EXPLANATORY MEMORANDUM TO

THE AGRICULTURE (FINANCIAL ASSISTANCE) REGULATIONS 2021

2021 No. [XXXX]

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 The Agriculture Act 2020 underpins a new agricultural system based on the principle that farmers will be paid to improve the environment, improve animal health and welfare and reduce carbon emissions.

2.2 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.

2.3 This instrument applies to the award of financial assistance under four financial assistance schemes (outlined in section 7). The instrument makes provision for:

- Checking whether eligibility criteria for receipt of financial assistance under the schemes are met;
- Enforcing compliance with conditions subject to which financial assistance under the schemes are given;
- Monitoring the extent to which the purpose of financial assistance has been achieved;
- The investigation of breaches and suspected offences in connection with applications for, or the receipt of, financial assistance
- Publication of certain information, including the recipient and amount of the financial assistance, as well as the purpose for which it was given.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 This instrument applies to England only. Financial assistance under the schemes referred to in section 7 may only be given in relation to England, as specified in section 1(3) of the Agriculture Act 2020.

3.3 The instrument does not have any minor or consequential effects outside England.

3.4 In the view of the Department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-

matter of this entire instrument would be within the devolved legislative competence of:

- the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter; and
- the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament; and
- Senedd Cymru if equivalent provision in relation to Wales were included in an Act of Senedd Cymru.

3.5 The Department has reached this view because the purpose of this instrument is to enforce and monitor the new agricultural financial assistance schemes referred to in section 7. Agriculture is within the devolved competence of the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru, but the financial assistance schemes in question only relate to England as specified in the Agriculture Act 2020.

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 Parliamentary Under Secretary 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) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument provides for the checking and monitoring of financial assistance schemes established under the Agriculture Act 2020 and implements enforcement measures to ensure compliance with conditions subject to which financial assistance is given. In particular, this instrument:

- imposes obligations on the Secretary of State to check that persons applying for financial assistance meet scheme eligibility criteria; enables the Secretary of State to request additional information in support of applications and allow defects to be corrected;
- imposes obligations on agreement holders to keep records and provide certain information if requested;
- requires a person receiving financial assistance under an agreement to notify the Secretary of State of any change in circumstances that might affect their ability to achieve the purpose of, or comply with conditions under, an agreement;
- make provision for the Secretary of State to investigate breaches of the Regulations, breaches of the conditions subject to which financial assistance is given and other offences that are relevant to the receipt of financial assistance under the schemes. In the event of a breach or an offence, the instrument gives discretionary powers to the Secretary of State to take action, including amending, removing or replacing agreement conditions, reducing the amount

of financial assistance awarded, recovering financial assistance already given, terminating an agreement or prohibiting a person from receiving financial assistance under any scheme for up to two years;

- allows agreements to be transferred if certain conditions are met;
- requires that certain information is published in relation to financial assistance which has been given under the schemes. For the tree health scheme and for payments below a de minimis, only aggregated data will be published;
- provides powers of entry and inspection to enforce compliance with the conditions of scheme agreements;
- allows interest to be charged if the Secretary of State takes steps to recover financial assistance already paid to an agreement holder and certain conditions are not met;
- makes provision for certain decisions or determinations made by the Secretary of State to be reconsidered. This instrument also provides an appeals process if a decision made following the reconsideration process is considered to be based on an error of fact, is wrong in law or there is shown to have been a material procedural error.

7. Policy Background

What is being done and why?

7.1 Now the United Kingdom has ended its membership of the European Union, it is free to move away from the Common Agricultural Policy (CAP), and the passage of the Agriculture Act 2020 was an important step in this process. The Act sets out an ambitious new way to support farming in England, which will allow the Government to reward farmers and land managers who deliver public goods such as protection of our environment. It will also help farmers and land managers stay competitive, with measures to increase productivity and investment in new technology. This includes the power to launch new agricultural financial assistance schemes, enabling the Secretary of State to give financial assistance to beneficiaries, including (but not limited to) farmers, horticulturalists, growers, foresters and those responsible for the management of land.

7.2 The initial schemes to be delivered under this legislation are;

- Environmental Land Management National Pilot - The Environmental Land Management scheme is the cornerstone of our new agricultural policy. The National Pilot will provide a critical opportunity to test, refine and develop a new financial assistance scheme design prior to full roll out across England of the Environmental Land Management scheme, which is due to launch in 2024.
- Tree Health Pilot – We will be launching a new financial assistance scheme to protect and enhance tree health. The new scheme expands and improves on the current financial support available under the existing Countryside Stewardship Tree Health scheme. The pilot will provide an opportunity to test and refine the new package of financial support ahead of a full launch which is expected in 2024. The financial assistance will support action to reduce the impact of tree pests and disease and promote treescape recovery.
- Countryside Stewardship Scheme – This financial assistance scheme is a simplified version of the EU Countryside Stewardship (CS) scheme and a

national CS scheme first introduced in England in 2020. The new CS financial assistance scheme will continue to provide funding to farmers and other land managers to make certain environmental, agricultural and forestry improvements.

