

SL(5)790 – The Agricultural Support (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021

Background and Purpose

These Regulations 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, these Regulations make minor, technical amendments to retained EU law in relation to direct payment schemes to address errors and ensure that the law functions efficiently and effectively.

These Regulations also incorporate references to the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016 into the aim of the support for rural development.

The Committee noted a previous version of these Regulations and a draft Report on those Regulations at its meeting on 15 March 2021. These Regulations address the technical scrutiny and merits scrutiny points raised in the Committee's draft Report.

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 point is identified for reporting under Standing Order 21.2 in respect of this instrument.

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

Regulation 6(3)(h) omits the definition of "*accounting year*" from Article 2(29) of Regulation (EU) No. 1303/2013. Although regulation 6(32) amends Article 127(1) of Regulation (EU) No. 1303/2013 to omit "*for an accounting year*" and "*during an accounting year*", that definition remains in Article 127(4).

Merits Scrutiny

The following 2 points are identified for reporting under Standing Order 21.3 in respect of this instrument.



2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy to be of interest to the Senedd.

In several places in retained EU law, these Regulations substitute “shall” for “may” and also use “must” in place of “shall” within substituted text. In other places these Regulations use “shall” within substituted text.

Specifically, regulation 7(7) uses “shall” when “must” is used on an earlier and later occasion within the same substituted text of Article 6 of Regulation (EU) No. 1305/2013.

It is noted that the Welsh Government’s response to this point, when raised on the previous version of these Regulations was:

“We note that there is inconsistency in the use of “shall” and “must”, but that this will not change the effect of the substituted text.”

3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy to be of interest to the Senedd.

It is noted that the Explanatory Memorandum states that these Regulations are considered by Officials:

“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.”

However, the Explanatory Memorandum also explains that these Regulations “put in place a domestic framework to fund new rural development schemes in Wales following the end of the EU Implementation Period”, simplify “the governance and administration of support for rural development” and incorporate “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”.

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.



In the Committee's draft Report on the previous version of these Regulations, the Welsh Government was asked to confirm which exception under the Code applies to the decision not to produce a regulatory impact assessment.

It is noted that the Welsh Government's response to that point was:

"The Welsh Government considers the Regulations to be routine technical amendments or factual amendments that are required to update regulations as the result of leaving the European Union and have no major policy impact. The Regulations enable a domestic framework to be put in place but do not create any new financial implications, criminal sanctions or administrative burdens that would affect the public or private sectors, charity or voluntary sectors."

Welsh Government response

The Committee is thanked for its report. The following is the response in respect of the Technical Point raised in the report.

Technical Scrutiny

Point 1

We are grateful to the Committee for bringing this to our attention.

The Welsh Government agrees that references to "accounting year" remain in Article 127(4). The Welsh Government considers this to be of minor effect and will correct these references at the next suitable opportunity.

Legal Advisers

Legislation, Justice and Constitution Committee

17 March 2021

