

Explanatory Memorandum to The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) (Amendment) Regulations 2010.

This Explanatory Memorandum has been prepared by Rural Payments Division of the Department for Rural Affairs and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected changes to cross compliance arising from the making of these Regulations.

Elin Jones

Minister for Rural Affairs

11 January 2010

1. Description

Cross Compliance requires that farmers meet environmental and other standards as a condition for subsidy payment under the Single Payment Scheme (SPS) and also as a baseline condition for Schemes under the Rural Development Programme, Wales. Additional cross compliance standards need to be introduced from the start of January 2010 following the Common Agricultural Policy (CAP) Health Check.

In order to comply with changes to the framework in Annex III of Council Regulation 73/2009 for Good Agricultural and Environmental Conditions ("GAECs") this instrument introduces the following new GAECs from 13 January 2010:

- **Abstraction of Water for Irrigation Purposes**
Claimants who abstract water for irrigation purposes will need to comply with the Environment Agency's abstraction licensing regime. This is already a domestic legal requirement under the Water Resources Act 1991.
- **Landscape Features**
Claimants will be required to retain ponds, ditches and field margins as landscape features.

The standards for ponds and ditches will require that these features are retained and that the necessary consent is obtained prior to undertaking work which would damage the feature.

With regards to the field margins, claimants will need to ensure that cultivation is not undertaken within 1 metre of a traditional boundary or ditch and watercourse which form part of a traditional boundary.

The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) Regulations 2004 (as amended) prescribe the GAECs which are in force in Wales. The current regulations amend the 2004 Regulations to take account of the above changes.

The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) Regulations 2004 are also being amended to (1) remove references to set aside, as there is no longer a requirement for a set aside standard under cross compliance, and (2) update references to EU legislation.

The Rural Payments Division will provide all farmers subject to cross compliance with updated guidance that gives details of all cross compliance requirements and highlights the changes made to the existing rules. Information will be published on the Website and articles written in Gwlad.

2. Matters of special interest to the Subordinate Legislation Committee

The amendments to the existing Cross Compliance SI need to come into force as soon as possible further to the changes to EU legislation, and by the start of January 2010 in respect of Good Agricultural Environmental Conditions (GAECs) so that the new conditions can be applied and enforced.

These Regulations will therefore not comply with the customary 21 day laying period before coming into force. The Presiding Officer has been informed in writing. For the same reasons, these amending regulations will be made in English only with a Welsh version to follow shortly after.

3. Legislative background

Welsh Ministers have the powers under section 2 (2) of the European Communities Act 1972, to make regulations which implement EC legislation in relation to the Common Agricultural Policy by virtue of the designation in S.I. 2005/2766

4. Purpose & intended effect of the legislation

The Regulations will set arrangements provided for in European Regulations for operating Cross Compliance in Wales. Amendments are necessary to reflect the changes resulting from the European Union's Common Agricultural Policy Health Check.

5. Consultation

The European Commission's "Health Check" proposals offered proposed changes to the Common Agricultural Policy. Widespread consultation on these proposals has taken place has ultimately influenced the final draft of the new EU Regulations.

The Welsh Assembly Government has engaged with key stakeholders throughout the Health Check process. The views of the stakeholders have been used to influence negotiations on the draft regulations. This ensured that the needs of Wales and Welsh Farming are fully recognised.

PART 2 – REGULATORY IMPACT ASSESSMENT

7. Options

The key changes as required by Commission Regulations which the Amendment SI would put into force are:

i) New GAEC (Good Agricultural and Environmental Condition) re Water abstraction for irrigation

- Where the use for water is subject to authorisation, authorisation procedures and conditions within any water abstraction licence must be complied with.

ii) New GAEC re Landscape Features

- Ponds and ditches must be retained
- Cultivation must not be undertaken within 1 metre of a traditional boundary

iii) Removal of Set aside

- References to set aside have been removed as they are no longer applicable

iv) Updating references to new Commission Regulations (EC) No 1120/2009 and 1122/2009.

In relation to cultivation next to traditional field boundaries, listed under ii) new GAEC re landscapes features; a 'do nothing' option was considered as the new standard. This is a compulsory standard but does include the wording 'where appropriate'. In England more stringent requirements are already in place including the imposition of a 2m buffer adjacent to traditional field boundaries with restrictions on cultivation, fertiliser and pesticide applications in this area. Scotland are choosing not to implement obligations/restrictions on field margins on the basis that their Single Payment Scheme is currently under review and they will not consider any further changes to GAEC, except abstraction of water for irrigation, before spring 2010.

The legislation states that the changes are compulsory rather than optional standards and consequently failure to implement the changes carries the risk of disallowance.

The recommendation is to implement a minimum standard rather than a 'do nothing' option. A 'light touch' approach is unlikely to impact on the industry and will also be appropriate to the measures being introduced under the Glastir agri-environment scheme.

