

## **REGULATORY APPRAISAL**

### **AGRICULTURE, WALES**

#### **THE COMMON AGRICULTURAL POLICY SINGLE PAYMENT AND SUPPORT SCHEMES (WALES) (AMENDMENT) REGULATIONS 2006**

##### **Background**

1. The Single Payment Scheme (SPS) was introduced in the UK as part of the EU Common Agricultural Policy (CAP) reforms from 1 January 2005. The Scheme is largely governed by European Council and European Commission regulations. The Scheme replaced most of the CAP livestock and crop payments schemes, and breaks the link between production and subsidies. The Common Agricultural Policy Single Payment and Support Schemes (Wales) Regulations 2005 mainly provide for setting arrangements under the Scheme, which are within the discretion of the UK as a member state or for Wales as a region within the UK.
2. The SPS 10-month period is a statutory period for which farmers must be able to demonstrate that the land declared in support of their SPS claim is at their disposal. The period can begin at any time from 1 October in the year before the claim to 30 April in the year of the claim.
3. The European Commission has provided for farmers to have two 10-month periods for the SPS, with separate start dates, where specific agricultural conditions so warrant (Commission Regulation (EC) No. 606/2005 refers). The Welsh Assembly Government consulted the industry on whether to introduce two start dates for the 2006 SPS. And given that the majority of the 14 responses supported the option for two start dates, the Minister for Environment, Planning and Countryside decided that farmers in Wales should benefit from this facility for the 2006 SPS and beyond. However, it is necessary to amend the existing National Assembly legislation as currently it only permits one 10-month period.
4. In respect of the notification period for farmers to inform the Welsh Assembly Government of the transfer of their SPS entitlements, the current National Assembly legislation is not fully clear about the flexibility of operating within the European Commission's regulations (Article 25 of EC regulation 795/2004). The technical amendment provides the means for the Welsh Assembly Government to inform farmers of the necessary arrangements, and any changes to those arrangements, as appropriate.

##### **Purpose and intended effect of the measures**

5. The objective of the Common Agricultural Policy Single Payment and Support Schemes (Wales) (Amendment) Regulations 2006 is to introduce legislation to:
  - allow farmers the option to operate two 10-month periods for their land, which they declare each year for the purpose of receiving payments

under the Single Payment Scheme (SPS). Farmers may continue to operate with only one 10-month period if they so wish;

- make a technical amendment allowing the period within which transfers of SPS entitlements are to be communicated to the National Assembly to be determined in accordance with the discretionary powers granted to the National Assembly, as an EU member state competent authority; and
  - update references in the Common Agricultural Policy Single Payment and Support Schemes (Wales) Regulations 2005 (SI 2005/360 (W.29)) (i.e. the principal regulations) to reflect European Commission amending regulations, by number, to Commission Regulations 795/2004 and 796/2004 since the coming into force of the Common Agricultural Policy Single Payment and Support Schemes (Wales) Regulations 2005
6. The effect of allowing two 10-month periods will mean that farmers in Wales will be able to take advantage of the derogation introduced by the European Commission to permit this. There is a high reliance on seasonal land letting in Wales, and the effect of having two 10-month periods provides greater scope for farmers to be in a position to claim payment on their SPS entitlements. Two 10-month periods have been introduced in the other UK territories and to do so in Wales will avoid any challenges of discrimination.
7. The effect of making the technical amendment and up-dating references to European Commission regulations is largely a cosmetic exercise to ensure that we have accurately reflected and interpreted the basis for complying with the Commission's regulations. It will allow the Welsh Assembly Government flexibility in handling matters concerning the notification of SPS entitlement transfers, in line with the other UK territories.

### **Risk Assessment**

8. Failure to introduce these amendment Regulations would mean that the Assembly Government could not allow farmers in Wales to take advantage of the European Commission's derogation to have two SPS 10-month periods, and face the probability of a legal challenge of discrimination given that the other UK countries will be providing this facility. Not having the amendment in respect of the notification period for SPS entitlement transfers may mean that the Assembly Government could be constrained in its ability to operate properly within the European Commission's Regulations.

