

SL(6)671 – The Agriculture Support Schemes (Eligibility, Enforcement and Appeals) (Wales) Regulations 2025

Background and Purpose

Under the Agriculture (Wales) Act 2023 the Welsh Ministers may provide support, financial or otherwise, in connection with agriculture in Wales and for ancillary activities that take place in Wales. The availability of such support may be subject to eligibility criteria and to such conditions as the Welsh Ministers consider appropriate. These Regulations make provision in relation to schemes that provide such support including in relation to checking eligibility for support, for publication of scheme data, inspections, enforcement and for appeals against decisions of the Welsh Ministers under these Regulations. They come into force on 13 December 2025.

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

1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Regulation 19 lists circumstances which the Welsh Ministers may investigate under regulation 20. Following such investigation the Welsh Ministers may determine under regulation 22 there has been default by the agreement holder in relation to the listed circumstances. Under regulation 23 the Welsh Ministers can then impose a sanction which range from an advisory letter to recovering on demand support previously paid.

Regulation 19(d) read with regulation 20 provides that the Welsh Ministers may investigate if they reasonably suspect that an agreement holder has prevented an authorised person from carrying out an inspection under regulations 14, 15 or 16.



Regulation 14(1) provides that an authorised person may carry out a virtual inspection of any land or premises owned or occupied by an agreement holder, other than a private dwelling for the purposes of checking compliance. Regulation 14(2) provides that before an authorised person is permitted to carry out a virtual inspection by live video link, the agreement holder must agree to the use of a live video link. Therefore the powers of the authorised person to carry out such an inspection are not absolute, they are dependent upon the agreement holder consenting.

Regulation 15 provides that an authorised person may, on notice, enter land or premises owned or occupied by an agreement holder or over which the agreement holder has control, other than a private dwelling. It is not expressly set out in regulation 15, but we consider the power is subject to the consent of the agreement holder. This is on the basis that if such consent is not provided, or the Welsh Ministers anticipate entry being refused (regulation 16(3)(a)), a justice of the peace may permit an authorised person to enter relevant land by reasonable force (regulation 16(2)).

It is unclear whether the Welsh Government consider that an agreement holder who refuses either a virtual inspection under regulation 14 or a physical inspection under regulation 15 is breaching the regulations. Further, it is unclear whether the Welsh Ministers consider it is appropriate to sanction such an agreement holder under regulation 23 if they exercise that right.

2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Regulation 20 sets out powers for the Welsh Ministers to carry out an investigation if certain circumstances, which are listed in regulation 19 arise.

Regulation 20(5) provides that when such an investigation is underway, the Welsh Ministers may withhold support until the investigation is concluded and they have made a determination under regulation 22. It is not clear how long an investigation may take and the regulations do not impose a time limit. This could have a significant impact on the support holder's business if the Welsh Ministers use their discretion to withhold support.

Until a determination is made, it is not known whether there has been any significant default by the agreement holder that will ultimately lead to a significant financial sanction. A minor default may warrant only a advisory letter (regulation 23(a)). If an agreement holder successfully mitigates based on exceptional circumstances that may result in the Welsh Ministers taking no action (regulation 24).

It is unclear whether the Welsh Ministers considered imposing a limit on how long an investigation can take or alternatively placing a limit on how long support can be withheld pending a determination.

3. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.



Regulation 22 makes provision for the Welsh Ministers to make a determination following an investigation under regulation 20. It provides that if the Welsh Ministers are satisfied that there has been a breach of conditions, or regulation 19 applies, they must make a determination to that effect.

Regulation 19 lists circumstances which, if the Welsh Ministers suspect have arisen, they may investigate under regulation 20.

Regulation 22(2) provides that when the Welsh Ministers make their determination they must make a further determination as to the seriousness of a breach and the appropriate steps, if any, required to be taken in respect of the breach. In making that further determination they must have due regard to any failure on the part of the agreement holder to co-operate with an inspection under regulation 14 or 15. We consider this raises a similar issue to that discussed in reporting point 1 above, if the Welsh Ministers agree that refusing an inspection under regulation 14 or 15 is not a breach of these regulations in itself, it is unclear if they consider it is appropriate to take it into account in determining what action the Welsh Ministers take under regulation 23.

4. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Regulation 29 sets out an appeals mechanism that is available to a person who is subject to a decision taken by the Welsh Ministers under regulation 6(2), 10(3) and 25.

Regulation 6(2) makes provision for the consequences of incomplete or erroneous applications for support. Regulation 10(3) applies in the event an applicant for support or an agreement holder experiences a change in circumstances and requires the Welsh Ministers are notified. Regulation 25 applies in the event the Welsh Ministers, following an investigation, determine that there has been a breach of these regulations or of a condition applied to support.

An appeal can be submitted on the grounds that the Welsh Ministers decision under those regulations was based on an error of law, was wrong in law or on the basis that there has been a material procedural error.

Regulation 29 sets out a two stage appeal route with the first stage being a review by officials and the second stage including a hearing by an independent appeals panel. Regulation 29(9) provides that the panel must consider the appeal and make a recommendation to the Welsh Ministers in writing. Regulation 29(10) provides that upon receipt of the panel's recommendation the Welsh Ministers must make a final determination in respect of the stage 2 appeal.

The regulations do not include any information regarding what constitutes an independent appeals appeal, for example who will be eligible for appointment to the panel, how they will be appointed and how the panel will operate. Without such information, it is difficult to



reach a view on how panel will demonstrate independence from the Welsh Ministers and officials who may have been involved in the original decision making or the stage one appeal and therefore to fully consider the appeals mechanism.

5. Standing Order 21.2(vi) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

In regulation 29, the English language text of the Regulations states that

“A person (“the appellant”) may submit a stage one appeal to the Welsh Ministers against a decision or determination made under regulation 6(2), 10(3) or 25...”

The Welsh language text of the Regulations uses “penderfyniad” for both “decision” and “determination”. Whilst the reference to regulations 6(2), 10(3) and 25 provide clarity in regulation 29(1), elsewhere in regulation 29 it is unclear in the Welsh language text whether a “decision”, a “determination” or a “decision or determination” is being referred to, because “penderfyniad” is used on each occasion. The Welsh Government is asked why alternative wording was not used, and how does it consider that a reader of the Welsh language text is able to distinguish between a “decision”, a “determination” and a “decision or determination” in these Regulations and in regulation 29 in particular.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

12 November 2025

