

EXECUTIVE NOTE

THE COMMON AGRICULTURAL POLICY SCHEMES (CROSS COMPLIANCE) (SCOTLAND) REGULATIONS 2011

S.S.I. 2011/415

1. The above Instrument was made in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(a). The Instrument is subject to negative resolution procedure.

Background

2. In June 2003, the EU Agriculture Council agreed a radical reform of the Common Agricultural Policy (CAP). The aim of the reforms was to make agriculture more market-orientated and their objectives are: to break the link between farm subsidies and production; to provide flexibility to help the UK manage the change; to make support contingent on environmentally sensitive and sound farming practices; and to reduce bureaucracy.

3. The Council of Ministers of the European Union also recognised that farmers in receipt of subsidies have important responsibilities towards the protection of the environment, animal health and welfare and public health. The CAP reform agreement currently implemented by Council Regulation 73/2009 requires farmers to observe certain mandatory conditions in these areas in return for receipt of support payments. Collectively these conditions are known as cross compliance.

4. There are two elements to cross compliance: Statutory Management Requirements and Good Agricultural and Environmental Condition as described below –

- The Statutory Management Requirements (SMRs) are set out in Annex II of Council Regulation 73/2009 and cover 18 existing European regulatory requirements relating to the environment, animal health and welfare and public health. Member States do not have any discretion over the implementation of the SMRs. Although all the SMRs are already legally binding the introduction of cross compliance means that breaches of the requirements can also lead to a partial or complete withdrawal of financial support.
- Good Agricultural and Environmental Condition (GAEC) is based on a framework provided in Annex III of Regulation 73/2009 to address five issues: soil erosion, soil organic matter, soil structure, the minimum level of maintenance and the protection and management of water. Article 6 of 73/2009 provides flexibility which allows Member States to define minimum requirements taking into account local conditions including soil, climate, crop rotations, land use and farming systems.

Policy Objectives

5. The Instrument seeks to implement two broad policy objectives contained in the above legislation.

6. Firstly, it consolidates (with amendments) the existing provisions concerning cross-compliance as set out in the Common Agricultural Policy Schemes (Cross Compliance) (Scotland) Regulations 2004 (as amended) (“the 2004 Regulations”). The main changes made:

- update references to the relevant EU instruments and other statutory references, as well as to remove of redundant provisions;
- to clarify the extent of assistance to authorised persons, reference is made to gathering livestock and presenting them for inspection in a safe and secure manner.
- update relevant offence provisions in line with current drafting practice, including a new offence to cover the provision of false or misleading information; and
- amend the Rural Payments (Appeals)(Scotland) Regulations 2009, to provide for a continued right of appeal in respect of cross-compliance enforcement decisions; and
- in drafting relevant provisions of the Instrument (in particular, paragraphs 18(2) and 19(2) of the Schedule, account has been taken of the Subordinate Legislation Committee's previous comments in relation to the Common Agricultural Policy (Single Farm Payment and Support Schemes and Cross-Compliance)(Scotland) Amendment Regulations 2009 (SSI 2009/391).

7. Secondly, as explained in more detail below, the Instrument introduces a new GAEC standard relating to the establishment of buffer strips along water courses (Schedule, paragraph 20), extends the hedge trimming period (Schedule, paragraph 15 (Boundary features)) and makes several drafting refinements in relation to other existing GAEC standards. Taking each in order:

Establishment of buffer strips along water courses

8. Commission Regulation 73/2009 places a mandatory obligation on Member States to introduce a GAEC standard by 1 January 2012 to protect water against pollution and run-off by establishing buffer strips along water courses. As a minimum the new standard has to be set at the level equal to the existing cross compliance requirements in relation to Nitrate Vulnerable Zones (NVZs), as implemented in Scotland via the Action Programme for Nitrate Vulnerable Zones (Scotland) Regulations 2008. Following views from CAP stakeholders and internal discussions it has been decided to base the new GAEC standard on those minimum requirements. This Instrument extends the existing cross compliance restrictions on the application of fertilisers along side water courses in NVZ areas to the remainder of the land in Scotland.

Boundary Features

9. Under GAEC 15 farmers (and other land managers) must not damage or destroy a range of boundary features, including hedges. Hedge trimming is permitted except between 1 March and 31 July in order to prevent disturbing nesting birds. This Instrument extends the hedge trimming period up to 31 March but only for the traditional practice of hedge laying.

Consultation

10. Due to the flexibility provided by Article 6 of Council Regulation 1122/2009 the implementation of the establishment of buffer strips along water courses standard has been discussed with CAP stakeholders.

Financial Effects

11. The introduction of the establishment of buffer strips along water courses extends existing cross compliance requirements to non-NVZ areas and will therefore only affect farmers in these areas. In addition GAEC is set at a minimum level and encourages farmers to adopt good environmental practice. In summary there will be:

- no change to the current position on the financing of the administration of the Common Agricultural Policy
- no increase in public spending
- no further funds would require to be transferred by virtue of this amendment.

12. A Business and Regulatory Impact Assessment (BRIA) relating to the introduction of cross compliance was undertaken at the time of implementation. For this reason and the reasons stated in the preceding paragraph a renewed BRIA has not been undertaken.

Scottish Government Rural Payments and Inspections Directorate.
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