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WELSH STATUTORY INSTRUMENTS

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**2006 No. 3343 (W.304)**

**AGRICULTURE, WALES**

**The Rural Development Programmes (Wales) Regulations 2006**

*Made* - - - - - *13 December 2006*

*Coming into force* - - - - - *1 January 2007*

The National Assembly for Wales, being designated(1) for the purposes of section 2(2) of the European Communities Act 1972(2) in relation to the common agricultural policy of the European Community, in exercise of the powers conferred on it by that section, makes the following Regulations.

**Title, application and commencement**

1.—(1) The title of these Regulations is the Rural Development Programmes (Wales) Regulations 2006.

(2) These Regulations come into force on 1 January 2007 and apply in relation to Wales.

**Interpretation**

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

“approved operation” (“*gweithrediad a gymeradwywyd*”) means an operation which the National Assembly has approved in writing for the receipt of financial assistance, and “approve” (“*cymeradwyo*”) and “approval” (“*cymeradwyaeth*”) are to be construed accordingly;

“authorised person” (“*person awdurdodedig*”) means a person authorised by the National Assembly for the purposes of these Regulations, and includes any duly appointed official of the Commission who accompanies such an authorised person;

“beneficiary” (“*buddiolwr*”) means a person who has been granted financial assistance;

“the Commission” (“*y Comisiwn*”) means the Commission of the European Communities;

“Community assistance” (“*cymorth Cymunedol*”) means assistance from the European Agricultural Fund for Rural Development, granted pursuant to the Community legislation;

“the Community legislation” (“*y Ddeddfwriaeth Gymunedol*”) means the instruments listed in the Schedule;

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(1) S.I.2005/2766.

(2) 1972 c. 68.

“financial assistance” (“*cymorth ariannol*”) means an amount paid or payable under these Regulations;

“the National Assembly” (“*y Cynulliad Cenedlaethol*”) means the National Assembly for Wales;

“operation” (“*gweithrediad*”) has the meaning given to it in Council Regulation 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD).

### **Financial assistance**

3.—(1) The National Assembly may pay financial assistance to a beneficiary towards expenditure incurred in connection with an approved operation.

(2) Where the National Assembly makes payments of financial assistance, it may make such payments—

- (a) at such a time, or by such instalments at such intervals or times as it thinks fit, and
- (b) subject to such conditions relating to payment as it may determine.

### **Approval of operations**

4.—(1) An application for the approval of an operation must—

- (a) be made in such form and at such time, and
- (b) contain such information,

as the National Assembly may require.

(2) The National Assembly may, provided that it is satisfied that an operation to which the application relates is eligible for Community assistance, approve that operation for the receipt of financial assistance, and any such approval may be given subject to such conditions as the National Assembly may determine.

(3) The National Assembly may vary an approval by varying any condition to which it is subject, or imposing conditions.

(4) Before varying an approval under paragraph (2), the National Assembly must—

- (a) give the beneficiary notice in writing that it proposes to do so with a statement of reasons;
- (b) give the beneficiary an opportunity to make written representations within such time as the National Assembly considers reasonable; and
- (c) consider such representations.

### **Claims**

5. Any claim for payment of financial assistance is to be made at such time and be in such form and be accompanied by such information as the National Assembly may require.

### **Provision of information**

6.—(1) A beneficiary must supply to the National Assembly such information about an approved operation as the National Assembly may require.

(2) Where the National Assembly requires information under paragraph (1), the beneficiary must supply that information within such period as the National Assembly may determine.

### **Powers of an authorised person**

7.—(1) An authorised person may, at all reasonable times and on production, if so required, of his or her authority to do so, enter upon any land other than land which is used solely for the purpose of a dwelling—

- (a) to which an approved operation relates, or
- (b) on which he or she has reasonable grounds to believe that documents relating to an approved operation are retained,

for any of the purposes mentioned in paragraph (2).

(2) Those purposes are—

- (a) inspecting the land to which the approved operation relates;
- (b) verifying the accuracy of any information provided by a beneficiary relating to the operation;
- (c) ascertaining whether any financial assistance is payable or recoverable or the amount of such financial assistance that is payable or recoverable;
- (d) ascertaining whether an offence under these Regulations has been or is being committed; and
- (e) otherwise ascertaining whether Community assistance is being efficiently and correctly used.

