EXPLANATORY MEMORANDUM TO

THE RURAL DEVELOPMENT (AMENDMENT) (ENGLAND) REGULATIONS 2022

2022 No. 765

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 Her Majesty.

2. Purpose of the instrument

2.1 The instrument modifies retained EU regulations that enable the continued delivery of multi annual agri-environment and forestry schemes under the Rural Development Programme for England (RDPE). The instrument makes changes to inspection procedures, the application of penalties and recoveries, scheme administration and other matters to align more closely with equivalent 'domestic' schemes that have been established under the Environment Act 1995 (EA 1995) and the Agriculture Act 2020 (AA 2020) since we left the EU. The benefits provided by the instrument include a simpler and more efficient administration process and a smoother transition for existing agreement holders who wish to take advantage of the opportunities offered by future domestic 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 territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

5.1 The Minister of State for Farming, Food, and Fisheries, Victoria Prentis MP has made the following statement regarding Human Rights:

"In my view the provisions of the Rural Development (Amendment) (England) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 As part of the United Kingdom's (UK) exit from the European Union (EU), at 11pm on 31 December 2020 the European Union (Withdrawal) Act 2018 incorporated EU legislation as it stood at that time into UK domestic law. However, this did not apply to Defra's delivery of multi annual RDPE due to Article 138(1) of the Withdrawal Agreement (WA). This provided that 'Union programmes and activities committed under the MFF [Multiannual Financial Framework] 2014-2020 or previous financial perspectives' were to be subject to 'applicable Union law...after 31 December 2020 until the closure of those Union programmes and activities'. This had the effect of

applying ongoing EU law (as it applied to the remaining Member States) to multi annual agri-environment and forestry schemes under the RDPE.

6.2 However, the EU has now confirmed that once the UK is no longer spending EU funds in relation to RDPE activities (as the EU budget for the 2014-2020 RDPE has been exhausted) and has switched to using domestic funds instead, those activities are no longer considered subject to Article 138(1) of the WA. The EU has further confirmed that in such circumstances the UK may diverge from applicable Union law.

6.3 An additional complication is that section 3(2)(a)(bi) of the European Union (Withdrawal) Act 2018 (EUWA) prevents legislation caught under the WA from becoming incorporated retained EU law. Ordinarily, therefore, it would not be possible to make changes to the legislative framework governing the RDPE. However, section 18 of the AA 2020 enables such legislation to become retained EU law notwithstanding the effect of s3(2)(a)(bi) of EUWA.

6.4 This instrument is therefore being made on the basis that Article 138(1) of the WA does not apply to the RDPE in relation to activities that are being domestically funded. Furthermore, it is possible to modify retained EU law relating to the RDPE notwithstanding the effect of s3(2)(a)(bi) of EUWA given specific provision has been made for this under section 18 of the AA 2020.

6.5 The rules regarding the operation and management of RDPE schemes were originally established pursuant to Regulations 1698/2005 and 1305/2013 of the European Parliament and of the Council. This instrument now makes changes to the incorporated EU legislation for the operation and management of these schemes once such agreements are being domestically funded from 1st January 2023.

6.6 Other than in relation to Regulations 9(2) and 9(4), changes made by this instrument are to the EU regulations as incorporated into domestic law by virtue of section 3 of EUWA, and not to any version of the EU regulations subsequently amended by domestic secondary legislation (for example to versions which relate to direct payments, such as by virtue of The Common Agricultural Policy (Financing, Management and Monitoring Supplementary Provisions) (Miscellaneous Amendments) (EU Exit) Regulations 2019).

6.7 Regulations 9(2) and 9(4) make changes to the versions of the EU Regulations as amended by Regulation 6 of The Common Agricultural Policy (Financing, Management and Monitoring Supplementary Provisions) (Miscellaneous Amendments) (EU Exit) Regulations 2019 (as amended by The Agriculture (Payments) (Amendment, etc.) (EU Exit) Regulations 2020), but only insofar as they relate to rural development support measures.

6.8 The changes made by this instrument are made using the powers in 14(1), 14(2), 16(3) and 16(4) of the AA 2020. These sections provide the Secretary of State with powers to change the law governing the RDPE.

