

EXPLANATORY MEMORANDUM TO

THE COMMON AGRICULTURAL POLICY SINGLE PAYMENT SCHEME (SET-ASIDE) (ENGLAND) REGULATIONS 2004

2004 No. 3385

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

- 2.1 This instrument sets out the provisions that farmers must observe in relation to the obligation to set aside land from production under the new Single Payment Scheme. That Scheme is to be introduced under the EU's Common Agricultural Policy on 1 January 2005.
- 2.2 It sets out the provisions necessary in respect of the management conditions for set-aside land. These provisions are broadly similar to those which formerly operated under The Arable Area Payments Regulations 1996 (as amended).

3. Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Legislative Background

- 4.1 *General:* The Regulations are made under section 2(2) of the European Communities Act 1972 (1972 c. 68). They implement certain provisions of, firstly, Council Regulation (EC) No 1782/2003 (as amended), particularly Articles 54 to 56 and Article 63 (2), and, secondly, of Commission Regulation (EC) No 795/2004 (as amended), particularly Articles 32 and 33.
- 4.2 *EC legislation:*
 - 4.2.1 The Community legislation referred to above will apply to direct payments to farmers under the Single Payments Scheme in respect of the scheme years starting on 1 January 2005, although some parts of it are already in force.
 - 4.2.2 No Transposition Note is necessary. A European Council common position on the Mid-term review of the CAP was reached on 26 June 2003, and the proposal was adopted on 29 September 2003.

5. Extent

This instrument applies to England only.

6. European Convention on Human Rights

Not applicable.

7. Policy background

7.1 Until now, under the Common Agricultural Policy as it has been operated, farmers have been subsidised according to how much they produce. From 1 January 2005 this system will change, and the Single Payment Scheme will set out new rules for direct payments. Except under certain remaining schemes, farmers will no longer be subsidised on the basis of how much they produce. Instead, common rules have been established under which farmers will now be able to claim decoupled payments (as set out in Council Regulation (EC) No. 1782/2003, as amended).

7.2 A condition of receiving these decoupled payments for most farmers will be an obligation to set aside a percentage of their eligible arable land to be managed in accordance with set-aside management rules. These rules apply specifically to set-aside land and are additional to the standards of “good agricultural and environmental condition” which apply to all agricultural land and which are required by The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (England) Regulations 2004 (S.I. 2004/3196).

Many farmers will be familiar with these requirements, since a broadly similar set of set-aside management rules has operated under the Arable Area Payments Scheme (AAPS) since 1992. AAPS is one of the schemes that will be replaced by the Single Payment Scheme in England on 1 January 2005.

7.3 The instrument will affect all farmers in England who wish to claim under the Single Payment Scheme, except small producers, farmers whose holding consists exclusively of land ineligible for set-aside entitlement, and farmers who manage all the productive land on their holding organically. Many livestock farmers and producers of horticultural crops will have to set aside land for the first time.

7.4 The Rural Payments Agency, an Executive Agency of the Department for Environment, Food and Rural Affairs, will be the Competent Control Authority for set-aside, bearing responsibility for carrying out the controls and checks in addition to those relating to cross compliance.

7.5 Among the responses to the public consultation on proposed cross compliance measures (which also covered set-aside management rules) in early 2004, there were a number that specifically mentioned set-aside. Many of those called for set-aside to be discontinued altogether, which would not be allowed under the EC Regulations. Others suggested changes to the set-aside

management rules, some of which have been implemented in this Statutory Instrument. The general media have not taken any significant interest in the issue of set-aside under the Single Payment Scheme.

- 7.6 The new set-aside arrangements have some political significance because of the large number of farmers who will be having to set aside land for the first time, particularly dairy farmers and other livestock producers. Dairy farmers are under a lot of economic pressure at the present time, and this new requirement could be viewed, reasonably or not, as exacerbating the situation.
- 7.7 Further details of the policy intentions behind the set-aside requirements can be found in the attached Regulatory Impact Assessment. The cross compliance standards and requirements are summarised in the *Set-Aside Handbook for England*. This publication will be published on Defra's website very shortly, and copies will be sent to all farmers.

8. Impact

- 8.1 On business, charities or voluntary bodies: [please see attached Regulatory Impact Assessment.]
- 8.2 On the Exchequer: no impact.

9. Contact

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REGULATORY IMPACT ASSESSMENT ON THE COMMON AGRICULTURAL POLICY SINGLE PAYMENT SCHEME (SET-ASIDE) (ENGLAND) REGULATIONS 2004

1. Purpose and intended effect of measure – to implement the set-aside measures which will apply under the Single Payment Scheme that will take effect from 1 January 2005. These are partly based on the set-aside provisions which formerly operated under The Arable Area Payment Regulations 1996 (as amended).

1(1) The objective: The Regulations will implement Council Regulation (EC) No.1782/2003 (as amended) and Commission Regulation (EC) No 795/2004 (as amended) insofar as they concern land set-aside from agricultural production under the Single Payment Scheme.

