

**EXPLANATORY MEMORANDUM TO**  
**THE COMMON AGRICULTURAL POLICY (DIRECT PAYMENTS TO FARMERS)**  
**(AMENDMENT) (EU EXIT) REGULATIONS 2018**

**2018 No. [XXXX]**

**AND**

**THE COMMON AGRICULTURAL POLICY (RULES FOR DIRECT PAYMENTS)**  
**(AMENDMENT) (EU EXIT) REGULATIONS 2018**

**2018 No. [XXXX]**

**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 Act.
- 1.2 This memorandum contains information for the Sifting Committees.

**2. Purpose of the instruments**

- 2.1 These instruments amend retained European Union (“EU”) legislation relating to Direct Payments to farmers and land managers under agricultural support schemes within the Common Agricultural Policy (“CAP”). These instruments will address operability issues created by the United Kingdom (“UK”) leaving the EU to ensure that the Direct Payments legislation can continue to operate effectively after EU Exit.

*Explanations*

What did any relevant EU law do before exit day?

- 2.2 The Common Agricultural Policy (Direct Payments to Farmers) (Amendment) (EU Exit) Regulations 2018 amends Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy. The EU Regulation establishes the high-level framework required to make Direct Payments to farmers and land managers under support schemes within the framework of the CAP.
- 2.3 The legislation amended by The Common Agricultural Policy (Rules for Direct Payments) (Amendment) (EU Exit) Regulations 2018 comprises:
  - Commission Implementing Regulation (EU) No. 641/2014 of 16 June 2014 laying down rules for the application of Regulation (EU) No 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 common agricultural policy; and
  - Commission Delegated Regulation (EU) No. 639/2014 of 11 March 2014 supplementing Regulation (EU) No 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 common agricultural policy and amending Annex X to that Regulation.

- 2.4 These regulations work together to create the detailed rules necessary to finance, manage and monitor the delivery of Direct Payments across EU Member States.

*Why is it being changed?*

- 2.5 After EU Exit, without amendment, the above retained EU legislation would contain inoperable provisions that would prevent the UK Government, and the devolved administrations, from being able to make Direct Payments to farmers and land managers in the UK. These instruments use powers in the European Union (Withdrawal) Act 2018 to correct these deficiencies so that the legislation will continue to function effectively. This, in turn, will support the continued delivery of Direct Payments to eligible beneficiaries.

*What will it now do?*

- 2.6 These instruments will ensure that retained EU legislation relating to CAP Direct Payments will continue to operate effectively throughout the UK after EU Exit. These instruments reflect the UK devolution settlements and the status quo whereby the relevant authorities in England, Northern Ireland, Scotland and Wales operate the Direct Payments framework, make payments and enforce the rules surrounding Direct Payments, within their respective territories.
- 2.7 The appropriate legislative “fixes” introduced by these instruments will maintain a status quo position, as far as possible, and will have no noticeable impacts on the ground for farmers or land managers. More information on the specific changes being made is at section 7, sub-paragraph 7.4.

### **3. Matters of special interest to Parliament**

*Matters of special interest to the Sifting Committees*

- 3.1 These instruments are being laid for sifting under the European Union (Withdrawal) Act 2018.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As these instruments are subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

### **4. Extent and Territorial Application.**

- 4.1 The territorial extent of both of these instruments is the UK.
- 4.2 The territorial application of both of these instruments is the UK.

### **5. European Convention on Human Rights**

- 5.1 As these instruments are both subject to the negative resolution procedure and do not amend primary legislation, no statements are required.

## **6. Legislative Context**

6.1 The key legislative context for each instrument is set out at paragraph 2.2. As a result of EU Exit, corrections are required to retained EU Regulations relating to Direct Payments to farmers and land managers to ensure that the legislation can continue to operate effectively in a domestic setting. The corrections made by these instruments will create a Direct Payments regime for the UK that will respect the UK devolution settlements.

6.2 As part of the EU Exit process, Defra will also introduce fifteen other statutory instruments whose main purpose will be to correct retained EU legislation relating to the CAP. Five of these additional instruments will contain provisions that interact with the Direct Payments legislation amended by these instruments as specified at 2.1. These related instruments will be laid between November and January 2019 and concern:

- the “Horizontal” (cross-cutting) framework for the financing, management and monitoring of the CAP (two instruments). One of these SIs will also be used to amend article 8(1) and 8(2) (financial discipline in relation to direct payments) of Regulation (EU) No. 1307/2013, and to amend article 11 (receipts obtained from non-agricultural activity) of Regulation (EU) No. 639/2014;
- existing UK domestic legislation which implements the CAP in the UK (one instrument);
- the transfer of European Commission legislative powers and functions to appropriate UK bodies, including powers and functions related to CAP and the retained EU Direct Payments Regulations (one affirmative instrument); and
- retained EU legislation relating to state aid rules in relation to Agriculture and Fisheries (one instrument). This SI will be used to amend article 13 (state aid in relation to Direct Payments) of Regulation (EU) No. 1307/2013.

