

EXPLANATORY MEMORANDUM TO
THE COMMON AGRICULTURAL POLICY (CONTROL AND ENFORCEMENT,
CROSS- COMPLIANCE, SCRUTINY OF TRANSACTIONS AND APPEALS)
REGULATIONS 2014

2014 No. 3263

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**

The instrument is one of three which make provision for the implementation of the new Common Agricultural Policy (CAP) from 1st January 2015. Regulations which are directly applicable in the United Kingdom have been made by the Council and Parliament of the European Union (see paragraph 4.1 below). This instrument makes supplementary provision required for the administration and enforcement of the CAP.

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

3.1 This instrument sets out new fees for those who appeal against decisions made by the Secretary of State or other public bodies under the CAP. The current fee to have an appeal heard via the Independent Agricultural Appeals Panel is £100. This fee has been in place since 2004 in relation to CAP ‘Pillar 1’ decisions concerning direct payments to farmers and market support measures. The power to charge a fee is new in relation to ‘Pillar 2’ decisions concerning rural development payments. No fee is currently charged, but this option would be available should a policy decision be taken to introduce it.

3.2 The instrument introduces a tiered system of fees based on the value of the amount in dispute as follows:

- £100 for disputes under £2,000;
- £250 for disputes of £2,000–£10,000;
- £450 for disputes over £10,000.

3.3 A tiered system of fees will make it less likely that small businesses are unduly penalised by the rise in fees, where relatively small amounts are in dispute. The appeal fee will be refunded when an appeal is successful.

4. **Legislative Context**

4.1 The rules for the new CAP are set out in the following EU Regulations:

- Regulation (EU) No. 1303/2013 of the European Parliament and of 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;
- 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;
- Regulation (EU) 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the CAP;
- Regulation (EU) 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy;
- Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007.

These EU Regulations are supplemented by additional EU basic, delegated and implementing acts, details of which are cited in regulation 2(1).

4.2 An ambulatory reference has been inserted in regulation 2(1) in the definition of ‘the SCMO Regulations’ which are defined by reference to the EU Regulations listed in Schedule 1. The SCMO Regulations are referred to in Part 5 (appeals) and may give rise to decisions which are capable of being appealed under that Part. They also fall within the definition of ‘European Regulations’, referred to in regulation 10(1) in relation to powers of entry and inspection. Technical amendments to the SCMO Regulations are often made for market management purposes. For example, in the past two years, there have been 50 such amending Regulations (40 in 2013 and 10 in 2014). It would be impracticable to keep Schedule 1 up to date by regular amending instruments, in the absence of an ambulatory reference, to ensure that (i) appellants continue to have rights of appeal against decisions made under those Regulations (as amended); and (ii) authorised persons may exercise the powers specified in regulations 10 and 11 (powers of entry and inspection) for the purpose of enforcing the SCMO Regulations (as amended). The Department does not expect this to have any consequence other than that of ensuring that rights of appeal and powers of entry and inspection are kept up to date.

4.3 Although the EU Regulations are directly applicable in Member States, domestic legislation is required to implement the EU requirements in certain respects, for example to provide for appeals, criminal offences and powers of entry and inspection to facilitate enforcement.

4.4 The instrument revokes, with appropriate savings, statutory instruments which support the implementation of the current CAP or that are obsolete (Part 6 and Schedule 5).

4.5 The instrument is being made at the same time as two other related statutory instruments. The Common Agricultural Policy Basic Payment and Support Schemes (England) Regulations 2014¹ set out certain discretions, options and derogations exercised by the Secretary of State in relation to England for direct payments made to farmers. The Common Agricultural Policy (Paying Agencies: Competent Authority and Coordinating Body) Regulations 2014² provide for the Secretary of State and Ministers of the devolved administrations to exercise jointly functions of the UK Competent Authority and UK Coordinating body.

