

The Agricultural Support (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021

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 Senedd Cymru 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 Agricultural Support (Miscellaneous Amendments)(Wales) (EU Exit) Regulations 2021.

Lesley Griffiths MS

Minister for Environment, Energy and Rural Affairs

23 February 2021

1. Description

The Agricultural Support (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (“the Instrument”) 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, the Instrument makes minor, technical amendments to retained EU law in relation to direct payments schemes to address errors and ensure that it functions efficiently and effectively.

The Instrument has five Parts. Part 1 makes introductory provisions for the Instrument. Parts 2 to 5 contain the substantive amendments, detailed below.

Rural Development: Horizontal Legislation

Part 2 of the Instrument amends the following, insofar as they relate to domestic support for rural development:

- 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; 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.

Rural Support: Retained Direct Legislation

Part 3 of the Instrument amends:

- 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 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 (EU) No 1083/2006;
- 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 repealing Council Regulation (EC) No 1698/2005;
- Commission Delegated Regulation (EU) No 480/2014 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council 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;
- 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 the European Parliament and of the Council of 17 July 2014 laying down rules for the application of Regulation (EU) No 1305/2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD);
- Commission Implementing Regulation (EU) No 821/2014 laying down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards detailed arrangements for the transfer and management of programme contributions, the reporting on financial instruments, technical characteristics of information and communication measures for operations and the system to record and store data; and

- Commission Implementing Regulation (EU) No 964/2014 laying down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards standard terms and conditions for financial instruments.

Rural Development: Domestic Legislation

Part 4 of the Instrument amends the following, insofar as they relate to rural development:

- the Rural Development Programmes (Wales) Regulations 2014; and
- the Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014.

Direct Payments: Horizontal Legislation

Part 5 of the Instrument amends the following, insofar as they relate to Direct Payments only:

- the Horizontal Regulations;
- Commission Delegated Regulation (EU) No. 640/2014; and
- Commission Implementing Regulation (EU) No. 809/2014.

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

The Instrument comes into force on the day after the day on which the Instrument is made.

The Instrument is made in exercise of the powers conferred by section 46 of, and paragraphs 2(1), 4(1) and 6(1) of Schedule 5 to, the Agriculture Act 2020 (c.21), and paragraph 1 of Schedule 2 to the European Union (Withdrawal) Act 2018 (c.16).

In accordance with 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, a draft of the Instrument has been laid before, and is subject to approval by a resolution of Senedd Cymru.

3. Legislative background

Section 46 and Schedule 5 of the Agriculture Act 2020 provide the Welsh Ministers with powers to modify retained direct EU legislation relating to support for rural development and direct payments and subordinate legislation relating to that legislation so far as it has effect in relation to Wales.

The 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 European Union (Withdrawal) Act 2018.

In accordance with the requirements of the European Union (Withdrawal) Act 2018 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 provides a legislative framework to enable the provision of financial support for new domestic rural development schemes from 2021.

Support for rural development was previously provided through the European Agricultural Fund for Rural Development (EAFRD) and delivered through the second pillar of the Common Agricultural Policy. Following the end of the Implementation Period, support for new rural development schemes will be domestically funded and will not be subject to EU law. Existing and ongoing activities delivered through the Welsh Government Rural Communities - Rural Development Programme 2014-20 will continue to operate under EU law.

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

Part 2 – Rural Development: 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”) lays down the rules on: the financing of expenditure under the Common Agricultural Policy (CAP), including expenditure on rural development; the farm advisory system; the management and control systems to be put in place by the Member States; the cross-compliance system; clearance of accounts.
- Commission Delegated Regulation (EU) No. 640/2014 supplementing Regulation (EU) No. 1306/2013 of the European Parliament and of the Council lays down provisions supplementing certain non-essential elements of Regulation (EU) No 1306/2013 in relation to: refusal or withdrawal of aid or support; administrative penalties; rules for submission of applications or amendments on a public holiday, a Saturday or a Sunday; specific definitions to ensure a harmonised implementation of the integrated system; basic features and technical rules and quality requirements; the basis for the calculation of aid; additional rules for intermediaries involved in the procedure for granting the aid or support; 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 lays down rules for the application of Regulation (EU) No 1306/2013 in relation to: notifications to the Commission

to protect the financial interests of the Union; administrative and on-the-spot checks; control measures and methods for determining tetrahydrocannabinol levels in hemp; inter-branch organisations for the purposes of the crop-specific payment for cotton; aid applications and payment claims; administrative penalties; non-compliance; the transfer of holdings; the payment of advances.

