EXPLANATORY MEMORANDUM TO

THE FARM SUSTAINABILITY (TRANSITIONAL PROVISIONS) REGULATIONS (NORTHERN IRELAND) 2025

S.R. 2025 No. 33

1. Introduction

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

1.2 The SR is made under section 48 and paragraph 2(1) of schedule 6 of the Agriculture Act 2020 and Article 35(3) of Regulation (EU) No.1307/2013 of the European Parliament and of the Council of 17 December 2013 and is subject to the draft affirmatory resolution procedure.

2. Purpose

2.1 The SR gives legal effect to the Farm Sustainability Transition Payment (FSTP) which will replace the current Basic Payment Scheme (BPS) within 2025. It also includes a number of additional legislative changes to ensure the continued roll out of the Farm Support and Development Programme.

3. Background

3.1 FSTP forms part of the Farm Support and Development Programme. FSTP will replace the current BPS and will provide a vital safety net payment for farm businesses. FSTP will also provide a smooth transition from BPS to the implementation of the Farm Sustainability Payment (FSP) in 2026. FSTP is expected to attract approximately 24,000 applications in 2025.

3.2 To ensure FSP, when it is introduced in 2026, is directed towards farm businesses actively engaged in agricultural activity the SR legislates that businesses that did not meet specific agricultural production levels during an historic reference period, set by the Department as 2020 and 2021 will not be eligible. This historic year's requirement will not apply to an applicant who has set up a new farm business in any year following 2021.

3.3 Those no longer eligible for FSP will be able to transfer the entitlements that they currently hold, if they choose to do so, by the closure of the 2026 entitlement trading window (15 May 2026). Entitlements not transferred by this date will expire.

3.4 Entitlement leases agreed during the 2025 or 2026 scheme year entitlement trading periods will be limited to one year by the SR. This is to ensure that

businesses no longer eligible to claim FSP from leasing out their entitlements prior to their expiry for extended periods of time, therefore, indirectly continuing to benefit from the payment for which they are no longer eligible. If the lessor is not eligible for FSP the entitlements will expire at the end of the lease.

3.5 Entitlement leases agreed prior to 1 January 2025, on a long-term basis beyond 15 May 2026, will remain with the lessee until the end of the lease, at which stage they will revert back to the lessor only if they remain eligible for FSP. If the lessor is not eligible for FSP the entitlements will expire.

3.6 The above provisions have been included in this SR to enable the Department to communicate during 2025, with those farm businesses potentially impacted by this policy change, to enable them to plan effectively.

3.7 Farm businesses currently in receipt of BPS must be actively engaged in agricultural activity and meet the active farmer definition. This will continue for FSTP and FSP. An active farmer is currently defined as "the person having decision-making power, benefits and financial risks in relation to the agricultural activity on the land for which activation (payment) of entitlements is requested".

3.8 The active farmer definition was removed from legislation by The Rules for Direct Payments to Farmers (Amendment) Regulations 2020 as the provision was spent given that it related to establishment of entitlements in 2015. However, the recital containing the provision remains and it continues to be applied by DAERA. For legal certainty it is desirable to express it in legislation. The SR reinstates the active farmer definition into legislation.

3.9 Land on which certain categories of hemp is grown is currently eligible for BPS and will continue to be so for and FSTP and FSP. The SR removes the sampling element of the control requirements for FSTP/FSP but retains the requirement for growers to have a current license to grow hemp and supply original seed labels to the Department.

3.10 Schedule 2 of the SR amends existing legislation to replace references to the basic payment scheme with the farm sustainability transition payment scheme for the 2025 scheme year and farm sustainability payment in relation to the 2026 scheme year and subsequent scheme years.

3.11 The SR also introduces a number of additional legislative amendments to enable the continued roll out of the Farm Support and Development Programme.

3.12 The Farm Sustainability (Transitional Provisions) Regulations (Northern Ireland) 2025 amend The Beef Carbon Reduction Scheme Regulations (Northern Ireland) 2023 to include reference to BPS, FSTP and FSP under the eligibility for payment requirements for that scheme.

3.13 The Farm Sustainability (Transitional Provisions) Regulations (Northern Ireland) 2025 removes reference to the total ceiling for Northern Ireland from Regulation (EU) No.1307/2013 of the European Parliament and Council of 17 December

2013 and allows the Department to determine the ceiling for each scheme year prior to the commencement of payments. The Regulations remove the requirement for the Department to publish the ceiling and also provide the power to DAERA to make additional payments to BPS, FSTP or FSP eligible farm businesses in a scheme year, if required.

3.14 The Regional Reserve (RR) and Young Farmers' Payment (YFP) were introduced as compulsory schemes for EU Member States to implement as part of the 2015 CAP Reforms to encourage generational renewal within the agricultural industry. Going forward the Farming for the Generations Scheme, included within the Farm Support and Development Programme will be the policy instrument to support generational renewal. This new scheme rather than focusing on purely financial incentives is designed to take a holistic approach to generational renewal which supports the intergenerational needs of the farm family, thereby facilitating a smooth and planned transition and supporting the long-term sustainability of the farm business.

