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WELSH STATUTORY INSTRUMENTS

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**2001 No. 2446 (W.199)**

**AGRICULTURE, WALES**

**The Agricultural Processing and  
Marketing Grant (Wales) Regulations 2001**

*Made:* - - - - - 03 July 2001

*Coming into force:* - - - - - 04 July 2001

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

**Title, commencement and application**

1.—(1) These Regulations may be cited as the Agricultural Processing and Marketing Grant (Wales) Regulations 2001 and shall come into force on 04 July 2001.

(2) These Regulations apply to Wales.

**Interpretation**

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

“approved expenditure” (“*gwariant a gymeradwywyd*”) means, in relation to any operation, expenditure which the National Assembly has approved for the receipt of financial support, and “approve” (“*cymeradwyo*”) and “approval” (“*cymeradwyaeth*”) shall be construed accordingly;

“authorised person” (“*person a awdurdodwyd*”) means any person who is authorised by the National Assembly either generally or specifically to act in matters arising under these Regulations and includes any official of the Commission who accompanies such an authorised person;

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

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

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(1) By virtue of the European Communities (Designation) (No.3) Order 1999 (S.I. 1999/2788).

(2) 1972 c. 68.

“the Commission Regulation” (“*Rheoliad y Comisiwn*”) means Commission Regulation (EC) No. 1750/1999<sup>(3)</sup> laying down detailed rules for the application of the Council Regulation, as amended by Commission Regulation (EC) No. 2075/2000<sup>(4)</sup>;

“commitment” (“*ymrwymiad*”) means any obligation placed upon a beneficiary under, or by virtue of, these Regulations and / or the Community legislation;

“Community support” (“*cymorth Cymunedol*”) means support from the European Agricultural Guidance and Guarantee Fund payable in accordance with the Community legislation;

“the Community legislation” (“*y ddeddfwriaeth Gymunedol*”) means the instruments listed in the Schedule to these Regulations in so far as they relate to expenditure for which support may be granted pursuant to Articles 4 to 7 and 25 to 28 of Council Regulation 1257/1999/EC;

“the Council Regulation” (“*Rheoliad y Cyngor 1257/1999/EC*”) means Council Regulation (EC) No.1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF)<sup>(5)</sup>;

“electronic communication” (“*cyfathrebu electronig*”) has the same meaning as in the Electronic Communications Act 2000 <sup>(6)</sup>;

“financial support” (“*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*”) means an investment or project;

“Objective 1 area” (“*ardal Amcan 1*”) means the area described in the Commission Decision of 24 July 2000 (referred to in the Schedule to these Regulations), as “West Wales and the Valleys”, and comprising the local authority areas of, Isle of Anglesey, Gwynedd, Conwy, Denbighshire, Ceredigion, Pembrokeshire, Carmarthenshire, Swansea, Neath Port Talbot, Bridgend, Rhondda Cynon Taf, Merthyr Tydfil, Blaenau Gwent, Caerphilly, and Torfaen;

“public funds” (“*cronfeydd cyhoeddus*”) means monies made available by—

- (a) a body exercising public functions within the United Kingdom; or
- (b) the European Communities;

“the RDPW” (“*y CDGC*”) means the Rural Development Plan for Wales 2000 — 2006 approved by the Commission Decision of 11 October 2000 referred to in the Schedule to these Regulations, and “the relevant part of the RDPW” (“*y rhan berthnasol o'r CDGC*”) means that part of the RDPW which relates to expenditure for which support may be granted pursuant to Articles 4 to 7 and 25 to 28 of the Council Regulation;

“small and medium-sized enterprises” (“*mentrau bach a chanolig*”) has the same meaning as in the Annex to Commission Recommendation (EC) No. 96/280 of 3 April 1996 concerning the definition of small and medium-sized enterprises<sup>(7)</sup>; and

“the SPD” (“*y DRS*”) means the Single Programming Document for Community structural assistance under Objective 1 for West Wales and the Valleys approved by the Commission Decision of 24 July 2000 referred to in the Schedule to these Regulations.

(2) A reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication which has been recorded and is consequently capable of being reproduced.

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(3) OJ No.L214, 13.8.1999, p.31.

(4) OJ No.L246, 30.9.2000, p.46.

(5) OJ No.L160, 26.6.1999, p.80.

(6) 2000 c. 7.

(7) OJ No. L107, 30.4.96, p.4.

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

### **Processing and Marketing Grants**

**3.—**(1) The National Assembly may pay a grant, known as a Processing and Marketing Grant, towards approved expenditure incurred in connection with an operation.

(2) A grant shall not be payable under paragraph (1) in cases where the cost of an operation is less than £40,000.

(3) The maximum amount of grant payable under paragraph (1) in respect of any particular operation shall be £1,200,000.

