
DRAFT STATUTORY INSTRUMENTS

2019 No.

The Agriculture (Legislative
Functions) (EU Exit) Regulations 2019

PART 2

Financing, Management and Monitoring Amendments

Amendment of Regulation (EU) No 1306/2013

2. Regulation (EU) No 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy is amended in accordance with regulations 3 to 27.

3. In Article 2(1), after point (o)(1) insert—

“(p) ‘appropriate authority’ means:

- (i) the relevant authority for the constituent nation in which the regulations apply, or
- (ii) the Secretary of State:

- (aa) in relation to regulations applying in Wales and made under Article 8, 20, 79(2), 84(6), 88 or 106(5) or (6) of this Regulation, if consent is given by the Welsh Ministers;

- (bb) in relation to regulations applying in Scotland, if consent is given by the Scottish Ministers;

- (cc) in relation to regulations applying in Northern Ireland, if consent is given by the Department of Agriculture, Environment and Rural Affairs.”.

4. In Article 8—

(a) in paragraph 1—

- (i) for the words from “Commission” to “Article 111” substitute “appropriate authority may make regulations”;

- (ii) omit point (a);

(b) omit paragraph 2.

5. In Article 15—

(a) for the words from “Commission” to “acts” substitute “appropriate authority may make regulations”;

(b) omit the second paragraph.

6. In Article 20, for paragraphs 2 to 4 substitute—

(1) Article 2 of Regulation (EU) No. 1306/2013 is amended to include new paragraphs and definitions of “relevant authority and constituent nation” by The Common Agricultural Policy (Financing, Management and Monitoring) (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/XXXX).

“2. The appropriate authority may make regulations in relation to public intervention expenditure concerning:

- (a) the types of measures eligible for financing and the reimbursement conditions;
- (b) the eligibility conditions and calculation methods based on the information actually observed by the paying agencies or based on flat-rates prescribed in regulations by the appropriate authority, or based on flat-rate or non-flat-rate amounts provided for by the sectoral agricultural legislation.

3. The appropriate authority may make regulations laying down the rules on the valuation of operations in connection with public intervention, the measures to be taken in the case of loss or deterioration of products under the public intervention, and on the determination of the amounts to be financed.”.

7. For Article 26 substitute—

“Article 26

Financial Discipline in England

1. The Secretary of State may make regulations fixing an adjustment rate to be applied to direct payments in England where expenditure in England on CMO support and Direct Payment support is forecast to exceed the threshold.

2. For the purposes of this Article, the threshold is:

- (a) for the financial year ending 31 March 2020, €2,093,000,000;
- (b) for the financial year ending 31 March 2021, €2,095,000,000.

3. For the purposes of this Article, a payment is a direct payment in England if the competent authority required to determine the application for the payment in accordance with regulation 3 of the Common Agricultural Policy (Control and Enforcement, Cross-compliance, Scrutiny of Transactions and Appeals) Regulations 2014⁽²⁾ is the competent authority for England.

4. In the case of a holding situated in more than one constituent nation, the adjustment rate must not be applied to any of the payment which relates to entitlements in Wales, Scotland or Northern Ireland.

5. Subject to paragraph 6, regulations under paragraph 1 may be laid no later than 30 September of the scheme year in respect of which the adjustment rate applies.

6. Where the Secretary of State has made regulations under paragraph 1, the Secretary of State may exercise the power to amend the adjustment rate if there is a change in the forecast expenditure, provided that such regulations are laid no later than 1 December of the scheme year in respect of which the adjustment rate applies.

7. The adjustment rate must be no higher than the rate required to offset the amount by which the forecast expenditure exceeds the threshold.

8. Paragraph 9 applies where:

- (a) direct payments are subject to an adjustment rate under this Article, and
- (b) actual expenditure in the financial year in which the adjustment is applied is lower than the threshold.

(2) [S.I. 2014/3263](#). Regulation 3 was amended by [S.I. 2015/1325](#).