3.15 The Farm Sustainability (Transitional Provisions) Regulations (Northern Ireland) 2025 therefore establishes 2025 as the final year for new applications to the YFP. Successful applicants to the YFP in 2025 will receive the YFP top-up payment for five years. 2025 will also be the final year that NE and YF can obtain entitlements from the RR. NE and YF will retain the right to buy or lease entitlements to enable them to access FSP.

4. Consultation

4.1 The Department consulted from 21 December 2021 to 15 February 2022 on the introduction of a Resilience Payment as part of the Future Agricultural Policy Proposals for Northern Ireland consultation. The name of the Reslience Payment subsequently changed and a number of the Resilience Payment policy proposals now form part of FSP. Stakeholder responses received in respect of these proposals were considered and included in the analysis of the Future Agricultural Policy Decisions in Northern Ireland published on 22 March 2022.

4.2 The Agricultural Policy Stakeholder Group (APSG) has been established by the Department to ensure that stakeholder views are understood and properly considered during the development of the Farm Support and Development Programme. A number of presentations have been made to this group to discuss FSTP and FSP policy.

4.3 The Department also consulted on proposals for the future of the RR and YFP with industry representatives through the Agricultural Policy Stakeholder Group on 13 August 2024 and followed up on 3 September and 10 September 2024. Stakeholders expressed strong support that the YFP should continue for applications until 2025, with top-up payments continuing for the full five-year period. Stakeholders also indicated that the RR should remain for both young farmers and new entrants until 2025. The policy revisions being introduced take account of these views.

5. Equality Impact

5.1 In accordance with the Departments obligations under section 75 of the Northern Ireland act 1998, the potential equality impact of the statutory rule has been assessed. The screening exercise concluded that the historic years exercise and the closure of applications to YFP and RR could have a minor impact on the 'Age' Section 75 category. The screening decision was therefore that the SR should be screened out with mitigations.

5.2 Analysis of the businesses impacted by the FSP historic years exercise indicated that 67% of businesses impacted have a head of holding aged 55 or above. While this is partly explained by the fact that the average age for a farmer in Northern Ireland is 59 as a mitigation the Department intends to write to farm businesses impacted by the historic year non-active business policy to set out the options open to them. Businesses impacted will have the option to transfer their payment entitlements before the closure of the 2026 entitlement trading window to realise the monetary value of the entitlements.

5.3 Given that RR and YFP were introduced to encourage generational renewal within the agricultural industry it is recognised that this policy revision will have a greater impact on younger farmers. However, as outlined above, the introduction of the Farming for the Generations policy instrument is intended to mitigate this by providing a holistic approach to generational renewal which supports the intergenerational needs of the farm family, thereby facilitating a smooth and planned transition and supporting the long-term sustainability of the farm business. A pilot Farming for the Generations Scheme has commenced and the evaluation of this pilot will inform the development of the full scheme. In addition, New Entrants to farming will retain the right to buy or lease payment entitlements to allow them access to FSP.

5.4 The Statutory Rule has also been assessed for rural needs. No adverse impacts on rural needs were identified.

6. Regulatory Impact / Better Regulation / Data Protection Impact Assessment

6.1 FSTP/FSP is intended to provide payments to farm businesses most at risk from shocks outside their control. It is therefore unlikely that there will be any mandatory costs, savings or administrative burdens placed on NI farm businesses. Rather FSTP/FSP are anticipated to have a positive direct impact on eligible farm businesses. FSTP will operate using the same procedures and systems for data recording and processing as BPS. No data protection issues are, therefore, anticipated. These impact assessments will again be completed prior to the introduction of FSP.

7. Financial Implications

7.1 From 2025/26 as part of its draft budget, the Executive has agreed to baseline the Resource DEL allocated in the NI block grant for farming and fisheries as Executive Earmarked to fund the Farm Support and Development Programme.

8. Section 24 of the Northern Ireland Act 1998

8.1 The Regulations do not have any human rights implications, nor are they incompatible with EU law. The Regulations are therefore deemed to comply with the requirements of section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1 There are no EU implications associated with this statutory rule.

10. Parity or Replicatory Measure

10.1 Work is ongoing across the other UK Devolved Administrations to develop and implement new farm support polices following UK exit from the EU. While there are agricultural support schemes in GB, there are none that are directly comparable to FSTP/FSP. RoI will deliver payment schemes in line with requirements set out in the EU CAP 2023-27 programme.

11. Additional Information

11.1 For further information contact George Moffett, Agricultural Policy Division, Department of Agriculture, Environment and Rural Affairs (George.moffett@daera-ni.gov.uk)