1(2) The background: Setting land aside was a condition of claiming payments for growing eligible crops under the Arable Area Payments Scheme (AAPS) between 1992 and 2004. Except for small farmers, all growers of cereals, oilseeds and protein crops had to set land aside under that Scheme, and were required to observe management conditions for set-aside designed to protect and enhance the environment. Set-aside will continue to be a feature of the Single Payment Scheme, and it will apply to a larger number of farmers than in the past. However, it will not apply to farmers whose land consists exclusively of land ineligible for set-aside entitlement, those whose holding is situated entirely in the moorland part of the Severely Disadvantaged Area, or those who manage all the productive land on their holding organically. In addition, the percentage set-aside rate will be lower in 2005 than it has been in most recent years under AAPS, and the area threshold for small farmers will be set at a higher level (19.48 ha of land eligible for set-aside entitlement in lowland areas, or 122.36 ha of such land in the non-moorland Severely Disadvantaged Area) than it was under that Scheme.

1(3) Risk assessment

The risks associated with not continuing to regulate in this area are that the UK will be in breach of EU legislation. Failure to apply the necessary controls would lead to a risk of disallowance, against the total fund which is around £1.7 billion in England.

1(4) Business sectors affected

All farmers making claims under the Single Payment Scheme will have to set land aside, except those categories indicated at 1(2).

1(5) Issues of equity and fairness

No issues of equity and fairness are expected to arise if national implementation takes place.

2. Options

Option 1: do nothing.

Option 2: implement of Council Regulation (EC) No.1782/2003 (as amended) and Commission Regulation (EC) No 795/2004 (as amended), using as a basis the set-aside provisions contained in The Arable Area Payments Regulations 1996 (as amended).

3. Benefits

Option 1: no benefits identified. This option would be inconsistent with the Community obligations, would also be inconsistent with what is being implemented in Scotland, Wales and Northern Ireland, would cause environmental damage and could lead to budgetary disallowance by the European Commission.

Option 2: would implement UK obligations and enable farmers to make valid claims under the Single Payment Scheme. The continuation of set-aside within the framework of these Regulations will also bring environmental benefits.

4. Compliance costs for business:

Option 1: do nothing. Failure to make this legislation which underpins the set-aside obligation could have a negative financial effect on those farmers who, under the EC regulations, must set land aside in order to make a claim under the Single payment Scheme, since their claims could be penalised as a result.

Option 2: This would provide the proper legislative framework for the implementation of the set-aside provisions under the Single Payment Scheme and hence reduce the risk of their claims being penalised. It would also reduce the magnitude of the regulatory burden which set-aside represents by comparison with the set-aside provisions formerly contained in The Arable Area Payments Regulations 1996 (as amended), since many of the provisions contained in those Regulations have either been made more flexible or have been discontinued altogether.

5. Consultation with small business: ‘small firms impact test’

Compliance with the set-aside legislation will enable farmers to make claims under the Single Payment Scheme. As this new legislation did not introduce any additional controls it was not subject to a public consultation. However, there was liaison with the National Farmers Union and other farming organisations in respect both of the provisions contained in the legislation and of the Set-Aside Handbook, which will be sent to all farmers shortly. The NFU were content with the provisions and with the Handbook.

6. Competition assessment

The implementation of this legislation will not distort or affect competition in the market.

7. Enforcement and Sanctions

The enforcement of the set-aside requirements and the sanctions for non compliance will be possible under The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (England) Regulations 2004.

8. Monitoring and review

The legislation is enforced in England by the Secretary of State.

These proposals will not impose any costs on any organisations other than the farmers who are directly affected. Such costs will remain at or below existing levels for most farmers and will be totally removed for those categories of producers mentioned at 1(2) above.

This legislation will not impose any further criminal sanctions over and above those already provided for in The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (England) Regulations 2004.

9. Consultation

9(1) Within Government: appropriate Divisions within Defra as well as the Devolved Administrations have been consulted at all key stages of development relating to the adoption of the EC legislation and the implementation measures for England.

9(2) Public consultations:

A public consultation was not considered necessary on the Regulations themselves because they do not contain any new controls in relation to the management of set-aside. However, a consultation was carried out on the general principles of set-aside management within the context of the wider consultation on cross-compliance held in early 2004. Some changes to the rules were made as a result of the responses to that consultation. The NFU and other farming organisations are aware of the position and are content with the rules as proposed in these Regulations.

10. Summary and recommendation`

This regulatory impact assessment supports and recommends option 2 for the making of the Regulations to implement Council Regulation (EC) No.1782/2003 (as amended) and Commission Regulation (EC) No 795/2004 (as amended) insofar as they concern land set-aside under the Single Payment Scheme and for the continuation of legislation.

11. Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed Whitty

Date 20 December 2004

Lord Whitty

Parliamentary Under Secretary of State (Lords)

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