EXPLANATORY MEMORANDUM TO

THE RURAL DEVELOPMENT AND FARMING ADVICE SERVICE (AMENDMENT) (ENGLAND) REGULATIONS 2024

2024 No. 1221

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. Declaration

2.1 Daniel Zeichner MP, Minister of State (Minister for Food Security and Rural Affairs) at Defra, confirms that this Explanatory Memorandum meets the required standard.

2.2 David Cooper, Deputy Director for the policy design at Defra, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Simon Wild at Defra (telephone: 07799 656675 or email: simon.wild@defra.gov.uk) can be contacted 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 This instrument makes amendments to various rules regarding the operation and management of EU legacy rural development schemes to align them more closely with equivalent schemes established under the Agriculture Act 2020. They also remove requirements that are no longer necessary following the removal of cross-compliance rules which came to an end on 31st December 2023.

Where does the legislation extend to, and apply?

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

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

5. Policy Context

What is being done and why?

5.1 There is currently a legal requirement for government to provide an independent farm advisory system. This system was required to deliver advice on cross-compliance rules until cross-compliance came to an end on 31st December 2023. After this time, there remains a requirement to deliver advice relating to some assimilated EU legislation relating to farming – the Water Framework Directive and the Sustainable Use of Pesticides Directive. This instrument removes the requirement to provide

advice on these specific pieces of legislation, allowing the service to flexibly deliver the appropriate advice.

5.2 There will still be a legal requirement to provide an independent farm advisory system, but it will have greater flexibility to meet a full range of farmer needs. The service will continue to give advice on legislation, including assimilated EU and domestic regulations, such as the Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018 (also known as the Farming Rules for Water), and will also advise on schemes and grants, such as the Sustainable Farming Incentive.

5.3 In person advice is still provided on farming, water quality and pesticide use through Catchment Sensitive Farming Officers, Natural England advisors, Environment Agency advisors and through the Farming Advice Service. This instrument is not associated with any reduction in advice provision.

5.4 This instrument removes requirements relating to the competent control authority as this authority is obsolete following the removal of cross-compliance rules.

5.5 This instrument also amends the currency of a maximum threshold amount from € (Euros) to £ (Sterling). The Rural Payments Agency may decide not to pursue recovery in relation to an amount that does not exceed this threshold. Amending the currency provides consistency across existing and new agreements.

5.6 This instrument also amends rules to allow for quarterly payments to be made to agreement holders, where this was previously restricted to two payments per year. Newer schemes use a quarterly payment regime which is intended to spread payments over a financial year.

5.7 Finally, this instrument amends a rule relating to payment claims, which previously required payment claims to be submitted by the 15th May each year. This rule has been amended to give agreement holders greater flexibility in submitting annual claim declarations. This requirement can now be set to before the 31st December each year and will be rolled out to existing agreement holders subject to amending associated in-house processes.

What was the previous policy, how is this different?

5.8 Assimilated law set different requirements (see below). These are updated to reflect newer domestic policy or are deleted as they were obsolete.

5.9 Countryside Stewardship agreements were first offered through the Rural Development Programme for England (RDPE) in 2015, part of the EU's Common Agricultural Policy. Following EU exit, a domestic Countryside Stewardship scheme was launched under the Environment Act 1995. The introduction of the Agriculture Act 2020 allowed us to offer Countryside Stewardship agreements under this legislation. The first agreements went live in 2021, with the first application window opening in the previous February 2020. All provide funding for farmers, woodland owners and land managers to make environmental improvements through activities such as: conserving and restoring wildlife habitats; managing flood risk; creating and managing woodland; reducing water pollution; and encouraging educational access by hosting school visits.

5.10 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 able to do so.

5.11 Countryside Stewardship revenue agreements last for 5, 10 or, in some circumstances, 20 years. Agreement holders receive a set annual payment each year, providing they carry out all the land management activities specified in their agreement. All live agreements became domestically funded from 1 January 2023, when all EU legacy agreements were aligned with agreements made directly under the Agriculture Act 2020. The legislation that implemented these amendments is the Rural Development (England) (Amendment) Regulations 2022, which came into force on 28 July 2022, and the Rural Development (Amendment) (No. 2) (England) Regulations 2022, which came into force on 15 December 2022.

5.12 Further amendments are now being made to align these rural development schemes with equivalent schemes made under the Agriculture Act 2020. This instrument is required to remove the legislative requirements under certain regulations as a preparatory step that allows us to harmonise the rules of similar schemes in the future.

