

Public Intervention and Private Storage Aid Agricultural Products

Proposed Amendment to Retained EU Frameworks

Consultation August 2023

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Sustainable Agri Food Development Division
Department of Agriculture, Environment and Rural Affairs
1st Floor West
Clare House
303 Airport Road West Belfast
BT3 9ED

Email: PIPSAconsultation@daera-ni.gov.uk

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1. Introduction

- 1.1 Following the UK's exit from the European Union (EU), the legislation (known as 'regulations') relating to the common organisation of the markets in agricultural policy – the Common Agricultural Policy (CAP) – were retained in UK domestic legislation. The regulations were also amended to ensure they reflected the UK's exit from the EU and the fact that agricultural policy is a devolved matter.
- 1.2 The frameworks provided by the retained regulations, which had developed over time to operate in the context of a single European market for agricultural products, remained unaltered. These frameworks may no longer suit domestic circumstances and, due to their nature, could be deemed ineffective in seeking to assist with their policy intent: this is particularly the case in relation to both the frameworks for intervention in the markets, and the provision of indirect support to the agri-food sector, when there is, or there is the threat of, a severe market disturbance that is likely to have an adverse effect on the prices that producers receive for their product.
- 1.3 This document sets out proposed changes to Public Intervention and Private Storage Aid (PI and PSA) regulations, to ensure that the frameworks are more appropriate to local circumstances. The proposed amendments also reflect changes that have been made in the regulations that apply in England. We understand that the Welsh Government will be making similar amendments to the regulations as they apply in Wales. A number of questions are posed throughout the document for your consideration and response. The frameworks were also recently amended in Scotland so that PSA has been amended and PI will not operate for a five year period from July 2023.
- 1.4 DAERA has separately announced the timeline for the implementation of a Future Farm Support and Development Programme on 19 June 2023. The aim of that programme is to support farming, enhance environmental sustainability and focusses on meeting the four desired outcomes of increased productivity; improved sector resilience; environmental sustainability; and an effective functioning supply chain. The new Schemes and Measures within that programme will be phased in over a number of years and sit outside this consultation but provide an important context for the proposals in this document.
- 1.5 Responses to this consultation will inform the formulation of recommendations on the future shape of the frameworks for public intervention and aid for private storage to an incoming DAERA Minister. **Decisions on the amendments to be taken forward and the future statutory structure of the PI and PSA frameworks as they apply in Northern Ireland will be a matter for an incoming DAERA Minister and NI Assembly.**

2. Background

- 2.1 Part II Chapter 1 of retained EU regulation (EU) No. 1308/2013 (as amended following the UK's exit from the EU) provides powers for DAERA to intervene in agricultural markets, when the prices for the products are depressed due to an increase in supply or other market disturbance. This intervention can take the form of either, public intervention (the buying-in) of a product, or the granting of aid for private storage.
- 2.2 Under Public Intervention (PI) regulations, products would be bought in by the relevant UK authority and stored by it until disposed of through public tender, when the market for the product has improved. Article 11 of regulation (EU) No. 1308/2013 specifies the products that are eligible for PI. These include skimmed milk powder, butter, paddy rice, common wheat, durum wheat, beef, veal, barley and maize. These products must originate in the UK to be eligible for PI.
- 2.3 Article 12 of regulation (EU) No. 1308/2013 specifies the periods during which public intervention shall be open for specific products. Article 1a of regulation (EU) No. 1370/2013 specifies the reference threshold prices at which product would be bought into public intervention, in other words, the market price that must prevail for public intervention to be introduced.
- 2.4 Private Storage Aid (PSA) is an alternative way to help stabilise the prices of certain products at times of a severe disturbance in the market for agricultural products. The scheme is intended to address exceptional market disturbances by subsidising the cost of storing specified products under suitable conditions when prices have fallen to a point that it is considered that it is not economically viable to sell.
- 2.5 Under PSA, traders are invited to remove their own product from the market and place it in store for a specified period of time. In such instances the traders retain ownership with the scheme contributing towards storage costs. 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 improved.
- 2.6 Article 17 of regulation (EU) No. 1308/2013 specifies the products that are eligible for the granting of aid for private storage. These include white sugar, olive oil, flax fibre, fresh or chilled beef aged eight months or more, butter, cheese, skimmed milk powder, pigmeat, sheepmeat and goatmeat. As with PI, the products must originate in the UK.

