EXPLANATORY MEMORANDUM TO

THE DIRECT PAYMENTS TO FARMERS (REDUCTIONS AND SIMPLIFICATIONS) (ENGLAND) (AMENDMENT) REGULATIONS 2021

2021 No. 407

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 sets the reductions which will be applied to Direct Payments made to farmers in England for the 2021 claim year. It makes changes to reflect the fact that Direct Payments to farmers in England will be calculated in sterling from the 2021 claim year. It changes the rules for the recovery of overpayments and payment entitlements. Finally, this instrument makes minor changes arising from a previous Statutory Instrument that were not fully dealt with at the time.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 entire instrument applies to England only because it applies only to Direct Payment schemes in England (see regulation 1(3) of this instrument).

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
- Senedd Cymru if equivalent provision in relation to Wales were included in an Act of Senedd Cymru.

3.5 Defra has reached this view because the purpose of this instrument is to make changes to the Direct Payment schemes, which is within devolved 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 set out in Section 3 under "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)".

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 (Reductions and Simplifications) (England) (Amendment) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 On 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 these schemes to continue, in England, beyond 2020.

6.2 This instrument makes changes to the law relating to the Direct Payment schemes (as listed in section 6.3 of this Explanatory Memorandum) to apply reductions to Direct Payments in England for the 2021 scheme year. It also makes some other minor changes (see section 7 of this Explanatory Memorandum).

6.3 The regulations that are part of UK law and are changed by this instrument are:

- Regulation (EU) No. 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financial management and monitoring of the common agricultural policy (EUR 2013/1306). This sets the overarching framework for how the Common Agricultural Policy schemes are administered;
- Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 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"). This establishes the high-level framework required to make Direct Payments to farmers;
- Commission Delegated Regulation (EU) No. 640/2014 of 11 March 2014 supplementing Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance (EUR 2014/640). This includes rules on the calculation and withdrawal of aid, administrative penalties and technical rules around payment entitlements;
- Commission Implementing Regulation (EU) No. 809/2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance (EUR 2014/809). This sets some of the detailed rules necessary to finance, manage and monitor the delivery of the Common Agricultural Policy schemes;

- Commission Implementing Regulation (EU) No 908/2014 of 6 August 2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency (EUR 2014/908). This contains further rules about financial management;
- The Common Agricultural Policy Basic Payment and Support Schemes (England) Regulations 2014 (SI 2014/3259). This sets out how some policy options on Direct Payments are exercised in England; and
- The Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 (SI 2014/3263). This sets out rules for England on control and enforcement arrangements, Cross Compliance requirements, recovery of undue payments and rights of farmers to appeal against decisions.

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 we left the EU.

7.2 Direct Payments are untargeted, can inflate land rent prices and can stand in the way of new entrants. The Government remains committed to phasing out Direct Payments in England over an agricultural transition period (2021 to 2027), as provided for in its Agriculture Act 2020. Phasing out Direct Payments will free up money to support agriculture in different ways, including paying farmers to improve the environment.

7.3 In 2018 the Government announced how it intended to phase out Direct Payments in its "Health and Harmony: the future for food, farming and the environment in a Green Brexit - policy statement": https://www.gov.uk/government/publications/the-future-for-food-farming-and-the-environment-policy-statement-2018/health-and-harmony-the-future-for-food-farming-and-the-environment-in-a-green-brexit-policy-statement. This explained that reductions will be made to farmers' Direct Payments from 2021 and set out the maximum reductions that would be applied for the 2021 claim year.

7.4 The reductions we intend to apply for 2021 were confirmed in November 2020 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 payment reductions will be applied in payment bands, with higher reductions initially applied to amounts in higher payment bands. This is a method known as progressive reductions.

7.5 This instrument changes the Direct Payments regulations to set the progressive reductions to be applied to payments for the 2021 claim year. It also omits the current rules which require that payment amounts under the basic payment scheme above €150,000 must be reduced by 5%. The basic payment scheme is the main Direct Payment scheme in England. To continue with both systems of reduction would add complexity for farmers and lead to overlapping reductions.

7.6 This instrument also makes changes because payments for the Direct Payment schemes will be calculated in sterling from the 2021 claim year. These changes avoid the need for the payments to be calculated in euros and then converted into sterling.

7.7 This instrument also changes the rules where farmers have been overpaid or given more payment entitlements than they are eligible for. These changes remove the euro thresholds below which the Rural Payments Agency do not need to recover overpayments or payment entitlements or charge interest. As Direct Payments will be calculated in sterling from 2021, and are funded by the UK Government, it is not appropriate to have euro thresholds. When deciding whether recoveries should be made, the Rural Payments Agency will apply the principles in the Treasury's "Managing Public Money" guidance: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/835558/Managing_Public_Money__MPM__with_annexes_2019.pdf .

7.8 This instrument also makes two minor changes which were not fully dealt with by the Direct Payments to Farmers and Cross-Compliance (Simplifications) (England) (Amendment) Regulations 2020 (SI 2020/1387). Firstly, it removes a cross-reference to an article which was removed by SI 2020/1387. Secondly, it changes SI 2014/3259 to change a percentage figure used to calculate young farmer payments, top-up payments made to eligible young farmers. SI 2020/1387 changed this figure in the Direct Payments Regulation to ensure the value of the young farmer payments will not be affected by the removal of the greening payment.

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

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, as we only have the flexibility to makes the changes in this instrument 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 Defra carried out a consultation on "The future for food, farming and the environment" from February to May 2018, which led to over 40,000 responses. This asked for views, amongst other things, on the method of reductions to be applied to Direct Payments. The progressive reductions in this instrument take into account the responses to that consultation. They balance the views of those who felt recipients of the highest payments should initially face higher reductions, with the strong calls for the reductions to be shared amongst all farmers from the start of the agricultural transition.

11. Guidance

11.1 Defra published a "Farming is changing" booklet on 30 November 2020: https://www.gov.uk/government/publications/future-farming-changes-to-farming-in-england. This set out the intended reductions to be made to Direct Payments for 2021, as well as those for 2022 to 2024. More information on the reductions for 2021 will be included in the annual scheme guidance which the Rural Payments Agency issues to applicants in the spring.

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 it is not a regulatory provision. This instrument changes the law for the Direct Payment schemes in connection with 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 and micro businesses.

14. Monitoring & review

14.1 The Government has announced its intention to phase out Direct Payments over the period 2021 to 2027. 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: 0208 0262927 or email: claire.williams@defra.gov.uk can be contacted with any queries regarding this instrument.

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

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