

## **Explanatory Memorandum to the Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) (Amendment) Regulations 2011**

This Explanatory Memorandum has been prepared by the Department of Agriculture, Food, Fisheries and European Programmes 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 Single Payment and Support Schemes (Cross Compliance) (Wales) (Amendment) Regulations 2011

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### **1. Description**

The European Council Regulation (EC) No 73/2009 requires that, with effect from 1 January 2012, all farmers in Wales who claim payments under the Single Payment Scheme will be prohibited from spreading inorganic fertilisers within 2 metres of the surface of a watercourse and manures within 10 metres of the surface of the watercourse. Application of manures will also be prohibited within 50 metres of boreholes, springs and wells

This Statutory Instrument amends the Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) Regulations 2004 ("the principal regulations"). The new Instrument will apply to all agricultural land in Wales, irrespective of the field/parcel size, and regardless if the land is within or outside a Nitrate Vulnerable Zone. It will be implemented as follows:

- Inorganic fertilisers and manufactured fertilisers must not be applied within 2 metres of a water course.

- Organic fertilisers (including manures and slurry) must not be applied within 10 metres of a water course.
- Organic fertilisers (including manures and slurry) must not be applied within 50 metres of boreholes, springs and wells.

This instrument also updates references to EU legislation in the principal regulations.

## **2. Matters of Special Interest to the Constitutional and Legislative Affairs Committee**

The Statutory Instrument “S.I.” which applies in relation to Wales gives effect to the requirement to establish buffer strips along water courses as a Good Agricultural and Environmental Condition (“GAEC”) with effect from 1 January 2012. GAECs are part of the Cross Compliance requirements which farmers must meet in order to receive certain payments made under the Common Agricultural Policy of the European Union (“EU”). The SI will also update references to EU legislation in the principal regulations.

The requirement to establish buffer strips is an EU obligation contained in Article 6 and Annex III of Council Regulation (EC) No 73/2009 (of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003).

## **3. Legislative background**

The Welsh Ministers may make regulations in exercise of powers contained in section 2(2) of the European Communities Act 1972. The Welsh Ministers are designated to exercise these powers by virtue of the European Communities (Designation)(No 5) Order 2010 (SI 2010/2690) in relation to the common agricultural policy of the European Union.

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

As part of the CAP Health Check agreement in 2008, the European Regulation 73/2009 requires all Member States to introduce by 1 January 2012, the new Good Agricultural and Environmental Condition to maintain buffer strips alongside watercourses to tackle the issue of water pollution from agriculture.

This Statutory Instrument introduces this requirement. The instrument also updates references to EU legislation in the principal regulations.

## 5. Consultation

A ten week consultation on the proposals was launched on 22 June 2011 and as a result of responses received The Deputy Minister for Agriculture, Food, Fisheries and European Programmes decided to implement the minimum requirement for Welsh farmers. As a result, all farmers in Wales who claim payments under the Single Payment Scheme will be prohibited from spreading inorganic fertilisers within 2 metres of the surface of a watercourse and manures within 10 metres of the surface of the watercourse. Application of manures will also be prohibited within 50 metres of boreholes, springs and wells.

## 6. Regulatory Impact Assessment

### Background

- 1.1 As part of the **Common Agricultural Policy (CAP) Health Check** agreement in 2008, Member States are required, under the **Water Framework Directive**, to achieve good ecological status in water bodies by 2015. The establishment of buffer strips along watercourses is a compulsory standard that will be incorporated into **Good Agricultural Environmental Condition** (GAEC) from January 2012.
- 1.2 As a minimum requirement, no-spread zones for manure and fertiliser use, as defined below in paragraph 1.3, must be applied to all land for which the single farm payment is claimed, by 1 January 2012. Farmers will be required to adopt the **Nitrates Action Programme** (EC Directive 676/1991), which applies to all agricultural land i.e. not just within the **Nitrate Vulnerable Zones** (NVZs).
- 1.3 The Nitrates Action Programme has the following *minimum prohibitions*:
  - (i) spreading of inorganic fertilisers within 2 metres of any surface water
  - (ii) spreading manure within 10 metres of any surface water
  - (iii) application of manure within 50 metres of any boreholes, springs or wells
- 1.4 Water courses are not currently protected by a no-spread zone, except land that falls within NVZs, or where it is a requirement of a scheme or designation such as Tir Gofal, or a Site of Special Scientific Interest (SSSI). For the purpose of the new GAEC, the term “watercourse” will be defined on exactly the same basis as “surface water”, as defined in the **Code of Agricultural Good Practice** (CoGAP). This definition is as follows – “*Surface water includes coastal waters, estuaries, canals, lakes, ponds, rivers, streams and ditches, which contain free water, and also temporarily dry ditches and blind ditches.*”

