

Draft Regulations laid before Parliament under section 50(6) of the Agriculture Act 2020, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2021 No. 0000

AGRICULTURE, ENGLAND

The Agriculture (Financial Assistance) Regulations 2021

Made - - - - *******
Coming into force - - *******

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 2(8), 3(1) and (2) and 50(3) of the Agriculture Act 2020⁽¹⁾.

In accordance with section 50(6) of that Act, a draft of the instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Part 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Agriculture (Financial Assistance) Regulations 2021 and come into force on the day after the day on which they are made.

Interpretation

2.—(1) In these Regulations—

“the 2020 Act” means the Agriculture Act 2020;

“agreement holder” means a person who has entered into an agreement with the Secretary of State for financial assistance under the CS scheme, the environmental land management pilot scheme, the farming investment fund scheme or the tree health pilot scheme in accordance with scheme guidance, including their representative in the event of incapacity or death⁽²⁾;

“applicant” means a person who applies to the Secretary of State for financial assistance;

(1) 2020 c.21.

(2) “Financial assistance” is defined in section 1(6) of the 2020 Act.

“authorised person” means a person authorised by the Secretary of State to carry out inspections and exercise powers of entry under these Regulations for enforcement purposes;

“CS scheme” means the scheme known as the “countryside stewardship scheme” pursuant to which the Secretary of State gives financial assistance under section 1(1) of the 2020 Act;

“eligibility criteria” means the criteria specified in scheme guidance to determine the receipt of financial assistance, including any criteria allowing for selection of applicants on a competitive basis;

“environmental land management pilot scheme” means the scheme known as “the environmental land management national pilot scheme” pursuant to which the Secretary of State gives financial assistance under section 1(1) of the 2020 Act;

“farming investment fund scheme” means the scheme comprising elements known as “the farming equipment and technology fund” and “the farming transformation fund” pursuant to which the Secretary of State gives financial assistance under section 1(2) of the 2020 Act;

“scheme guidance” means the forms, guidance, manuals and handbooks issued by the Secretary of State in relation to the financial assistance scheme in question⁽³⁾;

“tree health pilot scheme” means the scheme known as “the tree health pilot scheme” pursuant to which the Secretary of State gives financial assistance under section 1(1) of the 2020 Act.

(2) Where a provision in these Regulations is silent as to which financial assistance scheme it applies to, the provision applies to the—

- (a) CS scheme;
- (b) environmental land management pilot scheme;
- (c) farming investment fund scheme; and
- (d) tree health pilot scheme.

Part 2

Assessing applications for financial assistance

Checking eligibility for financial assistance

3. Where an applicant applies to the Secretary of State for financial assistance under the CS scheme, the environmental land management pilot scheme, the farming investment fund scheme or the tree health pilot scheme, the Secretary of State must check the information provided by the applicant to ensure the applicant meets the eligibility criteria for the financial assistance scheme to which the applicant is applying.

Information in support of eligibility for financial assistance

4.—(1) The Secretary of State may require the applicant to provide additional information, including evidence, in support of their application.

(2) Where the Secretary of State has requested information or evidence under paragraph (1), the applicant must provide that information or evidence within any deadlines specified by the Secretary of State.

(3) “Financial assistance scheme” is defined in section 1(6) of the 2020 Act.

Defects in an application for financial assistance

5. Where an applicant has submitted an incomplete application or the application contains an obvious error, the Secretary of State must notify the applicant of the defect and permit the applicant to correct the defect within any deadlines specified by the Secretary of State.

Consequences of incomplete or erroneous applications

6.—(1) The Secretary of State must not give financial assistance under a financial assistance scheme if, having considered the information in an application, together with any supporting information or evidence required under regulation 4, the Secretary of State is satisfied that—

- (a) the applicant has not met the eligibility criteria for receipt of financial assistance;
- (b) the applicant has failed to provide information or evidence requested under regulation 4;
- (c) the applicant has failed to correct a defect in accordance with regulation 5; or
- (d) there are reasonable grounds to suspect that the applicant has provided false or misleading information.