6.3 Section 8(1) of the European Union (Withdrawal) Act 2018 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. These instruments are made in exercise of section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

## **7. Policy background**

### *What is being done and why?*

7.1 In 2016, UK agriculture received €3,927m through the EU CAP regime, of which:

- €3,035m is allocated to Direct Payments to farmers and land managers;
- €806m is allocated to various Rural Development agri-environment schemes; and
- €85m is allocated to market support measures.

7.2 Many farmers and land managers are currently reliant on Direct Payments to support their incomes and businesses. Direct Payments are made on condition that the

beneficiary respects “cross-compliance” rules on human and animal health and welfare, plant health and the environment. Direct Payments are currently made under the EU CAP Regulations described in section 2.2, and are administered and controlled in the UK by the national authorities of each constituent nation.

- 7.3 In a scenario where a withdrawal agreement between the UK and the EU is not reached, the UK will no longer be part of the CAP at EU Exit and the retained EU legislation relating to Direct Payments will contain inoperabilities. These inoperabilities could result in the UK administrations being unable to continue making Direct Payments to farmers and land managers and also prevent enforcement of the legislative requirements. To avoid this happening, these instruments will amend the retained EU Direct Payments legislation to create a functioning Direct Payments framework for the UK. In turn, this framework will ensure current CAP Direct Payments scheme recipients will continue to be paid following EU Exit, ensuring a smooth transition.
- 7.4 These instruments will enable the following CAP Direct Payments farming support schemes to continue to work effectively across the UK after EU Exit:
- Basic Payment – this is a non-competitive payment that is based on land area. Certain minimum standards on animal and public health and environmental standards must be met (known as “cross-compliance”);
  - Greening payment – this is a 30% portion of the Basic Payment, paid to farmers and land managers who meet certain environmental standards;
  - Young farmer payment – this is a payment for “Young Farmers”, farmers starting up businesses who are 40 or under at the time of applying;
  - Voluntary Coupled Support – this is a payment made to incentivise production in a particular sector. It is currently used in Scotland to support livestock farmers in both the beef and sheep sectors; and the
  - Redistributive payment – this is currently used in Wales to provide additional payment to support smaller farms.
- 7.5 The legislative amendments introduced by these instruments will maintain the status quo, as far as possible, and are largely minor and technical. No substantive policy changes are being made and the beneficiaries of Direct Payments will see no change on the ground. The key amendments to the retained EU Direct Payments legislation can be summarised as:
- Changes to Direct Payment scheme notification and reporting requirements:  
The EU Direct Payments legislation places requirements on Member States to routinely provide notifications and reports to the European Commission to set out how they are administering the Direct Payments schemes listed in paragraph 7.3. Such notifications and reports are necessary for the Commission to manage and monitor the EU CAP as a whole. The notification and reporting requirements include a Member State having to supply information on:
    - the funding allocations it sets for each Direct Payments scheme;
    - the extent of CAP “active farmer” rules applied;

- any equivalent practices implemented in relation to greening scheme requirements; and
- the commencement of any Direct Payment schemes that a Member State may not have previously utilised, for example Voluntary Coupled Support.

After EU Exit, some of these notification and reporting requirements will no longer be appropriate for a domestic setting and they will cease to be required. These instruments will therefore remove these provisions from retained EU legislation. For example, the UK's annual notification to the European Commission of the outcome of CAP greening measures is required for the Commission to assess the success of the greening policy across the EU, but this would not be required in a UK context as agriculture is a devolved matter and it is for each UK administration to assess the success of policies within its territory. This approach will help lessen the reporting burden upon the UK Government and the Devolved Administrations.

With regard to other Direct Payment scheme notification and reporting requirements, it is unnecessary in a domestic context to keep these as legislative notification requirements. Where the information is needed at a UK level, the need can be met through an administrative joint working agreement between the UK administrations. This will allow relevant authorities to collect and share key information as necessary to ensure the domestic framework for Direct Payments will continue to operate effectively across the UK.

