

The Direct Payments to Farmers and Rural Affairs (Miscellaneous Amendments etc.) (Wales) (EU Exit) Regulations 2020

Explanatory Memorandum

This Explanatory Memorandum has been prepared by Rural Economy and Legislation division within the Department for Environment, Skills and Natural Resources and is laid before the Senedd in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Direct Payments to Farmers and Rural Affairs (Miscellaneous Amendments etc.) (Wales) (EU Exit) Regulations 2020

Lesley Griffiths AM

Minister for Environment, Energy and Rural Affairs

24 November 2020

1. Description

The Direct Payments to Farmers and Rural Affairs (Miscellaneous Amendments etc.) (Wales) (EU Exit) Regulations 2020 (“the Instrument”) make amendments to retained EU law and domestic law governing the direct payment schemes for securing the continuation of the basic payment scheme in Wales beyond 2020 and to ensure it is efficient and effective.

The Instrument also makes amendments to this legislation to:

- simplify the administration of the scheme and make it more efficient and effective;
- remove provisions which are spent or not in use;
- remove or reduce burdens on persons applying for direct payments under the scheme;
- improve the way the scheme operates;
- ensure sanctions and penalties imposed under the scheme are appropriate and proportionate; and
- limit the application of the scheme to land in Wales only.

In addition, the Instrument makes amendments to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union, and to correct errors in existing EU Exit statutory instruments.

The Instrument has six Parts. Part 1 makes introductory provisions for the Instrument. Parts 2 to 6 contain the substantive amendments, detailed below.

Part 2 - Direct Payments: Horizontal Legislation

Part 2 of the Instrument amends the following, insofar as they relate to direct payments:

- Regulation (EU) No. 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy (“the Horizontal Regulations”);
- Commission Delegated Regulation (EU) No. 640/2014 supplementing Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance;
- Commission Implementing Regulation (EU) No. 809/2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to the integrated

administration and control system, rural development measures and cross compliance;

- Commission Delegated Regulation (EU) No. 907/2014 of 11 March 2014 supplementing Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro; and
- Commission Implementing Regulation (EU) No. 908/2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency.

Part 3 – Direct Payments: Retained Direct Legislation

Part 3 of the Instrument amends:

- Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy (“the Direct Payments Regulation”);
- Commission Delegated Regulation (EU) No. 639/2014 of 11 March 2014 supplementing Regulation (EU) No. 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy; and
- Commission Implementing Regulation (EU) No. 641/2014 of 16 June 2014 laying down rules for the application of Regulation (EU) No. 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy.

Part 4 – Direct Payments: Domestic Legislation

Part 4 of the Instrument amends the following, insofar as they relate to direct payments:

- the Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014;
- the Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014; and
- the Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015.

Part 5 – Direct Payments: Amendment of Domestic Legislation consequent on the Withdrawal of the United Kingdom from the European Union

Part 5 of the Instrument amends the Common Agricultural Policy (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

Part 6 – Amendment of Domestic Legislation consequent on the Withdrawal of the United Kingdom from the European Union

Part 6 of the Instrument amends:

- the Retained EU Law (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 and
- the Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) (No. 3) Regulations 2019.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

Parts 1, 5 and 6, and regulation 7(4) come into force on the day after the day on which the Instrument is made, with the rest of the Instrument coming into force on Implementation Period completion day (“IP completion day”). Section 39 of the European Union (Withdrawal Agreement) Act 2020 defines IP completion day as 11pm on 31 December 2020.

Parts 2, 3, and 4 of the Instrument are made in exercise of the powers conferred by paragraphs 2(1), 3(1) and (2) and 4(1) and (2) of Schedule 5 to the Agriculture Act 2020 (c.21) (“the 2020 Act”) in order to make provision in retained EU law governing the direct payment schemes for securing the continuation of the basic payment scheme in Wales beyond 2020, and to make small but impactful changes to the scheme including simplifications, and the removal of administrative burdens.

Parts 5 and 6 of the Instrument are made in exercise of the power conferred by paragraph 1 of Schedule 2 to the European Union (Withdrawal) Act 2018 (c.16) (“the 2018 Act”). Part 5 contains amendments which revoke provisions in the

Common Agricultural Policy (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (S.I. 2019/688 (W. 132)) to ensure the legislation reflects the changes already made by the Common Agricultural Policy (Direct Payments to Farmers) (Miscellaneous Amendments) (Wales) Regulations 2020 (S.I. 2020/104 (W. 17)), and the changes being made by this Instrument.

Part 6 contains amendments to correct errors in the Retained EU Law (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (S.I. 2019/1281 (W. 225)) and the Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) (No. 3) Regulations 2019 (S.I. 2019/1376 (W. 242)).