(2) Where the Secretary of State decides not to give financial assistance under a financial assistance scheme, the Secretary of State must—

- (a) notify the applicant, within a reasonable period, of that decision and the reasons for the decision; and
- (b) inform the applicant of the right to request a reconsideration under regulation 30.

Part 3

Payments of financial assistance, monitoring and record keeping

Payments under the environmental land management pilot scheme

7.—(1) Where an agreement holder has incurred capital expenditure and submitted a request for payment under the environmental land management pilot scheme, the Secretary of State may require the agreement holder to provide additional information or evidence in support of that payment request.

(2) Where the Secretary of State has requested information or evidence under paragraph (1), the agreement holder must provide that information or evidence within any deadlines specified by the Secretary of State.

(3) Where the agreement holder has not provided the information or evidence requested under paragraph (1), the Secretary of State may withhold financial assistance until such time as the Secretary of State is in receipt of that information or evidence.

(4) Any payments made by the Secretary of State must be to a verified bank or building society account of the agreement holder.

(5) The agreement holder must notify the Secretary of State, without delay, of any anticipated or actual changes to that person's bank or building society account.

(6) Where the Secretary of State receives a notification under paragraph (5), the Secretary of State may withhold payments until such time as the Secretary of State is satisfied that the changes have been checked and verified.

(7) Where an agreement holder is awarded financial assistance under the environmental land management pilot scheme, that person must submit an annual declaration to the Secretary of State confirming compliance with the conditions subject to which that financial assistance is given.

Payments under the CS scheme, the farming investment fund scheme and the tree health pilot scheme

8.—(1) Where an agreement holder has submitted a request for payment under the CS scheme, the farming investment fund scheme or the tree health pilot scheme, the Secretary of State may require the agreement holder to provide additional information or evidence in support of that payment.

(2) Where the Secretary of State has requested information or evidence under paragraph (1), the agreement holder must provide that information or evidence within any deadlines specified by the Secretary of State.

(3) Where the agreement holder has not provided the information or evidence requested under paragraph (1), the Secretary of State may withhold financial assistance until such time as the Secretary of State is in receipt of that information or evidence.

(4) Any payments made by the Secretary of State must be to a verified bank or building society account of the agreement holder.

(5) The agreement holder must notify the Secretary of State, without delay, of any anticipated or actual changes to that person's bank or building society account.

(6) Where the Secretary of State receives a notification under paragraph (5), the Secretary of State may withhold payments until such time as the Secretary of State is satisfied that the changes have been checked and verified.

Checking and monitoring

9. An agreement holder must supply, in such manner and at such times as the Secretary of State may specify, such information or evidence as the Secretary of State may require for the purposes of—

- (a) checking whether the eligibility criteria for receipt of financial assistance continue to be met;
- (b) verifying compliance with conditions subject to which financial assistance is given;
- (c) monitoring the extent to which the purpose of financial assistance has been, or will be, achieved; and
- (d) reviewing or evaluating—
 - (i) any of the activities carried out by the agreement holder under the financial assistance scheme; and
 - (ii) the success of the financial assistance scheme as a whole.

Record keeping

10. Where an agreement holder is required to keep records in accordance with their agreement, that person must provide copies to the Secretary of State in such manner and at such times as the Secretary of State may specify.

Part 4

Change of circumstances and transfer of agreements

Change of circumstances

11.—(1) An agreement holder must notify the Secretary of State, as soon as reasonably practicable, of any change in circumstances which might reasonably be expected to affect—

- (a) the continuance of entitlement to financial assistance;

