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WELSH STATUTORY INSTRUMENTS

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**2001 No. 496 (W. 23)**

**AGRICULTURE, WALES**

**The Tir Mynydd (Wales) Regulations 2001**

*Made* - - - - - *15th February 2001*

*Coming into force* - - - - - *1st March 2001*

The National Assembly for Wales (“the National Assembly”), having been designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> as regards the common agricultural policy of the European Community, hereby makes the following regulations:

**PART I—  
GENERAL**

**Name commencement and application**

1.—(1) These Regulations are called the Tir Mynydd (Wales) Regulations 2001 and come into force on 1st March 2001.

(2) These Regulations apply in relation to Wales.

**Definitions**

2.—(1) In these Regulations unless the context otherwise requires—

“agriculture” (“*amaethyddiaeth*”) includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the use of land for other agricultural purposes, and “agricultural” (“*amaethyddol*”) shall be construed accordingly;

“area aid application” (“*cais am gymorth arwynebedd*”) has the same meaning as in article 6 of Council Regulation 3508/1992<sup>(3)</sup>;

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(1) By virtue of the European Communities (Designation) (No.3) Order (S.I 1999/2788) (“the Order”). The National Assembly’s power to make, as a body designated in relation to the common agricultural policy of the European Community regulations which extend to holdings which include land situated within the United Kingdom but outside of Wales is confirmed by paragraph 2(b) of Schedule 2 to the Order.

(2) 1972 c. 68.

(3) O.J. No. L355, 05.12.92, p1.

“authorised person” (“*person awdurdodedig*”) means a person who is authorised by the National Assembly, either generally or specifically, to act in matters arising under these Regulations, whether or not an officer of the National Assembly;

“breeding cow” (“*buwch fridio*”) shall mean a suckler cow or a dairy cow;

“claimant” (“*ceisydd*”) means a person who makes a claim for a compensatory allowance called a Tir Mynydd payment and “claim” (“*cais*”) shall be construed accordingly;

“Commission Regulation 1750/1999” (“*Rheoliad y Comisiwn 1750/1999*”) means Commission Regulation (EC) No. 1750/1999<sup>(4)</sup> which laid down detailed rules for the application of Council Regulation (EC) No. 1257/1999<sup>(5)</sup> on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF);

“Council Regulation 1257/1999” (“*Rheoliad y Cyngor 1257/1999*”) means Council Regulation (EC) No. 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and which also amended certain Regulations and repealed others

“Council Regulation 3508/92” (“*Rheoliad y Cyngor 3508/92*”) means Council Regulation (EEC) 3508/92 establishing an integrated administration and control system for community aid schemes;

“designated maps” (“*mapiau dynodedig*”) means the two volumes of maps numbered 1 and 2, each volume being marked “Volume of Maps of less favoured farming areas in Wales” and with the number of the volume, dated 20th May 1991, signed by the Secretary of State for Wales, and deposited at the offices of the National Assembly for Wales Agriculture Department at Cathays Park, Cardiff CF10 3NQ;

“disadvantaged land” (“*tir tan anfantais*”) (except in the expression “severely disadvantaged land”) means land shown coloured blue on the designated maps;

“eligible land” (“*tir cymwys*”) means disadvantaged land or severely disadvantaged land that complies with the requirements of these Regulations;

“ewe” (“*mamog*”) means a female sheep which is at least one year old or has given birth by 15th May in the year in which a claim for a Tir Mynydd payment is made;

“forage land” (“*tir porthiant*”) means land used to graze or feed livestock which was included as such in a valid area aid application submitted for the relevant year;

“heifer” (“*heffer*”) has the same meaning as in Article 3 of Council Regulation (EC) 1254/1999<sup>(6)</sup>;

“holding” (“*daliad*”) means all the production units managed by the claimant situated within the United Kingdom;

“IACS” means the Integrated Administration and Control System established by Council Regulation 3508/92;

“less favoured area” (“*tir llai ffafriol*”) means land that is disadvantaged or severely disadvantaged;

“livestock unit” (“*uned da byw*”) is a unit of measurement of livestock numbers, and the following constitute a single livestock unit—

- (a) one suckler cow;
- (b) 1.67 heifers;

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<sup>(4)</sup> O.J. No. L214, 13.08.99, p.31.