### **Processing and Marketing Small Grants**

**4.—**(1) The National Assembly may, subject to paragraph (3), pay a grant, known as a Processing and Marketing Small Grant, towards approved expenditure incurred in connection with an operation.

(2) A grant shall only be payable under paragraph (1) where the cost of an operation exceeds £1,500 but is less than £40,000.

(3) Where an operation is not located within the Objective 1 area eligibility for grant under paragraph (1) shall be limited to individuals with a registered agricultural holding.

### **Amount of Grant**

**5.—**(1) Subject to paragraph (2) the amount of grant payable under Regulation 3 or 4 shall not exceed:

- (a) 30 per cent of approved expenditure; or
- (b) where the operation in question is located within the Objective 1 area, 40 per cent of approved expenditure.

(2) If any other grant is payable from public funds in relation to the approved expenditure, the amount of grant payable under Regulation 3 or 4 shall be such amount which, when added to that other grant, would lead to a value of 30 per cent, or in the case of operations within the Objective 1 area, 40 per cent, of the approved expenditure.

### **Approval of expenditure**

**6.—**(1) An application for the approval of expenditure in connection with an operation must be made in the form and at the time that the National Assembly requires.

(2) An application shall contain such other information as the National Assembly may require.

(3) The National Assembly may refuse to approve expenditure in connection with an operation, or approve it in whole or in part, but, in doing either, it shall have regard to the benefits such an approval would have on small and medium-sized enterprises, and, in any event, it may not approve it unless it is satisfied that it is eligible for Community support and is in accordance with the relevant part of the RDPW and / or the SPD.

(4) Approval may be given subject to such conditions as the National Assembly may determine.

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

(6) Before varying an approval under paragraph (5), the National Assembly shall—

- (a) give the beneficiary notice in writing that it proposes to do so with a statement of its reasons;

- (b) give the beneficiary an opportunity to make written representations within such time as the National Assembly considers reasonable; and
  - (c) consider any such representations.
- (7) An approval or variation under this regulation shall be in writing.

### **Claims**

7. A claim for financial support must be made at such time and in such form and be accompanied by such information as the National Assembly reasonably requires.

### **Payment**

8.—(1) The National Assembly may pay a grant in respect of approved expenditure in connection with an operation by a single lump sum or by instalments.

- (2) Payments may be made—
- (a) at such time or times as the National Assembly reasonably may determine; and
  - (b) subject to such conditions as the National Assembly may determine.

### **Information**

9.—(1) A beneficiary shall give the National Assembly such information about any approved expenditure and any operation in connection with which such expenditure is incurred as the National Assembly may reasonably require.

(2) Where the National Assembly requires such information, the beneficiary shall provide it within such period as the National Assembly may reasonably determine.

### **Record keeping**

10.—(1) A beneficiary shall keep any invoice, account or other document relating to approved expenditure or any operation in connection with which such expenditure is incurred for the period of five years beginning with the day on which the last payment of financial support under these Regulations is made to him or her in connection with that expenditure or operation, subject to paragraphs (2) and (3).

(2) If a beneficiary transfers the original of any such document to another person in the normal course of business, the beneficiary must instead keep a copy of that document for that period.

(3) Paragraph (1) does not apply if the document has been removed by any person lawfully authorised to remove it.

### **Powers of authorised persons**

11.—(1) An authorised person may at all reasonable times, on producing if so required, some duly authenticated document showing his or her authority, enter onto any land, other than land used solely for the purpose of a dwelling house :—

- (a) to which financial support or a commitment relates, or
- (b) on which he or she has reasonable grounds to believe that documents relating to financial support or a commitment are being kept,

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

- (2) Those purposes are—
- (a) inspecting the land to which financial support or a commitment relates;

- (b) verifying the accuracy of any information provided by a beneficiary relating to financial support or a commitment; and
  - (c) determining whether or not a beneficiary has complied with a commitment.
- (3) An authorised person who has entered onto any land under paragraph (1) may—
- (a) inspect the land and any document, record or equipment on it, which he or she reasonably believes, relates to financial support or a commitment;
  - (b) require the beneficiary, or any employee, servant or agent of such beneficiary, to produce, or secure the production of, any document or supply any additional information in his or her possession or under his or her control relating to financial support or a commitment;
  - (c) where any information referred to in sub-paragraph (b) is kept by means of a computer, have access to any computer and any associated apparatus or material which is or has been used for storing that information and require the information to be reproduced in a form in which it is legible and can be taken away;
  - (d) require copies of or extracts from any such document or other record referred to in sub-paragraph (a) or (b) to be produced;
  - (e) retain a copy of any document produced to him or her; and
  - (f) seize and retain any document or other record which he or she reasonably believes may be required as evidence in proceedings under these Regulations.
- (4) A beneficiary or any employee, servant or agent of the beneficiary shall give an authorised person all reasonable assistance in relation to the exercise of his or her powers under paragraphs (1) and (3).
- (5) An authorised person entering any land under paragraph (1) may be accompanied by—
- (a) any official of the Commission, and
  - (b) such other persons as he or she considers necessary,
- and paragraphs (3) and (4) shall apply in relation to any persons referred to in sub-paragraph (b), when acting under the instructions of an authorised person, as if he or she were an authorised person.