- (b) compliance with conditions subject to which financial assistance is given;
 - (c) the ability of that person to achieve the purpose for which the financial assistance is given in accordance with any agreed standards or timescales; or
 - (d) the amount of financial assistance awarded or due to be awarded.
- (2) Where the Secretary of State receives a notification under paragraph (1), the Secretary of State may—
- (a) amend, remove or replace a condition subject to which financial assistance is given, either temporarily or permanently;
 - (b) amend, remove or replace any agreed standards or timescales, either temporarily or permanently;
 - (c) reduce the amount of financial assistance awarded, either temporarily or permanently;
 - (d) recover on demand all or any part of financial assistance which has already been paid to the agreement holder;
 - (e) terminate the agreement for financial assistance; or
 - (f) accept an undertaking for the transfer of all or part of an agreement for financial assistance in accordance with regulation 12 to release the agreement holder from their obligations under all or part of that agreement.
- (3) Where the Secretary of State decides to take one or more of the actions referred to in paragraph (2), the Secretary of State must—
- (a) notify the agreement holder, within a reasonable period, of that decision and the reasons for the decision; and
 - (b) inform that person of the right to request a reconsideration under regulation 30.

Transfer of agreements

- 12.**—(1) Where the Secretary of State is satisfied a change in circumstances will affect one or more of the matters specified in regulation 11(1), the Secretary of State may consent to the transfer of all or part of an agreement for financial assistance provided that—
- (a) the agreement holder transfers management control of all or part of the land or assets which are the subject of that agreement to another person (“the transferee”);
 - (b) the transferee—
 - (i) has management control of the land or assets and sufficient control of activities on the land to be able to meet the conditions of the agreement; and
 - (ii) meets the eligibility criteria for receipt of financial assistance under that agreement;
 - (c) the transferee notifies the Secretary of State of the transfer within any deadline specified by the Secretary of State;
 - (d) the transferee gives an undertaking to the Secretary of State to assume the obligations under that agreement in place of the agreement holder; and
 - (e) the Secretary of State has accepted that undertaking.
- (2) Paragraph (1) does not release the agreement holder in respect of any breach or other matter occurring before the acceptance by the Secretary of State of the transferee’s undertaking.

Part 5

Publication of information

Publication of data in relation to agreement holders

13.—(1) For each financial year, the Secretary of State must ensure that the specified information is published in relation to agreement holders who have received relevant payments.

(2) Paragraph (1) does not apply in relation to an agreement holder where the total of the relevant payments made to that agreement holder within that financial year is less than £1,250.

(3) The information published under paragraph (1) must—

- (a) be published on a searchable database on www.gov.uk; and
- (b) remain on that searchable database for 3 years from initial publication.

(4) For the purposes of paragraph (1) “the specified information” means—

- (a) the full name of the agreement holder;
- (b) the post town, and post code area and district where—
 - (i) the agreement holder is resident, if the agreement holder is a natural person;
 - (ii) the agreement holder’s registered office is located, if the agreement holder is incorporated; or
 - (iii) the agreement holder’s primary base of business is located, where the agreement holder is a body of persons unincorporated;
- (c) for each financial assistance scheme, the total relevant payments received by the agreement holder in the financial year; and
- (d) a description of the activities financed by the relevant payments.

(5) Where information within paragraph (4)(c) concerns relevant payments received under the farming investment fund scheme, the specified information must identify the total relevant payments received by the agreement holder from the farming equipment and technology fund and the farming transformation fund respectively.

(6) For the purposes of this regulation and regulation 14, “relevant payment” means a grant payment made to an agreement holder in a financial year under one of the following financial assistance schemes—

- (a) the CS scheme;
- (b) the environmental land management pilot scheme; and
- (c) the farming investment fund scheme.

Publication of aggregated data

14.—(1) For each financial year the Secretary of State must ensure the publication of the following information—

- (a) the aggregate of the financial assistance paid to agreement holders to whom paragraph (2) applies under each of the following financial assistance schemes—
 - (i) the CS scheme;
 - (ii) the environmental land management pilot scheme; and
 - (iii) the farming investment fund scheme; and
- (b) the aggregate of the financial assistance payments made under the tree health pilot scheme in that financial year.

(2) This paragraph applies in relation to an agreement holder where the total of the relevant payments made to that agreement holder within that financial year is less than £1,250.

(3) Where information within paragraph (1)(a) concerns payments received under the farming investment fund scheme, the information must identify the aggregate of such payments received from the farming equipment and technology fund and the farming transformation fund respectively.

(4) The information published under paragraph (1) must be published on www.gov.uk, and remain there for 3 years from initial publication.