- Commission Implementing Regulation (EU) No. 908/2014 lays 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 – Rural Development: Retained Direct Legislation

- Regulation (EU) No. 1303/2013 of the European Parliament and of the Council of 17 December 2013 lays down the common rules applicable to the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF), which operate under a common framework (the 'European Structural and Investment' - 'ESI Funds'). It also lays down the provisions necessary to ensure the effectiveness of the ESI Funds and their coordination with one another and with other Union instruments;
- Regulation (EU) No. 1305/2013 of the European Parliament and of the Council of 17 December 2013 lays down general rules governing Union support for rural development, financed by the European Agricultural Fund for Rural Development ("the EAFRD") and established by Regulation (EU) No 1306/2013. It sets out the objectives to which rural development policy is to contribute and the relevant Union priorities for rural development; outlines the strategic context for rural development policy; defines the measures to be adopted in order to implement rural development policy; lays down rules on programming, networking, management, monitoring and evaluation on the basis of responsibilities shared between the Member States and the Commission and rules to ensure coordination of the EAFRD with other Union instruments.
- In terms of support for rural development, Commission Delegated Regulation (EU) No 480/2014 of 3 March 2014 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council sets out: provisions as regards the criteria for determining the level of financial correction to be applied under the performance framework; rules in relation to financial instruments; the method for calculating the discounted net revenue of operations generating net revenue after completion; and the flat rate for indirect costs and the related methods applicable in other Union policies.
- Commission Delegated Regulation (EU) No 807/2014 of 11 March 2014 lays down provisions supplementing Regulation (EU) No 1305/2013 as regards:

young farmers; farm and forest exchange schemes and visits; quality schemes — promotion; farm and business development; afforestation and creation of woodland; agri-environment-climate; conservation of genetic resources in agriculture and in forestry; exclusion of double-funding; animal welfare; cooperation; commercial loans to mutual funds; investments; conversion or adjustment of commitments; extended or new commitments.

- Commission Implementing Regulation (EU) No 808/2014 of 17 July 2014 lays down rules for the implementation of Regulation (EU) No 1305/2013 as regards the presentation of rural development programmes, procedures and timetables for approval and amendment of rural development programmes and national frameworks, the content of national frameworks, information and publicity for rural development programmes, implementation of certain rural development measures, monitoring and evaluation and reporting.
- Commission Implementing Regulation (EU) No 821/2014 of 28 July 2014 lays down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards detailed arrangements for the transfer and management of programme contributions, the reporting on financial instruments, technical characteristics of information, communication and visibility measures for operations and the system to record and store data.
- Commission Implementing Regulation (EU) No 964/2014 of 11 September 2014 lays down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards standard terms and conditions for financial instruments.

Part 4 – Rural Development: Domestic Legislation

- The Rural Development Programmes (Wales) Regulations 2014 regulate new programmes administered by the Welsh Ministers and provide a domestic legal framework for the operation of the EU legislation in Wales.
- 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.

Part 5 - 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”) is amended, insofar as it relates to direct payments.
- Commission Delegated Regulation (EU) No.640/2014 supplementing Regulation (EU) No. 1306/2013 of the European Parliament and of the Council is amended insofar as it relates to direct payments.
- 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 is amended, insofar as it relates to direct payments.

Why is it being changed?

This Instrument allows the continuation of support for new rural development schemes in Wales beyond the end of the EU Implementation Period.

This Instrument simplifies the governance and administration of support for rural development as well as removing from the retained EU law provisions that are not applicable in Wales post the end of the EU Implementation Period. For example, the Instrument removes rules concerning the content and amendment of rural development programmes which were previously approved and monitored by the European Commission. This aligns the requirements for approving and monitoring the content and amendment of rural development programmes with standard Welsh Government procedures and Senedd scrutiny.

This Instrument also incorporates 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.

In addition, the Instrument makes amendments to legislation governing the direct payments scheme in Wales to address errors and to ensure it continues to operate effectively and efficiently.

5. Consultation

The amendments in Parts 2 – 4 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 has been considered in relation to these Regulations. Officials consider these amendments 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.

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 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA 2018 SIs.	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	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	Statement of the reasons for the Minister's opinion that the SI is urgent.

		paragraphs 4 or 14, Schedule 7.	
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: <ul style="list-style-type: none"> 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 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 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.

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 Agricultural Support (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 do no more than is appropriate.”

This is the case because the Instrument corrects deficiencies, which arise from withdrawal, and ensures there is a legislative framework in place to fund new rural development schemes effectively in Wales following the end of the Implementation Period. The Instrument makes small but impactful changes allowing a tailored approach to the delivery of new rural development 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 end of 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 the legislation amended by this Instrument will allow for a smooth transition out of the Implementation Period and until the future reform of agricultural and rural development 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.