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- 2.7 Retained regulation (EU) No. 2016/1238 (as amended by UK legislation following EU exit) supplements regulation (EU) No. 1308/2013 with regard to public intervention and aid for private storage. This regulation covers, amongst other matters, the eligibility of operators who can apply for aid, the payment of a security when applying to place product into storage (and its release or forfeiture), intervention storage places, and rules relating to the payment of aid for private storage.
- 2.8 Retained regulation (EU) No. 2016/1240 (as amended by UK legislation following EU exit) lays down rules for the application of regulation (EU) No. 1308/2013 with regard to public intervention and aid for private storage. This regulation provides the main frameworks for the operation of PI and PSA. In relation to PI, it covers such matters as the procedures for the buying-in of product at fixed price or via a tendering process, delivery (including provisions for the delivery of beef and the packing, delivery and storage of butter and skimmed milk powder) and the sale of the product from interventions. In relation to PSA it covers opening a tendering procedure and fixing the amount of aid, placing of products into storage, conclusion of contracts, removal of product from storage and payment of aid.
- 2.9 As noted previously, the policy intention of PI and PSA is to seek to support market prices by reducing the supply of goods on the domestic market, and thereby raising market prices for the benefit of agricultural producers. However, the effectiveness of these mechanisms as a means of raising producer prices will be impacted by alternative external sources of supply entering the market that is being supported. The existence of a single UK market and a free trade agreement providing for zero tariffs with the EU, as well as other trade agreements, are therefore key considerations on whether these mechanisms in their current form can help achieve the policy intention to support market prices for the benefit of primary producers.

3. Frameworks in Other Jurisdictions

England

- 3.1 On 7 February 2023 the Secretary of State for the Department of Environment, Food and Rural Affairs (DEFRA) laid a Statutory Rule before Parliament (S.I. 2023 No. 124) amending various pieces of retained direct EU legislation concerning PI and PSA as the provisions apply in England. The amendments removed the provisions relating to the mandatory buying-in of products under PI, i.e. the fixed requirement to buy-in specified products, and amended provisions for the operation of the PSA frameworks to make them better suited to the domestic market.

Wales

- 3.2 The Welsh Government will be bringing forward amendments to the PI and PSA provisions as they apply in Wales that mirror those contained in the DEFRA S.I.

Scotland

- 3.3 The Scottish Government has brought forward new legislation which retains the framework for PSA with some minor changes, and preserves the framework for PI only for circumstances where Scottish Ministers have to take measures to address threats of market disturbance. PI for the specified commodities will no longer operate in Scotland for a period of five years from 1 July 2023.

Republic of Ireland

- 3.4 As a member of the EU the provisions of regulation (EU) No 1308/2013 and associated regulations continue to apply.

4. Proposals

Introduction

- 4.1 The Department proposes to amend the provisions in retained EU regulations concerning how PI and PSA operates in Northern Ireland. Your views will be important to DAERA's thinking and to the advice we give to an incoming Minister.
- 4.2 Any amendments would be made using the power available to DAERA that is set out in paragraph 9 of Schedule 6 to the Agriculture Act 2020. As with the recent changes made in England, the proposed amendments will make the frameworks specified in the legislation better suited to the post EU exit domestic market.
- 4.3 The amendments that are proposed, and that are set out in the following paragraphs, do not remove DAERA's ability to make use of the powers available under retained direct EU legislation (as amended following EU exit). Rather, the amendments seek to focus the powers available to DAERA to ensure that a Minister and the Department have greater discretion and flexibility in the use of these mechanisms in the event of a crisis affecting the prices for agricultural products. These powers would be available to DAERA to respond to a severe disturbance in agricultural markets or a serious threat of a severe disturbance in agricultural markets, if the disturbance or threatened disturbance has, or is likely to have, a significant adverse effect on agricultural producers in Northern Ireland in terms of the prices achievable for one or more agricultural products. The potential use of these powers, or alternative producer support mechanisms such as those deployed during the Covid crisis, would be a policy choice for the Department and the Minister.
- 4.4 Paragraph 1.4 above notes DAERA's intention to improve farm resilience through a separate Future Farm Support and Development Programme.

