

Summary of Scheme Rules

Stage 1 Appeal Decision

D Cook has appealed on behalf of Three Shires against the Welsh Government's decision to reject their applications for an allocation of BPS entitlements from both the BPS National Reserve Force Majeure and Exceptional Circumstance category and the New Entrant category

The scheme rules for Force Majeure and Exceptional Circumstances are set out on pages 1 to 6 below and the scheme rules for the New Entrant Category are set out on pages 7 to 12 below.

Scheme Rules & Literature Force Majeure Exceptional Circumstance

Basic Payment Scheme National Reserve Form Guidance Notes

Page 6 (Table)

National Reserve Category	Eligibility Criteria	Eligibility Criteria	See details on page
Force Majeure / exceptional circumstances	Have had a force Majeure / exceptional circumstance event that prevented you activating entitlements in 2013		12

How to apply for BPS entitlements ((Page 7)

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You must submit documentary evidence with your National Reserve Form (including Proof of production) to support the information provided. All supporting documentary evidence must be submitted by 15 May 2015 at the very latest. Any documentary evidence submitted after 15 May 2015 and by 9 June will attract a late claim penalty of 1% per working day. Any documentary evidence submitted after 9 June will not be considered.

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National Reserve Qualifying Criteria

Force Majeure/Exceptional Circumstance category (page12)

This category is available to farmers who were unable to activate any of their SPS entitlements in 2013 due to force majeure or exceptional circumstances.

The exceptional circumstances or force majeure situation must be abnormal and unforeseeable conditions outside the farmer's control, and the consequences of which, in spite of the exercise of all due care, could not have been avoided.

Such circumstances will be recognised by the Welsh Government in cases such as:

- The death of the beneficiary
- Long term professional incapacity of the beneficiary
- A severe natural disaster gravely affecting the holding
- The accidental destruction of livestock buildings on the holding
- An epizootic or plant disease affecting part or all of the beneficiary's livestock or crops respectively
- Expropriation (compulsory purchase) of all or part of the holding if that expropriation could not have been anticipated on the day of lodging the 2013 application
- Other, the above list is not exhaustive but the onus will be on the applicant to provide evidence as to how the situation was abnormal, unforeseeable, outside their control or could not have been avoided.

Documentary evidence must be provided to support applications to the force majeure/exceptional circumstances category, which could be one or more of the following: death certificate; doctor's letter; compulsory purchase orders; veterinary evidence; agronomist reports or any other documentary evidence you feel is appropriate.

All supporting documentary evidence **must** be submitted with your National Reserve Form (including Proof of Production) or by 15 May 2015 at the very latest. Any documentary evidence submitted after 15 May 2015 and by 9 June will attract a late claim penalty. Any documentary evidence submitted after 9 June will not be considered.

What allocation of BPS entitlements will I receive from the National Reserve due to Force Majeure / exceptional circumstances?

Successful applicants from the force majeure /exceptional circumstance category will be put back in the position they would have been in had the force majeure or exceptional circumstance event not prevented them from activating SPS entitlements in 2013 , providing there is sufficient budget available to meet demand.

How to complete the form - general guidance (pages 19 and 20)

Allocation of entitlements from National Reserve.

If you wish to be considered for National Reserve entitlements due to a force majeure/exceptional circumstance event that prevented you from activating SPS entitlements in 2013 you **must** complete section 4.

Documentary evidence

All supporting documentary evidence must be submitted with your National Reserve Form (including Proof of Production) or by 15 May 2015 at the very latest. Any documentary evidence submitted after 15 May 2015 and by 9 June will attract a late claim penalty. Any documentary evidence submitted after 9 June will not be considered.

The types of documentation that would be acceptable for each category are listed below.:

National Reserve entitlements – Force Majeure/ Exceptional Circumstances

One or more of the following

- Death Certificate
- Doctors Letter
- Compulsory Purchase Orders
- Veterinary evidence
- Agronomist reports
- Other appropriate documentary evidence to prove eligibility

NB. Post Literature Advice from the EC

The Welsh Government contacted the European Commission for advice on the deadlines to be applied for the submission of supporting information to establish eligibility. A copy of the European Commission response is included in the pack.

In view of the legislation and the European Commission response the Welsh Government is unable to consider any additional information that enables eligibility to be established for an allocation of entitlements under the national reserve that has been submitted after 9 June. Any such supporting information received between 16 May and 9 June can be considered but will mean that the first year's BPS payment will be reduced by 1% per working day that receipt of the information was delayed.

All information to support National Reserve Applications had to be received by 9 June 2015 it is now too late for Three Shires to submit any further evidence to support their application unless they can demonstrate that a Force Majeure event prevented them from submitting such information before the 9 June 2015.

