

EXPLANATORY MEMORANDUM TO
THE COMMON AGRICULTURAL POLICY SINGLE PAYMENT SET-ASIDE
(ENGLAND) (AMENDMENT) REGULATIONS 2005

2005 No. 3460

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 amends the provisions set out in Common Agricultural Policy Single Payment Scheme (Set-aside) (England) Regulations 2004 which farmers must observe in relation to the obligation to set aside land from production under the Single Payment Scheme (SPS). The SPS is a major instrument under the European Union's Common Agricultural Policy and was introduced in the UK on 1 January 2005.

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

3.1 None

4. Legislative Background

4.1 These Regulations are made under section 2(2) of the European Communities Act 1972. The statutory instrument that this one amends is one of a series that implement the reforms to the Common Agricultural Policy (CAP) direct payment schemes that were agreed in June 2003.

4.2 Domestic Legislation applicable to England

The other statutory instruments in the series implementing the 2003 CAP reforms of direct payments are:

a) The Common Agricultural Policy Single Payment and Support Schemes (Amendment) Regulations 2005 SI No. 1087

b) The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (England) Regulations 2004 S.I No. 3196¹

c) The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (England) (Amendment) Regulations 2005 SI No. 918²

d) The Common Agricultural Policy Single Payment and Support Schemes (Appeals) (England) Regulations 2004 S.I No. 2689

¹ Due to be revoked and replaced by The Common Agricultural Policy Single Payment and Support Schemes (Cross-compliance) (England) Regulations 2005 which are expected to come into force on the 12 January 2006.

² Due to be revoked and replaced by The Common Agricultural Policy Single Payment and Support Schemes (Cross-compliance) (England) Regulations 2005 which are expected to come into force on the 12 January 2006.

e) The Common Agricultural Policy Single Payment Scheme (Set-aside) (England) Regulations 2004 SI No. 3385

f) The Common Agricultural Policy Single Payment and Support Schemes Regulations 2005 SI No. 219

4.3 Domestic Legislation applicable to the UK

a) The Common Agricultural Policy Single Payment and Support Schemes (IACS) Regulations 2005 SI No. 218

These IACS Regulations are the only SPS legislation with a UK wide application. Devolved administrations are implementing all other SPS legislation domestically.

4.3 European Legislation

4.3.1 Links to each of the relevant European Regulations are listed below, for:

a) European Council Regulation 1782/2003 (<http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=OJ:L:2003:270:0001:0069:EN:PDF>)

b) European Commission Regulation 795/2004 (http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_141/l_14120040430en00010017.pdf)

c) Commission regulation 796/ 2004 (http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_141/l_14120040430en00180058.pdf)

d) Commission Regulation 1973/2004 (<http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CONSLEG:2004R1973:20050801:EN:PDF>)

4.3.2 The Community legislation referred to above applies to all payments made to farmers under the Single Payments Scheme in respect of scheme years starting from 1 January 2005.

4.3.3 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.

4.4 Article 32(2) of European Regulation (No) 1782/2003 states that Member States shall apply suitable measures compatible with the specific situation of areas set-aside in order to ensure they are maintained in good agricultural and environmental condition and that the environment is protected.

5. Extent

5.1 This instrument applies to England

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required

7. Policy background

7.1 Setting land aside was a condition of claiming payments for growing eligible crops under one of the schemes that the Single Payment Scheme replaced - the Arable Area Payments Scheme (AAPS) - between 1992 and 2004 and farmers were required to observe management conditions for set-aside designed to protect and enhance the environment. Set-aside continues to be retained as a production control measure under the Single Payment Scheme and management conditions continue to apply.

7.2 The launch of the SPS also saw the introduction of Cross Compliance rules which farmers now also have to meet. These include maintaining agricultural land in “good agricultural and environmental condition” as specified in The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (England) Regulations 2004 (S.I. 2004/3196)(as amended). The rules that apply specifically to set-aside land are additional to these requirements unless otherwise stated.

7.3 The set-aside management conditions in place for 2005 are broadly similar to those which formerly operated under The Arable Area Payments Regulations 1996 (as amended). However, having reviewed those conditions in the light of the first year of operation of both the Single Payment Scheme and Cross Compliance and feedback from stakeholders, it is considered desirable to provide greater legal certainty in some areas.

7.4 Consequently, this instrument aims to:

- a) codify some existing and long standing set-aside management rules into domestic legislation such as the rules governing the use of pesticides and herbicides on set-aside land.
- b) provide legislative force for a number of long standing exemptions to the set-aside management rules such as the requirement to be exempt from establishing a green cover by the start of the set-aside period if your crops fail or if you harvest them after 1 October in the preceding year

7.5 In addition, in response to feedback from stakeholders, this instrument provides for a minor relaxation of the conditions in some cases, for example by allowing partially organic farmers who place organic fields in set-aside to be allowed to cultivate them for the purposes of controlling weeds from the 1 May each year rather than the 1 July.

8. Impact

8.1 Details of all Regulatory Impact Assessments carried out on the Single Payment Scheme are available on the Defra website under the following link <http://www.defra.gov.uk/farm/capreform/background/260603-riacon.htm>.

8.2 A separate RIA is attached for this instrument. While it will affect farmers who are required to set-aside land and their businesses, the net result of these changes be a minor reduction in the related regulatory burden that they face.

9. Contact

Sunil Sood at the Department for Environment, Food and Rural Affairs Tel: 020 7238 3161 or e-mail: sunil.sood@defra.gsi.gov.uk can answer any queries regarding the instrument.