In relation to Parts 5 and 6 of the Instrument, the requirement in paragraph 4(a) of Schedule 2 (relating to consultation with the Secretary of State) to the 2018 Act has been satisfied.

3. Legislative background

On Exit Day, the Direct Payments to Farmers (Legislative Continuity) Act 2020 (“the DPFLC Act”) incorporated EU legislation governing the 2020 Common Agricultural Policy (CAP) Direct Payment schemes into UK law.

This was necessary because the effect of Article 137 of the Withdrawal Agreement was to exclude direct payments legislation for claim year 2020 from legislation which formed part of the transition period.

The Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020/90) and the Rules for Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020/91) were made pursuant to powers in section 3 of the DPFLC Act. These SIs made corrections to the direct payments legislation to ensure it functioned effectively upon Exit Day. These regulations continue in force after 31 December 2020 by virtue of section 3(8) of the DPFLC Act.

This Instrument is being made pursuant to paragraphs 2(1), 3(1) and (2) and 4(1) and (2) of Schedule 5 to the 2020 Act, and paragraph 1 of Schedule 2 to the 2018 Act.

This Instrument is subject to the affirmative procedure pursuant to section 50(6)(c) and (8) of the 2020 Act, and paragraph 1(9) of Schedule 7 to the 2018 Act.

In accordance with the requirements of the 2018 Act the Minister for Environment, Energy and Rural Affairs has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

This Instrument ensures that the existing Direct Payment schemes for farmers in Wales can continue to operate efficiently and effectively beyond the 2020 claim year, which runs until 31 December 2020.

Direct Payments have been the main income-support schemes for farmers under the CAP. The legislation governing the 2020 Direct Payment schemes was incorporated into UK law on exit day and the 2020 scheme was domestically funded.

The purpose of the legislation being amended by the Instrument is as follows:

Part 2 - Direct Payments: Horizontal Legislation

- Regulation (EU) No. 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy (“the Horizontal Regulations”) set out the detailed rules of implementing the EU Common Agricultural Policy (CAP) for both Pillar 1 and Pillar 2 schemes. The Horizontal Regulations provide requirements for administration of the schemes (including Audit and Control measures) and reporting of funding under the CAP.
- Commission Delegated Regulation (EU) No. 640/2014 supplementing Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance sets out the detailed rules relating to conditions for partial or total refusal or withdrawal of support, administrative penalties, the integrated system, for the identification system for agricultural parcels and cross-compliance.
- Commission Implementing Regulation (EU) No. 809/2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance sets out the detailed rules relating to administrative and on the spot checks, reporting of checks and verifications, specific control measures in relation to hemp, cases in which payment claims may be corrected and adjusted, the recovery of undue payments and penalties, the transfer of holdings and the payment of advances.
- Commission Delegated Regulation (EU) No. 907/2014 of 11 March 2014 supplementing Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro sets out detailed rules in relation to paying agencies and coordinating bodies, the accreditation of such bodies, financial management and use of the Euro.
- Commission Implementing Regulation (EU) No. 908/2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks,

securities and transparency sets out detailed rules in relation to paying agencies, financial management, checks, securities and transparency.

Part 3 - Direct Payments: Retained Direct Legislation

- Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy;
- Commission Delegated Regulation (EU) No. 639/2014 of 11 March 2014 supplementing Regulation (EU) No. 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy; and
- Commission Implementing Regulation (EU) No. 641/2014 of 16 June 2014 laying down rules for the application of Regulation (EU) No. 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy.

Part 4 - Direct Payments: Domestic Legislation

- The Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014 make provision in relation to Wales, for the implementation of European Regulations (including the Horizontal Regulations and Direct Payments Regulations and the accompanying Delegated and Implementing Regulations) relating to the administration of the EU CAP. These Regulations include provisions on control and enforcement in relation to payments granted directly to farmers under Direct Payments, eligible dates for applications, minimum holding size, procedures for debts, powers of entry, offences and penalties and rules on cross-compliance.
- The Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 make provision for the implementation in England and, for certain purposes, the United Kingdom, of the European Regulations relating to the administration of the EU CAP. Regulations 3 and 4 extend to the UK. Regulation 3 specifies which competent authority may determine a single application for direct payments, and regulation 4 permits competent authorities to enter into agency agreements with each other.
- The Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015 make provision, in relation to Wales, for the administration of the Direct Payments Regulations and the associated Delegated and Implementing Regulations. These Regulations set out provisions on minimum eligible size of a holding, the date on which parcels of land must be at the farmers' disposal, the minimum level of agricultural activity, short rotation coppice and maximum harvest cycles, the Young

Farmers Scheme payment calculation, payment entitlement allocation, transfer & lease and the Greening requirements.

