

EXPLANATORY MEMORANDUM TO
THE DIRECT PAYMENTS TO FARMERS (ENGLAND) (AMENDMENT)
REGULATIONS 2020

2020 No. 1513

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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument continues the existing Direct Payment schemes for farmers in England beyond the end of the 2020 scheme.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument needs to come into force on 1 January 2021. This is the start of the 2021 claim year for farmers and without this instrument the Direct Payment schemes would not be able to operate effectively in 2021.
- 3.2 Regulation 2(4) sets rules about the financial ceilings used to calculate farmers’ Direct Payments. These rules come into force the day after this instrument is made. This will allow time for the Secretary of State to determine the ceiling for the 2021 claim year before the start of that year. These rules about ceilings will not introduce obligations on farmers.

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)

- 3.3 This entire instrument applies to England only because it applies only to Direct Payment schemes in England (see regulation 1(4) of the instrument).
- 3.4 The instrument does not have any minor or consequential effects outside England.
- 3.5 In the view of Defra, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this entire instrument would be within the devolved legislative competence of:
 - the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter;
 - the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament; and
 - Senedd Cymru if equivalent provision in relation to Wales were included in an Act of Senedd Cymru.

3.6 Defra has reached this view because the purpose of this instrument is to continue the Direct Payment schemes, which is within devolved competence.

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 set out in Section 3 under “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)”.

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 (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.

6.2 This instrument makes changes to the law relating to the Direct Payment schemes (as listed in section 6.4 of this Explanatory Memorandum) to allow the basic payment scheme to continue, in England, beyond 2020. Section 7(2) of the Agriculture Act defines the basic payment scheme as also including the greening payment and young farmer payment. These are the three Direct Payment schemes currently running in England.

6.3 The changes also empower the Secretary of State to set the financial ceiling used to calculate farmers’ Direct Payments in England. The changes also remove rules that are no longer used, or have never been used, in England.

6.4 The regulations that are part of UK law and are changed by this instrument include

- 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. 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;

- iv. 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;
- v. 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;
- 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 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 about financial management;
- viii. 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 about financial management; and
- ix. 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.

7. Policy background

What is being done and why?

- 7.1 This instrument allows the Government to continue to run the existing Direct Payment schemes for farmers in England beyond the 2020 claim year, which ends on 31 December 2020.
- 7.2 Direct Payments have been the main income-support schemes for farmers under the Common Agricultural Policy. The legislation governing the 2020 Direct Payment schemes was incorporated into UK law when we left the EU and the 2020 scheme was funded by the UK Government.
- 7.3 Without this instrument we would not have the necessary legislation in place to run the existing Direct Payment schemes for farmers in England beyond the end of the 2020. In England Direct Payments are currently worth around £1.8 billion annually. Ending the payments overnight would result in a significant shock for the farming industry.

- 7.4 The legislative changes made by this instrument 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.
- 7.5 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 instrument specifies how the Secretary of State will determine the annual financial ceiling to calculate payments beyond 2020 in England. The ceiling for each future year must be equivalent to England's share of the UK national ceiling specified in the Direct Payments Regulation for 2020.
- 7.6 This instrument also makes other minor changes to ensure the schemes can continue to work effectively beyond 2020. This includes replacing some dates which were specific to the 2020 claim year with equivalent dates which are not year-specific.
- 7.7 This instrument also removes rules which are not relevant in England. This includes removing rules on the redistributive payment and voluntary coupled support, which are Direct Payment schemes that have never been run in England. It similarly removes some rules which are no longer used in England. For example, it removes the need for recipients of Direct Payments to meet 'active farmer' requirements and removes rules on making payments in euros.
- 7.8 Other changes remove rules which are not relevant beyond the 2020 scheme. For example, this instrument removes rules on the transfer of funds from the 2020 Direct Payments budget to be used for rural development measures.
- 7.9 The Government remains committed to beginning ambitious agricultural reforms in England in 2021, including beginning to apply reductions to Direct Payments to phase them out over a seven year agricultural transition period. It also intends to make simplifications to the Direct Payment schemes from 2021. This instrument does not achieve those reforms.

8. European Union (Withdrawal) Act/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, the need for the instrument arises from the UK's withdrawal from the European Union.

9. Consolidation

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

10. Consultation outcome

- 10.1 This instrument has not been subject to a formal consultation because it retains the *status quo* beyond the 2020 claim year, it makes no substantive policy changes and is largely technical in nature. This instrument provides continuity and stability for Direct Payments recipients in England.
- 10.2 However, Defra has kept the Rural Payments Agency's Direct Payments Working Group (DPWG) updated on its plans to produce secondary legislation to continue the current Direct Payment schemes beyond 2020. This included Defra giving an update at the DPWG meeting on 29 September 2020. No concerns were raised. The following stakeholders were present:

- i. National Farmers' Union
- ii. Tenant Farmers Association
- iii. Country Land and Business Association
- iv. Farming Community Network
- v. British Institute of Agricultural Consultants
- vi. Central Association of Agricultural Valuers
- vii. Institute of Agricultural Secretaries and Administrators
- viii. Wildlife Trust

11. Guidance

- 11.1 Defra is not producing any guidance on this instrument as it maintains the *status quo* for farmers.

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 An Impact Assessment has not been prepared for this instrument as no, or no significant impact, on the private or voluntary sector is foreseen. The purpose of this instrument is to maintain the existing Direct Payment schemes for farmers beyond claim year 2020. This instrument does not make any substantive policy change.

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 The Government has announced its intention to phase out Direct Payments over the period 2021-2027. However, Defra and its agencies will monitor and review the impact of this instrument as part of its standard policy-making procedures.

15. Contact

- 15.1 Claire Williams at Defra: Telephone: 0208 0262927 or email: claire.williams@defra.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Elen Shepard, 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.