

EXPLANATORY MEMORANDUM TO
THE RURAL DEVELOPMENT (ENFORCEMENT) (ENGLAND) REGULATIONS 2007
2007 No. 75

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations provide powers to make inspections and recover payments from those who breach the conditions of commitments made under the new Rural Development Regulation (Council Regulation (EC) No. 1698/2005) covering the period from 2007 to 2013. They also make provision for situations where land subject to a rural development commitment is transferred, and create offences of making a false or misleading statement in order to obtain a rural development payment, obstructing an authorised person, and failing to give assistance to an authorised person.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 These regulations implement Article 74(1) of Council Regulation 1698/2005 and Article 9(1) of Council Regulation 1290/2005, which require Member States to adopt legislative and administrative provisions to ensure that the Community's financial interests in relation to expenditure on rural development during the 2007 to 2013 programming period are effectively protected.

4.2 They also implement Article 51(1) of the Rural Development Regulation, which applies the cross-compliance provisions in Articles 4 and 5 of, and Annexes III and IV to, Council Regulation 1782/2003 to certain rural development measures such as agri-environment.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 These Regulations provide inspection and enforcement powers for rural development commitments made during the 2007-13 programming period under Council Regulation 1698/2005. They succeed the England Rural Development Programme (Enforcement) Regulations 2000 (S.I. 2000/3044, as amended), which covered the 2000 to 2006 programming period and will continue to apply to commitments entered into during that period.
- 7.2 The Rural Development Programme for England will implement European Council Regulation 1698/2005 (the Rural Development Regulation), which comes into effect from 1 January 2007. Under the Rural Development Regulation, Member States have to submit programmes to the European Commission, detailing the measures they wish to fund under the Rural Development Programme. Each Programme is co-financed from the Community budget, and this element of the financing is only guaranteed when the Commission has approved the Programme.
- 7.3 Commitments under Rural Development Programmes established by Council Regulation 1698/2005 are entered into voluntarily but subject to specific conditions for the payment of grant. As outlined in section 4 above, Member States are required to adopt appropriate legislative and administrative procedures to protect against breaches of those conditions.
- 7.4 Once approved (see below), the Rural Development Programme for England will be delivered on behalf of the Secretary of State by a range of delivery bodies, broken down as follows:
- (a) **Regional Development Agencies:** for socio-economic expenditure on the agri-food sector, forestry and the wider rural economy and communities;
 - (b) **Natural England:** for agri-environment and energy crop expenditure;
 - (c) the **Forestry Commission:** for expenditure on afforestation and environmental management of forests and woodlands.
 - (d) **Local Action Groups:** for implementing local development strategies with a view to achieving one of the other policy objectives of the Rural Development Regulation.
- 7.5 Where appropriate, therefore, these Regulations provide inspection and enforcement powers to the delivery bodies as well as to the Secretary of State. For Hill Farm Allowance, the **Rural Payments Agency** will carry out the Secretary of State's functions.

- 7.6 Approval of the England programme by the European Commission will be delayed beyond 1 January. As announced by the Secretary of State on 12 December (Column 78WS), arrangements have been put in place to enable payments for Environmental Stewardship and Hill Farm Allowance to be made, where necessary, in advance of programme approval. These Regulations will apply to commitments made both before and after programme approval by the Commission.
- 7.7 To a large extent, these Regulations replicate the powers contained in S.I. 2000/3044, with some necessary changes to reflect the delivery arrangements outlined in paragraph 7.4. The Regulations have not, therefore, been put out for formal public consultation. However, the objectives, priorities and intended beneficiaries of the 2007 to 2013 Rural Development Programme for England were consulted on at the beginning of 2006, and there will be a further consultation on the draft programme document (accompanied by an environmental report on the programme) early in 2007

8. Impact

- 8.1 A Regulatory Impact Assessment is attached to this memorandum.
- 8.2 There will be no significant impact on the public sector. The inspection and enforcement powers in these Regulations are broadly similar to those in the corresponding Regulations for the 2000-2006 programme (see paragraph 7.1 above) and have been resourced accordingly.

9. Contact

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REGULATORY IMPACT ASSESSMENT

1. Title of proposal

THE RURAL DEVELOPMENT (ENFORCEMENT) (ENGLAND) REGULATIONS 2007.