7. Policy background

What is being done and why?

7.1 This instrument modifies retained EU law for those RDPE schemes that originated under EU regulations, aligning the regulations more closely to equivalent schemes established under the EA 1995 or AA 2020. The instrument will enable Defra to align agreements made under the EU regulations with their equivalent domestic

counterparts. The benefits of this approach are simpler and more efficient administration and a smoother transition for agreement holders to take up the opportunities of our future domestic schemes (for example under the Local Nature Recovery scheme).

Explanations

What did any law do before the changes to be made by this instrument?

7.2 The EU regulations being amended, as outlined in paragraph 6.5 above, described;

i. agreement lengths

ii. how land transferred to another person during the agreement period allows for the other person to take over the commitment for the remainder of the period or if the commitment is not taken over, how reimbursement of assistance granted should be made

iii. the number and type of checks required in each calendar year and how they are carried out

iv. the rules relating to leaving schemes early

v. the rules relating to non-compliance penalties and recoveries

vi. and to the rules relating to notification of *force majeure* and exceptional circumstances.

Why is it being changed?

7.3 After leaving the EU we took the opportunity to develop a domestic version of the main agri-environment scheme under the RDPE commonly known as Countryside Stewardship Scheme. New agreements were made under the EA 1995 and applied to agreements starting 01 January 2021 and 01 January 2022. These agreements are funded using Exchequer funds. The Countryside Stewardship Regulations 2020 (the CS 2020 Regulations) made under the EA 1995 brought in changes to make the scheme simpler to administer and more attractive to customers. These agreements removed the mandatory application of penalties, for example for breaches of agreement or overclaims, and allowed us to apply a certain amount of discretion to them. Instead of a recovery and a penalty on top, we recover any overclaim, so that we are not overpaying the agreement holder. We also signpost advice to rectify the issue. If agreement holders retain the evidence (as we ask them to) that they did everything right (such as bought the right seed mix and sowed at the right time) we will still pay them. The rationale was that penalties do not improve the environmental outcomes of agreements, but they do put people off from applying.

7.4 Agreements have also been made using the AA 2020, a newer Act brought into force after the CS 2020 regulations. The agreements made using the Agriculture Act, and its supporting Agriculture (Financial Assistance) Regulations 2021, are also aligned to those made through the CS 2020 regulations.

7.5 As a result of leaving the EU and Defra using both the CS 2020 Regulations and the AA 2020, we have extant agreements that are delivering similar environmental outcomes, but which are governed by different regulations.

7.6 The Rural Payments Agency and Forestry Commission which administer the agri-environment and woodland schemes on behalf of Defra are required to control and manage the schemes in accordance with detailed rules. There is an administrative burden in having different processes and rules for similar agreements. The aim has always been to harmonise these rules when we are in a position to do so. As explained above, Defra has now received clarification from the EU that those agreements made and funded under the RDPE will not need to follow EU law, once those agreements utilise Exchequer funding. This clarification provides an opportunity to align existing EU funded agreements with newer domestic agreements. This will then simplify the administration of the agreements by having a harmonised approach of controls and processes and will reduce the administrative burden of having multiple approaches to agreement management.

What will it now do?

7.7 The changes to the retained EU regulations made by this instrument will enable Defra to align existing agreement holders with newer domestic funded agreements.

7.8 The instrument allows Defra to provide more flexibility to agreement holders who wish to exit the scheme and take up a future domestic agri-environmental or forestry scheme. The instrument will allow for extension of individual environmental options in agreements if required. These commitments shall be undertaken as a general rule for a period of at least three years so as to secure a minimum term of the environmental benefit. However, a commitment for a shorter period may be possible where this provides additional short term environmental benefits. These flexibilities provide an important capability for Defra and agreement holders during the transition between the previous EU funded schemes and the future schemes being developed whilst maintaining, or improving upon, the delivery of existing environmental outcomes.

7.9 The instrument will permit agreement holders to transfer land or holdings without suffering financial penalty if taking up the new schemes.

