

EXPLANATORY MEMORANDUM TO
THE COMMON AGRICULTURAL POLICY SINGLE PAYMENT AND SUPPORT
SCHEMES (APPEALS) REGULATIONS 2010

2010 No. 39

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Common Agricultural Policy Single Payment and Support Schemes (Appeals) Regulations 2010 enable the continuation of the procedure for farmers to appeal decisions made in relation to their applications under the Common Agricultural Policy's (CAP) Single Payment Scheme (SPS) and other direct payment schemes. The Regulations reflect the new EC scheme legislation adopted following the recent EU review of the CAP (the 'CAP Health Check').

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative context

4.1 The arrangements for the SPS and other direct payments are provided for in Council Regulation (EC) No 73/2009, which replaced Council Regulation (EC) No 1782/2003 under which the schemes had been established. The detailed scheme rules are provided for in Commission Regulations (EC) 1120/2009, 1122/2009 and 1121/2009, which replaced Commission Regulations (EC) 795/2004, 796/2004 and 1973/2004.

4.2 The Common Agricultural Policy Single Payment and Support Schemes (Appeals) Regulations 2004 (S.I. 2004/2689) established a formal appeals process under which a farmer could appeal against decisions which had been taken under the EC legislation. These Regulations are available on the OPSI website, together with the accompanying Explanatory Memorandum (at <http://www.opsi.gov.uk/si/si2004/20042689.htm>). These Regulations are being repealed and replaced by the 2010 Regulations.

4.3 The 2010 Regulations continue the appeals procedure established under SI 2004/2689, and provide for farmers to appeal against decisions taken under the current EC scheme legislation as well as any decisions made under the replaced EC legislation (see paragraph 4.1).

4.4 The fee for the appeal procedure, which has not increased from the 2004 Regulations, is set under the authority of section 56(1) of the Finance Act 1973.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The SPS, which forms part of the Common Agricultural Policy (CAP), is the main support payment paid to farmers in the EU and was established as part of the 2003 CAP Reform. The reform also established the Aid for Energy Crops, Protein Crop Premium and Area Payment for Nuts. The EC legislation governing these schemes has been replaced following the ‘CAP Health Check’, a scheduled review of the CAP.

7.2 An appeals procedure was established in England to enable farmers to appeal decisions taken in relation to the administration of the SPS and other support schemes. These Regulations continue that procedure, which is updated to also cover decisions made under the new EC legislation.

7.3 The Regulations enable the Secretary of State to appoint a person to make a recommendation about how the appeal should be decided. The Secretary of State then makes the final decision. A charge of £100 applies to farmers who appeal under this procedure.

7.4 After careful consideration, ambulatory references have been used in these Regulations. This is to ensure that farmers have a legal right to appeal, under the established appeal procedure, decisions taken under the relevant EC regulations and all of their amendments. By including ambulatory references we are guarding against the possibility that farmers could be denied this legal right through having Regulations that do not relate to the latest regulatory amendments. Regulatory amendments under SPS are frequent

- *Consolidation*

7.5 As this instrument does not amend another instrument, no consolidation of legislation is necessary.

8. Consultation outcome

8.1 A consultation has not been carried out as these Regulations simply enable the continuation of the existing appeals procedure.

9. Guidance

9.1 Information about the appeals procedure is included in scheme guidance, which is sent annually to all farmers applying under the relevant schemes. Detailed guidance is available on the website of the Rural Payments Agency, the delivery body for the schemes concerned, and is also sent to those farmers who wish to appeal a decision.

10. Impact

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

10.2 The impact on the public sector is minimal and is limited to the Department for Environment, Food and Rural Affairs and its delivery body, the Rural Payments Agency.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small businesses

11.1 The legislation applies to small businesses.

11.2 There will be no additional burden to small businesses as the Regulations do not introduce any new burdens for business.

12. Monitoring and Review

12.1 There is ongoing monitoring and review, including engagement with stakeholders, of the operation and effectiveness of the appeal procedure.

13. Contact

13.1 Claire Williams at the Department for Environment, Food and Rural Affairs
Tel: 0207 238 3157 or e-mail: claire.williams@defra.gsi.gov.uk can answer any queries regarding the instrument.