EXPLANATORY MEMORANDUM TO

THE RULES FOR DIRECT PAYMENTS TO FARMERS (AMENDMENT) REGULATIONS 2020

2020 No. 91

AND

THE FINANCING, MANAGEMENT AND MONITORING OF DIRECT PAYMENTS TO FARMERS (AMENDMENT) REGULATIONS 2020

2020 No. 90

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 memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instruments

2.1 These instruments amend retained European Union ("EU") law governing the Direct Payment schemes for farmers established under the Common Agricultural Policy ("CAP") in respect of claim year 2020, which runs from 1 January 2020 to 31 December 2020. This is in order to address operability issues created by the United Kingdom ("UK") leaving the EU. The amendments will enable that retained EU law to operate effectively in the UK after EU Exit for claim year 2020.

Explanations

What did any relevant law do before exit day?

2.2 The Rules for Direct Payments to Farmers (Amendment) Regulations 2020 amends the following insofar as they relate to Direct Payments for claim year 2020:

i. 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 (the "Direct Payments Regulation"). This establishes the high-level framework required to make Direct Payments to farmers under support schemes within the framework of the CAP;

ii. The Implementing Regulation and Delegated Regulation supplementing the Direct Payments Regulation. Together these set the detailed scheme rules for Direct Payments; and

iii. The Common Agricultural Policy Basic Payment and Support Schemes (England) Regulations 2014 (SI 2014/3259). This sets out how some Member State discretion is exercised in England in relation to Direct Payments, including as regards the 'greening' and young farmer payment.

2.3 The Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020 amends the following insofar as they relate to Direct Payments for claim year 2020:

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. This sets the overarching framework for how the CAP is administered, including Direct Payments (the "Horizontal Regulation");

ii. The two Implementing Regulations and two Delegated Regulations which supplementing the Horizontal Regulation. These together set the detailed rules necessary to finance, manage and monitor the delivery of the CAP schemes; and

iii. The Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 (SI 2014/3263). This makes supplementary provision required for the administration and enforcement of the CAP, including provision for control and enforcement arrangements, cross compliance requirements, recovery of undue payments and rights of farmers to appeal against decisions.

2.4 All of the EU regulations being amended by these instruments are listed in Annex 1 of this Explanatory Memorandum.

Why is it being changed?

2.5 On exit day the EU legislation listed in Annex 1 (except for Article 13 of the Direct Payments Regulation) is incorporated into domestic law as far as it relates to the Direct Payment schemes for claim year 2020 (see section 6 for further detail). Without amendment, that body of legislation and subordinate legislation relating to it (which, in England, is the domestic legislation listed in section 2.2(iii) and 2.3(iii)) (together, the "retained EU law") would contain inoperable provisions. As a result, existing law would either be unclear or would not function effectively. The effect of this would be to prevent the UK Government, and the Devolved Administrations, from being able to administer the Direct Payment schemes effectively, and to make payments to eligible farmers in the UK, for claim year 2020.

2.6 These instruments use powers in the Direct Payments to Farmers (Legislative Continuity) Act 2020 (the "DPLC Act") to correct these deficiencies so that the legislation will continue to function effectively. This, in turn, will support the delivery of Direct Payments to UK farmers for claim year 2020.

What will it now do?

2.7 These instruments will ensure that the retained EU legislation listed in Annex 1 relating to CAP Direct Payments for claim year 2020 will continue to operate effectively throughout the UK after EU Exit, and that the domestic regulations listed in section 2.2 (iii) and 2.3 (iii) will continue to operate effectively in England.

2.8 These instruments reflect the UK devolution settlements and the *status quo* whereby the relevant authorities in England, Northern Ireland, Scotland and Wales operate the Direct Payment schemes, make payments and enforce the rules surrounding Direct Payments, within their respective constituent nations.

