

POLICY NOTE

THE RURAL SUPPORT (CONTROLS) (CORONAVIRUS) (SCOTLAND) REGULATIONS 2021

SSI 2021/72

The Rural Support (Controls) (Coronavirus) (Scotland) Regulations 2021 (the “2021 Regulations”) are made in exercise of the powers conferred by Article 75(3) of Regulation (EU) No 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the Common Agricultural Policy (the “Horizontal Regulation”). The 2021 Regulations are subject to the made affirmative procedure and come into force on 31 March 2021. The 2021 Regulations shall apply to the whole of Scotland.

Purpose of the Instrument

This instrument 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 been postponed. The effect of the derogation is that payments to beneficiaries may be made, for the schemes covered by the derogation, after the administrative checks have been finalised. This will enable the Scottish Ministers to make payments timeously before completing physical on-the-spot checks to provide continued financial stability to our farmers and crofters. This derogation is limited to certain designated schemes for the claim years 2020 and 2021.

1. Policy Objectives

The Horizontal Regulation requires that all eligibility conditions be verified before scheme payments can be made. Eligibility conditions are verified by carrying out administrative checks, supplemented by on-the-spot checks including physical inspections.

Due to the coronavirus pandemic and associated lockdown restrictions, agricultural inspectors have not been able to carry out on-the-spot checks to the normal timetable. For example, under the voluntary coupled support (VCS) schemes, livestock inspections normally take place between January to the end of March. The Scottish Government would normally commence payments under the voluntary coupled support schemes in April. This year, it has not yet been possible to carry out the VCS scheme livestock inspections. The delay of these inspections adds to the existing backlog of inspection work. There is also added uncertainty regarding the timescales for easing of restrictions due to the emergence of new variants of the virus.

Given the ongoing restrictions and the resultant backlog of inspection work, the requirements of the Horizontal Regulation as they stand threaten to undermine the Scottish Government’s payment strategy for certain schemes. The 2021 Regulations seek to address this problem by allowing payments under certain schemes to be made following the completion of administrative checks, thus ensuring that farmers and crofters are not subjected to financial uncertainty and potential hardship as a result of unavoidable delays to on-the-spot inspections that cannot be completed.

The Scottish Ministers are of the opinion that, in order to enable farmers and crofters to receive their payments on time, it is necessary and justifiable in Scotland to derogate from the some of the requirements in Article 75(2) of the Horizontal Regulation in respect of certain

schemes (listed below in section 3). The extent and period of that derogation are, in the Scottish Ministers' opinion, limited to that which is strictly necessary.

2. Explanation of the law being derogated from by the 2021 Regulations

The 2021 Regulations make amendments to provide a derogation from the requirements of Article 75(2) of the Horizontal Regulation, to allow payments to beneficiaries of the schemes covered by the derogation, after administrative checks have been completed.

3. Reasons for and effect of the proposed change

This derogation is limited in its application, applying 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.

These are schemes for which the Scottish Government considers that it is both necessary and justifiable to put in place measures which will allow payments to be made timeously even if the on-the-spot inspections programme is delayed.

Due to the ongoing coronavirus related restrictions, there is a backlog of on-the-spot inspections work. At present, agricultural inspectors are not able to carry out their usual physical on the spot checks and inspections. For example, the on-the-spot checks programme for VCS schemes livestock that would normally take place in the period from January to the end of March 2021 have not been carried out. Given that the Scottish Government would normally commence payments under VCS schemes in April 2021, in the absence of this derogation there would be a barrier to those payments being made.

The delay in these on-the-spot checks adds to the backlog of inspection work, which is increasing as the restrictions continue. As a result the on-the-spot checks or inspections programme for the remainder of the year will be delayed which will undermine our payment strategy for the designated schemes.

Without this derogation, the Scottish Government could not provide a guarantee as to when payments to scheme beneficiaries for the designated schemes would be made. This would result in additional uncertainty and potential financial hardship for the scheme beneficiaries.

The 2021 Regulations permit payments to be made following the completion of administrative checks. All "desk-based" checks will be completed prior to any payments being made, to ensure effective checks will be maintained to the extent practicable.

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

Further information

Consultation and views of stakeholders

The 2021 Regulations do not amount to a change in policy and are being made to provide a limited, temporary and necessary derogation from the rules in respect of certain designated schemes.

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 on the spot inspections due to coronavirus. Indeed we also understand we would be criticised by farmers if these inspections were continued due to the risks involved.

Impact Assessments

Apart from the BRIA , impact assessments have not been prepared for the 2021 Regulations because they are aimed only at providing a limited temporary derogation for just the designated schemes. The temporary derogation does not alter the Scottish Government's current environmental policies and priorities and, therefore, do not have a significant impact on the environment.

Financial Effects

The Cabinet Secretary for the Rural Economy and Tourism, Fergus Ewing, has approved the BRIA for the 2021 Regulations.

Scottish Government
Agriculture and Rural Economy Directorate

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