EXPLANATORY MEMORANDUM TO

THE DIRECT PAYMENTS TO FARMERS (ELIGIBLE HECTARES AND AFFORESTED AREAS) (AMENDMENT) (ENGLAND) REGULATIONS 2023

2023 No. 718

1. Introduction

1.1 This explanatory memorandum has been prepared by Department for Environment, Food and Rural Affairs ("Defra") and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to enable farmers who enter land into woodland creation grant agreements which are longer then twelve years to be able to use that land to receive Direct Payments under the Basic Payment Scheme (BPS). Without the change made by this instrument, woodland creation grants on land which is used to claim BPS are limited to a period of twelve years.

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 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.

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 On EU exit day, the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c. 2) ("the 2020 Act") incorporated EU legislation governing the 2020 Common Agricultural Policy Direct Payment schemes into UK law. 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 2013/1307) (the "Direct Payments Regulation") was incorporated (apart from Article 13) into domestic law by section 1 of the 2020 Act. The Direct Payments to Farmers (England) (Amendment) Regulations 2020, laid on 12 November 2020, allow these schemes to continue, in England, beyond 2020.

6.2 Regulation 2 of this instrument amends Article 32 of the Direct Payments Regulation. Regulation 2 amends the meaning of "eligible hectare" for the purposes of a claim for Direct Payments under the BPS to include land which is afforested under a national

scheme for durations longer than the maximum period of twelve years specified in Article 22 of Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (EUR 2013/1305).

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 in England are currently made through the BPS. BPS payments are largely based on the area of eligible land a farmer has. Land must be eligible for BPS for the whole calendar year of the BPS claim. In general, land is eligible if it is agricultural land.

7.3 Non-agricultural land, such as woodland, is eligible for BPS if it was used to claim payments in 2008 under the scheme which existed before BPS (the Single Payment Scheme) and if the land currently gives a right to payments under certain other land management schemes. Land which has been entered into a woodland creation grant agreement is only eligible for BPS if the woodland creation grant agreement is less than twelve years.

7.4 This instrument amends the Direct Payments Regulation to enable farmers who enter land into woodland creation grant agreements which are longer then twelve years to be able to use that land to receive direct payments under BPS. This will allow the Government to offer woodland creation grant agreements which are longer, more flexible and attractive to farmers with the land remaining eligible for BPS. To be eligible for BPS the land must also meet the existing requirement to have been used to claim payments in 2008 under the Single Payment Scheme.

7.5 The Government announced in "The Path to Sustainable Farming: An Agricultural Transition Plan 2021 to 2024" that it intended to replace BPS in England with delinked payments in 2024. Delinked payments will not be based on land. The changes in this instrument are being made now so farmers can benefit from the longer, more flexible, woodland creation grants this year without it affecting their 2023 BPS claims.

8. European Union Withdrawal and Future Relationship

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 because the flexibility to make the changes to the Direct Payments Regulation made by this instrument exist as a result of leaving the EU.

9. Consolidation

9.1 Defra does not intend to consolidate the relevant legislation.

10. Consultation outcome

10.1 No consultation was undertaken in relation to the change made by this instrument to BPS eligibility rules. This is because it is a minor change to ensure afforested land under woodland creation grant agreements with a duration exceeding twelve years will be eligible for BPS payments whilst BPS continues to operate. See section 7.4 for details on the eligibility rules.

11. Guidance

11.1 The detail of how woodland creation grant offers will change for farmers and land managers is planned to be published by Defra on gov.uk in the autumn of 2023. This will include reassurance that, as a result of the amendment in this instrument, land covered by the new offers will be eligible for BPS until the end of that scheme if it meets the rules described in section 7.4.

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 relates to 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 businesses.

14. Monitoring & review

14.1 The Government has announced its intention to replace BPS 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 Andrew Sloman at Defra, Telephone: 07442 863069 or email: andrew.sloman@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Naomi Mathieson, Deputy Director for Trees, Woodlands and Forestry policy, 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.