2.9 The appropriate legislative "fixes" introduced by these instruments will maintain a *status quo* position, as far as possible. More information on the specific changes being made is at section 7 of this Explanatory Memorandum.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has agreed for these instruments to be made subject to the urgent 'made affirmative' procedure. These instruments could not be made until the DPLC Act received Royal Assent. It is important that the amendments come into force on exit day, at the point the relevant EU legislation becomes retained EU law. This is to avoid any legislative gap in the Direct Payment schemes for claim year 2020 and to ensure the scheme remains operable for the whole claim year, which began on 1 January.

3.2 Farmers across the UK have planned on the basis that the 2020 Direct Payment scheme will continue to operate without interruption and that they will receive payment. It is important that there is no disruption for farmers as this could have a severe impact on their financial viability. These instruments are needed to correct inoperabilities and provide continuity and certainty for farmers.

3.3 The key scheme eligibility conditions apply throughout the year. These instruments are also needed so that the Government and Devolved Administrations can continue to enforce these provisions in their constituent nations. As our domestic Direct Payment schemes for claim year 2020 need to be equivalent to the EU schemes in order to benefit from the state aid exemption (see section 6.3), any enforcement gap could put this exemption at risk.

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)

3.4 The territorial application of this instrument varies between provisions.

4. Extent and Territorial Application

4.1 The territorial extent of these instruments is the UK, apart from the amendments to the regulations listed in section 2.2 (iii) and 2.3 (iii) which extend to England and Wales only.

4.2 The territorial application of these instruments is the UK, apart from the amendments to the regulations listed in section 2.2 (iii) and 2.3 (iii) which apply to England only.

5. European Convention on Human Rights

5.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding Human Rights:

"In my view the provisions of The Rules for Direct Payments to Farmers (Amendment) Regulations 2020 and The Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 Under the terms of Part 4 of the Withdrawal Agreement (the "WA"), EU law continues to be applicable in the UK during the Implementation Period, which is defined in Article 126 of the WA as starting on the date of entry into force of that Agreement and ending on 31 December 2020. Section 1A of the European Union (Withdrawal) Act 2018 (the "Withdrawal Act") gives effect to Part 4 of the WA.

6.2 However, Article 137 of the WA provides that, taking effect from exit day, the Direct Payments Regulation (which governs CAP Direct Payments to farmers) shall not apply in the UK for claim year 2020, save for Article 13 of that Regulation (the state aid exemption for Direct Payments). Whilst Article 137 of the WA expressly refers to Regulation (EU) 1307/2013, it is also intended to capture law connected to the application of that Regulation.

6.3 To benefit from the state aid exemption the UK must have Direct Payment schemes that are "*equivalent*" to the EU schemes for claim year 2020. Article 137, therefore, envisages that the UK will have Direct Payment schemes that are equivalent to the EU schemes.

6.4 Incorporating the relevant EU legislation into domestic law and making appropriate corrections to that body of law and subordinate legislation under it (as described in sections 2.5 and 2.6 above) provides the legislative vehicle to enable the Direct Payment schemes to continue for the whole of the claim year 2020.

6.5 The Horizontal Regulation and those regulations supplementary to it are only incorporated in so far as they relate to the CAP Direct Payment schemes. This is because the rest of the law within those regulations continues to have effect as it did before exit day until the end of the Implementation Period by virtue of section 1A of the Withdrawal Act. In addition, the incorporation is limited to that which relates to the claim year 2020; the law relating only to earlier claim years is not brought into domestic law. The subordinate legislation being amended in England (listed in section 2.2 (iii) and 2.3 (iii) of this Explanatory Memorandum) does not require incorporating into domestic law by the DPLC Act. That continues to have effect in domestic law during the Implementation Period by virtue of section 1B(2) of the Withdrawal Act.

6.6 These two instruments are being laid using powers in section 3(1) of the DPLC Act, which makes provision as the Secretary of State considers appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively or any other deficiency in retained EU law arising from the withdrawal of the United Kingdom from the EU.

