

EXPLANATORY MEMORANDUM TO
THE RURAL DEVELOPMENT (AMENDMENT) (EU EXIT) REGULATIONS 2018
AND THE RURAL DEVELOPMENT (RULES AND DECISIONS) (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 instrument

- 2.1 These instruments amend EU regulation 1305/2013 which provides support for rural development to allow programmes currently funded by the European Agricultural Fund for Rural Development (EAFRD) to continue to operate in the UK after EU exit, for the remainder of the 2014-2020 programme. There are also a number of legacy regulations and implementing decisions associated with EU regulation 1305/2013 as referenced in paragraph 6.1.

Explanations

- 2.2 What did any relevant EU law do before exit day?

EU regulation 1305/2013 sets out the requirements for support for rural development financed by the European Agricultural Fund for Rural Development (EAFRD). In particular, it sets out the requirements necessary to manage the programme effectively.

- 2.3 Why is it being changed?

Amendments to the EU regulation are required to correct deficiencies, ensuring that payments can continue to be made to beneficiaries post-exit, using domestic funding, under programmes currently funded by the EAFRD. It is also to put in place arrangements on how the programme will be managed on exit and that the programme can be effectively managed more generally until 2020.

- 2.4 What will it now do?

These instruments will amend the EU regulations governing rural development to enable the UK's Rural Development Programmes for 2014-2020 to continue to operate in the event of a no deal situation on EU exit, applying to programmes currently funded by EAFRD.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees

3.1 These instruments are being laid for sifting by the Sifting Committees.

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 these instruments is the United Kingdom.

4.2 The territorial application of these instruments is the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 These instruments are being made to amend regulation 1305/2013 of retained EU law to make it operable in the event of a no-deal on EU exit. The Rural Development (Amendment) (EU Exit) Regulations 2018 instrument amends the following legacy regulations to make them operable in the event of a no deal exit: 2078/1992, 746/1996, 1257/1999, 1698/2005, 1974/2006, 65/2011, and 1310/2013. The Rural Development (Rules and Decisions) (Amendment) (EU Exit) Regulations 2018 instrument amends EU regulations 807/2014 and 808/2014 and a number of implementing decisions: (2015)855, (2016)4147, (2017)4413, (2017)6493, (2018)1166, (2015)3488, (2017)4598, (2015)6018, (2015)9754, (2017)570, (2017)5498, (2017)8620, (2015)3489, (2016)3620, (2017)1429 and (2017)6954 and (2018)1185.

7. Policy background

What is being done and why?

7.1 The effect of these instruments is limited to allowing the retained EU regulations to operate effectively in the event of a no-deal situation on exit from the EU. They amend both the regulations that apply to the current (2014-2020) rural development programmes and operations implemented under previous programmes. The “legacy regulations” that apply to previous programmes have been repealed with savings and are therefore being amended to the extent that they continue to apply. These instruments also amend implementing decisions that provide for the operation of the

rural development programmes and amendments to them. This is being done to enable rural development programmes currently funded by the EAFRD to continue operating in the same way for the remainder of the 2014-2020 programme period. These instruments remove the following provisions which will be inoperable following EU exit:

- The requirement to comply with EU law;
- Articles relating to the requirement to submit rural development programmes and national frameworks to the Commission for approval;
- The requirement to operate a European Network for Rural Development, including responsibilities for local action groups;
- Articles relating to the European Innovation Partnership network;
- The potential to establish a national Monitoring Committee to co-ordinate the implementation of the programmes;
- The requirement to carry out an ex ante evaluation before designing a programme;
- The requirement to carry out a post evaluation in 2024;
- The requirement for managing authorities to submit and implement an information and publicity strategy, including the requirement to display the EU emblem and publicising the EU's participation through publications, posters and on-line links; and
- Articles relating to the requirement for and content of National Frameworks.

7.2 Other amendments transfer requirements or obligations that were previously for the Commission, or in some cases Member States, to the relevant authority or stakeholders. The relevant authority is the Secretary of State in England, the Department of Agricultural, Environment and Rural Affairs in Northern Ireland, Scottish Ministers in Scotland and Welsh Ministers in Wales. These obligations include:

- Overall responsibility for the programme;
- The process for approval of the annual implementation reports so that on exit they are considered and approved by the monitoring committee and no longer sent to the Commission;
- No longer responsibilities for the Commission in financial management.

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

These instruments are 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 There is no intention to consolidate this legislation.

10 Consultation outcome

No separate consultation exercise was conducted as these instruments make technical amendments whose purpose is to maintain continuity of approach in the context of the UK leaving the EU; it does not change substantive policy.

11 Guidance

11.1 A technical notice titled “Guidance: Receiving rural development funding if there’s no Brexit deal” was published on 23 August 2018.
<https://www.gov.uk/government/publications/receiving-rural-development-funding-if-theres-no-brexit-deal/receiving-rural-development-funding-if-theres-no-brexitdeal>.

12. Impact

- 12.1 There is no, or no significant impact on business, charities or voluntary bodies. Beneficiaries will continue to receive rural development funding similarly to before EU exit.
- 12.2 There is no, or no significant, impact on the public sector. There may be a negligible increase in administration cost as notifications may go to responsible bodies within the UK rather than European institutions, but this is not expected to be a significant impact.
- 12.3 As a result of EU exit, the UK’s membership of the European Network for Rural Development (ENRD) would no longer be operable.
- 12.4 An Impact Assessment has not been prepared for this instrument as there is expected to be no, or no significant impact on business.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small business is that no disproportionate impacts are expected to affect small and micro businesses.

14. Monitoring & review

14.1 As these instruments are made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Clare Osborne at the Department for Environment, Food and Rural Affairs Telephone: 0208 026 2933 or email: Clare.Osborne@defra.gsi.gov.uk can be contacted with any queries regarding these instruments.

- 15.2 Fiona James and Elen Shepard at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 George Eustice at the Department for Environment, Food and Rural Affairs 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/ESIC |
| Appropriateness | 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 | <p>Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.</p> <p>State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p> |
| 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. |

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|---|--|---|--|
| 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) 2018 Act

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 Rural Development (Amendment) (EU Exit) Regulations 2018 and the Rural Development (Rules and Decisions) (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)”.

“The contents of these instruments are not of such significance that Parliament would expect to debate it. The amendments to retained direct EU legislation are the minimum required to make the legislation operable and are not significant in that they maintain current regulatory standards”.

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 Rural Development (Amendment) (EU Exit) Regulations 2018 and the Rural Development (Rules and Decisions) (Amendment) (EU Exit) Regulations 2018 do no more than is appropriate”.

- 2.2 This is the case because the effects of these instruments are limited to making the retained EU legislation operable in the event of a no-deal situation on EU exit.

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:

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

- 3.3 These are explained in paragraph 2.3 of this explanatory memorandum.

4. Equalities

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

“These draft 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, 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.