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

- (a) inspect the land and any document, record or equipment thereon which that person reasonably believes relates to the operation;
- (b) require the beneficiary, or any employee, servant or agent of the beneficiary, to produce any document, record or supply any additional information in that person's possession or under his or her control relating to the operation;
- (c) where any document, record or information referred to in sub-paragraph (b) is kept by means of a computer, have access to and inspect any computer and any associated apparatus or material which is or has been used in connection with that document, record or information;
- (d) require that copies of, or extracts from any document, record or information relating to the operation be produced;
- (e) remove and retain for a reasonable period any document, record or information relating to the operation which the authorised person has reason to believe may be required as evidence in proceedings under these Regulations and, where any such document is kept by means of a computer, require it to be produced in a form in which it may be taken away and in which it is visible and legible.

(4) A beneficiary or any employee, servant or agent of a beneficiary must render all reasonable assistance to an authorised person in relation to the matters mentioned in this regulation.

(5) An authorised person entering any land by virtue of this regulation may take with him or her such other persons as he or she considers necessary and paragraphs (1), (2), (3) and (4) apply to such persons, when acting under the instructions of an authorised person, as if they were an authorised person.

(6) An authorised person is not liable in any proceedings for anything done in purported exercise of the powers conferred on the authorised person by virtue of this regulation if the court is satisfied that the act was done in good faith, that there were reasonable grounds for doing it and that it was done with reasonable skill and care.

(7) In this regulation, “the operation” means the approved operation in relation to which entry onto land has been sought pursuant to paragraph (1).

### **Record keeping**

**8.—**(1) Save as provided in paragraphs (2) and (3), a beneficiary must retain any invoice, account or other document relating to an approved operation until the end of six years after the last payment of financial assistance made to him or her pursuant to regulation 3 in relation to that operation.

(2) Paragraph (1) does not apply in relation to any document removed by any person lawfully authorised to remove it.

(3) Where, in the normal course of business, a beneficiary transfers the original of any document referred to in paragraph (1) to another person, the beneficiary must retain a copy of that document until the end of the period specified in paragraph (1).

### **Assembly’s powers of recovery etc.**

**9.—**(1) The National Assembly may exercise the powers specified in paragraph (2) where it is satisfied, as regards an approved operation, that—

- (a) any condition referred to in regulation 3 or 4 has not been complied with in whole or in part;
  - (b) the application so approved under regulation 4 (or any part of it) was not an application (or part) which the beneficiary was eligible to make;
  - (c) the beneficiary or an employee, servant or agent of a beneficiary has—
    - (i) failed to comply with any requirement under regulation 6, regulation 7(3)(b), regulation 7(3)(d) or regulation 7(4);
    - (ii) has given information on any matter relevant to the giving of the approval which is false or misleading in a material respect;
  - (d) the approved operation was commenced before the date on which the National Assembly gave written permission to do so;
  - (e) any undertakings given by the beneficiary under regulation 13 have not been complied with;
  - (f) the beneficiary has failed to comply with regulation 8;
  - (g) there is a material change in the nature, scale, costs or timing of the approved operation;
  - (h) the approved operation has not been or is not being properly carried out;
  - (i) the approved operation has been or is being unreasonably delayed or is unlikely to be completed;
  - (j) the financial assistance duplicates or would duplicate assistance provided or to be provided out of monies made available by—
    - (i) the European Communities,
    - (ii) the National Assembly, or
    - (iii) a body exercising public functions within the United Kingdom;
  - (k) the beneficiary is in breach of any requirement to which he or she is subject under these Regulations or under the Community legislation;
  - (l) the approved operation is subject to penalties applicable under the Community legislation.
- (2) The powers conferred by paragraph (1) are to—
- (a) revoke the approval of the operation in whole or in part;
  - (b) reduce or withhold any financial assistance in respect of the approved operation;

(c) recover on demand the whole or any part of any financial assistance already paid to the beneficiary.

(3) Where the Commission has decided to reduce or suspend assistance, the National Assembly may exercise the powers referred to in paragraph (2).

(4) For the purposes of paragraph (1)(j), a sum duplicates financial assistance if it is, or would be, paid for any of the same purposes.

### **Recovery of interest**

**10.**—(1) Where the National Assembly exercises the powers conferred by regulation 9(2)(c), it may also recover, on demand, interest on the sum to be recovered at the rate of 1 percentage point above LIBOR for the period from the day on which the financial assistance was granted until the day on which the National Assembly recovers the amount.

