

EXPLANATORY MEMORANDUM TO
THE COMMON AGRICULTURAL POLICY SINGLE PAYMENT AND SUPPORT
SCHEMES (HORTICULTURE) REGULATIONS 2009

2009 No. 1771

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. Purpose of the instrument
 - 2.1 The Common Agricultural Policy Single Payment and Support Schemes (Horticulture) Regulations 2009 (“the 2009 Regulations”) enable the Secretary of State to apply new provisions for the Common Agricultural Policy’s Single Payment Scheme (“the SPS”) in England. Specifically, the 2009 Regulations provide for the allocation of new SPS payment entitlements to farmers in respect of land used for permanent fruit and vegetables, nurseries and vines.
3. Matters of special interest to the Joint Committee on Statutory Instruments
 - 3.1 None
4. Legislative context
 - 4.1 The arrangements for the SPS are provided for in the Council Regulation and Commission Regulations (EC) 795/2004 (as amended) and 796/2004 (as amended). These regulations provide some areas of national discretion in relation to the SPS aspects of the EU fruit and vegetable reform (which covers land used for permanent fruit and vegetables and nurseries) and the EU wine reform (which covers land used for vines). In particular, these regulations set the conditions under which new SPS payment entitlements can be allocated to farmers.
 - 4.2 The Common Agricultural Policy Single Payment and Support Schemes Regulations 2005 (S.I. 2005/219) provided for the application in England of the SPS under the Common Agricultural Policy. These Regulations are available on the OPSI website, together with the accompanying Explanatory Memorandum (at www.opsi.gov.uk/si/si2005/20050219.htm).
 - 4.3 The 2009 Regulations extend the availability of payment entitlements under the SPS, making provision for the allocation of new SPS payment entitlements with respect to land used for permanent fruit and vegetables, nurseries and vines.
5. Territorial Extent and Application
 - 5.1 The 2009 Regulations apply in England.
6. European Convention on Human Rights

6.1 As the 2009 Regulations are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 The SPS, which forms part of the Common Agricultural Policy, is the main support payment paid to farmers in the EU. When the scheme was introduced, in 2005, land used for permanent fruit and vegetables, nurseries and vines was deemed to be ineligible for scheme purposes. However, reforms of the EU fruit and vegetable and EU wine regimes, agreed in June 2007 and December 2007 respectively, changed that and, in particular, gave Member States the option of allocating new SPS payment entitlements to farmers in respect of land used for these crops. It has been decided that this option will be taken up in England.

7.2 Member States who take up this option have some areas of discretion in relation to exactly how and when any new entitlements are allocated. Regulations 3 and 5 of this instrument set out the choices made in England. Regulation 3 sets out the qualifying criteria for the new entitlements (area of land used for permanent fruit and vegetables, nurseries and vines in the relevant reference period). The reference periods are 1 January 2008 – 30 September 2008 for permanent fruit and vegetables and nurseries and 1 January 2008 – 31 July 2008 for vines. Regulation 3 also sets out the rules that apply where more than one farmer applies for entitlements with respect to the same area of land. Regulation 5 sets the minimum holding size (0.3ha) that applies to the allocation of new entitlements. Farmers who wish to apply for an allocation of new entitlements must do so by 13 August 2009. This date is used as a trigger point for any late application penalties that are applied (in accordance with Commission Regulation (EC) 796/2004, as amended by Commission Regulation (EC) 380/2009).

8. Consultation outcome

8.1 A formal consultation on the main areas of national discretion was carried out during the period February to May 2008 (to which 12 responses were received). The respondents included industry representative organisations and individual growers. All those who responded were in favour of us taking up the option to grant new entitlements. The date of implementation was not the favoured date of the respondents but was chosen in recognition of the need to ensure that the allocation of new entitlements did not present risks to the Rural Payments Agency reaching its targets for 2008 SPS payments and the implementation of CAP Heath Check changes which apply from 1 January 2009. The chosen implementation date was felt to offer the best balance of risks and benefits to all SPS applicants.

8.2 The reference periods were chosen following discussions in September 2008 with industry representatives. The periods chosen took account of stakeholder requests to have periods spanning several months, in order to avoid disadvantaging growers of particular types of crops.

