

Financial Assistance Statutory Instrument Consultation Invitation Privacy statement

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The personal data that Defra will process are: your name; the organisation you represent your email address; and any information in your responses to this consultation exercise consisting of your personal data. Defra will use this information to: identify consultees and respondents to the consultation; contact you again if we need you to provide further information; conduct the consultation exercise; undertake analyses of the responses and assist us in developing and formulating government policy on matters within Defra's remit.

Your participation in this consultation is voluntary and any response that you send would therefore be with your consent. However, when Defra receives a response, the legal basis for the processing of any personal data is that the processing is necessary for the performance of a task carried out in the public (Article 6(1)(e) of the GDPR refers). The public interest task is ensuring that stakeholders are consulted and that they have the opportunity to provide their views for Defra to take into account when developing and formulating policies or legislation that will likely have an effect on the stakeholders' interests.

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Defra will keep your response and any personal data it contains for 2 years after the consultation deadline for responses until all legal and other processes relating to the consultation and resultant decisions are completed and expiry of any relevant legal timescales.

Information provided in response to this consultation, including personal data, may be published or disclosed in accordance with the access to information regimes these are primarily the Environmental Information Regulations 2004 (EIRs), the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 2018 (DPA). We have obligations, mainly under the EIRs, FOIA and DPA, to disclose information to particular recipients or to the public in certain circumstances.

If you want the information that you provide to be treated as confidential, please be aware that, as a public authority, the Department is bound by the Freedom of Information Act and may therefore be obliged to disclose all or some of the information you provide. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a

request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Defra's Data Protection Officer can be contacted by email at **data.protection@defra.gov.uk**

1. Timing and duration of this consultation

The consultation period will commence on **Tuesday 4th August 2020** and will be open to responses for a period of four weeks. We welcome views from farmers, foresters, growers, and other land managers who have an interest in the Government's future agricultural policy.

The consultation period will end at midnight on Tuesday 1st September 2020. We may not consider any responses received after that date.

To respond to this consultation please contact;

FinancialAssistanceConsult@defra.gov.uk

2. Purpose of this document

This document can be used to support responses to the consultation. It summarises the key questions, providing a structured format for responses.

3. Your information

Name: Susan Twining
Organisation: Country Land and Business Association
Date Form Returned: 1 September 2020

Summary of Publishing Questions

Section 2.1 – Background

Q1 - Do you agree that in addition to the Grants Standard website, details of grant payments should be published on Defra's own separate website?

There are advantages to having the information on Defra's own website, which will allow more flexibility over what information is published and for what purpose based on the needs of the policy. This would also allow the information to be presented in the most useful way, rather than being constrained by the reporting requirements and presentation formats used on the Grants Standards website.

If part of the information must also be published on the Grants Standards website there should be a link back to Defra's website for those seeking further details.

Section 2.2 – Publication of Beneficiary Data

Q2 - What type of information about payments would you find most helpful? A description of the individual grants or a description of the overall scheme purpose?

There are benefits to both policy-makers and land managers in having national data about grants given and the activities paid for. This can help identify trends or gaps as well as ensuring transparency over Government spending against targets and objectives.

However, CLA members want to protect their privacy and ensure that data related to their business is only shared when necessary. There are various risks to publishing data, including: financial impacts from sharing commercially sensitive information; security risks and the potential for increased criminal activity (e.g. wildlife crime, theft); unauthorised public access to land with knock-on effects on wildlife an habitats and public safety.

The CLA, therefore, would like to see a balance between privacy and transparency. This will involve publishing data about recipients of public funding to ensure transparency while ensuring members' privacy is respected and avoiding unintended consequences.

It is important to distinguish between data collection and data publication. Some of the benefits from data collection and analysis can be gained without the need to publish it as a default position. For example, Defra can use granular data gathered about grants to produce anonymised statistics at national or regional level.