(2) For the purposes of this regulation, LIBOR means the sterling three-month London interbank offered rate in force during the period between the date on which the National Assembly makes the payment to be recovered and the date on which the National Assembly recovers the payment.

(3) In any proceedings relating to this regulation, a certificate of the National Assembly stating the LIBOR applicable during a period specified in the certificate is deemed to be conclusive evidence of the rate applicable in the specified period if the certificate also states that the Bank of England notified the National Assembly of that rate.

### **Sums payable to the National Assembly to be recovered as a debt**

**11.** In any case where an amount falls to be paid to the National Assembly by virtue of these Regulations (or by virtue of action taken under these Regulations), such amount is recoverable as a debt.

### **Offences and penalties**

**12.**—(1) A person is guilty of an offence if—

- (a) for the purposes of obtaining financial assistance under these Regulations for himself or herself or for any other person, he or she knowingly or recklessly makes a statement which is false or misleading in a material particular;
- (b) in relation to the exercise by the National Assembly of the powers specified in regulation 9(2), he or she knowingly or recklessly makes a statement which is false or misleading in a material particular;
- (c) he or she fails, without reasonable excuse, to comply with a requirement imposed by or under regulation 7(3)(b), regulation 7(3)(d) or by regulation 8; or
- (d) he or she intentionally obstructs an authorised person (or a person accompanying and acting under his or her instructions) in the exercise of his or her powers under regulation 7.

(2) A person guilty of an offence under paragraph (1)(a) and (b) is liable—

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale; or
- (b) on conviction on indictment, to a fine.

(3) A person guilty of an offence under paragraph (1)(c) or (d) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(4) Proceedings for an offence under paragraph (1) may, subject to paragraph (5), be commenced within the period of six months from the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to his or her knowledge.

(5) No proceedings for an offence under paragraph (1) may be commenced more than three years after the commission of the offence.

(6) For the purposes of this regulation, where the proceedings are instituted by the National Assembly—

- (a) a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient in his or her opinion to warrant the proceedings came to his or her knowledge is conclusive evidence of that fact;
- (b) a certificate stating that matter and purporting to be so signed is deemed to be so signed unless the contrary is proved.

(7) Where an offence under this regulation which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of that body corporate, or any person who was purporting to act in such capacity, he or she as well as that body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly.

(8) Where the affairs of a body corporate are managed by its members, paragraph (7) applies in relation to acts and defaults of a member in connection with his or her management functions as if he or she were a director of that body corporate.

### **Undertakings**

**13.** A beneficiary may be required by the National Assembly to give such undertakings as the National Assembly considers appropriate to the case.

### **Revocation and savings provisions**

**14.**—(1) Subject to paragraph (2), the following regulations (“the revoked legislation”), are revoked—

- (a) The Rural Development Grants (Agriculture) (Wales) Regulations 1996<sup>(3)</sup>;
- (b) The Land in Care Scheme (Tir Gofal) (Wales) Regulations 1999<sup>(4)</sup>;
- (c) The Organic Farming Scheme (Wales) Regulations 2001<sup>(5)</sup>;
- (d) The Tir Mynydd (Wales) Regulations 2001<sup>(6)</sup>;
- (e) The Tir Mynydd (Cross-border Holdings) (Wales) Regulations 2001<sup>(7)</sup>;
- (f) The Agricultural Processing and Marketing Grant (Wales) Regulations 2001<sup>(8)</sup>;
- (g) The Farm Enterprise Grant and Farm Improvement Grant (Wales) Regulations 2001<sup>(9)</sup>; and
- (h) The Tir Cynnal (Wales) Regulations 2006<sup>(10)</sup>.

(2) Subject to paragraph (3), the revocations in paragraph (1) do not affect the continued operation of the revoked legislation in respect of financial assistance paid or applied for under the revoked legislation prior to the coming into force of these Regulations.

(3) Paragraph (2) does not apply in relation to the following provisions—

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(3) S.I. 1996/529.  
 (4) S.I. 1999/1176.  
 (5) S.I. 2001/424 (W. 18).  
 (6) S.I. 2001/496 (W. 23).  
 (7) S.I. 2001/1154 (W. 61).  
 (8) S.I. 2001/2446 (W.199).  
 (9) S.I. 2001/3806 (W.314).  
 (10) S.I. 2006/41 (W. 7).

