EXPLANATORY MEMORANDUM TO

THE AGRICULTURE (LUMP SUM PAYMENT) (ENGLAND) REGULATIONS 2022

2022 No. [XXXX]

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 allows a scheme to be introduced in 2022 which provides lump sum payments to farmers who wish to leave the sector. The payments will be in place of any further Direct Payments to the farmer. Direct Payments are area-based payments currently paid to farmers under the Basic Payment Scheme.

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 The Minister 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 Agriculture (Lump Sum Payment) (England) Regulations 2022 are compatible with the Convention rights."

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 these schemes to continue, in England, beyond 2020.

6.2 Section 12 of the Agriculture Act 2020 (the "Agriculture Act") gives the Secretary of State the power to make delinked payments. Payments under the existing Direct Payment schemes will end once delinked payments are introduced.

6.3 Section 13 of the Agriculture Act gives the Secretary of State the power to make lump sum payments to eligible applicants who apply for them. Lump sum payments will be in place of payments which applicants might otherwise be entitled to under the existing Direct Payment schemes or delinked payments. This instrument sets the

eligibility and application requirements for the scheme and circumstances in which lump sum payments can be paid.

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 are untargeted, can inflate land rent prices and can stand in the way of new entrants to the farming industry. The Government remains committed to phasing out Direct Payments in England over an agricultural transition period (2021 to 2027).

7.3 In November 2020 the Government published "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. This said that, as part of its wider agricultural reforms, the Government intended, in 2022, to offer lump sum payments to farmers who wish to leave the sector.

7.4 Phasing out Direct Payments and moving to our new agriculture policy will be a big change for some farmers. The Government wants to support those farmers who wish to leave the sector and make it easier for those people wanting to join. Some farmers who wish to leave can find it difficult to do so and lack of finance can be one of the reasons. Offering a lump sum payment will help those who wish to leave the sector to do so in a planned way. This will make more land available for new entrants and for existing farmers who wish to expand.

7.5 This instrument allows lump sum payments to be introduced in 2022. Defra plans to do this through a Lump Sum Exit Scheme. Once they have received a lump sum, recipients will not be able to receive any further Direct Payments.

7.6 This instrument sets the rules that applicants will need to meet to apply for and receive the payment. With some exceptions, the applicant must have claimed under the Basic Payment Scheme ("BPS") in the 2018 claim year or earlier. BPS is the existing Direct Payment scheme. This rule makes sure that lump sum payments cannot be paid to people who have only recently started farming.

7.7 Applicants will be required to transfer their agricultural land (and rights to graze common land), apart from five hectares of that land, unless an exemption applies. They must do this by 31 May 2024. Defra considers this will give most farmers enough time to complete their land transfer. This deadline can be extended in limited circumstances. The instrument sets rules for how the land must be transferred and who it cannot be transferred to. Exemptions apply in certain cases when land will not need to be transferred.

7.8 For example, applicants will not have to transfer any of their agricultural land which they plant with trees under some woodland creation schemes by 31 May 2024. This could help towards meeting the Government's target of increasing tree planting across the UK to 30,000 hectares per year by the end of this Parliament.

7.9 Applicants will also have to give up their BPS payment entitlements by 31 May 2024. Entitlements are used by farmers to claim BPS.

7.10 Where a partnership or corporate body, such as a limited company, applies for the lump sum, only some of the partners or shareholders may wish to exit farming. This instrument allows partnerships to apply for the lump sum where partners with at least a 50% share in the profits leave the partnership. Corporate bodies will be allowed to apply for a lump sum where members with at least a 50% of the equity share capital leave the corporate body. For both partnerships and corporate bodies, the minimum 50% figure can be met either by one person on their own or by two or more people considered together (as long as those people are leaving the business).

7.11 This instrument sets how the lump sum amount will be calculated. The lump sum payment will be based on the average BPS payments made to the applicant for the BPS 2019 to 2021 scheme years. Using an average figure will help to even out any anomalies which could arise if only a single year is applied. A cap of £42,500 will be applied to this average reference amount, before it is multiplied by 2.35 to give the value of the lump sum. This ensures value for money. It means that no applicant will receive more than £100,000. Based on previous BPS claim data, 87% of BPS applicants are likely to be unaffected by the cap. Apart from the 13% of farmers who may be affected by the cap, the lump sum will be equivalent to the amount the farmer could have received in Direct Payments over the rest of the agricultural transition period (2022 to 2027).

7.12 This instrument sets the reductions which will be made to the lump sum if the farmer has not surrendered enough payment entitlements. This avoids double funding between the Lump Sum Exit Scheme and BPS. As it could take farmers some time to transfer their land, they may choose to continue to apply for Direct Payments until they are paid their lump sum. This instrument specifies that any Direct Payments they receive for the 2022 claim year or later will be deducted from the lump sum amount.

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 because we are able to offer lump sum payments as a result of leaving the EU.

9. Consolidation

9.1 This instrument does not amend another instrument and therefore consolidation is not applicable.

10. Consultation outcome

10.1 A public consultation: “Direct Payments to farmers: Lump sum exit scheme and delinked payments in England” ran from 19 May 2021 to 11 August 2021. 654 responses to the consultation were received from farmers, farming organisations and other interested parties.

10.2 The consultation sought views on the eligibility criteria for the proposed Lump Sum Exit Scheme and aspects of how the value of the lump sum payment should be calculated.

10.3 Most respondents felt the scheme would help farmers to leave the industry if they wanted to. Most respondents supported the proposal to require applicants to transfer

their agricultural land. A key message was the need to give farmers enough time to arrange their exit from farming and transfer their land. Most respondents supported calculating the lump sum amount based on the average BPS payments made to the applicant over three years. Most supported a cap on the amount an applicant could receive. Other comments included concerns that the proposed rules on partnerships and limited companies would be too restrictive. The rules in this instrument about partnerships and corporate bodies take these comments into account (see paragraph 7.10 of this explanatory memorandum). There were also requests to keep the scheme rules and application process simple.

10.4 The full summary of responses and the Government response to the consultation can be found here:

https://www.gov.uk/government/consultations/direct-payments-to-farmers-lump-sum-exit-scheme-and-delinked-payments

11. Guidance

11.1 The Rural Payments Agency ("RPA") provided information to farmers in February 2022 explaining the key scheme rules. This can be found here: www.gov.uk/rpa/lump-sum-exit-scheme. RPA plans to issue further scheme guidance to farmers in April 2022 before applications begin.

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 this is not a regulatory provision.

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 Defra plans to carry out an evaluation of the Lump Sum Exit Scheme which will be introduced under this instrument. This will assess how successful the scheme has been in delivering the intended outcomes.

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 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 Minister of State for Agriculture, Fisheries and Food at Defra, can confirm that this Explanatory Memorandum meets the required standard.