EXPLANATORY MEMORANDUM TO

THE AGRICULTURE (FINANCIAL ASSISTANCE) (AMENDMENT) REGULATIONS 2023

2023 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by Department for Environment, Food and Rural Affairs ("Defra") and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 Under section 1 of the Agriculture Act 2020 ("the Act"), the Secretary of State has the power to give financial assistance to farmers, foresters, and other land managers to achieve public benefits including 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 financial assistance schemes launched 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 schemes.

2.3 These amendments to the 2021 Regulations will help ensure the continued smooth running of the schemes, by allowing Defra to adapt some of the financial assistance schemes already launched under the Act and helping with the design of new schemes for launch from 2023.

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 extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England only.

5. European Convention on Human Rights

5.1 The Rt Hon Mark Spencer has made the following statement regarding Human Rights:

"In my view the provisions of the Agriculture (Financial Assistance) (Amendment) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 The 2021 Regulations were made using powers conferred by the Agriculture Act 2020, and provided for the checking and monitoring of four financial assistance schemes launched under the Act in 2021. The 2021 Regulations were amended by the Agriculture (Financial Assistance) (Amendment) Regulations 2022 No. 389 to extend the investigatory powers available to the Secretary of State, and so that most provisions apply to any financial assistance scheme under the Act. This instrument uses the same powers in the Act to make further amendments to the 2021 Regulations.

7. Policy background

What is being done and why?

7.1 Under the Agricultural Transition Plan, Defra will reduce area-based payments to farmers and encourage them to apply for financial assistance under section 1 of the Act.

7.2 Defra has launched several financial assistance schemes under section 1 of the Act and intends to launch further schemes in 2023. The 2021 Regulations make provision for checking, monitoring, payment, and publication of information in relation to these schemes.

7.3 These amendments to the 2021 Regulations will allow Defra to adapt some of the financial assistance schemes already launched, including environmental land management schemes and the farming investment fund, and help with the design of new schemes for launch from 2023.

Explanations

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

7.4 The 2021 Regulations apply to financial assistance schemes launched under Part 1 of the Agriculture Act 2020. 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

Why is it being changed?

7.5 The 2021 Regulations are being amended to support the requirements of financial assistance schemes being produced in 2023 and beyond.

7.6 The instrument will minimise references to specific financial assistance schemes and scheme definitions in the 2021 Regulations. This includes removing references to environmental land management schemes in Regulations 2 and 7. This will help future-proof the 2021 Regulations against changes to the name or design of specific schemes, and avoid the need for an increasing list of financial assistance schemes in the regulations. The instrument also omits the previous definition of the "farming investment fund" that referred only to section 1(2) of the Act, so that the fund can be used more flexibly for any of the statutory purposes in section 1. For example, the

policy intention is to launch the "animal health and welfare scheme" as part of the farming investment fund.

7.7 The 2021 Regulations require the Secretary of State to publish specified information about agreement holders who receive financial assistance. The 2021 Regulations currently exempt two schemes from publication, the Annual Health and Welfare Review and the Tree Health Pilot, where publishing the specified data could be damaging to the individuals or businesses concerned and inhibit cases of pests and diseases being reported. This instrument continues to exempt both schemes, and amends the data publication provisions to allow the Secretary of State to extend the exemption for other schemes (or parts of a scheme) where financial assistance has been awarded to protect or improve the health or welfare of livestock, or to protect or improve the health of plants, and the Secretary of State is satisfied that publication is likely to hinder the extent to which that purpose is achieved. This will remove the need to ask Parliament to amend the 2021 Regulations every time such a scheme is created, renamed, or closed.

7.8 The 2021 Regulations also require the Secretary of State to provide a breakdown of data published in relation to two financial assistance schemes, the animal health and welfare grant scheme and the farming investment fund, to identify payments made under specific parts of those schemes (see Regulations 13(5) and 14(3)). For example, data published in relation to the farming investment fund must identify which payments relate to the farming equipment and technology fund and to the farming transformation fund. Further work by Defra has shown that Regulation 13(5) is unnecessary, because this information will be included in "the description of activities financed by the relevant payments" in Regulation 13(4)(d). Regulation 14 will also be amended so that where the Secretary of State publishes an aggregate of financial assistance, that information is broken down by each financial assistance scheme or part of a scheme, and includes the number of agreement holders in each case.

7.9 The instrument amends the transfer of agreement provisions by removing the requirement for the transferee to have "management control" of the land or assets under the agreement in every case, and relying instead on "eligibility criteria" in general. This is to reflect situations where more than one person has control over the same piece of land, for example a landowner and a tenant. The transferee is still required to meet the scheme eligibility criteria, including management control where relevant. Therefore, there is no need to retain a reference to management control in the regulations.

What will it now do?

7.10 These amending regulations will therefore:

- remove the definitions of three financial assistance schemes from the 2021 Regulations;
- merge the regulation for payments under an environmental land management scheme with the regulation for payments under other financial assistance schemes;
- amend the conditions in which the Secretary of State may consent to the transfer of an agreement to another person.
- amend the data publication requirements so that the Secretary of State may exempt further schemes where financial assistance has been awarded to protect or improve the health or welfare of livestock, or to protect or improve the health

of plants, and the Secretary of State is satisfied that publication is likely to hinder the extent to which that purpose is achieved.

- amend the data publication requirements so that where the Secretary of State is required to publish the aggregate of financial assistance paid under a scheme, they must also publish the number of agreement holders.

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 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 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

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

11.3 For example, full guidance on how the Sustainable Farming Incentive works was published on 30 March 2022, and can be found here: https://www.gov.uk/government/publications/sustainable-farming-incentive-full-guidance/sustainable-farming-incentive-full-guidance

11.4 Guidance on how land managers and farmers can apply for funding from the Landscape Recovery scheme for wildlife and river projects on 1 February 2022. It can be found here: https://www.gov.uk/guidance/apply-for-landscape-recovery-funding-to-protect-native-species-and-improve-rivers

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 for two reasons. The first is because participation in the Government's financial assistance schemes is voluntary. The other is that Defra is providing payments through this instrument using

money freed up from phasing out area based payments so the impact will be low. 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. Therefore, the impact on businesses falls below the threshold for producing an Impact Assessment.

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 financial assistance schemes under the Act.

13.4 Also, no agreement holders that are in receipt of a total of less than £1250 across all financial assistance schemes per financial year will have their full details published. Instead, their payments will form part of an aggregate total published for each scheme of all payments below that threshold.

14. Monitoring & review

14.1 The 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 Alastair Walton at the Department for Environment, Food and Rural Affairs. Telephone: 07384 876008 or email: alastair.walton@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Jonathan Baker, Future Farming Strategy, Programme Policy and Engagement Team at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rt Hon Mark Spencer, MP, Minister of State for the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.