EXPLANATORY MEMORANDUM TO

THE DIRECT PAYMENTS TO FARMERS AND CROSS-COMPLIANCE (SIMPLIFICATIONS) (ENGLAND) (AMENDMENT) REGULATIONS 2020

2020 No. 1387

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs ("Defra") and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument simplifies the Direct Payment schemes for farmers in England. It also simplifies, and makes more proportionate, the inspection and enforcement of Cross Compliance in England. Cross Compliance is the set of rules on the environment and plant and animal health and welfare that farmers and land managers must comply with to receive Direct Payments and other farm payments.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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)

3.2 As this 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.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State for Agriculture, Fisheries and Food, Victoria Prentis MP, has made the following statement regarding Human Rights:

"In my view the provisions of The Direct Payments to Farmers and Cross-Compliance (Simplifications) (England) (Amendment) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 On exit day, the Direct Payments to Farmers (Legislative Continuity) Act 2020 incorporated EU legislation governing the 2020 Common Agricultural Policy Direct Payment schemes into UK law. The Direct Payments to Farmers (England) (Amendment) Regulations 2020, laid on 12 November 2020, allow these schemes to continue, in England, beyond 2020.

6.2 This instrument makes changes to the law relating to the Direct Payment schemes (as listed in section 6.7 of this Explanatory Memorandum) to simplify those schemes in England from the 2021 scheme year.

6.3 At 11pm on 31 December 2020 the European Union (Withdrawal) Act 2018 incorporates EU legislation as it stands at the time into domestic law. This includes the legislation governing Cross Compliance.

6.4 This instrument makes changes to the incorporated Cross Compliance legislation to simplify and improve the administration of the Cross Compliance rules. These changes will apply from January 2021.

6.5 However, under Article 138 of the Withdrawal Agreement and section 7A of the European Union (Withdrawal) Act 2018, EU-funded farm and market support schemes will still be governed by directly applicable EU law for as long as they continue, or until technical measures are agreed with the EU. The changes made to Cross Compliance under this instrument will not apply to EU-funded schemes.

6.6 The changes made by this instrument are made using the powers in sections 9, 14(1) and (2) and 50(3) of the Agriculture Act 2020. These sections provide the Secretary of State with powers to change the law governing the Direct Payment schemes, as well as to the law relating to the financing, management and monitoring of other farm payment and market support schemes.

6.7 The regulations that are changed by this instrument are:

i. The Common Agricultural Policy Basic Payment and Support Schemes (England) Regulations 2014 (SI 2014/3259). This sets out how some policy options on Direct Payments are exercised in England;

ii. The Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 (SI 2014/3263). This sets out rules for England on control and enforcement arrangements, Cross Compliance requirements, recovery of undue payments and rights of farmers to appeal against decisions;

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 Common Agricultural Policy schemes are administered;

iv. 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;

v. 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;

vi. 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;

vii. Commission Implementing Regulation (EU) No. 641/2014 of 16 June 2014 laying down rules for the application of 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 2014/641). This includes administrative rules on payment entitlements under the Basic Payment Scheme and other detailed scheme rules; and

viii. 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 Common Agricultural Policy schemes.

7. Policy background

What is being done and why?

7.1 Direct Payments have been the main income-support schemes for farmers under the Common Agricultural Policy. The EU legislation governing the 2020 Common Agricultural Policy Direct Payment schemes was incorporated into UK law when we left the EU.

7.2 The Government remains committed to phasing out Direct Payments in England over an agricultural transition period (2021-2027), as provided for in its Agriculture Act 2020. As these payments are phased out, the Government intends to simplify the existing Direct Payment schemes, as set out in its “The Path to Sustainable Farming: An Agricultural Transition Plan 2021 to 2024” published on 30 November 2020: (https://www.gov.uk/government/publications/agricultural-transition-plan-2021-to-2024).

7.3 To achieve this simplification, this instrument makes changes to the following Direct Payment schemes in England:

i. Basic Payment Scheme – this is a non-competitive payment that is based on land area;

ii. Young farmer payment – this is a top-up payment made to eligible young farmers; and

iii. Greening payment – around thirty percent of a farmer’s Direct Payment is currently made conditional on them meeting rules which are intended to benefit the environment. This is known as the greening payment.

