

BUSINESS AND REGULATORY IMPACT ASSESSMENT

1. Title of proposal

The Rural Support (Simplification and Improvement) (Scotland) Regulations 2023 (the “Regulations”)

2. Purpose and intended effect of the Regulations

Context

The Regulations implement the following amendments to deliver simplifications and improvements to the operation of the provisions of Common Agricultural Policy (“CAP”) legislation.

Regulation 2 omits Article 31(1)(a) and (b) of Regulation (EU) No 1307/2013 (the “Direct Payments Regulation”) which concern the replenishment of national or regional reserves both from payment entitlements not giving right to payments during two consecutive years due to the application of the specified provisions, and from payment entitlements not activated for two consecutive years.

Regulations 3 and 4 omit provisions in Commission Delegated Regulation (EU) No 639/2014 and Commission Implementing Regulation (EU) No 641/2014 respectively. Those omissions are consequential on the amendment to the Direct Payments Regulation made by regulation 2.

Regulation 5 omits paragraph 9(4) of the Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015 to remove the requirements relating to reversion to the national reserve of (a) 50% of the annual unit value of payment entitlements that are transferred without land that applied up to 2018 and (b) 30% of the annual unit value of payment entitlements that are transferred without land that currently applies as from 2018.

These provisions come into force on 1 January 2024 and therefore have effect for the 2024 claim year onwards.

Objectives

The amendment made by regulation 2 of the Regulations will simplify the application process for our customers and stakeholders and reduce their administrative burden. Without the Regulations coming into force, some of our customers may feel obliged to sell or lease their entitlements for the 2024 claim year and subsequent years.

The amendment made by regulation 5 of the Regulations will also simplify the application process for our customers and stakeholders and reduce their administrative burden.

In absence of the Regulations, our customers will not benefit from this simplification and improvement of process for the 2024 claim year and subsequent years.

Background

Article 31(1) of the Direct Payments Regulation sets out rules for replenishment of the national reserve. The Regulations omit points (a) and (b) of Article 31(1), being provisions regarding the replenishment of national or regional reserves from payment entitlements not giving right to payments during two consecutive years due to the application specified provisions, and from payment entitlements not activated for two consecutive years.

Regulation 9(4) of the Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015 provides for the reversion to the national reserve (a) 50% of the annual unit value of payment entitlements that are transferred without land that applied up to 2018 and (b) 30% of the annual unit value of payment entitlements that are transferred without land that currently applies as from 2018. The Regulations therefore omit Regulation 9 (4).

Rationale for Government intervention

We believe the Regulations will be welcomed by the NFUS and our customers as a change that will simplify the payments entitlement process and make it easier to use and apply.

Both of the above simplifications of our payments entitlement process will make it easier for our applicants to use some of whom are obliged to take action to avoid this such as selling or leasing their entitlements all adding to the administrative burden for applicants.

Both of these simplifications will reduce the administrative burden for our customers.

Assessment of the impact of the simplifications and improvements on stakeholders and members of the public

The Regulations will have no material negative impact on members of the public or stakeholders and will have no material impact on our young farmer and/or new entrant categories of the National Reserve and the levels of BPS payments for applicants.

The Regulations should have a positive impact on our stakeholders/scheme beneficiaries for direct payments as with effect from the 2024 claim year and for subsequent years the application process will be improved and simpler and it will no longer be necessary for some of our applicants to take action such as selling or leasing their entitlements which would otherwise continue to add to their administrative burden.

3. Consultation

Within Government

Responsibility for the schemes affected by the simplifications and improvements being made by these Regulations and related issues lie with the Agriculture and

Rural Economy (“ARE”) directorate. We have discussed the simplifications and improvements 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 and Business Stakeholders

We conducted a full public consultation on our period of Stability and Simplicity to 2024 and further consultation took place in relation to the Agriculture (Retained EU Law and Data) (Scotland) Bill. The Regulations will be used to deliver on the stated objective of the Bill “to enable the continued operation of current CAP schemes and policies, but also to allow them to be progressively improved and simplified”.

