



Department
for Environment
Food & Rural Affairs

The Common Agricultural Policy (Control and Enforcement, Cross Compliance, Scrutiny of Transactions and Appeals) Regulations 2014

Post Implementation Review

November 2023



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Post Implementation Review – Cover sheet

Title: The Common Agricultural Policy (Control and Enforcement, Cross Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 PIR No: N/A Original IA/RPC No: N/A Lead department or agency: Department for Environment Food and Rural Affairs Other departments or agencies: Rural Payments Agency Contact for enquiries: Charmaine Govindasamy	Post Implementation Review
	Date: 20/11/2023
	Type of regulation: Domestic
	Type of review: Statutory
	Date measure came into force: 01/01/2015
	Recommendation: Retain
RPC Opinion: N/A	

1. What were the policy objectives of the measure? (Maximum 5 lines)

The policy objective for the SI when it was made was to provide an administrative framework to manage Common Agricultural Policy (CAP) schemes. Following EU Exit, amendments were made to the SI and its implementation to simplify operation of the legacy EU CAP schemes. It continues to provide the administrative framework to manage these schemes. The SI provides for powers of entry and inspection, implementation of cross compliance rules (which farmers must meet to receive full payment), the scrutiny of the system for financing Common Market Organisation (CMO) schemes and appeal procedures.

2. What evidence has informed the PIR? (Maximum 5 lines)

We have used the following evidence sources to inform the PIR:

- The Implementation of CAP reform in England: Evidence Paper published in October 2013
- The impact of changes to cross compliance in England: Evidence summary published in June 2014
- The 2018 Health and Harmony Consultation and evidence compendium published in February 2018
- Rural Payments Agency (RPA) data on powers of entry and site visits

3. To what extent have the policy objectives been achieved? (Maximum 5 lines)

The package of measures contained in the SI have provided the administrative framework within which to manage CAP schemes. The policy objectives at the time this SI was laid have been achieved.

As part of our agricultural transition away from the EU's CAP we are moving towards our Environmental Land Management schemes. These schemes pay farmers for taking action that benefits the environment, alongside the sustainable production of food.

Sign-off for Post Implementation Review: Chief economist/Head of Analysis and Minister

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: **Ciaran Devlin**

Date: 25/05/2023

A handwritten signature in blue ink, appearing to read 'M. Spencer'.

Signed:

Date: 28/11/2023

Further information sheet

Please provide additional evidence in subsequent sheets, as required.

4. What were the original assumptions? (Maximum 5 lines)

The original assumption was that the administration and enforcement measures in the SI were, for the most part, a continuation of existing measures.

5. Were there any unintended consequences? (Maximum 5 lines)

No unintended consequences have been identified as part of this review.

6. Has the evidence identified any opportunities for reducing the burden on business? (Maximum 5 lines)

The enforcement measures contained in the SI are mostly a continuation of existing measures, which did not have any new or additional impact on business.

Amendments have been made to the SI and its implementation following EU Exit to simplify operation of the legacy EU CAP schemes.

The evidence has not identified further opportunities for reducing the burden on business whilst we continue to operate these schemes.

7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements? (Maximum 5 lines)

The SI directly implemented EU requirements for financing, management and monitoring of the CAP. The requirements were implemented uniformly across Member States with little variation.

Introduction

1. In 2013, the European Union (EU) adopted five regulations setting the framework for its Common Agricultural Policy (CAP). These regulations had direct effect in Member States (meaning they did not need to be copied into domestic legislation). The five regulations were:

- Regulation (EU) No. 1303/2013 of the European Parliament and of the Council 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
- Regulation (EU) No.1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development
- Regulation (EU) 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the CAP
- Regulation (EU) 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the CAP
- Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007

2. In addition to these EU Regulations, the UK government made supplementary legislation for the administration and enforcement of the CAP within the UK. The Common Agricultural Policy (Control and Enforcement, Cross Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 (SI 2014 No. 3263)¹ (hereinafter “the SI”) provide for:

- control and enforcement provisions, including the roles of administrative bodies, application deadlines and powers of entry and inspection
- implementation of cross compliance rules²
- scrutiny of the system of financing Common Market Organisation (CMO) support
- appeals procedure

¹ The CAP (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 (SI 2014 No. 3263) can be found on the legislation.gov website at: <https://www.legislation.gov.uk/ukSI/2014/3263/contents>.

