POLICY NOTE

THE COMMON AGRICULTURAL POLICY (DIRECT PAYMENTS ETC.) (SCOTLAND) AMENDMENT (No. 2) REGULATIONS 2016

SSI No 2016/178

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 17 May 2016 and its provisions will come into force on 18 May 2016.

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 these Regulations which extend deadlines in 2016 (from 16 May to 15 June) to allow more time for farmers to submit their applications for subsidy under the Common Agricultural Policy (CAP) in 2016.

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) 2016/761 (derogating from Regulation (EU) No 809/2014) (the 2016 Commission Implementing Regulation) came into force on 13 May 2016. It was not possible, therefore, to neither make and lay, nor bring this Instrument into force before 16 May 2015, but for reasons of transparency and in order to provide legal certainty for farmers, land managers and agents, this Instrument amends the deadlines and comes into force the day after it was made and laid: that is 18 May 2016. 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;

- 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"), as amended. This Instrument further amends the principal Regulations.

6. This amending Instrument makes provision in Scotland for the exercise of derogations in respect of deadlines for relevant applications applicable to calendar year 2016, in accordance with Articles 1 and 3 of the 2016 Commission Implementing Regulation as regards;

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

6.2 the final date for applications for the allocation of payment entitlements or the increase of the value of payment entitlements.

Outline of Changes to the Direct Payment Scheme

7. The amendments to 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 2016, in accordance with Articles 1 and 3 of the 2016 Commission Implementing Regulation.

8. 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. (unless that date is a Saturday, Sunday,

Bank Holiday or other public holiday, in which case, the deadline is the next working day). 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, or for the increase in the value of, payment entitlements under the CAP (unless that date is a Saturday, Sunday, Bank Holiday or other public holiday, in which case, the deadline is the next working day).

Because 15 May falls on a Sunday in 2016, the relevant deadline in both respects for 2016 is 16 May.

9. Articles 1 and 3 of the 2016 Commission Implementing Regulation permit Member States to fix new deadlines in respect of these two aspects of the CAP in relation to 2016. 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 16 May to 15 June, for 2016 only. Similar amendments were made to the principal Regulations in respect of calendar year 2015 by S.S.I. 2015/215. The deadlines for subsequent calendar years remain 15 May.

Effect of Instrument

12. The Scottish Government has brought forward this secondary legislation to implement appropriate scheme criteria to land in Scotland.

Impact Assessments

13. No business and regulatory impact assessment has been prepared for these Regulations as no impact upon business, charities or voluntary bodies is foreseen.

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 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

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

17 May 2016