Part 6

Inspections and powers of entry

Virtual inspections

15.—(1) An authorised person may, at any reasonable hour, carry out a virtual inspection of any land or premises owned or occupied by an agreement holder, or over which the agreement holder has control, other than a private dwelling, if it is for the purposes of—

- (a) checking whether eligibility criteria for receipt of financial assistance continue to be met;
- (b) verifying compliance with conditions subject to which financial assistance is given;
- (c) monitoring the extent to which the purpose of financial assistance is achieved;
- (d) reviewing or evaluating—
 - (i) any of the activities carried out by the agreement holder under a financial assistance scheme;
 - (ii) the success of the financial assistance scheme as a whole;
- (e) verifying whether there has been a breach of these Regulations of the type listed in regulation 20(a) or 20(b)(i);
- (f) verifying whether there has been an offence committed under any other legislation, in so far as it is relevant to the application or the request for, or receipt of, financial assistance;
- (g) offering guidance and support, where appropriate.

(2) Before an authorised person is permitted to carry out a virtual inspection by live video link, the following conditions must be satisfied—

- (a) the agreement holder must have access to, and agree to the use of, a live video link;
- (b) the virtual inspection must be capable of being held fairly and transparently;
- (c) the authorised person must inform the agreement holder of the purpose of the proposed virtual inspection and, where possible, agree a suitable date and time for that inspection; and
- (d) where it is not possible to agree a suitable date and time for that inspection, the authorised person must notify the agreement holder in writing of the purpose of the inspection and the date and time of the inspection, at least 48 hours in advance of the inspection.

(3) In this regulation—

- (a) “remote sensing” means any type of aerial photography, satellite imagery or imagery that is captured remotely from an airborne vehicle including an aeroplane, helicopter or remotely piloted aircraft system (RPAS);
- (b) “virtual inspection” means an inspection carried out by—
 - (i) remote sensing; or

- (ii) a live video link that enables the agreement holder and the authorised person, who are not in the same location, to see and hear each other.

Physical inspections

16.—(1) An authorised person may, at any reasonable hour, enter any land or premises owned or occupied by an agreement holder, or over which the agreement holder has control, other than a private dwelling, if it is for any of the purposes listed in regulation 15(1)(a) to 15(1)(g) and it is in accordance with paragraphs (2) and (3) of this regulation.

(2) The authorised person must inform the agreement holder of the purpose of the proposed inspection and, where possible, agree a suitable date and time for that inspection.

(3) Where it is not possible to agree a suitable date and time, the authorised person must notify the agreement holder in writing of the purpose of the inspection and the date and time at least 48 hours in advance of that inspection.

Powers of entry

17.—(1) An authorised person may, at any reasonable hour, enter any land or premises owned or occupied by an agreement holder, or over which the agreement holder has control, other than a private dwelling, without notice if—

- (a) there is a reasonable suspicion of—
 - (i) a breach of any condition subject to which financial assistance is given;
 - (ii) a breach of these Regulations of the type listed in regulation 20(a), (b)(i) and (iv) to (vii); or
 - (iii) an offence having been committed under any other legislation, in so far as it is relevant to the application or the request for, or receipt of, financial assistance;
- (b) the authorised person produces, if so required, a duly authenticated document confirming authorisation; and
- (c) one or more of the conditions in paragraph (4) is met.

(2) An authorised person may, at any reasonable hour, enter any private dwelling owned or occupied by an agreement holder, or over which the agreement holder has control, without notice if a warrant has been obtained in accordance with paragraph (3).

(3) A justice of the peace may, by signed warrant, permit an authorised person to enter any private dwelling owned or occupied by an agreement holder, or over which the agreement holder has control, if necessary by reasonable force, if the justice, on sworn information in writing, is satisfied that—

- (a) there is a reasonable basis for the suspicion referred to in paragraph (1)(a);
- (b) one or more of the conditions in paragraph (4) is met; and
- (c) if only the condition set out in paragraph (4)(a) is met—
 - (i) notice of intention to apply for a warrant has been served on the agreement holder; or
 - (ii) such notice has not been served on the agreement holder because serving such a notice would interfere with the purpose or effectiveness of the entry.