- Removal of redundant articles or clauses, and spent provisions:

Some articles or clauses in the retained EU Direct Payment legislation will be redundant or irrelevant in a UK setting after EU Exit and will be removed by these instruments. For example, Articles 20 and 27 of Regulation (EU) No. 1307/2013, which relate to de-mining reserves in Croatia. Spent provisions will also be removed or, where appropriate, reworded to reflect they can no longer be implemented or modified. For example, provisions under Article 30(1) of Regulation (EU) No. 1307/2013 for making a linear percentage reduction of the basic payment scheme ceiling: this was only to be carried out in the first year of the basic payment scheme, and is now spent.

- Correcting references to the EU, EU institutions and “Member State(s)”:  
After EU Exit, certain terms will be redundant or inappropriate and need correction. These instruments will make technical amendments throughout the retained EU Direct Payments legislation to ensure that it remains operable and does not contain any ambiguity. References to “Member State(s)” will be amended so that, in most instances, this will be replaced with the phrase “relevant authority” in order to align with the UK devolved settlements and enable each constituent nation to make its own policy choices within the limits of the retained EU Direct Payments regulations. The definitions for the defined terms “relevant authority” and “constituent nation” will appear in Regulation (EU) No. 1307/2013 and that meaning will, as happens currently, carry through to Regulation (EU) No. 639/2014 and Regulation (EU) No. 641/2014. Therefore, the definitions will not appear in these Regulations, only the defined terms.
- Correcting EU procedures to reflect appropriate UK processes:

Certain articles in the EU legislation give the European Commission the power to make implementing acts to fix spending ceilings for individual Direct Payment schemes, in order to reflect a Member State's spending choices. It is unnecessary in the domestic context to have legislation setting out the ceilings for the different schemes at UK level, especially when (other than in relation to voluntary coupled support) they are administered at devolved level. We are therefore omitting provisions which require legislation to be made setting out what the ceilings are, although the processes in relation to how such ceilings are to be set remains the same. Information about each relevant authority's ceilings would be available from the relevant authority, and could be shared as appropriate with other relevant authorities.

- 7.6 Defra has decided to retain references to Euros in retained EU Direct Payments legislation at the point of EU Exit. This is because both Defra and the Devolved Administrations are in agreement that undertaking such currency conversion mid-way through a scheme year would be problematic from an operational perspective and also risk causing confusion for beneficiaries who receive Direct Payments. Section 8 of the European Union (Withdrawal) Act 2018 provides the power to legislate to correct deficiencies until two years after Exit day. This gives flexibility for currency changes to coincide with the end points of "rolled over" CAP schemes and programmes.
- 7.7 The corrections made by these instruments will ensure that, after EU Exit, there is no ambiguity about the ability of UK administrations to continue to make Direct Payments to farmers and land managers, and carry out associated inspection and enforcement activity. These instruments will also support delivery of the UK Government's Manifesto commitment to continue to provide the same cash total in funds for farm support until the end of the current Parliament, which includes all funding provided for farm support under the current EU CAP.
- 7.8 The impact of the amendments introduced by these instruments is deemed to be negligible, and these administrative impacts will only affect the UK Government and the Devolved Administrations. We do not envisage any impacts on farmers, land managers or rural businesses, as there are no changes to dates and obligations upon Direct Payment beneficiaries. These instruments will ensure that the rules concerning Direct Payments are clear to stakeholders across the UK.
- 7.9 As previously noted, agriculture policy is a devolved matter in Scotland and Wales and a transferred matter in Northern Ireland. These instruments will apply across the UK in order to provide a common approach to the retained EU Direct Payments domestic framework defined by 2.1 of this document. However each relevant authority will continue to be able to make its own policy choices within the limits of that framework.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 These instruments are being made using the powers in section 8(1) of, and paragraph 21(b) of Schedule 7 to, 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 UK from the EU. 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 These instruments have not been subject to formal consultation because they replicate, as far as possible, the same existing regulatory standards. Consequently, there should not be any difference in experience received on the ground by Direct Payments recipients.

10.2 On 25 September 2018, Defra met with the Rural Payments Agency's 'Industry Partnership Group' to update farming and land management stakeholders on the Government's plans for EU Exit. At the meeting, stakeholders were informed of plans to make both retained EU CAP legislation and existing domestic CAP regulations fully operable at the point of EU Exit, to enable Defra and the Devolved Administrations to continue to deliver ongoing CAP Pillar 1 and Pillar 2 commitments to the agriculture sector in 2019 in the event of non-negotiated Exit. No concerns were raised. Stakeholders present were:

- Tenant Farmers Association;
- Countryside Land and Business Association;
- Farming Community Network;
- Institute of Agricultural Secretaries and Agents;
- British Institute of Agricultural Consultants;
- National Farmers Union.