²Cross compliance is a set of rules which farmers and land managers must follow on their holding if they are claiming certain rural payments.

3. The specific regulations of the SI that apply in the Devolved Administrations are listed in Annex 1.

Policy Background

4. The CAP is the European Union's system of agricultural subsidies and programmes that covers farming, environmental and rural development measures, and controls EU agricultural markets. It is the EU's single largest common policy. The CAP was introduced in 1962 and has undergone several reforms.
5. Following the UK's decision to leave the EU, the government carried out a wide-ranging consultation in 2018 on the future of farming in England - the Health and Harmony consultation³. Following this consultation, the government publicly committed to phasing out Direct Payments to farmers, removing cross compliance and transitioning from legacy EU CAP schemes to new Environmental Land Management schemes and other grants in England.
6. In November 2020, Defra published 'The Path to Sustainable Farming: Agricultural Transition Plan 2021 to 2024'⁴. The plan sets out Defra's overarching plan for the agricultural transition period, running from 2021 to 2027, with a focus on the first four years of the transition. With the funding freed up from Direct Payments, we are expanding our Environmental Land Management schemes to pay farmers and land managers to provide environmental goods and services and improve animal health and welfare, alongside food production; and providing one-off grants to support farm productivity, innovation, research, and development, in a way that also helps us to achieve these goals.
7. As a result of EU Exit a new category of domestic law was created consisting of EU-derived legislation, transposed to our domestic legal framework by the European Union (Withdrawal) Act 2018⁵ (the 2018 Act). This is known as "Retained EU Law" (REUL). Although the SI was made under domestic powers it falls into the category of REUL.

³ The 2018 Health and Harmony Consultation and evidence compendium can be found using the following link: <https://www.gov.uk/government/consultations/the-future-for-food-farming-and-the-environment>

⁴ The 2020 Agricultural Transition Plan can be found using the following link: <https://www.gov.uk/government/publications/agricultural-transition-plan-2021-to-2024>

⁵ EU legislation governing the 2020 Direct Payment schemes was brought into UK law on EU Exit Day by the Direct Payments to Farmers (Legislative Continuity) Act 2020 (<https://www.legislation.gov.uk/ukpga/2020/2/contents/enacted>)

8. The UK government made the Retained EU Law (Reform and Revocation) Act 2023⁶ earlier this year. This Act makes it easier for departments to amend, repeal or replace their REUL. The Act's powers provide Defra with the opportunity to reform retained EU law through secondary legislation. Defra has no immediate plans to revoke the SI under the powers in the Act. The department will have the power to reform it, should any amendments be required, or to revoke it once it is no longer needed.

Policy Objectives

9. The policy objective for the SI when it was made was to provide an administrative framework to manage Common Agricultural Policy (CAP) schemes. Following EU Exit, amendments were made to the SI and its implementation to simplify operation of the legacy EU CAP schemes. It continues to provide the administrative framework to manage these schemes. The SI provides for powers of entry and inspection, implementation of cross compliance rules (which farmers must meet to receive full payment), the scrutiny of the system for financing Common Market Organisation (CMO) schemes and appeal procedures.

Purpose of Review

10. The primary purpose of this review is to assess whether the objectives of the regulations remain appropriate and, if so, the extent to which they could be achieved with a system that uses less regulation. The review is of the regulations as they apply in England. There is no statutory obligation on the Devolved Administrations to review the SI in so far as it applies to their territories. The first review was postponed, as resources were prioritised to deliver EU Exit and to support the government's response during the Covid-19 pandemic.
11. Following advice from Defra's Better Regulation Unit (BRU), a light-touch approach was taken to this review, which has considered the policy background outlined above.

Evidence sources

12. An evidence paper on the impact of the CAP was published as part of the government's consultation in October 2013⁷. This showed a general reduction in the number of cross

⁶ Retained EU Law (Revocation and Reform) Act 2023 c.28 can be read here:
<https://www.legislation.gov.uk/ukpga/2023/28/contents>

⁷ Implementation of CAP reform in England Evidence Paper can be found using the following link:
https://consult.defra.gov.uk/agricultural-policy/cap-consultation/supporting_documents/131022%20CAP%20Evidence%20Paper%20%20Final.pdf

compliance requirements, largely due to requirements being deleted at EU level, as well as a reorganisation and amalgamation of domestic requirements.

