

Explanatory Memorandum to the Common Agricultural Policy (Amendment) (No.2) (Wales) Regulations 2016

This Explanatory Memorandum has been prepared by the Department of 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 (Amendment) (Wales) (No.2) Regulations 2016. I am satisfied that the benefits outweigh any costs.

Rebecca Evans
Deputy Minister for Farming and Food
25 February 2016

1. Description

The Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2016 (the Basic Payment Scheme Regulations) and the Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) Wales Regulations 2014 (the Cross Compliance Regulations) require amending in line with policy objectives and further details from the European Commission. As the two pieces of legislation cover the same subject matter of the Common Agricultural Policy in Wales, it is possible to amend both using a single Statutory Instrument. The changes relate to administrative aspects of the Basic Payment Scheme and an amendment of the Cross Compliance Regulations to allow farmers to leave a rough surface over winter.

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

The Common Agricultural Policy (Amendment) (Wales) Regulations 2016 were the subject of administrative errors in relation to dates. As a result, the Deputy Minister has chosen to revoke and replace those Regulations with The Common Agricultural Policy (Amendment) (No.2) (Wales) Regulations 2016. Save for the revocation provision at regulation 4, these Regulations are made in exactly the same terms as the revoked Regulations.

3. Legislative background

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

These amending Regulations are made subject to the negative procedure and therefore require a period of 21 days after the date they have been laid before the National Assembly for Wales to have passed prior to coming into force and effecting the amendment.

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' contain both compulsory and optional provisions. Some of the compulsory elements also offer choices as to how they may be implemented.

The amendments to the Basic Payment Scheme Regulations deal with the administration of the Scheme.

5. Consultation

1. Basic Payment Scheme

The Welsh Government has developed its Pillar 1 proposals and made decisions on the basis of extensive consultation activity from 2011 onwards. There have been four consultations throughout the process along with public meetings throughout Wales. Developing policy decisions have been shared with and commented on by a working group which has included as members the FUW, NFU (Cymru), CLA, CAAV, YFC and TFA.

2. Cross Compliance

Formal consultation on GAEC's 4 and 5 took place in 2014 during the development of 'The Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014'. Subsequent engagement with industry stakeholders brought to light further issues relating to the rough surface allowance. Officials engaged with key industry stakeholders through the development of the amendment and its related guidance.

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

This paper is split into sections for ease of reading:

1. Basic Payment Scheme – Greening
2. Basic Payment Scheme – National Reserve
3. Basic Payment Scheme – Non-Agricultural Activities
4. Cross Compliance – Rough ploughing
5. Basic Payment Scheme - Method for Calculating Interest on Debt

1. Basic Payment Scheme – Greening

The EU Direct Payments Regulation 1307/2013¹ states that Member States can decide how the greening payment is calculated.

- Option A is to calculate the payment based on the total number of eligible hectares claimed by all claimants; this gives every claimant the same payment value per entitlement for greening.
- Option B calculates the greening payment as a percentage of the total value of the payment entitlements a claimant has individually activated.

The Welsh Government discussed this issue with key stakeholders and Option B has been chosen. This option will ensure that transition to area payments is smoother as all claimants will be getting a greening payment linked to their own entitlements.

This decision will affect all claimants although the option chosen will be more beneficial to those who are currently claiming as it will smooth their transition.

Addition to the Ecological Focus Area list

The Welsh Government was asked to provide a list of landscape features which would be eligible as Ecological Focus Areas. The chosen features for Wales included hedges. Since this decision was made the European Commission has considered Ecological Focus Area in greater detail and has advised that where a Member State has selected hedges as landscape features, they must also include wooded strips.

The Welsh Government is obligated to comply with the Commission's ruling on this issue and the list of landscape features will be increased to show hedges and wooded strips.

This is likely to benefit all claimants as it will provide further features which claimants can include in their list of eligible features. The Welsh Government

¹ Regulation (EU) No 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.

sent revised Greening Guidance during August 2015 to affected customers. An article briefly explaining the changes appeared in the November edition of Gwlad.

