
DRAFT STATUTORY INSTRUMENTS

2023 No.

**The Agriculture (Delinked Payments and
Consequential Provisions) (England) Regulations 2023**

PART 1

Introduction

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Agriculture (Delinked Payments and Consequential Provisions) (England) Regulations 2023.

(2) These Regulations—

- (a) come into force on 1st January 2024; and
- (b) extend to England and Wales but apply in relation to England only.

Interpretation

2. In these Regulations—

“the Act” means the Agriculture Act 2020;

“the Direct Payments Regulation” means [Regulation \(EU\) No1307/2013](#) 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 and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009⁽¹⁾ as that Regulation applied in relation to England immediately before the end of 2023;

“agricultural holdings tenancy” means a tenancy to which the Agricultural Holdings Act 1986⁽²⁾ applies;

“delinking period” is the period beginning with 1st January in the year prescribed in regulation 4 and ending on the last day of the agricultural transition period for England⁽³⁾;

“eligible land in England” means any land in England that was an “eligible hectare” within the meaning given by Article 32(2) of the Direct Payments Regulation;

“farm business tenancy” means a tenancy to which the Agricultural Tenancies Act 1995⁽⁴⁾ applies;

“reference amount” has the meaning given in regulation 5(3);

“reference period” has the meaning given in regulation 5(2);

“transfer”, in relation to eligible land in England, means—

(1) EUR 1307/1307; as amended by [S.I. 2020/91](#), [576](#) and [760](#). This Regulation was incorporated into domestic law by section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c. 2).

(2) [1986 c. 5](#).

(3) See section 7(4) of the Agriculture Act 2020 (“the Act”) for the meaning given to “agricultural transition period for England”.

(4) [1995 c. 8](#).

- (a) where the transferor is the owner of the land, a transfer by sale or gift or by lease under a farm business tenancy or agricultural holdings tenancy;
- (b) where the transferor is a tenant occupying the land under a farm business tenancy, a transfer by surrender or assignment of the tenancy;
- (c) where the transferor is a tenant occupying the land under an agricultural holdings tenancy, a transfer by surrender or assignment of the tenancy or by the transfer of the tenancy to a successor in accordance with Part 4 of the Agricultural Holdings Act 1986.

PART 2

Delinked payments

Delinked payments

3. The Secretary of State must make a delinked payment under these Regulations(5) for any year falling within the delinking period to a person who, in respect of that year, satisfies the eligibility conditions in regulation 6.

The delinking period

4. For the purposes of section 12(2)(b)(i) of the Act and of these Regulations, the year specified for the beginning of the delinking period is 2024(6).

Calculation of delinked payments

5.—(1) A delinked payment is to be calculated by the Secretary of State in accordance with Schedule 1.

(2) The period which applies for the purposes of calculating a delinked payment (the “reference period”) is the period of three years which began on 1st January 2020 and ended on 31st December 2022.

(3) The amount which applies for the purposes of calculating a delinked payment (the “reference amount”) is the amount described in paragraph 1 of Schedule 1 that is calculated by the Secretary of State in respect of a person.

(4) When calculating a delinked payment under Schedule 1, the Secretary of State—

- (a) may adjust the reference amount to reflect any alterations to payments made to or in respect of a person under the basic payment scheme(7) for any year falling within the reference period; and
- (b) must adjust the reference amount—

- (i) to offset any proportion of that amount that has been applied for the purposes of calculating a lump sum payment made to any person under regulation 12 of, and the Schedule to, the Agriculture (Lump Sum Payment) (England) Regulations 2022(8);
- or

(5) Section 12(1) of the Act provides that a delinked payment is made in place of direct payments under the basic payment scheme. See section 7(2) of the Act for the meaning of “basic payment scheme”. See also section 12(2)(a) of the Act for the meaning given to “delinked payment”.

(6) See section 12(2)(b)(ii) of the Act which provides that the delinking period is to end on the last day of the agricultural transition period for England.

(7) See section 7(2) of the Act for the meaning given to “basic payment scheme”.

(8) [S.I. 2022/390](#).

(ii) in accordance with paragraph 4 of Schedule 1.

Eligibility conditions

6.—(1) The eligibility conditions are that a person—

- (a) was eligible for and claimed direct payments under the basic payment scheme in the 2023 claim year;
- (b) has a reference amount calculated in respect of them by the Secretary of State under Schedule 1; and
- (c) where applicable, has complied with any request made by the Secretary of State under regulation 7 for the supply of additional information or evidence.

(2) For the purposes of paragraph (1) and of these Regulations, a person includes a natural or legal person or, as the case may be, a group of natural or legal persons, regardless of the legal status afforded to such group and its members.

(3) A person who satisfies the eligibility conditions in paragraph (1) may, at any time, request in writing that the Secretary of State should cease to regard that person as eligible to receive any, or any further, delinked payments under these Regulations.