### **Options**

9. In respect of this legislation the "Do nothing option" is not an option as it would ultimately lead to infraction proceedings against the National Assembly for Wales by the European Commission. Therefore, the "Make the Legislation" option, to implement the changes required to comply with European legislation, is being proposed.

### Make the Legislation

10. To adopt these amending Regulations would allow farmers in Wales to have the same flexibility to operate (as in the rest of the UK) under the SPS. These Regulations will also allow Welsh farmers to continue with the traditional practice of seasonal land letting without providing a threat that by doing so they undermine their situation as regards claiming SPS payments.

### **Benefits**

11. The benefits of the SPS are wide ranging. It provides financial assistance to around 18,000 farmers in Wales for not only engaging in farming activity to meet market demands, but also to ensure the good agricultural and environmental condition of the land they farm.

12. The particular benefit associated with the introduction of two 10-month periods is that farmers will have wider scope to have access to land, mainly under seasonal lets, which they need in order to maximise their applications for SPS entitlements payments.

### **Costs**

13. The costs of making these amending Regulations and the IT development costs for introducing two 10-month periods is estimated at £50,000 and will be found from within the Rural Payment Division's operating budgets.

14. There will be no financial implications for farmers.

### **Competition Assessment**

15. The competition filter test has been completed and it shows that there is unlikely to be any market competition impact of the Common Agricultural Policy Single Payment and Support Schemes (Wales) (Amendment) Regulations.

### **Consultation**

#### With Stakeholders

16. A consultation exercise for the introduction of two 10-month periods took place between 15 August 2005 and 9 September 2005 with members of the Environment, Planning and Countryside Committee, the Rural Payments Division CAP Reform Stakeholders Group, which includes representatives from the main farming unions, and partnership groups. A list of consultees is attached at Annex A.

17. Fourteen responses were received. The majority of responders, including the farming unions, were in favour of introducing two 10-month periods. Most considered that two periods would provide a degree of flexibility for farmers to manage their short-term lets better than under the current single period. A summary of the consultation responses is attached at Annex B.

18. There was no consultation on the proposed technical amendments.

### With Subject Committee

19. The proposed Regulations were notified to the Environment Planning and Countryside Committee, via the list of forthcoming legislation on 5 October 2005 (EPC (2)-11-05(p.7) Annex 1, item No. 51). They were not identified for detailed scrutiny.

### **Monitoring and Review**

20. The Common Agricultural Policy Single Payment and Support Schemes legislation is subject to continued monitoring and review by Welsh Assembly Government officials and subject to audit, including by the European Court of Auditors.

### **Summary**

21. The existing Common Agricultural Policy Single Payment and Support Schemes (Wales) Regulations need revision in order to provide the same flexibility for Welsh farmers under the SPS as will be afforded to farmers in the other UK territories. The technical amendments are necessary so that Welsh Assembly Government officials can operate fully within the principles of the EU legislation governing the SPS.

## **ANNEX A: List of consultees**

### **Alphabetical list of organisations, EPC Committee Members and Individuals**

#### **Organisations**

Countryside Council for Wales	B Pawson; B Long; L Hughes
Country Landowners Business Association	Colin Hedley; Julian Salmon; Dawn Harding
DEFRA	David J Collins
Environment Agency	Richard Davies; Bob Merriman
Food Standards Agency	Mike Pender
Forestry Commission	Peter Garson Steve Hunt
Farmers' Union of Wales	Arwyn Owen; Rhian Nowell- Phillips
Gelli Aur College	John Griffiths
Local Authority	Graham Capper
National Farmers' Union	Mary James
Organic Centre Wales	Sue Fowler
Powys Local Authority	Idris Jones
Royal Society for the Protection of Birds	Katie-Jo Luxton; Tim Stowe
Snowdonia National Parks Authority	Emyr Williams
Welsh Local Government Association	Sue Perkins

#### **EPC Committee Members**

Alun Ffred Jones (Chair)	Carwyn Jones (Assembly Minister)
Lorraine Barrett	Helen Mary Jones
Mick Bates	Sandy Mewies
Glyn Davies	Carl Sargeant
Irene James	Brynle Williams

