

**EXPLANATORY MEMORANDUM TO**  
**THE DIRECT PAYMENTS PENALTY SIMPLIFICATION (ENGLAND)**  
**REGULATIONS 2020**

**2020 No. 551**

**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, and makes more proportionate, the penalties to be applied to farmers’ Direct Payments in England where they have made small over-declarations of land. An “over-declaration” occurs where the area the farmer declares, for the purposes of claiming payment under the Direct Payment schemes, is more than the area that meets the scheme eligibility rules.

**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 the 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 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**6. Legislative Context**

- 6.1 The following EU regulations, as far as they relate to 2020 Direct Payments, were incorporated into domestic law by the Direct Payments to Farmers (Legislative Continuity) Act 2020, and amended by the Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020 (SI 2020/90), with effect from “exit day” (11:00pm on 31 January 2020):
- i. 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) (the “Horizontal Regulation”).

This sets the overarching framework for how the Common Agricultural Policy (“CAP”) schemes are administered; and

- ii. 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) (the “Delegated Regulation”). This Delegated Regulation sets some of the detailed rules necessary to finance, manage and monitor the delivery of the CAP schemes.

- 6.2 This instrument amends the Delegated Regulation to simplify the penalties that will be applied to farmers’ Direct Payments in England for claim year 2020 in cases where they have made an over-declaration. These amendments are made using the power in Article 77(8) of the Horizontal Regulation.

## **7. Policy background**

### *What is being done and why?*

- 7.1 Direct Payments have been the main income-support schemes for farmers under the CAP. The EU legislation governing the 2020 CAP Direct Payment schemes was incorporated into UK law on exit day. This was because Article 137 of the Withdrawal Agreement disapplied that EU legislation for the UK for claim year 2020 from exit day.
- 7.2 The Government remains committed to phasing out Direct Payments in England over an agricultural transition period, as provided for in its Agriculture Bill. In the lead up to this agricultural transition, it intends to simplify the existing schemes where possible, as set out in its “Farming for the future: policy and progress update” published on 25 February 2020: <https://www.gov.uk/government/publications/the-future-for-food-farming-and-the-environment-policy-statement-2020>. This includes making the penalty system simpler and more proportionate.
- 7.3 To achieve this simplification, this instrument amends the penalty framework applied to farmers’ Direct Payments under the following schemes in England:
  - i. Basic payment – this is a non-competitive payment that is based on land area; and
  - ii. Young farmer payment – this is a payment for “Young Farmers”, that is farmers starting up businesses who are 40 or under at the time of their first application.
- 7.4 The amendments in this instrument concern cases where a farmer makes an over-declaration. Specifically, they concern “small over-declarations”, which are those where the difference between the area declared and the area found to be eligible is more than either 2 hectares or 3%, but no more than 10%, of the eligible area.
- 7.5 Currently, where a farmer has made a small over-declaration, the land concerned is deemed ineligible for payment and, in addition, a penalty is applied. The normal penalty is 1.5 times the size of the over-declaration. This penalty is reduced to 0.75 times the size of the over-declaration where this is a first offence. In the event of an over-declaration in the following year, a penalty of 1.5 times the size of the over-declaration applies for that following year, and the penalty for the year of the first over-declaration is increased to 1.5 times the size of the over-declaration. For the 2018

scheme in England, out of around 1,600 small over-declarations, 370 attracted the penalty rate of 1.5 times the size of the over-declaration.

- 7.6 This instrument simplifies this system so that all small over-declarations will attract a penalty of 0.75 times the size of the over-declaration, rather than some receiving a higher penalty. Over-declarations of 10% or more will continue attract a higher penalty rate to maintain a sufficient deterrent. Defra considers this revised penalty system to be more proportionate, and simpler for both farmers and the Rural Payments Agency (“RPA”). The Government will look to make further simplifications to the Direct Payment schemes for the 2021 scheme year.

## **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, insofar as we only have the flexibility to amend the retained EU legislation to simplify the penalties as a result of leaving the EU.

## **9. Consolidation**

- 9.1 Defra does not intend to consolidate the relevant legislation at this time. An informal consolidated text will be made available to the public for free.

## **10. Consultation outcome**

- 10.1 Defra conducted an extensive consultation on “The future for food, farming and the environment” from February to May 2018, which generated over 40,000 responses. This sought views, amongst other things, on the simplification of the CAP schemes. The responses showed there was a huge desire among farmers for simplification. Many respondents, including individual farmers and the National Farmers’ Union, felt excessive penalties were issued under the current schemes.
- 10.2 In the period July to September 2019, Defra consulted the RPA’s Direct Payments Working Group on some detailed simplification proposals. These proposals took account of the responses to that wider 2018 consultation. The 2019 consultation included the proposed amendment to the penalty regime for Direct Payments. Responses were received from the following stakeholders:
- a) National Farmers’ Union;
  - b) Tenant Farmers Association;
  - c) Country Land and Business Association;
  - d) British Institute of Agricultural Consultants; and
  - e) Central Association of Agricultural Valuers.
- 10.3 Everyone who responded to the consultation was supportive of the proposed amendment. Key reasons given in support included that: it would be simpler; it would be more proportionate to the offence (which is considered to be usually the result of a genuine mistake or oversight); and it could reduce administration for the RPA in calculating the penalties and resolving queries with farmers. The National Farmers’ Union said they would also like to see changes to other aspects of the penalty regime, including a reduction in the size of penalties applied to larger over-declarations of land.

## **11. Guidance**

- 11.1 The RPA issued the annual scheme guidance to farmers in England on 12 March 2020, in line with the usual timetable. This explained that the Government planned to simplify the penalties for over-declarations. Updated guidance will be published if and when this instrument has cleared parliamentary scrutiny.

## **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 These instruments relate only to the 2020 Direct Payments claim year. However, Defra and its agencies will monitor and review the impact of these instruments as part of its standard policy-making procedures, and will ensure that the provisions are adhered to.

## **15. Contact**

- 15.1 Claire Williams at Defra: 0208 0262927 or email: [claire.williams@defra.gov.uk](mailto:claire.williams@defra.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Andrew Robinson, Deputy Director for CAP, Direct Payments and Sector Interventions 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.