

**EXPLANATORY MEMORANDUM TO**  
**THE COMMON AGRICULTURAL POLICY BASIC PAYMENT AND SUPPORT**  
**SCHEMES (ENGLAND) (AMENDMENT) REGULATIONS 2018**

**2018 No. 1026**

**1. Introduction**

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

**2. Purpose of the instrument**

- 2.1 This amendment will provide a concession for farmers in 2018 allowing them to graze areas of Ecological Focus Area (EFA) Cover Crops; farmers will also be allowed to sow the areas with grass or other herbaceous forage, or to cut short the period of time that the Cover Crop must be retained. All these changes are intended to relieve the situation of lack of forage for livestock following the prolonged period of dry weather in the summer of 2018.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments and Select Committee on Statutory Instruments*

- 3.1 The regulations breach the “21 day rule”.
- 3.2 The regulations relieve farmers from the requirement to sow mixed crops on Ecological Focus Areas before 1 October and, consequently, need to come into force by 30 September. The department was unable to lay the regulations any earlier as they are made under section 2(2) of the European Communities Act 1972 to implement a derogation given effect by Commission Implementing Decision Regulation (C(2018) 6085 final). The Commission Implementing Decision did not come into force until 18 September 2018.
- 3.3 If the legislation was delayed, this would result in being unable to make full use of the EU derogation.

*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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England only.

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

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

## **6. Legislative Context**

- 6.1 Following discussions with stakeholders, who requested action to relieve pressures on farmers following the prolonged period of dry weather in the summer of 2018, Ministers gave a commitment to seek relaxation of EU requirements where appropriate. Amongst these is a helpful Commission Implementing Decision which will result in an increase in the amount of land available for grazing this coming winter.
- 6.2 In order to take advantage of this derogation from EU law, we need to make an amendment to our implementing Statutory Instrument: The Common Agricultural Policy Basic Payment and Support Schemes (England) Regulations 2014 (S.I. 2014/3259). S.I. 2014/3259 currently provides for catch crops and green cover (cover crops) to count as an Ecological Focus Area and specifies the acceptable crop types and time period during which it must be retained. It is necessary to provide an exemption to these requirements for the 2018 scheme year following the decision by the European Commission to relax the requirements following the recent exceptional weather.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The prolonged period of exceptionally dry weather between May and July 2018 caused many problems for farmers, whose effects are expected to be felt well into 2019. The Secretary of State met with stakeholders at the Dry Weather Summit in August 2018 to listen to their concerns and undertook to pursue any temporary derogations to EU requirements that might be of assistance.
- 7.2 One possibility was a relaxation of the Greening rules for EFA Cover Crop option, which would allow these areas of land to be grazed. We believe that around 1,300 farmers have taken up this EFA Cover Crop option for 2018 and, although the land area will be relatively small, allowing the freeing up of this land for grazing would be a help to farmers.
- 7.3 Simply allowing these areas to be grazed would not on its own be of great help to farmers as the EU Regulations also include a stipulation that Cover Crops must be sown with a mix of un-grazeable plant types (unless it is undersown from the main crop), as set out for England in the SI to be amended. The EU has now produced a Commission Decision which not only allows EFA Cover Crops to be grazed, but also varies the requirements for 2018 in order to allow more palatable crop types, such as grass, to be grown and allows for a shorter retention period for areas established through sowing of mixed crops.

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

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

9.1 Consolidation is not being done.

## **10. Consultation outcome**

10.1 A very rapid, verbal consultation with major stakeholders shows strong support for the change from farming representatives. It is not foreseen that the changes would result in any significant diminution of environmental benefit from the Cover Crop measure.

## **11. Guidance**

11.1 The Rural Payments Agency has produced guidance on the anticipated rule changes for the relevant farmers and a copy of the guidance is enclosed.

## **12. Impact**

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

12.2 There is no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because there are not many business affected and the amounts involved fall below the threshold for producing one.

## **13. Regulating small business**

13.1 The legislation applies to activities that are undertaken by small businesses.

## **14. Monitoring & review**

14.1 The regulation does not include a statutory review clause as it only applies in respect of the 2018 claim year and will therefore cease to have effect before the end of the 5 year period beginning with the commencement date.

## **15. Contact**

15.1 Stephen Harris at the Department for the Environment, Food and Rural Affairs Telephone: 020 8026 4131 or email: [Stephen.harris@defra.gsi.gov.uk](mailto:Stephen.harris@defra.gsi.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Laura McCambridge, Deputy Director for Common Agricultural Policy Team, at the Department for the Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Michael Gove MP at the Department for the Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.