The Common Agricultural Policy (Direct Payments to Farmers) (Miscellaneous Amendments) (Wales) Regulations 2020

Explanatory Memorandum

This Explanatory Memorandum has been prepared by Rural Payments Wales 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 (Direct Payments to Farmers) (Miscellaneous Amendments) (Wales) Regulations 2020.

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs
17 February 2020

1. Description

The Common Agricultural Policy (Direct Payments to Farmers) (Miscellaneous Amendments) (Wales) Regulations 2020 ("the instrument") amend the Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014, and the Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015. The amendments address operability issues created by the United Kingdom ("UK") leaving the EU. The instrument will enable the domestic EU derived legislation to operate effectively in the UK after EU Exit for direct payments claim year 2020.

The amendments in this instrument will maintain the status quo, as far as possible, and are minor and technical in nature.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

The instrument is being laid using powers conferred upon the Welsh Ministers by section 3(3)(a) of the Direct Payments to Farmers (Legislative Continuity) Act 2020 ("DPLC Act"). The instrument makes provisions that the Welsh Ministers consider appropriate to prevent, remedy or mitigate any failure of retained EU law governing the CAP direct payment schemes to operate effectively, or any other deficiency in retained EU law arising from the withdrawal of the UK from the EU.

The instrument is being laid under the "made affirmative" procedure as provided for in paragraph 2(1) of Schedule 2 to the DPLC Act. The instrument comes into force on Exit Day (11pm on 31 January 2020).

The instrument could not be made until the DPLC received Royal Assent on 30 January 2020. It is important that the amendments come into force on Exit Day, at the point the relevant EU legislation becomes retained EU law. This is to avoid any legislative gap in the Direct Payment schemes for claim year 2020 and to ensure the scheme remains operable for the whole claim year, which began on 1 January.

The domestic Direct Payment scheme for claim year 2020 needs to be equivalent to the EU schemes in order to benefit from the state aid exemption in Article 13 of Regulation (EU) 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 ("Direct Payments Regulations"). An enforcement gap could put this exemption at risk.

In relation to commencement, paragraph 1(1) of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 ("Withdrawal Act") contains a general rule that 'glosses' the commencement dates in subordinate legislation made before exit day. The gloss applies to all subordinate legislation due to come into force on, immediately before or exit day, and provides that those provisions will instead come into force at the end of the implementation period. Regulation 1(2) provides that paragraph 1(1) of Schedule 5 to the Withdrawal Act does not apply to this instrument. The instrument therefore comes into force on exit day.

Section 1(1) of the DPLC Act incorporates the relevant EU legislation on Exit Day into domestic law. Section 3(7) of the DPLC Act clarifies that provisions made by regulations under the powers in the DPLC Act may apply in relation to matters in relation to the CAP Direct Payment schemes for the whole of the claim year, notwithstanding that for the month of January it will remain EU law.

3. Legislative background

CAP is the agricultural policy of the EU. It implements a system of agricultural subsidies and other programmes. Funding made available under the CAP is split into two Pillars: Pillar I (Direct Payments and CMO measures) and Pillar II (Rural Development Programmes). Direct Payments are the main income-support schemes for farmers under the CAP.

Under the terms of Part 4 of the Withdrawal Agreement ("WA"), EU law continues to be applicable in the UK during the implementation period, which is defined in Article 126 of the WA as starting on the date of entry into force of that Agreement and ending on 31 December 2020.

Section 1A of the Withdrawal Act gives effect to Part 4 of the WA. However, Article 137 of the WA provides that, taking effect from Exit Day, the Direct Payments Regulation (which governs CAP Direct Payments to farmers) shall not apply in the UK for claim year 2020, save for Article 13 (the state aid exemption for Direct Payments). Whilst Article 137 of the WA expressly refers to the Direct Payment Regulation, it is also intended to capture law connected to the application of that Regulation.

To benefit from the state aid exemption the UK must have Direct Payment schemes that are "*equivalent*" to the EU schemes for claim year 2020. Article 137, therefore, envisages that the UK will have Direct Payment schemes that are equivalent to the EU schemes.

The domestic legislation being amended by this instrument continues to have effect in domestic law during the implementation period by virtue of section 1B (2) of the Withdrawal Act, however amendments are required to ensure it remains operable and effective.

4. Purpose and intended effect of the legislation

This instrument amends domestic EU derived legislation governing the Direct Payment schemes for farmers established under CAP in respect of claim year 2020, which runs from 1 January 2020 to 31 December 2020. This is in order to address operability issues created by the United Kingdom (“UK”) leaving the EU. The amendments will enable that domestic legislation to operate effectively in the UK after EU Exit.

The amendments introduced by this instrument will maintain the *status quo*, as far as possible, and are largely technical. No substantive policy changes are being made and farmers in Wales will see no change on the ground.

5. Consultation

This instrument has not been subject to formal consultation because it aims to retain the status quo for the 2020 claim year, makes no substantive policy changes and is largely technical in nature. The instrument provides continuity and stability for Direct Payments recipients in Wales.

6. Regulatory Impact Assessment (RIA)

The Regulations maintain the current position and make no policy changes hence why no RIA has been undertaken.