REGULATORY IMPACT ASSESSMENT ON THE COMMON AGRICULTURAL POLICY SINGLE PAYMENT SCHEME (SET-ASIDE) (ENGLAND) (AMENDMENT) REGULATIONS 2005

1. Title of Proposal

The Common Agricultural Policy Single Payment and Support Schemes (Set-aside) (England) (Amendment) Regulations 2005.

2. Purpose and Intended Effect of Measure

2.1 Objectives

To amend the management conditions that some farmers are required to meet on set-aside land under the Single Payment Scheme (the 'SPS').

2.2 Background

This regulatory impact assessment is concerned with the management conditions which apply to land set-aside from production under Article 54 of European Council Regulation No. 1782/2003 (as amended) and European Commission Regulation No. 795/2004 (as amended), to farms claiming under from the SPS as part of the reformed Common Agricultural Policy (CAP) agreed by the Agricultural Council on 26 June 2003.

SI 2004/3185 established the management conditions farmers were expected to meet on such land in England under Article 32(2) of European Commission Regulation No. 795/2004 (as amended) which requires Member States to ensure that such land is maintained in Good Agricultural and Environmental Condition (GAEC). These were based, in part, on the set-aside provisions which formerly operated under The Arable Area Payment Regulations (AAPS) 1996 (as amended), which is one of the schemes the SPS replaced in 2005.

A full Regulatory Impact Assessment (RIA) of all the proposed GAEC measures including those applicable to set-aside land was carried out in 2004 prior to the launch of the SPS. This RIA is available at :
<http://www.defra.gov.uk/corporate/regulat/ria/2004/cross-compliance.pdf>.

2.3 Rationale for Government Intervention

The majority of changes proposed in this instrument relate to issues identified either by Defra (for example where further flexibilities can be offered to farmers), or are based on comments and feedback received from stakeholders during this first year of implementation of the SPS. In addition, this instrument includes a number of exemptions from the set-aside rules from for farmers which have historically existed but have not previously been codified. The inter-relationship between set-aside management conditions and cross compliance GAEC standards [as laid out in SI 2004/3196 (as amended)] is clarified. This government intervention will therefore primarily provide greater clarity and flexibilities for farmers. The changes being made

to these regulations will be set out in the *Set-aside Handbook and Guidance 2006 Edition*.

3. Consultation

A full consultation exercise, including extensive engagement with stakeholders, was carried out in 2004. The consultation included various GAEC measures including those applying to set-aside land. Details of the consultation can be found at: <http://www.defra.gov.uk/corporate/consult/capsingle-payment/index.htm>.

The responses to the consultation informed the development of the set-aside management conditions and were subsequently set out and published within the *Set-aside Handbook and Guidance for England: 2005 Edition*. A summary of responses to the 2004 consultation can be found at: <http://www.defra.gov.uk/corporate/consult/capsingle-payment/responses.pdf> or in the Defra Library Information Resource Centre (tel.: 020 7238 6575, e-mail: defra.library@defra.gsi.gov.uk).

Informal consultation on the substance of the amendments included in this instrument has taken place with both Devolved Authorities and stakeholders such as the National Farmers Union.

4. Options

There are two main options:

Option 1 – Adopting this instrument.

This option would result in a minor simplification of the current set-aside management rules. In addition, the inter-relationship between set-aside and cross compliance GAEC standards would be clarified and greater consistency achieved with long-standing guidance provided to farmers.

Option 2 - Do Nothing

This option would effectively retain the status quo and the current set-aside management conditions. These would be less flexible than those proposed by this instrument and the feedback and comments received from farmers and other stakeholders in the light of the first year of the SPS would not be taken into account and hence the scope for clarifications, the lowering of regulatory burden would be lost.

5. Costs and Benefits

All the costs and benefits arising to farmers from the set-aside measures introduced in 2005 are set out in the 2004 RIA referenced at section 2.2 above. Costs and benefits arising from amendments to the 2005 measures are minor. They are outlined below for each of the two options identified above:

Option 1 – Accepting this instrument

This would lead to a minor fall in the cost of complying with these these regulations, particularly the organic sector.

Option 2 – Do Nothing

This would lead to no change from the current position.

6. Small Firms Test

Following advice from the Small Business Service (SBS), the 2004 RIA defined a small business as one with up to 200 members of staff. The agricultural industry is, by this definition, almost entirely made up of small businesses.

Compliance with the set-aside legislation enables farmers to make claims under the SPS. There was liaison with the National Farmers Union and other stakeholders in respect both of the provisions contained in the legislation and of the Set-Aside Handbook, which will be sent to all farmers shortly. Feedback from stakeholders was positive.

7. Competition Assessment

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

8. Enforcement, sanctions and monitoring

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.

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 this instrument because they do not contain any new controls in relation to the management of set-aside that were not in place in guidance provided to farmers and which applied previously under AAPS. 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

stakeholders are aware of the position and are content with the rules as proposed in these Regulations.

10. Summary and Recommendation

We recommend that option 1 of this RIA, adopting this amending instrument, is taken up. In the light of the consideration of practical and policy implications and costs and benefits set out above, we believe that there will overall be no, or *de minimis*, costs which will be balanced by if not outweighed by the benefits arising from the changes that we are proposing to the set-aside management conditions. The majority of changes proposed are issues on which Defra and its implementing agencies have identified the need for additional clarification or flexibilities, or which have been raised by farmers and industry stakeholders.

11 Declaration and Publication

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed: Bach

Date: 14th December 2005

Lord Bach

Parliamentary Under Secretary of State

Department for Environment, Food and Rural Affairs