9. Where this paragraph applies, an amount equal to the difference between actual expenditure and the threshold must be distributed to eligible farmers in accordance with paragraph 11.

10. For the purposes of paragraph 9, a person is an eligible farmer:

- (a) if the person:
 - (i) receives a direct payment in England in respect of scheme year N+1, being the scheme year following the scheme year in which the adjustment rate was applied, and
 - (ii) would be subject to an adjustment rate in respect of that direct payment if one were applied, or
- (b) if:
 - (i) the person received a direct payment in England which was reduced as a result of the adjustment rate; and
 - (ii) there are no direct payments in England made in the following scheme year.

11. The amount to be distributed to each eligible farmer must be in direct proportion to the value of:

- (a) in the case of a person who is an eligible farmer by virtue of paragraph 10(a), the direct payment made to that person in respect of scheme year N+1 insofar as it exceeds €2000;
- (b) in the case of a person who is an eligible farmer by virtue of paragraph 10(b), the direct payment which was adjusted insofar as it exceeds €2000.

12. In calculating the value of the direct payment for the purposes of paragraph 11, no account is to be taken of:

- (a) any part of the payment which relates to entitlements in Wales, Scotland or Northern Ireland;
- (b) any financial adjustment applied by virtue of this Article;
- (c) any penalties applied to the payment by virtue of Title VI;
- (d) any reductions applied under Article 7 and Article 11 of [Regulation \(EU\) 1307/2013](#).

13. For the purposes of this Article, expenditure in England comprises:

- (a) in relation to Direct Payment support:
 - (i) for the purposes of forecasting expenditure, the amount expected to be paid in respect of direct payments in England in the financial year in question, disregarding any adjustment to be applied for the scheme year under this Article;
 - (ii) for the purposes of calculating actual expenditure, the amount paid (or approved for payment) in respect of direct payments in England in the financial year in question;
- (b) in relation to CMO support, a proportion of any CMO support paid (or approved for payment) in the financial year in question, such proportion to reflect the amount of that support which is attributable to England, as calculated in accordance with guidance issued by the Secretary of State.”.

8. For Article 28 substitute—

“Article 28

Forecasts of expenditure in England for the purpose of financial discipline

1. For the purposes of Article 26, the Secretary of State must determine monthly expenditure profiles for England at the start of the financial year. Those profiles may be based, where appropriate, on average monthly expenditure during the previous three years and must be updated as necessary throughout the financial year to take account of any changes in circumstances or any new information.
2. The Secretary of State must publish a report every 3 months setting out, in relation to England, expenditure in relation to the profiles and an assessment of the forecasted expenditure for the financial year.”
9. In Article 46, for paragraphs 5 and 6 substitute—
 - “5. The appropriate authority may make regulations laying down specific conditions applying to the information to be booked in the accounts kept by paying agencies.
 6. The appropriate authority may make regulations to make provision for the financing of intervention measures in the form of public storage, and other expenditure financed by agricultural support.”
10. For Article 50(2) substitute—
 - “2. The appropriate authority may make regulations laying down rules on the conditions on which the supporting documents referred to in Article 49 are to be kept, including their form and the time period of their storage.”
11. For Article 57 substitute—

“Article 57

Power to make regulations

In order to ensure correct and efficient application of the provisions relating to the conditions for the recovery of undue payments and interest thereon, the appropriate authority may make regulations setting out procedures for such recovery as set out in this Section.”

12. In Article 62(2)—
 - (a) for “Commission shall adopt implementing acts” substitute “appropriate authority may make regulations”;
 - (b) in point (a)—
 - (i) for “Member States” substitute “relevant authority”;
 - (ii) omit the words from “resulting” to the end;
 - (c) omit point (f);
 - (d) omit the second subparagraph.
13. In Article 63—
 - (a) in paragraph 4, for the words from “Commission” to “Article 115” substitute “appropriate authority may make regulations”;
 - (b) in paragraph 5—
 - (i) for “The Commission shall adopt implementing acts” substitute “The appropriate authority may make regulations”;
 - (ii) omit the second subparagraph.