7.4 This instrument improves the administrative rules for farmers who have land both in England and in other parts of the UK (i.e. Northern Ireland, Scotland or Wales). These are known as ‘cross-border farmers’. Currently, these farmers send separate application forms for Direct Payments to each part of the UK where they have land. The current rules require these to be treated as one single application, which means the farmer receives one payment for all their UK land. This instrument removes this requirement. This means the farmer would apply, and be paid, in England for Direct Payments for their English land only. This would be separate to any application they make under the Direct Payment schemes in other parts of the UK. This should simplify the processing of applications for these farmers and so should speed up these payments.

7.5 This instrument also exempts some cross-border farmers from the minimum claim size for Direct Payments. The minimum claim size in England is five hectares. Around 50 cross-border farmers have fewer than five hectares of eligible land in England. These farmers may not meet the minimum claim size when we change the rules on cross-border farmers (as described in section 7.4 of this Explanatory Memorandum). So that these farmers are not disadvantaged by that change, this instrument exempts these farmers from the minimum claim size in England.

7.6 This instrument makes changes for farmers who have been unable to meet Direct Payment scheme rules because of *force majeure* or exceptional circumstances. The time period for these farmers to request to have payment reductions and penalties waived has been extended from 15 working days to 8 weeks. This provides extra flexibility for farmers.

7.7 This instrument also removes the ‘entitlement usage rule’. Entitlements are used by farmers to claim payments under the Basic Payment Scheme. The entitlements usage rule requires farmers to use all their entitlements to claim payment at least once every two years to prevent them being taken away. This can be confusing for farmers. It also adds burdens for farmers, who may have to sell or lease out their entitlements to avoid having them taken away. This instrument means that farmers will not have entitlements taken away if they do not claim payment on them.

7.8 This instrument also removes the so-called ‘greening’ rules. Defra considers that the greening rules have delivered little environmental benefit, while causing unnecessary administration for farmers and the Rural Payments Agency. The European Court of Auditors expressed a similar view in their 2017 Special Report on greening (https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=44179). Removing the greening rules would not affect the overall payment received by the farmer. The budget for the greening payment would become part of the overall Direct Payments’ budget. The instrument also changes the way in which young farmer payments are calculated to ensure the value of these payments will not be affected by the removal of the greening payment.

7.9 This instrument also makes it easier for farmers to apply for Direct Payments. Farmers sometimes need to send documents to support their application. Currently, they must send these by the application deadline (which is usually 15 May of the scheme year) to avoid payment reductions. This instrument changes the rules so that farmers may send supporting documents up to 25 calendar days after the application deadline and receive no reduction to their payment.

7.10 This instrument also extends the period in which farmers may make changes to their application for Direct Payments without having a penalty applied. Currently, farmers may make changes to their application up to 31 May, without getting a penalty. Farmers who make changes after this date, and up to 25 calendar days following the application deadline, will receive a penalty. This instrument changes the rules so that farmers can change their applications during this period without getting a penalty. This change should reduce the number of farmers who receive penalties.

7.11 This instrument also changes the rules on what can be considered an ‘obvious error’ on the part of a Direct Payment applicant. Where a farmer has made an obvious error on their application, it can be corrected without the farmer receiving a payment reduction or a penalty. However, the rules state that the error must be obvious from a simple check of the application. This instrument changes the definition of ‘obvious error’, as it applies to Direct Payments. The new definition will allow the Rural Payments Agency to take account of all the information it holds (such as evidence from email or telephone records) where a farmer requests that it does so. This should result in fewer farmers losing out on a full payment.

7.12 Inspections are used to check that Direct Payments applicants meet the scheme rules. Currently, there are detailed rules for how these inspections must be selected and the minimum level of inspections (broadly, five percent of the total number of applications). These are separate to the rules for Cross Compliance inspections. The rules on Direct Payments inspections are inflexible. They do not always allow the selections to be made in a way which best reflects the risk of non-compliance. This instrument removes the requirement to inspect eligibility for Direct Payments at a minimum level. It also removes the rules on how applications must be selected for inspection. Instead, each year the Rural Payments Agency will carry out a number of inspections which reflects the risks of non-compliance. This is in line with the Farm Inspection and Regulation Review which supported a risk-based approach to inspections (https://www.gov.uk/government/publications/farm-inspection-and-regulation-review).

