

EXPLANATORY MEMORANDUM TO

THE COMMON AGRICULTURAL POLICY (CROSS-COMPLIANCE EXEMPTIONS AND TRANSITIONAL REGULATION) (AMENDMENT) (EU EXIT) REGULATIONS 2022

2022 No. 861

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.
- 1.2 This Explanatory Memorandum contains information for the Joint Committee on Statutory Instruments (“JCSI”).

2. Purpose of the instrument

- 2.1 The European Union (Withdrawal) Act 2018 (“the Withdrawal Act”) converted into domestic law and preserved EU law as it applied in the UK at the end of the transition period (“retained EU law”). This included Regulation (EU) 2020/2220 of the European Parliament and of the Council of 23 December 2020 laying down certain transitional provisions for support from the European Agricultural Fund for Rural Development (EAFRD) and from the European Agricultural Guarantee Fund (EAGF) (Regulation (EU) 2020/2220). Regulation EU 2020/2220 was made by the EU on 23 December 2020. It made amendments to, and inserted new provisions into, existing EU Regulations concerning the Common Agricultural Policy (“CAP”): i.e., Regulation (EU) 1305/2013, Regulation (EU) 1306/2013, and Regulation (EU) 1308/2013.
- 2.2 In order to ensure that retained EU law relating to the CAP would function correctly following the end of the transition period, Defra made a number of SIs in 2019 and 2020 using the powers in the Withdrawal Act to correct deficiencies in retained EU law. However, because the EU made Regulation (EU) 2020/2220 so close to the end of the transition period, Defra was unable to correct its effect using its 2020 EU Exit SIs before the end of the transition period.
- 2.3 Regulation (EU) 2020/2220, and the amendments it made to Regulation (EU) 1305/2013, Regulation (EU) 1306/2013, and Regulation (EU) 1308/2013, contains provisions which no longer have relevance in the UK. These include requirements to make notifications to the European Commission, references to “Member States”, references to EU funding and EU policies, reports to be prepared by the European Commission, and references to prospective EU legislation not yet made. In order to minimise any apparent ambiguity in domestic legislation, or potential confusion for stakeholders, this SI makes amendments to remove these provisions.
- 2.4 Other provisions in Regulation (EU) 1308/2013, for example, revised duration of apiculture and fruit and vegetable aid schemes, align with UK authorities’ plans for a smooth transition to new domestic support arrangements and have been retained with minor amendments.
- 2.5 This instrument also amends Schedule 3 to the domestic Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals)

Regulations 2014 (S.I. 2014/3263), which sets out the circumstances under which a breach of the standards of good agricultural and environmental condition set out in Schedule 2 to those Regulations is not a non-compliance with the cross-compliance rules. The amendment made to S.I. 2014/3263 by regulation 2 extends the list of management agreements and measures under which carrying out an obligation, restriction or action conflicting with the cross-compliance rules will not be considered a non-compliance. That is in order to include new domestic scheme agreements made under section 98 of the Environment Act 1995 (c. 25) and section 1 of the Agriculture Act 2020 (c. 21).

- 2.6 The amendments made by this instrument as set out in paragraphs 2.3-2.4 of this memorandum apply – except as set out in section 4 of this memorandum – only in England and in Northern Ireland. This is because the Scottish Government and the Welsh Government made equivalent amendments in 2021, via Scottish S.I. 2021/33 and Welsh S.I. 2021/400. The amendments made by this instrument as set out in 2.5 of this memorandum apply only in England. This is because the provisions in S.I. 2014/3263 that are being amended are England-only in their application.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 A previous version of this draft instrument was laid on 11 May 2022. It was subsequently withdrawn, after regulation 3(14) of that version was found to be defective.
- 3.2 Regulation 3(14) of that previous version purported to amend Annex II of Regulation (EU) 2013/1305 in order to undo an amendment made by Article 7(18) of Regulation (EU) 2020/2220 prior to IP completion day. However, Article 7(18) of Regulation (EU) 2020/2220 was not in force in the EU prior to IP completion day (it came into force the day after), and therefore did not become part of retained EU Law in the UK on IP completion day. This means this instrument does not need to make any amendment to Annex II of Regulation (EU) 2013/1305.
- 3.3 Regulation 3(14) was included in that previous version of this draft instrument through an oversight. Having become aware of the error, Defra has taken the earliest opportunity to withdraw the instrument and omit the defective regulation while making no substantive changes to the instrument before re-laying.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
- 4.2 The territorial application of this instrument is England and Northern Ireland only, save as otherwise provided in paragraphs (4) and (5) of regulation 1. In effect, regulation 2 applies in England only, and regulation 1 and of regulation 4 apply in the whole of the United Kingdom.
- 4.3 The devolved administrations have provided their consent for this instrument.