2. Purpose and intended effect

- 2.1 These Regulations provide powers to make inspections and recover payments from those who breach the conditions of commitments made under the Rural Development Programme for England (RDPE) The RDPE will implement in England the EU Rural Development Regulation (Council Regulation 1698/2005) during the rural development programming period from 1 January 2007 to 31 December 2013.
- 2.2 The Regulations also make provision for situations where land subject to a rural development commitment is transferred, and create offences of making a false or misleading statement in order to obtain a rural development payment, obstructing an authorised person, and failing to give assistance to an authorised person.
- 2.3 The inspection and enforcement powers in these Regulations are broadly similar to those in the corresponding Regulations for the 2000-2006 programming period (the England Rural Development Programme (Enforcement) Regulations 2000 (S.I. 2000/3044, as amended)).
- 2.4 The Regulations implement Article 74(1) of Council Regulation 1698/2005 and Article 9(1) of Council Regulation 1290/2005, which require Member States to adopt legislative and administrative provisions to ensure that the Community's financial interests in relation to expenditure on rural development during the 2007 to 2013 programming period are effectively protected. Because the Rural Development Programme for England will be part-funded by the Exchequer, the powers in the Regulations also allow the Secretary of State and delivery bodies acting on behalf of the Secretary of State to safeguard national contributions to payments made under the Rural Development Regulation.

3. Consultation

- 3.1 As well as consultation within Defra and the Rural Payments Agency, the Regional Development Agencies, Natural England and the Forestry Commission have also been consulted.
- 3.2 To a large extent, these Regulations replicate the powers contained in S.I. 2000/3044, with some necessary changes to reflect the delivery arrangements outlined in paragraph 4.3 below. The Regulations have not, therefore, been put out for formal public consultation. However, the objectives, priorities and intended beneficiaries of the 2007 to 2013 Rural Development Programme for England

were consulted on at the beginning of 2006, and there will be a further consultation on the draft programme document (accompanied by an environmental report on the programme) early in 2007.

4. Options

- 4.1 “Do nothing” is not a feasible option. The current Regulations (S.I. 2000/3044, as amended) apply only to commitments made during the 2000 to 2006 programming period under the current England Rural Development Programme (ERDP). They could not be used to provide the legislative framework for commitments entered into from 1 January 2007. As noted above (paragraph 2.4), there is an EU requirement to adopt legislative and administrative provisions to ensure protection of the Community’s financial interests in relation to expenditure on rural development during the 2007 to 2013 programming period.
- 4.2 Without the legislative framework provided by these Regulations the Secretary of State, and the bodies delivering the new programme, would be unable to carry out inspections other than with the voluntary consent of grant beneficiaries. They would also lack the powers to enforce recovery, impose conditions on the transfer of land which is under agreement or, in exceptional cases, prosecute offenders.
- 4.3 The proposed Regulations also need to reflect changes in the delivery arrangements for the new programme as compared to the 2000 to 2006 one. The Rural Development Programme for England will be delivered on behalf of the Secretary of State by a range of delivery bodies, broken down as follows:
- (a) **Regional Development Agencies:** for socio-economic expenditure on the agri-food sector, forestry and the wider rural economy and communities;
 - (b) **Natural England:** for agri-environment and energy crop expenditure;
 - (c) the **Forestry Commission:** for expenditure on afforestation and environmental management of forests and woodlands;
 - (d) **Local Action Groups:** for implementing local development strategies with a view to achieving one of the other policy objectives of the Rural Development Regulation.
- 4.4 Where appropriate, therefore, these Regulations provide inspection and enforcement powers to the delivery bodies as well as to the Secretary of State. For Hill Farm Allowance, the Rural Payments Agency will carry out the Secretary of State’s functions.
- 4.5 The Regulations have been drawn up in close comparison with corresponding Regulations relating to the Single Farm Payment and cross-compliance under the CAP. Where the context permits, similar provisions have been used to promote transparency and simplify procedures.
- 4.5 The Regulations have also been drafted so that the powers given to the Secretary of State and to delivery bodies are proportionate to the risk of not

being able to ensure adequate controls on expenditure under the Rural Development Regulation. This is intended to minimise both the risks to public funds and the risk of applying excessive powers of inspection and enforcement.

- 4.6 “Doing nothing” would put the Department at high risk of disallowance by the European Commission through failing to impose the necessary controls on expenditure.

5. Costs and benefits

Sectors and groups affected

- 5.1 The Rural Development Regulation enables payments to be made to a wide range of beneficiaries, including farmers and the agri-food sector, foresters, other rural businesses, voluntary and community organisations. Each of these groups will be equally subject to the eligibility conditions relating to the measures under which they seek support.
- 5.2 The Enforcement Regulations do not directly describe the terms of eligibility for payment; instead they are concerned with giving the Secretary of State and delivery bodies the legal powers to check compliance with eligibility conditions, and describing the powers available to address instances where those conditions are not met, for various reasons. As such, the powers can be said to apply to all beneficiaries in the same way.