### **Breaches of commitments**

- 12.—(1) Subject to paragraph (2), where—
- (a) any information furnished to the National Assembly by a beneficiary is false or misleading,
  - (b) the beneficiary is in breach of any of the terms of a commitment,
  - (c) the beneficiary is in breach of any requirement to which he or she is subject under these Regulation or under the Community legislation, or
  - (d) the whole or any part of financial support 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,the National Assembly may exercise the powers specified in regulation 14(1).
- (2) For the purposes of paragraph (1)(d), a sum duplicates such assistance if it is, or would be, paid for any of the same purposes.
- (3) Where—
- (a) a beneficiary has transferred all or part of the land to which a commitment relates to another person (“the transferee”),

- (b) the transferee has, within three months of the date of transfer, given an undertaking to the National Assembly to assume the commitment in place of the beneficiary, and
- (c) the National Assembly has accepted that undertaking,

the beneficiary shall be released from his commitment, other than in respect of any breach or other matter occurring before acceptance by the National Assembly of the transferee's undertaking.

#### **Other cases in which recovery etc. powers apply**

13. The National Assembly may exercise the powers specified in paragraphs (1)(a) and (b) of regulation 14 where—

- (a) there has been a material change in the nature, scale, costs or timing of the operation in relation to which financial support has been given or a commitment has been made; or
- (b) the operation in relation to which financial support has been given or a commitment has been made has been or is being delayed, or is unlikely to be completed.

#### **Assembly's powers of recovery etc**

14.—(1) The powers conferred by regulations 12(1) and 13 are—

- (a) to withhold the whole or any part of the sums payable to the beneficiary;
- (b) to recover on demand the whole or any part of the sums already paid to the beneficiary.

(2) Where any of the circumstances specified in regulation 12(1) were intended by the beneficiary or arose as a result of recklessness on the part of the beneficiary, the National Assembly may also require the beneficiary to pay to it an additional sum equal to no more than 10% of the sums paid or payable to him or her.

(3) Where the National Assembly takes any step specified in paragraph (1), it may also suspend or terminate financial support and / or any commitment made by a beneficiary, and thereupon any entitlement of the beneficiary to payment in respect of the unexpired period of the commitment shall likewise be suspended or terminated as the case may be.

(4) Where the National Assembly terminates a commitment under paragraph (3), it may also prohibit the beneficiary from entering into any new commitment for such period (not exceeding two years) from the date of the termination as it may specify.

(5) The powers conferred on the National Assembly by paragraphs (2), (3) and (4) shall be exercisable by a notice served on the beneficiary by post at his or her last known address, and in paragraph (4) "specify" means specify in such notice.

- (6) Before taking any step specified in paragraph (1), (2), (3) or (4) the National Assembly shall—
  - (a) give to the beneficiary a written explanation of the reasons for the step proposed to be taken;
  - (b) afford the beneficiary the opportunity of making written representations within such time as the National Assembly considers reasonable; and
  - (c) consider any such representations.

#### **Recovery of Interest**

15.—(1) Where the National Assembly exercises the power conferred by regulation 14(1)(b), it may also recover on demand interest on the sum to be recovered, and the rate of interest shall be one percentage point above LIBOR on a day to day basis.

(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 it recovers it.

(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 shall 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 recoverable as a debt**

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

### **Offences and penalties**

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

- (a) for the purposes of obtaining financial support 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; or
- (b) he or she intentionally obstructs an authorised person (or a person accompanying an authorised person and acting under their instructions) in the exercise of his or her powers under regulation 11.

(2) A person guilty of an offence under paragraph(1)(a) shall be 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)(b) shall be liable on summary conviction, to a fine not exceeding level 3 on the standard scale.

(4) No prosecution for an offence under paragraph (1) which, by virtue of paragraph 2(a), is triable summarily shall be commenced after the expiration of three years from the commission of the offence or one year from the date that, in the prosecutor’s opinion, evidence sufficient to justify the proceedings came to his or her knowledge, whichever is the earlier.

(5) Where paragraph 4 applies—

- (a) a statement of the date on which evidence sufficient in the prosecutor’s opinion to justify the proceedings came to his or her knowledge is conclusive evidence of its contents if signed by or on behalf of the prosecutor; and
- (b) such a statement purporting to be so signed shall be treated as being so signed unless the contrary is proved.