4.6 The proposals for the EU Regulations listed in paragraph 4.1 have all been cleared by the EU Scrutiny Committees. The Commons Committee cleared as politically important the proposals for the direct payments and rural development regulations on 21 November 2012 and the proposals for the financing, management and monitoring regulations and common market organisation regulations on 23 November 2012. They were recommended for debate in the EC(A) Commons Report 1 on 7 May 2013. The Lords Committee sifted the proposals in sub-committee D on 8 November 2012 and they were cleared by Ministerial correspondence on 22 May 2013.

5. Territorial Extent and Application

5.1 This statutory instrument applies in England, apart from the following regulations and related provisions which extend to the UK:

- Regulation 3 on the role of the competent authority (to determine applications) and to whom applications in respect of cross-border holdings may be made;
- Regulation 4 on agency arrangements between competent authorities;
- Regulation 9(1) on set-off between sums due to competent authorities and direct payments due to a farmer;
- Regulations 20 to 29 on the scrutiny of European Agricultural Guarantee Fund transactions and regulation 35(7) which provides for the continuation of appointments of authorised persons;
- Regulation 34 on the exchange rate to be used.

5.2 Certain revocations and savings effected by regulation 35 and Schedule 5 extend to the UK, consistent with the extent of the Regulations being revoked.

¹ SI 2014/#.

² SI 2014/#.

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**

7.1 The CAP is the system of agricultural subsidies and programmes which covers farming, environmental and rural development measures and controls EU agricultural markets. It is the EU's single largest common policy and accounts for over 40% of the EU budget. The CAP was introduced in 1962 and has undergone several reforms since then. The latest reform is the new CAP which starts from 1 January 2015 (some changes to market management measures have already been introduced) and it seeks to strengthen the competitiveness and the sustainability of agriculture in Europe.

7.2 This instrument provides for the Integrated Administration and Control System (IACS) for payments to farmers and rural businesses; it provides for powers of entry and inspection; implementation of cross-compliance rules (which farmers must meet to receive payment); scrutiny of European Agricultural Guarantee Fund transactions (other than direct payments); and appeals procedures.

7.3 The instrument replaces existing statutory instruments relating to the administration and enforcement of the current CAP. In many cases existing provisions are being carried over so that arrangements in place can continue, but the opportunity has also been taken to eliminate duplications, and through consolidation reduce the number of powers of entry, offences and penalties that apply in relation to the CAP.

Control and Enforcement

7.4 EU Regulations³ require member States to adopt all legislative, regulatory and administrative provisions and take any other measures necessary to ensure effective protection of the financial interests of the Union, in particular, to check the legality and regularity of operations financed by the Funds, ensure effective prevention against fraud, prevent, detect and correct irregularities and fraud, impose penalties and recover undue payments plus interest. Member States are required to operate an Integrated Administration and Control System (IACS) and to carry out on-the-spot-checks. Part 2 of the instrument includes provisions for this control and enforcement system. It applies to direct payments to farmers and to rural development payments. The key changes to existing arrangements are explained below.

7.5 Regulation 10 provides for a power of entry to carry out inspections. This implements EU obligations to undertake effective on-the-spot checks and is a central part of controls to ensure compliance and prevent error and fraud. Previously, this power of entry did not apply in respect of premises used solely as a dwelling. In future, it will not apply in respect of premises used wholly or mainly as dwelling. If entry to such properties is required then a warrant would need to be obtained.

³ Article 58 of Regulation (EU) No. 1306/2013

7.6 Regulation 16 sets out criminal offences and penalties to apply to anyone who obstructs the inspections and enforcement of the CAP, fails to provide assistance, furnishes any information known to be false or misleading or fails to produce required records. Having these offences and penalties in place ensures compliance with EU Regulations and reduces the risk of financial penalties being imposed. The criminal penalties are an important part of the control regime because of their preventative effect, but in practice they are rarely used sanctions.

7.7 The instrument consolidates and simplifies the penalties that currently apply. This means that for obstruction/failure to provide assistance, anyone found guilty on summary conviction would be liable to a fine not exceeding level 3 on the standard scale. For knowingly or recklessly providing false or misleading information, anyone found guilty on summary conviction would be liable to a fine not exceeding the statutory maximum (which is currently £5,000) or to imprisonment for a term not exceeding three months, or on conviction on indictment to a fine or imprisonment for a term not exceeding two years, or both.

