# EXPLANATORY MEMORANDUM TO

# THE DIRECT PAYMENTS TO FARMERS (RECONSIDERATION AND APPEAL) (MODIFICATION) (ENGLAND) REGULATIONS 2023

## 2023 No. 1181

## 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 His Majesty.

## 2. Purpose of the instrument

2.1 This instrument introduces statutory 60-day time limits for farmers to submit challenges and appeals against decisions made in relation to their Direct Payments under the Basic Payment Scheme ("BPS") in England.

## 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 only.

## 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 incorporated EU legislation governing the 2020 Common Agricultural Policy Direct Payment schemes into UK law. The Direct Payments to Farmers (England) (Amendment) Regulations 2020 (SI 2020/1513) allow Direct Payments to continue, in England, beyond 2020. Direct Payments in England are made through the BPS.

6.2 This instrument makes changes to the Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 (S.I. 2014/3263). S.I. 2014/3263 includes some provisions for the administration and enforcement of the CAP, including the rights of farmers to appeal against decisions made in relation to them.

6.3 This instrument modifies the application of the appeal rules in S.I. 2014/3263 to introduce a 60-day time limit for farmers to request the reconsideration of any BPS decisions made in relation to them by the Secretary of State. It also provides a further

60-day period for farmers to appeal should they be dissatisfied with the outcome of the reconsideration.

6.4 Paragraphs (3) to (7) of regulation 32 of S.I. 2014/3263 set the current rules on how appeals must be carried out and the appeal fees that the appellant can be required to pay. The modification made to Part 5 of S.I. 2014/3262 by this instrument ensures that those rules continue to apply to appeals against BPS decisions under the new regulation 32A.

## 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 and, in England, they are currently paid through the BPS. The Government is phasing out Direct Payments in England over an agricultural transition period (2021 to 2027), as it moves funding towards Environmental Land Management schemes. The Government announced its intention to end BPS and introduce delinked payments (which is a simpler type of payment) in 2024 as it phases out Direct Payments. This was announced in "The Path to Sustainable Farming: An Agricultural Transition Plan 2021 to 2024": https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/954283/agricultural-transition-plan.pdf. The Government laid the Agriculture (Delinked Payments and Consequential Provisions) (England) Regulations 2023 in parliament on 7 November 2023 to end BPS and introduce delinked payments in 2024. This means that the 2023 claim year will be the last year of BPS in England. This instrument contains supplementary provision for transitional purposes in connection with the introduction of delinked payments.

7.2 This instrument makes a change to S.I. 2014/3263, which forms part of the law relating to BPS in England, for transitional purposes. S.I. 2014/3263 sets the current rules for farmers who wish to appeal to the Secretary of State against a BPS decision made in relation to them. It does not set a time limit for these appeals. Currently, the Rural Payments Agency (RPA) also has an administrative process for farmers to challenge BPS decisions before they reach the appeal stage. This process is not set in law and no time limits are applied for bringing these challenges. As BPS is ending, the Government considers that it is appropriate to introduce a statutory time limit for farmers to challenge and appeal against BPS decisions made by the Secretary of State in relation to them. Setting time limits will help the RPA to close the BPS efficiently. It will avoid the RPA having to process unlimited BPS challenges and appeals even after the scheme has closed.

7.3 This instrument makes a change to S.I. 2014/3263 to introduce a 60-day time limit for farmers to ask the Secretary of State to reconsider a BPS decision made in relation to them. The 60-day time limit applies from the date the farmer was notified of the decision. If the farmer is dissatisfied with the outcome of that reconsideration, they will be able to appeal to the Secretary of State but must do so within 60 days of being notified of the outcome of the reconsideration. Where the decision concerned was made before 1 January 2024, and it has not been reconsidered by the Secretary of State or appealed against before that date, the 60-day period will begin on 1 January 2024. This means the 60-day time limit will not begin before this instrument comes into force.

7.4 Where, before 1 January 2024, a BPS decision was reconsidered following a challenge from the farmer but had not been the subject of an appeal, it will be treated as if the farmer had been notified of the outcome of the reconsideration on 1 January 2024. This means that if the farmer wishes to submit an appeal, the 60-day time limit for doing so begins on 1 January 2024.

7.5 Where, before 1 January 2024, a farmer had challenged a BPS decision, but this decision had not been reconsidered by 1 January 2024, it will be treated as if the farmer had challenged the BPS decision under the new rules. This means there will be no need for the farmer to re-submit their challenge.

7.6 Where, before 1 January 2024, a farmer had appealed a BPS decision, the current rules continue to apply.

7.7 The Government considers that the 60-day time limits will give farmers sufficient time to ask for a decision to be reconsidered or to submit an appeal. They are consistent with the time limits set for farmers and land managers under the financial assistance schemes introduced under the Agriculture Act 2020.

