

**The Common Agricultural Policy (Payments to Farmers) (Coronavirus)
(Wales) Regulations 2020**

Explanatory Memorandum

This Explanatory Memorandum has been prepared by Rural Economy and Legislation Division within the Department for Environment, Skills and Natural Resources and is laid before the Senedd in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Common Agricultural Policy (Payments to Farmers) (Coronavirus) (Wales) Regulations 2020.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs

30 April 2020

1. Description

The Common Agricultural Policy (Payments to Farmers) (Coronavirus) (Wales) Regulations 2020 (“the instrument”) modifies the application of retained EU Direct Payments legislation and domestic legislation to extend the deadlines for submission and amendment of the Common Agricultural Policy Single Application Form (“SAF”), aid applications, payment claims and notification of the transfer of entitlements (“T&L”) for claim year 2020.

The instrument modifies the application of provisions in the following legislation:

- Commission Implementing Regulation (EU) No 809/2014 laying down rules for the application of Regulation (EU) No 1306/2013 with regard to the integrated administration and control system, rural development measures and cross compliance(1);
- Commission Implementing Regulation (EU) No 641/2014 of 16 June 2014 laying down rules for the application of Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy(2);
- the Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015(3); and
- the Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014(4).

2. Matters of special interest to the Legislation, Justice and Constitution Committee

Farmers who are applying for the following schemes must complete a SAF:

- Basic Payment Scheme (“BPS”) including Redistributive, Greening and Young Farmer
- Glastir Advanced (GA)

¹ Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance (OJ L 227, 31.7.2014, p. 69–124). In so far as relating to the CAP direct payment schemes, Commission Implementing Regulation (EU) No 809/2014 has been incorporated into domestic law by virtue of section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (2020 c.2). Commission Implementing Regulation (EU) No 809/2014 has been amended by regulation 14 of the Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020/90). There are other amending instruments but none are relevant.

² Commission Implementing Regulation (EU) No 641/2014 of 16 June 2014 laying down rules for the application of Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy (OJ L 181, 20.6.2014, p. 74–8). Commission Implementing Regulation (EU) No 641/2014 has been incorporated into domestic law by section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (2020 c.2). Article 8 of Commission Implementing Regulation (EU) No 641/2014 has been amended by regulation 21 of the Rules for Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020/91).

³ S.I. 2015/1252 (W. 84).

⁴ S.I. 2014/3223 (W. 328).

- Glastir Organic (GO)
- Improved Land Premium (ILP)
- Glastir Woodland Creation Premium (GWCP)
- Glastir Woodland Creation Maintenance (GCM)
- Glastir Woodland Creation Premium (GCP)

In so far as it relates to the BPS (Pillar 1) 2020, Regulation 1306/2013 has been incorporated into domestic law by virtue of section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c.2).

The amendments to extend the Pillar 1 application and amendment deadlines are being made pursuant to Article 78(b) of Regulation (EU) No. 1306/2013 on the financing, management and monitoring of the common agricultural policy (“Regulation 1306/2013”). Article 78(b) has been amended by regulation 7(16)(b) of the Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020/90). The function in Article 78(b) of making regulations laying down rules on aid applications, and applications for payment entitlements (including the final date for submission of applications) is conferred on the “appropriate authority” which is the Welsh Ministers in this context by virtue of Article 2(1)(l) and (m) of Regulation 1306/2013

The Rural Development Programme (Pillar 2) remains governed by EU law. This includes the Glastir schemes, and Improved Land Premium. 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 (which includes the UK in relation to Pillar 2) 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.

The amendments to extend the deadlines in relation to Pillar 2 are therefore being made pursuant to section 2(2) of the European Communities Act 1972. The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the common agricultural policy by virtue of the European Communities (Designation) (No. 5) Order 2010 (S.I. 2010/2690). This designation allows Welsh Ministers to make regulations for the purpose of implementing any EU obligation of the United Kingdom.

