

## **Explanatory Memorandum to The Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015**

This Explanatory Memorandum has been prepared by the Department for Natural Resources and is laid before the National Assembly for Wales 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 Basic Payment and Support Schemes (Wales) Regulations 2015.

I am satisfied that the benefits outweigh any costs.

Rebecca Evans  
Deputy Minister for Farming and Food  
22 April 2015

## **1. Description**

The Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015 ('the Regulations') sets out the decisions made by Wales in respect of the European Union (EU) reform of the Common Agricultural Policy (CAP). The Regulations provide a legislative framework for those decisions and include, amongst others, the greening options for Wales and the Young Farmers Scheme. Payment options for the BPS are currently subject to a public consultation. Once that has concluded and a decision taken, the necessary provisions will be included in a future Statutory Instrument amending these Regulations.

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

These Regulations have been developed in response to public consultations and monthly meetings with stakeholders. The changes have been discussed in detail in the RIA.

## **3. Legislative background**

The reform of the CAP is governed by Regulation (EU) No 1307/2013 establishing rules for direct payments to farmers under support schemes within framework of the Common Agricultural Policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009. It came into force on 17 December 2013 and is supplemented by a number of European Commission (EC) Delegated and Implementing Regulations. Member States may introduce their own domestic legislation to implement certain aspects of the EU legislation.

The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the CAP of the European Union by virtue of S.I. 2010/2690. This designation allows Welsh Ministers to make Regulations for the purpose of implementing any EU obligation in exercise of the powers contained in section 2(2).

The Regulations would be made by the negative procedure.

## **4. Purpose & intended effect of the legislation**

The EU periodically reforms the CAP. The current changes taking place are for the period 2014-2020 but owing to the time taken for all institutions and Member States to reach agreement, they were not implemented until 2015. The EU Regulations' provisions are either compulsory or optional. Some of the compulsory elements also offer choices as to how they are implemented. The choices available to the Welsh Government regarding these options and the decisions taken are set out in the RIA.

Reform of CAP direct payments from January 2015 will see the introduction of a suite of changes including the introduction of a payment for greening and a separate support scheme for young farmers. The policy aim is to implement these changes in a managed manner.

Detailed information on these changes is included in the RIA.

## **5. Consultation**

The Welsh Government has developed its Pillar 1 proposals and made decisions on the basis of extensive consultation activity. The consultation paper published in July 2013 was supplemented by public meetings across Wales. A further consultation on aspects of the Basic Payment Scheme (BPS) which are not the subject of this Statutory Instrument is in progress and ends on 23 June 2015. Developing policy decisions have been shared with and commented on by a working group which has included as members the FUW, NFU (Cymru), CLBA, CAAV, YFC and TFA.

## PART 2 – REGULATORY IMPACT ASSESSMENT

### Options

This paper is split into sections for ease of reading:

1. Basic Payment Scheme; this includes minimum claim size, active farmer and entitlements
2. Greening; this includes permanent grassland, Crop Diversification and Ecological Focus Area
3. Young Farmers Scheme
4. Small Farmers Scheme

The European Union periodically reforms the CAP. This reform applies to Wales as part of the UK, which is an EU Member State. The reforms are given effect by pan-European legislation which provides a legal framework that the Welsh Government must adhere to. If we choose to do nothing and not implement CAP reform we would risk infraction proceedings and disallowance penalties. In addition, there would be no mechanism for farmers in Wales to receive any payments and the Welsh Government would run the risk of being substantially fined. Therefore, the reform must be implemented. The “do nothing” options have not been covered as, without running the above risks, it is not possible to do nothing.

The options we have in introducing this reform of the CAP are explained in the sections below.

### **1. Basic Payment Scheme (BPS)**

#### Minimum Claim Size

The EU Regulations state that all claims must be a minimum of 1 hectare (ha) but may be increased to 5ha. Currently the Welsh Government has a minimum claim size of 0.3ha. The options were to apply a minimum claim size of between 1-5ha. The Welsh Government will be applying a 5ha minimum claim size.