<sup>(5)</sup> O.J. No. L160, 26.06.99, p.80.

<sup>(6)</sup> O.J. No. L160, 26.06.99, p.21.

(c) 6.67 female sheep eligible under the Sheep Annual Premium Scheme pursuant to the Sheep Annual Premium Regulations 1992(7)) as amended;

“overgrazing” (“*gorbori*”) means grazing land with livestock in such numbers as adversely to affect the growth, quality or species composition of vegetation (other than vegetation normally grazed to destruction) on that land to a significant degree, and “overgrazed” (“*wedi'i orbori*”) shall be construed accordingly;

“production unit” (“*uned gynhyrchu*”) means land farmed by a claimant as a single unit, having regard to supplies of machinery, livestock, feeding stuffs and workforce;

“retirement pension” (“*pensiwn ymddeol*”) means a category A or category B pension within the meaning of section 20(1)(f) of the Social Security Contributions and Benefits Act 1992(8), or a category C or category D pension within the meaning of section 63(f) of that Act or a graduated retirement benefit as referred to in section 62 of that Act;

“scheme year” (“*blwyddyn gynllun*”) means a calendar year;

“severely disadvantage land” (“*tir tan anfantais ddifrifol*”) means land shown coloured pink on the designated maps;

“stocking density” (“*dwysedd stocio*”) means the number of livestock units divided by the number of hectares;

“suckler cow” (“*buwch sugno*”) has the same meaning as in Article 3 of Council Regulation 1254/1999;

“woodland” (“*coetir*”) means land used primarily for the growing of trees.

(2) Any reference in these Regulations to a Community instrument is reference to that instrument as amended on the date on which these Regulations are made.

(3) Any reference in these Regulations to a numbered regulation or schedule (without a corresponding reference to a specific instrument) is a reference to the regulation or schedule so numbered in these Regulations.

## PART II— THE SCHEME

### Qualifying claimants

3.—(1) Claimants shall be eligible for payments under the Tir Mynydd scheme if they:

- (a) have submitted a valid area aid application that showed the existence of eligible land;
- (b) have undertaken to continue farming at least six hectares of eligible land for five years from the date of the first Tir Mynydd payment; and
- (c) have submitted a claim for livestock aid in relation to sheep or suckler cows or both during the year in which the Tir Mynydd claim is submitted; and
- (d) apply usual good farming practices compatible with the need to safeguard the environment and maintain the countryside, in particular by sustainable farming.

(2) The eligible area is the forage land within the less favoured area as declared in the IACS area aid application for the scheme year, subject to the following provisions relating to land grazed by dairy cows.

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(7) S.I.1992/2677.

(8) 1992 c. 4.

(3) If, on the date of the Tir Mynydd claim, the claimant has available an individual reference quantity of milk, the area of eligible land is reduced in accordance with the provisions of this regulation.

(4) The reduction is calculated by reference to the number of animals in the notional dairy herd.

(5) The number of livestock units in the notional dairy herd is calculated by dividing the individual reference quantity of milk available to the claimant by 5730, being the number of litres of milk deemed to be equivalent to the annual production of one dairy cow.

(6) Such livestock units are firstly applied to that part of the holding that is not eligible land at the rate of one hectare for each two livestock units so calculated.

(7) The remaining livestock units not so applied are used to calculate the reduction in eligible land at the same rate, taking the reduction from disadvantaged land before severely disadvantaged land.

(8) In this regulation “notional dairy herd” means the total number of animals deemed to constitute the dairy herd on land farmed by the claimant in Wales as calculated above and “individual reference quantity of milk” has the same meaning as in Article 31 of Commission Regulation 2342/1999(9)).