13. The impact of changes to cross compliance in England: Evidence summary published in June 2014⁸. The administration and enforcement measures in the SI were, for the most part, a continuation of existing measures which did not have any new or additional impacts on business, charities or the voluntary sector. An impact assessment was therefore not prepared.

14. Evidence sources include data obtained from the Rural Payments Agency (RPA) on powers of entry and site visits.

Legacy EU CAP schemes impacted by the SI

15. Detail on the legacy EU CAP schemes covered by the SI is provided below:

- Direct Payments
- Rural development
- Common Market Organisations

Direct Payments

16. Direct Payments have been the main income-support schemes for farmers under the EU's CAP. They are largely paid to farmers based on the amount of eligible land and the payment entitlements they have. The current Direct Payment scheme in England is known as the Basic Payment Scheme⁹ (BPS) and is claimed by around 85,000 farmers each year.

17. The government is phasing out Direct Payments in England over seven years (2021 to 2027) and reinvesting that money into new schemes, which will improve the environment, support sustainable food production, and deliver better value for the taxpayer. In its Agricultural Transition Plan, the government set out its intention to simplify Direct Payments as they are phased out.

⁸ Evidence summary on the implementation of changes to cross compliance in England can be found using the following link:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/320886/cross-compliance-evidence-summary.pdf

⁹ BPS references in this document include the Young Farmer Payment.

18. In 2020, the government amended the SI in England as part of a wider package of post-EU Exit simplification measures for Direct Payments¹⁰. That simplification package took account of the responses to the 2018 Health and Harmony consultation, which showed a desire from farmers for simplification of Direct Payments and was supported by industry stakeholders when they were consulted on the simplification proposals in 2019.
19. The 2020 amendment to the SI improved the administrative rules for farmers who have land both in England and in other parts of the UK (Northern Ireland, Scotland or Wales). These are known as “cross-border farmers”. These farmers send separate application forms for Direct Payments to each part of the UK where they have land. The amendment made by the 2020 SI removed a requirement to treat these as one single application, which had meant the farmer used to receive one payment for all their UK land. Farmers now apply, and are paid, in England for Direct Payments for their English land only. This is separate to any application they make under the Direct Payment schemes in other parts of the UK. This has simplified the processing of applications for these farmers and has helped speed up these payments. Equivalent amendments were made by each of the Devolved Administrations in relation to the rules that applied in their region.
20. No further simplifications or other improvements to the SI have been identified in relation to the current Direct Payment scheme. The SI meets the policy objectives in relation to the implementation of the current scheme. No unintended consequences have been identified.
21. The SI enables elements of the Direct Payment scheme to be administered effectively by providing powers of entry for scrutiny (site visits) in England. Table 1 sets out the number of Direct Payment (BPS) site visits.

Table 1: Number of Direct Payment (BPS) site visits 2020 to 2022

Year	Number of Direct Payment (BPS) visits
2020	1,851
2021	1,788
2022	1,567

22. Site visits have all taken place by consent and without inspectors needing to invoke the power of entry powers provided within the SI.

¹⁰ The Direct Payments to Farmers and Cross-Compliance (Simplifications) (England) (Amendment) Regulations 2020 (SI 2020 No. 1387) <https://www.legislation.gov.uk/uksi/2020/1387/contents/made>

23. The government intends to end the current Direct Payment scheme in England and introduce a simpler payment, called a 'delinked payment'¹¹ in 2024. This was set out in its Agricultural Transition Plan and is part of the government's plans to further simplify Direct Payments as they are phased out. We laid a statutory instrument in Parliament on 7 November 2023¹² to introduce delinked payments in 2024 and to put the rules for those payments into law.
24. From the end of 2023 the SI will no longer apply to Direct Payments in England (although saving provisions will apply to ensure the SI, or parts of it, continues to have effect to deal with matters relating to historic scheme years).

