

AGRICULTURE (WALES) ACT 2023

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Support for Agriculture Etc

Chapter 1 - Welsh Ministers' power to provide support

66. This Chapter confers power on the Welsh Ministers to provide support for or in connection with agriculture in Wales and ancillary activities that take place in Wales. This power enables the Welsh Ministers to provide support, including by means of a support scheme or schemes (and in establishing any such scheme or schemes the Welsh Ministers will need to comply with the SLM duty).
67. The power to provide support, in practice, provides Welsh Ministers with the mechanism to support farmers in producing food and other goods in a sustainable way that is intended to support the Welsh Government's environmental and climate commitments and to further support the well-being of citizens as it relates to agriculture in Wales.

Section 8 - Welsh Ministers' power to provide support

68. **Section 8** provides the Welsh Ministers with the power to provide support for, or in connection with, agriculture and ancillary activities that take place in Wales. Support may be financial, or non-financial, for example the Welsh Ministers might choose to exercise the power to make payment for actions or to provide instructional assistance and advice.
69. **Section 8(2)** sets out a list of (non-exhaustive) purposes for or in connection with which the Welsh Ministers may provide support in Wales. The Welsh Ministers are not constrained by the listed purposes at section 8(2) and may provide support for other purposes, so long as the other purposes are for or in connection with agriculture and/or ancillary activities in Wales. The purposes listed at section 8(2) provide context in terms of the policy aims for which support is envisaged. The purposes support the achievement of the SLM objectives detailed in section 1.
70. The purpose at subsection (2)(a) refers to encouraging the production of food in an environmentally sustainable manner. For example, support might be provided for growing crops in a way that minimises or eradicates the need for artificial fertiliser.
71. The purpose at subsection (2)(b) refers to helping rural communities to thrive, and to strengthening links between agricultural businesses and their communities. For example, support given for this purpose might be aimed at promoting the economic resilience of agricultural businesses through farm diversification and strengthening farm businesses to support and contribute towards thriving rural (local) communities, such as supporting and encouraging an increase in biodiversity or eco system resilience on farms, through collaborative projects such as community orchards, or supporting farm businesses to diversify into direct-to-consumer sales, via meat and / or vegetable boxes.

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(c.4) which received Royal Assent on 17 August 2023*

72. The purpose at subsection (2)(c) refers to improving the resilience of agricultural businesses. Support given for this purposes might be aimed at seeking to attract new entrants to farming and to support succession planning.
73. The purpose at subsection (2)(d) refers to sustaining the Welsh language and promoting and facilitating its use. Support given for this purposes could be aimed at facilitating the use of the Welsh language across all levels of competency and the encouragement of new learners across the agricultural sector.
74. The purpose listed at subsection (2)(e) refers to reducing of emissions of greenhouse gases. For example, support might seek to encourage farms to reduce their greenhouse gas emissions, including through making efficient use of fuel and energy, minimising external inputs and having productive livestock and crops.
75. Subsection (2)(f) sets out the purpose of maximising carbon sequestration and storage. Support given for this purpose could be aimed at creating new and enhancing existing carbon stocks on farms, for example through increasing soil carbon content, restoring peatland, tree and/or hedge planting and farm woodland management.
76. The purpose referred to at subsection (2)(g) is that of maintaining and enhancing the resilience of ecosystems. This could mean supporting a farmer in adopting different farming techniques which avoid negative impacts on, and delivering benefits for, biodiversity, species, and habitats.
77. The purpose listed at subsection (2)(h) is conserving and enhancing landscapes and the historic environment. Support provided for or in connection with this purpose could, for example, look to support farmers in maintaining historical buildings they may have on their land.
78. The purpose at subsection (2)(i) is improving air quality. Support provided for or in connection with this purpose is intended to be aimed at actions which result in air which has limited pollution (human made particles and harmful gases) including fine particulate matter (PM2.5), ammonia (NH₃) and non-methane volatile organic compounds (NMVOC).
79. Subsection (2)(j) provides for the purpose of improving water quality. The policy aim behind this purpose is to ensure the water environment (including inland water) is sustainably managed to support healthy communities, flourishing businesses and increased biodiversity.
80. The purpose listed at subsection (2)(k) is maintaining and enhancing public access to and engagement with the countryside and the historic environment. Action that could be taken in connection with this purpose could include supporting farmers to upgrade public footpaths to make them more accessible for wheelchair users.
81. Subsection (2)(l) lists the purpose of mitigating flood and drought risks. Support for or in connection with this purpose may be provided, for example, to enable farms to prepare for periods of low or high rainfall, reducing the risks to the farm and communities from flooding and drought including through nature-based flood management.
82. The purpose at subsection (2)(m) is achieving and promoting high standards of animal health and welfare. Support provided for or in connection with this purpose could require/encourage farmers to draw up and action an animal health plan and/or to take actions which improve the well-being of animals such as providing shade or suitable space.
83. Subsection (2)(n) provides for the purpose of maximising resource efficiency. Support provided for or in connection with the purpose, for example, could assist farms in taking a circular economy approach by keeping resources and materials in use for as long as possible and minimising waste.