Cross-Compliance

7.8 Cross-compliance is a mechanism that links CAP payments to compliance with basic farming and environmental standards. These standards comprise Statutory Management Requirements (SMRs) which are EU requirements concerning the environment, food safety and animal and plant health, as well as the standards for maintaining land in good agricultural and environmental condition (GAEC). SMRs are set out in the EU CAP legislation and apply to all member States. The Commission, however, allows member States flexibility in establishing the detailed GAEC standards. Part 3 of the instrument sets out the GAEC standards that will apply in England from 1 January 2015.

Scrutiny of European Agricultural Guarantee Fund Transaction

7.9 The European Agricultural Guarantee Fund (EAGF) is one of the two financial instruments for the Common Agricultural Policy. EU Regulations require post-transaction scrutiny of payments made from the EAGF (other than direct payments which are subject to IACS controls). This mainly covers payments made to traders under market management schemes, many of which arise from EU Regulation 1308/2013. Part 4 of the instrument sets out provisions enabling this scrutiny to take place. It creates a power of entry which, like the IACS power of entry, does not apply in respect of premises used wholly or mainly as a dwelling. It also sets out criminal offences and penalties which broadly carry forward existing provision.

Appeals

7.10 The instrument also provides for appeals to be made against decisions taken in the administration of the CAP. As explained in section 3, a tiered fee system for appeals is being introduced.

8. Consultation outcome

8.1 Throughout the CAP reform negotiations and implementation process, the Government has actively engaged with interested parties. In April 2013 the Government established a Direct Payments Consultative Group⁴ comprised of stakeholder representatives from agricultural and environmental organisations. This has met on a regular monthly basis since then to discuss the implementation process and has ensured that stakeholder organisations have been fully consulted on decisions taken. In addition a number of ad hoc workshops on specific issues have taken place. Consultation has also taken place through other stakeholder forums as appropriate: including monthly working group meetings of rural development stakeholders and with the national common land stakeholder group on CAP reform and common land.

8.2 On 31 October 2013 the Government issued a [consultation on the implementation of CAP reform in England](#). The consultation closed on 28 November 2013. The timetable for the consultation was constrained as the Government wanted to consult on the basis of as much final information as possible. It was desirable to wait until negotiations on EU implementing and delegated acts and discussions on European Commission guidance were well advanced, although on some issues consultation had to take place before the finer detail had emerged. The consultation was also constrained by the need to notify the European Commission by 31 December 2013 on whether to transfer funds from the CAP budget for direct payments (Pillar 1) to fund rural development (Pillar 2), which was part of the consultation.

8.3 In total, 4,928 responses were received. 767 of these were received on-line, and 4,161 by email and post. Of these responses, 3,797 were connected to a campaign organised by the Royal Society for the Protection of Birds (RSPB) and 36 were connected to a Soil Association campaign.

8.4 During the consultation period, Defra also hosted 10 stakeholder events across England in Ardingly, Bridgwater, Bromsgrove, Cambridge, Hexham, Leeds, Melton Mowbray, Penrith, Nantwich and Truro. These were attended by approximately 720 people in total. The themes that emerged at the stakeholder events were considered alongside the written responses. Defra also hosted two online social networking discussions, on 21 November 2013 via @AgriChatUK and on 26 November 2013 with the Parliamentary Under Secretary of State for farming, food and marine environment. The Government's proposals were also considered by the Select Committee on the Environment, Food and Rural Affairs, which published its findings in the [Seventh Special Report of Session 2013–14](#), on 3 December 2013⁵. These were taken into account in the consultation response. The Government published its [formal response](#) to the Committee on 27 January 2014.

8.5 The Government issued a summary of [responses to the consultation](#) and its decisions on 16 December 2013 and 26 February 2014. [In June 2014](#) further decisions were announced on the new 'greening' rules that farmers need to meet and cross-

⁴ Membership is listed in the Annex to this Memorandum

⁵ HC 745.

compliance. Between 12 March and 12 April 2014 the Government also consulted on an [environment report](#) for the [Strategic Environmental Assessment](#) for the Rural Development Programme which was published in June 2014.