The consultation proposed setting a new minimum threshold of 3ha. 3ha was seen as a reasonable option and was aligned with the minimum holding size used for Pillar 2 Glastir Schemes. It was also felt that 5ha might disadvantage young or new entrants. Points made during the evening CAP meetings supported 5ha however, the view being that people entering farming would need at least this amount of land to have a viable business. Consultation responses brought little in the way of comment with only a small majority in favour of 5ha<sup>1</sup>.

In the context of Welsh farming, 5ha is still a very small farm. With some 16,000 claiming farms and 1,333,000ha of claimed land, the Welsh average

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<sup>1</sup> 12 respondents opted for 5 ha, 10 for 3 ha and 1 would like more than 5 ha.

farm size is much larger at 83ha. Claim data from 2012 records that 887 farms with less than 5ha claimed SPS worth €496,000, a very small sum relative to a Pillar 1 budget of some €327m. Of these small farms, 805 had claims of less than €1,000 and only 19 claimed more than €2,000. The minimum claim size could be raised to 5ha without materially impacting on the farming industry – the farms that would lose out would mostly lose negligible sums - and that would free around €0.5m a year for distribution to larger farms as well as having a small administrative benefit by reducing the number of claims processed. In addition, Welsh Ministers wanted to focus Pillar 1 support on productive farms and in a Welsh context these are larger than 5ha.

There would be no direct impact on Glastir schemes by raising the limit from the proposed 3ha to 5ha. Having different size limits makes no difference to how either Pillar 1 or Pillar 2 operates. Glastir entry is also not conditional on being eligible for Pillar 1. 27 farms claiming SPS with 3-5ha are also in Glastir. It is possible that the withdrawal of Pillar 1 payments might impact on the operation of these farms to the point that they are no longer viable but given their SPS payments are very small this seems very unlikely.

### Active Farmer

The EU Regulations provide that payments will only be made to people who are 'active farmers'. The European Commission (EC) has concerns that organisations whose main business is something other than agriculture, or people who are claiming payments but are not farming themselves, should be prevented from claiming BPS payments. The EU Regulations also introduce a 'negative list' where those claimants carrying out certain business activities on the negative list should not be eligible to claim. This list includes airports, water companies, railways, real estate services, permanent sport and recreational grounds. The Welsh Government is required to;

- a) set criteria for activities that maintain the land in a suitable state for grazing/cultivation without preparatory action that goes beyond usual methods and machines; and
- b) define minimum activity on land naturally kept fit for grazing or cultivation.

Under **a)**, the Welsh Government has decided that the area must be grazed at an annual stocking density of 0.01-0.05 livestock units per hectare or the claimant must control non-native invasive weeds and scrub on that area.

Under **b)**, the Welsh Government has decided that the claimant must control non-native invasive weeds and scrub on that area.

These requirements will affect all claimants but they should not incur any additional costs as the requirements do not go beyond those activities which demonstrate that they are an active farmer.

It is important to strengthen the definitions as without reference to stocking rates/control of weeds, a landowner with naturally kept land would be able to

comply with the agricultural activity definition as long as the field parcels are kept in grazing condition. This could require as little effort as mowing the parcel once a year. The addition of a minimum stocking density/control of weeds ensures the claimant has to make some effort. It is also intended to deter those persons who do not keep any livestock from claiming payments meant for those claimants the EC consider to be active farmers. The Welsh Government has discussed these decisions with the EC and has taken account of their views in making this decision.

For those persons carrying out a business on the negative list, there are three further tests which may allow them access to the BPS<sup>2</sup>. These tests may be modified by Member States. Following consultation with Defra, other UK Devolved Administrations and industry stakeholders, the criteria listed at a)-b) below will be used by the Welsh Government. Those claimants carrying out an activity on the negative list will need to satisfy one of the tests below in order to be eligible for the BPS;

- a) the annual amount of direct payments is at least 5% of the total receipts that if obtained from non-agricultural activities in the most recent fiscal year for which such evidence is available.
- b) a farmer's agricultural activities are not insignificant if that farmer's total holding size is greater than or equal to 21 hectares.
- c) a farmer's principal business or company objects consist of exercising an agricultural activity where that farmer provides the Welsh Ministers with evidence that at least 40% of the total receipts obtained by the business in the most recent fiscal year for which evidence is available were obtained from agricultural activities

Option a) does not alter the provision as it is set out in the EU Regulation.