84. The purposes referred to in subsection (2)(o) is that of encouraging agricultural businesses to manage energy effectively (including by adopting energy efficiency and energy saving practices, and generating renewable energy on their land). Support for or in connection with this purpose may be provided, for example, to encourage agricultural businesses to adopt good energy management plans and generate renewable energy on-site, with a view to this supporting those agricultural businesses to (over time) lower their energy costs, through a range of measures.
85. [Section 8\(3\)](#) provides that support provided under the power to provide support may be provided by way of a scheme, or by other means. For example, through a knowledge transfer and innovation service.
86. Subsection (4) provides the Welsh Ministers with the power to amend the list of purposes by regulations (by adding a new purpose, removing a purpose, or altering the description of a purpose). This might for instance reflect a change in Welsh Government commitments and the SLM objectives. Alternatively, it may be considered that one or more of the purposes are no longer considered necessary and therefore need to be replaced to reflect an updated position.

Section 9 - Further provision about support under section 8

87. [Section 9](#) provides that support provided under the power of support in section 8 may be given financially or otherwise. In practice, the way in which support is given is likely to depend on any number of factors, for example intended outcome and type/number of recipients. Subsection (2) specifies that financial support may be given by way of grants, loans or guarantees, but support may be given in any other form.
88. Subsection (3) provides that eligibility criteria may need to be met in order for a person to be eligible for support. The eligibility criteria will be determined by each individual support scheme established pursuant to section 8.
89. Subsection (4) provides examples of eligibility criteria where support is provided in connection with the use of land. Requirements may, among other things, relate to the characteristics of the land, for example, the ecological features of the land. A requirement may also relate to the person receiving support – for example, someone who is new to farming or someone who wants to diversify from current farming practices on the land.
90. Subsection (5) allows the Welsh Ministers to attach conditions to any support provided: in practice, examples might be proof of action, time frames and contract length.
91. Subsection (6) states that these conditions may include provision for support to be repaid. Interest may be charged on monies that are required to be repaid.
92. Subsection (7) provides that support may be given under section 8 to a person or organisation who has established and/or operates a “third party scheme”. The support must be given in connection with the establishment or operation of that “third party scheme”. This means that support may be provided under section 8 in connection with expenditure incurred by a third party in establishing and operating a scheme, and for funding provided through that scheme. This would enable the Welsh Ministers to fund, for example, local partnerships or other organisations to deliver landscape-based collaborative projects that enhance the historic environment and designated landscape across multiple farms.
93. Subsection (8) provides a definition of “third party scheme” for the purposes of subsection (7): it is a scheme that provides support for or in connection with agriculture or ancillary activities, and which is made by a third party (not the Welsh Ministers).
94. Subsections (9) and (10) enable the Welsh Ministers to delegate functions in relation to giving support including giving guidance or exercising a discretion.