2. Basic Payment Scheme – National Reserve

Article 30 of the EU Direct Payments Regulation 1307/2013 allows the use of a National or Regional Reserve. This allows new entrants to enter the Basic Payment Scheme by allocating them entitlements which are available up to the budget ceiling. The National Reserve budget is approximately €5 million; this is around 3% of the overall Direct Payment ceiling. The Welsh Government has a choice of using either:

- Option A – National Reserve
- Option B – Regional Reserve

The Welsh Government is applying Option A; National Reserve. Option B can only be applied if regional payment rates were used in Wales. Wales is using a flat rate payment system with redistributive payments over a transition period to 2019.

3. Basic Payment Scheme – Non-Agricultural Activities

Article 9 of the EU Direct Payments Regulation 1307/2013 states that no direct payments shall be granted to natural or legal persons, or to groups of natural or legal persons, who operate airports, railway services, waterworks, real estate services, and permanent sport and recreational grounds. Member States may, on the basis of objective and non-discriminatory criteria, decide to add any other similar non-agricultural businesses or activities to the list above (and subsequently withdraw these additions).

The Welsh Government had previously proposed that within the list of non-agricultural activities in the Schedule to the Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015, golf courses in Wales which were situated on areas of Common Land that are used for grazing animals should be eligible to for the Basic Payment Scheme. The farmer would need to evidence that the agricultural activity on these areas was not significantly hampered by intensity, nature, duration and timing of the non-agricultural activity to be eligible for the Basic Payment Scheme.

A recent judgement from the Court of Justice of the European Union has ruled that it may now be possible to claim for any area which meets the definition of eligible hectares regardless of where that area is. As a result the list included in the Part 2 of the Schedule to the Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015 will now be removed from the Common Agricultural Policy (Amendment) (No.2) (Wales) Regulations 2016.

4. Cross Compliance – Rough Surface

Background and options

Representations from the agriculture industry raised concerns about the removal of the provision 'allowing rough surface as minimum soil cover' from Cross Compliance in 'The Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014'. This provision had previously existed during the previous period of the CAP. The industry were concerned that preventing farmers from this agronomic practice may, in certain circumstances, exacerbate soil erosion, increase pesticide use and be detrimental to soil condition, carbon footprint and climate adaptation. Farmers Unions have also highlighted the impact on producers of early harvested potatoes as a rough surface is needed to weather and break down the soil.

Option A - Do nothing. Do not amend The Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014.

Under the previous Cross Compliance regime in Wales, Good Agricultural and Environmental Condition A ('GAEC A) – Soils and the post-harvest management of land', land could be left with a rough surface after cultivation to allow infiltration of rain, as a 'minimum soil cover'. The current Cross Compliance regime, which came into force on 1 January 2015, removed the allowance for farmers to leave a rough surface over winter following criticism from EC auditors.

Option B - To amend the Welsh Cross Compliance regime by incorporating within GAEC 5 a provision that would allow farmers to leave a rough surface at any date where site specific conditions that limit soil erosion can be demonstrated.

Farmers wishing to leave a rough surface will be required to undertake and submit a soil risk assessment to Welsh Government. This must demonstrate that rough ploughing practice was not being undertaken on a field where there was a high risk of soil erosion e.g. due to slope/soil type etc.

Rural Inspectorate Wales will ensure, during their routine Cross Compliance inspections, that where the rough ploughing practice has been carried out, the site was not high risk and that the Welsh Government had received notification of the farmer's intention along with a complete risk assessment that accurately reflected on-farm activity.

The Welsh Government has decided to apply Option B:

Operational flexibility will be improved for farmers at harvest as Option B will allow a rough surface to be left over winter; this will improve farmers' ability to achieve optimal sowing dates for crops and will allow the soil to be broken down by the frost. The requirement to complete a soil risk assessment to prevent the practice being implemented on an inappropriate site will reduce risk of soil loss.

Costs and benefits

Option A - Do nothing

No change.

