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STATUTORY INSTRUMENTS

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**2021 No. 405**

**The Agriculture (Financial Assistance) Regulations 2021**

**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(1) 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).

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(1) 1998 c.11.