

EXPLANATORY MEMORANDUM TO
THE DIRECT PAYMENTS TO FARMERS (INSPECTIONS) (CORONAVIRUS)
(ENGLAND) REGULATIONS 2020

2020 No. 575

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 will reduce the rate of on-the-spot control checks (i.e. inspections) which the Rural Payments Agency ('RPA') will carry out for the 2020 Direct Payments scheme year. It will also allow the RPA to substitute physical on-farm checks with alternative means such as satellite imagery. This has been prepared in response to the difficulties being caused by Covid-19 and allows the RPA to reduce control check rates for various elements of the Direct Payments scheme.

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 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 England and Wales.
4.2 The territorial application of this instrument is England only.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 This instrument amends Articles 24(4) and 26(4) of Regulation (EU) 809/2014. It also makes specific provision about the control rates for Direct Payments in respect of 2020 to replace the existing requirements in Articles 30 and 31 and disapply Article 33(a) of Regulation (EU) 809/2014. This instrument is made under Article 62(2) of Regulation (EU) 1306/2013. Both of these EU Regulations were incorporated into domestic law as far as they relate to the Direct Payments schemes by the Direct Payments to Farmers (Legislative Continuity) Act 2020 and amended by the Rules for

Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020/91) with effect from exit day (11pm on 31 January 2020).

7. Policy background

What is being done and why?

- 7.1 Due to the Covid-19 pandemic, restrictions on movement were put in place on 23 March 2020. These restrictions create administrative difficulties in England with regards to planning and executing on-the-spot control checks (i.e. inspections) for the 2020 Direct Payments scheme year.
- 7.2 The control checks linked to this instrument are as follows:
 - (a) Direct Payments: an umbrella legal term covering all elements of what is often referred to as the Basic Payment Scheme ('BPS'), but is actually made up of several components such as the BPS, Greening, the Young Farmer payment and Hemp;
 - (b) Greening: a payment element within Direct Payments where checks are required for those applicants obliged to meet the Greening rules, which this year covers Ecological Focus Areas ('EFAs') and grassland;
 - (c) The Young Farmers scheme: checks to ensure that applicants who have applied for this additional payment are under 40 years of age and meet other relevant conditions when they apply;
 - (d) Cross Compliance: receiving Direct Payments is conditional on meeting this complex range of statutory standards and non-statutory best practice conditions, that in general seek to protect the environment, animal and plant health or animal welfare;
 - (e) Hemp: varieties of hemp with low levels of tetrahydrocannabinol ('THC') can receive additional payments. Checks and analysis are required to ensure that only specified varieties are grown and that THC levels are below permitted levels. Growing Hemp in the UK requires a licence from the Home Office.
- 7.3 Control checks include area and linear measurements, document and record checks, compliance assessments against a range of statutory standards, criteria and code of practice checks, and sampling and laboratory analysis.
- 7.4 To avoid delaying both the performance of control checks and making payments to claimants in a timely manner, we are making changes to reduce control check rates for 2020 as follows:
 - (a) Direct Payments inspection rate will reduce from 5% to 1%;
 - (b) Greening inspection rate will reduce from 5% to 3%;
 - (c) The Young Farmer scheme inspection rate will reduce from 5% to 3%;
 - (d) Cross Compliance inspection rate will reduce from 1% to 0.5%; and
 - (e) Hemp inspection rate will reduce from 30% to 10%.
- 7.5 Due to the restrictions on movement put in place to address Covid-19, the RPA may fully substitute physical checks with the use of alternative measures. This may include new technologies, remote sensing and photo-interpretation of satellite or aerial ortho-images. Ortho-images are images that have been geometrically corrected (orthorectified) to remove distortion caused by differences in elevation and sensor tilt and, optionally, by sensor optics. The RPA may also use other relevant evidence

including evidence which could be provided by the beneficiary, such as geo-tagged photos. Such evidence could enable definitive conclusions to be drawn to the satisfaction of the RPA.

- 7.6 The EU made a similar derogation^[1] for Member States earlier this year. With the changes brought about by this instrument for England, the UK will therefore still maintain an equivalent Direct Payments scheme for 2020, and so under the terms of the Withdrawal Agreement preserve the state aid exemption.

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

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

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

10. Consultation outcome

- 10.1 Stakeholders have shown a favourable view on reducing inspection rates in order to alleviate pressure from farmers and land managers, and this has been discussed at Defra and the RPA's regular stakeholder forum.
- 10.2 The RPA are in favour of these reductions to ensure that control checks can be carried out in a timely and safe manner. This will help to alleviate pressure on making payments from the beginning of December 2020.

11. Guidance

- 11.1 The RPA has produced guidance on the anticipated rule changes and a copy of the guidance can be found at: <https://www.gov.uk/government/collections/bps-2020>

12. Impact

- 12.1 There is no, or no significant, impact on businesses, 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 the impact is positive, as this derogation removes a burden on farm businesses, and the amounts involved are below the threshold for producing an Impact Assessment.

13. Regulating small business

- 13.1 This instrument applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses because there are no burdens arising from this legislation.

14. Monitoring & review

- 14.1 This instrument does not include a statutory review clause. This is because it only applies in respect of the 2020 claim year and will therefore cease to have effect before the end of the five-year period beginning with its commencement date.

^[1] Commission Implementing Regulation (EU) 2020/532.

15. Contact

- 15.1 Richard Beddard at the Department for Environment, Food and Rural Affairs
Telephone: 020 8225 8986 or email: Richard.beddard@defra.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Andrew Robinson, Deputy Director for the Common Agricultural Policy, Direct Payments and Sector Interventions at the Department for Environment, Food and Rural Affairs, can confirm that this explanatory memorandum meets the required standard.
- 15.3 Victoria Prentis MP, Parliamentary Under-Secretary of State for Agriculture, Fisheries and Food at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.