8.6 Following the consultation, the Government has continued to work closely with stakeholder organisations on the detailed implementation of the CAP. Proposals for administration and enforcement measures, and drafts of this instrument, were discussed with stakeholders at meetings of the Direct Payments Consultative Group in August, September and October 2014. Stakeholders were supportive of the approach to re-enact enforcement measures currently in place and to consolidate these where possible. On appeals they were keen to see clear arrangements in place and that any increase in fees was proportionate.

8.7 Informal consultation on cross-compliance took place in a series of workshops with stakeholders in early 2014. Options which took account of responses to the consultation were put forward to stakeholders for discussion. On 16 June 2014 the Government published [an evidence summary of the impact of changes to cross-compliance in England](#).

9. Guidance

9.1 A series of guidance leaflets on how the new CAP will affect farmers and other rural businesses have been issued.

9.2 [CAP Reform: introduction to the new Common Agricultural Policy schemes](#) published on 14 April 2014 provided an overview of the new CAP. [CAP reform: August 2014 update](#) published on 14 August provided an update on the new greening rules. [CAP Reform: October 2014 update](#) published on 28th October 2014 provided more information on the BPS for farmers. These guidance notes have been published on the gov.uk website, and posted to all eligible claimants. They have also attracted widespread attention from stakeholders, who have relayed details to their members.

9.3 Further guidance will be issued later this year and in early 2015. This includes guidance to set out the cross-compliance rules for farmers and explain the wider enforcement mechanisms that will be in place. A direct payments handbook will be published in February 2015, containing consolidated guidance.

10. Impact

10.1 An [evidence paper](#) on the impact of the reformed CAP on farmers and other rural businesses was published as part of the [Government's consultation in 2013](#). The enforcement measures contained in the instrument are, in the most part a continuation of existing measures which will not have any new or additional impact on businesses, charities or voluntary sector. In respect of cross-compliance there has been a general reduction in the number of requirements. This is as a result of requirements being deleted at EU level as well as a reorganisation and amalgamation of requirements domestically. As noted in paragraph 8.7 on 16 June 2014 the Government published [an evidence summary of the impact of changes to cross-compliance in England](#).

10.2 As discussed in the consultation document in making its proposals the Department has considered the impact that the policy choices have both for farmers and other CAP customers, as well as Defra, the Rural Payments Agency and its wider delivery network.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people Defra has sought to implement the CAP regulations in a way that is simple affordable and effective. This guiding principle is reflected in the [summary of the Government's responses to the 'Consultation on the implementation of CAP reform in England'](#) The decisions taken mean the new CAP is implemented in the most straightforward way possible. It will minimise burdens on farmers and reduce the risk of disallowance from the EU. Defra is investing in a much more efficient, customer friendly, online system ready to support farmers and other rural businesses.

12. Monitoring & review

The Regulations will be formally reviewed in five years in accordance with regulation 37 of the instrument.

13. Contact

Fiona James at the Department of Environment Food and Rural Affairs Tel: 020 7238 5665 or email: fiona.james@defra.gsi.gov.uk can answer any queries regarding the instrument.

Annex A

Stakeholders represented on the Direct Payments Consultative Group

1. Agriculture and Horticulture Development Board (AHDB)
2. British Institute of Agricultural Consultants (BIAC)
3. Central Association of Agricultural Valuers (CAAV)
4. Country Land and Business Association (CLA)
5. Institute of Agricultural Secretaries and Administrators (IAgSA)
6. National Farmers Union (NFU)
7. National Parks UK (NP)
8. National Trust (NT)
9. The Royal Society for the Protection of Birds (RSPB)
10. Tenant Farmers Association (TFA)
11. Wildlife and Countryside Link (WC)
12. The Wildlife Trusts (WT)
13. Moorland Association (MA)
14. Foundation for Common Land (FCL)