

Cross Compliance briefing from Wildlife and Countryside Link

Draft Agriculture (Delinked Payments and Consequential Provisions) (England) Regulations 2023

These regulations were laid in draft under the negative procedure on 7 November 2023.¹ They will come into effect on 1 January 2024 and introduce delinked payments to replace Direct Payments under the Basic Payment Scheme, as well as revoking associated cross compliance requirements. Originating in the system of farm support that applied when the UK was a member of the EU, cross compliance is a set of rules which farmers and land managers must follow on their holding if they are claiming payments under the Basic Payment Scheme (BPS). The Government laid further regulations regarding the right of appeals² and the removal of cross-compliance requirements for recipients of payments under the legacy Rural Development Schemes³.

The delinking of agricultural payments was clearly advertised within the Agricultural Transition Plan, and is a necessary step to move to a new fairer system of payments based on the principle of public money for public goods. Consequently, it is critical that BPS is revoked and payments are delinked.

We remain concerned however about the consequential removal of the cross-compliance system. The third⁴ report of the Secondary Legislation Scrutiny Committee (SLSC) drew the regulations to the special attention of the House on these grounds, raising concerns that the removal of cross compliance requirements before the full application of a post Brexit system of rules will lead to regulatory gaps. This briefing sets out those concerns in more detail. We encourage parliamentarians to call on the Government to commit to bringing forward a new system of farm regulation that fairly protects people and the rural environment by reducing agricultural pressures on soil, water, air and landscape features including hedgerows and stone banks. Defra should also introduce conditionality to new ELM schemes to ensure public money is not being used where public harms are occurring.

The risk of regulatory gaps

As the SLSC report to the House outlines, it is concerning that existing cross compliance policy is being removed prior to the complete establishment of the new regulatory framework. The Government's piecemeal approach to replacing cross compliance risks the protection of key parts of the rural environment.

In an August 2023 response to SLSC enquiries about a regulatory gap related to the legacy payments element of the changes, Defra stated that *"the majority of rules under cross compliance are already in*

¹ <https://www.legislation.gov.uk/ukdsi/2023/9780348253344/contents>

² <https://www.legislation.gov.uk/uksi/2023/1181/contents/made>

³ <https://www.legislation.gov.uk/uksi/2023/816/contents/made>

⁴ <https://publications.parliament.uk/pa/ld5804/ldselect/ldsecleg/13/1304.htm>

domestic law".⁵ 'Majority' is doing a lot of heavy lifting in this explanation – the removal of cross compliance from 1st January will leave regulatory gaps across hedgerows, soil cover and watercourse buffer strips that are not covered by the Farming Rules for Water. It also risks enforcement gaps on compliance with regulations such as domestic public rights of way that benefit from the conditionality for payments that falls away from 1st January.

Defra have made some progress on hedgerows, issuing a consultation on new protective requirements in summer 2023, but this has not been undertaken in sufficient time to prevent regulatory gaps between 1 January 2024 and the enactment of additional protections.⁶ This leaves key environmental assets vulnerable for an uncertain period of time and risks a perverse outcome in the context of increasing investment in public goods through ELM, which could be undermined by the loss of these regulations.

The consultation on hedgerows was also not expansive enough to cover other looming gaps in cross compliance, such as soil and watercourses protection. In their August response to the SLSC (p. 9), Defra notes that "*there are other existing measures to provide ongoing protections*" but the continued delays, lack of clarity and certainty on objectives undermines the effectiveness of these measures.

The explanatory memorandum for the Basic Payments SI cites unspecified "*generalised and outcome-focussed rules in existing regulation*", the Code of Practice for Plant Protection Products and the Sustainable Farm Incentive standards that will stand in for cross compliance. Many of these domestic standards are guidance and voluntary incentivisation frameworks that do not apply to all farmers, they are not appropriate replacements for enforceable rules under regulatory conditionality. This also creates an unlevel playing field between farmers, risking a 'race to the bottom' as those who comply with voluntary standards are disadvantaged commercially.

Link asked Defra to publish a full transition plan on farm regulation, setting out how the new system would uphold the regulatory protections offered by cross compliance. This request has not been met.

As SLSC observes (para. 11), the Government still faces "*questions about whether the [standards under the new compliance regime] can be enforced as effectively as the current statutory cross-compliance requirements*". Link would be grateful if peers could raise these questions with Ministers when the House debates the SI on 6 December, and seek robust assurances.

The absence of an Environmental Assessment

Neither the SIs nor Defra's original response to the SLSC (p. 9) are clear on why "*a full environmental impact assessment of this policy was not required*". Given that the three SIs and resultant gaps will have an evidential impact on wildlife, it is not clear why Defra has determined these changes will not have a

⁵ <https://committees.parliament.uk/publications/41560/documents/204690/default/>, p. 8

⁶ See Link response to Hedgerow consultation for more detail:

https://www.wcl.org.uk/docs/assets/uploads/Protecting_Hedgerows_Link_response_September_2023.pdf

significant environmental effect when it has also acknowledged there will be gaps in protections from 1 January 2024. For example, hedgerows are key habitats and sources of biodiversity, and any gap in hedgerow compliance will inevitably have an impact on these environments.

The absence of a formal impact assessment of the removal of cross compliance and regulatory conditionality is problematic. An impact assessment should be carried out in accordance with law, along with a Habitat Regulation Assessment and Strategic Environmental Assessment.

Wildlife and Countryside Link (Link) is the largest nature coalition in England, bringing together 80 organisations to use their joint voice for the protection of the natural world.

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