EXPLANATORY MEMORANDUM TO

THE RURAL DEVELOPMENT (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. 764

AND

THE RURAL DEVELOPMENT (RULES AND DECISIONS) (AMENDMENT)(EU EXIT) REGULATIONS 2019

2019 No. 770

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.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These instruments amend the retained EU law governing financial support for rural development which is currently provided both from the European Agricultural Fund for Rural Development (EAFRD) and the Exchequer on the basis of rural development programmes running for the duration of the 2014-2020 Multiannual Financial Framework (MFF). The amendments will allow the rural development programmes to continue to operate in the UK after EU exit for the remainder of the 2014 to 2020 programming period.

Explanations

What did any relevant EU law do before EU exit day?

2.2 Regulations (EU) No 1305/2013 and (EU) No 1310/2013 and the delegated and implementing acts made under them set out the rules governing programmes approved during the current MFF. A number of legacy regulations govern programmes approved during previous MFFs.

2.3 In the UK, each devolved administration has its own programme. European and Exchequer funding is used to support activities provided for in the programmes. Funding can go to activities such as improving the environment, increasing the productivity of farming and forestry and growing the rural economy.

Why is it being changed?

2.4 After EU exit, without amendment, certain provisions within the retained EU regulations referenced in section 6, will be inoperable. Amendments to the EU regulation are therefore required to correct deficiencies, ensuring that payments can continue to be made to beneficiaries post-EU exit using domestic funding.

Amendments are also required to arrangements for managing the programmes after EU exit.

What will it now do?

2.5 These instruments will ensure that the retained EU regulations governing rural development will continue to operate after EU exit.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 These instruments were presented to the Sifting Committees on 29 November 2018. Both committees provided their responses on 13 December 2018 and recommended that these instruments should be debated by Parliament.

3.2 The Commons Sifting Committee made this recommendation because it believes that the amendments have significant financial implications and are of particular importance to rural communities. It considers that the additional safeguard of affirmative resolution is appropriate, on the grounds that these statutory instruments are of political importance. The Lords Sifting Committee made this recommendation to allow the House an opportunity to press the Minister for a fuller explanation of their purpose and effect.

3.3 George Eustice MP, the then Minister of State for Agriculture, Fisheries and Food, agreed for these instruments to be made subject to the affirmative procedure.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.4 The territorial application of this instrument includes Scotland and Northern Ireland.

3.5 This instrument applies to all of the United Kingdom.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 The Minister of State for Agriculture, Fisheries and Food, Robert Goodwill MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Rural Development (Amendment) (EU Exit) Regulations 2019 and the Rural Development (Rules and Decisions) (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The legislative context for this instrument is set out at paragraph 2.2 and Annex 2 of this explanatory memorandum. As a result of EU exit, corrections are required to existing EU legislation governing rural development programmes to ensure it can continue to operate effectively.

6.2 Powers in Regulation (EU) No 1305/2013 allowing the Commission to make secondary legislation are being transferred or omitted in a related instrument, the Agriculture (Transfer of Functions) (EU Exit) (Regulations) 2019, insofar as they apply to EAFRD.

6.3 Additional regulations which govern the EAFRD are also being amended in two other separate instruments: the European Structural and Investment Funds Common Provisions (Amendments) (EU Exit) Regulations 2019 and the European Structural and Investment Funds Common Provisions Rules Etc (Amendment Etc) (EU Exit) Regulations 2019.

6.4 These instruments also relate to another instrument, Regulation (EU) No 1303/2013 of the European Parliament and the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006.

6.5 These Funds all operate under a common framework as the European Structural and Investment Funds ("ESI Funds"), for the 2014 to 2020 programming period.

7. Policy background

What is being done and why?

7.1 The effect of these instruments is limited to allowing Regulation (EU) 1305/2013 and Regulation (EU) 1310/2013, the delegated and implementing regulations made under them together with the legacy regulations, to operate effectively on the UK's exit from the EU. This is being done to enable existing programmes to continue to operate.