#### **Minimum stocking density**

4.—(1) To qualify for Tir Mynydd payments the holding must have a minimum stocking density of 0.1 livestock units per hectare.

(2) Where a lower stock limit is required by environmental or nature conservation schemes in which the claimant is a participant, the lower limit will be allowed.

#### **Maximum stocking density**

5.—(1) Subject to the provisions of paragraph (2) below, there will be no prescribed maximum stocking density.

(2) A holding with stocking density of 1.8 livestock units per hectare or over shall be the subject of an inspection by or on behalf of the National Assembly during 2001 (or in the year in which that density is first exceeded) and at least every three years thereafter.

(3) If an inspection under paragraph (2) above produces evidence of overgrazing to the satisfaction of the National Assembly, the claimant will be required to enter into a management agreement with the National Assembly with a view to eliminating such overgrazing. The agreement must set out the timescale for the claimant to adjust stocking rates to remove the risk of overgrazing.

(4) Any claimant whose holding has been inspected (and that inspection has led to evidence of overgrazing) but who has not concluded a management agreement with the National Assembly or who has not complied with the terms of such a management agreement shall cease to be eligible for Tir Mynydd payments until the management scheme has been concluded or complied with as the case may be.

#### **Calculation of area payments — element 1**

6.—(1) A claimant who satisfies the conditions set out in regulations 3, 4 and 5 above shall be eligible for payment under element 1 of the scheme in accordance with the calculation contained in Part A of the Schedule to these Regulations.

(2) The basic calculation made in accordance with part A of the Schedule shall, where the eligible forage land exceeds 140 hectares, be subjected to the tapering mechanism set out in Part B of the Schedule .

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(9) O.J. No. L281, 04.11.99, p.30.

(3) The calculation of element 1 of the area payment will also be subject to a safety net mechanism calculated in accordance with Part C of the Schedule.

### **Environmental enhancement under Element 2 of the Scheme**

7.—(1) Claimants shall be entitled to an enhancement of the payment due to them in respect of Element 1 of the Tir Mynydd scheme if they qualify under one or more of the categories set out in regulation 8 below.

(2) Subject to the provisions of paragraph (4) below, any claimant who satisfies one of the categories shall be entitled to an enhancement of 10 per cent of the payment calculated under element 1.

(3) Subject to the provisions of paragraph (4) below, any claimant who satisfies two or more of the categories will be entitled to an enhancement of 20 per cent of the payment calculated under element 1.

(4) The National Assembly may adjust the enhancements due to claimants pursuant to this regulation if the total enhancements calculated to be payable under this regulation exceed five per cent of the total budget for the Tir Mynydd scheme for 2001 and 2002 and ten per cent for subsequent years. In that case the percentage enhancement will be reduced to such percentage as limits the total enhancements to five per cent of the total Tir Mynydd budget for 2001 and 2002 and ten per cent for subsequent years.

### **Categories that qualify for the environmental enhancement**

8. The categories that qualify for the enhancement referred to in regulation 7 above are the following:

- (a) that the holding contains a ratio of at least one breeding cow for every 30 ewes in the less favoured area;
- (b) that the farm is registered with the United Kingdom Register of Organic Food Standards (a body notified to the European Commission as a designated inspection authority) in relation to land not already the subject of an agreement under either the organic aids scheme or the organic farming scheme;
- (c) that the farm has at least two per cent of the less favoured area land (but with a minimum of one hectare) under one or more of arable crops, root crops and field horticultural crops (excluding maize and grass ley) that is not land on which arable aid payments have been claimed;
- (d) that the stocking density is no more than 1.2 livestock units per hectare;
- (e) if the claimant is exercising grazing rights on a common registered under the Commons Registration Act 1965 (10) in the less favoured area, that the claimant, and all other graziers, at the same time remove all stock from that common land for a period of 3 months within the period September to February inclusive in any twelve month period;
- (f) that at least two per cent of the less favoured area of the holding (but with a minimum of one hectare) is deciduous woodland that is fenced and managed so that access for grazing may be permitted that does not otherwise attract common agricultural policy support under the Farm Woodland Premium Scheme;
- (g) that the farm is registered under an approved farm assurance scheme for beef or sheep or both that is accredited by the United Kingdom Accreditation Service.

