

Explanatory Memorandum to Common Agricultural Policy (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by Rural Payments Wales Common Agricultural Policy legislation Team within the Economy, Skills and Natural Resources Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Common Agricultural Policy (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the Annex to this Memorandum.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs
20 February 2019

PART 1

1. Description

- 1.1 The Common Agriculture Policy (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 ('this Instrument') correct deficiencies in domestic legislation which implements the European Union Common Agriculture Policy continuing to provide Direct Payments for farmers and land managers and Wales' Rural Development Programme.
- 1.2 The Regulations come into force on "exit day", which section 20(1) of the European Union (Withdrawal) Act 2018 ('the 2018 Act') defines as 29 March 2019 at 11.00pm.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

- 2.1 This Instrument is being made using the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the 2018 Act

This Instrument is subject to the affirmative procedure in accordance with paragraph 1(9) of Schedule 7 to the 2018 Act.

3. Legislative background

- 3.1 This Instrument is being made using the power in Part 1 of Schedule 2 to the 2018 Act in order to address failures of retained EU law to operate effectively, or other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

This Instrument is also made under paragraph 21 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

What did any relevant EU law do before exit day?

The domestic legislation is related to the implementation and administration of CAP and farming support in Wales. Its primary aim is to deliver support to the rural economy in Wales through CAP

A summary of the domestic Regulations subject to amendment is set out in the following paragraphs.

The Agricultural Subsidies and Grants Schemes (Appeals) (Wales) Regulations 2006

The Agricultural Subsidies and Grants Schemes (Appeals) (Wales) Regulations 2006 allow the Welsh Ministers to establish appeals procedures for farmers and foresters who dispute decisions taken by it in connection with the funding of elements of CAP and schemes relating to it.

The Rural Development Programmes (Wales) Regulations 2014 (“RD Regulations”)

The RD Regulations apply to the Rural Development Programmes established under Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 and Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013. In Wales, these programmes are administered by the Welsh Ministers.

The RD Regulations supplement and provide a domestic framework for the operation of the following EU legislation in Wales:

- Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006.
- Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005.
- Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008.
- Commission Delegated Regulation (EU) No 640/2014 of 11 March 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 Delegated Regulation (EU) No 807/2014 of 11 March 2014 supplementing Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the

European Agricultural Fund for Rural Development (EAFRD) and introducing transitional provisions.

- Commission Implementing Regulation (EU) No 808/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD).
- Commission Implementing Regulation (EU) No 809/2014 of 17 July 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.

The RD Regulations provide the Welsh Ministers with the power to approve operations for the receipt of financial assistance and to pay financial assistance from the European Agricultural Fund for Rural Development. An “operation” is a project, contract, action or group of projects selected by the managing authorities of the programmes concerned, or under their responsibility, that contributes to the objectives of a priority or priorities. The RD Regulations also set out the circumstances in which approval of an operation may be revoked and financial assistance paid to a beneficiary, in respect of that operation, may be withheld or recovered.

The Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014 (“IACS Regulations”)

The IACS Regulations make provision in relation to Wales for the implementation of the following EU legislation relating to the administration of the Common Agricultural Policy:

- 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;
- Commission Delegated Regulation (EU) No 639/2014 supplementing the Direct Payments Regulation;
- Commission Implementing Regulation (EU) No 641/2014 laying down rules for the application of the Direct Payments Regulation;
- 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 908/2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy;
- 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;
- Regulation (EU) No 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy;
- Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development;
- Commission Delegated Regulation (EU) No 807/2014 supplementing the Rural Development Regulation; and
- Commission Implementing Regulation (EU) No 808/2014 laying down rules for the application of the Rural Development Regulation.

Part 2 sets out provisions on control and enforcement in relation to payments granted directly to farmers under the Direct Payments Regulation (“direct payments”) and rural development payments under the Rural Development Regulation (“RD payments”).

Part 3 sets out further requirements on beneficiaries of direct payments and certain Rural Development payments relating to the maintenance of standards for good agricultural and environmental conditions.

Part 4 makes provision for revocations and savings.

The Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015 (“BPS Regulations”)

The BPS Regulations make provision in Wales for the administration of the following EU Regulations:

- 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;
- Commission Delegated Regulation (EU) No 639/2014 supplementing the Direct Payments Regulation;

- Commission Implementing Regulation (EU) No 641/2014 laying down rules for the application of the Direct Payments Regulation; and
- 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.

The BPS Regulations make provision in relation to the administration of direct payments to farmers under CAP support schemes. The Regulations set out a number of rules, including the minimum eligible area of a holding in respect of which direct payments may be granted, and the activities a farmer must carry out in order to maintain an agricultural area in a state suitable for grazing or cultivation.

The BPS Regulations also provide the basis on which an increase in direct payments to qualifying farmers aged 40 or less must be calculated (the young farmer schemes)

Why is it being changed?

- 4.5 After EU-Exit, without amendment certain provisions will be inoperable and, as a result, existing law will either be unclear or will not function effectively. This Instrument therefore uses powers in the 2018 Act to make predominantly technical changes to the above legislation to ensure that it remains coherent and continues to function correctly after the UK has left the EU. This will provide clarity to stakeholders.

What will it now do?

- 4.6 This Instrument will ensure the Welsh regulations relating to the administration and implementation of CAP in Wales will continue to be operable after the UK leaves the EU. The Instrument does not make any change to the way the Welsh regulations operate.

5. Consultation

As there is no policy change, no public consultation was undertaken. The purpose of this Instrument is to enable the current legislative and policy framework to remain operable after the withdrawal of the United Kingdom from the European Union.

6. Regulatory Impact Assessment (RIA)

- 6.1 An impact assessment has not been prepared for this instrument because there is no impact anticipated for business, charities, voluntary bodies or the public sector. The current CAP arrangements will continue unchanged.

**(ANNEX TO BE INCLUDED IF THE SI IS MADE
UNDER THE EUROPEAN UNION (WITHDRAWAL)
ACT 2018)**

**Annex [x]
Statements under the European Union
(Withdrawal) Act 2018**

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 <i>Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)</i>	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28,	Applies to Ministers of the Crown exercising	A statement to explain the good reasons for making the

	Schedule 7	powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	<p>A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.</p> <p>A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p>
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to 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 changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 18(1), 9 and paragraph 1 of	A statement to explain why it is appropriate to create such a sub-delegated power.

		<p>Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority.</p> <p>Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority</p>	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

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

1. Sifting statement(s)

Not applicable.

2. Appropriateness statement

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

“In my view the Common Agriculture Policy (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 do no more than is appropriate”. This is the case because all the changes being made are solely in order to address provisions which will be inoperable as a result of the UK withdrawing from the EU. There is no change to policy. This is in line with government policy.

3. Good reasons

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths 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 draft instrument, and I have concluded they are a reasonable course of action”. These are that failure to make this legislation would result in Welsh legislation relating to the administration and implementation of CAP failing to operate effectively after the UK leaves the EU.

4. Equalities

4.1 The Minister for Environment, Energy and Rural Affairs has made the following statement(s):

“This 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.

- 4.2 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 draft instrument, I, Lesley Griffiths, the Minister for Environment, Energy and Rural Affairs, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010”.

5. Explanations

The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

Not applicable/required.

7. Legislative sub-delegation

7.1 Not applicable/required,

8. Urgency

8.1 Not applicable/required.