

EXPLANATORY MEMORANDUM TO
THE DIRECT PAYMENTS TO FARMERS (AMENDMENT) REGULATIONS
(NORTHERN IRELAND) 2021

SR 2021 No. 40

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Agriculture, Environment, and Rural Affairs (“the Department”) to accompany this Statutory Rule (SR) which is laid before the Northern Ireland Assembly.
- 1.2 The SR is made under schedule 6 paragraphs 2, 3 and 5 and section 50(3)(d) of the Agriculture Act 2020, and is subject to draft affirmative resolution procedure.

2. Purpose

- 2.1 These Regulations modify the existing legislation governing Direct Payment schemes for farmers in Northern Ireland so that they can continue to operate beyond the end of the 2020 scheme. This includes making provision for the direct payments ceiling beyond 2020 and removing provisions that are no longer operating, or have never operated, in Northern Ireland.

3. Background

- 3.1 On exit day, the Direct Payments to Farmers (Legislative Continuity) Act 2020 incorporated EU legislation governing the 2020 Common Agricultural Policy (CAP) Direct Payment schemes into UK law.
- 3.2 These Regulations amend the retained EU law relating to the Direct Payment schemes (as listed in section 3.4 of this explanatory memorandum) in order that the basic payment scheme can continue to function effectively beyond 2020 in Northern Ireland. Schedule 6 paragraph 1(2) of the Agriculture Act defines the basic payment scheme as also including the greening payment and young farmer payment. These are the Direct Payment schemes currently operating in Northern Ireland.
- 3.3 The amendments include provision for determining the Direct Payment ceiling in Northern Ireland. The amendments also remove provisions that are no longer operating, or have never operated, in Northern Ireland.
- 3.4 The retained EU law and domestic legislation amended by this instrument is:
- i) Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy (EUR 2013/1307) (the “Direct Payments Regulation”). This establishes the high-level framework required to make Direct Payments to farmers;

- ii) Commission Delegated Regulation (EU) No. 639/2014 supplementing Regulation (EU) No. 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 (EUR 2014/639). This sets some of the detailed scheme rules for Direct Payments;
- iii) Regulation (EU) No. 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financial management and monitoring of the common agricultural policy (EUR 2013/1306). This sets the overarching framework for how the CAP schemes are administered;
- iv) Commission Implementing Regulation (EU) No. 809/2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance (EUR 2014/809). This sets some of the detailed rules necessary to finance, manage and monitor the delivery of the CAP schemes;
- v) Commission Delegated Regulation (EU) No. 640/2014 of 11 March 2014 supplementing Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance (EUR 2014/640). This includes rules on the calculation and withdrawal of aid, administrative penalties and technical rules around payment entitlements;
- vi) Commission Delegated Regulation (EU) No. 907/2014 of 11 March 2014 supplementing Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro (EUR 2014/907). This contains rules relating to financial management;
- vii) Commission Implementing Regulation (EU) No 908/2014 of 6 August 2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency (EUR 2014/908). This contains further rules relating to financial management; and
- viii) The Common Agricultural Policy Basic Payment and Support Schemes Regulations (Northern Ireland) 2015.

3.5 Direct Payments have been the main income-support schemes for farmers under the CAP. The legislation governing the 2020 Direct Payment schemes was incorporated into UK law on exit day and the 2020 scheme was domestically funded.

3.6 Without this SR we would not have legislation in place allowing us to operate the existing Direct Payment schemes for farmers in Northern Ireland beyond the end of the 2020 scheme. In Northern Ireland Direct Payments are

currently worth £293m annually. Ending the payments overnight would result in a significant systemic shock for the farming industry.

- 3.7 The legislative amendments introduced by this SR will maintain the *status quo*, as far as possible, and are largely technical. No substantive policy changes are being made and farmers will see no change on the ground as a result of this instrument.
- 3.8 The Direct Payments Regulation contains financial ceilings which are used to calculate Direct Payments to farmers across the UK. However, it only includes financial ceilings up to and including the 2020 claim year. This SR specifies the manner by which DAERA will determine the annual financial ceiling to calculate payments beyond 2020 in Northern Ireland. The ceiling for each future year must be equivalent to Northern Ireland's share of the UK national ceiling specified in the Direct Payments Regulation for 2020.
- 3.9 This SR also makes other minor amendments to ensure the schemes can continue to operate effectively beyond 2020. This includes replacing some dates which were specific to the 2020 scheme year with equivalent dates which are not year-specific.
- 3.10 This SR also removes from the retained EU law provisions which are not applicable in Northern Ireland. It similarly removes some provisions which are no longer operating in Northern Ireland, such as requirements for beneficiaries to meet 'negative list' rules and the ability to make payments in euros.
- 3.11 Other amendments remove provisions which are not relevant beyond the 2020 scheme. For example, the instrument removes rules concerning the transfer of funds from the 2020 Direct Payments budget to be used for rural development measures.
- 3.12 The Department also intends to make simplifications to the Direct Payment schemes from 2021 and will do so via a separate SR. This SR does not achieve those changes.

4. Consultation

- 4.1 This SR has not been subject to a formal consultation because it retains the *status quo* beyond the 2020 claim year, makes no substantive policy changes and is largely technical in nature. The Regulations provide continuity and stability for Direct Payments recipients in Northern Ireland.

5. Guidance

- 5.1 The Department is not producing any guidance on this instrument as it maintains the *status quo* for farmers.

6. Equality Impact

- 6.1 The Statutory Rule amends the legislation providing for the rules governing the Direct Payment Scheme for farmers so that it can continue to operate beyond the end of the 2020 year and does not introduce any policy changes. There are therefore no equality implications for society generally, or on Section 75 stakeholders specifically. The Statutory Rule will apply to all farmers claiming direct payments and makes no policy change.

7. Regulatory Impact

- 7.1 Given the minor nature of the amendments, it is considered there are no impacts on the private, voluntary or public sector as a result of these changes.

8. Financial Implications

- 8.1 £293m has been allocated to Northern Ireland for Direct Payments for 2020 scheme year. These amendments have no impact on the financial allocation.

9. Section 24 of the Northern Ireland Act 1998

- 9.1 The Statutory Rule makes only minor and technical amendments to retained EU law and domestic legislation and does not introduce any policy change and therefore will have no impact on human rights. The legislation that is amended were each assessed for their human rights impacts prior to their being made. In each case it was concluded that the legislation would have no impact on human rights. Given that the amendments contained in these Regulations introduce no new policy, this conclusion remains unchanged. These Regulations are therefore deemed to comply with the requirements of section 24 of the Northern Ireland Act 1998.

10. EU Implications

11. The United Kingdom leaving the EU and the Common Agricultural Policy means that our policies no longer have to be constrained by the existing CAP Pillar 1 and Pillar 2 construct and gives us the opportunity to develop new approaches and support systems which better address the needs of Northern Ireland agriculture, the environment and rural communities.

12. Parity or Replicatory Measures

- 12.1 Defra and the other Devolved Administrations are in the process of introducing similar legislation to give legal effect for payments for the 2021 scheme year.

13. Additional Information

- 13.1 N/A