Option B - Allowing farmers to leave land with a rough surface post-harvest

Costs

Leaving a rough surface post-tillage, before 2015, was one of four post-harvest options which could be employed to limit soil degradation with corresponding impacts for soil erosion and surface water runoff.

ADAS (2013) ranked post-harvest management options in terms of their efficacy in reducing soil degradation risk (Table 1). Where crops are harvested in late autumn (e.g. vegetables, potatoes, sugar beet, maize, and salad crops) a switch from cover crops, next crop or stubbles to rough surfaces, could reduce soil degradation. Where crops are harvested in early autumn, allowance of the rough surface option could exacerbate soil loss. To reduce risk of soil loss on any site that a farmer is considering leaving a rough surface, farmers will be required to complete a soil risk assessment.

Table 1: Soil Degradation Risk Associated with Post-Harvest Management

Option	Risk (Lowest to Highest)
Cover crop (sown early autumn) – good vegetation cover	1
Next crop (sown early autumn) – good vegetation cover	2
Stubble with additional crop residue/mulch	3
Stubble – compaction removed where present	4
Rough surface	5
Stale seedbeds (cultivation sequence to control weeds)	6
Cover crop (sown post late autumn harvest)	7
Next crop (sown late autumn)	8

(Adapted from ADAS, 2013)

The implications of crop choice for current erosion rates in Wales are estimated in Table 2. This multiplies the known area of crop cover in Wales with erosion coefficients for these crops established in Boardman (2013). Even though the later-sown crops have much higher mean erosion rates, they represent a smaller component of overall erosion than earlier sown autumn crops, due to their scale.

Table 2: Erosion Rates Associated with UK Crops in Wales

Crop	Mean Rate (m ³ /ha/yr.)	Welsh Crop Area (ha)	Total erosion (m ³ /yr.)
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Vegetables	5.08	456	2,316
Potatoes	2.53	1,705	4,314
Maize	4.48	12,805	57,366
Total Late Crops		14,966	63,997
Other Fodder	2.1	9011	18,923
Rape	1.92	5215	10,013
Cereals	1.8	55,066	99,119
Other	2.67	4,604	12,293
Total Other Crops		73,896	140,347
Total		88,862	204,344

(Adapted from Boardman, 2013; WAG, 2011)

A survey of English farmers (ADAS, 2012) suggests that 21% favour the rough surface method for cereals, oilseed rape or grain legumes, whilst 28% favour this method for potatoes, beet, maize, vegetables, salads, bulbs, and rhizomes. If these statistics were applied to Wales, and we assume that allowing the rough surface method would decrease erosion in late autumn sown crops, but increase erosion in earlier sown crops, the change would most likely increase the c. 29,500 m³/yr. of soil loss from earlier sown crops and decrease the 17,900 m³/yr. of soil loss from late autumn harvested crops. It should be stressed, however, that the statistics above do not take into account the relative magnitude of the change in soil loss due to the change in management regime, only the ranking. Furthermore, the spatial distribution of soil loss may not be even as this will be determined by the location of crops in a given catchment and the collective decisions of farmers post this change.

Overall, the change could potentially be net negative and so the soil risk assessment will be required to mitigate against this loss and to ensure the rough surface method is not implemented on high risk sites.

Assigning a monetary value to possible soil loss is also challenging because the magnitude of actual erosion reduction cannot be estimated. If this were possible, then the costs could be estimated with reference to the total off-farm costs of erosion from agriculture (£106 million in 1996 in the UK according to Pretty et al. 2000: An assessment of the total external costs of UK agriculture, *Agric. Syst.* 65:113-136). In the absence of this data, no estimate of monetary valuation can be provided.

If a farmer were to get a consultant to complete the soil risk assessment notification, it would likely cost around £500; this is based on one day of work at standard consultancy rates. Alternatively farmers can complete the risk assessment themselves, based on 12 hours at £12 an hour, this would cost £144. This cost would be mitigated against by decrease in labour, fuel and seed costs that would be necessary for sowing and ploughing up a cover crop and the increased flexibility in establishing a crop.