(4) The conditions are that—

- (a) entry to the land or premises has been refused, or the Secretary of State has reasonable grounds to suspect entry is likely to be refused;
- (b) entry is required urgently;
- (c) the land or premises are unoccupied or the occupier is temporarily absent.

(5) A warrant signed in accordance with paragraph (3) is valid for one month from the date of signature.

(6) An authorised person who enters any premises which are unoccupied or from which the occupier is temporarily absent must leave them as effectively secured as they were before entry.

Powers of inspection

18.—(1) An authorised person who carries out a virtual or physical inspection of land or premises in accordance with regulation 15, 16 or 17 may—

- (a) carry out any inquiries, checks, examinations, measurements and tests;
- (b) inspect the land or premises;
- (c) inspect any livestock, trees, crops, plants, machinery or equipment specified in the agreement;
- (d) mark any animal or other thing, or require any animal or other thing to be marked, for identification purposes;
- (e) have access to, inspect, copy and print any documents or records (in whatever form they are held) or remove any such documents to enable them to be copied or retained as evidence;
- (f) have access to, inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the documents or records; and
- (g) take a photograph, or a record in digital form, of anything on or associated with the land or premises.

(2) An authorised person who enters land or premises in accordance with regulation 16 or 17 may also—

- (a) take samples;
- (b) remove a carcass on the land or premises for the purpose of carrying out a post-mortem examination; and
- (c) remove anything reasonably believed to be evidence of a breach or offence referred to in regulation 17(1)(a).

Assisting an authorised person

19.—(1) An authorised person carrying out a virtual or physical inspection of land or premises under regulation 15, 16 or 17 may be accompanied by such other persons as the authorised person considers necessary.

(2) An agreement holder, and any employee or agent of that person, must give the authorised person such assistance as the authorised person may reasonably request so as to enable the authorised person to exercise any power conferred on them by regulation 18 and must arrange for the collection, penning and securing of any animal if requested.

Part 7

Breach of conditions, regulations, suspected offences and investigations

Breach of regulations

20. This regulation applies where—

- (a) there has been a change of circumstances that has not been reported in accordance with regulation 11; or
- (b) an agreement holder, or any employee or agent of that person, has—
 - (i) at any time, given false or misleading information to the Secretary of State;
 - (ii) failed to provide information or evidence in accordance with regulation 9;
 - (iii) failed to provide copies of records in accordance with regulation 10;
 - (iv) prevented an authorised person from carrying out a virtual or physical inspection of land or premises which was proposed to take place under regulation 15, 16 or 17;
 - (v) prevented an authorised person from exercising any powers of inspection under regulation 18;
 - (vi) refused to provide assistance requested under regulation 19(2); or
 - (vii) otherwise obstructed an inspection under regulations 15 to 19.

Investigating breaches and suspected offences

21.—(1) Where the Secretary of State reasonably suspects that regulation 20 applies or that the agreement holder is in breach of any conditions subject to which financial assistance is given, the Secretary of State must carry out an investigation proportionate to the type of breach suspected.

(2) Where the Secretary of State reasonably suspects that the agreement holder has committed an offence under any other legislation, in so far as it is relevant to an application for, or receipt of, financial assistance, the Secretary of State may—

- (a) carry out an investigation;
 - (b) obtain information from any relevant third parties; and
 - (c) provide information to any person responsible for examining, investigating or prosecuting such an offence.
- (3) When carrying out an investigation, the Secretary of State may—
- (a) request information or evidence from the agreement holder;
 - (b) carry out an inspection under regulation 15, 16 or 17; and
 - (c) contact relevant third parties to verify information.

(4) The agreement holder must provide such assistance, as may be required, during any investigation carried out by the Secretary of State under paragraph (1) or (2).

(5) Where an investigation is carried out under paragraph (1) or (2), the Secretary of State may withhold financial assistance until the investigation is concluded and, where applicable, determinations are made under regulation 23(1) and (2).