For option b), the Welsh Government has decided that an eligible agricultural area in excess of the median hectareage size of a farm in Wales cannot be considered insignificant. The justification for this is that if someone is farming an area of land that is bigger in area than at least half the claiming farms in the territory, then it is reasonable that they should be considered to be an active farmer for the purposes of the BPS. In Wales' case the median farm size set for the criterion is 21ha.

For option c), the Welsh Government has decided that demonstrating that 40% of total receipts are from agricultural activities is sufficient to provide assurance that a claimant undertakes agricultural activity either as its principal business, or as one of no more than two principal businesses. A claimant who cannot show that their agricultural receipts exceed 40% of total receipts cannot reasonably be said to be undertaking agricultural activity as their principal business. This is felt to be the best test, within WTO rules, of whether agricultural activity is the principal business or company object.

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<sup>2</sup> Article 9(2)(a-c) of Regulation (EU) No 1307/2013

The Welsh Government also had the option to add further business types to the negative list on the basis of objective and non discriminatory criteria. The Welsh Government has not added to this list. An active farmer workshop with industry stakeholders could not identify any additional businesses or activities which should be added to the negative list. This has benefits to the Welsh farming industry as we do not want to penalise farms that have positively diversified into non-farming enterprises if their main business activity is still farming.

### Entitlements

All farms must have entitlements to claim the Basic Payment Scheme. Under the Single Payment Scheme, claimants were allocated historical entitlements based on what they produced during the reference years of 2000, 2001 and 2002. Historical entitlements were extinguished on 31 December 2014. They will be replaced by new entitlements in 2015 with one entitlement being awarded per hectare of land. In order to be eligible for this first allocation of new entitlements a person must:

- Have received a SPS payment in 2013;
- Or instead be able to provide evidence, such as receipts or accounts, to prove that they were farming in 2013 and had not claimed SPS previously.

The Welsh Government also had a choice whether to allow farmers who had not had SPS entitlements in the past to claim. It was decided to allow this to benefit all farmers in Wales. There will be farmers who were never able to claim SPS due to them not having entitlements or farming within the reference period for the SPS. By taking up this option, the Welsh Government is allowing all farmers to be allocated entitlements irrespective of whether they claimed SPS or not. It is not possible to estimate the new number of entitlements until all the claims have been received in 2015.

The Welsh Government was able to decide whether to apply additional objective and non-discriminatory eligibility criteria for new farmers to be allocated entitlements. This will not be taken forward. Applying additional criteria may mean that Pillar 1 support can be targeted to those who have proven experience but this may prove a barrier to new entrants. Further, those who previously claimed SPS will not have had to comply with the same criteria. Therefore, to apply extra criteria to some, but not all, would be unfair.

## **2. Greening**

Greening is the informal name for what the EU Regulations term as agricultural practices beneficial for the climate and the environment. It is a compulsory element of the payment system and makes up 30% of Pillar 1 payments. There are three elements of greening:

- Permanent grassland, this is grass which has not been ploughed for five years or more and Wales is required to keep within 5% of the area we declared to the Commission as permanent grassland.
- Ecological Focus Area (EFA), a claimant will need to have ecological focus areas on their arable land if they have more than 15 hectares of arable land.
- Crop Diversification, this is the 2 or 3 crop rule, claimants with more than 10 hectares of arable land will need to follow these rules on the minimum area of crops they grow and the areas they cover.

The simplest greening option has been chosen with the aim that there will be more benefits for the environment; hence the 15% transfer, from Pillar 1 to Pillar 2.

### Use of a national certification scheme

The Welsh Government is not implementing a national certification scheme and will adopt the EC's default greening proposals based on maintaining permanent grassland, crop diversification and ecological focus area. The default measures represent the most straightforward means for the majority of farms to qualify without significantly impacting on their businesses. It is estimated that 86% of farms of 20ha or more could comply with the default greening requirements without significantly changing their operations. For farms smaller than this, the figure rises to 98%. There was significant support for this option in the consultation responses with 3 to 1 of those responding to this question favouring the default requirements.

