

**The Direct Payments to Farmers (Crop Diversification Derogation) (Wales)
Regulations 2020**

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 the Senedd 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 Direct Payments to Farmers (Crop Diversification Derogation) (Wales) Regulations 2020.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs

30 April 2020

1. Description

1.1 The Direct Payments to Farmers (Crop Diversification Derogation) (Wales) Regulations 2020 (“the instrument”) will exempt farmers in Wales from the need to follow crop diversification requirements for the Basic Payment Scheme 2020 only.

1.2. The instrument modifies the application of provisions in Regulation (EU) No. 1307/2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ No L 347, 20.12.2013, p. 608 (“Regulation (EU) No. 1307/2013”).

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

2.1 The instrument is being laid using powers conferred upon the Welsh Ministers under Articles 69(1) and 70(4) of Regulation (EU) No. 1307/2013.

Regulation (EU) No. 1307/2013, has been incorporated into domestic law by virtue of section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c. 2) for claim year 2020. The Direct Payments to Farmers (Legislative Continuity) Act 2020 provides the legal basis to continue paying direct payments to farmers for claim year 2020. Article 137 of the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union (19 October 2019) provided that Regulation (EU) No. 1307/2013 does not apply to the UK for claim year 2020.

Regulation (EU) No. 1307/2013 has been amended by regulations 2, 3(4) and 7 of the Rules for Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020/91) (“the 2020 Regulations”). The amendments made by the 2020 Regulations addressed the failures in Regulation (EU) No. 1307/2013 to operate effectively and other deficiencies arising from the withdrawal of the UK from the European Union. In particular, the 2020 Regulations amended Article 69(1) of Regulation (EU) No. 1307/2013 so that the power to make derogations is exercisable by the Welsh Ministers (for the definitions of “relevant authority” and “appropriate authority” see Article 4(1)(r) and (s)), and inserted Article 70(4) which provides that Regulations may contain consequential, supplementary, transitional and saving provisions.

Article 69(1) provides that the Welsh Ministers may make regulations which are both necessary and justifiable in an emergency in order to resolve a specific problem. The Welsh Ministers consider that, in order to resolve the specific problems arising from the extreme winter weather and flooding in Wales, it is necessary and justifiable to exercise emergency powers to derogate from the provisions in Regulation (EU) No. 1307/2013 for claim year 2020 as respects crop diversification requirements.

The derogation only applies for claim year 2020. “Claim year 2020” is defined by reference to section 1(7) of the Direct Payments to Farmers (Legislative

Continuity) Act 2020 (c. 2) which provides that “claim year” followed by a year, means the period of 12 months beginning with 1 January in that year. The derogation therefore lasts less than 12 months in accordance with Article 69(3) of Regulation (EU) No. 1307/2013

Article 71(3) of Regulation (EU) No. 1307/2013 provides that regulations made under Article 69(1) are subject to the made-affirmative procedure.

It was necessary to wait for the Direct Payments to Farmers (Legislative Continuity) Act 2020 (Consequential Amendments) Regulations 2020 (“2020 Regulations”) to be made before making this instrument to ensure continuity of approach for definitions and interpretation. The consequential amendments made by the 2020 Regulations are needed because the EU Direct Payments legislation was incorporated into UK law on Exit Day, rather than at the end of the Implementation Period. The amendments ensure that the retained Direct Payments legislation is treated in the same way as legislation under the European Union (Withdrawal) Act 2018.

The 2020 Regulations make consequential amendments required as a result of the Direct Payments to Farmers (Legislative Continuity) Act 2020 on a UK-wide basis. The 2020 Regulations were made on 27 April 2020, laid before Parliament on 28 April and came into force on 30 April.

3. Legislative background

3.1 Since September 2019, Wales has been experiencing higher than average rainfall. In addition, Storm Ciara and Storm Dennis have caused widespread flooding across parts of Wales.

3.2 Farming stakeholders have reported that farmers have been experiencing difficulties cultivating crops as a result, either because they cannot access flooded land or land is too wet to plant. This could potentially impact their ability to meet crop diversification requirements for the 2020 Basic Payment Scheme. Failure to meet crop diversification requirements makes a claim ineligible for the greening element of Basic Payment Scheme, which accounts for approximately 30% of the total value of BPS.

3.3 The current crop diversification rules require that:

- (a) on holdings with between 10 and 30 hectares of arable land at least two different crops must be grown on that land and the largest crop must not cover more than 75% of that arable land; and
- (b) on holdings with more than 30 hectares of arable land, at least three different crops must be grown on that land, the largest crop must not cover 75% of that arable land and the two largest crops together must not cover more than 95% of that arable land.

3.4 In Wales in 2019, 405 of farmers require 3 crops, whilst a further 127 farmers require 2 crops to meet the crop diversification rules to qualify for Greening payments.

3.5 This instrument will remove the crop diversification requirement completely for the 2020 Basic Payment Scheme year. This will mean that farmers in Wales will not have to comply with the crop diversification requirements to plant more than one crop in 2020, and also do not need to provide any evidence to show they have attempted to comply but failed for 'force majeure' reasons in order to receive payment in full done so to the contrary.

3.6 Welsh farmers will qualify for full Greening payment via permanent pasture and Ecological Focus Area declarations only.

4. Purpose and intended effect of the legislation

Regulation (EU) 1307/2013 of the European Parliament

4.1 Regulation 2 of this instrument disapplies Articles 43(2)(a) and 44 and Annex IX, Section I, paragraph (1) of Regulations (EU) 1307/2013 in respect of claim year 2020 in terms of crop diversification. Regulation 3 of this instrument confirms that regulation 2 only has effect for claim year 2020, which is defined by reference to section 1(7) of the Direct Payments to Farmers (Legislative Continuity) Act 2020.

5. Consultation

5.1 The Welsh Government has received representations from several stakeholders requesting a relaxation of crop diversification requirements. Additionally, a very rapid, verbal consultation with major stakeholders showed strong support for this change.

6. Regulatory Impact Assessment (RIA)

6.1 A Regulatory Impact Assessment has not been prepared for this instrument because it does not affect many businesses and the amounts involved are below the threshold for producing an Impact Assessment.