EXPLANATORY MEMORANDUM TO

THE DIRECT PAYMENTS TO FARMERS (AMENDMENT) REGULATIONS 2020

2020 No. 576

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 amends the retained EU law governing the 2020 Direct Payment schemes for farmers. This EU law became domestic law at 11:00pm on 31st January 2020 ("exit day") further to the Direct Payments to Farmers (Legislative Continuity) Act 2020 ("the DPLC Act"). The amendments in this instrument confirm the euro to sterling exchange rate for payments under these schemes. This instrument also addresses other operability issues arising from the UK's exit from the EU that were not fully dealt with at the time. The amendments will enable the retained EU law to operate effectively in the UK for claim year 2020, with no ambiguity.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Parliamentary Under Secretary of State for Agriculture, Fisheries and Food, Victoria Prentis MP, has agreed for this instrument to be made using the 'made affirmative' procedure as prescribed in the DPLC Act. The made affirmative procedure was specified in the DPLC Act because the EU law under that Act would become domestic law on Royal Assent and operability amendments needed to be made without delay to avoid a significant legislative gap in the Direct Payment schemes for claim year 2020.

3.2 This instrument makes further minor operability amendments to the retained EU law that were not made at that time, using the same powers, and it is appropriate that they too come into force without delay (see sections 7.3 and 7.4 of this explanatory memorandum for more detail). This ensures ambiguities are removed from the statute book at the earliest opportunity.

3.3 Regulation 7 of this instrument amends the Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020 ("S.I. 2020/90"), which made operability amendments to the retained EU law on exit day. Those regulations are in force. Ordinarily any amendment would be to the principal regulations, rather than the amending regulations. However, the text being omitted by regulation 7 of this instrument did not become domestic law because section 1 of the DPLC Act only brought the legislation listed in that Act into domestic law insofar as it relates to the 2020 Direct Payment schemes.

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)

3.4 The territorial application of this instrument includes Scotland and Northern Ireland.

3.5 The powers under which this instrument is made may be used by each relevant authority or UK-wide with consent of the Devolved Administrations (see section 9 of the DPLC Act). This instrument will be made UK wide with consent. The territorial application is not limited either by the DPLC Act or by this instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the UK.

4.2 The territorial application of this instrument is the UK.

5. European Convention on Human Rights

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

"In my view the provisions of the Direct Payments to Farmers (Amendment) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 The DPLC Act incorporated the EU legislation governing the 2020 Common Agricultural Policy ("CAP") Direct Payment schemes into domestic law on exit day.

6.2 Two statutory instruments, which came into force on 31 January 2020, made amendments to this retained EU law to make it operable in the UK. These were S.I. 2020/90 and the Rules for Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020/91).

6.3 This instrument makes further amendments to the retained EU law to address additional operability issues. The retained EU law amended by this instrument is:

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 CAP schemes are administered. It was incorporated into UK law only insofar as it relates to 2020 Direct Payments;

ii) 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;

iii) 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;

iv) 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 CAP schemes. It was incorporated into UK law only insofar as it relates to 2020 Direct Payments;

v) The Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transaction and Appeals) Regulations 2014 (S.I. 2014/3263) (the "Supplementary Regulations"). This makes supplementary provision required for the administration of the CAP, including provisions on euro to sterling exchange rates for Direct Payments. It is a domestic instrument made under section 2(2) of the European Communities Act 1972 and, insofar as it relates to Direct Payments, forms part of retained EU law in accordance with the DPLC Act.

6.4 This instrument amends the Horizontal Regulation to specify the methodology for setting the euro to sterling exchange rate to be used to calculate farmers' 2020 Direct Payments. It amends the Supplementary Regulations to specify that the previous exchange rate methodology only applies to the 2019 claim year and earlier years. This instrument also makes some other minor operability amendments to the Regulations listed in sections 6.3(i)-(iv) of this explanatory memorandum, such as removing some redundant cross-references. This instrument also makes amendments to S.I. 2020/90 (see section 3.3 of this explanatory memorandum).

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 the Direct Payments Regulation for the UK for claim year 2020 from exit day.

7.2 The Government and Devolved Administrations, in their constituent nations, have committed to continuing to operate the 2020 Direct Payment schemes. The Government has committed to provide £2.852 billion of support to allow the funding for Direct Payments for 2020 to continue at the same level as 2019 in each part of the UK.

7.3 At the time of EU Exit, no operability amendments were made to the provisions in the retained EU law concerning exchange rates. This was because the Government and Devolved Administrations had yet to decide on the exchange rate they wished to set for the Direct Payment schemes for the 2020 claim year, given that these schemes will be domestically funded. The Government and Devolved Administrations have since decided that the exchange rate to be used is the one that was used for the 2019 claim year. This instrument makes amendments to the retained EU law to reflect these decisions, ready for payments to be made later this year.

7.4 The other operability amendments made by this instrument are minor. The need for these minor changes was identified after EU Exit. The amendments include removal of some cross-references which are no longer relevant, such as cross-references to articles which are not part of the retained EU law. Other amendments include removal of references to the Commission's budgetary management system of financial

discipline as this does not form part of retained EU law. Some amendments are made to clarify that, in some instances, the EU legislation being referred to is the version that had effect immediately before exit day. Some amendments address other outstanding minor operability issues, such as removing references to the "Commission", and make minor drafting amendments.

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, the amendments in the instrument are being made to deal with deficiencies in the law arising from the withdrawal of the UK from the EU. The need for the legislation arises from Article 137 of the Withdrawal Agreement. Sections 6 and 7 of this explanatory memorandum provide the legislative and policy context. In particular, if EU Exit had not occurred, the exchange rate for 2020 Direct Payments would be set through mechanisms used under the CAP.

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 This instrument has not been subject to a formal consultation. This is because it does not make substantive policy change. The exchange rate to be used for 2020 Direct Payments, for example, will be the same as was used for the 2019 scheme. This instrument provides continuity and stability for Direct Payments recipients.

10.2 This instrument has been developed in collaboration with officials in the Scottish and Welsh Governments and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.

11. Guidance

11.1 The Rural Payments Agency issued the annual scheme guidance to farmers in England on 12 March 2020, in line with the usual timetable. This explained that the Government intended to introduce legislation to set the exchange rate to be used for payments under the 2020 Direct Payment schemes. An accompanying press release specified the exchange rate the Government intends to use in England. This press release can be found here: https://www.gov.uk/government/news/two-month-window-to-claim-for-farm-payments-for-2020-opens. The confirmed exchange rate will be published on gov.uk if and when this instrument has cleared parliamentary scrutiny. The Devolved Administrations will put in place their own arrangements for updating farmers in their constituent nations.

11.2 Defra is not producing any further guidance relating to this instrument, as the other amendments it contains are minor and maintain the status quo.

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 will not implement any substantive policy change. It will maintain the status quo, compared to the 2019 scheme, with regards to the exchange rates to be used for 2020 Direct Payments.

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 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.