The CLA believes that Defra should publish data mirroring what is currently published on the CAP Payments website. This includes:

- the amount of grant
- the business name
- the approximate location using postcode prefix and/or town/city
- the scheme
- headline details about what the money is paid for. For example, the public good being delivered (e.g. heritage, climate change mitigation) or the type of management activity (e.g. grassland management, woodland creation).

Q3 - Do you agree with the proposal to publish land management plans?

The CLA disagrees with this proposal. There is no clear rationale to publish Land Management Plans either in full or partially. This conflates two separate policy objectives: a land management plan that is beneficial to land managers and the government as the basis of an ELM agreement and the desire for certain information about ELM agreements to be published in the interests of transparency. It is not obvious that a single document (even if redacted) best serves both objectives.

CLA members see the benefits of a Land Management Plan (LMP) which enables them to plan, record and demonstrate their current and proposed management options, but by its very nature this may contain a lot of commercial information. A requirement to publish this plan, even if redacted, may deter some from using it, and so from the ELM scheme. Furthermore, appropriate redaction (and, one assumes, checking) would be time-consuming (and therefore incur a cost) for whoever has to do it.

In order to overcome this problem, rather than produce redacted LMPs, it is preferable to include a summary page with the information that will be made public. This allows a standard format that only includes that information that it is reasonable to publish, focussing on the outcomes delivered rather than the management to achieve those outcomes. This should not include details that could compromise the delivery of the environmental outcomes of the safety and security of the applicant. Farm maps and locations should not be published unless they contain specific information for the public such as permissive access routes.

At the same time, we see a role for the information contained in LMPs to be used by public bodies to inform policy and practice, without being published in full. For example, geospatial data relating to ecology and management could be used by Defra or other public bodies in monitoring and evaluation. Data could also be used to inform local ELM priorities and to feed into the development of Local Nature Recovery Strategies or Catchment Management Plans. This would ensure that data was handled and held by bodies with a duty to use it responsibly. Thus achieving the benefits of having the data available without the risks.

It is also possible to encourage land managers to publish data, and to promote and celebrate the work they are being paid to do, without making this a legal requirement. Some land managers may of course want to publish more details about the work they are doing. As the ELM scheme develops and more land managers embrace their role in delivering public goods, this could allow for increasing amounts of information in the public domain. However, to force data publication from the start could lead to anxiety and lack of uptake from land managers.

The CLA requests further consultation on this issue once the precise nature of Land Management Plans and examples are available to analyse.

Q4 - Do you think that the land management plans should be published by Defra or uploaded by the responsible agreement holder to a public portal?

As set out above, we do not believe that Land Management Plans should be published in full. In their role as the basis for an ELM agreement, they should be uploaded to a portal for Defra to check and approve. This would form part of the processing stage for ELM agreements. The CLA would expect this process to be simple and achievable for land managers with limited internet capacity and IT skills.

The summary page of the Land Management Plan designed for publication could be submitted at the same time. However, the CLA believes that ultimately Defra should be responsible for checking the plans before publication to ensure the correct data is published and sensitive information is not accidentally uploaded. This is especially true if the proposal to publish redacted Land Management Plans is followed, given the importance of ensuring the correct parts are redacted.

Q5- Is there anything else you would expect to be redacted, or conversely anything you would expect to be published?

Again, we do not believe that redacting a document is the best course. If it is to be redacted we agree that the information identified should be identified. We also believe there should be further consultation on this list, once the nature of Land Management Plans is better known. There should also be a process to allow land managers to redact additional information in certain circumstances.

Q6 - Do you have any other comments on our proposals on publishing information?

Section 2.6 – When Will We Publish

Q7 - Do you agree to an annual reporting cycle?

Yes

Q8 - Would you find it helpful for Defra to publish data as a batch covering each financial year?

Yes

Q9 - Do you agree that individual LMPs should be published following the participant's application being agreed and the first monthly payment being made, rather than in a single batch annually?

