POLICY NOTE

The Common Agricultural Policy (Simplifications and Improvements) (Miscellaneous Amendments) (Scotland) Regulations 2020

SSI 2020/349

The Common Agricultural Policy (Simplifications and Improvements) (Miscellaneous Amendments) (Scotland) Regulations 2020 (the "2020 Regulations") are made in exercise of the powers conferred by section 2 of the Agriculture (Retained EU Law and Data) 2020 Act[1].

Section 2(3) of the Agriculture (Retained EU Law and Data) 2020 Act provides that "Regulations under this section are (if they have not been subject to the affirmative procedure) subject to the negative procedure".

The 2020 Regulations are subject to the negative procedure because they simplify and improve existing policy, remove provisions which are no longer appropriate or workable for Scotland, and do not introduce any new policy.

In particular, all UK administrations have agreed to remove the concept of cross border applications after EU exit as they will no longer be workable due to potential divergence in policy among the UK nations and we are therefore removing those provisions. Although we are removing the crop diversification requirement because it is not appropriate or effective for Scotland, we are retaining the Greening policy with the remaining Greening provisions and payments which will continue. Finally, an effective regulatory inspection regime will continue with the benefit of our simplifications and improvements.

In addition , the 2020 Regulations do not have those criteria that would normally make an instrument subject to affirmative procedure. In particular: 1. They do not create or amend a criminal offence. 2. They do not amend an Act of Scottish Parliament or primary legislation just retained EU law and 3. They do not contain any matter with material financial impact or financial implications.

The 2020 Regulations will apply to the whole of Scotland and come into force on 1 January 2021 with effect from the 2021 claim year.

Purpose of the Instrument

The amendments made by this instrument will simplify and improve the operation of the provisions of the Common Agricultural Policy ("CAP") retained EU legislation.

In particular the amendments will simplify and improve the operation of the provisions for (a) cross border applications,(b) the Greening rules relating to crop diversification and (c) inspections that are undertaken for direct payment and rural development schemes .

The Agriculture (Retained EU Law and Data) 2020 Act of Scottish Parliament number 17 [1].

1. Policy Objectives

Cross border applications:

The 2020 Regulations aim to simplify and improve the operation of the EU CAP provisions for cross border applications to provide for those changes necessary to enable applications to be processed separately by each UK administration, given agriculture is devolved to Scottish Ministers and the other devolved administrations, following the exit of the UK from the EU.

Crop diversification Greening rules:

The 2020 Regulations aim to simplify and improve the operation of the CAP Greening provisions for the benefit of the environment by revoking the crop diversification requirements. Crop diversification was introduced across Europe in recognition of the growing of large areas of cereals in other member states, however it does not benefit Scotland in the same way. Not only is there little, if any, evidence of environmental benefit to support the requirement in Scotland, it also imposes burdens on Scottish arable units by reducing efficiency. The adherence to crop diversification is also complex, with crops being grown to specific areas rather than to field sizes, all contributing to the frustration of applicants. It poses a risk of hindering mitigation of climate change due to the introduction of inefficiencies in crop production.

Inspections:

The 2020 Regulations aim to simplify and improve the operation of inspections for direct payment and rural development schemes in order to reduce the demand on Scottish Government resource, increase focus on outcomes rather than bare compliance, and repurpose area office resources to increase proactive engagement with customers to better increase awareness of the scheme requirements and to help reduce potential stress of the claimants being inspected.

2. Explanation of the law being amended by the 2020 Regulations

Cross border applications:

Regulation 2(2) amends the definition of "farmer" and "holding" under Regulation (EU) No 1307/2013 (the "Direct Payments Regulation") in order to remove the concept of cross border applications under direct payment schemes. Regulation 3(2) amends the definition of "holding" in Regulation (EU) No 1306/2013 (the "Horizontal Regulation") for the same purpose. Regulation 6 amends the Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 to remove related domestic provisions that enable cross border applications.

Crop diversification greening rules:

Regulations 2(3) and (4) amend the Direct Payments Regulation to remove crop diversification as one of the agricultural practices deemed as beneficial for the environment (known as "greening") under the basic payment scheme. Regulation 4 amends Commission Delegated Regulation (EU) No 639/2014, regulation 5 amends the Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015, regulations 7(4), (10) and (11) amend Regulation (EU) No 809/2014, and regulations 9(2), (4) to (6) amend Regulation (EU) No 640/2014 to remove related provisions that flow from the crop diversification requirement.

Inspections:

Regulation 3(3) and (4) amends the Horizontal Regulation, regulation 7(2) to (3), (5) to (9) and (12) to (13) amends Regulation (EU) No 809/2014, and regulation 8 amends Regulation (EU) No 532/2020, to simplify and improve the operation of on-the-spot checks that are undertaken as part of CAP schemes. Regulation 9(3) makes minor amendments to Regulation (EU) No 640/2014 with regard to quality assessment of the land parcel identification system ("LPIS"). In particular, in article 6 "declared" is substituted by "claimed" in recognition of the fact that multiple businesses can declare the same land on the Single Application Form ("SAF") but only one business will actually claim for it under the Basic Payment Scheme.

