as all UK territories had the same deadline of 15 May.

Consolidation

7.7 This instrument amends the Basic Payment Regulations and the Control Regulations. The Department currently has no plans to consolidate the legislation, as the instrument is the first such amending instrument.

8. Consultation outcome

8.1 Throughout CAP reform negotiations and the implementation process, the Government has actively consulted with interested parties as set out in the Explanatory Memorandum to the Control Regulations.

8.2 The Commission announced its intention to extend CAP deadlines in March 2015 and the Government needed to react quickly to the development. A decision was taken that providing certainty to farmers on a welcome deadline extension was preferable to carrying out a formal consultation which would protract the decision. Using well established communication channels, the Department was able to discuss the matter widely and informally. Stakeholders were, and continue to be, entirely supportive of the extension as it gives extra flexibility for farmers, particularly in light of RPA's adjustment to paper claim forms. Stakeholders recognise the benefit of giving their members more time to claim in the first year of a new scheme where complex new rules apply.

8.3 The arrangements for farmers with land in more than one part of the UK to submit their applications were discussed and agreed with the Devolved Administrations.

9. Guidance

9.1 The change in application dates has been advertised on GOV.UK and in discussion with stakeholders. The deadline for farmers to submit applications for payment and for entitlements was printed on the corresponding application forms and guidance sent to all farmers.

9.2 Specific guidance has been sent to farmers with land in more than one part of the UK. This includes an explanation of which application deadline they need to meet.

10. Impact

10.1 The impact on business, charities or voluntary bodies is advantageous in extending the time available for farmers and agents to submit their claims.

10.2 The impact on the public sector primarily relates to RPA. The change to the deadlines does not alter the number of applications RPA is likely to receive from farmers but provides for a smoother implementation by allowing extra time for the paying agency to prepare for the new scheme.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people Defra has sought to implement the CAP regulations in a way that is simple affordable and effective. The deadline extensions should ease the application process for many farmers in 2015.

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 Hugh Craddock at the Department of Environment, Food and Rural Affairs Tel: 0207 238 5663 or email: Hugh.Craddock@defra.gsi.gov.uk can answer any queries regarding the instrument.