8.3 A summary of the responses to the consultation is available from the Defra Information Resource Centre, Lower Ground Floor, Ergon House, c/o Nobel House, 17 Smith Square, London, SW1P 3JR.

9. Guidance

9.1 Guidance on the allocation of new entitlements has been sent to all farmers who have registered their interest with the Rural Payments Agency, an executive agency of Defra with responsibility for delivering the Single Payment Scheme in England. It has also been sent to industry representatives and been published on the Rural Payments Agency website (www.rpa.gov.uk/rpa/index.nsf/7801c6143933bb248025713f003702eb/77816d2ab8a19956802575d0004ad933!OpenDocument).

10. Impact

10.1 The impact on the business sector (farmers) is that they will have the opportunity to claim annual payments under the SPS (estimated to be worth approximately £7.4 million per annum over the years 2010 to 2012 inclusive). There will be administrative costs associated with applying for the allocation of entitlements and applying for the annual payment (estimated to be a maximum of £7.4 million per annum). The administrative costs assume that all farmers applying for the new entitlements will be new to the scheme but, in practice, most are likely to be existing SPS applicants and the administrative costs will be greatly reduced as a result.

10.2 The 2009 Regulations have no impact on charities or voluntary bodies (unless they are farmers in which case these regulations apply to them in the same way as to other farmers).

10.3 The impact on the public sector will be in the form of additional administration costs for the Rural Payments Agency.

10.4 An impact assessment is attached to this memorandum.

11. Regulating small business

11.1 The 2009 Regulations apply equally to small businesses (above the minimum holding size of 0.3ha).

12. Monitoring and review

12.1 The SPS will be subject to the wider review of the Common Agricultural Policy at the end of 2012.

13. Contact

13.1 Claire Williams at the Department for Environment Food and Rural Affairs Tel: 0207 238 3157 or e-mail: claire.williams@defra.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: Defra	Title: Impact Assessment of implementation of the fruit and vegetable, and Wine reforms relating to the Single Payment Scheme	
Stage: Implementation	Version: Final	Date: July 2008
Related Publications:		

Available to view or download at:

<http://www.>

Contact for enquiries: Akeela Bashir

Telephone: 0207 238 3155

What is the problem under consideration? Why is government intervention necessary?

The problem is how to allocate entitlements to the Single Payment Scheme (SPS) for previously ineligible land. The Single Payment is the main support payment paid to farmers in the EU who must hold entitlements in order to receive the payment. Permanent fruit (orchards), nurseries and vines are currently excluded from the scheme but will be eligible from the 2009 scheme year onwards. Government intervention is necessary to ensure the entitlements are allocated equitably.

What are the policy objectives and the intended effects?

That the implementation approach should be equitable and in line with the SPS model adopted in England, so that growers of permanent fruit, nurseries and vines should have similar opportunities under the scheme as other farmers.

What policy options have been considered? Please justify any preferred option.

The consultation included 3 questions covering the entitlement allocation method for permanent fruit and nursery crops (and the timing of such allocation) and vines. We consider that, under the regional model of the SPS, we are legally obliged to allocate entitlements to growers of permanent fruit and nursery crops. The allocation method option which has been chosen was done so to produce an equitable outcome for growers and to minimise costs. The other options would have been higher cost. On timing, the chosen option takes account of the need to ensure this work does not risk SPS delivery.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The rules of the Single Payment Scheme are subject to review in the "2008 CAP Healthcheck" and then a more fundamental review in 2012.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

.....Date:

Summary: Analysis & Evidence

Policy Option: Flat rate allocation	Description: Allocate new entitlements to farmers of permanent fruit orchards and nursery crops on a flat rate basis
---	---

COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' The costs shown are the one-off administration costs for the RPA and for growers in the first year via the entitlement allocation process (including registering new customers and new land), and the annual costs for RPA and growers relating to the SPS application. Annual cost to growers is £7.4m. Annual cost to RPA is £1m.
	One-off (Transition) Yrs	
	£ 4m	
	Average Annual Cost (excluding one-off)	
	£ 8.4m	Total Cost (PV) £ 24.4m
Other key non-monetised costs by 'main affected groups' Existing SPS recipients would lose some payment if funds are redistributed to issue new entitlements. SPS funds of up to 7.6m euro will have to be redistributed and this represents the maximum loss of payment that could occur for existing recipients. This is not shown separately as it is only redistribution of funds.		