### Permanent Grassland

As well as the adoption of the default requirements for permanent grassland, for greening purposes the Welsh Government has decided to designate environmentally sensitive permanent grassland in all SSSIs unless the SSSI has written consent to plough in accordance with Section 28E of the Wildlife and Countryside Act 1981. This is an exception as some SSSI's require ploughing for protection of the habitat.

The Welsh Government had the option to apply an obligation to maintain permanent grassland at either a holding or all-Wales level in order to ensure that the ratio of permanent grassland does not decrease by more than 5%. The Welsh Government has decided to keep the ratio of permanent grassland to total agricultural area maintained at the all-Wales level.

### Crop Diversification

The Welsh Government has adopted the default requirements for crop diversification.

### Ecological Focus Area

The Welsh Government has adopted the default requirements for Ecological Focus Areas (EFA). The EFAs used in Wales will be fallow land, hedges and traditional stone walls from the landscape features options along with short rotation coppice, afforested areas used to claim the Single Payment Scheme in 2008 and nitrogen fixing crops. This was decided following significant discussions with stakeholders and represents the best option for Welsh farms in terms of established farming practices and Wales' geography.

The Welsh Government does not permit adjacent EFA areas between farms or group EFA applications.

### **3. Young Farmers Scheme**

The Young Farmers Scheme is mandatory. It allows up to 2% of the national ceiling to be utilised to enable young farmers (under 40 years of age) to receive a top-up on their basic payment for up to five years.

The Welsh Government has decided to not set any additional eligibility criteria for young farmers than what is set by the EU Regulations. This ensures that we are not placing additional barriers to entry on young farmers, thus making the process fairer and open to all potential applicants. It is also simpler to administer.

The payments for this Scheme will be made on a maximum of 25ha and the payment methodology chosen is calculated by dividing a fixed percentage of the national ceiling for the calendar year 2019 by the number of all eligible hectares declared in 2015. This was agreed following an industry stakeholder meeting.

### **4. Small Farmers Scheme**

There will be no Small Farmer Scheme in Wales as the impact of this scheme would be extremely low, affecting only 1,104 farms. The Small Farmer Scheme would provide exemption from cross compliance requirements for those eligible. The Welsh Government believes that all farmers claiming BPS should be required to observe cross compliance obligations and any exemption may raise the risk of a decrease in environmental and animal health standards in Wales.

### **Consultation**

There has been extensive consultation throughout the CAP Reform period. There have been three written consultation documents completed; December 2011, February 2013 and July 2013, along with a further exercise launched on 31 March 2015. The links to these are below.

December 2011 – CAP Conversation

<http://wales.gov.uk/topics/environmentcountryside/farmingandcountryside/cap/pillar-1-direct-payments/documents/111219capconversation/?lang=en>

February 2013 – CAP Reform – Direct Payments – Next Steps

<http://wales.gov.uk/consultations/environmentandcountryside/130206cap-reform-direct-payments-to-farmers-next-steps/?status=closed&lang=en>

July 2013 – December 2013 – Welsh Government Proposals for Direct Payments Consultation

<http://wales.gov.uk/topics/environmentcountryside/farmingandcountryside/cap/pillar-1-direct-payments/documents/proposals-for-direct-payments-to-farmers/?lang=en>

March 2015 – June 2015 – Proposals for the Basic Payment Scheme

<http://gov.wales/consultations/environmentandcountryside/basic-payment-scheme-proposals/?lang=en>

Direct Payments to farmers – Decisions Booklet

<http://wales.gov.uk/topics/environmentcountryside/farmingandcountryside/cap/pillar-1-direct-payments/documents/direct-payments-to-farmers-decisions-booklet/?lang=en>

Accompanying the consultation were three rounds of evening meetings throughout Wales. One series took place in the spring of 2013; another in Autumn 2013 and the final round early 2014.

Further to the consultations carried out, we have engaged industry stakeholders throughout the process with the NFU, FUW, CLA, CAAV, TFA and YFC sitting as members of the CAP Modelling Group and CAP High Level Group. These met on a monthly / bimonthly basis throughout the process to discuss all of the options for the BPS along with all other aspects of the reform of the CAP.

## APPENDIX A

### The Competition Assessment

The competition filter test	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	Yes
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector characterised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

