

The Payments to Farmers (Controls and Checks) (Wales) (Coronavirus) 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 Payments to Farmers (Controls and Checks) (Wales) (Coronavirus) Regulations 2020.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs

22 May 2020

1. Description

- 1.1 As a result of the COVID-19 pandemic, the Payments to Farmers (Controls and Checks) (Wales) (Coronavirus) Regulations 2020 (“the instrument”) will reduce the minimum inspection and control rates for the Basic Payment Scheme (“BPS”) 2020 in line with Commission Implementing Regulation (EU) 2020/532 derogating in respect of the year 2020 from Implementing Regulations (EU) No 809/2014, (EU) No 180/2014, (EU) No 181/2014, (EU) 2017/892, (EU) 2016/1150, (EU) 2018/274, (EU) 2017/39, (EU) 2015/1368 and (EU) 2016/1240 as regards certain administrative and on-the-spot checks applicable within the common agricultural policy.

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

- 2.1 In light of the COVID 19 pandemic the European Commission has proposed to derogate from the current requirements in EU Law for the Basic Payment Scheme (BPS) and Rural Development Programme (RDP) for scheme year 2020.
- 2.2 The EU published the Commission Implementing Regulation (EU) 2020/532 derogating in respect of the year 2020 from Implementing Regulations (EU) No. 809/2014, (EU) No. 180/2014, (EU) No. 181/2014, (EU) 2017/892, (EU) 2016/1150, (EU) 2018/274, (EU) 2017/39, (EU) 2015/1368 and (EU) 2016/1240 as regards certain administrative and on-the-spot checks applicable within the common agricultural policy (“the EU Regulations”) on 16 April 2020.
- 2.3 The Direct Payments to Farmers (Legislative Continuity) Act 2020 (c.2) (the ‘2020 Act’) incorporated EU legislation relating to Direct Payments into domestic law, thus allowing UK administrations to continue to operate BPS for claim year 2020. RDP 2020 schemes such as Glastir continue to operate under EU legislation by virtue of the Withdrawal Agreement and are co-financed with the EU.
- 2.4 Of the twenty Articles in Commission Implementing Regulation (EU) 2020/532, only six are relevant for BPS in Wales for claim year 2020. Four of these require legislative amendments to be made to Commission Implementing Regulation (EU) No. 809/2014, which by virtue of the 2020 Act now forms part of domestic law.
- 2.5 Any derogations provided for which apply directly to RDP 2020 schemes, already directly apply as they form part of EU Law, and do not require domestic legislative amendments.

3. Legislative background

- 3.1 The changes to reduce the minimum inspection and control rates are being made pursuant to Article 62(2)(a) and (b) of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council of 17

December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No. 352/78, (EC) No. 165/94, (EC) No. 2799/98, (EC) No. 814/2000, (EC) No. 1290/2005 and (EC) No. 485/2008 (OJ No L 347, 20.12.2013, p. 549).

- 3.2 In so far as it relates to the BPS (Pillar 1) 2020, Regulation (EU) No. 1306/2013 has been incorporated into domestic law by virtue of section 1 of the 2020 Act.
- 3.3 Article 62(2) of Regulation (EU) No. 1306/2013 has been amended by regulation 7(4) of the Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020/90). In particular, the function in Article 62(2) has been amended so that it is exercisable by the appropriate authority. “Appropriate authority” is defined in Article 2(1)(m) of Regulation (EU) No. 1306/2013 as the “*relevant authority for the constituent nation in which the regulations apply*”. “Relevant authority” is then defined in Article 2(1)(k) as the Welsh Ministers for Wales.
- 3.4 This instrument is subject to negative procedure pursuant Article 115B(1) of Regulation (EU) No. 1306/2013 (as it forms part of domestic law by virtue of section 1 of the 2020 Act).

4. Purpose and intended effect of the legislation

- 4.1 Regulation 2 modifies Commission Implementing Regulation (EU) No. 809/2014 (“Regulation 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 for claim year 2020.
- 4.2 Regulation 809/2014 lays down rules on the timing of on-the-spot checks, the control rates of certain on-the-spot checks within the integrated system including for area-related aid schemes, and the increase or reduction of the control rates. In addition, Regulation 809/2014 contains rules on on-the-spot checks relating to eligibility criteria, and commitments.
- 4.3 Several obligations pursuant to Regulation (EU) No. 1306/2013 and Regulation (EU) No. 1307/2013 rely on specific and different time frames for their fulfilment, and consequently require the on-the-spot checks to be carried out within those time frames. The measures in place to address the COVID-19 pandemic affects the feasibility of performing the required on-the-spot checks accurately and within the corresponding time limits.
- 4.4 Regulation 2 provides for derogations from those requirements and reduces the minimum rate of the on-the-spot checks compared to the normal control rates for Greening, cross-compliance, BPS, redistributive and young farmer obligations.

5. Consultation

- 5.1 This instrument has not been subject to formal consultation due to the fact it needed to be brought forward quickly in response to the COVID-19 pandemic.
- 5.2 These changes reduce the minimum number of controls required to be carried out before payments and provides for alternative methods where social distancing measures due to COVID-19 are unable to be delivered. The instrument replicates flexibility provided by the European Commission to all Member States (including the UK with respect to Pillar 2 schemes such as Glastir).

6. Regulatory Impact Assessment (RIA)

- 6.1 No RIA has not been prepared in relation to this instrument. It was considered not necessary to carry out a RIA as to the likely costs and benefits of complying with this instrument.
- 6.2 With respect to the reduction of minimum cross compliance checks from 1% to 0.5% the effect will predominantly reduce Good Agricultural and Environmental Conditions (GAEC) checks, which historically have seen low levels of non-compliance. The changes do not prevent additional checks being undertaken e.g. where non-compliance is reported during the year. The reduction does not affect the requirement to inspect 3% of holdings for livestock identification and movement reporting checks and the 100% administrative check, when bovine tuberculosis (TB) tests become overdue remains.