The amendment to extend the T&L notification deadline is being made pursuant to Article 34(5) of Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common

agricultural policy⁵ (“Regulation 1307/2013”). Regulation 1307/2013 has been incorporated into domestic law by virtue of section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (2020 c.2). Article 34(5) was amended by regulation 5 of the Rules for Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020/91). The function in Article 34(5) of making regulations laying down detailed rules governing the notification by farmers of the transfer of payment entitlements and the deadlines within which such notification is to take place is conferred on the “appropriate authority” which is the Welsh Ministers in this context by virtue of Article 4(1)(r) and (s) of Regulation 1307/2013.

The instrument is subject to negative procedure as the instrument needs to be made, and come into force urgently. The deadline for the T&L notification is currently 30 April (day included). As such the amendments need to be made urgently to ensure clarity around the deadlines. On this basis the negative procedure has been selected in relation to use of the section 2(2) of European Communities Act 1972 powers. Article 115B(1) of Regulation (EU) No. 1306/2013 and Article 71A of Regulation (EU) No. 1307/2013 provide that the negative procedure applies in relation to the use of the powers in Article 78(b) of Regulation (EU) No. 1306/2013 and Article 34(5) of Regulation (EU) No. 1307/2013.

21 Day Convention and Section 4(1) of the Statutory Instruments Act 1946

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.

This instrument, made on 29 April 2020 will come into force at the beginning of the day on 30 April 2020 and will be laid before the National Assembly for Wales on 30 April 2020, in effect, after it has come into force.

3. Legislative background

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

⁵ Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ No L 347, 20.12.2013, p. 608).

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 set out above, 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.

The rationale being that this will ease the administrative pressure on farmers, many of whom may be affected by coronavirus, self-isolating or unable to access assistance from the relevant paying agency – in this instance Rural Payment Wales (“RPW”).

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 (the “DPLC Act”) 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.

4. Purpose and intended effect of the legislation

Commission Implementing Regulation (EU) No 809/2014

Regulation 2 modifies the application of the Commission Implementing Regulation (EU) No 809/2014 (“Regulation 809/2014”) which lays down rules for the application of Regulation 1306/2013 with regards to the integrated administration and control system, rural development measures and cross compliance for claim year 2020.

Regulation 2(a) modifies the application of Article 13(1) so that for claim year 2020 the SAF, aid application and payment claim submission deadline is extended from 15 May to 15 June 2020

Regulation 2(b) modifies the application of Article 15(2) to extend the deadline for making amendments to a SAF, aid application or payment claim from 31 May to 30 June 2020.

Regulation 2(c) modifies the application of Article 22(1) to ensure that the final date for submitting an application for the allocation or increase in value of payment entitlements aligns with the amended deadlines. This is extended from 15 May to 15 June 2020.

Commission Implementing Regulation (EU) No 641/2014

Regulation 3 modifies the application of the Commission Implementing Regulation (EU) No 641/2014 which lays down rules for the application of

Regulation 1307/2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy. The modification removes references to Exit Day from Article 8(1) for clarity.

Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014

Regulation 4 modifies the application of the Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014 (“the 2014 Regulations”) for claim year 2020. The application of regulation 3 of the 2014 Regulations is amended to extend the deadline for submitting a SAF, aid application or payment claim to the Welsh Ministers from 15 May to 15 June 2020

Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015

Regulation 5 modifies the application of the Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015 (“the 2015 Regulations”) for claim year 2020. The 2015 Regulations make provisions in relation to the administration of Regulation (EU) No 1307/2013.

Regulation 5(a) modifies the application of regulation 10(1) of the 2015 Regulations to align the deadline for applications for allocation of payment entitlements under the basic payment scheme with the revised dates in Regulation 809/2014.

Regulation 5(b) modifies the application of regulation 11(3) of the 2015 Regulations so that the final date by which the transferor of payment entitlements must notify the Welsh Ministers of the transfer for claim year 2020 is extended from 30 April to 15 May 2020.

5. Consultation

This instrument has not been subject to formal consultation because we needed to bring the SI forward quickly to try and address difficulties experienced by farmers as a result of the pandemic

6. Regulatory Impact Assessment (RIA)

The Regulations maintain the current position and make no policy changes hence why no Regulatory Impact Assessment has been undertaken, in addition to the fact that we needed to bring the SI forward quickly to try and address difficulties experienced by farmers as a result of the pandemic.