

**2023 No. 1181**

**AGRICULTURE, ENGLAND**

**The Direct Payments to Farmers (Reconsideration and Appeal)  
(Modification) (England) Regulations 2023**

*Made - - - - at 9.30 a.m. on 7th November 2023*

*Laid before Parliament at 1.00 p.m. on 7th November 2023*

*Coming into force immediately before the end of 2023*

The Secretary of State, in exercise of the powers conferred by sections 9(1)(a), 50(3) and (4) and 53(1) and (7) of the Agriculture Act 2020(a), makes the following Regulations.

**Citation, commencement, extent and application**

1.—(1) These Regulations may be cited as the Direct Payments to Farmers (Reconsideration and Appeal) (Modification) (England) Regulations 2023 and come into force immediately before the end of 2023.

(2) These Regulations—

- (a) extend to England and Wales; and
- (b) apply in England only to Pillar 1 decisions which relate to direct payments.

**Interpretation**

2. In these Regulations—

- (a) “the principal Regulations” means the Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014(b);
- (b) “direct payments” means direct payments under 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 and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009(c) as that Regulation applies in relation to England on the coming into force of these Regulations; and
- (c) “Pillar 1 decision” has the meaning given in regulation 30 of the principal Regulations (interpretation)(d).

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(a) 2020 c. 21. Section 50(4) of the Agriculture Act 2020 is cited because it enables provision to be made under section 50(3)(d) of that Act which modifies subordinate legislation.

(b) S.I. 2014/3263, relevant amendments were made by S.I. 2020/90 and 1445.

(c) EUR 2013/1307, relevant amendments were made 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).

(d) The definition of “Pillar 1 decision” in regulation 30 of S.I. 2014/3263 was amended by S.I. 2019/733 and S.I. 2020/90 and 1445.

### **Modification of Part 5 of the principal Regulations**

3. Part 5 of the principal Regulations (appeals) is, in the case of a Pillar 1 decision to which these Regulations apply, to be read as if—

- (a) in regulation 32 (appeals), paragraph (1) were omitted; and
- (b) after regulation 32, there were inserted the following regulation—

#### **“Reconsideration and appeal: direct payments**

**32A.**—(1) A Pillar 1 appellant may, in the case of a Pillar 1 decision made by the Secretary of State which relates to direct payments—

- (a) request that the Secretary of State reconsiders that Pillar 1 decision; and
- (b) if dissatisfied with the outcome of the Secretary of State’s reconsideration of that Pillar 1 decision, appeal to the Secretary of State.

(2) A Pillar 1 decision which relates to direct payments—

- (a) that was made by the Secretary of State before 1st January 2024; but
- (b) that was not, before 1st January 2024, either—
  - (i) the subject matter of a non-statutory request for a reconsideration by the Secretary of State, or
  - (ii) the subject matter of an application for an appeal to the Secretary of State made under regulation 32(1),

is to be treated as if it were a Pillar 1 decision which relates to direct payments that was notified to the Pillar 1 appellant on 1st January 2024.

(3) A Pillar 1 decision which relates to direct payments that was, before 1st January 2024, the subject matter of a non-statutory reconsideration by the Secretary of State, but not an application for an appeal to the Secretary of State under regulation 32(1), is to be treated as if it were a Pillar 1 decision which relates to direct payments that was reconsidered by the Secretary of State following a request made by the Pillar 1 appellant under paragraph (1)(a) the outcome of which was notified to that appellant on 1st January 2024.

(4) Where a Pillar 1 decision which relates to direct payments that was made before 1st January 2024—

- (a) was, before that date, the subject matter of a non-statutory request for a reconsideration by the Secretary of State; but
- (b) was not reconsidered by the Secretary of State before that date,

then the Pillar 1 decision concerned is to be treated as if it were a decision that falls to be determined by the Secretary of State under paragraph (6) following a request for a reconsideration made by the Pillar 1 appellant under paragraph (1)(a).

(5) A request made by a Pillar 1 appellant under paragraph (1)(a) must be—

- (a) submitted in writing; and
- (b) received by the Secretary of State before the end of the period of 60 days beginning with the date of the notification to the Pillar 1 appellant of the Pillar 1 decision concerned.

(6) The Secretary of State must—

- (a) reconsider the Pillar 1 decision to which the request under paragraph (1)(a) relates; and
- (b) notify the Pillar 1 appellant in writing of the outcome of that reconsideration.