Rural Development

25. The SI enables elements of the Rural Development Programme (RDP) to be administered effectively by providing powers of entry and inspection for scrutiny (site visits) and recovery powers for the UK and for appeals in England.
26. Since 2015, the RPA have made site visits to approximately 11,000 Rural Development agreement holders for both Environmental Stewardship (ES) and Countryside Stewardship (CS) schemes. These site visits have identified areas of concern, including where breaches of agreements have occurred.
27. Table 2 sets out the number of site visits completed by the RPA between 2020 and 2022 inclusive, broken down into the different Rural Development schemes. This information includes site visits that have been carried out post payment (ex-post). For example, for capital agreements, to check items have been received. 'Campaign CS' site visits are where the customer is not selected for a routine site visit under the main programme of visits, but where the RPA have other information to hand identifying that there could be an issue, so a site visit is commissioned to investigate.

¹¹ The Government response to the 2021 consultation 'Direct Payments to farmers: Lump sum exit scheme and delinked payments in England' can be found using the following link: [Direct Payments to farmers: lump sum exit scheme and delinked payments in England - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/direct-payments-to-farmers-lump-sum-exit-scheme-and-delinked-payments-in-england)

¹² [The Agriculture \(Delinked Payments and Consequential Provisions\) \(England\) Regulations 2023 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2023/1000)

Table 2: Number of Rural Development site visits for 2020 to 2022

Scheme Name	2020	2021	2022
CS 'Campaign' (targeted visits)	0	43	12
Capital Grant Scheme ¹³	13	3	28
Countryside Productivity Small Grants	15	25	44
CS (Ex-post)	118	56	98
CS Facilitation Fund	8	7	6
CS Feasibility and implementation Plan	2	1	2
CS Hedgerows and Boundaries	27	29	44
CS Higher Tier ¹⁴	119	132	130
CS Mid Tier ¹⁵	578	930	713
CS Woodland Title IV ¹⁶	5	14	34
Energy Crops	0	4	0
English Woodland Grant Scheme (EWGS) Woodland Grants	71	72	72
Farm Woodland Premium Scheme	12	0	0
Farming Equipment and Technology Fund	0	0	125
ES Higher Level Stewardship	396	279	305
Socio Economic Inspection	70	85	57
Technical Assistance	3	2	0
Water Environment Grants	6	4	3
Woodland Grant	2	18	3
Site Visit total	1,445	1,704	1,664

28. The policy objectives have been achieved because these regulations have provided the framework for site visits to go ahead, and future visits will continue to use these powers. As set out above, the RDP was administered through a number of different EU

¹³ The 2022 figure includes 28 visits for agreements that are domestically funded.

¹⁴ The 2022 figure includes 6 visits for agreements that are domestically funded.

¹⁵ The 2022 figure includes 191 visits for agreements that are domestically funded.

¹⁶ The 2022 figure includes 7 visits for agreements that are domestically funded.

regulations which provided specific minimum requirements for inspections/site visits. Now that we have left the EU and are no longer caught by the same regulations, a different and less burdensome approach is to be taken using the Financial Assistance regulations supporting the Agriculture Act 2020¹⁷.

29. For many of these schemes within the RDP, we are continuing to evaluate whether policy objectives have been met but, where we have evidence already, this is the case.
30. Beneficiary surveys are used extensively for schemes such as Countryside Productivity Small Grants where recipients are asked about not just outcomes achieved but also the experience of delivery including claims and inspection processes. The overall number is low compared to the number of grants awarded or agreements held across these measures. The final ex-post evaluation to meet European Commission requirements should be completed by the end of 2023.