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(10) 1965 c. 4.

## **PART III— ADMINISTRATION**

### **Payments**

**9.—(1)** The National Assembly will make the payments to claimants during the scheme year to which the claim relates.

(2) Payment will only be made to claimants who have entered into an undertaking in the form specified by the National Assembly to continue to use at least six hectares of less favoured area forage area land for a period of five years from the date of the first payment under the Tir Mynydd scheme.

(3) Farmers who claimed hill livestock compensatory allowance (HLCA) in the year 2000 and in previous consecutive years shall be considered to have complied with the undertaking if such earlier years taken with the years during which they have participated in the Tir Mynydd scheme equal or exceed the necessary total of five consecutive years;

(4) The National Assembly may decide to pay element one and element two of the Tir Mynydd payment separately.

### **Claims**

**10.—(1)** Claims for payment under the Tir Mynydd Scheme shall be in such form as the National Assembly may from time to time determine.

(2) The National Assembly may incorporate the claim for Tir Mynydd payment into the IACS area aid application.

(3) The closing date will be 15th May. Late claims will be dealt with in accordance with the provisions of regulation 11 below.

### **Late claims**

**11.—(1)** Subject to paragraphs (2) and (3) below, if the claimant presents a claim for a Tir Mynydd payment in respect of a particular year later than the date fixed by the National Assembly in accordance with regulation 10 above, the amount otherwise payable shall be reduced by one percent for every working day from the closing date to the date upon which the claim was received by the National Assembly.

(2) If the claim was presented more than 25 days (whether or not working days) later than the relevant closing date, no payment will be made to the claimant pursuant to that claim for a Tir Mynydd payment.

(3) Paragraphs (1) and (2) above shall not apply if and to the extent that a claim is lodged later than the relevant closing date by reason of force majeure.

(4) In this regulation—

(a) “working day” means a day which is not a Saturday, Sunday, a common law holiday in Wales and England, or a Bank Holiday in Wales under the Banking and Financial Dealings Act 1971<sup>(11)</sup>; and

(b) “force majeure” means abnormal and unforeseeable circumstances outside the control of the claimant the effect of which would not have been avoided by the exercise of all due care by the claimant.

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(11) 1971 c. 80

### **Release from undertakings**

12. A claimant is by virtue of this regulation released from the undertaking referred to in regulation 9(2) above:

- (a) when the claimant first receives a retirement pension (as defined in regulation 2(1) above);
- (b) if the claimant is unable to continue to discharge that undertaking by reason of any material circumstances beyond the control of the claimant; or
- (c) if the claimant ceases farming but at least six hectares of the eligible land last used by the claimant for the grazing of animals continued to be so used.

### **Withholding or recovery of payments**

13. The National Assembly may withhold or recover on demand the whole or any part of any Tir Mynydd payment made or to be made to a claimant in any of the following circumstances:—

- (a) if the claimant does not comply with the terms of an undertaking given under regulation 9(2) when the claimant has not been released pursuant to regulation 12;
- (b) if the National Assembly has informed the claimant that it is not satisfied with the accuracy of any statements made by the claimant in support of the claim;
- (c) if the claimant, or an employee, servant or agent of the claimant, intentionally obstructs an authorised person or a person accompanying an authorised person and acting under the instruction of that authorised person, from exercising any power conferred upon the authorised person by regulation 16, or without reasonable excuse does not comply with requirements made by that authorised person under that regulation or a request made by that authorised person pursuant to these regulations.

### **Rate of interest**

14. When the National Assembly recovers the whole or part of any payment made to a claimant, it may also recover interest thereon at the rate of one per cent above the sterling three months London interbank offered rate and that interest being calculated on a day to day basis for the period from payment to the claimant to recovery from the claimant, unless the sum recovered was paid to the claimant as a result of an error on the part of the National Assembly its servants or its agents.

