

EXPLANATORY MEMORANDUM TO
THE DIRECT PAYMENTS TO FARMERS (REDUCTIONS) (ENGLAND)
REGULATIONS 2023

2023 No. 456

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

2. Purpose of the instrument

- 2.1 This instrument sets the percentage reductions which will be applied to the Direct Payments made to farmers in England under the Basic Payment Scheme for the 2023 claim year.
- 2.2 Regulation 2 makes a minor change to correct an error in the text of the table in Article 11A of 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”) as substituted by regulation 2 of the Direct Payments to Farmers (Reductions) (England) Regulations 2022 (S.I. 2022/407). S.I. 2022/407 set the percentage reductions to Direct Payments for the 2022 claim year.
- 2.3 Regulation 3 substitutes Article 11A of the Direct Payments Regulation to set the percentage reductions to Direct Payments for the 2023 claim year.
- 2.4 Notwithstanding the substitution made by regulation 3, regulation 4 saves the effect of the previous version of Article 11A of the Direct Payments Regulation, inserted by S.I. 2022/407 and as amended by regulation 2 of this instrument, for the purposes of dealing with any outstanding matters relating to claims for Direct Payments for the 2022 claim year.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument makes a minor change to the Direct Payments Regulation to correct an error contained in S.I. 2022/407. This instrument is being published under the free issue procedure. Defra has complied with the requirement stated in paragraph 4.7.6 of Statutory Instrument Practice (5th edition) to consult with the S.I. Registrar.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England only.

5. European Convention on Human Rights

5.1 The Minister of State for Food, Farming and Fisheries, Mark Spencer MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Direct Payments to Farmers (Reductions) (England) Regulations 2023 are compatible with the Convention rights.”

6. Legislative Context

6.1 On EU 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. This included the Direct Payments Regulation. The Direct Payments to Farmers (England) (Amendment) Regulations 2020 (S.I. 2020/1513) allow the Direct Payment schemes to continue, in England, beyond 2020.

6.2 The Direct Payments to Farmers (Reductions and Simplifications) (England) (Amendment) Regulations 2021 (S.I. 2021/407) made changes to the Direct Payments Regulation to apply percentage reductions to Direct Payments in England for claim year 2021. S.I. 2022/407 made changes to apply percentage reductions for claim year 2022. This instrument makes changes to apply percentage reductions to Direct Payments in England for claim year 2023.

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 the UK left the EU.

7.2 Direct Payments are untargeted, can inflate land rent prices and can stand in the way of new entrants to the farming industry. The Government remains committed to phasing out Direct Payments in England over an agricultural transition period (2021 to 2027), as provided for in its Agriculture Act 2020. Phasing out Direct Payments frees up money to support agriculture in different ways, including paying farmers to improve the environment and support sustainable food production.

7.3 In 2018 the Government announced how it intended to phase out Direct Payments in its “Health and Harmony: the future for food, farming and the environment in a Green Brexit - policy statement”: <https://www.gov.uk/government/publications/the-future-for-food-farming-and-the-environment-policy-statement-2018/health-and-harmony-the-future-for-food-farming-and-the-environment-in-a-green-brex-it-policy-statement>. This explained that percentage reductions would be made to farmers’ Direct Payments from 2021. The reductions for the 2021 and 2022 claims year were applied by S.I. 2021/407 and S.I. 2022/407 respectively, which amended the Direct Payments Regulation to apply these reductions.

7.4 The reductions the Government intends to apply for 2023 were confirmed in November 2020 in “The Path to Sustainable Farming: An Agricultural Transition Plan 2021 to 2024” (the “Agricultural Transition Plan”):

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/954283/agricultural-transition-plan.pdf. This instrument makes further changes to the Direct Payments Regulation to set the reductions to be applied to payments for the 2023 claim year. As was the case for the 2021 and 2022 claim years, the payment reductions will be applied in payment bands, with higher percentage reductions applied to amounts in higher payment bands. This is a method known as progressive reductions.

- 7.5 This instrument also makes a minor change to correct an error in the text of the table in Article 11A of the Direct Payments Regulation as substituted by S.I. 2022/407. This does not change the percentage reduction numbers in the table, which were the reductions to be applied to Direct Payments for the 2022 claim year.
- 7.6 The Government intends for 2023 to be the last year of the current Direct Payment scheme in England. This means that the Government does not expect to use the Direct Payments Regulation in England for claim years after 2023. Instead, the Government plans to replace the current Direct Payment scheme with a simpler payment, called a delinked payment, in 2024. This is part of the Government's plans to simplify Direct Payments as they are gradually phased out by the end of 2027, as set out in its Agricultural Transition Plan.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the United Kingdom from the European Union. This is because we only have the flexibility to make 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 asked for views, amongst other things, on the method of reductions to be applied to Direct Payments. The progressive reductions in this instrument take into account the responses to that consultation. They balance the views of those who felt recipients of the highest payments should initially face higher reductions, with the strong calls for the reductions to be shared amongst all farmers from the start of the agricultural transition.

11. Guidance

- 11.1 Defra published a "Farming is changing" booklet on 30 November 2020. This set out the intended reductions to be made to Direct Payments from 2021 to 2024. The Rural Payments Agency has since published a calculator that farmers can use to see how the planned reductions could affect their payment: <https://calculate-direct-payment-reductions.defra.gov.uk>. More information on the percentage reductions for 2023 will be included in the annual scheme guidance which the Rural Payments Agency issues to applicants in the spring.

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 A full Impact Assessment has not been prepared for this instrument because it is not a regulatory provision. This instrument changes the law for the Direct Payment schemes in connection with the giving of grants or other financial assistance by or on behalf of a public authority.

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 to 2027. It has also announced its intention to replace the current Direct Payment scheme with delinked payments in 2024. 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 Fiona James, Deputy Director for Policy Design in the Future Farming and Countryside Programme at Defra, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Mark Spencer MP, the Minister of State for Food, Farming and Fisheries at Defra, can confirm that this Explanatory Memorandum meets the required standard.