EXPLANATORY MEMORANDUM TO

THE DIRECT PAYMENTS TO FARMERS (INSPECTIONS) (ENGLAND) REGULATIONS 2021

2021 No. 1057

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 reduces the Cross Compliance on-farm inspection rate from 1% to 0.5% for the 2021 claim year for Direct Payment schemes in England. This is in response to the difficulties being experienced by the Rural Payments Agency ("RPA") in planning and carrying out on-farm inspections because of Covid-19 and its related restrictions.

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 amends Article 68 of Regulation (EU) No. 809/2014 (EUR 2014/809) to reduce the rate of on-farm Cross Compliance inspections for Direct Payment claims from 1% to 0.5% for the 2021 claim year. It is made under Article 62 of Regulation (EU) No. 1306/2013 (EUR 2013/1306). Both of these EU Regulations were incorporated into domestic law as far as they relate to Direct Payment schemes by the Direct Payments to Farmers (Legislative Continuity) Act 2020 and amended by the Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020/90). EUR 2014/809 was also amended in relation to direct payments by S.I. 2020/575, S.I. 2020/1387 and S.I. 2020/1513.

7. Policy background

What is being done and why?

7.1 Cross Compliance is a set of standards for farmers and other land managers which protect the environment; animal welfare; public, animal and plant health and keep

land in good agricultural and environmental condition. There are currently two Cross Compliance regimes in operation in England. Firstly, there is a domestic Cross Compliance regime which applies to Direct Payments for farmers. Direct Payments are mainly based on land-area and paid through the Basic Payment Scheme. Secondly, there is an EU Cross Compliance regime which applies to ongoing payments under EU schemes, primarily agri-environment and forestry schemes. Receiving payments under each set of schemes is conditional on meeting the Cross Compliance standards.

7.2 Both Cross Compliance regimes have a requirement for 1% of recipients to be inspected each year, during which on-farm checks are carried out by the RPA and the Animal and Plant Health Agency ("APHA"). Some of these checks require the inspector to visit and meet with the recipient to carry out measurements of land, document checks and other assessments against the Cross Compliance standards and rules.

7.3 Last year Covid-19 and the resulting restrictions on movement created administrative and practical difficulties with regard to planning and carrying out on-farm visits. The European Commission published a derogation[1] which reduced the rate to 0.5% for EU schemes. Defra subsequently laid a Statutory Instrument[2] reducing the Cross Compliance inspection rate for Direct Payment claims to 0.5% for the 2020 scheme year.

7.4 Some difficulties in planning and carrying out on-farm visits have continued into this year and the European Commission published a derogation[3] on 4 May 2021 mirroring the 2021 derogation and reducing the Cross Compliance inspection rate to 0.5% for 2021. In England, this reduced rate only applies to ongoing EU schemes and not to Direct Payments.

7.5 Initially, Defra and the RPA believed that the 1% domestic Cross Compliance rate for Direct Payments could be achieved this year and considered that it would not be necessary to reduce the level of checks. However, recently the impact of Covid-19 and its related restrictions have caused increased difficulties. There are severe staff resourcing issues due to inspectors having to isolate and some on-farm inspections that involve meeting with recipients have had to be cancelled at short notice by the recipient.

7.6 As a result, to ensure that payments can continue to be made in a timely manner, this instrument will reduce the Cross Compliance inspection rate for Direct Payments from 1% to 0.5% for the 2021 scheme year. This reflects the EU derogation published earlier this year for EU schemes and the continued difficulties faced in carrying out on-farm visits. Having a single Cross Compliance inspection rate across all schemes operating in England also ensures that farmers and land managers receiving payments from EU and domestic schemes are treated consistently and fairly.

7.7 The RPA will continue to carry out a range of other measures, such as remote sensing and evidence checks, to monitor compliance. These are not affected by this instrument and their effectiveness will continue as normal.

[1] Commission Implementing Regulation (EU) 2020/532
[2] The Direct Payments to Farmers (Inspections) (Coronavirus) (England) Regulations 2020 (S.I. 2020/575)
[3] Commission Implementing Regulation (EU) 2021/725

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

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

10. Consultation outcome

10.1 The RPA and APHA are in favour of the inspection rate reduction so that on-site visits can continue to be carried out in a safe manner.

11. Guidance

11.1 Guidance for farmers and land managers on Cross Compliance is available here: Cross compliance 2021 - GOV.UK (www.gov.uk) There is no intention to publish additional guidance relating to this instrument because it does not affect the standards or requirements farmers and land managers must meet.

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 reduces the burden on farm businesses and the RPA in the 2021 claim year and because the amounts involved are below the threshold for producing an Impact Assessment.

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 because there are no burdens arising from this legislation.

14. Monitoring & review

14.1 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Victoria Prentis, MP, Minister for Farming, Fisheries and Food has made the following statement:

"A statutory review clause is not appropriate because the provisions in this instrument will cease to have effect before the end of the five-year period beginning with its commencement date."

15. Contact

15.1 Jenny Hewlett at Defra Telephone: 02078 955438 or email: jenny.hewlett@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Deborah Wells, Deputy Director for the Common Agricultural Policy and Transition at Defra can confirm that this Explanatory Memorandum meets the required standard.

15.3 Victoria Prentis, MP, Minister for Farming, Fisheries and Food at Defra can confirm that this Explanatory Memorandum meets the required standard.