### **Cross Border Holdings**

15. These Regulations do not apply to holdings that include land in one or more of England, Scotland and Northern Ireland as well as Wales.

## **PART IV— ENFORCEMENT**

### **Powers of authorised persons**

16.—(1) An authorised person may at all reasonable hours, and on producing, if so required, some duly authenticated document showing his or her authority, exercise the powers specified in this regulation for the purposes of—

- (a) carrying out any specified control measures;
- (b) ascertain whether an offence under regulation 18 has been or is being committed; or
- (c) ensuring that Tir Mynydd payments are paid in proper cases only.

(2) An authorised person may enter any land, other than land used only as a dwelling, which is, or which such person reasonably believes to be, occupied by a claimant or used by the claimant for grazing suckler cows or ewes for which a claim for Tir Mynydd payment has been made.

(3) An authorised person who has entered any land by virtue of this regulation may:—

- (a) inspect and verify the total area of that land, or any part of it;
- (b) inspect and count any animals on that land and read their ear tags or other identification marks;
- (c) carry out any other activity which is a specified control measure; and
- (d) inspect that land for the purposes of determining whether it has been over-grazed.

(4) An authorised person entering any land by virtue of this regulation may take with him or her such persons acting under the authorised person's instructions as are considered necessary.

(5) An authorised person may:—

- (a) require a claimant or any employee, servant or agent of a claimant to produce any document or other record in his or her possession or control and supply such additional information in that person's possession or control relating to a claim for a Tir Mynydd payment as the authorised person may reasonably request;
- (b) inspect any document or other record referred to in sub paragraph (a) and, where any such record is kept by means of a computer, have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been used in connection with that record;
- (c) make such copies of any document or other record referred to in sub-paragraph (a) as the authorised person thinks fit; and
- (d) seize and retain any document or other record referred to in sub-paragraph (a) which the authorised person has reason to believe may be required as evidence in proceedings under these regulations or in proceedings for the recovery of any payment made and, where any such record is kept by means of a computer, require it to be produced in a form that makes it possible for it to be taken away.

### **Assistance to authorised persons**

17. The claimant, any employee, servant or agent of a claimant, or any person in charge of animals on the land, shall give to an authorised person such assistance as the authorised person may reasonably request so as to enable the authorised person to exercise any power conferred by regulation 16 and in particular in relation to any animal shall arrange for the collection, penning and securing of such animal, if so requested.

### **Offences**

18. It shall be an offence for a person:—

- (a) intentionally to obstruct an authorised person in the exercise of a power conferred by regulation 16;
- (b) without reasonable excuse to fail to comply with the requirements made under regulation 16 or a request made under that regulation; or
- (c) knowingly or recklessly to make a statement or furnish any information which is false or misleading in a material particular where the statement is made or the information is furnished for the purposes of obtaining for himself or herself or any other person the whole or any part of any Tir Mynydd payment.



## **Penalties**

**19.**—(1) A person guilty of an offence under regulation 18(a) or 18(b) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) A person guilty of an offence under regulation 18(c) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## **Time Limit for prosecutions**

**20.**—(1) Proceedings for an offence under regulation 18 above may, subject to paragraph (2) below, be commenced within a period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant proceedings comes to the prosecutor's knowledge.

(2) No such proceedings shall be commenced by virtue of this regulation more than twelve months after the commission of the offence.

(3) For the purpose of this regulation a certificate signed by or on behalf of the prosecutor stating the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the knowledge of the prosecutor shall be conclusive evidence of that fact.

(4) A certificate stating that fact and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

## **Offences by bodies corporate**

**21.**—(1) Where a body corporate is guilty of an offence under regulation 18, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the body corporate he, as well as the body corporate, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) For the purposes of paragraph (1), "director", in relation to a body corporate whose affairs are managed by its members, means a member of that body corporate.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998 (12).

