

**EXPLANATORY MEMORANDUM TO**  
**THE AGRICULTURE (CROSS COMPLIANCE) (No. 2) (AMENDMENT)**  
**REGULATIONS 2013**

**2013 No. 3231**

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.

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

2. **Purpose of the instrument**

2.1 These Regulations amend the Agriculture (Cross compliance) (No. 2) Regulations 2009 (S.I. 2009/3365) (the “2009 Regulations”). The amendment implements a change in cross compliance rules of Good Agricultural and Environmental Condition (GAEC) contained in the common agricultural policy (“CAP”) EU Regulation commonly known as the Transitional Regulation<sup>1</sup>. The Transitional Regulation was adopted on 16 December 2013 and will apply from 1 January 2014.

2.2 The Transitional Regulation removes Statutory Management Requirement (SMR) 2 from Annex II to Council Regulation (EC) No.73/2009<sup>2</sup> which covers groundwater activities and creates a new GAEC standard to cover groundwater activity. In order to implement the requirements of the new GAEC in domestic legislation, the 2009 Regulations cross-refer to provisions of the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675) concerning failures to comply with requirements relating to groundwater activities.

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

3.1 The Department regrets breaching the 21 day rule. The Transitional Regulation was adopted on 16 December 2013 and is stated to apply, with a few exceptions, from 1 January 2014 (Article 11). Had the Department delayed the coming into force of these Regulations beyond 1 January 2014 the UK would have been in breach of its legal obligation to implement the Transitional Regulations by 1 January. There would have been a period when the new GAEC standard could not have been enforced against farmers claiming EU subsidies. This would have risked the imposition of financial penalties (“disallowance”) by the European Commission’s auditors. The Department prepared

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<sup>1</sup> EU Regulation of the European Parliament and of the Council laying down certain transitional provisions on support for rural development by the European Agricultural Fund for Rural Development (EAFRD),

<sup>2</sup> Council Regulation (EC) No. 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (OJ No. L 30, 31.1.2009, p. 16).

draft Regulations in advance of the formal adoption of the Transitional Regulation and laid these Regulations as soon as practicable.

3.2 One of the exceptions to the general application date of 1 January 2014 is point 20 of Article 6. That provision introduces the changes to cross compliance and is stated to apply from 22 December 2013. This reflects the fact that Council Directive 80/68/EEC<sup>3</sup> is to be repealed on 22 December 2013 by Directive 2000/60/EC<sup>4</sup>. However, as that date precedes the expected entry into force date of the Transitional Regulation, which the Department understands is likely to be 27 December 2013, the Department considers that it would be most appropriate for the Regulations to come into force on 1 January 2014, so aligning their commencement with the general application date of the Transitional Regulation.

#### 4. Legislative Context

4.1 These Regulations amend the 2009 Regulations which themselves revoked and replaced the Agriculture (Cross compliance) Regulations 2009 (S.I. 2009/3264). The latter Regulations revoked and replaced the Common Agricultural Policy (CAP) Single Payment and Support Schemes (Cross compliance) (England) Regulations 2005 (S.I. 2005/3459). The 2005 Regulations provided for the administration of Council Regulation (EC) No 1782/2003<sup>5</sup> and Commission Regulation (EC) No 796/2004<sup>6</sup> in relation to the establishment of a cross compliance control system for direct support schemes under the CAP. They are available on the legislation.gov.uk website, together with the accompanying Explanatory Memorandum (at <http://www.legislation.gov.uk/uksi/2005/3459/contents/made>).

4.2 Following the CAP Health Check (where changes were made to the Regulations governing the Single Payment Scheme and Cross compliance), Council Regulation (EC) No 1782/2003 and Commission Regulation (EC) No 796/2004 were replaced by Council Regulation (EC) No 73/2009 and Commission Regulation (EC) No 1122/2009 respectively. As part of the CAP transitional measures, Council Regulation (EC) No 73/2009 has been amended by the Transitional Regulation which was adopted on 16 December 2013, and will apply from 1 January 2014.

