EXPLANATORY MEMORANDUM TO

THE DIRECT PAYMENTS TO FARMERS (CROP DIVERSIFICATION DEROGATION) (ENGLAND) REGULATIONS 2020

2020 No. 475

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 The amendment made by this instrument will exempt farmers in England from the need to follow crop diversification requirements during 2020 in order to receive Direct Payments for 2020. This requirement is removed for 2020 only, in response to the recent prolonged period of wet weather and the flooding from Storm Ciara and Storm Dennis. This amendment means farmers in England will not be required to plant more than one crop for the 2020 Direct Payments scheme year.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument is being made urgently using the made-affirmative procedure in order to resolve problems arising from flooding in England.

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 This instrument applies to England only.

3.3 The instrument does not have any minor or consequential effects outside England.

3.4 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
- the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

3.5 Defra has reached this view because it considers that the purpose of the instrument is to amend the rules for Direct Payments for 2020, which is within devolved legislative 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 England only.

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 (Crop Diversification Derogation) (England) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is made under Article 69(1) of Regulation (EU) 1307/2013. This Regulation was incorporated into domestic law as far as it relates to the Direct Payment schemes for the 2020 scheme year by the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c. 2) and amended by S.I. 2020/91 with effect from exit day (31 January 2020). Article 71(3) sets out that Regulations made under Article 69(1) are subject to made affirmative procedure.

7. Policy background

What is being done and why?

7.1 Since September 2019, England has been experiencing higher than average rainfall. Farming stakeholders have reported that farmers have been experiencing difficulties cultivating crops as a result, either because they cannot access flooded land or land is too wet to plant. This could potentially impact their ability to meet crop diversification requirements for 2020 Direct Payments. Failure to meet crop diversification requirements makes a claim ineligible for the greening element of Direct Payments, which accounts for approximately 30% of the total value of payments.

7.2 The crop diversification rules require that:

a) on holdings with between 10 and 30 hectares of arable land at least two different crops must be grown on that land and the largest crop must not cover more than 75% of that arable land; and

b) on holdings with more than 30 hectares of arable land, at least three different crops must be grown on that land, the largest crop must not cover 75% or more of that arable land and the two largest crops together must not cover more than 95% of that arable land.

7.3 This regulation will apply to the whole of England and will remove the crop diversification requirement completely for the 2020 Direct Payments scheme year. This will mean that farmers in England will not have to comply with the crop diversification requirements in 2020 in order to receive payment, and will not need to provide any evidence that they have done so.

7.4 Alternative options to introducing a general derogation for crop diversification requirements have been considered by the Department and found to be insufficient to address the issues that farmers are experiencing in response to prolonged wet weather conditions. The first alternative was to recommend that farmers explore alternative

methods for meeting their crop diversification requirements, where they had been unable to plant winter crops:

a) Land left uncropped can be managed to count as fallow for crop diversification requirements;

b) Spring cropping can be used to help meet crop diversification rules (spring and winter varieties count as different crops independent of their sowing date);

c) Failed crops can count as the crop originally established, or be managed to count as fallow land, if supporting evidence is submitted (for example seed invoices and delivery notes, crop records or photographs); and

d) Force majeure applications can be made where exceptional circumstances outside of the farmer's control have affected their ability to comply with scheme rules.

7.5 Another alternative would be to leave 75% or more of arable land fallow, in order to be exempt from crop diversification requirements.

7.6 Undertaking one of the alternative measures above, or a combination thereof, was the advice of the Department until this guidance was withdrawn on 31 March 2020, when our assessment was that these mitigations were no longer plausible for farmers to undertake.

7.7 Meteorological and river flow data from the Met Office and Environment Agency show much higher than average rainfall across all English regions between September 2019 and December 2019. The waterlogging and flooding of land was further exacerbated by Storm Ciara and Storm Dennis in February 2020. For example, England experienced 267% of the Long-Term Average rainfall in February. The Environment Agency's 'December Water Situation Report' explains that it had been the seventh consecutive month to have above average rainfall for England.

7.8 Given wet weather conditions in late 2019, it was extremely difficult for most farmers to plant winter crops. This left them with the option to plant spring crops only. The two February storms then pushed spring cropping back by a considerable amount of time, due to land being flooded and waterlogged. The prime sowing time for most spring crop varieties are between the end of February and middle of March. After this period, the yield and quality of most crop varieties at harvest start to become economically unviable – that is, they would cost more to produce than what they will be sold for.

7.9 Force majeure applications could not be considered until late spring 2020 and would create considerable uncertainty for farmers who have to make cropping decisions and compile evidence for the purposes of submitting claims which may not be approved and would not be confirmed for several months. Additionally, given that the wet weather has been widespread, causing issues for farmers across England, relying on individual force majeure claims to deal with what is a nationwide issue was not considered appropriate.

7.10 With regard to crop diversification exemptions, these are not a catch-all solution in cases of widespread prolonged wet weather like that experienced in 2019/20. In most cases, arable farms will not have 75% of their land under fallow or temporary grassland. Despite a difficult season, the majority of farmers will still try to plant on as much land as possible. The growing of crops is essential for their bottom line, and therefore, farmers will try to plant and harvest. It is economically unviable for a majority of farmers to leave 75% or more of their land fallow.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

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

10. Consultation outcome

10.1 Defra has received representations from several stakeholders requesting a relaxation of crop diversification requirements. Additionally, a very rapid, oral consultation with major stakeholders showed strong support for this change.

11. Guidance

11.1 The Rural Payments Agency has produced guidance on the anticipated rule changes and a copy of the guidance can be found at: https://www.gov.uk/government/collections/bps-2020

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 because the impact is positive, as this derogation removes a burden on farm businesses, and the amounts involved are below the threshold for producing an Impact Assessment.

13. Regulating small business

13.1 This instrument applies to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 This instrument does not include a statutory review clause. This is because it only applies in respect of the 2020 claim year and will therefore cease to have effect before the end of the five-year period beginning with its commencement date.

15. Contact

15.1 Richard Beddard at the Department for the Environment, Food and Rural Affairs Telephone: 020 8225 8986 or email: Richard.beddard@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Andrew Robinson, Deputy Director for the Common Agricultural Policy Team at the department for Environment, Food and Rural Affairs, can confirm that this explanatory memorandum meets the required standard.

15.3 Victoria Prentis MP, Parliamentary Under-Secretary of State for Agriculture, Fisheries and Food at the Department for the Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.