EXPLANATORY MEMORANDUM TO

THE AGRICULTURE (FINANCIAL ASSISTANCE) (AMENDMENT) REGULATIONS 2022

2022 No. 389

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.

2. Purpose of the instrument

2.1 Under the Agriculture Act 2020, the Secretary of State has the power to give financial assistance to farmers, foresters, and other land managers to encourage environmental protection and enhancement, public access to the countryside and the safeguarding of livestock and plants.

2.2 The Agriculture (Financial Assistance) Regulations 2021 (the "2021 regulations") provide for the checking and monitoring of four financial assistance schemes launched in 2021 under the Act. The 2021 regulations also implement enforcement measures to ensure compliance with scheme conditions and require the publication of certain information in relation to those four schemes.

2.3 Defra intends to launch other new financial assistance schemes from 2022. This instrument makes amendments to the 2021 regulations to ensure that any new financial assistance schemes launched in 2022 and thereafter are subject to the same checking, monitoring and enforcement requirements that applied to the original schemes launched in 2021.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England only.

5. European Convention on Human Rights

5.1 The Minister of State for Farming, Fisheries and Food, Victoria Prentis MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Agriculture (Financial Assistance) (Amendment) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument makes the following amendments to the 2021 regulations:

- adds new and amends existing definitions in regulation 2 of the 2021 regulations;
- extends the scope of regulation 3 of the 2021 regulations to enable the Secretary of State to check the eligibility criteria of any financial assistance scheme established under Part 1 of the 2020 Act;
- extends the scope of regulation 8 of the 2021 regulations to apply the payment requirements to any financial assistance scheme established under Part 1 of the Act, other than an environmental land management scheme;
- extends the scope of regulations 13 and 14 of the 2021 regulations to apply the publication of information requirements to any financial assistance scheme established under Part 1 of the Act. The tree health pilot scheme and annual health and welfare review (defined in regulation 2 of the 2021 regulations) are exempt from certain publication requirements;
- extends the scope of regulation 21 of the 2021 regulations to enable the Secretary of State to investigate suspected offences (where relevant to an application for, or receipt of financial assistance) committed by applicants or the agents and employees of applicants or agreement holders.

7. Policy background

What is being done and why?

7.1 This instrument broadens the scope of the 2021 regulations so that the requirements relating to checking, monitoring, payment, and publication of information apply to new financial assistance schemes launched in 2022 and thereafter. It also extends the investigatory powers so that they apply to applicants as well as agreement holders and to the employees or agents of an applicant or agreement holder.

7.2 "Financial assistance scheme" is defined in section 1(6) of the Agriculture Act 2020. Rather than naming and defining individual financial assistance schemes in regulation 2, the regulations have been amended so that most provisions will apply to a "financial assistance scheme" as defined under the Act.

Explanations

What did any law do before the changes to be made by this instrument?

7.3 The 2021 regulations apply to four financial assistance schemes launched in 2021. The regulations make provision for:

- checking whether eligibility criteria under the schemes have been met;
- enforcing compliance with scheme conditions;
- monitoring the extent to which the purpose of the financial assistance schemes has been achieved;
- the investigation of breaches and suspected offences in connection with applications for, or the receipt, of financial assistance; and
- publication of certain information, including the recipient and amount of the financial assistance, as well as the purpose for which it was given.

Why is it being changed?

7.4 The 2021 regulations are being amended to extend the checking, monitoring, payments, and publication of information requirements to new financial assistance schemes which are to be launched in 2022 and subsequent years.

7.5 The instrument inserts a new definition of "agreement" and expands the definition of an 'agreement holder' under regulation 2 of the 2021 regulations to include agents and employees of a person who has entered into a financial assistance agreement. This is because the 2021 regulations, as they currently stand, only allow the Secretary of State to investigate circumstances where an agreement holder is suspected of being in breach of conditions subject to which financial assistance is given. There may however be circumstances in which an employee or agent of an agreement holder is suspected of such a breach. The instrument ensures that the 2021 regulations also cover agents and employees in such circumstances, ensuring suspected breaches can be fully investigated.