5. European Convention on Human Rights

- 5.1 The Minister of State for Farming, Food, and Fisheries, Victoria Prentis MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Common Agricultural Policy (Cross-Compliance Exemptions and Transitional Regulation) (Amendment) (EU Exit) Regulations 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The Withdrawal Act incorporates into UK law EU law as it stood at the end of the transition period. Section 8(1) of the Withdrawal Act provides that a Minister of the Crown may, by regulations, make such provision as the Minister considers appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively or any other deficiency in retained EU law arising from the withdrawal of the United Kingdom from the EU.
- 6.2 These Regulations amend retained CAP legislation to ensure it operates effectively now that the UK is no longer an EU member state. It relies upon section 8 of the Withdrawal Act to, among other things, amend retained EU law relating to rural development funding from the European funds and programme durations of certain schemes, to amend retained cross-compliance rules in order that they will not conflict with obligations under new domestic land management schemes, and to remove ineffective references to “Member States” and requirements to make reports to the European Commission, which are no longer necessary in the UK now the transition period has concluded.
- 6.3 Regulation 1(2) of this instrument provides for these Regulations to come into force on the day after the day on which they are made. This is because the amendments to be made by these Regulations include the correction of deficiencies in retained EU law that have been outstanding since Regulation (EU) 2020/2220 was introduced shortly before the end of the transition period. Defra considers it desirable to bring these Regulations into force at the earliest convenient point after their making because the amendments to be made by them do not impose duties on people that are significantly more onerous than before or require them to adopt different patterns of behaviour.

7. Policy background

Overview

- 7.1 The CAP is the EU policy to provide financial support to farmers in Member States. There are three strands to CAP: direct payments (including the basic payments scheme), marketing measures (“CMO”), and rural development. In 2019 and 2020 Defra made a number of SIs using the powers in the Withdrawal Act to correct deficiencies in retained EU law and to ensure it would function correctly following the end of the transition period. However, on 23 December 2020, after the passage of these Defra SIs, the EU made Regulation (EU) 2020/2220, which included subsidiary amendments to other CAP regulations, i.e., Regulation (EU) 1305/2013, Regulation (EU) 1306/2013 and Regulation (EU) 1308/2013.
- 7.2 In addition, the CAP includes cross-compliance, a set of rules made up of statutory management requirements and good agricultural and environmental conditions, which farmers must comply with in order to receive their full financial support. A range of percentage penalties is applied to this support in instances where non-compliances with the rules are found.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.3 Regulation (EU) 2020/2220 is a transitional regulation, which the EU intended to bridge the gap between its 2014-2020 CAP regime and its planned new CAP regime running from 2023-2027. To facilitate that EU transition, Regulation (EU) 2020/2220 removed the scope for extension of existing fruit and vegetable producer organisation programmes beyond 2022 and limited duration of new programmes to 3 years. The regulation also, for apiculture national programmes scheduled to run until 31 July 2022, extended their end date until 31 December 2022, while requiring Member States to notify consequent programme modifications to the European Commission for approval. The regulation also, for rural development, included provisions for “new commitments to be undertaken from or in 2021”, or programmes extended for 2021 and 2022: the EU will fund these new commitments or extensions from the next EAFRD in which the UK will not participate and so these provisions are not operable in the UK.
- 7.4 Regulation (EU) 2020/2220 also contains references to prospective EU legislation, which the EU intends to make in 2021 and 2022, and which will not be applicable in the UK; and sets rules for the improvement and stabilisation of the operation of the EU common market in olive oils, which the UK does not participate in. It also requires reports to be prepared by the European Commission on the effectiveness and efficiency of two European funds, the European Agricultural Guarantee Fund (“EAGF”) and the EAFRD, and their contribution to the European Union’s CAP strategy.
- 7.5 Regulation (EU) 2020/2220 also contains other requirements to make notifications to the European Commission, references to “Member States”, and references to funding for tasks that will implement future EU policies.
- 7.6 This instrument also makes amendments to the Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 (S.I. 2014/3263), which is a domestic instrument made to implement aspects of the CAP in the UK, largely in England. Schedule 2 to S.I. 2014/3263 sets out the domestic implementation of the standards for good agricultural and environmental condition, which together with the statutory management requirements make up the cross-compliance rules. Farmers in receipt of CAP payments are required to comply with these rules. Schedule 3 to that S.I. however sets out circumstances where a breach of Schedule 2 does not constitute a non-compliance. Such circumstances arise when the breach is a consequence of carrying out an obligation, restriction or action under one of the land management schemes or measures listed.

Why is it being changed?

- 7.7 Regulation (EU) 2020/2220 was made in late December 2020. The provisions outlined in 7.3 – 7.5 are predominantly redundant or deficient in a domestic context and would, if possible, have been amended or removed from the statute books by Defra’s 2020 EU Exit SIs, had the regulation been made earlier. As this was not practicable, those redundant and deficient provisions remain unchanged in domestic law. The new provisions add little to domestic law, place unnecessary requirements on the UK to comply with EU policies that the UK does not share, or actively contradict

amendments Defra and the Devolved Administrations have already made to provide for the future of agriculture in the UK.