NB. It is noted that this business is a cross border applicant consequently the extended RPA deadlines of 15 June applies instead of the 15 May and 10 July instead of the 9 June as referred to above.

Supporting legislation

EU Regulation 1307 2013

Article 30

1. Member states shall establish a national reserve

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7. Member States may use their national or regional reserves to:

a).....

c) allocate payment entitlements to farmers who were prevented from being allocated payment entitlements under this Chapter as a result of force majeure or exceptional circumstances.

EU Regulation 1306 2013

Article 2.

2. For the purposes of the financing, management and monitoring of the CAP, "force majeure" and "exceptional circumstances" may, in particular, be recognised in the following cases:

- (a) the death of the beneficiary;
- (b) long-term professional incapacity of beneficiary;
- (c) a severe natural disaster gravely affecting the holding;
- (d) the accidental destruction of livestock buildings on the holding;
- (e) an epizootic or a plant disease affecting part or all of the beneficiary's livestock or crops respectively;
- (f) expropriation of all or a large part of the holding if that expropriation could not have been anticipated on the day of lodging the application.

Legislation in respect of Supporting Information submission Deadlines.

Legislative Deadline for submitting supporting information.

European Commission Regulation 809/2014

Article 13 - Final date of submission of the single application, aid applications or payment claims.

Member States shall fix the final dates by which the single application, aid applications or payment claims to set a final date for the submission of single applications. The date cannot be later than 15 May each year.

Article 14 Contents of the single application or payment claim

1. The single application or payment claim shall contain all information **necessary to** establish eligibility for the aid and/or support, in particular:

(a).....

(f) where appropriate any supporting documents needed to establish the eligibility for the scheme and /or measure concerned

Article 15 Amendments to the single application or payment claim

1. After the final date of submission of the single application or payment claim, individual agricultural parcels or individual payment entitlements may be added or adjusted in the single application or payment claim provided that the requirements under the direct payment schemes or rural development measures concerned are respected.

Changes regarding the use or direct payment scheme or rural development measure in respect of individual agricultural parcels or in respect of payment entitlements already declared in the single application may be made under the same conditions.

Where the amendments referred to in the first and second subparagraphs have a bearing on any supporting documents or contracts to be submitted, such documents or contracts may be amended accordingly.

2. Amendments made in accordance with paragraph 1 shall be notified to the competent authority in writing by 31 May of the year concerned,

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Section 4 - Specific provisions pertaining to payment entitlements

Article 22 - Allocation or increase of the value of payment entitlements

1. Applications for allocation of payment entitlements or the increase of the value of payment entitlements under the basic payment scheme in accordance with Article 20, Article 24, Article 30, except paragraph 7(e), and Article 39 of Regulation (EU) No 1307/2013 shall be submitted by a date to be fixed by the Member States. The date fixed shall not be later than 15 May of the relevant calendar year.

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2. Member States may decide that the application for allocation of payment entitlements shall be submitted at the same time as the aid application under the basic payment scheme.

Commission Regulation 640 2014

Chapter iii Aid Applications and Payment Claims

Article 13 Late submission

1. Except in cases of force majeure and exceptional circumstances as referred to in Article 4, the submission of an aid application or payment claim pursuant to this Regulation after the final date for such submission as fixed by the Commission on the basis of Article 78(b) of Regulation 1306/2013 shall lead to a 1% reduction per working day of the amounts to which the beneficiary would have been entitled if the application or claim had been submitted within the time limit.

Without prejudice to any particular measures to be taken by the Member States with regard to the need for the submission of any supporting documents in due time to allow effective controls to be scheduled and carried out, the first subparagraph shall also apply with regard to applications for support, documents, contracts or other

declarations to be submitted to the competent authority where such applications for support, documents, contracts or declarations are constitutive for the eligibility for the aid or support in question. In that case, the reduction shall be applied on the amount payable for the aid or support concerned.

If such delay amounts to more than 25 calendar days, the application or claim shall be considered inadmissible and no aid or support shall be granted to the beneficiary.

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Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014/3223

Part 2 INTEGRATED ADMINISTRATION AND CONTROL SYSTEM AND ENFORCEMENT

3.— Applications

(1) For the purposes of Article 13(1) of the Horizontal Implementing Regulation and Article 12 of the Horizontal Delegated Regulation, the final date on which a single application, aid application or payment claim may be submitted to the Welsh Ministers is 15th May or, if 15th May is a Saturday, Sunday, Bank Holiday or other public holiday, the next working day.

(2) In paragraph (1)—

(a) “Bank Holiday” means a day specified in paragraph 1 of Schedule 1 to the Banking and Financial Dealings Act 1971;

(b) “payment claim” means a claim for support under the integrated system as provided by Article 67(2) of the Horizontal Regulation;

(c) “working day” means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday.

Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015/1252

Regulation 10.— Basic Payment Scheme entitlements

(1) For the purposes of Article 22(1) of the Horizontal Implementing Regulation, applications for allocation of payment entitlements under the basic payment scheme in accordance with Article 24 or Article 30, except paragraph 7(e), of the Direct Payments Regulation, must be submitted to the Welsh Ministers no later than the 15 May of the relevant calendar year.

(2) An application for allocation of payment entitlements must be submitted to the Welsh Ministers at the same time as the aid application under the basic payment scheme, in accordance with Article 22(2) of the Horizontal Implementing Regulation

New Entrant Scheme Rules & Literature

Basic Payment Scheme National Reserve Form Guidance Notes

Page 6 (Table)

National Reserve Category	Eligibility Criteria	Eligibility Criteria	See details on page
New Entrant	Cannot have had any agricultural activity in own name/at own risk in the 5 years before the start of your current farming activity	Must have started agricultural activity in 2013 or later.	9

How to apply for BPS entitlements ((Page 7)

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You must submit documentary evidence with your National Reserve Form (including Proof of production) to support the information provided. All supporting documentary evidence must be submitted by 15 May 2015 at the very latest. Any documentary evidence submitted after 15 May 2015 and by 9 June will attract a late claim penalty of 1% per working day. Any documentary evidence submitted after 9 June will not be considered.

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National Reserve Qualifying Criteria – New Entrant Category (Page9/10)

This category is available to sole traders, partnerships, or a legal person, for example a limited company, that **started farming in 2013 or later**.

If you wish to be considered for entitlements as a sole trader, you **must not** have carried out any agricultural activity in your own name or at your own risk in the five years before the start of your current farming activity.

If you wish to be considered for entitlements as a partnership, **none** of the partners can have carried out any agricultural activities in their own name or at their own risk, or as the person in control of, for example, a limited company (i.e. legal person), in the five years before the start of the partnership's current agricultural activity.

For legal persons, the controlling member(s) **must not** have carried out agricultural activities in their own name or at their own risk, nor had the control of a legal person exercising an agricultural activity, in the five years before the start of the current agricultural activity exercised by the legal person.

Working on a farm e.g. as a farm manager or a farm labourer would not be considered as undertaking an agricultural activity.

You must also submit your first application for BPS no later than 2 years after the calendar year in which you started the current agricultural activity.

Documentary evidence must be submitted to confirm the date the agricultural activity commenced this could be one or more of the following: confirmation of the date the holding was registered; registration with the British Cattle Movement Service (BCMS)/ Animal Movement Licensing System (AMLS); animal record books; pesticide records.

All supporting documentary evidence must be submitted with your National Reserve Form (including Proof of Production) or by 15 May 2015 at the very latest. Any documentary evidence submitted after 15 May 2015 and by 9 June will attract a late claim penalty. Any documentary evidence submitted after 9 June will not be considered.

How to complete the form - general guidance (pages 19 and 20)

Allocation of entitlements from National Reserve

If you wish to be considered for National reserve entitlements as a new entrant you **must** complete section 2.

Documentary evidence

All supporting documentary evidence must be submitted with your National Reserve Form (including Proof of Production) or by 15 May 2015 at the very latest. Any documentary evidence submitted after 15 May 2015 and by 9 June will attract a late claim penalty. Any documentary evidence submitted after 9 June will not be considered.

The types of documentation that would be acceptable for each category are listed below.:

National Reserve entitlements - New Entrant

One or more of the following

- Confirmation of the date the holding was registered
- Registration with BCMS/AMLS
- Pesticide Records
- Other appropriate documentary evidence to provide eligibility

NB. Post Literature Advice from the EC

The Welsh Government contacted the European Commission for advice on the deadlines to be applied for the submission of supporting information to establish eligibility. A copy of the European Commission response is included in the pack.

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May and 9 June can be considered but will mean that the first year's BPS payment will be reduced by 1% per working day that receipt of the information was delayed.

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Supporting legislation

EU Regulation 1307 2013

Article 30

3. Member states shall establish a national reserve

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6. Member States shall use their national or regional reserves to allocate payment entitlements, as a matter of priority, to young farmers and to farmers commencing their agricultural activity.

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11. For the purposes of this Article, the following definitions shall apply:

(a) "young farmers"

(b) 'farmers commencing their agricultural activity' means natural or legal persons who, in the five years preceding the start of the agricultural activity, did not have any agricultural activity in their own name and at their own risk or did not have the control of a legal person exercising an agricultural activity. In the case of a legal person, the natural person or persons in control of the legal person must not have had any agricultural activity in their own name and at their own risk or must not have had the control of a legal person exercising an agricultural activity in the five years preceding the start of the agricultural activity by the legal person; Member States may establish their own additional objective and non-discriminative eligibility criteria for this category of farmers as regards appropriate skills, experience or education.

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