Part 5 - Direct Payments: amendment of domestic legislation consequent on the withdrawal of the United Kingdom from the European Union

- The Common Agricultural Policy (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. These Regulations apply in relation to Wales and make miscellaneous amendments to subordinate legislation about the common agriculture policy.

Part 6 - Amendment of domestic legislation consequent on the withdrawal of the United Kingdom from the European Union

- The Retained EU Law (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. These Regulations make amendments to various pieces of domestic legislation including:
 - The Welsh Language (Wales) Measure 2011;
 - The Food (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019;
 - The Flood and Water (Amendments) (England and Wales) (EU Exit) Regulations 2019; and
 - The Seed Potatoes (Wales) (Amendment) (EU Exit) Regulations 2019.
- The Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) (No. 3) Regulations 2019 address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. These Regulations make amendments to legislation relating to food and horticulture:
 - The Marketing of Fresh Horticultural Produce (Wales) Regulations 2009;
 - The Eggs and Chicks (Wales) Regulations 2010;
 - The Poultrymeat (Wales) Regulations 2011;
 - The Food (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019; and
 - The Food Information (Wales) (Amendment) (EU Exit) Regulations 2019.

Why is it being changed?

This Instrument allows the continuation of the Direct Payment schemes for farmers in Wales beyond the end of the 2020 scheme.

The Direct Payments Regulation currently contains financial ceilings which are used to calculate Direct Payments to farmers across the UK. However, it only includes financial ceilings up to and including the 2020 claim year. This Instrument specifies the manner by which the Welsh Ministers will determine the annual financial ceiling to calculate payments beyond 2020 in Wales.

This Instrument removes from the retained EU law provisions which are not applicable in Wales, and provisions which are not relevant beyond the 2020 scheme. For example, the Instrument removes rules concerning the transfer of funds from the 2020 Direct Payments budget to be used for rural development measures (pillar transfer).

This Instrument also makes small but impactful amendments and simplifications to ensure the scheme operates efficiently and effectively beyond 2020. This includes, for example, replacing dates specific to the 2020 scheme year, removing references to the euro and simplifications to remove administrative complexities and tailor the retained EU law to support Welsh farmers whilst delivering on Welsh Government objectives.

In addition, the Instrument makes amendments to Welsh EU Exit statutory instruments to ensure they are operable and to address errors.

5. Consultation

The amendments in Parts 2 – 5 of the Instrument have been subject to formal public consultation. ‘Sustainable Farming and Our Land: Proposals to continue and simplify Agricultural Support for Farmers and the Rural Economy’ was open between 31 July and 23 October 2020.

6. Regulatory Impact Assessment (RIA)

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments have been considered in relation to these Regulations. Officials consider these amendments do not make fundamental changes to the current agricultural support funding arrangements and will have no significant effect on public or private sectors, charity or voluntary sectors.

As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

Annex
Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	An RIA must be completed for proposed legislation that could affect the public or private sectors, charities and the voluntary sector.
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2020.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical

		In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA 2018 SIs.	changes only are intended to the EU retained law.
Criminal Offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence.	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister’s opinion that the SI is urgent.
Explanation where amending regulations under s. 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA 1972	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA 1972, identifying the relevant law before exit day, and explaining the instrument’s effect on retained EU law.
Scrutiny statement where amending regulations under s.2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA 1972.	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority’s response to— (i) any recommendations made by a committee of

			<p>either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and</p> <p>c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.</p>
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Part 2

Statements required when using enabling powers under the European Union (Withdrawal) Act 2018

1. Sifting statement(s)

Not applicable.

2. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view, the Direct Payments to Farmers and Rural Affairs (Miscellaneous Amendments etc.) (Wales) (EU Exit) Regulations 2020 do no more than is appropriate.”

This is the case because the Instrument corrects deficiencies which arise from withdrawal and ensures that the direct payments scheme continues to operate effectively in Wales once we leave the EU. The Instrument makes small but impactful changes allowing a tailored approach to the delivery of agricultural funding in Wales after the end of the Implementation Period. It ensures that the legislation remains up to date and continues to operate effectively in Wales following the Implementation Period. This is in line with government policy.

3. Good reasons

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this Instrument, and I have concluded they are a reasonable course of action.”

This is because the provisions ensure that the legislation amended by this Instrument will allow for a smooth transition out of the Implementation Period and until the future reform of agricultural support.

4. Equalities

The Minister for Environment, Energy and Rural Affairs has made the following statement:

“The Instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the Instrument, I, Lesley Griffiths, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Equality Act 2010.”

5. Explanations

The explanations statement has been made in paragraph 4 (Purpose and intended effect of the legislation) of the main body of this Explanatory Memorandum.

6. Criminal offences

Not applicable/required.

7. Legislative sub-delegation

Not applicable/required.

8. Urgency

Not applicable/required.