7.10 The instrument allows Defra to exert more flexibility in the percentage checks carried out, including ex post, inspections, administrative checks and in our requirements to submit evidence. This flexibility will extend to the notice period given to agreement holders prior to an inspection visit and potentially allow for some inspections to be carried out virtually. These are all designed to both increase the overall uptake of our environmental schemes and reduce the administrative burden related to carrying out and managing an agreement.

7.11 The instrument permits agreement holders a longer period in which to inform the relevant authority of force majeure events should that be required. The instrument also allows Defra increased flexibility with respect to recoveries or withdrawal of support in cases where breaches are discovered and provides for discretion around late claim penalties. The instrument removes the requirement to charge interest and gives us flexibility to apply discretion. The rationale is to decrease the consequences where some part of an agreement's requirements cannot be delivered, and where possible, increase flexibility as to the application of the remedial options available in the event of a breach.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the UK from the EU because the instrument modifies retained EU law which will enable changes to be made to the terms and conditions of agreements entered into under the RDPE. As such, we only have the flexibility to makes the changes in this instrument as a result of leaving the EU.

9. Consolidation

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

10. Consultation outcome

10.1 There is no statutory requirement to consult on this instrument.

10.2 A public consultation: "Health and harmony: the future for food, farming and the environment in a Green Brexit" ran from 27 February 2018 to 8 May 2018. In total 43,356 responses were received, as well as 3 petitions with 127,183 signatures. In addition, 17 regional events and 7 policy roundtables were held, reaching over 1,250 people.

10.3 Countryside Stewardship (CS) provides financial incentives for farmers, woodland owners, foresters and land managers to look after and improve the environment. CS is the umbrella for investments under either agri-environment or forestry related schemes. Participants were asked for their views on ways to improve the current Countryside Stewardship grant scheme and increase its appeal to farmers and land managers. For CS, many respondents believed that making the application process simpler would improve the scheme and increase its appeal to farmers and land managers. Some wanted to see improvements in enforcement, regulation and delivery of payments. A more localised and flexible approach was favoured by several respondents, to allow a greater number of environmental benefits to be met.

10.4 The full consultation summary can be found here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/741461/future-farming-consult-sum-resp.pdf

10.5 In response, Defra published a policy statement on 14 September 2018. This stated that CS would continue to be available during the agricultural transition period and that Defra would look to simplify the application process further.

10.6 Specific proposals have been developed following discussions with a number of interested industry and environmental stakeholders. The scheme has been discussed with the Agri-environment Stakeholder Working Group during 2021, members include the National Farmers Union, Country Land and Business Association, Royal Society for the Protection of Birds, National Park Authorities, Farming and Wildlife Advisory Group, Tenant Farmers Association, National Trust and the English Organic Forum. The Working Group support the proposals, recognising the benefits they represent to those agreement holders affected by the instrument.

10.7 The changes made by this instrument take account of responses to the 2018 public consultation and Defra's subsequent stakeholder engagement around CS schemes.

11. Guidance

11.1 Once this instrument is laid, Defra will write to agreement holders affected by the instrument later in the Autumn of 2022, to notify them of the changes to their terms and conditions.

11.2 Guidance will also be published on gov.uk and will be made available as hard copies on request.

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 An Impact Assessment has not been prepared for this instrument because no, or no significant impact, on the private or voluntary sectors is foreseen. This instrument does not introduce new obligations on farmers and will seek to reduce regulatory burdens.

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 the amendments introduced by this instrument should not negatively impact businesses, irrespective of their size. This instrument introduces positive changes to terms and conditions that have received stakeholder support on consultation (see paragraph 10.1 – 10.7) and should inherently assist small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that the grant schemes it covers will be subject to external monitoring and evaluation to check that the intended environmental outcomes are being delivered. Defra and its agencies will monitor and review the impact of this instrument as part of its standard policy-making procedures.

15. Contact

15.1 Mary Colvill at the Department for Environment, Food and Rural Affairs, email: mary.colvill@defra.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Deborah Wells and Fiona James, Deputy Director for Policy Development Existing Schemes, at the Department for Environments Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Victoria Prentis MP, Minister of State for Farming, Fisheries and Food at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.