- 14.** In Article 64—
- (a) in paragraph 6—
 - (i) for the words from “Commission” to “Article 115” substitute “appropriate authority may make regulations”;
 - (ii) in point (a), omit “by Member States”;
 - (b) in paragraph 7—
 - (i) for “The Commission shall adopt implementing acts” substitute “The appropriate authority may make regulations”;
 - (ii) omit point (c);
 - (iii) omit the second subparagraph.
- 15.** In Article 72(5), for the words from “Commission” to “Article 115” substitute “appropriate authority may make regulations”.
- 16.** In Article 75(3)—
- (a) for “Commission shall adopt implementing acts” substitute “appropriate authority may make regulations”;
 - (b) for “implementing acts”, in the second place it occurs, substitute “regulations”;
 - (c) omit the last sentence.
- 17.** In Article 76—
- (a) in paragraph 1—
 - (i) for “protects the financial interests of the Union” substitute “ensures proper management of public money”;
 - (ii) for the words from “Commission” to “Article 115” substitute “appropriate authority may make regulations”;
 - (iii) in point (b), omit “by the Member States”;
 - (b) in paragraph 2—
 - (i) for the words from “Commission” to “Article 115” substitute “appropriate authority may make regulations”;
 - (ii) in point (c), for the words from “such” to “eligible area” substitute “such rules may allow, in relation to areas under permanent grassland, for scattered landscape features and trees, the total area of which does not exceed a specified percentage of the reference parcel, to be part of the eligible area automatically”.
- 18.** In Article 77—
- (a) in paragraph 7—
 - (i) for the words from “Commission” to “Article 115” substitute “appropriate authority may make regulations”;
 - (ii) omit “by Member States”;
 - (b) in paragraph 8—
 - (i) for “The Commission shall adopt implementing acts” substitute “The appropriate authority may make regulations”;
 - (ii) omit the second subparagraph.
- 19.** In Article 78—

- (a) for “The Commission shall adopt implementing acts” substitute “The appropriate authority may make regulations”;
 - (b) in point (b), for the words from “Member” to the end substitute “for the application of simplified procedures or correction of obvious errors”;
 - (c) omit the last sentence.
- 20.** In Article 79(2), for the words from “Commission” to “Article 115” substitute “appropriate authority may make regulations”.
- 21.** In Article 84(6)—
- (a) in the first sentence—
 - (i) for “Member States in their” substitute “relevant authority in its”;
 - (ii) for “Commission” substitute “relevant accounting officer”;
 - (b) for the last sentence substitute “In order to take account of economic developments, the appropriate authority may make regulations modifying the threshold. Such regulations may specify the threshold in Sterling.”.
- 22.** For Article 88 substitute—

“Article 88

Power to make regulations

The appropriate authority may make regulations laying down rules for the uniform application of this Chapter and in particular relating to:

- (a) the performance of the scrutiny referred to in Article 80 as regards the selection of undertakings, rate and the calendar for the scrutiny;
 - (b) the conservation of commercial documents and the types of documents to maintain or data to record;
 - (c) the responsibilities of the special department referred to in Article 85;
 - (d) the content of reports referred to in Article 86.”.
- 23.** In Article 96(4)—
- (a) for “The Commission shall adopt implementing acts” substitute “The appropriate authority may make regulations”;
 - (b) omit the second subparagraph.
- 24.** In Article 101—
- (a) in the heading, omit “Commission”;
 - (b) in paragraph 1—
 - (i) for the words from “Commission” to “Article 115” substitute “appropriate authority may make regulations”;
 - (ii) omit point (a);
 - (c) in paragraph 2—
 - (i) for “Commission shall adopt implementing acts” substitute “appropriate authority may make regulations”;
 - (ii) omit the second subparagraph.
- 25.** In Article 106—

