

SL(5)769 – The Agricultural Support (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021

Background and Purpose

These Regulations make amendments to retained EU law and domestic law governing the rural development programme to put in place a domestic framework to fund new rural development schemes in Wales following the end of the EU Implementation Period and to ensure that framework is efficient and effective.

In addition, these Regulations makes minor, technical amendments to retained EU law in relation to direct payment schemes to address errors and ensure that it functions efficiently and effectively.

These Regulations also incorporate references to the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016 into the aim of the support for rural development.

Procedure

Draft Affirmative.

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

The following 9 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

The draft text at the head of these Regulations explain that they are laid before the Senedd *"under section 50(6)(c) and (8) of the Agriculture Act 2020 and paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018"*.

Paragraph 1(8) of Schedule 7 to the European Union (Withdrawal) Act 2018, provides for instruments falling under paragraph 1(2) of the Schedule 8 to be subject to the draft affirmative procedure. Paragraph 1(9) of Schedule 7 applies to all other instruments not within the scope of paragraph 1(8) and provides for them to be subject to the negative procedure.

The reference to paragraph 1(9) of Schedule 7 should therefore instead refer to paragraph 1(8) of Schedule 7.



2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

These Regulations make a number of amendments to retained EU law, including omitting definitions and other provisions contained in retained EU law in so far as they relate to domestic support for rural development. Although certain provisions have been omitted, some reference to those omitted provisions remain in the relevant retained EU law.

The relevant provisions are:

Regulation (EU) No. 1306/2013, amended by Regulation 2 of these Regulations:

- Regulation 2(17) of these Regulations omits Article 108. A reference to the omitted Article 108 remains in Article 105.

Commission Implementing Regulation (EU) No. 809/2014, amended by Regulation 4 of these Regulations:

- Regulation 4(15) of these Regulations omits Article 40a. A reference to the omitted Article 40a remains in Articles 15(1b), 15(2b), 15(3) and 34(2).
- Regulation 4(29) of these Regulations omits Article 70a. A reference to the omitted Article 40a remains in Articles 34(2) and 70b.

Regulation (EU) No. 1303/2013, amended by Regulation 6 of these Regulations:

- The definition of “Fund-specific rules”, omitted by regulation 6(3)(a), remains in Article 70(1).
- The definition of “public expenditure”, omitted by regulation 6(3)(e), remains in Articles 35(2) and 132(1). A cross-reference to the definition also remains in Article 2(1) of Regulation (EU) No 1305/2013.
- The definition of “public law body”, omitted by regulation 6(3)(e), remains in Articles 63(1)(a), 63(2), 63(3) and 64(1).
- The definition of “SME”, omitted by regulation 6(3)(h), is used in the substituted text of Article 71(2) provided for by regulation 6(28)(b).
- The definition of “accounting year”, omitted by regulation 6(3)(h), remains in Article 127(1).
- The definition of “Financial Regulation”, omitted by regulation 6(3)(i), remains in Articles 2(11), 37(3), 38(4), 126(b), 127(1) and 127(5).
- The definition of “direct payment support”, omitted by regulation 6(3)(i), remains in Articles 4(2) and 65(11).
- Regulation 6(19) of these Regulations omits Articles 47 and 50 (amongst other Articles). References to the omitted Articles 47 and 50 remain in Article 125(2)(a) and 125(2)(b) respectively.



Regulation (EU) No. 1305/2013, amended by Regulation 7 of these Regulations:

- The definition of “SME” is omitted from Article 2 and is replaced in a number of places throughout Regulation (EU) No. 1305/2013, but references remain in Articles 26(1) and 27(2).
- Regulation 7(8) of these Regulations omits Article 8. A reference to the omitted Article 8 remains in Article 82.

3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

These Regulations make a number of amendments to retained EU Law to replace references to Euros with Pounds.

