

EXPLANATORY MEMORANDUM TO

THE MARKET MEASURES PAYMENT SCHEMES (AMENDMENTS, REVOCATION AND TRANSITIONAL PROVISION) (ENGLAND) REGULATIONS 2023

2023 No. 124

1. Introduction

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

2. Purpose of the instrument

- 2.1 These Regulations make amendments, to apply in relation to England only, to retained direct EU legislation in order to remove the framework related to public intervention (otherwise than in connection with exceptional market conditions which are the subject of a declaration under section 20 of the Agriculture Act 2020 (c. 21)). These amendments will make our intervention frameworks more suited to an England only context. The amendments made to the framework for PSA schemes will apply both to the general use of the schemes, and also to use of the schemes in response to exceptional market conditions during which a declaration under section 20 of the Agriculture Act 2020 (“the Act”) has effect. The Instrument also contains a transitional provision in order to provide that the amendments made by regulations 3 to 9 and the revocation made by regulation 11 are of no effect in so far as they relate to an admissible offer for public intervention which is received before the coming into force of the instrument.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) 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 Section 21 of the Act provides that the Secretary of State may give, or agree to give, financial assistance to agricultural producers in England whose incomes are being (or are likely to be) adversely affected by the exceptional market conditions described in a

declaration of exceptional market conditions made in accordance with section 20 of the Act.

- 6.2 Under section 21(3), the Secretary of State may also make use of any available powers under retained direct EU legislation which provide for the operation of PI and PSA mechanisms, in response to a declaration of exceptional market conditions. The Act does not provide a legal framework for PI and PSA, and this is instead provided for in retained EU legislation, which is amended in this SI.
- 6.3 To make these changes, we are amending:
 - 6.3.1 Regulation (EU) No 1306/2013 of the European Parliament and of the Council;
 - 6.3.2 Regulation (EU) No 1308/2013 of the European Parliament and of the Council;
 - 6.3.3 Council Regulation (EU) No 1370/2013;
 - 6.3.4 Commission Delegated Regulation (EU) No 907/2014;
 - 6.3.5 Commission Implementing Regulation (EU) No 908/2014;
 - 6.3.6 Commission Delegated Regulation (EU) 2016/1238; and
 - 6.3.7 Commission Implementing Regulation (EU) 2016/1240.
- 6.4 We are revoking:
 - 6.4.1 Commission Delegated Regulation (EU) No 906/2014.

7. Policy background

What is being done and why?

- 7.1 By making this SI, Government will tailor the statutory framework for PSA schemes applying in England, so that it is better suited to domestic circumstances. PSA schemes are intended to address exceptional market disturbances by subsidising the cost of products when prices have fallen to a point that it is not economically viable to sell. Products are returned to the market at the end of the contracted period when it is anticipated that the market is likely to have recovered and prices have subsequently improved.
- 7.2 The SI removes the requirement for inspections to be carried out whilst the product is in storage, as inspections at intake and at the end of the storage period provide sufficient checks to confirm scheme adherence. In addition, no risk to funds exists as payment of aid is made only once product condition and weight is confirmed, at the end of the storage period, maintaining the required oversight. Overall inspection levels will be maintained. Whilst we are removing interim inspections, we will increase minimum inspection levels at entry and removal of storage from 5% to 10%. The Rural Payments Agency (RPA) as delivery body will retain the powers they require to administer a PSA scheme in the future.
- 7.3 This instrument will remove the retained EU framework relating to the mandatory opening of PI schemes. PI schemes require the Government to buy and store certain products at a published price. They are not considered an effective method of market support and have a weak economic rationale. These schemes have high associated costs and there is a resource burden for the delivery body when statutory schemes are open. Even when market values have been low, there has historically been limited uptake of these types of schemes.

- 7.4 Retained Regulation 1308/2013 currently provides that PI schemes for specific commodities must open at specific times of the year. Common and durum wheat, barley, paddy rice and maize PI schemes currently open between 1st November and 31st May each year, while a window for butter and skimmed milk powder opens 1st March, closing 30th September. Beef and veal schemes can open at any time during the year if the market price drops below the intervention price for two consecutive weeks.
- 7.5 By virtue of the transitional provision included in this instrument, the retained EU framework for mandatory PI schemes will remain in place for admissible offers for public intervention received before the coming into force of this instrument. For the purposes of this regulation, an admissible offer for public intervention is an offer which is received in accordance with Articles 2 and 7 of Commission Implementing Regulation (EU) 2016/1240 of 18 May 2016 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to public intervention and aid for private storage).

Explanations

What did any law do before the changes to be made by this instrument?

- 7.6 The framework for PI and PSA schemes is contained in retained EU regulations. According to the existing legislation, there is a requirement to open PI schemes for certain commodities at particular times of the year and it also provides the legal basis upon which PI and PSA schemes operate.