- (a) in paragraph 5, for the words from “Commission” to “Article 115” substitute “appropriate authority may make regulations”;
 - (b) in paragraph 6—
 - (i) omit the words from “by”, in the first place it occurs, to “euro”, in the first place it occurs;
 - (ii) for the words from “Commission” to “Article 115” substitute “appropriate authority may make regulations”.
26. In Article 114—
- (a) for “Commission shall adopt implementing acts” substitute “appropriate authority may make regulations”;
 - (b) omit point (c);
 - (c) omit the second subparagraph.
27. For Article 115 substitute—

“Article 115

Regulations: general

1. Regulations made by the Secretary of State or the Welsh Ministers under this Regulation are to be made by statutory instrument.
2. For regulations made under this Regulation by the Scottish Ministers, see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010⁽³⁾.
3. Any power of the Department of Agriculture, Environment and Rural Affairs to make regulations under this Regulation is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979⁽⁴⁾.
4. Regulations under this Regulation may:
 - (a) contain consequential, incidental, supplementary, transitional or saving provision (including provision amending, repealing or revoking enactments);
 - (b) make different provision for different purposes.

Article 115A

Regulations: the Secretary of State

1. Except as specified in paragraphs 2 to 6, a statutory instrument containing regulations made by the Secretary of State under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.
2. A statutory instrument containing regulations made by the Secretary of State under Article 26(1) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
3. A statutory instrument containing regulations made by the Secretary of State under Article 75(3) must be laid before Parliament after being made.
4. Regulations made by the Secretary of State under Article 75(3) cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is

⁽³⁾ 2010 asp. 10.

⁽⁴⁾ S.I. 1979/1573 (N.I. 12).

made unless, during that period, the instrument is approved by resolution of each House of Parliament.

5. In calculating the period of 28 days for the purposes of paragraph 4, no account is to be taken of any time during which:

- (a) Parliament is dissolved or prorogued, or
- (b) either House of Parliament is adjourned for more than 4 days.

6. If regulations cease to have effect as a result of paragraph 4, that does not affect the validity of anything previously done under those regulations or prevent the making of new regulations.

7. Before making any regulations under this Regulation, other than regulations under Article 75(3), the Secretary of State must consult:

- (a) such bodies or persons as appear to the Secretary of State to be representative of the interests likely to be substantially affected by the regulation, and
- (b) such other bodies or persons as the Secretary of State may consider appropriate.

Article 115B

Regulations: the Welsh Ministers

1. Except as specified in paragraphs 2 to 5, a statutory instrument containing regulations made by the Welsh Ministers under this Regulation is subject to annulment in pursuance of a resolution of National Assembly for Wales.

2. A statutory instrument containing regulations made by the Welsh Ministers under Article 75(3) must be laid before the National Assembly for Wales after being made.

3. Regulations made by the Welsh Ministers under Article 75(3) cease to have effect at the end of the period of 28 days beginning with the day on which the instrument containing them is made unless, during that period, the instrument is approved by a resolution of the National Assembly for Wales.

4. In calculating the period of 28 days for the purposes of paragraph 3, no account is to be taken of any time during which the National Assembly for Wales:

- (a) is dissolved, or
- (b) in recess for more than 4 days.

5. If regulations cease to have effect as a result of paragraph 3, that does not affect the validity of anything previously done under those regulations or prevent the making of new regulations.

6. Before making any regulations under this Regulation, other than regulations under Article 75(3), the Welsh Ministers must consult:

- (a) such bodies or persons as appear to the Welsh Ministers to be representative of the interests likely to be substantially affected by the regulations, and
- (b) such other bodies or persons as the Welsh Ministers may consider appropriate.

