

SL(5)543 - The Common Agricultural Policy (Payments to Farmers) (Coronavirus) (Wales) Regulations 2020

Background and Purpose

These Regulations modify the application of retained EU Direct Payments legislation and domestic legislation to extend the deadlines for submission and amendment of the Common Agriculture Policy Single Application Form ("SAF"), aid applications, payments claims and notification of the transfer of entitlements ("T&L") for claim year 2020.

Farmers who wish to apply for Direct Payments or Rural Development funding have to submit the SAF, aid application or payment claim by a date set out in legislation, currently 15 May. There is then a window within which farmers can make changes to a submitted SAF, aid application or payment claim if there are any errors or issues.

As a result of the COVID-19 pandemic, the EU has published Commission Implementing Regulation (EU) 2020/501 of 6 April 2020 which allows all Member States to choose to extend the SAF, aid application and payment claim deadline by 1 month to 15 June for claim year 2020. The date for amending a submitted SAF, aid application, and payment claim form can then also be amended from 31 May to 30 June.

Unlike other EU law relating to the Common Agriculture Policy ("CAP"), changes to EU Direct Payments legislation do not automatically apply during the Implementation Period. Domestic legislation is therefore required to amend the SAF deadlines in Wales. EU law still governs other elements of CAP, including the Rural Development Programme.

Procedure

Negative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument.

1.Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

These Regulations were made on 29 April 2020 and came into force at the beginning of the day on 30 April 2020. They were also laid before the Senedd on 30 April 2020. This means that, in effect, the Regulations were laid before the Senedd after they had come into force. This also means that the convention of statutory instruments not coming into force sooner than 21 days from the date of laying has not been adhered to.

Sections 4(1) and 11A(4) of the Statutory Instruments Act 1946 require notification to be sent to the Llywydd explaining why it has been considered necessary for the instrument to come into force before



has been laid before the Senedd, and to breach the 21 day convention. The notification was provided by the Minister for Finance and Trefnydd in a letter to the Llywydd, dated 1 May 2020.

The notification explains that it was considered *“necessary to wait for the Direct Payments to Farmers (Legislative Continuity) Act 2020 (Consequential Amendments) Regulations 2020 (“2020 Regulations”) to be made before making this instrument to ensure continuity of approach for interpretation. The 2020 Regulations make consequential amendments required as a result of the Direct Payments to Farmers (Legislative Continuity) Act 2020 on a UK-wide basis.”*

The notification also explains that, due to the urgent timetable, there has been no time to carry out meaningful consultation or a Regulatory Impact Assessment.

The Welsh Government has also provided the following explanation in the Explanatory Memorandum to these Regulations:

“This SI is being made subsequent to the Direct Payments to Farmers (Legislative Continuity) Act 2020 (Consequential Amendments) Regulations 2020 (“2020 Regulations”) to ensure continuity of approach for definitions and interpretation. The 2020 Regulations make consequential amendments required as a result of the Direct Payments to Farmers (Legislative Continuity) Act 2020 on a UK-wide basis. The 2020 Regulations were made on 27 April 2020, laid before the UK Parliament on 28 April 2020 and come into force on 30 April 2020.

This instrument will come into force on 30 April 2020 to ensure there is clarity around submission dates, and as such the 21 day convention will not be adhered to.”

Implications arising from exiting the European Union

Basic Payment Scheme (“BPS”) in Wales is no longer governed by EU law as a result of Article 137 of the Withdrawal Agreement. The Direct Payments to Farmers (Legislative Continuity) Act 2020 incorporated the EU legislation governing the 2020 CAP Direct Payment schemes into domestic law on Exit Day. Unlike other EU law relating to the CAP, changes to EU Direct Payments legislation do not automatically apply during the Implementation Period, and domestic legislation is therefore required to amend the SAF deadlines in Wales. EU law still governs the other elements of CAP including the Rural Development Programme.

Government Response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

11 May 2020