Concluding an investigation

22.—(1) When an investigation under regulation 21(1) has been concluded, the Secretary of State must inform the agreement holder of the outcome of that investigation and permit that person to make written representations in such manner and at such times as the Secretary of State may specify.

(2) When an investigation under regulation 21(2) has been concluded, the Secretary of State may—

- (a) inform the agreement holder of the outcome of that investigation and permit that person to make written representations in such manner and at such times as the Secretary of State may specify; or

- (b) provide information to any person responsible for examining, investigating or prosecuting an offence to which the investigation related.
- (3) The Secretary of State must consider any written representations received from the agreement holder under paragraph (1) or (2) before making a determination under regulation 23.
- (4) Where an agreement holder has not been notified of an investigation under regulation 21(1) or 21(2) and, following the investigation, the Secretary of State has concluded that no further action is required, the obligations in paragraphs (1) and (2) do not apply.

Part 8

Determination on breach and remedies

Determination on breach

23.—(1) Where the Secretary of State is satisfied that a breach of conditions has occurred or that regulation 20 applies, the Secretary of State must make a determination to that effect.

(2) Where the Secretary of State has made a determination under paragraph (1), the Secretary of State must make a further determination as to the seriousness of the breach and the appropriate steps required to be taken in respect of the breach and in doing so must have due regard to—

- (a) the circumstances that led to the breach and whether it was caused by the intentional actions of the agreement holder or due to that person's recklessness or negligence;
- (b) any steps taken by the agreement holder to report a change of circumstance under regulation 11 or notify the Secretary of State of the breach within a reasonable period;
- (c) any failure on the part of the agreement holder to co-operate with an inspection which was proposed to take place under regulation 15, 16 or 17 or an investigation under regulation 21;
- (d) any past conduct of the agreement holder during the period of the agreement and whether a similar breach has previously occurred;
- (e) the nature of the breach and whether it constituted an offence or has caused widespread or irreparable damage;
- (f) the extent to which it is desirable, practicable or economic to permit the agreement holder to rectify the breach; and
- (g) the consequences of the breach and whether it renders the purpose of the financial assistance unachievable within the timescales or finances of the financial assistance scheme or to the standards agreed when the financial assistance was awarded.

Action available to the Secretary of State following determination of a breach

24.—(1) Further to the determination made under regulation 23(2), the Secretary of State may take such of the following steps as the Secretary of State considers appropriate—

- (a) issue a warning letter to the agreement holder;
- (b) amend, remove or replace a condition subject to which financial assistance is given either temporarily or permanently;
- (c) amend, remove or replace any agreed standards or timescales either temporarily or permanently;
- (d) permit the agreement holder to rectify the breach;
- (e) reduce the amount of financial assistance awarded in whole or in part;

- (f) withhold the whole or any part of financial assistance payable under the financial assistance scheme to which the breach relates;
 - (g) withhold the whole or any part of financial assistance payable under any financial assistance scheme to which the agreement holder is entitled;
 - (h) recover on demand all or any part of financial assistance which has already been paid to the agreement holder;
 - (i) terminate the agreement for financial assistance; and
 - (j) prohibit the agreement holder from receiving financial assistance under any financial assistance scheme under section 1 of the 2020 Act, subject to regulation 29.
- (2) The Secretary of State may take more than one step in any particular case.

Good reasons for a breach

25. For the purposes of regulation 23(2), where the agreement holder has informed the Secretary of State of good reasons for the breach, and submitted evidence in support of those reasons, the Secretary of State may determine that no steps under regulation 24 are required.

Notification of the determination on the breach

26. Where the Secretary of State makes determinations under regulation 23(1) and (2), the Secretary of State must—

- (a) give notice in writing to the agreement holder, within a reasonable period, of those determinations and the reasons for them; and
- (b) inform that person of the right to request a reconsideration under regulation 30.

Further information on rectifying a breach

27.—(1) Where the Secretary of State permits the agreement holder to rectify the breach under regulation 24(1)(d), the Secretary of State—

- (a) must specify a period within which the breach must be rectified; and
- (b) may withhold financial assistance until such time as the Secretary of State is satisfied that the breach has been satisfactorily rectified.