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups'
	One-off Yrs	
	£	
	Average Annual Benefit (excluding one-off)	
	£	Total Benefit (PV) £
Other key non-monetised benefits by 'main affected groups' Allocating new entitlements will bring more farmers into the SPS (estimated max. of 10,500) and therefore increase the number of farmers who are subject to cross compliance standards covering public, animal and plant health, environmental and animal welfare, helping to raise performance in these areas. See Note A on p6.		

Key Assumptions/Sensitivities/Risks 32,000 hectares of new entitlements allocated. All (10,500) farmers receiving new entitlements assumed to be new applicants to the SPS. Actual number of new applicants very likely to be smaller as some of the new entitlements will go to existing SPS recipients. Therefore farmer admin costs also very likely to be smaller.

Price Base Year	Time Period Years 4	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
--------------------	------------------------	-------------------------------------	---

What is the geographic coverage of the policy/option?	England
On what date will the policy be implemented?	2010
Which organisation(s) will enforce the policy?	RPA
What is the total annual cost of enforcement for these organisations?	£ 1m
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	No
What is the value of the proposed offsetting measure per year?	£ 0
What is the value of changes in greenhouse gas emissions?	£ 0
Will the proposal have a significant impact on competition?	Yes
Annual cost (£-£) per organisation (excluding one-off)	Micro Small Medium Large
Are any of these organisations exempt?	No No N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £ 7.4m	Decrease of £ 0	Net Impact £ 7.4m

Key: Annual costs and benefits: (Net) Present

Summary: Analysis & Evidence

Policy Option: 2010 Allocation	Description: Any new entitlements should be allocated to farmers of permanent fruit orchards and nursery crops for 2010 SPS scheme year
--	--

COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' Not applicable as the year of implementation has no associated cost or benefit beyond those given under option - flat rate		
	One-off (Transition) Yrs			
	£ N/A			
	Average Annual Cost (excluding one-off)			
	£ N/A	Total Cost (PV)	£	
Other key non-monetised costs by 'main affected groups'				

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' Not applicable as the year of implementation has no associated cost or benefit beyond those given under option - flat rate		
	One-off Yrs			
	£ N/A			
	Average Annual Benefit (excluding one-off)			
	£ N/A	Total Benefit (PV)	£	
Other key non-monetised benefits by 'main affected groups'				

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
--------------------	----------------------	-------------------------------------	---

What is the geographic coverage of the policy/option?	England
On what date will the policy be implemented?	2010
Which organisation(s) will enforce the policy?	RPA
What is the total annual cost of enforcement for these organisations?	£ N/A
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	No
What is the value of the proposed offsetting measure per year?	£ 0
What is the value of changes in greenhouse gas emissions?	£ 0
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro Small Medium Large
Are any of these organisations exempt?	No No N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £	Decrease of £	Net Impact £

Key: Annual costs and benefits: (Net) Present

Summary: Analysis & Evidence

Policy Option: Flat rate allocation vines	Description: Allocate new entitlements to vine growers on a flat rate basis
---	--

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' The costs shown are the one-off administration costs for RPA and for growers in the first year via the entitlement allocation process (including registering new customers and land), and the annual costs for RPA and growers relating to the SPS application. Annual cost to growers and RPA is £282,000 and £24,000 respectively.
	One-off (Transition)	Yrs	
	£ 100,000		
	Average Annual Cost (excluding one-off)		
	£ 306,000		Total Cost (PV) £ 0.9m
Other key non-monetised costs by 'main affected groups' Existing SPS recipients would lose some payment if funds are redistributed to issue new entitlements. SPS funds of up to 190,000 euro will have to be redistributed and this represents the maximum loss of payment that could occur for existing recipients. This is not shown above as it is only redistribution of funds.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yrs	
	£		
	Average Annual Benefit (excluding one-off)		
	£		Total Benefit (PV) £
Other key non-monetised benefits by 'main affected groups' Allocating new entitlements will bring more farmers into the SPS (estimated max. of 400) and therefore increase the number of farmers who are subject to cross compliance standards covering public, animal and plant health, environmental and animal welfare, helping to raise performance in these areas. See Note B on p6.			

