

EXPLANATORY MEMORANDUM TO
THE AGRICULTURE (LEGISLATIVE FUNCTIONS) (EU EXIT) REGULATIONS
2019

2019 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“Defra”) and is laid before Parliament by Act.

2. Purpose of the instrument

2.1 This instrument amends provisions of European Union (“EU”) legislation relating to the EU Common Agricultural Policy (“CAP”) and the European Maritime and Fisheries Fund (“EMFF”), which currently confer legislative functions on the European Commission (“the Commission”). Under the amendments, these functions will instead be exercisable by public authorities in the United Kingdom (“UK”). This will enable these legislative functions to continue to be used at a national level after the UK leaves the EU.

Explanations

What did any relevant EU law do before exit day?

2.2 The EU Regulations concerned cover: CAP financing, management and monitoring; CAP Direct Payments schemes; CAP Rural Development; and marine and fisheries.

2.3 In each case, the EU Regulations (listed below in section 2.4 of this explanatory memorandum) confer various legislative functions on the Commission so that it can develop the technical details required to operate a specific regime. Examples of these functions include: specifying forms to be used; setting financial limits or prices; defining scheme eligibility criteria; amending technical annexes to reflect advances in scientific and technical knowledge; establishing key dates; and defining programme or scheme periods.

2.4 This instrument amends five EU Regulations:

- a) Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy;
- b) Commission Delegated Regulation (EU) No 906/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to public intervention expenditure;
- c) 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;
- d) Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European

Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund; and

- e) Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD).

Why is it being changed?

- 2.5 After EU Exit, without amendment, the legislative functions within the above retained EU legislation will not work in a UK setting. This would mean that the UK Government and, where applicable, the devolved administrations, would be unable to make any necessary timely changes to each policy regime in order to keep them up to date and functioning effectively. This instrument uses powers in the European Union (Withdrawal) Act 2018 to correct this deficiency so that these legislative functions can continue to be exercised by appropriate UK public authorities.
- 2.6 The amendments will ensure that the policy regimes outlined at section 2.2 of this explanatory memorandum will continue to function smoothly after EU Exit. The amendments will prevent the need for primary legislation to be made every time a change in technical matters, such as the examples described at section 2.3 of this explanatory memorandum, is required to the retained EU Regulations.

What will it now do?

- 2.7 This instrument will ensure that the policy regimes for CAP financing, management and monitoring; CAP Direct Payments schemes; CAP Rural Development; and marine and fisheries funding will continue to function after EU Exit in a similar way to how they did previously. This instrument changes the identity of the bodies carrying out the specified legislative functions and converts the EU procedures to UK procedures, as appropriate. A full explanation of the amendments being made within this instrument can be found in Annex 2 to this explanatory memorandum.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this instrument includes Scotland and Northern Ireland.
- 3.3 The powers under which this instrument is made cover the entire UK (see section 24 of the European Union (Withdrawal) Act 2018) and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the UK.
- 4.2 The territorial application of this instrument is the UK.

5. European Convention on Human Rights

- 5.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Agriculture (Legislative Functions) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The European Union (Withdrawal) Act 2018 converts EU law as it stands at the moment of EU Exit into domestic law. It also confers temporary powers to make secondary legislation, to enable corrections to be made to the laws that would otherwise no longer operate appropriately once the UK has left the EU. This instrument relies upon those correcting powers to allow functions exercisable by the Commission to be exercisable instead by appropriate UK bodies, as this is an aspect of the law that will otherwise not work properly after EU Exit.

CAP financing and management, CAP Direct Payments schemes and CAP Rural Development

- 6.2 The corrections made by this instrument relating to CAP financing and management, CAP Direct Payments schemes and CAP Rural Development will create legislative regimes for the UK that will respect the UK devolution settlements. The way in which legislative functions will be exercised will depend on the content and scope of the power in question. In most instances, where provisions are devolved, the legislative powers will be transferred to the relevant Ministers or Department of the constituent nations, but with provision for the Secretary of State to act on behalf of Scottish Ministers, Welsh Ministers or the Department of Agriculture, Environment and Rural Affairs (“DAERA”), where those Ministers or Department consent. The ability of the Secretary of State to be able to act for one or more of the devolved administrations will allow for powers to be exercised uniformly across the UK or across certain constituent nations, where it is convenient to do so. In certain cases, the ability of the Secretary of State to act with consent of Ministers does not apply to Wales.
- 6.3 Additionally, there are certain powers where it been agreed by the UK administrations that the nature of the subject matter requires that the legislative powers should be exercised uniformly across the whole of the UK. In such cases, the power is conferred on the Secretary of State, but the Secretary of State may only act if all four constituent nations agree. Finally, powers relating to the CAP financial discipline mechanism, which is used to manage the CAP Pillar 1 budget (i.e. Direct Payments and measures relating to support provided for under the Common Organisation of Agricultural Markets), will be conferred on the Secretary of State only, and in relation to Direct Payments made in England only.