7.8 The change made by this instrument is not expected to affect many farmers. This is because few farmers currently ask the RPA to re-consider BPS decisions via its current complaints process or submit appeals. In 2022, the RPA only received 120 BPS complaints (which was less than 0.2% of BPS applicants) and 13 BPS appeals. As the BPS is closing, these numbers are expected to decrease further.

## 8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union. This is because the change made by this instrument is being made as a result of the Government's plans to close the BPS, which we only have the flexibility to do as a result of leaving the EU.

## 9. Consolidation

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

## 10. Consultation outcome

10.1 A formal consultation has not been carried out on the change made by this instrument. This is because the BPS is ending and the change made by this instrument is for transitional purposes only and is not expected to affect many farmers (see section 7.8 of this explanatory memorandum). However, Defra updated the RPA's Direct Payments Working Group ("DPWG") in June 2023 on the planned change and no concerns were raised. DPWG includes key industry stakeholders, including the National Farmers Union.

## 11. Guidance

11.1 The RPA will publish the 60-day time limits on its website (www.gov.uk/rpa) before the end of 2023. It will also publicise these time limits in other communications to farmers, such as in scheme information which will be sent to BPS applicants before the end of 2023.

## 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 on what action to take to assist small businesses is that no disproportionate impacts are expected to affect small and micro businesses.

## 14. Monitoring & review

14.1 The BPS in England will end when the Government introduces 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 Claire Williams at Defra, Telephone: 0208 0262927 or email: claire.williams@defra.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Deborah Wells, Deputy Director for Policy Design in the Farming and Countryside Programme 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.

# Annex

## Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

## Part 1A

### Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

| Statement | Where the requirement sits | To whom it applies | What it requires |
|---|---|---|---|
| Sifting | Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7 | Ministers of the Crown exercising sections 8(1) or 23(1) to make a Negative SI | Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees |
| Appropriate-ness | Sub-paragraph (2) of paragraph 28, Schedule 7 | Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 | A statement that the SI does no more than is appropriate. |
| Good Reasons | Sub-paragraph (3) of paragraph 28, Schedule 7 | Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 | Explain the good reasons for making the instrument and that what is being done is a reasonable course of action. |
| Equalities | Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7 | Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 | Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.<br><br>State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010. |
| Explanations | Sub-paragraph (6) of paragraph 28, Schedule 7 | Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2<br>In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs | Explain the instrument, identify the relevant law before IP completion day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law. |
| Criminal offences | Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7 | Ministers of the Crown exercising sections 8(1) or | Set out the 'good reasons' for creating a criminal offence, and the penalty attached. |

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| | | 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence | |
| Sub-delegation | Paragraph 30, Schedule 7 | Ministers of the Crown exercising section 8 or part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument. | State why it is appropriate to create such a sub-delegated power. |
| Urgency | Paragraph 34, Schedule 7 | Ministers of the Crown using the urgent procedure in paragraphs 5 or 19, Schedule 7. | Statement of the reasons for the Minister's opinion that the SI is urgent. |
| Scrutiny statement where amending regulations under 2(2) ECA 1972 | Paragraph 14, Schedule 8 | Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under s. 2(2) ECA | Statement setting out:<br>a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament,<br>b) containing information about the relevant authority's response to—<br>(i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and<br>(ii) any other representations made to the relevant authority about the published draft instrument, and,<br>c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid. |
| Explanations where amending regulations under 2(2) ECA 1972 | Paragraph 15, Schedule 8 | Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA | Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before IP completion day, and explaining the instrument's effect on retained EU law. |

# Part 1B

## Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

| Statement | Where the requirement sits | To whom it applies | What it requires |
|---|---|---|---|
| Sifting | Paragraph 8 Schedule 5 | Ministers of the Crown exercising section 31 to make a Negative SI | Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees |

# Part 2

## Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

**16. Explanations where amending or revoking regulations etc. made under section 2(2) of the European Communities Act 1972**

16.1 The Minister of State for Food, Farming and Fisheries, Mark Spencer MP, has made the following statement regarding regulations made under the European Communities Act 1972:

"In my opinion there are good reasons for the Direct Payments to Farmers (Reconsideration and Appeal) (Modification) (England) Regulations 2023 to amend the Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 (S.I. 2014/3263) made under section 2(2) of the European Communities Act 1972. This is because by introducing time limits for farmers to request the reconsideration of, and bring appeals against, Basic Payment Scheme ("BPS") decisions, this instrument will help the Rural Payments Agency to close the BPS efficiently. The BPS will end, and the law relating to BPS will be revoked, in relation to England when the Government introduces delinked payments in 2024 as part of its wider agricultural reforms."