

POLICY NOTE

THE COMMON AGRICULTURAL POLICY (SIMPLIFICATIONS AND IMPROVEMENTS) (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2021

SSI 2021/9

The Common Agricultural Policy (Simplifications and Improvements) (Miscellaneous Amendments) (Scotland) Regulations 2021 (the “2021 Regulations”) are made in exercise of the powers conferred by section 2 of the Agriculture (Retained EU Law and Data) 2020 Act¹.

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 2021 Regulations are subject to the negative procedure because they simplify and improve the existing penalty regime for voluntary coupled support schemes, remove wording from a provision of Regulation (EU) 1307/2013 (“the Direct Payments Regulation”) to ensure consistency with other amendments made by the Direct Payments to Farmers (Miscellaneous Amendments) (Scotland) Regulations 2020 (SSI 2020/460) and do not introduce any new policy.

In particular, although the existing tiered penalty regime, which contains five levels, is replaced by a single level, an effective penalty regime will continue with the benefit of our simplifications and improvements.

In addition, the 2021 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 the Scottish Parliament or primary legislation and 3. They do not contain any matter with material financial impact or financial implications.

The 2021 Regulations will apply to the whole of Scotland and come into force on 14 March 2021 in time for the Single Application Form 2021 submission window opening on 15 March 2021.

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 principal amendment will simplify and improve the operation of the provisions for penalties for our voluntary coupled support schemes.

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

1. Policy Objectives

Voluntary coupled support scheme penalties:

The 2021 Regulations aim to simplify and improve the penalties that are applied under Scotland's Voluntary Coupled Support Schemes (the Scottish Upland Sheep Support Scheme and the Scottish Suckler Beef Support Scheme (Mainland and Islands)) for over declaration of eligible animals. The existing tiered penalty regime, which contains five levels, is replaced by a single level where all penalties are calculated on the basis of a straight reduction to the payment due by the percentage error rate. The percentage error rate is calculated based on the number of ineligible animals compared to eligible animals claimed by an applicant.

The Direct Payments regulation:

The 2021 Regulations remove wording from a provision of the Direct Payments Regulation to ensure consistency with other amendments made by the Direct Payments to Farmers (Miscellaneous Amendments) (Scotland) Regulations 2020 (SSI 2020/460) .

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

Voluntary coupled support scheme penalties:

Regulation 3 amends Article 31(2) (Administrative penalties in respect of declared animals under the animal aid schemes) of Regulation (EU) No 640/2014, insofar as it applies to direct payments, to omit that wording that provides for a tiered penalty regime, which contains five levels. The effect is that this is replaced by a single level where all penalties are calculated on the basis of a straight reduction to the payment due by the percentage error rate.

Regulation (EU) No 640/2014 is one of the 'horizontal' CAP regulations that contains rules that apply across direct payments and rural development. EU legislation governing CAP direct payment schemes became part of domestic law in the UK on exit day (31 January 2020) by virtue of section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 ("the 2020 Act").

All other EU legislation governing CAP schemes became domestic law on IP completion day (31 December 2020 at 11.00 pm) under the European Union (Withdrawal) Act 2018 ("the 2018 Act").

Former EU legislation has been modified, or deficiency fixed, in order to be effective as domestic law. Legislation governing direct payments was modified during 2020 under the 2020 Act, and legislation governing rural development schemes was modified with effect from IP completion day under the 2018 Act.

It follows that there are two versions of Regulation (EU) No 640/2014: a 'direct payments' version and a 'rural development' version that have been differently amended. The changes being made in this instrument to Article 31(2) apply only to direct payments.

The Direct Payments regulation:

Regulation 2 removes wording from Article 14 (flexibility between pillars) of the Direct Payments Regulation to ensure consistency with other amendments made by the Direct Payments to Farmers (Miscellaneous Amendments) (Scotland) Regulations 2020 (SSI 2020/460).

3. Reasons for and effect of the proposed change

Voluntary coupled support scheme penalties:

The Land Court has raised concerns about the nature and size of level 5 penalties in relation to proportionality. Regulation 3 by removing the multi-tiers of penalties improves the operation of the penalty regime by addressing this concern. Furthermore, the system of penalties is simplified as complexity is reduced by treating all claimants in the same way with one straightforward rule where ineligible animals claimed by the applicant are used to calculate a percentage reduction in any payment due. This still provides an incentive to applicants to ensure they meet scheme conditions and retains a deterrent effect for those who may otherwise decide to take the risk and claim for ineligible animals.

The Direct Payments regulation:

Regulation 2 improves the Direct Payments Regulation by removing wording from Article 14 to ensure consistency with other amendments made by the Direct Payments to Farmers (Miscellaneous Amendments) (Scotland) Regulations 2020 (SSI 2020/460).

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 2021 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 2021 Regulations will be used to deliver on the stated objective of the Bill, which is “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 2021 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 robustly consulted on and fully impact assessed. It is not considered appropriate or proportionate to undertake full impact assessments for the 2021 Regulations as they enact administrative changes to the delivery of the existing CAP.

The 2021 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 2021 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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