European Maritime and Fisheries Fund (EMFF)

- 6.4 The UK administrations have agreed that powers relating to the EMFF should be exercised uniformly across the whole of the UK after EU Exit as is currently the case. The amendments therefore confer legislative functions on the Secretary of State, but the Secretary of State may only act if all four constituent nations agree. This is the most appropriate way to ensure that the programme can continue to run effectively and ensure no policy changes are made.

6.5 As part of the EU Exit process, Defra will also introduce other statutory instruments related to this instrument whose main purpose will be to correct retained EU legislation relating to the CAP and marine and fisheries. These related instruments were either laid in January 2019 (the Common Agricultural Policy and Agriculture and Horticulture Development Board (Amendment etc.) (EU Exit) Regulations 2019) or will be laid in February 2019 and concern:

- Retained EU legislation relating to the “Horizontal” (cross-cutting) framework for the financing, management and monitoring of the CAP (two instruments);
- Retained EU legislation relating to Direct Payments to farmers and land managers under agricultural support schemes as provided for under the European Agricultural Guarantee Fund (“EAGF”) of the CAP (two instruments);
- Retained EU legislation relating to rural development programmes and support for rural development as provided for under the European Agricultural Fund for Rural Development (“EAFRD”) (four instruments);
- Existing UK domestic legislation that implements the CAP in the UK (one instrument);
- The transfer of other European Commission legislative functions relating to the CAP to appropriate UK bodies that are not covered by this instrument (two instruments);
- Retained EU legislation relating to marine and fisheries (three instruments); and
- The transfer of other European Commission legislative functions relating to marine and fisheries to appropriate UK bodies that are not covered by this instrument (one instrument).

7. Policy background

What is being done and why?

- 7.1 EU legislation frequently gives the Commission the power to make further legislation (often called delegated or implementing acts). This is generally to allow the making of technical measures, such as prescribing forms to be used, adapting the legislation to scientific or technical change, or to reflect changes in international agreements.
- 7.2 As part of the corrections necessary to make the EU legislation covered by this instrument (see section 2.4 of this explanatory memorandum) operate effectively after EU Exit, it is necessary to amend these provisions to ensure that, where appropriate, the functions are conferred on an appropriate authority in the UK after EU Exit. This will prevent the UK Government and, where applicable, the devolved administrations, having to make primary legislation every time a technical change is required to a retained EU policy regime.
- 7.3 Across Defra’s policy areas, a considerable amount of EU legislation exists that confers such functions on the Commission. This instrument is one of several instruments that Defra will introduce to correct retained EU legislation relating to the CAP and marine and fisheries, to enable the legislative functions within that legislation to be exercised instead by UK public authorities. The policy areas amended by this instrument are:

- a) CAP financing, management and monitoring (“horizontal” or cross-cutting issues) (Regulations 2 to 29);
- b) CAP Direct Payments (Regulations 30 to 48);
- c) CAP Rural Development (Regulations 49 to 72); and
- d) CAP Rural Development funding and Marine and Fisheries funding (Regulations 73 to 86).

7.4 A detailed explanation of the amendments being made within this instrument for each of the above policy areas can be found in Annex 2 to this explanatory memorandum. This instrument simply changes the identity of the bodies carrying out the specified legislative functions and converts the EU procedures to UK procedures, as appropriate.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the power in section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the EU. In accordance with the requirements of that Act, the Minister has made the relevant statements as detailed in Part 2 of the Annex to this explanatory memorandum.

9. Consolidation

9.1 Defra does not intend to consolidate the relevant legislation at this time.

10. Consultation outcome

10.1 This instrument itself was not subject to consultation because its purpose is to solely enable the current policy framework for legislative functions relating to: CAP financing, management and monitoring; CAP Direct Payments schemes; CAP Rural Development; and marine and fisheries to remain unchanged by the withdrawal of the UK from the EU.

10.2 However, Defra has engaged with stakeholder umbrella organisations regarding CAP agriculture policy. On 25 September 2018, Defra met with the Rural Payments Agency’s (“RPA”) Industry Partnership Group (“IPG”) to update farming and land management stakeholders on the Government’s plans for EU Exit. At the meeting, stakeholders were informed of the plans to make both retained EU CAP legislation and existing domestic CAP regulations operable at the point of EU Exit, to enable Defra and the devolved administrations to continue to deliver ongoing CAP Pillar 1 and Pillar 2 commitments to the agriculture sector in 2019 in the event of a non-negotiated EU Exit. No concerns were raised. Stakeholders present were:

- Tenant Farmers Association;
- Countryside Land and Business Association;
- Farming Community Network;
- Institute of Agricultural Secretaries and Agents;
- British Institute of Agricultural Consultants;
- National Farmers’ Union.