Section 10 - Power to make provision about publication of information about support

95. **Section 10** confers power on the Welsh Ministers to make regulations about the publication of certain information (as specified in the regulations) about support which has been, or is being, supplied under section 8. The information that may be specified in the regulations may include information about the recipient of any support provided, the amount of support provided, and the purposes of any support provided.
96. **Section 10(2)** permits the regulations to impose requirements. So, for instance the regulations could require any person – including the Welsh Ministers – to provide the information stipulated.
97. In policy terms, the publication of information about the provision of support is intended to promote transparency and allow a clear indication of what has been achieved or is required from the support given.

Section 11 – Multi-annual Support Plans

98. **Section 11** requires the Welsh Ministers to prepare a ‘Multi-annual support plan’ (MASP) about the expected use, during the period to which the plan relates, of the powers under section 8.
99. Subsection (2) sets out the information that must be contained within the MASP, including a description of support schemes which are either both operational, or expected to become operational, during the period to which the plan relates.
100. Subsection (3) provides that the period to which the first MASP is to relate is to be five years, beginning with 1 January 2025. Subsection (4) states that subsequent MASPs must relate to periods not shorter than five years.
101. Subsection (5) places a duty on Welsh Ministers to ensure that there is always a MASP in force.
102. Subsection (6) provides that the MASP must be laid before the Senedd in advance of the date in which the plan period commences: in the case of the first MASP as soon as practicable before the plan period, and for subsequent plans, at least 12 months in advance of the beginning of the plan period.
103. Subsections (7) requires the Welsh Ministers to amend a MASP if the information in it ceases to be accurate before the end of the period to which it relates (for instance, where a support scheme is no longer operational or functions within a scheme are no longer supported).
104. Subsection (8) requires the revised MASP to be published and laid before the Senedd.

Section 12 - Power to make provision about checking eligibility for support, etc

105. **Section 12** provides the Welsh Ministers with regulation making powers that may be exercised to make provision about checking whether eligibility criteria for support under section 8 are met and the consequences where they are not, about enforcing compliance with conditions, about monitoring the extent to which the purposes of support have been achieved, and about the investigation of suspected offences. These powers are intended to ensure that agricultural support financed by the Welsh Government is administered correctly and that recipients of support under the power to provide support are subject to appropriate scrutiny and accountability.
106. Subsection (2) provides a non-exhaustive list of types of provision that may be included in any regulations made under subsection (1). Whilst these are considered to be some of the main matters that regulations may need to address, regulations may be made for any of the purposes set out in subsection (1) and the content of any future regulations is not limited to those areas listed in subsection (2).

107. Subsection (2)(f) permits regulations under section 11 to make provision about the recovery of financial support (for instance, the regulations might permit support to be recovered, with interest, where a person has breached a condition).
108. Subsection (2)(h) permits regulations under section 11 to make provision about steps to be taken by a person to whom support is being, or has been, provided, in order to rectify a breach of conditions.
109. Subsection (2)(i) and (j) permits regulations under section 11 to make provision about monetary penalties, including, security for payment.
110. Subsection (2)(k) permits the regulations to make provision about prohibiting a person from receiving support for a specified period, or until specified conditions are satisfied. For instance, the regulations might permit the payment of support to be suspended until a person has rectified a breach.
111. Subsection (2)(l) permits the regulations to make provision for appeals.
112. Subsection (2)(m) permits the regulations to confer functions on a person: this might for instance be used to make provision conferring functions upon a scheme administrator.
113. This may include the requirement of certain action to be taken, to rectify such a breach. Regulations may also make provision for the recovery of monies that have been paid (with or without interest), the suspension of someone from a scheme (for a specified period or until certain conditions have been satisfied) and the imposition of monetary penalties. There is also the power to make regulations conferring functions to others and to provide a procedure for appealing against decisions.
114. Subsection (3) provides that regulations made under section 11 may not authorise entry to a private dwelling (for instance, to check compliance) unless a warrant has been issued by a judicial procedure. (Section 51 defines a "private dwelling".)
115. Subsection (4) provides that, if the regulations make provision for penalties, they may provide for interest on penalties to be payable. The interest may be payable from a day provided for in the regulations themselves, or a day determined (for instance by a scheme administrator) under the regulations.