- Farming Investment Fund - This financial assistance scheme will provide grants to farmers, foresters and growers to enable them to invest in equipment, technology and infrastructure to help their businesses to prosper, while improving resource efficiency and enhancing the environment.

7.3 These initial schemes will launch in 2021 and this instrument creates a shared data publication and enforcement framework to ensure that payments are subject to an appropriate level of transparency and that the use of public money is subject to appropriate and proportionate controls, which are applied consistently.

7.4 It provides Defra, the Rural Payments Agency, Forestry Commission and other official bodies with powers to enforce scheme rules and protect public money, including powers to carry out virtual or physical inspections and to investigate breaches or suspected offences. This instrument limits when these powers can be exercised to ensure that they are used proportionately and do not place an excessive burden on the agreement holder. For example, site visits will now only take place at a mutually agreed time or, if that cannot be achieved, after giving the agreement holder a minimum of 48 hours' notice, contrasting with the CAP where no notice was required and only a maximum of 48 hours could be given.

7.5 The instrument includes a more proportionate approach to enforcement, with more emphasis on allowing minor breaches to be rectified, and when this isn't possible taking a more proportionate approach to the remedy to be applied, so that breaches are not being overly penalised. It gives the Secretary of State the ability to take the following steps when non-compliance is discovered:

- Offer an opportunity to rectify the breach;
- recover financial assistance already paid;
- withhold financial assistance; and
- in the most serious cases, prohibiting a person from receiving financial assistance under any scheme up to a period of two years.

This approach will allow space for farmers, land managers and agencies to trial new processes and learn from experience.

7.6 The instrument includes provisions to publish details on a public facing Defra database of payments made to beneficiaries, which are similar to existing provisions for CAP schemes. The intention is to continue to provide transparency on the use of public money and to allow payment data for future and previous years to be compared easily, the importance of which was highlighted by stakeholders during the consultation.

7.7 The instrument makes provision for decisions of the Secretary of State to be reconsidered and appealed in certain circumstances, similar to what is currently available under existing agricultural financial assistance schemes.

7.8 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 the regulations introduce a more proportionate and fairer enforcement regime, it is

reasonable and in everyone's interest to have them in force at the earliest date possible.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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 These regulations do not amend another instrument.

10. Consultation outcome

10.1 The consultation, which ran between 4 August 2020 and 1 September 2020, was directed at 59 key stakeholders who have an interest in the agricultural financial assistance schemes that will be introduced in 2021 under Section 1 of the Act.

10.2 Stakeholders were provided with a consultation document which set out the policy proposals for the publication of grant beneficiary data, eligibility, monitoring agreements and enforcement requirements that will accompany the 2021 financial assistance schemes.

10.3 Defra also held a virtual consultation engagement session on 26 August 2020 to gather further evidence to support the written consultation, which was attended by 21 stakeholders. Stakeholder views from the session were combined with the written consultation responses for analysis.

10.4 The consultation covered all aspects of the regulations in relation to publishing of data and enforcement and monitoring standards. The questions covered included:

- Where data should be published,
- The type of data to be published,
- The length of time that data should remain accessible to the public,
- Adopting a more proportionate enforcement approach,
- Powers available to Defra officials,
- The approach for routine inspections,
- The definition of a breach,
- The approach to rectifying breaches,
- The approach to banning beneficiaries for serious breaches
- The approach to be taken for the pilot schemes,
- The interest rate to be charged on outstanding debts, and
- The approach to complaints and appeals

10.5 The majority of the proposals were supported by the consultees; however, the approach was altered in the following areas in response to feedback received;

- Land Management Plans created as part of an Environmental Land Management scheme application will not be published during the pilot phase, and

- Published data will remain publicly accessible for three years after initial publication, rather than the proposed two years,

11. Guidance

11.1 Defra plans to provide detailed guidance for each of the four financial assistance schemes. 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 the agricultural transition in England, including the new financial assistance schemes which will be monitored and enforced by this instrument. 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 .

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 relevant financial assistance schemes is voluntary. Financial assistance under these schemes is given in the form of grants, and compliance with the rules made by this instrument is a condition of receiving those grants. 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 a grant from one of the new agricultural financial assistance schemes. Defra would expect any small business wishing to apply for a grant to familiarise itself with all applicable rules before making the application. In addition, Defra has consulted with stakeholders to ensure these regulations are not overly onerous. As a result of participation and complying with the rules, the agreement holders will receive the benefit of financial assistance with the knowledge that regulatory burdens will be proportionate and fair.

14. Monitoring & review

14.1 Defra and its agencies will monitor and review the impact of this instrument 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 Charles Hotham, Joint Leader, Future Farming Strategy & Programme Policy 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, the Parliamentary Under Secretary 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.