Common Market Organisations

31. The Common Market Organisation (CMO) is a set of measures that enable the monitoring and management, either directly or indirectly, of the markets of agricultural products. The purpose of market management is to stabilise markets to ensure that farmers do not suffer from excessively low prices and consumers have a secure supply of food at reasonable prices.
32. The SI enables elements of the CMO to be administered effectively, by providing powers of entry and inspection, scrutiny, offences and penalties, prosecutions, recoveries including own resources for the UK and for appeals in England.
33. The direct burden that these powers place upon CMO customers is very limited. Evidence is based on the number of inspections carried out using these powers of entry.
34. The costs to businesses of complying with these requirements are outweighed by the amount of support / aid received via CMO schemes. Appeals provisions are there to help businesses rather than to create an overhead. The current inspection requirement is most significant for Fruit and Vegetable Producer Organisations, but whilst the SI enables inspections to take place, the specific requirements for inspection are covered in other legislation.
35. This regulation provides the framework for inspections to go ahead. In the last calendar year (2022), the RPA has undertaken approximately 270 inspections to CMO customers. RPA usually undertakes on average 200 inspections a year. Inspections were higher

¹⁷ The Agriculture Act 2020 c. 21 can be found here: <https://www.legislation.gov.uk/ukpga/2020/21/contents>.

than average in the last calendar year, with around 25% related to the Pig meat Private Storage Aid (PSA) contracts. These contracts were temporary measures introduced as a result of exceptional market conditions in the pig sector.

36. A number of inspections have also been taken by RPA's Scrutiny team using the powers provided by these regulations. Whilst the 2019/20 scrutiny year was curtailed by the Covid pandemic, which paused physical inspections, there were 19 audits in the programme and 7 audits were completed or remained underway over that period. Physical inspections did not take place for in the 2020/21 scrutiny year or for the remainder of the 2021 calendar year. More recent statistics are not available.
37. Whilst the powers in the SI allow customers to appeal, there has been a very low level of appeals against RPA CMO scheme decisions.
38. The powers in the SI do not impose a significant burden on business. Inspections have all taken place by consent and without needing to invoke the power of entry powers provided within the SI. The appeals provisions place no burden on any customer, appealing against a decision is not mandatory and any appeal that is successful gets their panel fee returned. As a consequence, opportunities for streamlining have not been identified.
39. The policy objectives have been achieved because this regulation has provided the framework for inspections to go ahead. It would not be possible to reduce regulation in this area as this would remove the framework for inspections: it would mean that businesses could refuse to be inspected. No unintended consequences have been identified.
40. Whilst physical inspections have not been conducted since the start of the Covid pandemic (around March 2020) any audits carried out in future requiring powers of entry for scrutiny will be undertaken using these powers.

Cross compliance

41. Cross compliance is the set of rules that serves as a regulatory minimum standards baseline for Direct Payments and certain Rural Development payments, protecting the CAP fund by reducing payments from claimants who are non-compliant. These rules cover the environment, animal, plant and public health, animal welfare and landscape features. They are split into two types: Statutory Management Requirements (SMR), which reflect specific pieces of EU legislation with detailed requirements, and standards of Good Agricultural and Environmental Condition (GAEC), where Member States were given a framework to work to, but they can set actual requirements and are encouraged to align these to existing domestic rules where these exist.
42. The 2013 reform of the CAP led to significant simplification and rationalisation of the cross compliance framework, with 38 SMRs and GAECs reduced to 20. This generated

changes to the GAEC requirements and impacted the way which England implemented cross compliance¹⁸.

43. In December 2013 the government published its response to the consultation on implementation of the CAP in England¹⁹. In the replies to the consultation, stakeholders, and members of the public highlighted their concerns with cross compliance. There were a significant number of responses in regard to the continuation of some of the existing GAEC requirements, as well as the removal of the GAEC requiring a soil protection review which was supported by stakeholders.

44. All responses received were analysed and used along with evidence from stakeholders and industry, to put together a further informal consultation document which asked for opinions on specific policy proposals. Following this and feedback received from two stakeholder workshops in early 2014, Defra Ministers took the decision²⁰ on the detailed requirements that we would include for those GAECs, the majority of which were aligned to existing domestic rules to minimise the burden on industry and in particular what landscape features would be protected under GAEC 7 from 2015 onwards.