7.13 Cross Compliance rules apply to Direct Payments and land-based agri-environment and agroforestry schemes. This instrument makes changes to the inspection and enforcement of Cross Compliance, including making penalties more proportionate for negligent breaches. It removes the requirement that the penalties for these breaches should in general be 3% of a farm payment. It introduces percentage reduction options of 2% and 4%, to add to the existing 1%, 3% and 5% options. It also allows warning letters to be used, instead of payment reductions, for a wider range of potential breaches. Also, the decision whether to issue a warning letter will be able to take into account a farmer’s wider engagement with the rules, rather than only the specific breach.

7.14 There will no longer be a requirement to increase the number of Cross Compliance inspections where a high level of non-compliance is found. This measure has not been shown to increase levels of compliance.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018. However, it relates to the withdrawal of the UK from the EU, as we only have the flexibility to makes the changes in this instrument as a result of leaving the EU.

9. Consolidation

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

10. Consultation outcome

10.1 Defra carried out a consultation on “The future for food, farming and the environment” from February to May 2018, which led to over 40,000 responses. This sought views, amongst other things, on the simplification of the Common Agricultural Policy schemes. The responses showed there was a huge desire among farmers for simplification of the Direct Payment schemes and Cross Compliance. Many respondents felt that penalties applied to farmers' payments were excessive. Many respondents supported simplifying the greening rules and there was some support for removing all of the greening rules. Those who argued for the removal of all of greening felt it added excessive administrative burdens for little environmental benefit.

10.2 In the period July to September 2019, Defra consulted the Rural Payments Agency's Direct Payments Working Group on some detailed simplification proposals about the Direct Payment schemes. These proposals took account of the responses to that wider 2018 consultation. The 2019 consultation included four of the simplifications made by this instrument: the removal of the rules on inspection selection; the removal of cross-border applications; the removal of the entitlement usage rules; and the extension of the deadline for *force majeure* and exceptional circumstances. Responses were received from the following stakeholders:

i. National Farmers' Union
ii. Tenant Farmers Association
iii. Country Land and Business Association
iv. British Institute of Agricultural Consultants
v. Central Association of Agricultural Valuers.

10.3 Everyone who responded to the consultation was supportive of the proposed simplifications. Some respondees also argued for the obvious error rules to be made less restrictive, for an extension to the deadline for farmers to make changes to their application for Direct Payments and for a review of the penalty system where farmers send supporting documents late. Defra has responded to these requests by making the changes described in sections 7.9 to 7.11 of this Explanatory Memorandum.

10.4 Changes to Cross Compliance take account of responses to the 2018 public consultation. Specific proposals have been developed following discussions with a number of interested industry and environmental stakeholders.

11. Guidance

11.1 Defra first announced its intention to remove the greening rules in July 2020 (https://www.gov.uk/government/news/government-to-cut-red-tape-for-farmers-as-they-plan-for-2021). It provided information about some of the other changes made by this instrument in its "The Path to Sustainable Farming: An Agricultural Transition Plan 2021 to 2024" published on 30 November 2020. Full details of all the changes to the Direct Payment schemes will be included in the annual scheme guidance which the Rural Payments Agency issues to applicants in the spring.

11.2 Guidance on the changes relating to Cross Compliance will be issued to farmers in December in the annually published Cross Compliance guidance for England.

12. Impact

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

12.2 There is expected to be no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because no, or no significant impact, on the private or voluntary sectors is foreseen. This instrument does not introduce new obligations on farmers or have a significant impact on regulatory burdens.

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 to take no action to assist small businesses is that no disproportionate impacts are expected to affect small and micro businesses.

14. Monitoring & review

14.1 Defra and its agencies will monitor and review the impact of these instruments as part of its standard policy-making procedures.

15. Contact

15.1 Claire Williams at Defra: 0208 0262927 or email: claire.williams@defra.gov.uk can be contacted with any queries regarding this instrument.

15.2 Fiona James, Deputy Director for Common Agricultural Policy and Transition at Defra, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Victoria Prentis MP, the Parliamentary Under Secretary of State for Agriculture, Fisheries and Food at Defra, can confirm that this Explanatory Memorandum meets the required standard.