

EXPLANATORY MEMORANDUM TO
THE COMMON AGRICULTURAL POLICY BASIC PAYMENT AND SUPPORT
SCHEMES (ENGLAND) (AMENDMENT) REGULATIONS 2017

2017 No. 1198

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 Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument sets out how certain discretions will be exercised in relation to recent changes made to rules governing direct payments made to farmers under the Common Agricultural Policy (CAP). The changes relevant to this instrument relate to requirements to qualify for the ‘greening’ payment element of direct payments. Greening payments are made to farmers who follow specific practices beneficial for the environment to the level required under CAP (greening requirements). In common with all Member States, Defra Ministers have some discretion over aspects of CAP implementation in England.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative context

- 4.1 [The Common Agricultural Policy Basic Payment and Support Schemes \(England\) Regulations 2014](#) (Original Instrument), among other things, sets out how discretion should be exercised and how certain rules should be implemented in relation to the greening payment pursuant to Commission Delegated Regulation (EU) No. 639/2014 (the EU Regulation). Some of those rules have been amended by Commission Delegated Regulation (EU) No. 2017/1155, which applies in relation to applications for greening payments made by farmers in 2018. The changes particularly affect rules relating to Ecological Focus Areas (EFAs). These are areas of land that are eligible for greening payments if the greening requirements are followed. This instrument makes amendments to the Original Instrument to reflect the changes made to the EU Regulation. It confirms how discretions will be exercised in relation to England; these and other discretions will be explained to farmers in the 2018 Basic Payment Scheme guidance.
- 4.2 The changes to the EU Regulation were outlined in the European Commission’s 2016 report ‘Review of greening after one year’ reviewing the ‘greening’ provisions under

the CAP, the detail of this report was provided to both Parliamentary Scrutiny Committees in Explanatory Memorandum 10476/16 'Review of Greening after one year', which was cleared by both the House of Commons and House of Lords Scrutiny Committees.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is for England only.

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 The European Commission published changes to the rules relating to the ecological focus area component of the greening provisions under CAP on 30 June 2017, to apply in respect of applications for direct payment from 2018 onwards. These changes are a mix of simplification measures, some of which have increased flexibility for farmers when choosing EFA options and some tightening-up of the requirements, intended to boost environmental outcomes.
- 7.2 Regulation 4(2) sets the period for the EFA land-type 'land lying fallow' in England. England already had a 6 month period for this land type (which is the minimum period now required under the EU Regulation). The dates in each year therefore have not changed following the amendments to EU legislation and continue to be 1 January to 30 June each year. This will provide continuity to farmers whilst complying with the minimum period set by EU law and continuing to support practices beneficial to the environment.
- 7.3 Regulation 4(3) has amended the list of landscape features which may be selected by Member States for farmers to use in meeting EFA requirement. Two formerly separate options, namely (i) hedges and wooded strips; and (ii) trees in line have been combined into a single option. In England we only previously allowed the first option but not the trees in line option. This merger of two different options will add to the types of features that a farmer can use to meet the EFA requirement. This will provide additional opportunities for farmers to meet the conditions for obtaining a greening payment and encourage good environmental practice at the same time.
- 7.4 Regulation 4(4) sets the minimum width for buffer strips and field margins, the newly merged EFA, at one metre which is the minimum width allowed under the EU Regulations. This regulation and regulation 4(6) also reflect changes made by the EU Regulation to the calculation of minimum width, which no longer takes into account the width of a buffer strip or field margin calculated for the purposes of cross-compliance. Applying the minimum width permitted by the EU Regulation should minimise the burden on farmers. The removal of the cross-compliance area from the calculation of minimum width should make it easier for farmers to comply with the greening requirements in this area, as they will find it easier to meet the minimum requirements.
- 7.5 Regulation 4(5) sets a period in which catch crops must be sown and retained in England to meet the requirements for greening. Previously EU legislation was silent

on this matter and a minimum period of four weeks was set in England. The revised EU legislation requires a minimum period of eight weeks. It has therefore been necessary to extend the minimum period for this EFA option in England to reflect the change to the EU rules and the dates have only been changed to the extent necessary to comply with EU obligations, minimising any additional burden to farmers. In England the new annual eight week period for establishing and maintaining catch crops is 20th August to 14th October, a time period which has been agreed with farming stakeholders as the most appropriate for this circumstance.

8. Consultation outcome

- 8.1 A formal consultation was carried out for the introduction of the Original Instrument, which is described in [section 8 of the explanatory memorandum of that instrument](#).
- 8.2 Throughout the negotiation and implementation process of the Commission Delegated Regulation (EU) No. 2017/1155 the Government has actively engaged with interested parties. Extensive discussions have been held with a range of farming and environmental organisations, including an informal consultation.
- 8.3 Six organisations responded to the informal consultation. This includes the British Institute of Agricultural Consultants (BIAC), the Central Association of Agricultural Valuers (CAAV), the National Farmers' Union (NFU), the Royal Society for the Protection of Birds (RSPB) and The Tenant Farmers Association (TFA). Respondents felt the land lying fallow period did not need to change and the existing 6 month period is acceptable.
- 8.4 The BIAC, the RSPB, the TFA and the NFU, all considered adding field margins to the buffer fields EFA option would simplify the rules for farmers. Stakeholders generally would like to see more options to obtain greening payments for farmers and welcome the addition of trees in line.
- 8.5 Stakeholders did not have a united view of the appropriate eight week period for the EFA Catch Crop option in England, although all who commented said that the period should include the whole of the month of September.
- 8.6 Following the informal consultation the Government has continued to work closely with stakeholder organisations on the detailed implementation of the changes in this instrument.

9. Guidance

- 9.1 Guidance for 2018 Basic Payment Scheme claimants will be published early in 2018 and will incorporate guidance on the revised greening requirements. This guidance will also provide the foundation for staff administering the new greening requirements in the Rural Payments Agency (the delivery body for direct payments under CAP), but will be amplified by instructions for inspectors in time for the commencement of eligibility inspections.

10. Impact

- 10.1 No formal impact assessment has been done in relation to this instrument, as direct payments are part of the reformed CAP, and impacts primarily arise from the policy itself, rather than the discretions exercised via the instrument.
- 10.2 The changes to the greening requirements introduced by this instrument will have the effect of giving two new ways for farmers applying for direct payments in 2018 and

onwards to meet those requirements through the addition of field margins and trees in line to EFAs England has selected. This will give increased flexibility for farmers when deciding how to meet the requirement each year. Set against this is the new minimum 8 week period under the regulations for maintaining catch crops. The impact on farmers not meeting this EFA option, if used, would reduce the amount of a farmers Basic Payment Scheme greening payment. However, the impact to farmers' businesses has been reduced by applying the minimum period possible under EU law.

11. Regulating small business

- 11.1 The legislation applies to small business: many family farms qualify as small businesses. The European Union Regulations apply to all farmers who decide to claim direct payments.

12. Monitoring & review

- 12.1 The changes introduced by this instrument are consequential to changes in EU legislation and no review is proposed.

13. Contact

- 13.1 Stephen Harris at the Department for Environment, Food and Rural Affairs, Tel: 020 8026 4131 or email: Stephen.harris@defra.gsi.gov.uk who can answer any queries regarding this instrument.