POLICY NOTE

THE COMMON AGRICULTURAL POLICY (DIRECT PAYMENTS ETC.) (SCOTLAND) AMENDMENT REGULATIONS 2016

SSI 2016/104

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 on 15 February 2016, laid before the Scottish Parliament on 17 February 2016 and its provisions will come into force on 24 March 2016.

Background

2. 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.

3. There are also a number of Commission delegated and implementing Regulations supplementing these basic acts. This directly applicable European regulatory framework affords some discretion to Member States to adapt some of the arrangements for the implementation of the schemes to their own particular circumstances. The Scottish Ministers made certain decisions about how the direct payments regime is to 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"). The Agricultural Policy (Direct Payments etc.) (Scotland) Amendment Regulations 2015 (S.S.I. 2015/215) subsequently amended the principal Regulations.

4. This amending instrument introduces the following additional changes to the principal Regulations, in relation to practices beneficial for the climate and the environment ("greening" obligations):

- introducing an additional requirement to prepare a plan in respect of the application of inorganic nitrogen fertiliser and lime, which must be observed on non-exempt areas of permanent grassland
- extending the list of species which may count as green cover under the EFA requirement, to include clover and radish
- introducing an additional management condition which must be met in order for a nitrogen-fixing crop to count as an EFA, requiring two different species, or mixtures of species, to be established.

Outline of Changes to Greening Obligations

5. The directly applicable EU regulatory framework provides for three standard greening obligations to be met by the farmer, which have applied since 1st January 2015. These obligations are (i) in relation to the cultivation of crops (ii) in relation to areas of permanent grassland and (iii) the obligation to have Ecological Focus Areas (EFA) on arable land. However, the framework also allows Member States discretion to introduce measures equivalent to those standard obligations (see Article 43(3) of, and Annex IX to, Regulation (EU) No 1307/2013). This instrument introduces an equivalent obligation from 1st January 2016.

Accordingly, regulation 3 of this instrument inserts a new regulation 15(A) into the principal Regulations, which specifies the standard and, where applicable the equivalent greening obligation, which must be observed annually, where relevant, by non-exempt farmers on every eligible hectare of their land. Specifically, regulation 15A introduces a new equivalent obligation whereby the farmer must prepare a plan in respect of the application of inorganic nitrogen fertiliser and lime (referred to in new regulation 15A (2)(b)(ii)) on relevant land, in addition to the standard permanent grassland obligation.

6. Regulation 4 of this amending instrument inserts a new regulation 17A in to the principal Regulations, which describes the activities which must be undertaken in accordance with the requirement to prepare a plan in respect of the application of inorganic nitrogen fertiliser and lime. Under this requirement, a farmer must annually prepare a plan indicating the quantity of inorganic nitrogen fertiliser and lime they intend to apply to each of those land parcels on their holding which contain permanent grassland, excluding those parcels which also contain arable land or rough grazing. The principal objective of this requirement is to encourage better nutrient management planning in order to reduce greenhouse gas emissions from agriculture. Farmers will be encouraged in guidance to base their plan on the results of a soil pH test. If the soil pH is too low (acidic), applying lime can increase the efficiency with which grass takes up nitrogen from fertilisers, reducing nitrous oxide emissions. Permanent grassland parcels which also contain arable land are exempt in order to ensure field margins are not subject to the requirement. Permanent grassland fields which contain rough grazing are exempt, since fertiliser is not typically applied to this land.

7. Regulation 5 of this amending instrument extends the list of species which may count as green cover under the EFA greening measure, to include clover and radish. The purpose of this change is to increase flexibility for farmers whilst delivering the environmental objectives of the measure.

8. Regulation 5 also introduces an additional management condition which must be met in order for a nitrogen-fixing crops to count as an EFA, requiring two different species, or mixtures of species, to be established, with no one species (or, as appropriate, mixture of species) covering more than 75 per cent of the total area of EFA nitrogen-fixing crop. If one of the two crops is sown as a mixture of species, the same species may not be sown (singly or in a mixture) as the second crop. The principal Regulations define the species of nitrogen-fixing crops which may the declared as an EFA.

Effect of Instrument

12. The Scottish Government has brought forward this secondary legislation to implement appropriate scheme criteria to land in Scotland. It is supplemented by the principal Regulations 2014, Orders under the Scotland Act 1998 (sections 30(3) and 106 Orders) to deal with cross border producers, and the European Integrated Administration and Control System (IACS) protocol between administrations so that the effect of these Orders, secondary legislation and administrative arrangements, will be to allow Scottish Ministers to apply Scottish rules to Scottish land, and, with advice from the respective administrations, their rules to their land for cross-border producers.

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. An equality impact assessment was undertaken in relation to the principal Regulations and can be accessed using this link:
http://www.scotland.gov.uk/Topics/People/Equality/18507/EqualityImpactAssessmentSearch
This amending instrument is not expected to alter the findings of this assessment.

Financial Effects

15. The Schemes covered by this instrument will contribute to enabling the Scottish Ministers to pay around £450 million per annum.

Natural Resources Division
15 February 2016