Why is it being changed?

- 7.7 The retained European Union regulations provide a legal framework for the RPA to administer agricultural support schemes. We need to retain the framework for PSA to preserve the powers needed to administer the schemes. Without this, Government would need to create a support framework from scratch in order to operate a PSA scheme. This would likely delay implementation of any scheme to address exceptional market conditions, to the detriment of applicants in England.
- 7.8 We are also making changes so that this framework streamlines inspection requirements. Interim inspections are less useful for PSA as Government does not own the product and therefore none of the risk associated with selling it. Since the subsidy is only paid at the end of the storage period, this further decreases the need for these checks. Products also tend to be in PSA schemes for a much shorter amount of time, meaning that there is a much smaller window in which to perform these checks during the storage period.
- 7.9 The Protected Designated Origin (PDO) and Protected Geographical Indication (PGI) rules imposed on cheese are not needed in the UK in relation to PSA that and we would not differentiate on this basis should a PSA scheme be needed for cheese.
- 7.10 The obligation for operators to provide a security upon submitting the product into PSA will be removed. The security was in place to ensure the applicant placed the contracted quantity into store – an indication of their genuine intent to use the scheme. Since the scheme payment is not made until the end of the storage period, and the intake inspection ensures the product goes into store, the payment of a security is deemed unnecessary.

- 7.11 This instrument operates to remove the framework for mandatory PI because such schemes are not considered an effective method of market support and place unnecessary burdens on the delivery body. PI schemes will remain an option for the Secretary of State should one or more sectors suffer exceptional market conditions.

What will it now do?

- 7.12 Most of the retained EU provisions relating to PSA will remain in place, with minor amendments to ensure the framework is more appropriate in an England only context.
- 7.13 There will also no longer be interim checks on products being stored for the purposes of PSA and there will be a corresponding increase to the minimum percentage of product checked at the opening and closing of a scheme. Cheeses with PDO/PGI status will no longer be treated in a different way from those without such status, under PSA rules. Finally, securities will no longer need to be provided by the applicant for PSA.
- 7.14 These amendments also change the requirement for tenders for PSA schemes to be set in euros, it will now be set in pounds sterling.
- 7.15 With the exception of any admissible offers received in accordance with the transitional provision in this instrument, there will no longer be a framework for the operation of mandatory PI and schemes that have previously opened automatically at set timeframes for specific commodities will no longer operate.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union. The regulations this instrument amends are Retained EU Legislation that we wish to amend to make more effective in an England only context.

9. Consolidation

- 9.1 Defra does not intend to consolidate the relevant legislation at this time.

10. Consultation outcome

- 10.1 No formal consultation has been undertaken for this SI in relation to the changes we are making to PI and PSA.
- 10.2 Although we have not consulted on these changes, we have informed key agriculture stakeholders of the development of this SI at industry meetings.
- 10.3 As this SI applies to England only, we have not consulted formally with devolved administrations but have kept them updated on development of this SI.

11. Guidance

- 11.1 Defra is not producing any specific guidance for this instrument as this mainly makes technical amendments to retained EU law.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.

- 12.3 A full Impact Assessment has not been prepared for this instrument because this SI will likely have a low level and positive impact on businesses and continues to allow for PSA schemes to be created following the UK's withdrawal from the EU.
- 12.4 Any impact on businesses is likely to be positive. These provisions would be used to support operation of a PSA scheme only in the event that such a scheme is required. The last time such a scheme was opened in 2021-22, 743,637 tonnes of pigmeat was stored, with £206,494.20 paid.
- 12.5 There is a decreased administrative burden on the delivery body by removing operation of PI otherwise than in connection with exceptional market conditions which are the subject of a declaration under section 20 of the Agriculture Act 2020, and streamlining inspection requirements for PSA.

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 assistance is needed due to the expectation that there will be no to minimal impacts on small businesses. Businesses will only be impacted in the event that a PSA scheme is provided to support them due to adverse market conditions.

14. Monitoring & review

- 14.1 Defra and its agencies will monitor and review the impact of the instrument as part of its standard policy making procedures and will ensure that the provisions are adhered to.
- 14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Minister of State for Agriculture, Fisheries and Food, Mark Spencer MP has made the following statement: "In my view, as no, or no significant, impact on businesses is foreseen and the provisions of the Market Measures Payment Schemes (Amendments, Revocation and Transitional Provision) (England) Regulations 2023 are technical in nature, a statutory review clause is not required."

15. Contact

- 15.1 Matthew Stocks at the Department for Environment, Food and Rural Affairs Telephone: 07901683220 or email: matthew.stocks1@defra.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Gill Laishley, Deputy Director for Farming and Primary Processing, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Mark Spencer MP at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.