7.2 EAFRD and Exchequer money currently funds four rural development programmes in the UK: the Rural Development Programme for England, the Rural Development Programme for Scotland, the Rural Development Programme for Wales and the Rural Development Programme for Northern Ireland. Each programme has a managing authority who decides which projects are supported within these programmes. Each programme can provide funding for agriculture, the environment and rural life with the aim of improving the environment, growing the rural economy and increasing the productivity of forestry and farming

7.3 These instruments remove the following provisions:

- The requirement to comply with EU law;
- Articles requiring rural development programmes and national frameworks to be submitted to the Commission for approval. After EU Exit, no new rural development programmes will need to be approved and from 2021 new agricultural and environmental schemes will be delivered under the Agricultural Bill. National Frameworks will not be legally required as the UK does not currently produce them for the programme;
- Articles relating to the European Network for Rural Development and the European Innovation Partnership (EIP) network at Union level. The Articles relating to operational groups formed under the current EIP for agricultural

and sustainability will be retained, allowing the operational groups to continue to operate at domestic level;

- The requirement to carry out an ex ante evaluation before designing a programme and the requirement to carry out an ex post evaluation in 2024. This will not prevent programmes being evaluated administratively at a time the relevant authorities consider is appropriate;
- The requirement for managing authorities to submit and implement an information and publicity strategy, including the requirement to display the EU emblem and publicising the EU's participation through publications, posters and on-line links.

7.4 The amendments transfer obligations or discretions in relation to the content of the rural development programmes from Member States to relevant authorities. The relevant authority is the Secretary of State in England, the Department of Agricultural, Environment and Rural Affairs in Northern Ireland, Scottish Ministers in Scotland and Welsh Ministers in Wales.

7.5 On EU exit, the UK will seek reimbursement from the EU for all CAP payments made to beneficiaries up to 29 March 2019. Thereafter, such funding will be provided by HM Treasury. The guarantee also means that Defra and the devolved administrations can continue to sign new projects this year and during 2020, after the UK leaves the EU. The UK will still seek reimbursement from the EU for all payments made to beneficiaries up to 29 March 2019. In addition, the Government has pledged to continue to commit the same cash total in funds for farm support until the end of this Parliament, expected in 2022

7.6 Each devolved programme is currently managed by devolved authorities in consultation with a Programme Monitoring Committee, which is composed of representatives of environmental, rural and agricultural stakeholders including non-government organisations. Currently, changes to the programmes must be approved by the Commission. A separate instrument to be made under the European Union (Withdrawal) Act 2018 will transfer the Commission's functions to the devolved authorities.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the powers conferred by section 8 of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the EU. In accordance with the requirements of that Act, the Minister has made the relevant statements as detailed in Part 2 of the Annex to this explanatory memorandum.

9. Consolidation

9.1 There is no intention to consolidate this legislation at this time.

10. Consultation outcome

10.1 These instruments have not been subject to formal consultation because they make no substantive changes to existing domestic legislation.

10.2 These instruments and the policy reflected in them, has been developed in collaboration with officials in the Scottish and Welsh Devolved Administrations and the Department of Agriculture, Environment and Rural Affairs ("DAERA").

11. Guidance

11.1 A technical notice titled "Guidance: Receiving rural development funding if there's no Brexit deal" was published on 23 August 2018.

12. Impact

12.1 There is no or no significant impact on business, charities or voluntary bodies, likewise, there is no, or no significant impact on the public sector. Beneficiaries will continue to receive rural development funding as before EU exit.

12.2 There is no or no significant impact on the public sector. There may be a negligible increase in administration cost as notifications may go to responsible bodies within the UK rather than European institutions.

12.3 As a result of EU exit, the UK's membership of the European Network for Rural Development (ENRD) would no longer be operable. This network currently provides limited support as the UK has not entered into any transnational co-operation to date so we expect this to have minimal impact in practice.

12.4 An Impact Assessment has not been prepared for these instruments as the instruments relate to the maintenance of existing regulatory standards and no significant impacts are expected. These instruments also relate to the maintenance of existing funding streams.

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 disproportionate impacts are expected to affect small and micro businesses.