(2) Where the agreement holder fails to satisfactorily rectify the breach, the Secretary of State must make a new determination under regulation 23(2).

Further information on recovering financial assistance

28.—(1) Before the Secretary of State takes steps to recover on demand all or any part of financial assistance already paid to the agreement holder under a financial assistance scheme in accordance with regulation 11(2)(d) or 24(1)(h), the Secretary of State must notify the agreement holder of the amount to be recovered and the deadline by which the repayment must be made, that deadline being 60 days beginning with the date on which the notification is given.

(2) Where the agreement holder fails to repay the full amount within that period and that person is entitled to further financial assistance under that scheme or any other financial assistance scheme under section 1 of the 2020 Act, the Secretary of State may withhold payments under those schemes to the value of the net amount to be repaid.

(3) Where the agreement holder fails to repay the full amount within that period and that person is not entitled to further financial assistance under that scheme or any other financial assistance scheme under section 1 of the 2020 Act, or the amount withheld under paragraph (2) taken with any

repayment made by the agreement holder is lower than the full amount to be repaid, the Secretary of State may recover, as a debt, the net amount to be repaid, together with interest on that amount calculated in accordance with paragraph (4).

(4) Where the Secretary of State exercises the power conferred by paragraph (3), interest may be charged on the net amount to be repaid, for each day from the deadline referred to in paragraph (1) to the date on which repayment of the amount to be recovered and any associated interest is made in full.

(5) The rate of interest applicable on any day is one percentage point above the Bank of England base rate.

(6) In this regulation “the Bank of England base rate” means—

- (a) except where sub-paragraph (b) applies, the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short-term liquidity in the money markets; or
- (b) if an order under section 19 (reserve powers) of the Bank of England Act 1998(4) is in force, any equivalent rate determined by the Treasury under that section.

Further information on prohibiting financial assistance

29. Where the Secretary of State makes a determination under regulation 23(2) and prohibits an agreement holder from receiving financial assistance under any financial assistance scheme under section 1 of the 2020 Act in accordance with regulation 24(1)(j), such prohibition must—

- (a) not exceed a period of two years, beginning with the day after the day on which the Secretary of State notifies the agreement holder of that determination under regulation 26; and
- (b) be reasonable and proportionate, taking into account the seriousness of the breach and the factors specified in regulation 23(2).

Part 9

Reconsideration of decisions or determinations and appeals

Reconsideration of a decision or determination

30.—(1) A person may submit a request in writing to the Secretary of State for a reconsideration of a decision or determination notified to that person under regulation 6(2)(b), 11(3)(b) or 26(b).

(2) A request under this regulation must be received by the Secretary of State within 60 days of the decision or determination being notified to that person.

(3) When reconsidering the original decision or determination, the Secretary of State must give due regard to any additional information or evidence provided by the person making a request under paragraph (1).

(4) When the original decision or determination has been reconsidered, the Secretary of State must—

- (a) decide whether to uphold that decision or determination or substitute a new one;
- (b) give notice in writing to that person, within a reasonable period, setting out—
 - (i) the Secretary of State’s decision;

(4) 1998 c.11.

- (ii) any new decision or determination under regulation 6(1), 11(2) or 23, as the case may be; and
- (iii) the reasons for that decision or determination; and
- (c) inform that person of the right to appeal under regulation 31.

Appeals

31.—(1) A person (“the appellant”) may appeal in writing to the Secretary of State against a decision made under regulation 30 on any of the following grounds—

- (a) the decision was based on an error of fact;
- (b) the decision was wrong in law;
- (c) there has been a material procedural error.

(2) An appeal under this regulation must be received by the Secretary of State within 60 days of the decision being notified to the appellant.

(3) The Secretary of State must appoint a person or persons, up to a maximum of three (“the appointed person”) to consider appeals under this regulation.

(4) The appointed person, upon considering an appeal under this regulation, must report in writing to the Secretary of State with conclusions on the appeal and a recommendation as to the manner in which the matter should be finally determined by the Secretary of State.