15th February 2001

*D. Elis Thomas*  
The Presiding Officer of the National Assembly

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

## SCHEDULE

Regulation 6

### **PART A**

1. The eligible land will be calculated in accordance with the provisions of regulation 3.
2. There are two rates of area payment:—
  - (a) £23.00 per hectare for disadvantaged land; and
  - (b) £35.00 per hectare for severely disadvantaged land.
3. The basic payment under element one of the Tir Mynydd Scheme will be calculated by multiplying the eligible land by the appropriate rate or rates for the areas of disadvantaged or severely disadvantaged land as the case may be.

### **PART B**

1. The first 140 hectares of eligible land shall be calculated at the full rates in accordance with Part A of this Schedule.
2. The payment for eligible land in excess of 140 hectares but up to and including 640 hectares in any holding is calculated by reducing the payment for that land by 35%.
3. When the eligible land in any holding exceeds 640 hectares, the payment for eligible land in excess of 640 hectares is calculated by reducing the payment for that land by 70%.

### **PART C**

1. There shall be a safety net mechanism for scheme years 2001, 2002 and 2003.
2. In the year 2001 the claimant will be entitled to an additional sum that when added to the Tir Mynydd payment would bring the total up to 90% of the sum paid to the claimant for HLCA in 2000.
3. In the year 2002 the claimant will be entitled to an additional sum that when added to the Tir Mynydd payment would bring the total up to 80% of the sum paid to the claimant for HLCA in 2000.
4. In the year 2003 the claimant will receive the Tir Mynydd payment together with 50% of the difference between that payment and the sum received for HLCA in 2000 where that sum is greater.
5. For 2004 and subsequent years there will be no safety net mechanism.
6. If there has been a change in land area or use since the HLCA 2000 claim the National Assembly may make proportionate adjustments to these calculations.

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## EXPLANATORY NOTE

*(This note does not form part of the Regulations)*

The review of the European Union's common agricultural policy known as Agenda 2000 has led to a change in the system of less favoured area agricultural support from one based on the number of animals to an area based system. The policies of the European Union are set out in Council Regulation (EC) No. 1257/1999 and the detailed framework for the implementation of that Council Regulation is contained in Commission Regulation (EC) No. 1750/1999.

The proposals of the National Assembly for Wales for the implementation of those European Union policies were contained in the Rural Development Plan for Wales that it presented to the European Commission and which was approved on 11th October 2000. These Regulations deal with the Scheme described in that Rural Development Plan as the Tir Mynydd Scheme, which provides financial support for farmers whose holding includes disadvantaged or severely disadvantaged land (the less favoured area).

Different schemes for less favoured area support have been adopted by Wales, England, Scotland and Northern Ireland. Holdings that include land in more than one part of the United Kingdom will therefore be the subject of further regulations.

These Regulations provide for the following:

### **Part I**— General

- Name, commencement and application (regulation 1)
- Definitions (regulation 2)

### **Part II** — The Scheme.

- Qualifying claimants (regulation 3)
- Minimum stocking density (regulation 4)
- Maximum stocking density (regulation 5)
- Calculation of area payments - element 1 (regulation 6 and Schedule 1)
- Environmental enhancement under element 2 of the scheme (regulation 7)
- Categories that qualify for enhancement (regulation 8)

### **Part III** — Administration

- Payments (regulation 9)
- Claims (regulation 10)
- Late claims (regulation 11)
- Release from undertaking (regulation 12)
- Withholding or recovery of payments (regulation 13)
- Rate of interest (regulation 14)
- Cross Border Holdings (regulation 15)

### **Part IV** — Enforcement

- Powers of authorised persons (regulation 16)
- Assistance to authorised persons (regulation 17)

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- Offences (regulation 18)
- Penalties (regulation 19)
- Time limit for prosecutions (regulation 20)
- Offences by bodies corporate (regulation 21)

The changes to the system of support were required by the European legislation referred to above. The detailed arrangements for doing so are contained in the National Assembly's Rural Development Plan. The final version of the Plan was prepared following consultation with interested parties and with the National Assembly's Agriculture and Rural Development Committee. No specific regulatory appraisal has therefore been carried out.