14. Monitoring & review

14.1 As these instruments are made under the European Union (Withdrawal) Act 2018, no review clause is required. Defra and its agencies will monitor and review the impact of these instruments as part of its standard policy-making procedures and will ensure that the provisions are adhered to.

15. Contact

15.1 Clare Osborne, Senior Policy Manager at Defra: telephone: 0208 026 2933 or email: Clare.Osborne@defra.gov.uk can be contacted with any queries regarding these instruments.

15.2 Fiona James and Elen Shepard (job share), Deputy Directors for CAP EU Exit Preparedness at Defra, can confirm that this explanatory memorandum meets the required standard.

15.3 The Minister of State for Agriculture, Fisheries and Food, Robert Goodwill MP at Defra, can confirm that this explanatory memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-Ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-Delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

1.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Rural Development (Amendment) (EU Exit) Regulations 2019 and the Rural Development (Rules and Decisions) (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate".

1.2 This is the case because the amendments made are predominantly technical in nature and are limited to making the retained EU legislation operable following the UK's withdrawal from the EU.

2. Good reasons

2.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in these instruments and I have concluded they are a reasonable course of action".

2.2 These are explained in paragraph 2 of this explanatory memorandum.

3. Equalities

3.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement(s):

"These draft instruments do not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts".

3.2 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, George Eustice MP, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

4. Explanations

The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

Annex 2

Further detail on the amendments made by these Statutory Instruments set out in the main body of this explanatory memorandum

1. Further detail on EU regulations amended by these instruments

1.1 As detailed in section 2.2 of the main body of this explanatory memorandum, the Rural Development (Amendment) (EU Exit) Regulations 2019 makes changes to:

- Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) Regulation 1698/2005; and
- Regulation (EU) No 1310/2013 of the European Parliament and of the Council of 17 December 2013 laying down certain transitional provisions on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), amending Regulation (EU) No 1305/2013 of the European Parliament and of the Council as regards resources and their distribution in respect of the year 2014 and amending Council Regulation (EC) No 73/2009 and Regulations (EU) No 1307/2013, (EU) No 1306/2013 and (EU) No 1308/2013of the European Parliament and of the Council as regards their application in the year 2014.

1.2 These two EU regulations set out the rules governing rural development programmes. As a result of EU exit, amendments are required to these and other existing EU legislation governing rural development programmes to ensure it can operate effectively.

1.3 Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) Regulation 1698/2005, makes changes to the following six legacy regulations. These regulations apply to activities and funding agreements that began during previous programming periods. They have all been repealed but each continues to apply to actions approved by the Commission under it. We have consequently amended them as to the extent that they apply to these actions.

- Council Regulation (EEC) No 2078/92 of 30 June 1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside;
- Commission Regulation (EC) No 746/96 of 24 April 1996 laying down detailed rules for the application of Council Regulation (EEC) No 2078/92 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside
- Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations;

- Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD);
- Commission Regulation (EC) No 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD); and
- Commission Regulation (EU) No 65/2011 of 27 January 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures.

1.4 The Rural Development (Rules and Decisions) (Amendment) (EU Exit) Regulations – 2019, remedy deficiencies in the following two Regulations:

- Commission Delegated Regulation (EU) No 807/2014 of 11 March 2014 supplementing Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and introducing transitional provisions; and
- Commission Implementing Regulation (EU) No 808/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD).

1.5 Four implementing decisions are also amended in this instrument, which reflect programme amendments in each of the devolved authorities which have been approved by the Commission:

- Commission Implementing Decision (2015) 855, approving the rural development programme of England (UK) for support from the European Agricultural Fund for Rural Development;
- Commission Implementing Decision (2015) 3488, approving the rural development programme of Wales for support from the European Agricultural Fund for Rural Development;
- Commission Implementing Decision (2015) 6018 approving the rural development programme of Northern Ireland for support from the European Agricultural Fund for Rural Development; and
- Commission Implementing Decision (2015) 3489, approving the rural development programme of Scotland for support from the European Agricultural Fund for Rural Development.