(5) Following receipt of a report under paragraph (4), the Secretary of State must make a final determination.

(6) When the Secretary of State makes a final determination under paragraph (5), the Secretary of State must give notice in writing to the appellant, within a reasonable period, setting out—

- (a) the final determination, including any new decision or determination under regulation 6(1), 11(2) or 23, as the case may be; and
- (b) the reasons for that final determination.

Date

Name
Parliamentary Under Secretary of State
Department for Environment, Food and Rural
Affairs

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations, which apply to England only, are made under the Agriculture Act 2020 (c.21). The Secretary of State has the power to give financial assistance to farmers, foresters and other beneficiaries responsible for the management of land for purposes listed in section 1(1) and (2) of that Act. Such purposes include, but are not limited to, environmental protection and enhancement, public access to the countryside and measures to safeguard livestock and plants.

These Regulations make provision for the award of financial assistance under four financial assistance schemes:

- the environmental land management pilot scheme,
- the countryside stewardship scheme,
- the farming investment fund scheme, and
- the tree health pilot scheme (together referred to as “the schemes”).

Regulation 3 places an obligation on the Secretary of State to check that any person applying for financial assistance under one of the schemes meets the eligibility criteria for that scheme. Regulations 4 and 5 enable the Secretary of State to request additional information in support of an application and allow defects to be corrected by the applicant. Under regulation 6 the Secretary of State must refuse to award financial assistance under a financial assistance scheme if certain conditions are not met. If the Secretary of State refuses to award financial assistance, the applicant has the right to apply for a reconsideration of that decision under regulation 30.

Regulation 7 makes provision for payments of financial assistance under the environmental land management pilot scheme. Regulation 8 makes provision for payments of financial assistance under the countryside stewardship scheme, the farming investment fund scheme and the tree health pilot scheme.

Regulation 9 imposes a duty on an agreement holder receiving financial assistance under the schemes to provide information or evidence to the Secretary of State on request for the checking and monitoring of conditions imposed under the agreement for financial assistance. Regulation 10 requires an agreement holder to provide to the Secretary of State on request copies of records kept under the agreement.

Regulation 11 requires the agreement holder to notify the Secretary of State of relevant changes in circumstances, and enables the Secretary of State to take certain steps as a result. Regulation 12 makes provision for the transfer of agreements provided certain conditions are met.

Regulation 13 requires the Secretary of State to ensure that certain information is published in relation to financial assistance which has been given under the schemes. Regulation 14 requires the publication of aggregated data in relation to (a) payments under the countryside stewardship scheme, the environmental land management pilot scheme and the farming investment fund scheme which fall below a minimum threshold, and (b) payments under the tree health pilot scheme.

Regulations 15 and 16 enable the Secretary of State to carry out virtual or physical inspections for the purposes of verifying that a person entitled to financial assistance under the schemes is complying with the conditions of their agreement. Regulations 17, 18 and 19 provide powers of entry and inspection to enforce compliance with the conditions of scheme agreements.

Regulation 20 identifies the circumstances which amount to a breach of these Regulations. Regulations 21 and 22 make provision for the Secretary of State to investigate breaches of these

Regulations, breaches of any conditions subject to which financial assistance is given and other offences where they are relevant to the receipt of financial assistance. Under regulation 23, the Secretary of State must make a determination if satisfied that a breach of conditions has occurred or that regulation 20 applies. Regulation 24 specifies the steps that may be taken by the Secretary of State where there has been such a determination, including the withholding of financial assistance, recovering financial assistance previously awarded and prohibiting a person from receiving financial assistance under any scheme for up to two years. Under regulation 25, the Secretary of State may choose not to take steps if there is a good reason for a breach of conditions.

Regulations 27 to 29 provide further information on some of the steps the Secretary of State may require to be taken under regulation 24.

Regulation 30 makes provision for a person to request that the Secretary of State reconsider a decision or determination under regulation 6(2)(b), 11(3)(b) or 26(b). Regulation 31 makes provision for a subsequent appeal to the Secretary of State.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.