6.7 The operability amendments made in The Rules for Direct Payments to Farmers (Amendment) Regulations 2020 includes amendments to Articles 6(3), 7(3) and 22(5) which were amended by section 5 of the DPLC Act.

6.8 Section 1(1) of the DPLC Act only incorporates the relevant EU legislation on exit day. The law does not apply retroactively. For the month of January until exit day, EU law will govern the Direct Payment schemes for claim year 2020. From that point, domestic law will govern the scheme. But the retained EU law being amended by these instruments relates to the whole of the claim year. Payments are made after exit day but compliance obligations are in place for the whole claim year. Section 3(7) of the DPLC Act clarifies that provisions made by regulations under the powers in the DPLC Act may apply in relation to the CAP Direct Payment schemes for the whole of the claim year, notwithstanding that for the month of January it will remain EU law.

7. Policy background

What is being done and why?

7.1 The CAP is the agricultural policy of the EU. It implements a system of agricultural subsidies and other programmes. Funding made available under the CAP is split into two Pillars: Pillar I (Direct Payments and CMO measures) and Pillar II (Rural Development Programmes). Direct Payments are the main income-support schemes for farmers under the CAP.

7.2 Within the EU, CAP Direct Payments for claim year 2020 will be funded from the EU's new 2021 multi-annual budget (because CAP Direct Payments are paid in arrears). To avoid the UK being part of this new multi-annual budget, Article 137 of the WA disapplies the Direct Payments Regulation for the UK for claim year 2020. Therefore, unlike other EU law relating to the CAP, EU Direct Payments legislation will not continue to apply during the Implementation Period.

7.3 This means that the Government and Devolved Administrations will be unable to continue to operate the Direct Payment schemes for claim year 2020 and pay UK farmers unless the necessary domestic legislation is in place.

7.4 The Government and Devolved Administrations, in their constituent nations, have committed to operating the 2020 Direct Payment schemes. The Government has committed to provide £2.852 billion of support to allow the funding for Direct Payments for 2020 to continue at the same level as 2019 in each part of the UK.

7.5 Farmers across the UK have planned on the basis that the 2020 Direct Payment schemes will continue to operate and that they will receive payment for that claim year. Any immediate disruption to the 2020 schemes would severely affect the agricultural industry, threatening the financial viability of agricultural producers.

7.6 These instruments amend retained EU law to fix deficiencies in that body of law so the following Direct Payment schemes can continue to function properly for claim year 2020, payments can be made, and the schemes enforced across the UK:

a) Basic payment – this is a non-competitive payment that is based on land area. Certain minimum standards on animal and public health and environmental standards must be met (known as "cross-compliance");

b) Greening payment – this is a 30% portion of the Basic Payment, paid to farmers who meet certain environmental standards;

c) Young farmer payment – this is a payment for "Young Farmers", farmers starting up businesses who are 40 or under at the time of applying;

d) Voluntary coupled support – this is a payment made to incentivise production in a particular sector. The Scottish Government currently use some of their Direct Payments budget to support livestock farmers in both the beef and sheep sectors; and the

e) Redistributive payment – the Welsh Government currently use some of their Direct Payments budget to provide additional payments to smaller farms.

7.7 The legislative amendments introduced by these instruments will maintain the *status quo*, as far as possible, and are largely technical. No substantive policy changes are being made and farmers will see no change on the ground.

7.8 The Government remains committed to beginning ambitious agricultural reforms in England in 2021 and introduced its Agriculture Bill (which includes provisions for the

Welsh Government and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland), on 16 January. The Scottish Government has introduced its own legislation. These instruments do not achieve those reforms.

