

FINAL BUSINESS AND REGULATORY IMPACT ASSESSMENT

1. Title of proposal

The Rural Support (Controls) (Coronavirus) (Scotland) Regulations 2021

2. Purpose and intended effect of the Regulations derogation

Context and payment plan

The Regulations provide for a temporary derogation limited in its application, applying only in respect of the following schemes:

- the 2020 claim year VCS scheme payments, due to be made in April and May 2021;
- the 2021 claim year basic payment, greening, and young farmer schemes payments due to be made in December 2021; and
- the 2021 claim year less favoured area support scheme payments (LFASS) due to be made in January 2022.

Objectives

Verification of eligibility conditions must be established by both administrative checks and physical inspections or on the spot checks.

The Regulations will provide a derogation from the requirement for the verification of all eligibility conditions to be completed for payments to commence as, due to the coronavirus pandemic, on-the-spot checks have had to be postponed. The effect of the derogation is that payments to beneficiaries may be made, for the schemes covered by the derogation, as soon as the administrative checks are complete.

The objective is to enable the Scottish Ministers to make payments when they are normally due even where it has not been possible to complete the on-the-spot checks. This is necessary in order to provide the financial stability that will help mitigate the impact of the pandemic on farmers and crofters.

The requirement to complete “desk-based” checks prior to any payments being made will ensure that adequate and effective checks are maintained to the extent practicable.

Background

The derogation made by the Regulations are necessary to resolve specific problems in relation to the application of Article 75 of Regulation (EU) No. 1306/2013 (now incorporated into domestic law) during the ongoing coronavirus pandemic.

Rationale for Government intervention

Without this derogation, payments will be delayed due to the existing backlog of on the spot inspections and further unavoidable delays to both outstanding and pending inspections that cannot be completed due to Coronavirus restrictions. This would result in additional uncertainty and potential financial hardship for our scheme beneficiaries.

As regards the National Performance Framework, the derogation contributes to the outcome that we have a globally competitive, entrepreneurial, inclusive and sustainable economy.

Permissive flexibility of the derogation

The on-the-spot checks will be restarted as soon as it is safe to do so.

Should the situation improve such that it becomes possible to carry out some of the on-the-spot checks in advance of payments being due, the Scottish Government will do so as soon as it is possible.

3. Consultation

Within Government

Responsibility for the derogation and related issues lies with the Agriculture and Rural Economy ("ARE") directorate .We have discussed the derogation and related issues with the relevant ARE officials namely, the Risk Assurance and Fraud team and the Payment Strategy Board which represents all Scheme, Inspection, Finance and Area Office team interests.

Public Business Stakeholders

No formal public or business consultation has taken or will take place. It has not been possible due to the urgency of this emergency. The temporary derogation is a technical change in legislation to allow us to provide for the impact of the Coronavirus on our on the spot checks or inspections and payment strategy. There is no policy change regarding who we pay and no change regarding the other scheme conditions.

We have informed informally stakeholders of our plans for the temporary derogation and we understand they will support the derogation given the risks relating to the coronavirus pandemic. The NFUS have been encouraging their members to take all necessary precautions to limit the risk of coronavirus spread including limiting those visiting the farm. We understand the NFUS support the derogation as pragmatic and necessary to ensure financial support can continue and businesses are not impacted by delay of the on the spot inspections due to coronavirus. Indeed we also understand that the Scottish Government would be criticised by farmers if these inspections were continued due to the risks involved.

4. Options

Option 1 – implement the derogation via Regulations

Option 1 is to enable payments to be made after the administrative checks, but before physical inspections where they are not practicable as a result of Coronavirus restrictions.

There is a risk that a small number of claims will not be verified after being paid as a result of an adverse finding in a physical inspection. Any sums not due will need to be recovered, with the associated costs and risk to the fund.

Option 2 – do nothing

This would potentially create a situation where payments cannot be made on time, creating uncertainty, financial hardship with scheme beneficiaries and their businesses being adversely affected at this difficult time.

Sectors and groups affected

Beneficiaries of the designated schemes including farmers, crofters and their businesses.

Benefits option 1

The derogation will help maintain financial stability, provide continuity and will help avoid uncertainty.

We can continue to issue scheme payments in the stated timeframes ensuring continued financial stability for our farmers and crofters whilst remaining fully compliant with the ongoing Coronavirus restrictions.

The derogation will enable payments to be made timeously for the designated schemes, while still enabling effective administrative checks to be made. This will avoid uncertainty and potential financial hardship for scheme beneficiaries. The risk to the fund is not considered significant.

This option provides a necessary proportionate response to the current emergency that is temporary, and will only apply so long as it is strictly necessary.

Benefits option 2

The 'do nothing' option has no benefits other than minimising the risk to the fund, which is not considered significant as above.

Costs option 1

The derogation will not create additional costs and the administrative checks can be maintained using existing resources and staff.

Costs option 2

To do nothing could potentially create costs associated with scheme beneficiaries getting into financial difficulties. For example if we cannot make our voluntary coupled support schemes payments in the period from April to June 2021, this may represent a loss of £47,334,136.17 for our scheme beneficiaries farmers and crofters.

5. Scottish Firms Impact Test

There are no obvious adverse impacts on Scottish firms.

Competition assessment

There are no obvious impacts of the derogation on competition.

Consumer assessment

We do not anticipate the derogation which directly benefits farm businesses will have any adverse effect on consumers.

Indeed, by helping to ensure the viability of Scottish farm businesses the measures will help to preserve consumer choice.

“Test Run” of business forms

There will be no new forms as a result of the derogation.

Digital Impact Test

No impact is anticipated as a result of the derogation.

6. Legal Aid Impact Test

No legal challenge is expected as a result of the derogation.

7. Enforcement, sanctions and monitoring

We will be monitoring the position carefully throughout the crisis to ensure an adequate and effective regulatory regime is maintained.

8. Implementation and Delivery Plan

The derogation will be implemented at the earliest opportunity at the end of March to enable us to commence our voluntary coupled support scheme payments in accordance with our strategy so payment can be made in the period from April to June.

9. Post Implementation Review

We will review the derogation at regular intervals during the crisis to judge when it is appropriate for on the spot checks to resume.

10. Summary and Recommendations

Doing nothing is not a realistic option. The potential economic and social costs of economic and financial loss or uncertainty and risks for our food supply far outweigh any implications of a temporary removal of the requirement for on the spot checks.

11. Authorisation and approval

Fergus Ewing MSP Cabinet Secretary for the Rural Economy and Tourism has approved the Business Regulatory Impact Assessment and authorised Ben Macpherson MSP Minister for Rural Affairs and the Natural Environment to sign it on his behalf.

12. Declaration and publication

I have read the Business Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the derogation policy and (b) the benefits justify any costs . Formal consultation with businesses has not been possible in the current circumstances.

Name: Ben Macpherson

Date: 11th February 2021.....

Ben Macpherson MSP
Minister for Rural Affairs and the Natural Environment

Contact

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