Section 13 - Annual report about support provided under section 8

116. **Section 13** places a duty on the Welsh Ministers to prepare an annual report, in relation to each reporting period, about the financial and non-financial support provided during the period. Subsection (5) provides that the first reporting period runs from the date on which section 8 comes into force until 31 March 2025; while subsequent reporting periods will be aligned with financial years (1 April to 31 March).
117. Subsection (2) requires certain information to be included within the report. This is the total amount of any financial support provided during the reporting period, details of all financial and non-financial support provided under each support scheme established under section 8, and a description of any support other than financial support provided during the reporting period, but not under a scheme.
118. The Welsh Ministers are able, as set out in subsection (3), to include in the report any other information they consider appropriate. What is considered to be appropriate will depend on the particular circumstances, but an example might be information on any financial support which is being recouped and the reasons for this action.
119. Subsection (4) requires the Welsh Ministers to publish and lay the annual report before Senedd Cymru no later than 12 months after the end of each reporting period.

Section 14 – Impact Report

120. **Section 14** sets out the Welsh Ministers’ duty to produce (for each reporting period) an Impact Report in respect of support provided under section 8. The objective behind this is to ensure that every five years there is an evaluation of the impact and effectiveness all support provided during that period pursuant to section 8, including an assessment of how and the extent to which the support has achieved its purposes, and contributed to achieving the SLM objectives.
121. Subsection (2) requires the Impact Report to set out all the purposes for which support has been given under section 8, during the reporting period.
122. Subsection (3) provides that the Impact Report must include an assessment of the impact and effectiveness of support given during the reporting period, including an assessment of: (a) the way in which, and the extent to which, the support has achieved the purposes for which the support was given; and (b) the way in which, and the extent to which, the provision of the support has contributed to achieving the SLM objectives. Setting out the purposes in the way required under subsection (2) aims to highlight the link between support provided and the intended outcome of such support and is aimed at ensuring that the impact and effectiveness of support provided can clearly be measured against the purposes.
123. Subsection (4) provides that the Welsh Ministers may assess and report on any other matters they consider relevant for assessing the impact and effectiveness of support provided during the reporting period. For example, this could include information on whether any actions taken under a support scheme are still suitable, whether they have been achieved; are still in progress; or not actioned, together with any corrective action to remedy the issue. This information may even capture whether the administration of any scheme is fit for purpose.
124. Subsection (5) requires the Welsh Ministers to publish and lay the Impact Report before Senedd Cymru no later than 12 months after the end of each reporting period.
125. Subsection (6) defines the “reporting period” as being, for the first Impact Report, the period from when section 8 comes into force up until 31 December 2029. For subsequent Impact Reports the ‘reporting period’ will be successive periods of five years.
126. Subsection (7) provides the Welsh Ministers with a regulation making power, to amend the reporting period. This may be exercised, for example, in order to align the reporting period with the contract length of schemes under Section 8.

Section 15 - Steps to be taken in preparing report under section 13

127. **Section 15** requires the Welsh Ministers to have regard to certain matters during the preparation of an Impact Report. These include the purposes listed in section 8(2), each annual report that has been published in respect of the period covered by the Impact Report and the most recent Impact Report. The Welsh Ministers are also required to have regard to any other matters which they consider appropriate, reflecting the need for flexibility for each Impact Report to be tailored to any particular circumstances that may be relevant.
128. The intention behind this is to promote a complete and robust evaluation of the impact of support provided under the power to provide support.

Chapter 2 - Powers to modify legislation relating to financial and other support

129. **Chapter 2** confers powers on the Welsh Ministers, in relation to existing legislation, that replace certain time limited powers in the 2020 Act.

Section 16 - Power to modify legislation governing the basic payment scheme

130. **Section 16** provides the Welsh Ministers with the power by regulations to modify legislation governing the basic payment scheme so far as it has effect in relation to Wales. This power is intended to permit the Welsh Ministers to make changes to legislation governing the basic payment scheme, for example in connection with the transition away from payments made under the basic payment scheme and the closing down of the basic payment scheme. The legislation that the Welsh Ministers have the power to modify under this section is listed in subsection (2).