No formal public or business consultation has or will take place. The simplifications and improvements will simplify the application process for our customers and applicants. There is no policy change regarding the remaining options and elements of our young farmers and new entrants schemes and it will not affect the levels of BPS payments for applicants. There will be no changes regarding who we pay nor other scheme conditions.

We have informally advised NFUS and stakeholders of our proposals for the Regulations and we understand they will support them given they simplify and improve our application process.

4. Options

Option 1 – implement the Regulations

Option 1 is to implement the Regulations for the removal of these provisions from Article 31 of the Direct Payments Regulation (as well as the associated consequential amendments to Commission Delegated Regulation (EU) No 639/2014 and Commission Delegated Regulation (EU) No 639/2014) and the omission of regulation 9(4) of the Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015. These changes will simplify the payment entitlement process for our customers and stakeholders. Without the Regulations coming into force, some of our customers may feel obliged to sell or lease their entitlements for the 2024 claim year and subsequent years and they will not benefit from these simplifications of process.

Option 2 – do nothing

If we do not implement the Regulations for the removal of these provisions from Article 31 and the omission of Regulation 9 (4) our customers and stakeholders will not benefit from these simplifications of process.

Sectors and groups affected

Beneficiaries of direct payment schemes, namely, farmers, crofters and their businesses.

Benefits option 1

With effect from the 2024 claim year , some of our applicants will no longer need to sell or lease unused entitlements to avoid removal of their entitlements and our customers and stakeholders will benefit from these simplifications of process.

Benefits option 2

The 'do nothing' option has no benefits .

Costs option 1

The changes being made by the Regulations will not create significant additional costs. The changes are minor simplifications and improvements and the administrative checks that are carried out for payment entitlements and our registers will continue to be maintained and completed using existing resources and staff.

Costs option 2

To do nothing will mean additional costs will continue to be incurred in connection with the extra administrative costs related to the article 31(1)(a)(b) and regulation 9(4) provisions to be removed and the avoidance by some applicants selling or leasing their entitlements .

5. Scottish Firms Impact Test

There are no obvious adverse impacts on Scottish firms.

6. Competition assessment

There are no obvious impacts on competition.

7. Consumer assessment

We do not anticipate that the Regulations will have any adverse effect on consumers.

8. “Test Run” of business forms

There will be no new forms as a result of the change being made by the Regulations. Guidance will be made available to applicants to ensure they have all the required information relating to the proposals of the Regulations.

9. Digital Impact Test

No impact is anticipated as a result of the Regulations.

10. Legal Aid Impact Test

No impact on the legal aid fund is expected as a result of the Regulations.

11. EU Alignment

Following the UK's exit from the EU it is no longer necessary to retain the Article 31 (1)(a)(b) of the Direct Payments Regulation, Article 24(2) of the Commission Delegated Regulation (EU) No 639/2014, Article 9 of Commission Implementing Regulation (EU) No 641/2014 and the regulation 9(4) of the Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015. These minor technical simplifications and improvements will not contravene the policy of alignment to EU law. These changes will have no material impact on our young farmer and/or new entrant categories of the national reserve and the levels of BPS payments for applicants.

12. Enforcement, sanctions and monitoring

While the Regulations enable minor simplifications and improvements, there are no other changes in the administration of payment entitlements and the schemes will not be effected.

13. Implementation and Delivery Plan

The improvements will be implemented by the Rural Payments and Inspections Division following informal liaison with key stakeholders to inform them that they will no longer need to sell or lease their entitlements and the reversion to the national reserve of (a) 50% of the annual unit value of payment entitlements that are transferred without land that applied up to 2018 and (b) 30% of the annual unit value of payment entitlements that are transferred without land that currently applies as from 2018 will no longer apply all with effect from the 2024 claim year.

14. Post Implementation Review

The administration of payment entitlements will be reviewed annually to ensure the policy objectives are met.

15. Summary and Recommendations

We recommend the implementation of the Regulations. If we do not implement the Regulations for the removal of these provisions from Article 31 and the omission of Regulation 9 (4) our customers and stakeholders will not benefit from these simplifications of process. There are no significant costs or risks associated with implementation.

16. 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 improvements and (b) the benefits justify any costs .

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Mairi Gougeon Cabinet Secretary for Rural Affairs Land Reform and Islands

26 October 2023

Contact

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