EXPLANATORY MEMORANDUM TO

THE AGRICULTURE (REMOVAL OF CROSS-COMPLIANCE AND MISCELLANEOUS REVOCATIONS AND AMENDMENTS, ETC.) (ENGLAND) REGULATIONS 2023

2023 No. 816

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 His Majesty.

2. Purpose of the instrument

2.1 This instrument will remove cross compliance requirements for recipients of payments under Defra's rural development schemes, primarily, Countryside Stewardship, Environmental Stewardship and the Farm Woodland element of the English Woodland Grant Scheme.

2.2 This instrument also makes minor changes to other domestic and retained EU legislation introducing further discretion when administering Defra's financial assistance schemes.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

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 At 11pm on 31 December 2020 the European Union (Withdrawal) Act 2018 incorporated direct EU legislation as it stood at the time into domestic law (which became known as "retained" direct EU law).

6.2 That included legislation relating to the financing, management and monitoring of payments and schemes set up under the Common Agricultural Policy (CAP) (known as "Horizontal Legislation")([1]).

6.3 This instrument amends, and revokes provisions within, several pieces of retained Horizontal Legislation as they apply in England.

6.4 In addition, it makes revocations, again in relation to England, to provisions within domestic legislation enacted in the UK to implement horizontal EU law.

6.5 The purpose of these amendments and revocations is to remove cross compliance requirements for recipients of the farm payments to which they still apply. The amendments also add further flexibility into the requirements for administering financial assistance schemes formerly under the CAP.

Since there have been previous amendments to Horizontal Legislation, this instrument also revokes, in England, amending provisions which it will make obsolete through its changes.

This instrument comes into force at the same time it is intended a separate statutory instrument will revoke most Horizontal Legislation insofar as it relates to direct payments. This means that the amendments and revocations in this instrument will apply to the remaining applications of the Horizontal Legislation (i.e. in respect of Common Market Organisation and rural development support measures). However this is not the case in relation to Part 4 (late claims), which is made specific to rural development to match corresponding changes which have already been made([2]).

7. Policy background

What is being done and why?

7.1 Cross compliance sets minimum requirements that recipients of the CAP schemes (Basic Payment Scheme (BPS), Countryside Stewardship and Environmental Stewardship and the Farm Woodland element of the English Woodland Grant Scheme) must meet. Through cross compliance, agreement holders under these schemes must meet certain standards for the environment, public, animal and plant health and animal welfare. Nearly all cross compliance requirements mirror existing domestic legislative requirements.

7.2 The Rural Payments Agency's (RPA) administration of cross compliance includes inspections, guidance and financial deductions from payments for non-compliance with requirements.

7.3 There has been a public commitment to end cross compliance across all CAP schemes and it is set to end from 1 January 2024. To do so we need to remove or amend regulations in two areas: namely Direct Payments and Rural Development.

7.4 Direct Payments have been the main income-support schemes for farmers under the CAP, which in England are currently made through the Basic Payment Scheme. In 2018 the Government announced how it intended to phase out Direct Payments in its

([1]) Horizontal CAP legislation insofar as it related to direct payments (and legislation solely related to direct payments) had already been retained by the Direct Payments to Farmers (Legislative Continuity Act 2020 (c. 2). This was because Article 137 of the Withdrawal Agreement did not allow for it to continue to have effect in the UK beyond exit day and into the implementation period.

[2] Regulation 9(3) of The Rural Development (Amendment) (England) Regulations 2022 has already made some changes to Article 13 of Commission Delegated Regulation (EU) No 640/2014.

"Health and Harmony: the future for food, farming and the environment in a Green Brexit - policy statement": https://www.gov.uk/government/publications/the-future-for-food-farming-and-the-environment-policy-statement-2018/health-and-harmony-the-future-for-food-farming-and-the-environment-in-a-green-brexit-policy-statement. This included setting out the Government's intention to replace BPS in England with delinked payments, which would simultaneously remove the cross compliance rules in relation to BPS. The replacement of BPS is not a part of this instrument, the Government intends to produce a separate statutory instrument later this year to make those changes.