7.9 The key amendments these instruments make to the retained EU law are summarised below, with further detail in Annex 2 of this Explanatory Memorandum:

a) removing provisions which are not applicable in the UK;

b) amending references to the EU, EU institutions such as the European Commission, EU funds and "Member States" to reflect the domestic equivalents;

c) removing EU administrative processes which lose their purpose outside of the EU context, where a third-party relationship between actions carried out by Member States and the Commission exists;

d) removing the EU's financing model, auditing and accounting rules to enable suitable UK equivalents to take their place;

e) removing the EU's budget management mechanisms where these do not work in a domestic context;

f) making amendments to the EU legislation to clarify any relevance of past decisions and spent provisions (not being incorporated in domestic law) to claim year 2020;

g) making other amendments to the Horizontal Regulation, and those supplementing it, to make clear how the domestic Direct Payments for claim year 2020 interact with cross-cutting CAP provisions that will continue to apply to the UK during the Implementation Period; and

h) making amendments to the domestic legislation (listed in section 2.2(iii) and 2.3(iii)) to update cross-references to the EU legislation listed in Annex 1 and to remove historic or redundant provisions.

7.10 The retained EU law contains references to euros and the Horizontal Regulation contains provisions on the exchange rate to be used to convert euro amounts into national currencies. At the point of EU Exit no operability changes are being made with respect to currency conversion. This is because the Government and Devolved Administrations are yet to decide on the exchange rate they wish to set for their Direct Payment schemes for the 2020 claim year. The Government intends to make a further instrument after exit day to reflect the decisions of each administration once they have been made. The exchange rate does not need to be set on exit day as payments to farmers under the schemes are not made until later in the year.

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

8.1 These instruments are not being made under the European Union (Withdrawal) Act 2018. However, the amendments in the instruments are being made to deal with deficiencies in the law arising from the withdrawal of the United Kingdom from the European Union. The need for the legislation arises from Article 137 of the Withdrawal Agreement. Section 6 of this Explanatory Memorandum provides the legislative context, including the powers under which the instruments are being made.

9. Consolidation

9.1 Defra does not intend to consolidate the relevant legislation at this time. An informal consolidated text will be made available to the public for free.

10. Consultation outcome

10.1 These instruments have not been subject to formal consultation because they aim to retain the *status quo* for the 2020 claim year, make no substantive policy changes and are largely technical in nature. These instruments provide continuity and stability for Direct Payments recipients.

10.2 However, on 29 October 2019 Defra updated the Rural Payments Agency's ("RPA") Direct Payments Working Group ("DPWG") of its plans to make the retained EU Direct Payments legislation for claim year 2020 fully workable at the point of EU Exit in the event the UK were to exit the EU under the terms of the Withdrawal Agreement negotiated in October 2019. No concerns were raised. The following stakeholders were present:

i. National Farmers' Union

ii. Tenant Farmers Association

iii. Country Land and Business Association

iv. Farming Community Network

v. British Institute of Agricultural Consultants

vi. Central Association of Agricultural Valuers

vii. Institute of Agricultural Secretaries and Administrators

10.3 Defra further updated RPA's DPWG, at its meeting on 17 December 2019, on progress with preparing the legislation on Direct Payments ready for EU Exit.

10.4 These instruments, and the policy reflected in them, have 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 these instruments, as they only amend deficiencies in the retained EU Direct Payments legislation arising from the UK's withdrawal from the EU under the terms of the Withdrawal Agreement. They maintain the status quo and ensure the Direct Payment schemes for claim year 2020 can continue to operate, and payments be made, after EU Exit.

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 these instruments as no, or no significant impact, on the private or voluntary sector is foreseen. The purpose of these instruments is to maintain the existing Direct Payment schemes for farmers for claim year 2020 when the UK leaves the EU. These instruments will not implement any substantive policy changes; they will address technical deficiencies in retained EU Direct Payments legislation and so there is expected to be minimal impact on business.

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 These instruments relate only to the 2020 Direct Payments claim year. However, Defra and its agencies will monitor and review the impact of these instruments 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 can be contacted with any queries regarding these instruments.