(6) Where an offence under this regulation 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 or any person who was purporting to act in such a capacity, he or she is also guilty of the offence and liable to be proceeded against and punished accordingly.

(7) Where the affairs of a body corporate are managed by its members, paragraph (6) applies to acts and defaults of a member in connection with his or her management functions as if he or she were a director.

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### **Revocations and transitional saving**

**18.**—(1) The Agricultural Processing and Marketing Grant Regulations 1995<sup>(8)</sup> (“the 1995 Regulations”) are, subject to paragraph (2), hereby revoked in so far as they apply to Wales.

(2) The revocation in paragraph (1) shall not affect the continued operation of regulations 4<sup>(3)</sup>, 4<sup>(4)</sup> and 5 to 8 of the 1995 Regulations in respect of financial support paid under those Regulations.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998<sup>(9)</sup>

3rd July 2001

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

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<sup>(8)</sup> S.I. 1995/362.  
<sup>(9)</sup> 1998 c. 38.



## SCHEDULE

Regulation 2(1)

### MEANING OF “COMMUNITY LEGISLATION”

1. Commission Regulation (EC) No.1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ No. L160, 26.6.99, p.80).
2. Commission Regulation (EC) No. 1750/1999 of 23 July 1999 laying down detailed rules for the application of Council Regulation (EC) No. 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ No. L214, 13.8.99, p.32 as amended by Commission Regulation (EC) No. 2075/2000 of 29 September 2000 (OJ No. L246, 30.9.2000, p.46)).
3. Commission Decision No. C(2000) 2932 of 11 October 2000 approving the rural development programming document for Wales (UK) for the 2000—06 programming period.
4. Commission Decision No. C(2000) 2049 of 24 July 2000 approving the Single Programming Document for Community Structural Assistance under Objective 1, for West Wales and the Valleys in the United Kingdom.

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### EXPLANATORY NOTE

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

These Regulations, which apply to Wales, supplement the Community legislation listed in the Schedule to the Regulations (“the Community legislation”). The Community legislation provides, amongst other things, for support to be paid from the European Agricultural Guidance and Guarantee Fund (“Community support”) towards investment for the improvement of the processing and marketing of agricultural products. The Regulations operate within the scope of these provisions to enable grant to be paid towards expenditure incurred in connection with operations involving such improvements.

The Regulations make provision as part of the Rural Development Plan for Wales (“the RDPW”) and the Single Programming Document for Community structural assistance under Objective 1 for West Wales and the Valleys (“the SPD”), for the payment of grants by the National Assembly for Wales (“the National Assembly”) in respect of any expenditure it has approved (regulations 3 and 4).

The Regulations provide for two types of grant to be paid; a Processing and Marketing Grant (in respect of operations costing £40,000 and over), and a Processing and Marketing Small Grant (in respect of operations costing in excess of £1,500 but less than £40,000).

The maximum amount of grant available is to be 30 per cent of approved expenditure or 40 per cent of such expenditure where the operation is located within the Objective 1 area (regulation 5). Such expenditure may be approved if it is eligible for support under the Community legislation and is expenditure which falls within those parts of the RDPW or the SPD which concern the improvement of the processing and marketing of agricultural products (regulation 6).

In particular, the Regulations implement and supplement Commission Regulation (EC) No. 1750/1999 (OJ No. L160, 26.6.99, p.80) laying down detailed rules for the application of Council Regulation (EC) No. 1257/ 1999 (OJ No. L160, 26.6.99, p.80)(“the Commission Regulation”). The

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Regulations provide for the making of claims for, and the payment of, grants following approval (regulations 7 and 8) and the provision of information, and the keeping of records, by recipients of financial support (regulations 9 and 10). Regulation 11 confers powers of entry and inspection on certain authorised persons (including officials of the European Commission).

The Regulations implement Article 48(2) of the Commission Regulation (which requires Member states to determine a system of penalties to be imposed in the event of a breach of obligation) by granting the National Assembly powers to withhold or recover payments and take certain other action, including termination of the commitment (and of entitlement to payments in respect of it), in the event of a breach of an obligation arising under the regulations by a recipient of financial support (regulations 12, 13 and 14).

Regulation 15 provides power to charge interest on sums recovered and regulation 16 provides that sums payable to the National Assembly are recoverable as debts.

The Regulations also create offences in respect of the furnishing of false information for the purpose of obtaining aid and in respect of obstructing authorised persons in the exercise of their powers (regulation 17).

The Regulations revoke, subject to a transitional saving, the Agricultural Processing and Marketing Grant Regulations 1995 (S.I. 1995/362).

Copies of the Commission Decisions referred to in paragraphs 3 and 4 of the Schedule, the RDPW and the SPD, are available for inspection during normal office hours at the offices of the National Assembly for Wales, Agriculture Department, Cathays Park, Cardiff.