## **CoGAP recommendations**

2.1 CoGAP recommends the following:-

- (i) livestock manure and dirty water should not be applied within 10 metres of any ditch, pond or surface water
- (ii) lime and manufactured fertiliser should not be (a) spread directly into ditches (even if dry), onto surface water, hedge bottoms, uncropped areas or other habitats, where lime or nutrients may harm the natural flora and fauna; (b) spread within 2 metres of surface water, and wider buffer zones are advisable

## **Other options**

3.1 The CAP Internal Stakeholder Group has suggested that it *may* be appropriate to introduce buffer strips for any channel having well-defined banks, and a bed through which water flows continually throughout the year. This includes all natural rivers, streams, brooks and main carrier ditches, with a bed of over 1.5 metres wide.

3.2 Sustainability and Environmental Evidence Division (SEED) has proposed that all watercourses should be shown in blue on Single Application Form (SAF) maps – this is expected to include all rivers, streams, brooks and main ditches (including those that are temporarily dry). Smaller “feeder” ditches will not be included. The rationale for this definition is:-

- (i) industry and inspecting officers will easily be able to identify which watercourses are subject to the new GAEC restrictions, as all parties will have access to the same Ordnance Survey maps
- (ii) it will avoid disagreement between parties as to whether a watercourse is subject to the restrictions or not e.g. width of the watercourse, whether it dries up occasionally, or if it has well-defined banks
- (iii) the vast majority of surface waters will be subject to the new GAEC restrictions, thereby satisfying the Commission’s requirements
- (iv) because minor ditches are not included, the Welsh Government (WG) cannot be accused of “enhancing” the Commission’s requirements
- (v) as these watercourses already appear on SAF maps, resource implications for WG will be minimal

## **Consultation exercise**

On July 6<sup>th</sup> 2011, the Welsh Government consulted on proposals to introduce a new GAEC. This consultation ended on September 1<sup>st</sup>. The document was sent to local authorities, farming unions, environmental bodies, and other organisations/stakeholders deemed to have a key interest. Twenty two responses were received.

The consultation asked the following four questions:-

1. Should the buffer zone restrictions be the same as the basic requirements of the Nitrates Action Programme?

2. Should additional measures, such as wider no-spread zones, be applied?
3. Should alternative protection measures, which would be in addition to the minimum NVZ requirements, be applied?
4. What guidance or advice could WG provide, in order to assist with complying with the proposed GAEC?

Alternative, wider, buffer zones were also mentioned in the consultation document, namely 7m and 15m (instead of 2m and 10m).

Of the responses received, 73% were in favour of introducing the minimum requirement, although some of these thought that the requirements should form part of a targeted approach, as part of agri-environment measures.

Only 18% were in favour of additional measures, with a further 18% in favour of only using additional measures in specific, high risk areas, but not as a blanket approach.

41% made suggestions for alternative protection measures.

The definition of “watercourse” and “manure” were the main responses to the fourth question, plus the need for an educational programme and an effective communication strategy, to ensure that farmers would not be at risk of unintentionally breaking the rules.

Some responses requested a re-definition of the term “watercourse”, namely a narrower definition, as the responders felt that the proposed definition – which is identical to that in the NVZ regulation – goes well beyond the minimum required.

A common theme in the responses was concern over the economic impact of the introduction of this new regulation, given the number of watercourses in Wales. There was also a suggestion that a minimum field size should be stipulated, to minimise the impact on holdings with many small field parcels.

## **Conclusions from the consultation**

The Welsh Government is of the opinion that introducing the minimum requirement (the NVZ definition) is the preferred option. Further management requirements should be considered, but this should be done through the voluntary agri-environment programmes. The relevant policy leads within WG – SEED in particular – are considering this, and any suggestions will be considered. If necessary, any suggestions made will result in a change to the guidance.