10.3 These instruments, and the policy reflected within them, have been developed in collaboration with officials in the Scottish and Welsh Devolved Administrations and the Department of Agriculture, Environment and Rural Affairs ("DAERA") in Northern Ireland.

## **11. Guidance**

11.1 Defra is not producing any specific guidance on these instruments, as they only amend deficiencies in retained EU Regulations arising from the UK's withdrawal from the EU.

11.2 The Government has published Technical Notices on the GOV.UK website to help people prepare for how CAP will be handled after EU Exit. These provide relevant background information to the CAP-related content of these instruments. They are:

- Farm payments if there's no Brexit deal (see: <https://www.gov.uk/government/publications/farm-payments-if-theres-nobrexit-deal>); and
- Receiving rural development funding if there's no Brexit deal (see: <https://www.gov.uk/government/publications/receiving-rural-developmentfunding-if-theres-no-brexit-deal>).

## **12. Impact**

- 12.1 There is expected to be no, or no significant impact on business, charities or voluntary bodies as eligible beneficiaries will continue to receive Direct Payments funding as they had done before EU Exit.
- 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 the instruments as there is expected to be minimal impact on business as the corrections made by the instruments relate to the maintenance of existing legislation.

## **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 affect small and micro businesses.

## **14. Monitoring & review**

- 14.1 As these instruments are made under the powers in the European Union (Withdrawal) Act 2018, no review clause is required. Defra and its agencies will, however, monitor and review the impact of the instruments as part of its standard policy-making procedures, and will ensure that the provisions are adhered to.

## **15. Contact**

- 15.1 Michael Sanders at Defra: 0208 225 6298 or email: [Michael.Sanders@defra.gov.uk](mailto:Michael.Sanders@defra.gov.uk) can be contacted with any queries regarding these instruments.
- 15.2 Fiona James and Elen Shepard (job-share), Deputy Directors for CAP EU Exit Preparedness at Defra, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 George Eustice MP at Defra can confirm that this Explanatory Memorandum meets the required standard.



# Annex

## Statements under the European Union (Withdrawal) Act 2018

### Part 1

#### 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), 9 and 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), 9 and 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), 9 and 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), 9 and 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), 9 and 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 exit 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), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and 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 4 or 14, Schedule 7.	Statement of the reasons for the Minister’s opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit 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 exit day, and explaining the instrument’s effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 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.

## Part 2

### Statements required when using enabling powers under the European Union (Withdrawal) Act 2018

#### 1. Sifting statement(s)

- 1.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice 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 (Direct Payments to Farmers) (Amendment) (EU Exit) Regulations 2018 and the Common Agricultural Policy (Rules for Direct Payments) (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because: these instruments do not fall within the categories for which use of the affirmative procedure is required under the European Union (Withdrawal) Act 2018 and the contents of these instruments are not of such significance that Parliament would expect to debate them. Each instrument makes changes of a predominantly technical nature only, to ensure the continued effective delivery of retained European Union (“EU”) Direct Payments legislation across the United Kingdom (“UK”) after EU Exit.

#### 2. Appropriateness statement

- 2.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice 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 (Direct Payments to Farmers) (Amendment) (EU Exit) Regulations 2018 and the Common Agricultural Policy (Rules for Direct Payments) (Amendment) (EU Exit) Regulations 2018 do no more than is appropriate”.

- 2.2 This is the case because: the amendments made by these instruments to retained EU Direct Payments legislation are the minimum required to ensure that the legislation remains operable after EU Exit. The amendments are predominantly technical in nature and do no more than is strictly necessary to ensure that current regulatory standards are maintained and that the legislation can continue to function effectively. See section 7, sub-paragraphs 7.4, to 7.7.

#### 3. Good reasons

- 3.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice 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 these instruments, and I have concluded they are a reasonable course of action”.

- 3.2 These are: the amendments to retained EU Common Agricultural Policy (“CAP”) Direct Payments legislation are necessary to ensure that a functioning domestic framework for Direct Payments is in place across the UK after EU Exit. This framework will enable current and new Direct Payments recipients to continue to be paid after EU Exit, ensuring a smooth transition. These instruments will therefore provide continuity and security to farmers and landowners in the agricultural sector.
- 3.3 The appropriate legislative “fixes” introduced by these instruments will maintain the status quo, as far as possible (see section 7, sub-paragraph 7.7). No substantive policy changes are being made to the way that Direct Payments are delivered across the UK.

#### **4. Equalities**

- 4.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement:

“These instruments do 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.”

- 4.2 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to these instruments, I, George Eustice 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.”

#### **5. Explanations**

- 5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.