## Partnerships

K Bellis	C Morgan
M Dalton	J Morris
J Davies	O Moss
K Davies	G Owen
P Davies	G Owen
M Dolan	R Parry
A Edwards	E Perkins
D Evans	D Rees
Farmers Marts	P Rees
P Francis	H Richards
J Ganes	A Roberts
D Gatehouse	G O Roberts
A Giddings	I Roberts
H Griffiths	J F Roberts
L Griffiths	D Siencyn
C Horn	R Voyle
S James	G Watkins
D Jarrett	S White
B Jones	A Williams
C Jones	D Williams
D Jones	G Williams
H T Jones	J LI Williams
G Lewis	LI Williams
G Lloyd	R Williams
R Meadmore	

**ANNEX B: Consultation on modifications to the 2006 Single Payment Scheme (15 August 2005 to 9 September 2005): Summary of responses to the option for introducing two 10-month rule periods**

<b>Questions</b>	<b>Responder: NFU Cymru</b>
Q.7 Do you agree with this assessment? If not, why not?	Not addressed in respect of two 10-month periods.
Q.8 Do you have any suggestions on what other specific agricultural conditions are particularly relevant to Welsh farmers, which would benefit from two separate 10-month rule periods? If so, provide details.	Some farmers have been disrupted by having to comply with one start date. The definition of a holding is problematic i.e. "all production units controlled by a farmer". Businesses have distinctive enterprises based at different locations or even at the same location, with different needs or farming cycles, e.g. arable cropping or grassland or that the existing pre-SPS arrangements restricted their business opportunities. Two start dates would provide flexibility to take on land at a different time to that of the main holding/block so that the farmer can take advantage of the prevailing market place. The seasonal letting of land, which is important in Wales, will be better accommodated with two start dates and will partially overcome the difficulty where different graziers want different start/end dates to their agreements. It will also help to maximise the amount of land eligible for SPS and thus increase the area of land in Wales subject to cross compliance.
Q.9 Do you consider that the introduction of two separate 10-month rule periods in Wales would benefit farmers? If not, why not?	In principle yes, it will provide farmers with much needed flexibility.
Q.10 Do you consider that farmers' would find the management of having two separate 10-month periods burdensome? If so, why?	The consultation has not provided information of how this would operate. It is presumed that the farmer could chose one of two start dates next to each field on their SAF. Although two start dates will add to the complexity of the SPS it will provide much needed flexibility vis-à-vis the old IACS forage availability rules. There will need to be explicit and careful communication of the revised requirements to avoid confusion.
<b>Questions</b>	<b>Responder: NFU, Carmarthen [Peter Francis]</b>
Q.7 Do you agree with this assessment? If not, why	Yes.

not?	
Q.8 Do you have any suggestions on what other specific agricultural conditions are particularly relevant to Welsh farmers, which would benefit from two separate 10-month rule periods? If so, provide details.	This would be of some help but not a huge difference, once the agents and/or farmers sort the dates out there should be few problems.
Q.9 Do you consider that the introduction of two separate 10-month rule periods in Wales would benefit farmers? If not, why not?	Yes.
Q.10 Do you consider that farmers' would find the management of having two separate 10-month periods burdensome? If so, why?	No.

<b>Questions</b>	<b>Responder: FUW Aberystwyth [Arwyn M Owen, Director of Agricultural Policy]</b>
Q 7 to Q10	<p>The single start date for the 10-month rule caused problems for a number of farmers who are dependent on acquiring seasonal grazing agreements to supplement their declared forage areas. Farmers in these circumstances found it extremely difficult to arrange the same start date for all the land registered on their 2005 SAF forms and naturally believed that they should have been given parity with farmers in other EU member states (who had taken advantage of the two start date provision). The proposal to introduce two 10-month rule periods for 2006 SPS will therefore help to alleviate some of the problems which arise due to varying letting dates although we appreciate that it will be an additional administrative burden when completing SAF returns.</p> <p>A number of the FUW "county" responses also requested that the change should be accompanied by clarification in the guidance notes on the impact of two start dates on payment, trading and inspection in order to ensure that farmers who take advantage of this</p>