## **Introduction of the new regulation**

The regulation will be introduced from January 1<sup>st</sup> 2012. This will be done by amending the Cross-Compliance SI. Prior to this, farmers will be given advance warning of the implications of not complying with the regulation.

The NVZ Action Programme is currently being reviewed, and one of the proposals being considered is to relax the no-spread zone for those using precision slurry spreading techniques, such as shallow injection or band spreading. Should this proposal be accepted, it would come into force on January 1<sup>st</sup> 2013, and would allow those using precision techniques to spread within 6 metres of surface waters. This would have two benefits – firstly, it would allow the utilisation of slurry nutrients over a larger field area, and would encourage the use of more accurate slurry spreading methods. A draft consultation document will be submitted in due course.

### **The “do nothing” option**

Within Wales, watercourses that are outside the NVZs (NVZs only account for 4% of land area in Wales) currently have no protection, unless it is a requirement of Tir Gofal or a SSSI. The requirement to introduce a new GAEC is compulsory, and to “do nothing” would, therefore, be in contravention of Commission requirements.

### **The “do minimum” option**

To adopt a lesser requirement than the current NVZ one is a possibility, but this carries two risks. These are as follows:-

1. In the past, the Environment Directorate of the Commission has expressed its concern that only 4% of agricultural land in Wales is located within a NVZ. It follows, therefore, that auditors from the Commission may conclude that there is insufficient protection of water near to agricultural land, and if the auditors find against WG practice in this area, there would be a real risk of CAP monies being disallowed, and it would be difficult to defend or appeal against such a disallowance.
2. Either an individual, or a lobby group, could inform the Commission of a lower standard of protection for surface waters, or watercourses, in Wales. A legal challenge, by way of a judicial review, could then be brought against Welsh Ministers, for having a lower standard of protection outside of NVZs than land within them. Should such a challenge be brought, it is thought that the prospects of defending or appealing against such a judicial review would be low.

### **Financial implications of the proposed regulation**

Under the proposed definition, the average area of a 2m buffer zone would be 0.63ha per farm. This would have a financial impact, on average, of £254.05 loss of gross margin per annum. The 10m buffer zone would affect 3.1ha per farm, and this would result, on average, in a loss of gross margin of £504.30. It is anticipated that farms with arable enterprises will be most affected, dairy farms the next most affected, then beef/sheep farms, and sheep farms (in LFA areas) the least affected.

If the alternative 7m and 15m buffer zones were introduced, this would result in the following – an average of 2.19ha per farm would be affected by a 7m buffer zone, resulting in an average reduction of £889 gross margin per farm, or an average of 4.66ha per farm if a 15m buffer zone was introduced, resulting in an average reduction of £756 gross margin per farm.

At present, there are no financial implications for WG, as a result of this proposal, but any possible future financial implications are yet to be calculated.

### **Costs and benefits**

There are no financial benefits to any option – the “benefit” is an environmental one, namely to the quality of watercourses, as there will be less likelihood of pollutants entering them.

All of the costs will be recurring, as follows:-

a) Introduction of a 2m buffer zone

Average loss of gross margin per annum, per farm - £254.05

b) Introduction of a 7m buffer zone

Average loss of gross margin per annum, per farm - £889.00

c) Introduction of a 10m buffer zone

Average loss of gross margin per annum, per farm - £504.30

d) Introduction of a 15m buffer zone

Average loss of gross margin per annum, per farm - £756.00

### **Competition Assessment**

Please see below.

### **Post-implementation review**

It is yet to be decided how this legislation will be monitored, or whether/how it will be reviewed, but the GAEC will be reviewed, as part of the general inspections under the Single Payment Scheme cross-compliance regulations.

## **Summary**

For the reasons already stated in this document, the policy recommendation is that WG use the NVZ/CoGAP watercourse definition for the new GAEC requirement. Although this would have the greatest practical and financial impact on farm businesses, it would also offer the greatest protection against watercourse pollution. It should also be remembered that this option is the *minimum* requirement for the new GAEC.

## The Competition Assessment

Question	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?	Yes
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
<b>Q6:</b> Would the regulation lead to higher start-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

As there is only one “yes” answer, the new regulation is unlikely to have a significant detrimental effect on competition.

The details of the varying costs (Q4 refers) can be found in the first paragraph of “Financial implications of the proposed regulation” on page 4 of this document