One such amendment, contained in regulation 5(8)(c), seeks to replace “EUR 40 000”, in each place it occurs, with “£40 000” within Annex XI to Commission Implementing Regulation (EU) No. 908/2014. In Sheet B of Annex XI, reference is made to “40000 EUR”, which would not be amended by virtue of regulation 5(8)(c).

4. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

These Regulations omit text from the full name of two instruments – “the European Social Fund, the Cohesion Fund,” is missing from the reference to Regulation (EU) No. 1303/2013 in regulation 6(1) and “(Wales)” is missing from the reference to “the Well-being of Future Generations Act 2015” in the substituted text within regulation 7(4).

5. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulations 6(11)(e)(i)(bb) and 6(20)(e) amend Regulation (EU) No. 1303/2013, but those amendments are not effective as the relevant provisions of Regulation (EU) No. 1303/2013 were amended by the State Aid (Revocations and Amendments) (EU Exit) Regulations 2020.

6. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulation 6(21) seeks to amend the heading of Chapter II of Title VI of Regulation (EU) No. 1303/2013. There is no Chapter II of Title VI. It is presumed that the reference should be to Chapter II (Special rules on support from the ESI Funds to PPPs) of Title VII (Financial Support from the ESI Funds).

7. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

The substituted text within regulation 7(4) refers to the sustainable management of natural resources, as set out in Part 2 of the Environment (Wales) Act 2016. Part 2 of that Act relates



to Climate Change. The sustainable management of natural resources is set out in Part 1 of that Act.

8. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

These Regulations substitute wording by referring to “both places it occurs” in a number of places. With two of those references, more than two relevant references appear in the relevant provisions. It is therefore unclear where the substitutions should be made.

Regulation 7(24)(b) seeks to substitute “their rural development programmes” in “both places it occurs” in paragraph 3 of Article 29. Those words appear twice in the first sub-paragraph, once in the second sub-paragraph and once in the fourth sub-paragraph.

Further, regulation 8(7) seeks to substitute “ex ante” in “both places it occurs” in Article 8 of Commission Delegated Regulation (EU) No 480/2014. Those words appear twice in paragraph (b) and once in the paragraph (c).

9. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulation 7(29)(b) amends paragraph 1 of Article 34. Whilst the amendments set out in paragraphs (i) and (ii) relate to paragraph 1 of Article 34, paragraph (iii) relates to paragraph 3 of Article 34. The numbering for regulation 7(29)(b)(iii) should be regulation 7(29)(c).

Merits Scrutiny

The following two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

10. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

The substituted text within regulation 7(7) uses “shall” when “must” is used on an earlier and later occasion in the substituted Article 6.

11. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

It is noted that the Explanatory Memorandum states that these Regulations are considered by Officials:

“to be routine technical amendments to the rural development legislative framework that, for example, remove requirements for the approval and amendment of rural development programmes by the European Commission as this will no longer be operable post the end of the EU Implementation Period. This aligns the administrative and governance process for rural development support with standard Welsh Government procedures and Senedd scrutiny. The Instrument will have no significant effect on public or private sectors, charity or voluntary sectors.”



However, the Explanatory Memorandum also explains that these Regulations “*put in place a domestic framework to fund new rural development schemes in Wales following the end of the EU Implementation Period*”, simplify “*the governance and administration of support for rural development*” and incorporate “*references to the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016 into the current mission, objectives and priorities for rural development support as set out in the legislation*”.

The Code of Practice on the carrying out of Regulatory Impact Assessments includes the following exception to carrying out a regulatory impact assessment:

“where routine technical amendments or factual amendments are required to update regulations, etc. that have no major policy impact”.

Although this exception appears to apply to some of the amendments made by these Regulations, other provisions, particularly given the explanation referenced above, appear to constitute more than routine or factual amendments. It is not clear that any of the other exceptions under the Code apply to these Regulations.

The Welsh Government is asked to confirm which exception under the Code applies to the decision not to produce a regulatory impact assessment.

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

9 March 2021



Senedd Cymru
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—
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