15.2 Andrew Robinson, Deputy Director for Direct Payments and Sector Interventions at Defra, can confirm that this explanatory memorandum meets the required standard.

15.3 George Eustice MP, the Minister of State for Agriculture, Fisheries and Food at Defra, can confirm that this explanatory memorandum meets the required standard.

Annex 1

List of EU regulations amended by these Statutory Instruments

EU regulations amended by The Rules for Direct Payments to Farmers (Amendment) Regulations 2020

The following table lists the EU regulations which are incorporated into domestic law on exit day insofar as they relate to Direct Payments for claim year 2020 and which will be amended by this instrument. No regulations are being revoked by this instrument.

Regulation	Further detail
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 (save for Article 13).	This EU Regulation establishes the Direct Payment schemes, under which payments are made to farmers within the framework of the CAP. This includes the basic payment scheme, greening, the young farmer payment, redistributive payment and voluntary coupled support. Article 13 (state aid) of this regulation will remain directly applicable in the UK during the Implementation Period and so will not become domestic law on exit day.
Commission Delegated Regulation (EU) No. 639/2014 of 11 March 2014 supplementing Regulation (EU) No. 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and amending Annex X to that Regulation.	This EU regulation lays down provisions supplementing certain elements of Regulation (EU) No. 1307/2013. This includes detailed eligibility rules under the basic payment scheme, greening, the young farmer payment and voluntary coupled support.
Commission Implementing Regulation (EU) No. 641/2014 of 16 June 2014 laying down rules for the application of Regulation (EU) No. 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy.	This EU regulation lays down rules for the application of Regulation (EU) No. 1307/2013. This includes administrative rules concerning payment entitlements under the basic payment scheme, greening and voluntary coupled support.

EU regulations amended by The Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020

The following table lists the EU regulations which are incorporated into domestic law on exit day insofar as they relate to Direct Payments for claim year 2020 and which will be amended by this instrument. No regulations are being revoked by this instrument.

Regulation	Further detail
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.	This EU regulation (known as the 'Horizontal Regulation') sets out the overarching framework for how the CAP is administered.
Commission Delegated Regulation (EU) No. 640/2014 of 11 March 2014 supplementing Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance.	This EU regulation lays down provisions which supplement certain elements of Regulation (EU) No. 1306/2013. This includes rules on the calculation and withdrawal of aid, administrative penalties and technical rules around payment entitlements.
Commission Implementing Regulation (EU) No. 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance.	This EU regulation lays down rules which ensure the coherent application of Regulation (EU) No. 1306/2013 in relation to control measures, the application of administrative penalties and checks.
Commission Delegated Regulation (EU) No. 907/2014 of 11 March 2014 supplementing Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro.	This EU regulation lays down rules supplementing Regulation (EU) No. 1306/2013 in relation to the roles of certain bodies and issues concerning financial management. It also includes measures which are specific to the common organisation of agricultural markets.
Commission Implementing Regulation (EU) No. 908/2014 of 6 August 2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency.	This EU regulation provides rules for the application of Regulation (EU) No. 1306/2013 in relation to the functioning of the coordinating body (i.e. the Relevant Authorities acting jointly), recovery of undue payments and reduction of on-the-spot checks. It also includes measures which are specific to the CMO.

Annex 2

Further detail on the amendments made by these Statutory Instruments

The following table provides further detail on the key types of amendments made by these Statutory Instruments to the retained EU law governing Direct Payments for claim year 2020:

Key common amendments across both instruments	
Removing provisions which are not applicable in the UK.	The EU regulations governing the Direct Payment schemes contain some provisions which are not applicable to, or applied in, the UK. This includes schemes which do not operate in the UK at all, such as the payment for cotton (referred to, for example, in Articles 56-60 of the Direct Payments Regulation), and policy options within schemes which are either not relevant to, or have not been implemented in, the UK.
Amending references to the EU, EU institutions such as the European Commission, EU funds and “Member States” to reflect the domestic equivalents.	At the time of EU Exit, certain terms in the retained EU regulations need correction in order to refer to the appropriate UK equivalent. For example, it is appropriate to replace terms such as ‘EU’, ‘European Commission’ and ‘Member States’. References to “Member State(s)” will in most instances be replaced with the term “relevant authority” in order to align with the UK devolved settlements and enable each constituent nation to make its own policy choices within the limits of the retained EU regulations. The definition for “relevant authority”, as well as “constituent nation”, will be inserted into Article 4 of the Direct Payments Regulation and Article 2 of the Horizontal Regulation. After EU Exit, there will be a domestic framework for the financing of Direct Payments for claim year 2020, replacing the current framework involving EU funds. It is therefore, for example, appropriate to replace some references to the European Agricultural Guarantee Fund (EAGF) with references

	relating to domestic Direct Payment support. For example, Article 55 of the Horizontal Regulation contains some accounting provisions for the "EAGF" and it is appropriate to replace these with equivalent domestic provisions for "direct payment support".
Removing administrative processes which lose their purpose outside of the EU context, where a third-party relationship between actions carried out by Member States and the Commission exists.	The EU regulations contain requirements for Member States to routinely send various notifications to the European Commission concerning their operation of the schemes. For example, the extent of CAP 'active farmer' rules applied in the Member State (see Article 9 of the Direct Payments Regulation). These notification requirements are necessary so the Commission can scrutinise the spending of EU funds and satisfy itself that Member States are compliant with EU regulations. These notifications are not relevant in a domestic context and so should be omitted.
Making amendments to the EU legislation to clarify any relevance of past decisions and spent provisions (not being incorporated in domestic law) to claim year 2020.	The EU legislation contains some provisions relating to claim years prior to 2020 which nevertheless have an impact on claim year 2020. As the retained EU law only covers claim year 2020, it is necessary to make amendments to refer to some of those provisions so that the domestic legislation for claim year 2020 works properly. For example, it is necessary to refer to Article 24 of the Direct Payments Regulation (as it had effect immediately before exit day) as this article concerns the allocation of payment entitlements to farmers in the first year of the scheme. In most cases these entitlements can still be used to claim payment under the scheme in claim year 2020.
Making amendments to the domestic legislation (listed in section 2.2(iii) and 2.3(iii)) to update cross-references to the EU legislation listed in Annex 1 and to remove historic or redundant provisions.	The domestic legislation contains cross-references to the EU regulations listed in Annex 1. It is necessary to make some amendments so that the cross-references work correctly with the retained EU regulations. For example, amendments are needed to The Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 (SI 2014/3263)

	the “cross-cutting regulations”) to ensure the cross-references work both for claim year 2020 Direct Payments (covered by the retained EU legislation listed in Annex 1) and for the rest of the CAP (still covered by the EU legislation). Some historic or redundant provisions are removed. For example, the powers for representatives of the European Commission to enter land or premises is removed with respect to claim year 2020 Direct Payments. (These powers are currently in regulation 10, paragraph 7(a) of the cross-cutting regulations).
Key amendments made in The Rules for Direct Payments to Farmers (Amendment) Regulations 2020	
Removing administrative processes which lose their purpose outside of the EU context: Direct Payments ceilings.	The regulations also give the European Commission the power to make implementing acts to fix spending ceilings for individual Direct Payment schemes, in order to reflect a Member State’s spending choices (for example, Article 22 of the Direct Payments Regulation). After EU Exit, it is unnecessary in a domestic context to have legislation setting out the ceilings for the different schemes at UK level, especially when (other than in relation to the agreement of ceilings for voluntary coupled support) they are administered at the devolved level. These instruments therefore omit provisions which require legislation to be made setting these ceilings, although the processes in relation to how such ceilings are to be set will remain the same. Information about each the ceilings in each part of the UK would be available from the relevant authority.
Key amendments made in The Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020	
Removing the EU’s financing model, auditing and accounting rules, to enable suitable domestic equivalents to take their place.	Under the present EU funding system, Member States make payments to beneficiaries under CAP schemes and where those payments are eligible for EU funding, they submit a claim to the European Commission for reimbursement out of EU funds. The European Commission has the power to