Article 115C

Regulations: the Scottish Ministers

1. Except as specified in paragraphs 2 to 5, regulations made by the Scottish Ministers under this Regulation are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).
2. Regulations made by the Scottish Ministers under Article 75(3) must be laid before the Scottish Parliament after being made.
3. Regulations made by the Scottish Ministers under Article 75(3) cease to have effect at the end of the period of 28 days beginning with the day on which they are made unless, during that period, the regulations are approved by resolution of the Scottish Parliament.
4. In calculating the period of 28 days for the purposes of paragraph 3, no account is to be taken of any time during which the Scottish Parliament is:
 - (a) dissolved, or
 - (b) in recess for more than 4 days.
5. If regulations cease to have effect as a result of paragraph 3, that does not affect the validity of anything previously done under those regulations or prevent the making of new regulations.
6. Before making any regulations under this Regulation, other than regulations under Article 75(3), the Scottish Ministers must consult:
 - (a) such bodies or persons as appear to the Scottish Ministers to be representative of the interests likely to be substantially affected by the regulations, and
 - (b) such other bodies or persons as the Scottish Ministers may consider appropriate.

Article 115D

Regulations: Northern Ireland

1. Except as specified in paragraphs 2 to 5, regulations made by the Department of Agriculture, Environment and Rural Affairs (“the Department”) under this Regulation are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954⁽⁵⁾ as if they were a statutory instrument within the meaning of that Act.
2. Regulations made by the Department under Article 75(3) must be laid before the Northern Ireland Assembly after being made.
3. Regulations made by the Department under Article 75(3) cease to have effect at the end of the period of 28 days beginning with the day on which they are made unless, during that period, the instrument is approved by a resolution of the Northern Ireland Assembly.
4. In calculating the period of 28 days for the purpose of paragraph 3, no account is to be taken of any time during which the Northern Ireland Assembly is:
 - (a) dissolved,
 - (b) in recess for more than 4 days, or
 - (c) adjourned for more than 6 days.

(5) 1954 c. 33 (N.I.). Section 41(6) was amended by S.I. 1999/663.

5. If regulations cease to have effect as a result of paragraph 3, that does not affect the validity of anything previously done under those regulations or prevent the making of new regulations.

6. Before making any regulations under this Regulation, other than regulations under Article 75(3), the Department must consult:

- (a) such bodies or persons as appear to the Department to be representative of the interests likely to be substantially affected by the regulations; and
- (b) such other bodies or persons as the Department may consider appropriate.”.

Amendment of Regulation 906/2014

28. Commission Delegated Regulation (EU) No. 906/2014 supplementing Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to public intervention expenditure is amended in accordance with regulation 29.

29. In Article 4(2), for the third subparagraph substitute—

“The appropriate authority may make regulations setting the value of products which have deteriorated or been destroyed, either due to natural disasters or to too long a period of storage as referred to in point 2 of Annex VII to this Regulation.

Regulations made by the Secretary of State or the Welsh Ministers under this paragraph are to be made by statutory instrument.

For regulations made under this paragraph by the Scottish Ministers, see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010.

Any power of the Department of Agriculture, Environment and Rural Affairs to make regulations under this paragraph is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.

A statutory instrument containing regulations made by the Secretary of State under this paragraph is subject to annulment in pursuance of a resolution of either House of Parliament.

A statutory instrument containing regulations made by the Welsh Ministers under this paragraph is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

Regulations made by the Scottish Ministers under this paragraph are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).

Regulations made by the Department of Agriculture, Environment and Rural Affairs under this paragraph are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954⁽⁶⁾ as if they were a statutory instrument within the meaning of that Act.

Regulations under this paragraph may:

- (a) contain consequential, incidental, supplementary, transitional or saving provision (including provision amending, repealing or revoking enactments);
- (b) make different provision for different purposes.

Before making any regulations under this Regulation, the appropriate authority must consult:

- (a) such bodies or persons as appear to the authority to be representative of the interests likely to be substantially affected by the regulations, and
- (b) such other bodies or persons as the authority may consider appropriate.”.

(6) 1954 c. 33 (NI). Section 41(6) was amended by S.I. 1999/663.