	option are clear about the implications.
<b>Questions</b>	<b>Responder: Denbighshire Farmers' Union Wales [R Richards, County President]</b>
Q.7 Do you agree with this assessment? If not, why not?	Yes.
Q.8 Do you have any suggestions on what other specific agricultural conditions are particularly relevant to Welsh farmers, which would benefit from two separate 10-month rule periods? If so, provide details.	No.
Q.9 Do you consider that the introduction of two separate 10-month rule periods in Wales would benefit farmers? If not, why not?	Yes, if renting ground.
Q.10 Do you consider that farmers' would find the management of having two separate 10-month periods burdensome? If so, why?	No.
<b>Questions</b>	<b>Responder: Caernarfon Farmers' Union of Wales [Richard Parry]</b>
Q.7 Do you agree with this assessment? If not, why not?	Yes.
Q.8 Do you have any suggestions on what other specific agricultural conditions are particularly relevant to Welsh farmers, which would benefit from two separate 10-month rule periods? If so, provide details.	No comment.
Q.9 Do you consider that the introduction of two separate 10-month rule periods in Wales would benefit farmers? If not, why not?	Yes.

Q.10 Do you consider that farmers' would find the management of having two separate 10-month periods burdensome? If so, why?	Yes, but it would be up to the individual to weigh up the advantages and disadvantages.
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<b>Questions</b>	<b>Responder: CLA Wales [Country Land &amp; Business Association]</b>
Q.7 Do you agree with this assessment? If not, why not?	Yes.
Q.8 Do you have any suggestions on what other specific agricultural conditions are particularly relevant to Welsh farmers, which would benefit from two separate 10-month rule periods? If so, provide details.	No.
Q.9 Do you consider that the introduction of two separate 10-month rule periods in Wales would benefit farmers? If not, why not?	Yes, where it enables flexibility to maintain economic farming practices.
Q.10 Do you consider that farmers' would find the management of having two separate 10-month periods burdensome? If so, why?	No, not if it is beneficial to their business and kept to workable guidelines.
<b>Questions</b>	<b>Responder: Glyn O Roberts, Undeb Amaethwyr Cymru [Partnership Group]</b>
Q.7 Do you agree with this assessment? If not, why not?	Did not respond to question 7.
Q.8 Do you have any suggestions on what other specific agricultural conditions are particularly relevant to Welsh farmers, which would benefit from two separate 10-month rule periods? If so, provide details.	Mr Roberts did not understand this inducement.
Q.9 Do you consider that the	Did not respond to question 9.

introduction of two separate 10-month rule periods in Wales would benefit farmers? If not, why not?	
Q.10 Do you consider that farmers' would find the management of having two separate 10-month periods burdensome? If so, why?	Yes – because I don't understand the two periods of 10 months with them overlapping.
<b>Questions</b>	<b>Responder: Prydderch Rees [Farmer], Neuadd Tawr, Llanbydr</b>
Q.7 Do you agree with this assessment? If not, why not?	No.
Q.8 Do you have any suggestions on what other specific agricultural conditions are particularly relevant to Welsh farmers, which would benefit from two separate 10-month rule periods? If so, provide details.	Gives more flexibility to farming business, and enables new entrants to gain a foothold.
Q.9 Do you consider that the introduction of two separate 10-month rule periods in Wales would benefit farmers? If not, why not?	Did not respond to question 9.
Q.10 Do you consider that farmers' would find the management of having two separate 10-month periods burdensome? If so, why?	No.
<b>Questions</b>	<b>Responder: National Trust Wales [Dr Ruth Williams]</b>
Q.7 Do you agree with this assessment? If not, why not?	Yes.
Q.8 Do you have any suggestions on what other specific agricultural conditions are particularly relevant to Welsh farmers, which would benefit from two separate 10-month rule	No.

periods? If so, provide details.	
Q.9 Do you consider that the introduction of two separate 10-month rule periods in Wales would benefit farmers? If not, why not?	Yes.
Q.10 Do you consider that farmers' would find the management of having two separate 10-month periods burdensome? If so, why?	Quite possibly, but as it is optional, farmers could still elect to have a single period.