Public Intervention

- 4.5 The management of market prices was once the main method by which support was provided for farm incomes under the CAP. However, successive reforms to the CAP since 1992 have greatly diminished the relevance and use of this form of support. Intervention prices and other thresholds used to trigger PI and PSA have been reduced and then frozen for many years, meaning that in most cases, they are now far removed from market reality. For example, the threshold price for butter PI is €246.39 per 100kg, while that for skimmed milk powder is €169.80 per 100kg - these equate to milk prices below 20p/litre.

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- 4.6 Against this background, the retained EU framework relating to the mandatory opening of PI schemes, which requires the administration to buy and then store specified products when the market price for those products falls below the threshold price, is not considered an effective method of market support. It must be remembered that the purpose of such market support is to support the incomes of primary producers. There are other direct mechanisms for doing this. In recent times, there has been limited use of these types of market management schemes.
- 4.7 Attempts by Governments to manage markets can be inefficient and produce undesirable outcomes (such as leading to long term imbalances between supply and demand). They can also create major difficulties in terms of budgeting and public finances, as funding has to be diverted to cover the costs of buying-in the product and the costs of its storage.
- 4.8 The UK operates in a fairly open global trading environment but represents a small proportion of the world market. The operation of PI in the UK would make no significant difference to the world market price and consequently the domestic market price, particularly as the UK is a net importer of many food products. Hence, domestic prices would continue to be determined by the cost of imports which in turn are determined by developments on the world market.
- 4.9 The operation of PI in NI alone, as an even smaller market, will not bring benefits to NI producers. It is highly unlikely that the continued operation of a PI scheme in NI only would beneficially impact the market (and producer returns). Any product brought into intervention in NI would not be of sufficient scale to have a material impact on domestic market price levels that are dictated by the international balance of supply and demand. Therefore, retention of mandatory PI schemes represents a potential financial exposure risk to DAERA while offering no tangible benefits for NI producers in terms of income support when markets are depressed.
- 4.10 The Department therefore proposes to remove the requirement for the mandatory opening of PI schemes from the retained EU legislation. The Department proposes that the PI framework, as set out in regulation (EU) No. 2016/1238 and regulation (EU) No. 2016/1240 should be retained. This would make this mechanism available to the Department should specific circumstances emerge where the use of PI might be considered an appropriate policy response.

What are your views on the proposal to remove the mandatory requirement to buy in specified products under public intervention as provided for in regulation (EU) No. 1308/2013?

What are your views on the proposal to retain the PI framework as an option which could, if appropriate, be used by DAERA in response to exceptional circumstances in the market for agricultural products, as they relate to Northern Ireland?

Private Storage Aid

- 4.11 It is proposed that the private storage aid framework specified in the regulation (EU) No. 2016/1238 and regulation (EU) No. 2016/1240 would be retained with changes made to the framework to make any scheme's operation more appropriate to Northern Ireland.
- 4.12 Article 4(b) of regulation (EU) No. 2016/1238 currently provides that operators submitting a tender or application for aid for private storage shall lodge a security with the relevant paying agency (DAERA in NI) unless regulations providing for the opening of a scheme provides otherwise.
- 4.13 The payment of aid under the scheme is not made until the end of the contracted storage period and the inspection when the product is placed in storage ensures that the terms of the contract in relation to the quantity and quality of the product have been satisfied. The lodging of a security and its non-release until after the product has been removed from storage could place an additional financial burden on operators at a critical time.
- 4.14 Against this background, DAERA takes the view that there are sufficient safeguards in place in relation to protecting public finances through the framework, and that payment of a security is not required. Accordingly, this feature would be removed from the framework applicable in Northern Ireland.

What are your views on the proposal to remove the requirement for an operator to provide a security when placing product into storage under a PSA scheme?

- 4.15 Article 60 of regulation (EU) No. 2016/1240 provides for on-the-spot documentary checks within 30 days of the start of the contract storage period, and a physical inspection of a representative statistical sample of at least 5% of the lots covering at least 5% of the total quantities placed in storage. This is to ensure that the quantity, nature and composition, packaging and marking of the products and storage lots conform to the requirements for private storage and to the particulars specified by the operator in their tender or application.
- 4.16 Physical inspections of the product which is covered by the PSA contract are conducted when the product is first placed into storage. The product is then inspected at the end of the storage period before it is returned for marketing, and an aid payment is made.