Summary of cost:

The costs of allowing a rough surface and a farmer completing a soil risk assessment are considered to be outweighed by the benefit. It is a business decision for the farmer to make to implement the rough plough practice and so if the cost outweighed the benefits he/she would choose another option for winter cover, however the reintroduction of the rough surface practice would increase operational flexibility for farmers.

Benefits

Under particular circumstances rough surfaces can provide storage for rainwater allowing water to collect before it soaks into the soil, thus helping to slow down run-off and prevent soil erosion. Rough surfaces can also reduce wind speed at the surface helping to prevent soil erosion caused by wind.

Sowing a cover crop could minimise soil erosion, however it could be detrimental to soil compaction which in turn could lead to erosion. This increases the risk of ploughing being carried out at inappropriate times to get spring crops established with associated impacts, such as smearing and compaction of sub-soils which have the potential to contribute to increased run-off and erosion. Over-working of soils in the spring can also lead to further run-off and erosion. Introducing the flexibility of allowing a farmer to leave a rough surface where a risk assessment shows that site specific condition minimise the risk of soil erosion may, therefore, lessen soil compaction, without the need for additional mechanical input, and benefit soil structure and reduce erosion.

Allowing a rough surface to be left over winter would remove costs of sowing a cover crop and may decrease the need for pesticides and herbicides. In addition, minimising the mechanical input would decrease the carbon footprint of the produce. A lower carbon footprint is also valued by retailers. Additional flexibility of allowing a rough surface would also help farmers adapt to climate change.

Currently, where a farmer sows a cover crop, to get crops drilled at the optimal time, one approach would be to get help from contractors to speed up the operation of going from stubble to drilled crop close to the ideal time. One way to represent this is to assume that all oilseed rape in Wales is followed by winter wheat and that assistance from contractors would be required for 50% of the area with the current GAEC in force. The area of oilseed rape in Wales in 2011 was 5,215 hectares so contract help would be needed with 2,608 hectares at a cost of £60.54 per hectare. This gives a total cost to farmers per year of £0.158 million (precise calculation £157,858 per year) or an NPV (Net Present Value) over five years of £0.709 million.

Summary of benefits:

Arable farmers in Wales would benefit from the increased flexibility in establishing crops. The annual benefit is estimated at approx. £0.16 million per year in addition to the fuel; seed cost and labour saving made where a cover crop might otherwise have been sown.

In 2014 there were 359 potato farmers (0.17% of declared land) in Wales within Cross Compliance. In total 2,779 farmers grew potatoes, cereals and other crops who may choose to take advantage of any flexibility provided under option B.

5. Basic Payment Scheme - Method for Calculating Interest on Debt

This describes the method for calculating debts which was previously calculated on a daily basis. The amendment will calculate debt on the first day of each month. This is an administrative change only and has no discernible impact for farm businesses.

Consultation

1. Basic Payment Scheme

There has been extensive consultation through the CAP Reform period. There have been four written consultation documents completed; December 2011, February 2013, July 2013 and March 2015. The links to these are below:

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

<http://gov.wales/consultations/environmentandcountryside/proposals-for-direct-payments-to-farmers/?status=closed&lang=en>

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

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

2. Cross Compliance

Formal consultation on GAEC's 4 and 5 took place in 2014 during the development of 'The Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014'. Subsequent engagement with industry stakeholders brought to light further issues relating to the rough surface allowance. Officials

engaged with key industry stakeholders through the development of the amendment and its related guidance.

Competition Assessment

The amendment in Cross Compliance Regulations to allow farmers to leave a rough surface over winter will not have a significant detrimental impact on competition and it may improve a farmer's ability to compete with farmers from across the UK. Operational flexibility will be improved for farmers following harvest, this will impact on farmers equally and there is no obligation for a farmer to modify his/her practice in response to the amendment. A Competition Filter Test has been completed and is attached at Annex A.

APPENDIX A

The competition filter test

The competition filter test	
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?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
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