- 10.3 A further meeting between Defra, the RPA and the IPG was held on 26 November 2018, to update stakeholders further on legislative progress in preparing for EU Exit.
- 10.4 Defra has also conducted targeted engagement with fisheries stakeholders regarding the general approach it is taking with its EU Exit statutory instruments that amend retained EU marine and fisheries legislation. It met with key stakeholders from the fisheries sector, food industry and environmental non-governmental bodies on 27 September 2018 to update them on its plans to make retained EU marine and fisheries legislation operable at the point of EU Exit. In addition, Defra has conducted a ten-week consultation (from 4 July to 12 September 2018) through its Fisheries White Paper, which described future fisheries policy. Stakeholders were broadly supportive of the approach being taken in the White Paper.
- 10.5 This instrument, and the policy reflected within it, has been developed in collaboration with officials in the Scottish and Welsh devolved administrations and DAERA in Northern Ireland.

11. Guidance

- 11.1 Defra is not producing any specific guidance on this instrument, as it only makes technical amendments to deficiencies in retained EU legislation arising from the UK's withdrawal from the EU.
- 11.2 The Government has published Technical Notices on the <https://www.gov.uk> website to help people prepare for EU Exit. These provide relevant background information to the CAP and marine and fisheries related content of this instrument. They are:
- Farm payments if there's no Brexit deal (see: <https://www.gov.uk/government/publications/farm-payments-if-theres-no-brex-it-deal>);
 - Receiving rural development funding if there's no Brexit deal (see: <https://www.gov.uk/government/publications/receiving-rural-development-funding-if-theres-no-brex-it-deal>); and
 - Commercial fishing if there's no Brexit deal (see: <https://www.gov.uk/government/publications/commercial-fishing-if-theres-no-brex-it-deal>).

12. Impact

- 12.1 There is no, or no significant impact on business, charities or voluntary bodies. After EU Exit, legislative decision making powers currently conferred on the Commission will instead be conferred on appropriate UK public authorities. CAP and EMFF beneficiaries are currently subject to the possibility of these legislative powers being exercised at any time by the Commission; the only difference after EU Exit will be that such exercising of these same powers would instead be undertaken by UK public authorities. The impact of these new arrangements will be dependent on how these powers are exercised in the future, after EU Exit, which is outside of the scope of this instrument.
- 12.2 There is no, or no significant impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument as no, or no significant impact on the private or voluntary sector is foreseen. The purpose of the instrument is to maintain existing regulatory standards when the UK leaves the EU by

addressing technical deficiencies in retained EU CAP and EMFF legislation and so there is expected to be minimal impact on business.

- 12.4 As explained above these changes in regulation are intended to maintain the status quo in terms of business's regulatory obligations. There should be no significant changes in business practices and no significant changes in the direct costs faced by businesses. As a result, we are confident that the changes introduced by this instrument fall below the £5m per annum threshold for net direct costs to business.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No disproportionate impacts are expected to impact small and micro businesses.

14. Monitoring & review

- 14.1 As these instruments are made under the powers in the European Union (Withdrawal) Act 2018, no review clause is required. Defra and its agencies will monitor and review the impact of the instruments as part of its standard policy-making procedures.

15. Contact

- 15.1 Andrew Crawford at the Department for Environment, Food and Rural Affairs: Telephone: 0208 026 6557 or email: andrew.crawford@defra.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Fiona James and Elen Shepard (job-share), Deputy Directors for CAP EU Exit Preparedness at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 George Eustice MP, the Minister of State for Agriculture, Fisheries and Food at the Department for Environment, Food and Rural Affairs, can confirm that this explanatory memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI.	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees.
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs.	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence.	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under s2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA 1972.	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA 1972, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under s2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA 1972.	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) Act 2018

1. Appropriateness statement

- 1.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Agriculture (Legislative Functions) (EU Exit) Regulations 2019 does no more than is appropriate”.

- 1.2 This is the case because the instrument provides for the exercise of legislative functions by UK public authorities, as appropriate, given the nature of the functions concerned. These are required for the continued effective functioning of the policy regimes described in section 7.3 of the main body of this explanatory memorandum, after the UK has withdrawn from the EU.

2. Good reasons

- 2.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this draft instrument, and I have concluded they are a reasonable course of action”.

- 2.2 These are: that without this instrument, the EU Regulations listed at section 2.4, subparagraphs a) to e) of the main body of this explanatory memorandum, which are converted into UK law by the European Union (Withdrawal) Act 2018 will not work properly, and that it is appropriate, after EU Exit, for UK public authorities to exercise the legislative functions within this instrument that are currently carried out by the Commission.

3. Equalities

- 3.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement:

“This draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

- 3.2 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to this draft instrument, I, George Eustice MP, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

4. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.