EXPLANATORY MEMORANDUM TO

THE FAIR DEALING OBLIGATIONS (PIGS) REGULATIONS 2025

2025 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 Command of His Majesty.

2. Declaration

2.1 Daniel Zeichner MP, Minister for Food Security and Rural Affairs at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

2.2 Sarah Evered, Deputy Director for Innovation, Productivity and Science, at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Andrew Powley at the Department for Environment, Food and Rural Affairs can be contacted at andrew.powley@defra.gov.uk with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 These regulations impose obligations on business purchasers in relation to the contracts they make for the purchase of pigs, to improve fairness and transparency in the UK pig sector. They also make an amendment to regulation 9 (tiered pricing) in the Fair Dealing Obligations (Milk) Regulations 2024 (the "Milk Regulations"), which now appears in its amended form as regulation 27 in the Fair Dealings Obligations (Pigs) Regulations 2025

4.2 The need for intervention within the pig sector was highlighted in the response to a public consultation regarding the need for legislation in the sector, held in 2022. This demonstrated cross-industry desire for regulations to introduce a minimum contractual standard in the market.

Where does the legislation extend to, and apply?

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

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales, Scotland and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 Primary agricultural producers in the UK tend to be small, individual businesses operating independently. By contrast, operators further up the supply chain – with whom farmers do business – tend to be highly consolidated businesses that can command substantial shares of the relevant market.

5.2 This disparity makes primary producers vulnerable to unfair trading practices and can lead to contracts which impose commercially harmful terms and provide little legal protection

5.3 Poor contractual relations, and unfair or unclear terms and conditions between producers and processors, can limit the ability of farmers to budget effectively, manage price volatility, invest and innovate, and run profitable businesses. Ultimately, this could reduce choice, value and/or increase prices for consumers. In the context of broader changes to UK agriculture it is important farmers receive a fair return from the marketplace and the objective of these regulations is to require fair contractual dealing and promote transparency in contracts for the purchase of pigs.

5.4 Regulations exist elsewhere to address the problems which can arise from imbalanced commercial relationships. In 2013, the Groceries Code Adjudicator ("GCA") was appointed to oversee the relationships between the largest UK retailers and their direct suppliers. It is widely recognised that the GCA has improved the relationship between large grocery retailers and their direct suppliers.

5.5 However, most farmers do not supply supermarkets directly and so they are not covered by the GCA. In response to concerns raised from primary producers, the Government ran a Call for Evidence at the end of 2016 to explore the case to extend the GCA's remit. The Government's response to the Call for Evidence concluded that there was not sufficient evidence to justify extending its remit to cover the whole supply chain. The Government therefore made a range of commitments to address the specific issues which were raised by primary producers in the Call for Evidence. These included introducing mandatory written contracts and exploring the benefits of statutory codes of conduct. Powers were subsequently provided by the Agriculture Act 2020 (section 29) to achieve this.

5.6 The Milk Regulations were made in 2024 under section 29 to improve fairness and transparency in the UK dairy sector and the intention is to develop subsequent regulations to cover other agricultural sectors where there are issues regarding business relationships. As the issues faced by different farming sectors vary considerably, this tailored sector-specific approach is considered the most appropriate way to address those variations.

5.7 These Pig Regulations, made under section 29, impose new obligations on businesses purchasing pigs. They require that all contracts be in writing and include all relevant terms related to the purchase of pigs.

5.8 When a written contract is used, it must clearly outline the pricing terms, explaining how the price is determined. Additionally, the regulations introduce transparency provisions, granting producers the right to request a written explanation of price determination when the price is not primarily (i.e., more than 97.5%) based on factors that are quantifiable and freely accessible to both parties.

5.9 For those agreeing a written contract, the regulations provide a number of other provisions, including prohibitions on unilateral changes to contract terms, mandating

the inclusion of clear force majeure terms and requiring dispute resolution mechanisms to be established in pig purchase contracts.

5.10 The regulations also introduce requirements around termination clauses in contracts which must be incorporated into pig purchase contracts. Flexibility on mandatory notice periods is afforded where the parties mutually agree to end the contract at a different time or where the other party is in material breach of contract. A 'material breach' of contract is a breach which is more than just trivial but is not necessarily always so serious as to give rise to the common law right to terminate for a repudiatory breach of contract. It would ultimately however be for a court to decide in the particular circumstances of each case whether a breach should be considered 'material'.

5.11 There is an opt-out provision, allowing a producer to provide a notice to disapply the regulations and exempt sales of pigs from the requirements in the regulations. This is in order to continue to allow the popular practice of farmers selling on the 'spot market' within the sector. The 'spot market' involves pigs being reared and traded off-contract, at market rates, and serves as a useful supply balancing mechanism that ensures a healthy marketplace.

5.12 For new contracts, the regulations will come into force on the day after the expiry of 12 weeks beginning with the day on which the regulations are made (the "Commencement Date"). For pre-existing contracts that were made before the regulations come into force, there is a twelve-month transition period before the requirements contained in the regulations apply. This is to ensure that businesses have sufficient time to bring existing contracts into compliance with the regulations.

5.13 The regulations designate the Secretary of State as the person responsible for enforcement of the obligations placed on business purchasers. Under these regulations, the Secretary of State has the power to fine business purchasers up to 1% of their turnover in the UK if they are found to be non-compliant with the regulations. The Secretary of State is also able to order that business purchasers pay compensation to producers where they are in breach of the regulations. Under the regulations, parties are able to appeal decisions taken by the Secretary of State to the First Tier Tribunal (General Regulatory Chamber).