Section 17 - Power to modify legislation relating to the common agricultural policy

131. **Section 17** provides the Welsh Ministers with the power by regulations to modify legislation relating to the financing, management and monitoring of the common agricultural policy so far as it has effect in relation to Wales.
132. This power is intended to enable the Welsh Ministers to make modifications to legislation relating to the financing, management and monitoring of the common agricultural policy, in order to ensure a managed transition. The intention is that this power will be used to provide for the continued operation of existing farming support for a certain period, whilst any new scheme established under section 8 is introduced. This is intended to secure the effective operation of the agricultural sector. The legislation that the Welsh Ministers have the power to modify under this section is listed in subsection (2).

Section 18 - Power to modify legislation relating to support for apiculture

133. The EU's Apiculture Programme supports beekeeping through the national apiculture programmes, which aim to improve general conditions for the production and marketing of honey and other apiculture products. It covers technical assistance to beekeepers, combatting disease and pests, transhumance, laboratory and market support for apiculture products, restocking, applied research programmes, market monitoring and enhancement of product quality.
134. **Section 18** provides the Welsh Ministers with the power by regulations to modify legislation relating to apiculture so far as it has effect in relation to Wales. The legislation that the Welsh Ministers have the power to modify under this section is listed in subsection (2).

Section 19 - Power to modify legislation relating to support for rural development

135. **Section 19** provides the Welsh Ministers with the power by regulations to modify legislation relating to support for rural development in so far as it has effect in relation to Wales. The legislation that the Welsh Ministers have the power to modify under this section is listed in subsection (2).

Section 20 - Relationship with other powers to modify legislation

136. This section specifies that any other power under an enactment to modify provisions of legislation governing the basic payment scheme, or relating to the common agricultural policy, apiculture or rural development, is unaffected by the powers conferred in this Chapter.

Chapter 3 - Intervention in agricultural markets

Section 21 - Declaration relating to exceptional market conditions

137. **Section 21** makes provision for circumstances in which the Welsh Ministers may make an "exceptional market conditions" declaration, so as to enable financial support to be given as described in section 21.

138. Subsection (2) sets out a two-part test to determine whether exceptional market conditions exist. Subsection (3) sets out what must be included in an exceptional market conditions declaration.
139. Subsection (5) states that an exceptional market conditions declaration has effect until a date specified in the declaration under subsection (3): the effect of subsection (4) is that this date must be within the period of three months beginning with the day on which the declaration is published.
140. Subsection (6) allows the Welsh Ministers to revoke a declaration made under subsection (1) by making and publishing a further declaration to that effect.
141. Subsections (7) and (8) allow the Welsh Ministers to extend an exceptional market conditions declaration for a period of no more than three months, if within the period of seven days ending with the date originally specified in the declaration under subsection (3), that there continue to be exceptional market conditions.
142. Subsection (9) states that the expiration or revocation of a declaration made under subsection (1) in respect of exceptional market conditions does not prevent the Welsh Ministers from making and publishing another declaration relating to the same exceptional market conditions.
143. Subsection (10) states that a copy of any declaration made and published under the section must be laid before Senedd Cymru as soon as practicable. Subsection (11) sets out that publication of a declaration is to be done electronically.

Section 22 - Exceptional market conditions: powers available to Welsh Ministers

144. This section specifies the powers that are available while a declaration of exceptional market conditions has effect.
145. Subsection (2) provides that the Welsh Ministers may give, or agree to give, financial support to agricultural producers in Wales whose incomes have been, are being, or are likely to be, adversely affected by the exceptional market conditions described in the declaration.
146. The effect of subsection (3) is that the existence of the power under section 22 does not prevent the Welsh Ministers from using any other available powers to provide financial support to agricultural producers, including (but not limited to) powers under retained direct EU legislation. (The effect is that the availability of the section 22 power does not restrict any powers that may also be available to the Welsh Ministers under, for instance, section 8.)
147. Subsection (4) allows financial support to be provided in any form and subsection (5) gives the Welsh Ministers the power to provide it subject to conditions.
148. Subsection (6) states that those conditions may include provision for financial support under section 22 to be repaid. Subsection (7) clarifies that the Welsh Ministers may still provide financial support after a declaration of exceptional markets has ceased to have effect, provided that an application for it was made while the declaration had effect.