<b>Questions</b>	<b>Responder: RICS Wales [ The Royal Institution of Chartered Surveyors Wales]</b>
Q.7 Do you agree with this assessment? If not, why not?	RICS Wales broadly agrees with the details as proposed although there could be a potential disadvantage with the two periods of 10 months from an administrative point of view. What will be the position with a farmer and two 10-months periods?. Can the farmer deal with each parcel separately or will the existence of two 10-month periods mean that both must elapse before any further changes are made? Clarification on this issue would be appreciated.
Q.8 Do you have any suggestions on what other specific agricultural conditions are particularly relevant to Welsh farmers, which would benefit from two separate 10-month rule periods? If so, provide details.	Seasonal lettings are important as a traditional part of Welsh agriculture. The proposal will undoubtedly benefit the further occupation of parcels of land by an individual occupier whether for grazing or arable purposes; and also provide substantial benefit for the landowner and/or land manager.  Comments from the North-east Wales membership confirm that seasonal grazing starts from February to mid-May (but mostly in March and April) as well as from September and October. Traditionally such short-term lets have been for periods extending from 5/6 months or around 11 months.
Q.9 Do you consider that the introduction of two separate 10-month rule periods in Wales would benefit farmers? If not, why not?	Yes, but not only for farmers, but also for landowners and land agents.

Q.10 Do you consider that farmers' would find the management of having two separate 10-month periods burdensome? If so, why?	No. The practical benefits are considered to outweigh the additional management burdens of two 10-months rule periods. Those involved will need to consider carefully the arrangements they make.
<b>Questions</b>	<b>Responder: Brightwells Ltd</b>
Q.7 to 10	The 10-month rule caused land agents/auctioneers many problems as seasonal lets are a very important part of Welsh livestock farming and most are taken in March/April. This means farmers had to delay their home farm submissions until let land was taken. Given that overlap of the 10-month rule is not permitted, why cannot the SPS system follow the IACS submissions whereby the landowner could declare that no other claimant was occupying the land? For SPS purposes a spring tenant could backdate his/her SPS claim onto let land provided that the self-assessment record is up to date and meets cross compliance requirements.
<b>Questions</b>	<b>Responder: McCartneys Chartered Surveyors [Glyn R Owens]</b>
Q.7 Do you agree with this assessment? If not, why not?	Yes, but in much of Wales it only has a very limited application.
Q.8 Do you have any suggestions on what other specific agricultural conditions are particularly relevant to Welsh farmers, which would benefit from two separate 10-month rule periods? If so, provide details.	It may help some farmers rent land, which has been on a different 10-month period to their own.
Q.9 Do you consider that the introduction of two separate 10-month rule periods in Wales would benefit farmers? If not, why not?	Yes, see above.
Q.10 Do you consider that farmers' would find the management of having two separate 10-month periods burdensome? If so, why?	Possibly, but that is up to them. The choice to have two 10-month periods will not affect their cross compliance obligations.

<b>Questions</b>	<b>Responder: McCartneys LLP [C W Jones]</b>
Q7 to Q10	<p>Would prefer to see the old IACS rules, whereby a farmer had to take control of land between 1 January and 31 April in the year in question, and would have to have control of it for a continuous period of 7 months, beginning from within those dates. Under this system there were none of the current problems caused by having to state a specific start date. If two dates are allowed, why not allow different start dates for each specific area of land? The requirement of having to commence occupation of the land at a specific date is causing problems that will still exist with two dates, as this will not be satisfactory for many farmers. It is a farce to allow the occupation of the land three months before the scheme starts and up to seven months before the application is submitted confirming they are in occupation of the land. This is because they may have vacated the land before inspections take place making it impossible to successfully administer the cross compliance rules. Although they would agree that the present position is wrong, they believe that two 10-month periods would cause greater confusion and suggest the simpler IACS 7-month approach (as described above) is used. This will prevent any double claiming on land, will reduce confusion and allow control of the land to rest with the person who is submitting the claim for the ground. Any scheme, which requires specific dates to apply, will cause management problems and lead to confusion.</p>
<b>Questions</b>	<b>Responder: Morris Marshall &amp; Poole, Chartered Surveyors, Auctioneers, Estate Agents &amp; Valuers</b>
Q7 to Q10	Would welcome the flexibility of two 10-month periods if required by some farmers