Information in support of eligibility

7.—(1) The Secretary of State may require a person to provide additional information and evidence in support of that person's eligibility to receive a delinked payment.

(2) The information or evidence must be provided to the Secretary of State on or before the date specified by the Secretary of State.

Transfers of the reference amount

8.—(1) A request may be made to the Secretary of State for the transfer to a person by the Secretary of State of all, or any part, of a reference amount and Parts 1 and 2 of Schedule 2 have effect for these purposes.

(2) The Secretary of State must, as soon as practicable after the receipt of a request made under paragraph (1)—

- (a) determine that request; and
- (b) give notice in writing to the person who made the request of the Secretary of State's decision in relation to that request.

(3) For the purposes of determining a request made under paragraph (1), the Secretary of State may require additional information or evidence in support of that request under paragraph 9 or 16 of Schedule 2.

(4) A person to whom all, or any part, of a reference amount is transferred following a request made under paragraph (1) and Part 2 of Schedule 2 in circumstances where paragraph 13 of that Schedule applies, is, for the purposes of these Regulations, to be treated as a person who has satisfied the eligibility condition in regulation 6(1)(a).

PART 3

Making and recovery of delinked payments

Making delinked payments

9.—(1) Subject to paragraph (3), a delinked payment must be paid by the Secretary of State to a person before the expiry of the period of 13 months beginning on 1st January in the year to which the payment relates.

(2) A delinked payment in relation to a year may be paid by the Secretary of State to a person in two instalments, the first of which represents up to 50% of the estimated total value of the delinked payment payable to that person for that year and the second of which represents the balance due to that person after the total value of the delinked payment for that year has been calculated.

(3) The Secretary of State may pay a delinked payment, or any part of a delinked payment, to a person after the expiry of the period specified in paragraph (1) where the Secretary of State is satisfied that there are good reasons for doing so.

Recovery of delinked payments

10.—(1) The Secretary of State may recover on demand an amount paid to a person by way of a delinked payment to which that person was not entitled.

(2) Where the Secretary of State decides to recover an amount under paragraph (1) from any person, the Secretary of State must notify that person in writing of—

- (a) the amount to be repaid; and
- (b) the deadline specified in paragraph (3) by which the repayment of that amount must be made by that person.

(3) The deadline specified in this paragraph is before the end of the period of 60 days beginning on the date on which the notification under paragraph (2) is given.

(4) Where a person fails to repay the full amount referred to in paragraph (2)(a) within the deadline specified in paragraph (3), the Secretary of State may recover the amount outstanding as a debt, together with interest on that amount, calculated in accordance with paragraph (5).

(5) Where the Secretary of State exercises the power conferred under paragraph (4), interest may be charged to the amount to be repaid for each day from the repayment deadline specified in paragraph (3) to the date on which repayment of that amount, together with any associated interest, is made in full.

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

(7) In this regulation, “the Bank of England base rate” has the meaning given in regulation 28(6) of the Agriculture (Financial Assistance) Regulations 2021(9).

(9) [S.I. 2021/405](#), to which there are amendments not relevant to these Regulations.

PART 4

Appeals

Appeals: general

11.—(1) A person (“the appellant”) may appeal against any decision made in respect of that person by the Secretary of State under these Regulations.

(2) An appeal under paragraph (1) must be—

- (a) submitted to the Secretary of State in writing in such form as the Secretary of State may specify;
- (b) received by the Secretary of State before the end of the period of 60 days beginning on the date on which the notification of the decision being appealed against is given to the appellant by the Secretary of State.

Grounds of appeal

12. An appeal under regulation 11(1) may be submitted 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.

The appointed person

13.—(1) The Secretary of State must appoint no more than three persons to consider appeals.

(2) The persons appointed under paragraph (1) must, upon considering an appeal, 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.

Final determination of appeals

14.—(1) Following receipt of a report under regulation 13(2), the Secretary of State must make a final determination.

(2) The Secretary of State must give notice in writing to the appellant, within a reasonable period, setting out—

- (a) the final determination; and
- (b) the reasons for that determination.

PART 5

Termination of the basic payment scheme in England

Termination of the basic payment scheme in England

15. The basic payment scheme ceases to exist upon the coming into force of this regulation.

Revocations and savings

16. Schedule 3 has effect for the purposes of making—

- (a) in Part 1 of that Schedule, consequential revocations of the legislation governing the basic payment scheme⁽¹⁰⁾; and
- (b) in Part 2 of that Schedule, a saving of the effect of that legislation for specified purposes.

PART 6

Consequential amendments to other legislation

Consequential amendments

17. Schedule 4 has effect for the purposes of making consequential amendments to legislation that are necessary by reason of the revocation in relation to England of the legislation governing the basic payment scheme.

Date

Name
Minister of State
Department for Environment, Food and Rural
Affairs

(10) See section 7(3) of the Agriculture Act 2020 for the meaning given to “legislation governing the basic payment scheme”.