- 7.8 Leaving the provisions above in force would leave an apparent ambiguity in domestic agricultural rules, as it would give the misleading impression that the UK remained a Member State of the EU, would receive EU funding for domestically funded schemes, was complying with the EU's CAP strategic plans, would be carrying out EU reports, making notifications to the European Commission, or seeking authorisation for programme modifications from the European Commission. This might be a source of potential confusion for stakeholders.
- 7.9 With regard to cross-compliance, because the Environment Act 1995 and the Agriculture Act 2020 are not included in Schedule 3 to S.I. 2014/3263, there may be situations in which farmers complying with requirements of agri-environment schemes made under these powers commit breaches of cross-compliance rules in doing so. This is a situation CAP rules previously sought to avert via Schedule 3.

What will it now do?

- 7.10 This instrument makes the appropriate amendments to retained EU legislation to ensure legislation relating to the above aspects of agricultural policy take account of the UK no longer being a Member State and no longer part of the CAP. The amendments made by this instrument, largely technical in nature, will remove references to "Member State", remove references to new EU funding and prospective EU legislation, remove references to the EU common market, and remove requirements for the UK to carry out audits into EU funds and to make notifications to and seek approvals from the European Commission. These changes will minimise any potential confusion for stakeholders that would otherwise arise from CAP policy that does not apply in the UK.
- 7.11 With regard to cross-compliance, this instrument will insert into Schedule 3 to S.I. 2014/3263 an exemption from cross-compliance rules for land management agreements and measures made under section 98 of the Environment Act 1995 and section 1 of the Agriculture Act 2020, equivalent to those exemptions that already exist for other Acts and measures. This will exempt farmers from cross-compliance rules where they conflict with the obligations of new domestic schemes made under that legislation.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 Defra does not intend to consolidate the relevant legislation at this time.

10. Consultation outcome

- 10.1 This instrument has not been subject to formal consultation because it will seek to replicate, as far as possible, the existing regulatory position on finance, control, and management of CAP schemes and on regulatory standards.
- 10.2 Defra has engaged with the Devolved Administrations on its approach to CAP legislation under the Withdrawal Act, including on this instrument, to familiarise them with the legislation ahead of laying. The Common Agricultural Policy (Cross-Compliance Exemptions and Transitional Regulation) (Amendment) (EU Exit) Regulations 2022, and the policy reflected in that instrument, has been developed in collaboration with officials in the Scottish and Welsh Devolved Administrations, and DAERA in Northern Ireland.

11. Guidance

- 11.1 Defra is not producing any specific guidance on this instrument, as it only amends deficiencies in retained EU Regulations arising from the UK's withdrawal from the EU.
- 11.2 The Government's general Brexit Guidance on rules as they apply now the transition period has concluded can be found at <https://www.gov.uk/government/collections/brexit-guidance>.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies. This is because the instrument simply allows them to continue operating as they do at present, while minimising ambiguities in applicable legislation.
- 12.2 There is likely to be no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument as there is expected to be no significant impact on business. This is because the amendments made by this instrument relate to the maintenance of existing legislation. We are confident that the changes introduced by this instrument fall below the £5m per annum threshold for net direct costs to business. The purpose of this instrument is to maintain existing regulatory provisions and make existing CAP policy as it stood at the end of the transition period operable.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No disproportionate impacts are expected to impact small and micro businesses.

14. Monitoring & review

- 14.1 As this instrument is made under powers in the Withdrawal Act, no review clause is required. Defra does not expect the impacts of the measure to be significant. Defra and its agencies will, however, monitor and review the impact of this instrument as part of its standard policy-making procedures, and will ensure that the provisions are adhered to.

15. Contact

- 15.1 Pamela Frost at Defra: 020 802 65991 or email: pamela.frost@defra.gov.uk can be contacted with any queries regarding this instrument.
- 15.2 Jonathan Baker, Deputy Director for Programme Policy, Engagement and Strategy at Defra, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Victoria Prentis MP, the Minister for Farming, Fisheries and Food at Defra can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before IP completion day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

1. Appropriateness statement

- 1.1 The Minister of State for Farming, Fisheries and Food, Victoria Prentis MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Common Agricultural Policy (Cross-Compliance Exemptions and Transitional Regulation) (Amendment) (EU Exit) Regulations 2022 do no more than is appropriate”.

- 1.2 This is the case because the amendments made by this instrument are the minimum required to ensure that EU regulatory standards concerning CAP schemes as they stood at the end of the transition period will continue to apply across the UK, and operate effectively after the UK leaves the EU. The amendments are predominantly technical in nature and do no more than is strictly necessary to ensure that UK law continues to function effectively

2. Good reasons

- 2.1 The Minister of State for Farming, Fisheries and Food, Victoria Prentis MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 2.2 These are because the changes to retained EU legislation are necessary to ensure that the Common Agricultural Policy (“CAP”) arrangements can continue to operate without ambiguity now that UK has left the EU. See section 7 in the main body of this Explanatory Memorandum.

3. Equalities

- 3.1 The Minister of State for Farming, Fisheries and Food, Victoria Prentis MP, has made the following statement(s):

“The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

- 3.2 The Minister of State for Farming, Fisheries and Food, Victoria Prentis MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Victoria Prentis MP, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

4. Explanations

- 4.1 The explanations statement has been made in section 7 of the main body of this explanatory memorandum.