- (a) regulation 9 (Amounts of aid) and regulation 11(3) of, Part II of Schedule 1 (Payment rates for following the General Environmental Conditions) and Schedule 2 (Mandatory Management Activities) and Schedule 3 (Optional Management Activities) and Schedule 4 (Capital Activities) to, the Land in Care Scheme (Tir Gofal) (Wales) Regulations 1999;
- (b) regulation 4 (Determination of amount of aid and periods for which aid is paid) of, and Schedule 1 (Calculation of Aid) to, the Organic Farming Scheme (Wales) Regulations 2001; and
- (c) regulation 14 (Review of decisions) of the Agricultural Processing and Marketing Grant (Wales) Regulations 2001; and
- (d) regulation 11 (Amounts of aid) and regulation 13(3) of, and Part 4 (Payments) of the Schedule to, the Tir Cynnal (Wales) Regulations 2006.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(11)

13 December 2006

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

## SCHEDULE

Regulation 2

## MEANING OF “COMMUNITY LEGISLATION”

1. Council Regulation (EC) No. 1083/2006 of 11 July 2006 laying down the general provisions of the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) 1260/1999.

2. Council Regulation (EC) No. 1689/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), as last amended by Council Regulation (EC) No. 1463/2006.

3. Council Regulation (EC) No. 1290/2005 of 21 June 2005 on the financing of the common agricultural policy, as last amended by Council Regulation (EC) No. 320/2006.

4. Commission Regulation (EC) No. 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation No. 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers, as last amended by Commission Regulation (EC) No. 659/2006.

5. Council Regulation (EC) No. 795/2004 of 21 April 2004 laying down detailed rules for the implementation of the single payment scheme provided for in Council Regulation No. 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers, as last amended by Commission Regulation (EC) No. 1291/2006.

6. Council Regulation (EC) No. 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No. 2019/93, (EC) No. 1452/2001, (EC) No. 1453/2001, (EC) No. 1454/2001, (EC) 1868/94, (EC) No. 1251/1999, (EC) No. 1254/1999, (EC) No. 1673/2000, (EEC) No. 2358/71 and (EC) No. 2529/2001, as last amended by Council Regulation No. 1405/2006.

7. Council Regulation (EC) No. 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations, as last amended by Council Regulation (EC) No. 1689/2005.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations apply to the Rural Development Programmes (“programmes”), established under the European Community Council Regulations 1698/2005 and 1257/1999. In Wales, these Regulations will regulate existing and new programmes which are administered by the National Assembly for Wales.

These Regulations supplement the Community legislation listed in the Schedule to the Regulations (“the Community legislation”). The provisions in the Community legislation are directly applicable and have direct effect in a member State. These Regulations provide a domestic legal framework for the operation of the Community legislation in Wales.



The Community legislation provides (amongst other provisions) for assistance to be granted from the European Agricultural Fund for Rural Development towards operations which promote rural development in Wales.

These Regulations provide the National Assembly for Wales (“the National Assembly”) with the power to approve operations for the receipt of financial assistance, to attach conditions to any such approval (regulation 4) and pay financial assistance (regulation 3). The Regulations also set out the circumstances in which approval of an operation may be revoked and financial assistance paid to a beneficiary, in respect of that operation, may be withheld or recovered (regulation 9).

The Regulations provide powers of entry and inspection to authorised persons in relation to land on which an approved operation is situated or documents relating to an approved operation are held (regulation 7) (“authorised person” is defined in regulation 2(1)). The Regulations also requires beneficiaries of financial assistance to keep records relating to the approved operation for a certain period (regulation 8), to supply such information relating to the approved operations as the National Assembly requires (regulation 6), and to assist an authorised person in the exercise of his or her powers under regulation 9.

Regulation 10 allows the National Assembly to demand interest on sums due to it. Regulation 11 provides that sums payable to the National Assembly are recoverable as a debt.

The Regulations make it an offence (regulation 12) to knowingly or recklessly make false statements, intentionally to obstruct an authorised person in the exercise of his powers under regulation 7, and to fail (without reasonable excuse) to keep relevant records for the required period under regulation 8 or to provide an authorised person with assistance.

Regulation 13 requires a beneficiary to give an undertaking if required to do so. Regulation 14 deals with revocation and savings provisions.

A Regulatory Appraisal has been prepared for this Regulation. Copies of which are available from the Department of Environment, Planning and Countryside, Welsh Assembly Government, Cathays Park, Cardiff CF10 3NQ.