5.14 As well as provisions for the pig sector, these regulations make an amendment to regulation 9 of the Milk Regulations, which relates to tiered pricing. Regulation 9 of the Milk Regulations prohibited exclusive milk purchase contracts from including any provision that provides that the price to be paid for milk under the contract changes if the amount of milk provided by the producer exceeds a certain volume ("tiered pricing"). However, this unintentionally prohibited some pricing practices used within the sector that are unproblematic in businesses with a shared ownership structure. As a result, the amendment contained in regulation 27 now allows exclusive milk purchase contracts made by such a business to include tiered pricing provisions when purchasing from a producer member. This is subject to certain conditions and requirements to ensure fairness and transparency, by mandating that the contract sets out the amount by which the price is to change and specifies the volume of milk above which the change in price is to apply.

6. Legislative and Legal Context

How has the law changed?

6.1 This Statutory Instrument is the second to be made using powers in section 29 of the Agriculture Act 2020 (the "Act"). Section 29(1)(a) enables the Secretary of State to impose obligations on business purchasers of agricultural products in relation to contracts they make for the purchase of agricultural products from qualifying sellers. These powers are exercisable for the purpose of promoting fair contractual dealing by business purchasers of agricultural products from qualifying sellers.

6.2 These regulations apply where the agricultural product being purchased is pigs.

6.3 Section 29(1)(b) of the Act enables the Secretary of State to make regulations providing for the enforcement of obligations imposed under section 29(1)(a). Section 29(9) provides that the powers under subsection (1)(b) include power to confer functions on any person. These regulations confer enforcement functions on the Secretary of State in order to ensure compliance with the regulations made under section 29. The Agricultural Supply Chain Adjudicator (ASCA) has been established within the Department of Environment, Food and Rural Affairs. This office will exercise the Secretary of State's enforcement functions for dairy, pigs, and any future sector specific regulations that are developed.

6.4 Section 29(3)(a) of the Act defines a 'business purchaser' and Section 29(3)(b) defines a 'qualifying seller'. We have adopted these definitions in these regulations.

7. Consultation

Summary of consultation outcome and methodology

7.1 Between July and October 2022, the Department for Environment Food and Rural Affairs, with input from the Devolved Administrations, conducted a public consultation exploring contractual relationships in the UK pig sector.

7.2 A summary of responses was published in April 2023, which outlined the 374 responses to the consultation. There was significant demand for legislation; 89% of respondents agreed that there should be a mandate for written contracts. 64% of respondents stated their sale agreements were not always honoured, with references to a range of issues including the failure of processors to honour the contracted numbers of pigs to be purchased and difficulties with pre-agreed prices being honoured. Responses frequently highlighted that the imbalance in the supply chain led to risks unfairly being placed upon the producer and not being shared appropriately.

7.3 Reflecting that a sector specific approach will lead to the most appropriate outcomes for each industry, the consultation reflected that the pig sector was less clear about the contents of any potential standardised mandatory agreements. A flexible, light-touch, approach to take account of varied business relationships was frequently recommended.

7.4 The consultation Summary of Responses can be found on GOV.UK.[1]

[1] https://www.gov.uk/government/consultations/contractual-practice-in-the-uk-pig-sector/outcome/summary-of-responses-and-uk-government-response

8. Applicable Guidance

8.1 Regulation 22 requires the Secretary of State to publish guidance relating to the imposition on a business purchaser of a monetary penalty or a requirement to pay compensation. The Secretary of State must have regard to this guidance when making decisions relating to the imposition of monetary penalties or the ordering of compensation to be paid by the business purchaser to the producer. This guidance will be published prior to the date these regulations enter into force.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because it was projected that the cost to business would fall below the required threshold for this assessment. A more general assessment, the De Minimis Assessment (DMA), is available from the Department for Environment, Food and Rural Affairs, 2 Marsham Street, London, SW1P 4DF.

Impact on businesses, charities and voluntary bodies

9.2 The impact on business, charities or voluntary bodies is limited. This will primarily arise from small and medium sized businesses needing to meet the costs of reissuing compliant contracts and familiarising themselves with the regulations.

9.3 The legislation does impact small or micro businesses.

9.4 No specific action is proposed to minimise the regulatory burden on small businesses, as only a fraction of the additional costs (related to familiarisation) is expected to fall upon them. Most of the costs related to these regulations will fall upon larger processing businesses which small farming businesses supply.

9.5 There is no significant impact on the public sector as these regulations apply to the contracts signed between business purchasers and qualifying sellers. There is a limited impact in terms of the costs of enforcement, which is provided by the Agricultural Supply Chain Adjudicator (ASCA). However, the number of individuals expected to make a formal complaint to the ASCA is low, the office is already constituted and currently has sufficient resources for its current workload.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is established in regulation 26, which states a review of the regulations will be undertaken within five years of the legislation coming into force. Subsequent reviews must be carried out from time to time, at intervals no greater than every five years.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 Daniel Zeichner MP, the Minister for Food Security and Rural Affairs at the Department for Environment, Food and Rural Affairs has made the following statement regarding Human Rights:

"In my view the provisions of the Fair Dealing Obligations (Pigs) Regulations (2025) are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").