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<sup>3</sup> Council Directive 80/68/EEC on the protection of groundwater against pollution caused by certain dangerous substances (OJ No. L 20, 26.1.1980, p. 43).

<sup>4</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ No. L 327, 22.12.2000, p. 1).

<sup>5</sup> Council Regulation (EC) No. 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ No. L 270, 21.10.2003, p. 1).

<sup>6</sup> Commission Regulation (EC) No. 796/2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulations (EC) No 1782/2003 and (EC) No 73/2009, as well as for the implementation of cross compliance provided for in Council Regulation (EC) No 479/2008 (OJ No. L 141, 30.4.2004, p. 18).

## **5. Territorial Extent and Application**

This instrument applies to England.

## **6. European Convention on Human Rights**

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 Cross compliance requires that farmers meet environmental and other standards as a condition for subsidy payment under the Single Payment Scheme (SPS), and also acts as a baseline for agri-environment payments under the Rural Development Programme, England.

7.2 An amendment of the 2009 Regulations is needed to implement a change made by the Transitional Regulation to cross compliance standards contained in Annexes II & III of Council Regulation (EC) No 73/2009. The Transitional Regulation removes SMR 2 (groundwater) and creates a new GAEC to protect groundwater. The removal of SMR 2 stems from the repeal of Council Directive 80/68/EEC due to occur on 22 December 2013, on which the standard is based.

7.3 In practice, the farm-level rules for farmers remain the same for 2014, other than the technical change of controlling the groundwater activity via a GAEC rather than an SMR. The new GAEC requirements are implemented by cross-reference to provisions in the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 675/2010), Specifically, regulations 12(1)(b) and 35(2)(p) of, and Schedule 22 to, those Regulations have been inserted into the table in paragraph 1 of Schedule 1 to the 2009 Regulations.

- Consolidation

7.4 This instrument is the fourth instrument which amends the 2009 Regulations. These make minor amendments to cross compliance rules which have been changed from an SMR to a GAEC. These are important for the 2014 transitional year of the CAP. Following the negotiation of the new CAP, Defra is currently consulting on more substantive changes to cross compliance rules which will be introduced on 1 January 2015. For this reason the Department does not consider it appropriate to undertake a full redraft of the existing cross compliance legislation at this stage.

## **8. Consultation outcome**

As this instrument only clarifies technical aspects of current policy no consultation was conducted. The policy this instrument implements was subject to consultation in 2009 and the outcome of that consultation is summarised in the Explanatory Memorandum to the

## **9. Guidance**

The Rural Payments Agency provides all farmers subject to cross compliance with guidance that gives details of all the requirements. The guidance has been updated to reflect this change. As well as these guidance documents, cross compliance advice is provided by the Farm Advisory Service (FAS) which manages a helpline and a website containing further information, writes articles for the farming press and holds events for farmers and farm advisors.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is a small one-off administrative burden on the Rural Payments Agency in making changes to internal administrative processes and amending customer guidance.

10.3 An Impact Assessment has not been prepared for this instrument as it does not lead to costs or savings for businesses.

## **11. Regulating small business**

11.1 The legislation applies to small business (the majority of farms are small businesses so this legislation applies primarily to small businesses).

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to design standards in consultation with the farming industry. However, these Regulations however do not lead to any additional costs or savings for firms.

11.3 The basis for the final decision on what action to take to assist small business is feedback received from farmers. As these Regulations only implement a technical change that does not lead to any additional costs or savings for businesses, specific feedback on these changes was not sought.

## **12. Monitoring & review**

The Common Agricultural Policy (of which cross compliance forms part) has recently been reviewed and reform will generally come into force from 2015. As part of the implementation of the new CAP, the GAEC standards are being reviewed and potential changes to standards are being assessed for their impact. This review includes feedback from farming industry organisations, environmental bodies and the public. Performance

against existing standards is monitored annually under the cross compliance inspection programme.

**13. Contact**

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