

## EXPLANATORY MEMORANDUM TO

### THE DIRECT PAYMENTS TO FARMERS (LEGISLATIVE CONTINUITY) ACT (CONSEQUENTIAL AMENDMENTS) REGULATIONS 2020

2020 No. 463

#### 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.
- 1.2 This Explanatory Memorandum contains information for the Joint Committee on Statutory Instruments.

#### 2. Purpose of the instrument

- 2.1 The need for this instrument arises from the fact that the EU law governing the 2020 Direct Payment schemes for farmers established under the Common Agricultural Policy (“CAP”) was incorporated into UK law on exit day, rather than at the end of the Implementation Period (“IP”) established under the EU Withdrawal Agreement. It ensures that the retained Direct Payments legislation is treated in the same way as legislation retained under the European Union (Withdrawal) Act 2018 (the “2018 Act”). This is necessary to ensure the UK statute book works coherently and effectively. For example, it provides clarity on how cross-references to EU regulations governing the 2020 Direct Payment schemes should be read.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 This instrument will come into force less than 21 days after it is laid before Parliament. It needs to come into force before Defra can exercise powers under the retained Direct Payments legislation. This is because it ensures that regulations made under powers in the retained Direct Payments legislation are treated in the same way as regulations under powers in retained EU law under the 2018 Act. For example, it ensures that regulations made under retained Direct Payments legislation fall within the definition of subordinate legislation.
- 3.2 Defra now needs to exercise emergency powers in the retained Direct Payments legislation to lift crop diversification requirements in light of the prolonged and extreme wet weather across the country. These crop diversification rules specify the minimum number of crops farmers must grow when claiming Direct Payments. The extreme weather conditions are, in many cases, preventing farmers from establishing the required number of crops. Farmers would normally be required to have these crops in place from 1 May and Defra therefore needs to lift the requirements by then to ensure that farmers are not in breach.
- 3.3 Given the dependency and timings for the crop diversification regulations, we need to bring this instrument into force by 30 April.

- 3.4 We have laid this instrument as soon as we have been able to, taking account of the timescales required for obtaining consent from the Devolved Administrations, which have been reduced as far as possible.

*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)*

- 3.5 As the instrument is subject to negative resolution procedure, there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

#### **4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the UK, although different provisions have different extent depending on the extent of the legislation being amended.
- 4.2 The territorial application of this instrument is the UK, although different provisions have different application depending on the application of the legislation being amended.

#### **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 (Legislative Continuity) Act (Consequential Amendments) Regulations 2020 are compatible with the Convention rights.”

#### **6. Legislative Context**

- 6.1 The Direct Payments to Farmers (Legislative Continuity) Act 2020 (the “DPLC Act”) incorporated the EU legislation governing the 2020 CAP Direct Payment schemes into domestic law on exit day.
- 6.2 Certain provisions would not currently apply to the EU Regulations incorporated by the DPLC Act or to regulations made under those retained EU Regulations. This is because the DPLC Act incorporated the Direct Payments legislation into UK law separately from the 2018 Act and because the incorporation takes effect on exit day, rather than at the end of the IP. For example, some of the provisions in the European Union (Withdrawal) Act 2018 (Consequential Amendments) Regulations 2018 (S.I. 2018/1242) and The European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 (S.I. 2019/628) refer to regulations made on or after IP completion day. Other provisions amended by these Regulations refer to retained direct EU legislation and define it in a way which would not include the retained Direct Payments legislation.
- 6.3 This instrument amends the following pieces of legislation: the Interpretation Act 1978, the Statutory Instruments Act 1946, the Legislation (Wales) Act 2019, the Interpretation and Legislative Reform (Scotland) Act 2010, the Interpretation Act (Northern Ireland) 1954, the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573), the European Union (Withdrawal) Act 2018, the European Union (Withdrawal Agreement) Act 2020 and the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 (S.I. 2019/628).

## **7. Policy background**

### *What is being done and why?*

- 7.1 Direct Payments are the main income-support schemes for farmers under the CAP. EU legislation governing the 2020 CAP Direct Payment schemes was incorporated into UK law on 31 January 2020 rather than waiting until the end of the IP. This was because Article 137 of the Withdrawal Agreement disapplied the Direct Payments Regulation for the UK for claim year 2020 from exit day. Therefore, unlike other EU law relating to the CAP, EU Direct Payments legislation does not automatically apply during the IP.
- 7.2 This instrument makes amendments needed as a result of that separate, earlier incorporation of the Direct Payments legislation into UK law. The amendments ensure that EU legislation incorporated under the DPLC Act and regulations made under that legislation will be treated in the same way as retained EU legislation incorporated under the 2018 Act and regulations made under that retained EU legislation.

## **8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument is not being made under the 2018 Act. However, the amendments in the instrument are being made to deal with deficiencies in the law arising from the withdrawal of the UK from the EU. The need for this legislation arises from Article 137 of the Withdrawal Agreement. Section 6 of this Explanatory Memorandum provides the legislative context.

## **9. Consolidation**

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

## **10. Consultation outcome**

- 10.1 This instrument has not been subject to formal consultation because it aims to retain the *status quo* for the 2020 claim year, makes no substantive policy changes and is technical in nature. The instrument provides continuity and stability for Direct Payment recipients.
- 10.2 This instrument has been developed in collaboration with officials in the Scottish and Welsh Governments and the Department of Agriculture, Environment and Rural Affairs (“DAERA”) in Northern Ireland.

## **11. Guidance**

- 11.1 Defra is not producing any specific guidance on this instrument as it does not introduce policy change.

## **12. Impact**

- 12.1 There is expected to be no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is expected to be no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen. These are technical amendments which do not implement policy changes.

### **13. Regulating small business**

- 13.1 The instrument 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 and its agencies will monitor and review the impact of this instrument as part of its standard policy-making procedures, and will ensure that the provisions are adhered to.

### **15. Contact**

- 15.1 Claire Williams at Defra: 0208 0262927 or email: [claire.williams@defra.gov.uk](mailto:claire.williams@defra.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Andrew Robinson, Deputy Director for CAP, Direct Payments and Sector Interventions 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.