

EXPLANATORY MEMORANDUM TO

**THE DIRECT PAYMENTS TO FARMERS (ADVANCE PAYMENTS AND
ACTIVATION OF PAYMENT ENTITLEMENTS) (AMENDMENT) (ENGLAND)
REGULATIONS 2022**

2022 No. 706

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 Defra to pay farmers up to 50% of their Direct Payments under the Basic Payment Scheme (“BPS”) in advance of 1 December in any claim year. 1 December is when the usual payment window begins. Without the change made by this instrument, an advance payment would not be possible before 16 October in any claim year.
- 2.2 This instrument also ensures that land which is entered into some of the Government’s new land management schemes remains eligible for BPS payments.

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 Victoria Prentis MP, the Minister of State for Agriculture, Fisheries and Food, has made the following statement regarding Human Rights:
- 5.2 “In my view the provisions of the Direct Payments to Farmers (Advance Payments and Activation of Payment Entitlements) (Amendment) (England) Regulations 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The EU legislation governing the Common Agricultural Policy Direct Payment schemes became part of retained EU law on exit day via the Direct Payments to Farmers (Legislative Continuity) Act 2020. 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 a change to the law relating to Direct Payments in England.
- 6.3 The regulations that are part of UK law and are changed by this instrument are:

- i. 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) (“the Horizontal Regulation”). This sets the overarching framework for how the Common Agricultural Policy schemes are administered.
- ii. 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). This establishes the high-level framework required to make Direct Payments to farmers.

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 in England are being phased out over a seven-year agricultural transition period (2021-2027). As these payments are phased out, the Government intends to make them work better for farmers. Direct Payments in England are currently paid through BPS.
- 7.3 The Horizontal Regulation allows Direct Payments to be made from 1 December each year, with advance payments able to be made from 16 October. In England, the payments are usually made from 1 December.
- 7.4 With agricultural commodities closely linked to global gas prices, farmers are facing rising costs for inputs such as manufactured fertiliser, feed, fuel and energy. By February 2022, the price of gas was four times the price in the previous year due to higher global demand. The instability caused by the war in Ukraine has meant the gas price has risen further. This has led to increased short-term pressure on farmers’ cash flow.
- 7.5 This instrument allows Direct Payments, of up to 50% of the estimated application value, to be made in advance of 1 December for any claim year. It replaces the current rule that advance payments can only be made from 16 October. The existing requirement in the Horizontal Regulation that eligibility checks are to be completed before payments are made, will not apply to advance payments.
- 7.6 By providing advance payments, the Government will help to smooth out the cash flow of farmers. The Government intends to pay farmers with eligible BPS applications for the 2022 claim year an advance payment of 50% of their estimated application value from the end of July 2022. The remaining payment will be paid from December once eligibility checks have been completed.
- 7.7 The Government intends to pay Direct Payments in two instalments each year for the remainder of the agricultural transition period.
- 7.8 This instrument also makes a minor change to the land eligibility rules for BPS. BPS payments are partly based on the amount of eligible land a farmer has. In general, land is eligible if it is agricultural land.

- 7.9 Non-agricultural land is eligible if it was used to claim payments in 2008 under the Single Payment Scheme (“SPS”) and currently gives a right to payments under certain other land management schemes. SPS was the Common Agricultural Policy subsidy scheme which existed before BPS. This instrument expands the land management schemes covered by this rule to include all domestically funded Countryside Stewardship agreements and the new Local Nature Recovery and Landscape Recovery schemes being rolled out over the agricultural transition. This instrument also exempts land in domestically funded Countryside Stewardship from the BPS requirement that land must be eligible throughout the calendar year. This exemption applies to the 2022 claim year only and is necessary because some land has already been entered into these Countryside Stewardship agreements.
- 7.10 This change means that, from the 2022 claim year, land entered into these land management schemes will be eligible for BPS if it had been used to claim SPS payments in 2008. Without this change, farmers may be discouraged from taking part in these land management schemes.
- 7.11 The Government has announced its intention to replace BPS with delinked payments, as part of its plans to phase out Direct Payments. The changes made by this instrument only relate to Direct Payments made through BPS.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the United Kingdom from the European Union because the flexibility exists to make the change 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 A formal consultation has not been carried out on the change this instrument makes to the rules for advance payments. This is because it does not change the total value of Direct Payments each farmer will receive or the scheme rules they need to meet. However, key industry stakeholders, including the National Farmers Union, were updated in May 2022 on the plan to make advance Direct Payments and were supportive.
- 10.2 We have not consulted on the change made by this instrument to the BPS land eligibility rules. This is because it is a minor change to ensure land does not lose its eligibility for receiving BPS payments when entered into the Government’s new land management schemes.

11. Guidance

- 11.1 Defra announced its intention to make advance payments to farmers in England on 6 May 2022 (<https://www.gov.uk/government/news/payments-brought-forward-to-help-farmers-with-cashflow>). The Rural Payments Agency also sent a letter to BPS applicants in May 2022 to tell them about these plans.
- 11.2 The BPS 2022 scheme guidance reflects the change made by this instrument for land in Countryside Stewardship agreements (see the section on “Land”:

[https://assets.publishing.service.gov.uk/media/622b3ae68fa8f56c170b7259/Basic_Payment_Scheme_2022 - Rules for 2022.pdf](https://assets.publishing.service.gov.uk/media/622b3ae68fa8f56c170b7259/Basic_Payment_Scheme_2022_-_Rules_for_2022.pdf)). The scheme guidance for 2023 will be updated to reflect the change made by this instrument for land in Local Nature Recovery and Landscape Recovery schemes. It is not necessary to update the BPS 2022 guidance in relation to these schemes as land will not be entered into these schemes in 2022.

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 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, 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.