4.17 DAERA considers it likely that these inspections provide sufficient checks to confirm scheme adherence. In addition, as the payment of the aid is made only once the product condition and weight is confirmed at the end of the storage period, there is no risk to public funds. Accordingly, DAERA proposes that the requirement for interim inspections of product placed into storage should be removed. The removal of the requirement for an interim inspection would reduce the administrative burden on DAERA, and on the staff at the storage facility.

What are your views on the proposal to remove the requirement for interim inspections of product placed into storage under a PSA scheme?

4.18 Article 56 of regulation (EU) No. 2016/1240 provides for physical checks to verify the quality and composition of the products being placed into storage for the payment of aid under a PSA scheme. Article 60 of regulation (EU) No. 2016/1240 provides for an interim physical check of a sample of 5% of the product in storage during the contract, and a further check of a sample of 5% of the product when it is being removed from storage.

4.19 Associated with the proposed removal of the interim inspection regime DAERA proposes that the size of the sample of the product to be inspected when the product is placed into storage, and when it is removed from storage at the end of the contract period should be increased. It is proposed that the minimum inspection levels would be increased from 5% to 10% to ensure no overall drop in the checking regime.

What are your views on the proposal to increase in the level of inspection of a product being placed into storage under a PSA scheme from 5% to 10%?

5. How to Respond and When

Responses

5.1 Written responses should be sent to e-mail: PIPSAconsultation@daera-ni.gov.uk

Postal address: Sustainable Agri Food Development Division
Department of Agriculture, Environment and Rural Affairs
1st Floor West
Clare House
303 Airport Road West Belfast
BT3 9ED

5.2 When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents, and where applicable, how the views of its members were assembled.

5.3 A draft Equality and Disability Screening on the proposals has also been attached. The Department would welcome any comments you might have on this screening exercise. A draft Rural Needs Assessment has also been completed and the Department would welcome any comments you may have on this.

Closing date

5.4 Responses should be submitted by **24 October 2023**.

Confidentiality

5.5 The Freedom of Information Act 2000 gives the public a right of access to any information held by a public authority, the Department in this case. This includes information provided in response to this consultation.

5.6 The Department will publish a synopsis of responses to the consultation. This will include a list of names of organisations that responded but not personal names, addresses or other contact details.

5.7 The Department cannot automatically consider information supplied to it in response to a consultation, to be confidential. However, it does have a responsibility to decide whether any information provided by you in response to a consultation, including information about your identity, should be made public or treated as confidential. If you do not wish

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information about your identity to be made public please include an explanation in your response. Please be aware that confidentiality cannot be guaranteed, except in very particular circumstances. Please note, if your computer automatically includes a confidentiality disclaimer, it won't count as a confidentiality request.

- 5.8 Should you respond in an individual capacity: the Department will process your personal data in accordance with the Data Protection Act 1998. This means that your personal information will not be disclosed to third parties should you request confidentiality.
- 5.9 For further information about confidentiality of responses please contact the Information Commissioners Office (see its website at www.informationcommissioner.gov.uk)

6. Summary of Proposals

6.1 The Department's proposals for amendments to the retained EU regulations for public intervention and aid for private storage can be summarised as:

- the removal of the requirement for mandatory public intervention when the prices for specified products falls below the specified threshold price during the period set out in the legislation;
- the retention of the legislative framework for public intervention to provide the framework as a mechanism for its use if it was considered to be an appropriate response to a severe disturbance in agricultural markets that affected the prices obtained for products;
- the retention of the framework for a scheme to provide aid for the private storage of a specified product, if the use of such a scheme was considered to be an appropriate response to a severe disturbance in agricultural markets that affected the prices obtained for products;
- removal of the requirement for a trader to lodge a security deposit if they are applying for aid for the private storage of a product under any such scheme introduced by the DAERA;
- removal of the requirement for an interim inspection of any product placed in storage under a private storage aid scheme introduced by DAERA;
- an increase in the quantity of product to be inspected when being placed into storage, and subsequently removed from storage, under any private storage aid scheme introduced by DAERA from 5% to 10%.

All enquiries to:

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