Benefits

- 5.3 The aim of these Regulations is to protect EU and national funds from breaches of payment conditions laid down under the Rural Development Regulation and implemented through the RDPE. Benefits include protection of the public purse and the creation of a level playing field in which all beneficiaries are clear about their obligations and none are given licence to bypass those obligations.
- 5.4 By defining the powers of “authorised persons”, the Regulations also provide a legislative foundation for applying a risk-based approach to inspections in accordance with European Commission rules. This has the benefit of improving the efficiency of inspections through better targeting.

Costs

- 5.5 All commitments made under the Rural Development Regulation are entered into voluntarily by the beneficiary, who also signs up to the conditions appropriate to the commitment. These conditions are laid down in the Rural Development Regulation, in RDPE programming documentation, and in the terms and conditions of individual agreements. The conditions apply equally to all beneficiaries of similar measures available under the Rural Development Regulation. The inspection and breach of commitment provisions in these Enforcement Regulations can therefore be considered as part of the transaction costs of entering into an agreement under the RDPE

5.6 Beneficiaries will not be charged for the costs of inspections, and recovery will only result in a cost to the beneficiary if he has breached a commitment.

6. Small Firms Impact Test

6.1 Small businesses (defined as having fewer than 250 full time equivalent employees) make up a substantial proportion of rural businesses, particularly in the agriculture and forestry sectors.

6.2 Small firms have legitimate concerns about equality of access to Rural Development Programme funding, and have aired these at various times during the current (2000 to 2006) programme. In particular, there were concerns that initially all applications for grant (regardless of size) were treated in the same way, so that often the amount of effort required to prepare a detailed business plan was out of proportion to the amount of support required. This was addressed by introducing a fast-track, more proportionate application process for applications below a certain level.

6.3 Small firms and their organisations also participated in the consultation (launched in February 2006) on the priorities for the 2007 to 2013 RDPE, and their views will be taken into account in the Regulatory Impact Assessment being prepared for the RDPE draft programming document to be published next year. However, as noted in section 5 above, the powers available in the Enforcement Regulations apply equally to all beneficiaries of similar support, so that in themselves they have no disproportionate impact on small businesses.

7. Competition assessment

7.1 These Regulations have no negative impacts on competition. The powers available help to create a level playing field through the application of controls on non-compliance with the conditions of grant.

8. Enforcement, sanctions and monitoring

8.1 These Regulations have been drawn up in accordance with the detailed rules in Council Regulation 1698/2005 and its implementing regulations, and provide for both enforcement (i.e. inspection powers) and sanctions available in relation to payments under the Rural Development Programme for England. They are also consistent with EU rules for the monitoring of CAP expenditure.

9. Implementation and delivery plan

9.1 Apart from Hill Farm Allowance, which the Rural Payments Agency will administer itself, much of the delivery of the RDPE will be performed by Regional Development Agencies, Natural England and the Forestry Commission (see paragraph 4.3 for their respective roles). These delivery bodies will carry out their functions in accordance with Service Level Agreements with the RPA. Local Action Groups established under the Rural Development Regulation will

implement local development strategies under the Leader provisions of that Regulation.

- 9.2 The Enforcement Regulations provide powers of inspection and recovery to both the Rural Payments Agency (operating on behalf of the Secretary of State) and to all or a single one of the delivery bodies where a function will be performed by them.

10. Post-implementation review

- 10.1 A review of these Regulations will be undertaken in 2010 to coincide with work on the Mid Term Evaluation of the RDPE.

11. Summary and recommendations

- 11.1 The “do nothing” option will lay the UK open to a high risk of disallowance. The option proposed under these Enforcement Regulations provides the following advantages:

- (a) protection of EU and national funds through creating powers to inspect commitments made under the Rural Development Regulation and take recovery or other action in respect of breaches of commitment;
- (b) appropriate allocation of powers to the Secretary of State and delivery bodies, reflecting the delivery arrangements recently put in place for implementation of the 2007 to 2013 RDPE;
- (c) creation of a level playing field for all beneficiaries of grant through the consistent application of controls on non-compliance

12. Declaration and publication

I have read the Regulatory Impact Assessment and am satisfied that the benefits justify the costs