

EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND NORTHERN IRELAND PROTOCOL

C(2022)4478 FINAL + ANNEX

COMMUNICATION FROM THE COMMISSION APPROVAL OF THE CONTENT OF A DRAFT COMMISSION REGULATION AMENDING THE ANNEXES TO REGULATION (EU) NO 1408/2013 AS REGARDS THEIR ADAPTATION TO REFLECT THE PROVISIONS OF THE AGREEMENT ON THE WITHDRAWAL OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FROM THE EUROPEAN UNION AND THE EUROPEAN ATOMIC ENERGY COMMUNITY AND ITS PROTOCOL ON IRELAND/NORTHERN IRELAND

Submitted by the Department for Environment, Food and Rural Affairs

09 August 2022

SUBJECT MATTER

1. The European Commission has published its proposal for a Commission Regulation which will amend the annexes to Regulation 1408/2013 (concerning the maximum cumulative amounts of *de minimis* aid granted to undertakings active in the primary production of agricultural products).
2. These annexes previously set maximum amounts which were determined for the entire UK. Under the terms of the Northern Ireland Protocol, Regulation 1408/2013 is applicable to measures affecting trade between Northern Ireland and the European Union (EU). This Regulation replaces the existing maximum amounts applicable to the UK when it was a Member State with lower amounts intended to reflect the fact that EU State Aid law now applies only in respect of measures which affect trade between Northern Ireland and the EU which is subject to the Protocol.
3. The new amounts are calculated for Northern Ireland using the same method which was used to establish maximum amounts for each of the EU member states.

SCRUTINY HISTORY

4. The Parliamentary scrutiny history relevant to this Explanatory Memorandum is contained in Annex A.

MINISTERIAL RESPONSIBILITY

5. Existing Regulation 1408/2013 applies directly in Northern Ireland by virtue of Article 10(1) of the Northern Ireland Protocol. While UK policy on subsidy control is a

reserved matter, the proposals will principally apply to subsidies affecting Northern Ireland agricultural producers and it is appropriate to consult the Northern Ireland Department for Agriculture, Environment and Rural Affairs (DAERA).

6. The Secretary of State for the Department for Environment, Food and Rural Affairs has primary responsibility for policy concerning agricultural subsidies.
7. The Secretary of State for Business, Energy and Industrial Strategy (BEIS) has an interest given their overall responsibility for subsidies policy.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

8. This has no impact upon Scotland or Wales.
9. Notwithstanding the present Northern Ireland Bill, which would remove the application of EU State Aid law under the Protocol, this may impact Northern Ireland's ability to issue *de minimis* subsidies to agriculture. As explained below in paragraphs 10-12, this impact is unlikely to be significant; we additionally understand that Northern Ireland are unlikely to raise an objection to this proposed Commission Regulation.
10. We continue to work with DAERA and with other departments, including BEIS, to understand and manage interactions between the Northern Ireland Bill and any other legislation, including this proposed Commission Regulation.

LEGAL AND PROCEDURAL ISSUES

11.

i. Legal Base

The EU proposal is based on Article 108(4) of the Treaty on the Functioning of the European Union; Regulation 1408/2013 applies in Northern Ireland by virtue of the Article 10(1) of the Northern Ireland Protocol.

ii. Voting Procedure

Not applicable.

iii. Timetable for adoption and implementation

TBC (twenty days after appearing in Journal).

POLICY IMPLICATIONS

12. Under EU State Aid law, state subsidies to agriculture are generally prohibited unless they fall within one of the exemptions – primarily the Agricultural Block Exemption Regulation or *de minimis*. (CAP subsidies are not caught by this as the subsidies come from the Commission rather than a State). *De minimis* allows up to €20,000 per three years to be given to individual undertakings in agriculture.
13. Regulation 1408/2013 sets maximum cumulative amounts which member states and the UK (in respect of Northern Ireland) may give to enterprises active in primary agricultural production. This change would reduce the cumulative amounts for the United Kingdom of €394,577,292 or €473,504,750 to a cumulative amount, reflective of NI only, of €35,689,700.
14. This should not affect NI's actual spend. At present, most of NI's agriculture spend benefits from carveouts set out in Article 10(2) of the Protocol, which enable Northern Ireland to spend up to £382,200,000 per annum on agriculture subsidies without being subject to EU State Aid law. Under the Northern Ireland Protocol Bill agricultural subsidies in Northern Ireland will no longer be within scope of EU State Aid law.
15. Under the Northern Ireland Protocol Bill, introduced on 13 June 2022, Article 10 of the Protocol would be disapplied in domestic law. Agricultural subsidies in Northern Ireland will therefore no longer be within the scope of EU State Aid law. Instead, the Bill would extend the UK's domestic subsidy control regime to cover the whole of the UK, including Northern Ireland.

CONSULTATION

16. We have consulted Northern Ireland views on this proposal. They are not presently minded to object to it.

FINANCIAL IMPLICATIONS

17. This does not directly require any expenditure to implement.



**THE RT HON LORD BENYON
PARLIAMENTARY UNDER SECRETARY OF STATE (MINISTER FOR RURAL
AFFAIRS AND BIOSECURITY)
DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS**

ANNEX A

PARLIAMENTARY SCRUTINY HISTORY RELEVANT TO A:

COMMUNICATION FROM THE COMMISSION APPROVAL OF THE CONTENT OF A DRAFT COMMISSION REGULATION AMENDING THE ANNEXES TO REGULATION (EU) NO 1408/2013 AS REGARDS THEIR ADAPTATION TO REFLECT THE PROVISIONS OF THE AGREEMENT ON THE WITHDRAWAL OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FROM THE EUROPEAN UNION AND THE EUROPEAN ATOMIC ENERGY COMMUNITY AND ITS PROTOCOL ON IRELAND/NORTHERN IRELAND

C(22)5336; A COMMISSION REGULATION (EU) OF 23.7.2021 AMENDING REGULATION (EU) NO 651/2014 DECLARING CERTAIN CATEGORIES OF AID COMPATIBLE WITH THE INTERNAL MARKET IN APPLICATION OF ARTICLES 107 AND 108 OF THE TREATY

BEIS EM DATED 17/08/2021

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
COMPLETED SCRUTINY WITHOUT A SUBSTANTIVE REPORT TO THE HOUSE ON 22/09/2021 (REPORT 8, 21/22)	THE EM HAS BEEN RETAINED UNDER SCRUTINY BY THE LORDS EAC SUB-COMMITTEE ON THE PROTOCOL ON IRELAND/NORTHERN IRELAND