Key Assumptions/Sensitivities/Risks Approx 800 hectares of new entitlements allocated. All (400) farmers receiving new entitlements assumed to be new applicants to the SPS. Actual number of new applicants very likely to be smaller as some of the new entitlements will go to existing SPS recipients. Therefore farmer admin costs also very likely to be smaller.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
--------------------	----------------------	-------------------------------------	---

What is the geographic coverage of the policy/option?	England
On what date will the policy be implemented?	2010
Which organisation(s) will enforce the policy?	RPA
What is the total annual cost of enforcement for these organisations?	£ 24,000
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	No
What is the value of the proposed offsetting measure per year?	£
What is the value of changes in greenhouse gas emissions?	£
Will the proposal have a significant impact on competition?	Yes
Annual cost (£-£) per organisation (excluding one-off)	Micro Small Medium Large
Are any of these organisations exempt?	No No N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £ 282,000	Decrease of £ 0	Net Impact £ 282,000

Key: Annual costs and benefits: (Net) Present

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Background

The Single Payment Scheme (SPS) is the principal support payment paid in the European Union to farmers. To claim under the SPS you must be a farmer and you must hold SPS entitlements. You must also have an eligible hectare of land for each entitlement you decide to claim payment on and this land must be at your disposal on 15 May of the scheme year. To receive the payment, farmers and growers do not have to undertake any agricultural production, but they do have to comply with standards covering public, animal and plant health, environmental and animal welfare (known as cross compliance).

The SPS was introduced in 2005. Hitherto, single payment has not been payable on permanent fruit, nurseries and vines. In 2007, agreement was reached on wide-ranging reform of the EU Fruit and Vegetable and Wine regimes, including provisions to render permanent fruit and nurseries and vines eligible under the SPS (in England this will be from the 2009 scheme year onwards). The consultation paper asked for views on the basis under which any new entitlements under the scheme should be allocated with respect to permanent fruit and nurseries and when any allocation should take place. The vast majority of those who responded favoured the allocation of entitlements valued at the flat rate relevant to the year of allocation which they felt should be 2009. However, RPA have advised that they will not be able to administer the distribution of entitlements and processing of payment applications until 2010 without risking delivery of the main SPS payment timetable or delivery of the CAP Health Check changes. Several respondents did highlight the need for the changes to be able to be implemented without negatively affecting the overall SPS payment schedule.

We estimate that a maximum of approximately 32,800 hectares of land will become newly eligible under the scheme and which could, therefore, be the subject of any new entitlement allocation. Information from stakeholders has confirmed that much of this land is likely to be already known to the RPA so the figure very much represents a maximum. The introduction of additional land under the SPS and the allocation of new entitlements has little or no effect on the overall SPS budget as only limited additional funds may be made available (as part of the inclusion of vine growing areas) to fund new entitlements for these reforms. However, it is likely there will be a small effect on the distribution of the available funds among farmers. This is because funding of new entitlements can come from any residual amounts left in the English SPS national reserve and, if that is insufficient, from a scale-back in the value of other farmers' entitlements which are already in existence.

The main costs associated with all the options involve the implementation and enforcement costs incurred by RPA and additional administration required from farmers. The figures entered for the total annual enforcement cost in effect represent the total RPA admin cost. This is because most of RPA activity is related to enforcement in some way and it is difficult to separate out enforcement costs from any other costs.

Under the regional model of the SPS, as adopted in England, we do not consider that there are any objective criteria for allocating zero-valued entitlements with respect to permanent fruit and orchards. Entitlements were awarded in 2005 to other previously unsupported sectors and we consider that it would be discriminatory to not also award entitlements with respect to permanent fruit and orchards. Therefore, we consider that we are legally obliged to award entitlements with respect to such land. To not award entitlements would carry the risk of legal challenge from farmers and of possible infraction proceedings by the European Commission. (The legal basis for awarding entitlements under vines is different, with Member States having a choice as to whether to integrate the support into the SPS.)