Restrictions on cultivating field margins may be of more concern to arable than grassland farmers although arable land accounts for less than 10% of the agricultural land in Wales.

In addition these changes will result in negligible cost to the agricultural industry and any lost business opportunity from not being able to remove ditches and ponds could not be quantified in terms of marginal improvement

to enterprise or business performance. With regards to 1m field margins, this requirement represents normal practice for many farmers. The requirements covering water irrigation purposes are already required domestically under Water Resources Act 1991.

8. Costs & benefits

The first part of the regulation change re water abstraction for irrigation and compliance with authorisation and conditions of licence is already a requirement of the 1991 Act. The Environment Agency (EA) are responsible for policing abstraction of water and enforcement and that this will continue. EA will inform WAG of breaches. There is no additional cost or benefit to farmers.

Retention of ponds and ditches will not impose a cost on the land manager. Having consulted internally with technical colleagues it was concluded that any lost opportunity of investment would be negligible at best and removal would be more likely to represent a net cost compared to retention. The features would have been removed previously if there was a financial benefit to be had. Further the Single Payment (SP) receipt continues to represent the largest share of Farm Business Income; the 2008/09 Farm Business Survey results (table 1) indicate that safeguarding SP will have more impact on incomes than production changes for the main farming systems.

Components of Farm Business Income in Wales in 2008-09 (£)

Table 1

	Dairy	LFA Grazing Livestock	Lowland Grazing Livestock	All Farm Types
Income from agricultural production (excl. all subsidies)	27,200	11,800	- 2,300	- 4,000
Income from Single Farm Payment	28,500	27,700	22,600	27,400
Income from Tir Mynydd & agri-environment scheme payments	2,800	7,300	2,400	5,800
Income from diversified activities	900	900	1,000	1,200
Subsidies and payments to agriculture	2,900	400	800	900
Farm Business Income	62,200	24,500	24,400	31,300

Source: Farm Business Survey

Notes: 1. Numbers have been rounded to nearest £100. Totals may not sum due to rounding;

2. 'Subsidies and payments to agriculture' includes bTB and other compensation payments.

3. The costs associated with claiming Single Farm Payment were collected/calculated in the FBS for the first time in 2008/09 (i.e. the costs of keeping land in GAEC etc.). In the table above, these costs have been included (deducted) from the 'Income from agricultural production' line. This is to ensure consistency with the 'Components of Farm Business Income' tables produced in previous years. The SFP costs averaged approximately £4,200 in 2008/09.

Following technical advice, restricting cultivation within 1m of a traditional boundary is considered to be the 'lightest touch' approach towards retaining this feature, with no cost implications for the farmer/land manager, for the following reasons:

- Approximately 90% of agricultural land in Wales is grassland and in the main permanent grassland which is not cultivated. Consequently this restriction will not impact on the vast majority of farmers and land managers engaged in livestock enterprises and dairying.
- Arable farming constitutes less than 10% of the agricultural land in Wales. Arable fields tend to be larger, regular shaped fields which are more appropriate for modern machinery to negotiate. Field boundaries are more often 'man-made' (wire fencing) with little opportunity for field margins of landscape value to develop. The new standard would not apply in these situations.

When arable land and grassland adjacent to traditional field boundaries is cultivated either to renew the pasture or produce an arable crop, cultivations would not normally be undertaken to the edge of the boundary because:

- Machinery cannot easily access corners and the absolute edge of a traditional boundary without damage to the boundary or the machine.
- It is wasteful to apply fertilisers and pesticides in this region as the boundary will be receiving the application also.
- Applications of pesticides to the actual boundary, which would be inevitable if the crop is grown alongside the boundary could be damaging to the boundary in the case of a hedge or earth bank and to associated biodiversity.

To summarise:

Arable farms often comprise larger fields with non traditional field boundaries and consequently this change to GAEC will not effect them. Arable fields with traditional boundaries typically do not cultivate to the edge of the boundary.

Permanent grassland is occasionally renewed on grassland farms and it would be normal practice to retain a narrow strip up to 1m from the traditional boundary which is not cultivated. This retained strip would also be important

for environmental benefit. Any production loss would be very small and not quantifiable.

Sectors

Only the farming industry will be affected by this change and not significantly. Environmentalists will welcome the change because it is supportive of the environment and encourages environmental care even though tangible benefits would be impossible to measure.

9. Competition Assessment

The only sector to consider in terms of competitive advantages/disadvantages resulting from this change is the farming industry. The change is an EU obligation and all Member States will have to consider implementation. The recommended implementation in Wales is believed to be the lightest touch approach. In terms of closer to home, a more stringent requirement is already in place in England.

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

10. Post implementation review

Rural Inspectorate Wales will inspect traditional field boundaries and associated 1m field margins as part of the normal cross compliance / GAEC checks on farms. Breaches will be reported through the usual channels and penalties applied through the established penalty matrix.