6. Legislative and Legal Context

How has the law changed?

6.1 The rules regarding the operation and management of RDPE schemes were originally established pursuant to: (a) Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF); (b) Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD); and (c) Regulation (EU) No 1305/2013 of 17 December 2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD).

6.2 As part of the United Kingdom's exit from the European Union at 11pm on 31 December 2020, the European Union (Withdrawal) Act 2018 (EUWA) 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 schemes due to Article 138(1) of the Withdrawal Agreement (WA). This had the effect of applying ongoing EU law (as it applied to the remaining Member States) to those schemes.

6.3 However, the EU 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 further confirmed that in such circumstances the UK may diverge from applicable EU law.

6.4 An additional complication was that section 3(2)(a)(bi) of EUWA prevents legislation caught under the WA from becoming incorporated retained EU law. However, section 18 of the Agriculture Act 2020 enables such legislation to become retained EU law notwithstanding the effect of s3(2)(a)(bi) of EUWA.

6.5 As a result, the Rural Development (England) (Amendment) Regulations 2022 and the Rural Development (Amendment) (No.2) (England) Regulations 2022 were able to amend retained EU law for the operation and management of RDPE schemes once such agreements were domestically funded from 1 January 2023.

6.6 The Retained EU Law (Revocation and Reform) Act 2023, which received Royal Assent on 29 June 2023, assimilated all retained EU law remaining on the statute book by the end of 2023.

6.7 The changes made by this instrument are made using the powers in sections 14(1)(a) and (b), (2)(a) to (c) and 50(3)(a) and (d) of the Agriculture Act 2020. These sections provide the Secretary of State with powers to modify assimilated legislation relating to the financing, management and monitoring of the Common Agricultural Policy and to make supplementary, incidental, consequential, transitional, transitory or saving provision.

Why was this approach taken to change the law?

6.8 The Agriculture Act 2020 specifically grants the Secretary of State powers to modify assimilated legislation relating to the financing, management and monitoring of the Common Agricultural Policy. It allows changes to be made for the following purposes, amongst others: (a) securing that any provision of such legislation ceases to have effect; (b) simplifying the operation of any provision of such legislation, or making its operation more efficient or effective; and (c) removing or reducing burdens, or the overall burdens, imposed by such legislation on persons applying for, or in receipt of, payments governed by the legislation, or otherwise improving the way that the legislation operates in relation to such persons.

7. Consultation

Summary of consultation outcome and methodology

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

7.2 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.

7.3 Participants were asked for their views on ways to improve the current Countryside Stewardship (CS) 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.

7.4 The full consultation summary can be found here: https://assets.publishing.service.gov.uk/media/5ba0f42ae5274a55cbea6aaa/future-farming-consult-sum-resp.pdf

7.5 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.

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

8. Applicable Guidance

8.1 These changes are intended to provide greater flexibility in the future. Where guidance is specific on any of these amendments it will be updated and those agreement holders who are affected will be updated.

8.2 Defra has, and continues to, publish guidance for CS schemes[1].

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. This instrument does not introduce new obligations on farmers and will seek to reduce regulatory burdens.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on businesses, charities or voluntary bodies because this instrument does not introduce new obligations on farmers and will seek to reduce regulatory burdens.

9.3 The legislation applies to activities that are undertaken by small businesses. No specific action is proposed to minimise regulatory burdens on small businesses. 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 7) and should inherently assist small businesses.

9.4 There is no, or no significant, impact on the public sector because these amendments are technical in nature and seek to bring alignment in governing legislation.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 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 continue to be delivered. Defra and its agencies will monitor and review the impact of this instrument as part of its standard policy-making procedures.

[1] Countryside Stewardship: get funding to protect and improve the land you manage - GOV.UK (www.gov.uk) - https://www.gov.uk/guidance/countryside-stewardship-get-funding-to-protect-and-improve-the-land-you-manage

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, Minister of State (Minister for Food Security and Rural Affairs) at Defra, has made the following statement regarding Human Rights:

"In my view the provisions of the Rural Development and Farming Advice Service (Amendment) (England) Regulations 2024 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"). It does however relate to the withdrawal of the United Kingdom from the European Union because it amends assimilated EU regulations to align them with domestic law and current policy and deletes provisions that have become obsolete due to changes in policy following EU exit.