Options: costs and benefits

We considered the following questions:

Questions 1 (permanent fruit and nurseries) and 3 (wine): The objective basis on which any new entitlements should be allocated in respect of newly eligible land.

Question 2: (permanent fruit and nurseries): The first scheme year for which any allocation should occur

Questions 1 and 3:

Costs

Under the chosen option for Questions 1 and 3 the associated costs are those incurred by the delivery body, the Rural Payments Agency (for IT development, the entitlement allocation process and processing additional annual SPS applications) and individual farmers (for applying for new entitlements and for applying to the SPS annually).

The costs for individual farmers have been calculated in line with the SPS administration figures (in particular the costs of applying to the scheme) produced for Defra's Simplification Plan. The costs given for applying to the SPS assume all the applicants are new to the scheme with no prior knowledge of the scheme rules and no pre-population of application forms being possible (in reality in future years we would expect significant pre-population of these applicants' application forms and therefore the administration costs for farmers to be significantly reduced).

Benefits

Individual farmers who apply in respect of newly eligible land will benefit from being allocated entitlements to receive a payment under the SPS. The benefit for the individual farmer is determined by the number of entitlements that the farmer receives at the flat rate value for the relevant SPS scheme year.

There are also important environmental benefits (which have not been monetised) as these farmers must meet cross compliance requirements in order to receive payment. This will help raise the level of farmer performance in the area of environmental management, as well as in areas of public, animal and plant health, and animal welfare.

Question 2:

The chosen option for this question does not have an impact on the costs or benefits beyond those described for questions 1 and 3.

Footnotes:

Note A - SPS funds of around €7.6m may be claimed by growers of permanent fruit and nurseries in 2010. After allowing for increases in the flat rate this has a PV of £20.8m over the years 2010 to 2012 inclusive, & an average value of £7.2m pa. This is not shown above as it is only redistribution of funds.

Note B - SPS funds of some 190,000 euro may be claimed by growers of vines in 2010. After allowing for increases in the flat rate this has a PV of £0.5m over the years 2010 to 2012 inclusive, & an average value of £180,000 pa. This is not shown above as it is only redistribution of funds.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

Annexes

Specific impact tests

Competition Assessment

The policy is not expected to have any negative impact on competition compared to existing regulation as approximately 32,800 hectares of additional land will become eligible under the Single Payment Scheme (SPS) and new entitlements may be allocated to all growers in respect of this land.

The introduction of additional land under the SPS and the allocation of new entitlements has little or no effect on the overall SPS budget as only limited additional funds may be made available (as part of the inclusion of vine growing areas) to fund new entitlements for these reforms.

However, there may be a small effect on the distribution of the available funds among farmers. This is because funding of new entitlements can come from any residual amounts left in the English SPS national reserve and, if that is insufficient, a scale-back in the value of other farmers' entitlements which are already in existence may be unavoidable. However, even if a scale-back were to be required, the amounts involved per entitlement would be extremely small.

Small Firms Impact Test

There will be positive impact on small businesses as the proposal makes new land eligible under the SPS and more growers such as orchard growers and small nurseries which were previously ineligible under the scheme will benefit from this. However, in some cases for some very small businesses the administration cost of applying for payment may outweigh the benefits that would be received.

Legal Aid

The proposal does not create new criminal sanctions or civil penalties.

Sustainable Development

The amendments to the regulation are in accordance with the shared UK principals of sustainable development.

Carbon Assessment

The amendments will have no effect on carbon/greenhouse gas emissions, as the nature and scale of the farming activities and related industries remain the same.

Other Environment

The amendments have no implications in relation to climate change, waste management, landscapes, water and floods, habitat and wildlife or noise pollution.

Health Impact Assessment

The policy change will not directly impact on human health or well being and will not result in health inequalities.

Race/Disability/Gender

There are no limitations on meeting the requirements of the amended regulation on the grounds of race, disability or gender. It does not impose any restriction or involve any requirement which a person of a particular racial background, disability or gender would find difficult to comply with. Conditions apply equally to all individuals and businesses involved in the activities covered by the amended regulation.

Human Rights

The amended regulation is consistent with Human Rights Act 1998.

Rural Proofing

The customers are based in rural areas and the amendments to the regulation are designed to facilitate their activities.