EXPLANATORY MEMORANDUM TO
THE DIRECT PAYMENTS TO FARMERS (PENALTY SIMPLIFICATION) REGULATIONS (NORTHERN IRELAND)

SR 2020 NO. 94

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Agriculture, Environment and Rural Development ("the Department") to accompany the statutory rule (SR) which is laid before the Northern Ireland Assembly.

2. Purpose

2.1 The Department of Agriculture, Environment and Rural Affairs has made the above named Statutory Rule to provide for a minor simplification to the penalty system applying to direct payments from the 2020 scheme year.

3. Background

3.1 Farmers who declare land on their Single Application for payment which is not eligible are deemed to have over declared. They will receive no payment in respect of the ineligible land, but in addition as a deterrent against over declarations, a penalty is applied if the over declaration exceeds 3% of the area found eligible (determined) or 2ha.

3.2 The penalty is calculated as 1.5 x the area over declared. Therefore if a farmer declares 20ha and 17ha is found eligible, a penalty equivalent to 4.5ha (3ha x 1.5) is applied and payment is in effect restricted to 12.5ha.

3.3 If the over declaration is less than 10%, then the penalty is reduced by 50% but only if it is the first offence of the farm business. If the over declaration is repeated in the following claim year, then the 50% reduction has to be paid back (reapplied). This is known as the "yellow card." This conditionality causes significant administrative complications as every case where the over declaration is between 3% and 10% needs to be compared with previous years to check if it is their first offence. Furthermore if the yellow card is applied, then a check is needed in the following year to ascertain if a further over declaration has occurred.

3.4 The intention is to remove the conditions relating to first offence and re-payment if a subsequent over declaration occurs. Therefore everyone who over declares their land area by no more than 10% will have their penalty reduced by 50% from 2020 scheme year onwards.

3.5 In 2019, 90 businesses benefited from the yellow card by having their penalty reduced by 50% which was a reduction of €26,350. A further 25 businesses

had an over declaration of less than 10% but did not benefit due to it not being a first offence. If a 50% reduction to their penalty had applied, the total benefit would have been €8,516. Of these 25 businesses, 6 had to repay the reduction in penalty applied in the previous year which totalled €3,881.

3.6 In total, the conditionality attached to the yellow card resulted in an additional €12,397 being deducted from payments as penalties and affecting 25 farmers which is a tiny impact in the context of direct payments. Therefore the administrative simplification is justified. The penalty that would be applied is still a sufficient deterrent against over declaring land.

3.7 To achieve this simplification, a modification to Article 19a paragraph 2 of EUR 2014/640, the omission of paragraph 3 and a consequential amendment to paragraph 4 is needed. The effect would be that for all over declarations of no more than 10% of the area determined, the penalty would be reduced by 50%.

3.8 The Direct Payments to Farmers (Penalty Simplification) Regulations (Northern Ireland) 2020 will be made by negative resolution, under powers conferred by Article 77(8) of EUR 2013/1306 as set out in Article 115D of that regulation.

4. Consultation

4.1 The Direct Payments to Farmers (Penalty Simplification) Regulations (Northern Ireland) 2020 have not been subject to formal consultation. However, this issue was referred to in a stakeholder engagement document on the Northern Ireland Agricultural Future Policy framework issued on 1 August 2018 within the context of the penalty regime. Most of the responses that commented on this part of the document referred to the penalty regime more generally. Due to the very minor impact and that no farmer is disadvantaged, it is considered that a specific consultation is not required.

5. Equality Impact

5.1 The Statutory Rule will apply to all farmers from the 2020 scheme year and therefore there is no equality impact.

6. Regulatory Impact

6.1 Given the nature of the amendment, there are no impacts on the private, voluntary or public sector as a result of these changes.

7. Financial Implications

7.1 £293m has been allocated to Northern Ireland for Direct Payments for 2020 scheme year. These amendments have no impact on the financial allocation.

8. Section 24 of the Northern Ireland Act 1998

8.1 The Statutory Rule is assessed to have no impact on human rights. The Statutory Rule is therefore deemed to comply with the requirements of section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1 Under the Withdrawal Agreement the UK must run equivalent schemes to the EU in 2020. This Statutory Rule would still meet this requirement.

10. Parity or Replicatory Measures

10.1 This change is also being made in England for 2020 scheme year onwards with an equivalent Statutory Instrument scheduled to be made on the same date. Scotland and Wales have indicated that they are not making this change in 2020 scheme year.

11. Additional Information

11.1 N/A