	apply reductions (known as financial corrections or disallowance) to reimbursements from EU funds where auditors have determined that a Member State has not made payments in conformity with the regulations. This system differs from the normal model of public financing in the UK, which does not involve reimbursement of payments from a central fund and financial corrections. These EU provisions on funding and financial corrections (for example, article 52 of the Horizontal Regulation) should therefore be omitted as financing of Direct Payments for claim year 2020 will come from HM Treasury rather than the EU's CAP budget. (The EU provisions will remain directly applicable to the UK in respect of the rest of the CAP). From EU Exit, UK administrations will only be subject to an existing domestic framework for the financing, accounting and auditing of Direct Payments for claim year 2020, which is set out in the following domestic legislation: • In England, the Government Resources and Accounts Act 2000; • In Wales, the Government of Wales Act 2006; • In Scotland, the Public Finance and Accountability (Scotland) Act 2000; and • In Northern Ireland, the Government Resources and Accounts Act (Northern Ireland) 2001. Within this framework, public bodies in England, Wales, Scotland and Northern Ireland prepare financial accounts in accordance with the Government Financial Reporting Manual (FReM) issued by Her Majesty's Treasury, which applies International Financial Reporting Standards (IFRS), as adapted for the public sector. Domestic audits are also subject to the National Audit Act 1983 (as amended by the

	Budget Responsibility and National Audit Act 2011). In addition, domestic public bodies involved in the administration of agricultural support payments are scrutinised through internal audits. The Government Internal Audit Agency audits the English paying agency, and equivalent practices apply to the devolved administrations.
Removing the EU's budget management mechanisms where these do not work in a domestic context.	The Horizontal Regulation establishes a crisis reserve from which the European Commission can provide funding to Member States in the event of a crisis affecting the agriculture sector (see Article 25 of the Horizontal Regulation). The reserve is financed by Member States making a mandatory reduction to the Direct Payments they make to farmers within their territories. Where the crisis reserve is unused in a given year, these contributions are subsequently reimbursed to farmers in the following financial year. The UK currently contributes approximately €38m per annum to the reserve. The EU's crisis reserve has so far not been used for crisis compensation, meaning that farmers have received a reimbursement of the deductions made to Direct Payments every year. After EU Exit, UK participation in the EU crisis reserve becomes unworkable. Making the EU's concept of the crisis reserve operable in the UK would mean taking the UK's contributory 'share' of the existing reserve as the basis for an entirely UK reserve. This is likely to be of limited value in response to a crisis, especially when divided between England, Wales, Scotland and Northern Ireland. Similarly, the EU's financial discipline provisions (see Article 26 of the Horizontal Regulation) which require deductions to be made to Direct Payments (alongside the deductions for the crisis reserve) where the EU's Pillar 1 budget is forecast to be exceeded are not appropriate in a domestic

	context. This is particularly true for 2020 when it is only the Direct Payments element of Pillar 1 which will be domestically, funded; the remainder of Pillar 1 will continue to be subject to the EU CAP rules during the Implementation Period.
Other amendments to the Horizontal Regulation, and the EU regulations supplementing it, to make clear how the domestic Direct Payments for claim year 2020 interact with cross-cutting CAP provisions that will continue to apply to the UK during the Implementation Period.	The Horizontal Regulation establishes some CAP bodies and systems which will continue to be governed by EU rules in the UK during the Implementation Period. For example, the Farm Advisory System (see Article 12 of the Horizontal Regulation), which gives advice to farmers and land managers on land management issues, will continue to exist under EU law during 2020, and it is helpful to amend the relevant article to make it clear that advice will still be provided on issues related to Direct Payments.