

SL(5)673 – The Direct Payments to Farmers and Rural Affairs (Miscellaneous Amendments etc.) (Wales) (EU Exit) Regulations 2020

Background and Purpose

These Regulations 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, these Regulations make 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.

Parts 1, 5 and 6, and regulation 7(4) of these Regulations come into force on the day after the day on which these Regulations are made, and the remaining provisions come into force on Implementation Period completion day (11pm on 31 December 2020).

Parts 2, 3, and 4 of these Regulations 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, which was the subject of scrutiny by the Committee through the Legislative Consent Motion process earlier this year.

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



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 2 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) – 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 provisions contained in retained EU law in so far as they relate to direct payments. Although certain provisions have been omitted, references to some of those omitted provisions remain in retained EU law.

The relevant provisions are:

- Regulation 2(12) of these Regulations amends Regulation (EU) No. 1306/2013 to omit Article 77(6). A reference to the omitted Article 77(6) remains in Article 77(7)(a) of Regulation (EU) No. 1306/2013.
- Regulation 3(7) of these Regulations amends Commission Delegated Regulation (EU) No. 640/2014 to omit Article 10. A reference to the omitted Article 10 remains in the final subparagraph of Article 9(1) of Commission Delegated Regulation (EU) No. 640/2014.
- Regulation 3(8) of these Regulations amends Commission Delegated Regulation (EU) No. 640/2014 to omit the second subparagraph of paragraph 1 of Article 13. This means the third subparagraph becomes the second subparagraph. A reference to the third subparagraph of Article 13(1) remains in paragraph (b) of Article 12 of Commission Delegated Regulation (EU) No. 640/2014, although the same reference has been substituted in the second subparagraph of paragraph 3 of Article 13.
- Regulation 4(7)(a) of these Regulations amends Commission Implementing Regulation (EU) No. 809/2014 to omit Article 17(2). A reference to the omitted Article 17(2) remains in the second subparagraph of Article 36(2) of Commission Implementing Regulation (EU) No. 809/2014.

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

Regulation 7(6)(c) of these Regulations omits paragraphs 6 to 8 of Article 9 of Regulation (EU) No. 1307/2013. On exit day, paragraph 6 was omitted from Article 9 of Regulation (EU)



No. 1307/2013 pursuant to regulation 4(10)(f) of the Rules for Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020/91).

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

3. 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:

“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”

However, the Explanatory Memorandum also explains that these Regulations *“simplify the administration of the scheme”, “remove or reduce burdens on persons applying for direct payments under the scheme”, “improve the way the scheme operates”* and ensures *“sanctions and penalties imposed under the scheme are appropriate and proportionate”*.

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.

Implications arising from exiting the European Union

On exit day, the Direct Payments to Farmers (Legislative Continuity) Act 2020 incorporated EU legislation governing the 2020 Common Agricultural Policy 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.

These Regulations ensure 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.



Welsh Government response

Technical Scrutiny

Point 1

The Welsh Government agrees that the highlighted references are drafting errors. The Welsh Government will correct these at the next suitable opportunity.

Point 2

The Welsh Government agrees that paragraph 6 of Article 9 of Regulation (EU) No. 1307/2013 has already been omitted by the Rules for Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020/91). On this basis, the omission in regulation 7(6)(c) has no legal effect. The Welsh Ministers do not have urgent regulation-making powers in the Agriculture Act 2020, and as such it is not possible to amend the provision before the end of the Implementation Period. Had there been a suitable instrument being taken forward, the Welsh Government would have amended the instrument, however there is insufficient time to withdraw and amend it.

Merits Scrutiny

Point 3

The Welsh Government considers the changes to be routine technical amendments to the operation of the scheme which for example reduce the application of sanctions or penalties, compared to EU versions of the schemes.

Legal Advisers

Legislation, Justice and Constitution Committee

7 December 2020