45. These rules are set out in the SI.

Table 3: GAECs from 2015 onwards

GAEC No.	GAEC Name
1.	Establishment of buffer strips along water courses
2.	Water abstraction
3.	Groundwater
4.	Minimum Soil cover
5.	Minimum land management reflecting site specific conditions to limit erosion
6.	Maintenance of soil organic matter level

¹⁸ June 2014 evidence summary on the implementation of changes to cross compliance in England: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/320886/cross-compliance-evidence-summary.pdf

¹⁹ The Implementation of the CAP in England consultation ran from 31 October 2013 to 28 November 2013. The government published an additional response to this consultation on 26 February 2014. <https://www.gov.uk/government/consultations/common-agricultural-policy-reform-implementation-in-england>

²⁰ June 2014 the government decisions on cross compliance can be read using the following link: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/318922/cross-compliance-government-decisions.pdf

GAEC No.	GAEC Name
7.A.	Boundaries
7.B.	Public Rights of Way
7.C.	Trees
7.D.	Sites of Special Scientific Interest (SSSIs)
7.E.	Historical Monuments

46. Using powers set out in Part 3, regulation 19 of the SI, the Secretary of State was appointed as the Competent Control Authority for cross compliance purposes. The resulting control structure means the majority of site visits are carried out by the RPA to ensure both the GAEC and SMR requirements are adhered to. The Animal and Plant Health Agency (APHA) also carries out checks to ensure the animal welfare SMR requirements are adhered to. Other enforcement agencies, such as Natural England and the Environment Agency, can carry out checks in some limited circumstances. Table 4 shows the number of cross compliance inspections for 2020 to 2022.

Table 4: Number of cross compliance site visits 2020 to 2022

Year	Number of site visits
2020	3,789
2021	4,347
2022	4,398

47. The figures in Table 4 includes any site visit that contains a cross compliance check. This includes for example mandatory selected visits by RPA and APHA, visits where cattle and sheep identification and registration are checked and checks by other enforcement agencies.

48. In the 2018 Health and Harmony consultation²¹, Defra proposed to replace cross compliance with a new, better targeted and proportionate mechanism to enforce the regulatory baseline.

²¹ The 2018 Health and Harmony Consultation, and Government response - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/684003/future-farming-environment-consult-document.pdf

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/741461/future-farming-consult-sum-resp.pdf

49. This received mixed views from respondents to the consultation. A significant number saw the need for cross compliance to be streamlined, but some believed cross compliance should not be removed during the transition period. Others suggested that cross compliance should no longer be a requirement to receive payments. Some stakeholders expressed reservations about changes to cross compliance and efforts to simplify, stating that this could compromise standards.
50. As a result of the 2018 Health and Harmony consultation, cross compliance was retained and where possible the rules and their enforcement have been simplified during the transition period.
51. In 2021 the RPA introduced several measures to improve cross compliance and address the concerns set out in Dame Glenys Stacey's farm inspection and regulation review²², and the Health and Harmony reports. This included improving the visit experience for customers, improving proportionality for payment reductions for customers and improving approaches to inspection targeting. As a result, the number of financial penalties for minor non-compliances, like paperwork errors that did not impact environmental outcomes has been significantly reduced, with many farmers now receiving warning letters instead.
52. In 2022 the RPA made further changes to cross compliance, most significantly on livestock traceability where they are further improving proportionality.
53. From the 2024 calendar year in England, cross compliance rules and provisions relating to it will no longer apply to Direct Payments or Rural Development schemes. This will mean those sections of the SI will be revoked, but with a saving provision to allow them to stand in relation to outstanding rights and liabilities under the cross compliance framework e.g. the appeals process.
54. There are strong regulatory protections applicable to farming within domestic legislation, which safeguards our environment and protects the health of animals, plants and people. Most of the standards in cross compliance will continue to apply to farm activities as they are already legal requirements. Defra is considering the best approach to mitigate risks where there are gaps, such as hedgerow and landscape feature protections, water buffers and soil erosion measures.
55. Some site visit results, payment reductions, payments etc for the 2023 scheme year may complete processing after 2023 and potentially be subject to appeals, which will require
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²² Dame Glenys Stacey's Farm Inspection and Regulation review can be found on the following web page:
<https://www.gov.uk/government/publications/farm-inspection-and-regulation-review>

the need for savings provisions so that the SI, or parts of it, continue to have effect to deal with any outstanding matters relating to prior scheme years.