Section 23 - Power to modify retained direct EU legislation relating to public market intervention and private storage aid

149. **Section 23** confers on the Welsh Ministers powers to modify retained direct EU legislation relating to public market intervention or aid for private storage, so far as it has effect in relation to Wales.
150. Subsection (2) specifies that the power under this section includes power to change the products eligible for public market intervention or aid for private storage. This could be because of market conditions for a certain product changing, so that there is no longer demand for its storage.

151. The legislation that the Welsh Ministers have the power to modify under this section is listed in subsection (3).
152. Subsection (4) makes provision that relates to the CMO Regulation (defined in section 54). The CMO Regulation relates to markets in agricultural products.
153. Part 2 of Schedule 7 to the 2020 Act disapplies certain provisions of the CMO Regulation, in relation to Wales, for the duration of existing time limited provision about exceptional market conditions in Schedule 5 to the 2020 Act. Since the Act is replacing the time limited provision in Schedule 5, Schedule 3 to the Act amends the CMO Regulation in consequence (in that the amendment made to it by Schedule 7 to the 2020 Act will cease to be appropriate). But since the amendment made by Schedule 7 to the 2020 Act to the CMO Regulation is not yet in force, Schedule 3 provides (in Part 1) alternative consequential amendments to the CMO Regulation.
154. In section 23, subsection (4) states that until either of the consequential amendments in Part 1 of Schedule 3 is in force, references in section 23 to exceptional market conditions include references to circumstances that are the subject of measures under any of Articles 219, 220, 221 and 222 of the CMO Regulation. This is a transitory provision which will no longer have any effect once either paragraph 1 or paragraph 2 of Schedule 3 has been commenced. The effect is to permit flexibility as to the commencement of section 23 and Part 1 of Schedule 3.

Chapter 4 - Agricultural tenancies

Section 24 - Agricultural Holdings: dispute resolution relating to financial support

155. The Agricultural Holdings Act 1986 (at section 19A) confers power on the Welsh Ministers to make regulations that provide for the tenant of an agricultural holding to be able to refer a dispute with the tenant's landlord to arbitration, where the dispute revolves around a certain type of request made by the tenant, which has been refused by the landlord. The section describes the types of request concerned: this includes a request made for the purpose of enabling the tenant to apply for "relevant financial assistance"
156. **Section 24** amends the definition of "relevant financial assistance" in section 19A of the Agricultural Holdings Act 1986 to encompass financial assistance under section 8, financial assistance under a third party scheme as defined in section 9 (6), financial assistance under the Basic Payment Scheme (BPS), financial assistance under legislation relating to the common agricultural policy, financial assistance under legislation relating to support for apiculture, financial assistance under legislation relating to support for rural development, and financial assistance under section 22. It also makes some consequential amendments.
157. **Section 24** also inserts new sections 8A and 36A into the Agricultural Tenancies Act 1995. Section 8A provides for the tenant of a farm business tenancy to refer a dispute to arbitration where the landlord has refused a request for the variation of the tenancy, or a request for consent, that was made for specified purposes. These purposes are: the purpose of requesting or applying for specified types of support (including support provided under section 8); and the purpose of complying with a statutory duty. Section 8A also provides the Welsh Ministers with a regulation-making power to make provision in connection with such arbitration. Section 24 also makes a consequential amendment to section 28(5) of the 1995 Act, and inserts a new section 36A setting out the procedure applicable to regulations under the new section 8A.
158. These amendments are intended to address the possibility that a landlord's consent, or a variation of the tenancy itself, could be required for the tenant of an agricultural holding in order to access financial assistance under the legislation referred to under section 19A of the 1986 Act, as amended by section 24; or for the tenant under a farm

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business tenancy to access support under legislation referred to in the new section 8A of the 1995 Act, or for the purposes of complying with a statutory duty.

159. The provisions will come into force on a day appointed by the Welsh Ministers in an order made by Statutory Instrument.