7.5 Defra's rural development schemes provide payments to farmers and land managers under the CAP and is primarily made up of Countryside Stewardship, Environmental Stewardship and the Farm Woodland element of the English Woodland Grant Scheme.

7.6 Once cross compliance ends, the responsibility to ensure compliance with all other regulations that protect the environment, animal health and welfare and plant health will continue with existing regulators within their current legal remits. Defra has committed to a better targeted and more proportionate approach to the enforcement of farm regulation.

7.7 This instrument removes cross compliance from all farm payments which would be subject to it under the rural development schemes. It retains the ability to recover, by way of financial deductions, payments for non-compliance with requirements, outlined in paragraphs 7.1 and 7.2, for any breaches made prior to its removal. It also retains the appeals process for cases when such deductions are disputed.

7.8 This instrument amends the requirements for data to be published on beneficiaries of rural payments below EUR 1250, to give the relevant authority discretion over whether to publish that data.

7.9 This instrument amends the requirements for a financial reduction to be imposed against rural payments for late submission of payment claims. It gives the relevant authority discretion over whether to impose that reduction.

7.10 This instrument removes the legislative deadline by which beneficiaries of rural payments must inform the relevant authority of their intention to amend their payment claim.

7.11 This instrument amends the scrutiny requirements for commercial documents under the system of financing of Common Market Organisation support, introducing further flexibility for the relevant authority.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

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

10. Consultation outcome

10.1 Defra's 2018 Health and Harmony Consultation sought views on replacing cross compliance with a new, better targeted and proportionate mechanism to enforce the

regulatory baseline. This received mixed responses, with some respondents in favour of retaining cross compliance during the transition, whereas others suggesting that cross compliance should no longer be a requirement to receive payments.

10.2 The changes to the cross compliance regime have also been discussed with stakeholders at the Rural Payment Agency's monthly Agri-Environment Stakeholder Working Group and bi-monthly Industry Partnership Group whose members include the National Farmers Union, Country Land and Business Association, Royal Society for the Protection of Birds, National Parks, Wildlife Trusts, Wildfowl and Wetlands Trust, Tenant Farmers Association and the National Trust. The discussions were conducted informally as part of the stakeholder forum and a similar mix of responses and blend of support/reservations was received as to the original Health and Harmony Consultation.

11. Guidance

11.1 The 2023 cross compliance guidance has made farmers and land managers aware that cross compliance will be removed from 2024. Amendments will be made to associated guidance (manuals, handbooks) and the associated online guidance will be updated to reflect the removal of cross compliance and set out any replacement arrangements that will be required.

11.2 Existing agreement holders will also be contacted to inform them of the change.

12. Impact

12.1 There is no, or no significant, impact on business, charities, or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because it does not introduce any additional regulatory burden. This instrument relates to the giving of grants or other financial assistance by or on behalf of a public authority.

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 businesses is that no significant impact on regulatory burden for small businesses is foreseen. This instrument will only affect small businesses which have voluntarily entered into agricultural grant schemes originating from the common agricultural policy and the value of their grant agreement will not decrease because of this instrument, it will either increase or stay the same.

14. Monitoring & review

14.1 Defra and its agencies will monitor and review the impact of these instruments as part of its standard policy-making procedures.

15. Contact

15.1 Simon Wild at the Department for Environment, Food and Rural Affairs Telephone: 07799 656675 or email: simon.wild@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Fiona James, Deputy Director for Policy Design in the Farming and Countryside Programme at Defra can confirm that this Explanatory Memorandum meets the required standard.

15.3 Mark Spencer, MP, Minister for Farming, Fisheries and Food at Defra can confirm that this Explanatory Memorandum meets the required standard.