One concern with publication of an annual batch is that this could create bottlenecks and drain capacity of those processing this data. This would be more likely if complex checking and redaction were taking place. For this reason publishing information as the application is submitted and approved may be more efficient.

Q10 - Do you have any other comments on our proposals on the timing of publication?

No
Section 2.7 - How long should we retain beneficiary data on the publicly available DEFRA Database?
Q11 - Do you agree that prior year payment data is maintained in the Defra database for 2 years following publication?
Yes
Q12 - Do you agree that LMPs should be retained in perpetuity?
As outlined above, we do not believe that LMPs should be published, even in a redacted version. The agreement summaries (or redacted LMPs should Defra choose this option) should remain for the length of the agreement. This makes more sense given the reason for publication than an arbitrary cut-off after 2 years.
Section 2.8 - De Minimis
Q13 - Do you agree we should continue to use a de minimis, and that it should be set at the proposed level?
Yes, although it is important to review the level regularly, in line with funding reviews.
Q14 - Do you have any alternative suggestions to establish a de minimis?
The de minimis should be revised with every new Multi-annual financial assistance plan.
Q15 - Do you agree that all LMPs should be published irrespective of the size of the agreement?
LMPs should not be published, but the summary information that is published should not be affected by the size of agreement, except where this may affect security.

Summary of Enforcement Questions

Section 3.1 - Background
Q16 - Do you agree with our proposals for an enforcement approach based on risk-based targeting?
Yes, however our understanding is the ELM payments will be made monthly so consideration needs to be made to how this will affect checks at payments stage.

Q17 - Do you agree with our proposals for a more proportionate approach to enforcement?
Yes
Section 3.2 - Information and monitoring
Q18 - Can you identify any difficulties with our proposed approach?
No
Section 3.3 - Inspections and Powers of Entry
Q19 - Do you agree with our proposals on routine inspections (site visits)?
Yes
However, lessons must be learned from previous schemes, especially around the length of time taken to process inspection reports, which can have a significant financial impact (for example where penalties are imposed several years after an inspection took place and back-dated) and cause stress.
Q20 - Do you agree with our proposals where there is a suspicion of fraud or breach of conditions and the above powers for an inspection?
Yes
Section 3.4 - Breaches
Q21 - Do you agree the proposed examples should constitute breach? Are there other circumstances you believe should be considered a breach?
Yes
Q22 - Do you agree with our proposed approach for pilot schemes?
Yes
Q23 - Do you agree beneficiaries should be able to rectify the situation before sanctions are imposed?
Yes
Q24 - Do you think that account should be taken of exceptional circumstances, and should that be akin to "force majeure" or wider? Section 3.5 - Sanctions
Yes
Q25 - Do you agree that agreement holders should be banned as described, including from other schemes?
Yes
Q26 - What period of time do you think this should be for?
It will depend on the level of failure and any mitigating circumstances.

Q27 - Do you agree with the proposed method of calculating the interest rate for recoveries?
Yes
Section 3.6 - Appeals
Q28 - Do you agree with the proposed basis on which an applicant or agreement holder might appeal?
Yes
Q29 - Do you agree with the proposed complaints process and that it must be exhausted before an appeal is made?
Yes
Q30 - What are your thoughts on the potential appeal processes outlined above?
<p>Improvements should be made to the current system of complaints and appeals, being mindful of the financial pressure and stress that often accompanies a complaint or appeal being made. The current system takes too long to arrive at decisions and there is a lack of communication with agreement holders during the process. The Government or delivery body should commit to certain standards of service in terms of resolving appeals and to keep the customer updated regularly during the process.</p> <p>The Independent Agricultural Appeals Panel is respected by land managers and it or an equivalent should be maintained.</p>
Q31 - Do you have any other comments on our proposals on appeals?
No

Additional Questions

<p>If you have any additional questions or comments, please set them out here. Alternatively, please email FinancialAssistanceConsult@defra.gov.uk and we will respond as soon as possible</p>