EXPLANATORY MEMORANDUM TO

THE DIRECT PAYMENTS TO FARMERS (ALLOCATION OF PAYMENT ENTITLEMENTS FROM THE NATIONAL RESERVE) (ENGLAND) REGULATIONS 2022

2022 No. 200

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 makes a minor change to the Basic Payment Scheme (BPS) rules in England concerning how many payment entitlements are given to new and young farmers. Payment entitlements will no longer be given to new and young farmers in relation to land they bought or leased after 17 May 2021.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 This instrument makes a change to the law relating to Direct Payments made under the BPS in England. 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. The Direct Payments to Farmers (England) (Amendment) Regulations 2020 (SI 2020/1513) allows Direct Payments to continue, in England, beyond 2020.

6.2 This instrument changes 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 and amending Annex X to that Regulation (EUR 2014/639). This sets some of the detailed scheme rules for Direct Payments, including the allocation of BPS payment entitlements to young and new farmers from the national reserve.

6.3 The change is made using the power in Article 35(1)(c) 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 and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) 73/2009. This power allows regulations to be made about the number of payment entitlements allocated from the national reserve to ensure legal certainty and to clarify specific situations that may arise in the application of the BPS.

6.4 This instrument relates to the Agriculture (Lump Sum Payment) (England) Regulations 2022, which were laid in Parliament on 10 February 2022. The change made by this instrument is needed to ensure legal certainty and remove the risk of double funding between the Lump Sum Exit Scheme and BPS, and because Direct Payments are being phased out over the agricultural transition period (see Section 7).

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).

7.3 Direct Payments in England are currently made through the BPS. This is a payment based on land area and payment entitlements.

7.4 When the BPS was introduced, some of the English BPS funds were used to create a national reserve in England. This instrument makes a change to the way payment entitlements are given to new and young farmers from the national reserve. As Direct Payments are being phased out during the agricultural transition period, payment entitlements will no longer be given to new and young farmers in relation to land they bought or leased after 17 May 2021. 17 May 2021 was the deadline for applying for payment entitlements for the 2021 BPS claim year.

7.5 This change also means there will be no double funding in relation to land used to claim a lump sum payment under the Lump Sum Exit Scheme and land used to give BPS payment entitlements to new and young farmers. The Lump Sum Exit Scheme was established by the Agriculture (Lump Sum Payment) (England) Regulations 2022.

7.6 The Government plans to replace BPS with delinked payments in 2024 as it phases out Direct Payments.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union. This is because the change in this instrument is being made due to Direct Payments being

phased out and the Lump Sum Exit Scheme being introduced in England, as part of our move away from the Common Agricultural Policy.

9. Consolidation

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

10. Consultation outcome

10.1 A formal consultation has not been carried out on this instrument. This is because it makes a minor change as part of the Government's wider plans to phase out Direct Payments. Defra carried out an extensive consultation on those wider plans in 2018 in "The future for food, farming and the environment", which had over 40,000 responses.

10.2 Defra explained its intention to make the change made by this instrument in its public consultation: "Direct Payments to farmers: Lump sum exit scheme and delinked payments in England". This consultation ran from 19 May 2021 to 11 August 2021.

10.3 Defra has also updated the Rural Payments Agency's Direct Payments Working Group (DPWG) about its plans to introduce this change. This included providing an update at the DPWG meeting on 25 January 2022 which was attended by:

- National Farmers' Union
- Country Land and Business Association
- British Institute of Agricultural Consultants
- Central Association of Agricultural Valuers
- Farming Community Network
- Institute of Agricultural Secretaries and Administrators
- Wildlife Trusts

11. Guidance

11.1 The Rural Payments Agency plans to issue the annual scheme guidance to BPS applicants in March 2022, which is in line with the usual timetable. This will explain the change to the rules being made by this instrument.

12. Impact

12.1 The impact on business, charities or voluntary bodies is that new and young farmers in England will not be given payment entitlements from the national reserve for land they have bought or leased after 17 May 2021. They can buy or lease payment entitlements from other farmers if they wish to use that land to claim BPS in 2022 or 2023 and do not already have enough entitlements. As Direct Payments are phased out, there will be other support available for new entrants as set out in "The Path to Sustainable Farming: An Agricultural Transition Plan 2021 to 2024": https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/954283/agricultural-transition-plan.pdf.

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 this is not a regulatory provision.

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 the change in this instrument is part of the Government's wider agricultural reforms in England, which include phasing out Direct Payments for all farmers.

14. Monitoring & review

14.1 The Government has announced its intention to end BPS after the 2023 scheme year. 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 Deborah Wells, 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 Minister of State for Agriculture, Fisheries and Food at Defra, can confirm that this Explanatory Memorandum meets the required standard.