(7) An appeal made by a Pillar 1 appellant under paragraph (1)(b) must be—

- (a) submitted in writing; and

(b) received by the Secretary of State before the end of the period of 60 days beginning with the date of the notification to the Pillar 1 appellant of the outcome of the Secretary of State's reconsideration of the Pillar 1 decision concerned.

(8) Paragraphs (3) to (7) of regulation 32 also apply to appeals made under paragraph (1)(b).

(9) The appointed person must not consider an appeal made under paragraph (1)(b) if the Pillar 1 decision concerned has not first been reconsidered by the Secretary of State following a request made by the Pillar 1 appellant under paragraph (1)(a) (or treated as such by virtue of paragraph (3) or (4)).”.

### **Exception**

4. The modification of Part 5 of the principal Regulations made by regulation 3 is without prejudice to the continued application of regulation 32 of the principal Regulations to a Pillar 1 decision which relates to direct payments that was, before the end of 2023, the subject matter of an application for an appeal to the Secretary of State made by a Pillar 1 appellant under paragraph (1) of that regulation.

*Mark Spencer*  
Minister of State

At 9.30 a.m. on 7th November 2023

Department for Environment, Food and Rural Affairs

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations are made under the Agriculture Act 2020 (c. 21) in consequence of the introduction of delinked payments under section 12 of that Act in place of direct payments under the Basic Payment Scheme in England. They modify the application of the appeals provisions in Part 5 of the Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 (S.I. 2014/3263) (“the principal Regulations”) to Pillar 1 decisions which relate to direct payments so as to introduce a statutory time limit for requesting the reconsideration of, and for bringing appeals against, any such Pillar 1 decisions made by the Secretary of State. These Regulations extend to England and Wales but apply only to Pillar 1 decisions in England which relate to direct payments.

Regulation 3 modifies Part 5 of the principal Regulations so that regulation 32 of those Regulations (appeals) is required to be read as if paragraph (1) were omitted and as if, after that regulation, there were inserted a new regulation 32A. The purpose of the new regulation 32A is to enable a Pillar 1 appellant, in relation to a Pillar 1 decision which relates to direct payments, to request a reconsideration of that decision within 60 days from the date of notification of that decision by the Secretary of State. Where the Pillar 1 appellant remains dissatisfied with the outcome of that reconsideration, there is a further 60 day period from the date of notification of the outcome of that reconsideration within which the Pillar 1 appellant may appeal to the Secretary of State.

If a Pillar 1 decision which relates to direct payments was made by the Secretary of State before 1st January 2024 but has not, before that date, been the subject matter of a non-statutory request for a reconsideration by the Secretary of State or an application for an appeal made to the Secretary of State under regulation 32(1) of the principal Regulations, that decision is treated as if it was made on 1st January 2024 for the purposes of the new time limits. If a Pillar 1 decision which relates to direct payments was, before 1st January 2024, the subject matter of a non-statutory reconsideration by the Secretary of State, that decision is treated, for the purposes of the new time limits, as if it was reconsidered by the Secretary of State following a request made by the Pillar 1 appellant under the new regulation 32A(1)(a) the outcome of which was notified to the

Pillar 1 appellant by the Secretary of State on 1st January 2024. If the Secretary of State was, before 1st January 2024, asked to reconsider a Pillar 1 decision which relates to direct payments but the reconsideration did not take place before that date, the Pillar 1 decision concerned is treated as if it falls to be determined by the Secretary of State under new regulation 32A(6) following a request made under new regulation 32A(1)(a).

Paragraphs (3) to (7) of regulation 32 of the principal Regulations are also applied for the purposes of appeals submitted under the new regulation 32A(1)(b). These provisions require appeals to be considered by an appointed person who must report to the Secretary of State in writing with a recommendation about how the appeal should be finally determined by the Secretary of State and allow for reasonable remuneration and expenses to be paid to the appointed person. They also require the Secretary of State to make a final determination of the appeal and enable the charging of a fee in connection with the bringing of an appeal which must be refunded in the event that the Secretary of State revises the decision that is the subject matter of the appeal.

Regulation 4 provides that regulation 32 of the principal Regulations continues to apply without the modifications in regulation 3 in respect of any Pillar 1 decisions which relate to direct payments that were, before the end of 2023, the subject matter of an application for an appeal to the Secretary of State made under paragraph (1) of that regulation.

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.

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