

EXPLANATORY MEMORANDUM TO
THE EUROPEAN STRUCTURAL AND INVESTMENT FUNDS COMMON
PROVISIONS (AMENDMENTS) (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 and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Sifting Committees.

2. Purpose of the instrument

- 2.1 This instrument amends Regulation 1303/2013 laying down common provisions to allow programmes currently funded by the European Agricultural Fund for Rural Development (EAFRD) and the European and Maritime and Fisheries Fund (EMFF) to continue to receive funding for the 2014-2020 programme after EU exit.
- 2.2 Regulation 1303/2013, as it applies to the European Social Fund (ESF) and the European Regional Development Fund (ERDF), will be amended by a separate instrument.
- 2.3 This instrument also amends the Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014. It amends the definition of the Common Provisions Regulation so that it refers to Regulation 1303/2013, as amended by this instrument.

Explanations

What did any relevant EU law do before exit day?

Regulation 1303/2013 laid down the common rules applicable to the ERDF, the ESF, the Cohesion Fund, the EAFRD and the EMFF, which operate under a common framework as the European Structural and Investment Funds. It set out the provisions necessary to ensure the effectiveness of the funds and their coordination with each other.

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 and the EMFF.

What will it now do?

The common rules applying to programmes currently funded by the EAFRD and the EMFF are being retained.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees

- 3.1 This instrument is 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 the instrument is 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 this instrument is the United Kingdom.
4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 This instrument is being made to amend Regulation 1303/2013 to make it operable in the event of a no-deal on EU exit. It also amends the Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 to make cross references to Regulation 1303/2013 in it operable. They will refer to Regulation 1303/2013, as amended by this instrument.

7. Policy background

What is being done and why?

- 7.1 The effect of this instrument is limited to allowing Regulation 1303/2013 to operate effectively in the event of a no-deal situation on exit from the EU. This is being done to enable existing programmes in the UK currently funded by the EAFRD or the EMFF to continue operating in the same way for the remainder of the 2014-2020 programming period. The application of the regulation to the ESF and ERDF is being dealt with in a separate instrument.
- 7.2 This instrument omits the following provisions, which will be inoperable following EU exit:
- The requirement to comply with EU law;
 - Articles concerning the partnership agreement, an agreement between a Member State and the Commission which encompasses all of the ESIF;
 - The requirement for an annual review meeting to be held with the Commission;
 - The Commission's right to participate in a programme's monitoring committee;
 - The Commission's ability to initiate technical assistance;
 - The requirement to submit an ex post evaluation to the Commission for each programme;
 - The Commission's right to increase payments for Member States with temporary budgetary difficulties;

- Articles setting out the requirements for financial instruments and other instruments which are implemented or financed by the European Investment Bank;
- Articles relating to the preparation and adoption of programmes;
- The requirement to carry out an ex ante evaluation before designing a programme;
- The procedure for designating the managing and certifying authority;
- The payment of pre-financing; and
- Articles establishing the performance framework, performance review and performance reserve, which allow the Commission to determine which programmes or priorities have achieved their milestones, and require Member States to reallocate funding if milestones for programmes or priorities have not been achieved. If the Member State does not comply, the Commission may suspend interim payments.

7.3 Other amendments transfer requirements or obligations that were previously for Member States, or in some cases the Commission, to the relevant authority. The relevant authority for the rural development programme is the Secretary of State in England, the Department of Agriculture, Environment and Rural Affairs in Northern Ireland, Scottish Ministers in Scotland and Welsh Ministers in Wales. The relevant authority for the maritime and fisheries programme is the Managing Authority for that programme. These are:

- Overall responsibility for the programme;
- Promoting equality between men and women and non-discrimination;
- Defining criteria for selecting community-led local development strategies;
- Defining the roles for local action groups;
- Setting up a programme monitoring committee;
- Providing resources for carrying out evaluations;
- Promoting environmental protection, resource efficiency, climate change mitigation and adaptation, biodiversity, disaster resilience and risk prevention; and
- The ability to initiate technical assistance.

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

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 There are no plans for consolidation.

10. Consultation outcome

- 10.1 No separate consultation exercise was conducted as this instrument makes 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-brexit-deal>]
- 11.2 A technical notice titled “Guidance: Commercial fishing if there’s no Brexit deal” was published on 12 October 2018.
[<https://www.gov.uk/government/publications/commercial-fishing-if-theres-no-brexit-deal/commercial-fishing-if-theres-no-brexit-deal>]

12. Impact

- 12.1 There is no, or no significant impact on business, charities or voluntary bodies. Beneficiaries will continue to receive funding similarly to before EU exit. The UK’s involvement in the European Investment Bank would be inoperable as a result of EU exit however domestic finance mechanisms would still be accessible to those seeking funding.
- 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.
- 12.3 An Impact Assessment has not been prepared for this instrument because there is expected to be no significant impact on business. The instrument relates to the maintenance of existing funding streams.

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 this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Jenny Hewlett at the Department for Environment, Food and Rural Affairs Telephone: 02078 955438 or email: jenny.hewlett@defra.gsi.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Fiona James and Elen Shepard, Acting Deputy Directors for the Common Agricultural Policy EU Exit Preparedness 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/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) 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 European Structural and Investment Funds Common Provisions (Amendments) (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: this instrument addresses technical deficiencies in EU derived UK legislation that will arise from withdrawal from the EU.

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 European Structural and Investment Funds Common Provisions (Amendments) (EU Exit) Regulations 2018 does no more than is appropriate”.

- 2.2 This is the case because: the effects of this instrument 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:

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

- 3.2 These are outlined 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):

“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.

- 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 the draft instrument, 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.