There is reference in the footnotes of the 2020 Regulations to the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020, which are prospectively amending, from the Implementation Period completion day, previous EU Exit SIs that amend the retained EU law that is being amended in the 2020 Regulations. The Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 were laid in draft in the UK Parliament on 5 October 2020 and were going through the necessary Parliamentary procedure when the 2020 Regulations were made.

3. Reasons for and effect of the proposed change

Cross border applications:

Given that the UK has left the EU and agriculture is a devolved matter, agreement has been reached by all UK administrations to remove the concept of cross border applications for the 2021 and future claim years. All of the UK administrations have agreed to implement the changes for their respective territories that will remove current provisions for CAP cross border applications to enable separate applications to be submitted by applicants to the UK administration that administers the territory in which the land is situated.

Crop diversification Greening rules:

The crop diversification rules being one element of the Greening provisions of the basic payment scheme require that:
(a) on holdings with between 10 and 30 hectares of arable land at least two different crops must be grown on that land and the largest crop must not cover more than 75% of that arable land; and
(b) on holdings with more than 30 hectares of arable land, at least three different crops must be grown on that land, the largest crop must not cover more than 75% of that arable land and the two largest crops together must not cover more than 95% of that arable land.

The 2020 Regulations will simplify and improve the Greening provisions by removing all crop diversification requirements for the 2021 and subsequent claim years as it is an obligation on farmers and crofters that is not suited to Scotland , does not provide environmental benefits and poses a risk of hindering mitigation of climate change due to the introduction of inefficiencies in crop production.

However the remaining Greening elements of the basic payment scheme relating to permanent grassland and ecological focus areas will be retained and we can confirm the Greening scheme and payments will continue with these simplifications and improvements in 2021. Also in the period from 2021 to 2024, we will be considering making further improvements to these remaining Greening provisions.

Inspections:

The 2020 Regulations will simplify and improve the provisions for the operation of on-the-spot checks for direct payment and rural development schemes by implementing those changes which we explain as follows:
(a) As a result of the improvements in the maintenance of LPIS as demonstrated by the LPIS Quality Assessment it is clear that due to the SAF processing claimants cannot over claim. A SAF is required to support a claim for the Basic Payment Scheme , Agri Environment, Beef Calf Schemes, Scottish Upland Sheep Support Scheme and Less Favoured Area Support Scheme. Also for livestock and capital applications alternative administrative checks can validate numbers and additional supporting documentation can be used to validate claims. This enables us to reduce the number of on-the-spot inspections from 5% to 3% .
(b) Currently the regulations contain very detailed and prescriptive direction on the selection process. We are simplifying the selection process by changing the requirements for random selection of the control sample under the basic payment scheme and Greening to bring them in line with those used for rural development and voluntary coupled support. We are also removing rules that require an automatic increase or specified reduction in inspection rates. We are simplifying rules on inspections to provide us with flexibility to more effectively target claimants who are more likely to breach the rules. It is proposed to undertake 'intelligence gathering' utilising public service collaboration (including input from local RPID area offices) to feed into our risk analysis.
(c) In order to address claimants concerns, to maintain efficient use of resources and to accommodate a mutually convenient time, notification of inspections will be made informally with a view to arranging a suitable date. This will be within 14 days, with flexibility to extend this period if there are specific circumstances that warrant this, such as the absence of a key business member. Although the presumption will be against unannounced inspection , where for example we are considering criminality or validating activity that is specific such as to verify agri-environment proactive management such as stock exclusion , unannounced inspections will remain an option.

Further information

Consultation

We conducted a full public consultation on our period of Stability and Simplicity to 2024 and continue to engage with stakeholders and delivery partners through the Agriculture and Rural Development Stakeholder Group and the Rural Development Operation Committee.

Engagement on the 2020 Regulations took place with NFU Scotland, National Sheep Association Scotland, Scottish Beef Association, Scottish Crofting Federation and Scottish Environmental Link and with groups including the Simplification Taskforce, and Farming and Food Production Future Policy Group. All have noted their support for the proposed changes and recognise that this is a step change towards further improvements in the future.

Further consultation took place in relation to the Agriculture (Retained EU Law and Data) (Scotland) Bill and the 2020 Regulations will be used to deliver on the stated objective of the Bill that "From 1 January 2021, to enable the continued operation of current CAP schemes and policies, but also to allow them to be progressively improved and simplified".

Further engagement will take place on any future proposals for simplification and improvement from 2021.

Impact Assessments

The 2020 Regulations aim to simplify and improve the operation of the existing EU CAP and do not introduce new policy. The proposal is for the current CAP to continue until 2024.

The CAP was formally approved by the European Commission and the Pillar 2 Scottish Rural Development Programme was developed in conjunction with stakeholders, robustly consulted on and fully impact assessed. It is not considered appropriate or proportionate to undertake full impact assessments for the 2020 Regulations as they enact administrative changes to the delivery of the existing CAP.

In relation to the removal of the crop diversification requirement of Greening it makes the prior derogation permanent and was subject to a Strategic Environmental Assessment pre-screening (PRE01068).

The 2020 Regulations will not have a significant impact on the environment. No impact on business, charities or voluntary bodies is expected.

Financial Effects

The Cabinet Secretary for the Rural Economy and Tourism, Fergus Ewing, confirms that no BRIA is necessary as the 2020 Regulations have no financial effects on the Scottish Government, local government or on business.

Scottish Government
Agriculture and Rural Economy Directorate

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