Appeals

56. The SI provides the mechanism for customers to appeal against penalties, or reductions for breaching the scheme rules, or to make an appeal against decisions taken in the administration of the legacy EU CAP schemes. Appeals are made to the RPA using their complaints procedure. If the customer does not agree with the outcome of the complaint, they can appeal the decision via an Independent Agricultural Appeals Panel²³ (IAAP).
57. The IAAP was set up under the SI in October 2014, to independently consider appeals from customers. IAAP members are recruited through an open competition, with the criteria set by the Minister of State, who also approves the appointment of the successful candidates. Once appointed they are provided with training for their role as an IAAP member.
58. The panel is formed of three IAAP members and holds on average one or two hearings a week. There are currently 30 IAAP members that can be chosen to sit on the panel. Following the hearing the IAAP will make recommendations to the Secretary of State on whether to accept or reject the appeal. The Secretary of State then considers the recommendations made by the IAAP before making the final decision on the appeal.
59. Since November 2021 the RPA has made changes to internal process, resulting in a reduction in the length of time an appeal takes from receipt to decision.
60. Feedback from customers supports the RPA's objective to provide appellants with a fair, independent and impartial hearing experience.
61. The RPA has introduced a traffic light process (see Table 5) for appeals that require a decision from the Secretary of State, who has delegated this to the Minister of State. This process was adopted to assist the Minister to provide decisions without needing to have a monthly meeting. By using this process, RPA have reduced the waiting times to notify customers of the Ministers decision.

²³ Information on the IAAP can be found on the GOV.UK website using the following link:
<https://www.gov.uk/government/organisations/independent-agricultural-appeals-panel>

Table 5: Traffic light appeal process

Case category	Description
Green	IAAP recommendation is they agree with the RPA decision.
Amber	IAAP recommend making appeal partially successful or are not as straight forward as a Green categorised case.
Red	IAAP does not agree with the RPA decision or case is contentious.

62. Table 6 shows the number of appeals and their outcomes for cross compliance, BPS, ES and CS schemes from 2014 to 2022.

Table 6: Number of appeals for cross compliance, BPS, CS and ES schemes 2014 to 2022

Year	Number of Appeals			Total	Outcome		
	Cross compliance	BPS	ES & CS		Unsuccessful	Partially Successful	Successful
2014	2	0	0	2	0	2	0
2015	2	0	0	2	1	1	0
2016	7	7	1	15	8	4	2
2017	3	16	0	19	11	3	3
2018	5	23	15	43	16	4	8
2019	3	44	21	68	27	4	14
2020	1	20	42	63	31	5	24
2021	0	19	63	82	47	10	23
2022	0	13	54	67	39	9	19

Note: Some data sources used before 2020 in table 6 do not specify an outcome, so respective outcome columns don't add up to the total column.

Conclusion

63. Following the review of the SI, it has been concluded that:

- The SI should be retained to allow the RPA to continue to operate legacy EU CAP schemes in England, so they can continue to make site visits and carry out inspections and so that customer appeals are available should they be required

- The SI should be revoked in its entirety in England when it is no longer required. This is because there will be no remaining customers under the schemes, or a need to operate the legacy EU CAP schemes, and the majority of customers will be enrolled in England's new or updated Environmental Land Management scheme(s) under new domestic legislation.

Annex 1 – Devolved Administrations

As noted in the introduction, the review of the SI has been completed as far as it applies in England only. There are seventeen provisions in the SI that apply in whole or in part across the UK. As agriculture is a devolved subject, the Devolved Administrations can make amendments that apply within their territory. The Regulations in the SI which apply across the UK are as follows:

- Regulation 2 – on interpretation applies to the first five sets of regulations listed below
- Regulation 3 – on the role of the competent authority (to determine applications) and to whom applications in respect of cross-border holdings (where land is held in both in England and in other parts of the UK (Northern Ireland, Scotland or Wales) may be made
- Regulation 4 – on agency arrangements between competent authorities
- Regulation 9(1) – on set-off between sums due to competent authorities and Direct Payments due to a farmer
- Regulations 20 to 29 – on the scrutiny of the financing of CMO support
- Regulation 33 – on notices insofar as it relates to regulation 21 on powers of entry
- Regulation 34 – on the exchange rate to be used
- Regulation 35(2) – saving provision for regulations relating to single applications.
- Regulation 35(7) – which provides for the continuation of appointments of authorised persons