7.6 The instrument also expands the power of the Secretary of State to investigate suspected offences in connection with applications for, or receipt of financial assistance. Regulation 21 of the 2021 regulations has been amended to apply to the investigation of applicants as well as agreement holders, including, where relevant, the agents or employees of an applicant. This, again, is because the 2021 regulations as originally drafted only allow the Secretary of State to investigate agreement holders for breaches of their agreement. There may, however, be circumstances where there is suspicion of fraud at the application stage prior to a person entering into a financial assistance agreement and becoming an 'agreement holder'. In such circumstances, it would be reasonable for the Secretary of State to investigate any suspected offence before refusing the payment of financial assistance or permitting an applicant to enter into an agreement and become an agreement holder. The instrument therefore ensures that the 2021 regulations allow for such an investigation.

7.7 These changes will bring Defra's investigative powers closer to those which the Department currently holds in relation to schemes previously created under Common Agricultural Policy ("CAP") rules, such as Direct Payments and earlier iterations of Countryside Stewardship. Because of this similarity to powers under CAP schemes, Defra does not consider these to be "new" powers, except insofar as they will operate as part of the new statutory regime implemented by the Act. They will provide Defra Investigation Services with the flexibility it needs to investigate complex offences such as fraud or environmental crimes, while allowing it to do so in a more proportionate nature than the CAP practices, reflecting the principles of the Act.

What will it now do?

7.8 This instrument amends the 2021 regulations to ensure that any new financial assistance schemes launched in 2022 and thereafter are subject to the same checking, monitoring and enforcement requirements that applied to the original schemes launched in 2021.

7.9 The instrument will also ensure that the power of the Secretary of State to investigate cases of suspected offences in connection with financial assistance applies not only to agreement holders but also to applicants, and to the employees or agents of an applicant or agreement holder.

7.10 The instrument does not impose duties that are significantly more onerous than before, and will not require persons applying for financial assistance or entitled to financial assistance under the regulations to adopt different patterns of behaviour. Given that the instrument will apply the checking, monitoring and enforcement requirements to new financial assistance schemes introduced under the Act enabling payments to be made to farmers and land managers, it is reasonable and in everyone's interest to have the instrument in force at the earliest date possible.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument amends the Agriculture (Financial Assistance) Regulations 2021. Defra does not intend to consolidate the regulations at this time.

10. Consultation outcome

10.1 A full consultation was undertaken before the 2021 regulations came into force which considered Defra's proposals for publishing information under the schemes, checking eligibility criteria and other monitoring and enforcement provisions. Since this instrument is not making any substantive policy changes to those requirements, a further consultation was not necessary.

11. Guidance

11.1 Defra plans to provide detailed guidance for each financial assistance scheme established under the 2020 Act. This will be published ahead of the launch of each financial assistance scheme.

11.2 The UK Government has published detailed information on its plans for new financial assistance schemes under the Agricultural Transition Plan in England. Links to these publications, which include "The Path to Sustainable Farming: An Agricultural Transition Plan 2021 to 2024", can be found here: https://www.gov.uk/government/publications/agricultural-transition-plan-2021-to-2024 . Further guidance on how the Sustainable Farming Incentive will work in 2022 was published on 2 December 2021, and can be found here: https://www.gov.uk/government/publications/sustainable-farming-incentive-how-the-scheme-will-work-in-2022

12. Impact

12.1 There is no significant impact on business, charities, or voluntary bodies.

12.2 There is no significant impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because participation in the Government's financial assistance schemes is voluntary. Financial assistance under the schemes can be given in various forms, and compliance with the rules in the 2021 regulations (as amended by this instrument) is a condition of receiving financial assistance. The impact on businesses therefore falls below the threshold for producing one.

13. Regulating small business

13.1 The legislation 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 on what action to take to assist small businesses is that the publication and enforcement rules introduced by this instrument only apply to small businesses who opt to apply for financial assistance under one of the new financial assistance schemes.

14. Monitoring & review

14.1 Defra and its agencies will monitor and review the impact of this instrument, along with the 2021 regulations, as part of its standard policy-making procedures and will ensure that the provisions are adhered to and implemented.

15. Contact

15.1 Pamela Frost at the Department for Environment, Food and Rural Affairs. Telephone: 07770 984871 or email: pamela.frost@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Jonathan Baker, Future Farming Strategy, Programme Policy and Engagement Team; Head of Legislation, Devolution & Subsidy Control Policy at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Victoria Prentis MP, Minister of State for Farming, Fisheries and Food, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.