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STATUTORY INSTRUMENTS

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**1996 No. 3076**

**AGRICULTURE**

**The Moorland (Livestock Extensification)  
(Wales) (Amendment No. 2) Regulations 1996**

<i>Made</i>	- - - -	<i>11th December 1996</i>
<i>Laid before Parliament</i>		<i>11th December 1996</i>
<i>Coming into force</i>	- -	<i>1st January 1997</i>

The Secretary of State, being a Minister 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 him by that section, and of all other powers enabling him in that behalf, hereby makes the following Regulations.

**Title, commencement and extent**

1. These Regulations may be cited as the Moorland (Livestock Extensification) (Wales) (Amendment No. 2) Regulations 1996, shall come into force on 1st January 1997, and shall apply to Wales.

**Amendments to previous Regulations**

2.—(1) The Moorland (Livestock Extensification) (Wales) Regulations 1995<sup>(3)</sup> shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) before the definition of “application” there shall be inserted the following definition—

““agri-environment scheme” means an arrangement which is—

(a) regulated by statutory instrument providing for the payment of aid to persons who give an undertaking or enter an agreement in relation to land to which that instrument relates; and

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(1) S.I. 1972/1811.

(2) 1972 c. 68.

(3) S.I. 1995/1159, amended by S.I. 1996/2449.

- (b) approved by the Commission of the European Communities under Article 7(3) of Council Regulation 2078/92 as part of a zonal programme drawn up pursuant to Article 3 of Council Regulation 2078/92;”;
- (ii) after the definition of “beneficiary” there shall be inserted the following definition—
- ““Commission Regulation 746/96” means Commission Regulation (EC) No. 746/96(4) laying down detailed rules for the application of Council Regulation 2078/92;”;
- (iii) after the definition of “compensatory allowance” there shall be inserted the following definition—
- ““Council Regulation 2078/92” means Council Regulation (EEC) No. 2078/92(5) on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside;”;
- and
- (iv) in the definition of “eligible person” at the end of sub-paragraph (a), the word “and” shall be deleted, and after sub-paragraph (b) there shall be inserted the word “and” followed by the following sub-paragraph—
- “(c) is not prohibited from providing an undertaking pursuant to an agri-environment scheme either by application of a penalty consequent upon Article 20(2) of Commission Regulation 746/96 (which requires member states to determine a system of penalties which are effective, commensurate with their purpose and of adequate deterrent effect to be imposed for breaches of undertakings) or by application of Article 20(3) of Commission Regulation 746/96 (which requires a person who, intentionally or by reason of gross negligence, makes a false declaration, to be excluded from all aid under Council Regulation 2078/92);”;
- (b) in paragraph (5), for the expression “(Amendment)” there shall be substituted the expression “(Amendment No. 2)”.
- (3) In regulation 7 (change of occupation)—
- (a) after paragraph (2) there shall be inserted the following paragraph—
- “(2A) The Secretary of State shall not accept an undertaking referred to in paragraph (1) (b) unless he is satisfied that the new occupier is not prohibited from providing an undertaking pursuant to an agri-environment scheme by application of Article 10 of Commission Regulation 746/96 (which restricts duplication of aid payments), by application of a penalty consequent upon Article 20(2) of Commission Regulation 746/96 (which requires member states to determine a system of penalties which are effective, commensurate with their purpose and of adequate deterrent effect to be imposed for breaches of undertakings) or by application of Article 20(3) of Commission Regulation 746/96 (which requires a person who, intentionally or by reason of gross negligence, makes a false declaration, to be excluded from all aid under Council Regulation 2078/92);”;
- (b) there shall be substituted for paragraph (7) the following paragraph—
- “(7) The foregoing provisions of this Regulation shall be subject to Article 11 of Commission Regulation 746/96 (which governs transfers of holdings) and Article 12 of Commission Regulation 746/96 (force majeure);”;

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(4) OJ No. L102, 25.4.96, p.19.

(5) OJ No. L215, 30.7.92, p.85, as last amended by Commission Regulation (EC) No. 2772/95 OJ No. L288, 1.12.95, p.35, as rectified by Commission Regulation (EC) No. 1962/96, OJ No. L259, 12.10.96, p.7.

(c) in paragraph (8), after the word “Where” there shall be inserted the phrase “a change of occupation of a holding or part of a holding is the result of the compulsory purchase of that holding or part, and”.

(4) In regulation 8 (amounts of aid and claims), in paragraph (1) after the phrase “Subject to the provisions of these Regulations”, there shall be inserted the phrase “, of Article 20(3) of Commission Regulation 746/96 (which requires a person who, intentionally or by reason of gross negligence, makes a false declaration, to be excluded from all aid under Council Regulation 2078/92) and, in respect of an application made on or after 1st January 1997, of Article 10 of Commission Regulation 746/96 (which restricts duplication of aid payments)”.

(5) For regulation 10 (withholding and recovery of aid and termination) there shall be substituted the following regulation—

**“Withholding and recovery of aid, termination and exclusion**

**10.**—(1) Where any person, with a view to obtaining the payment of aid under these Regulations to himself or any other person, makes any statement or furnishes any information which is false or misleading, the Secretary of State may withhold the whole or any part of any aid payable to that person or to such other person and may, subject to the provisions of Article 20 of Commission Regulation 746/96 (which provides for recovery of wrongful payments with interest, a penalty system and exclusion for false declarations), recover the whole or any part of any aid already paid to that person or to such other person.

(2) Where a beneficiary—

- (a) fails to comply with any of the extensification obligations;
- (b) fails without reasonable excuse to permit entry and inspection by an authorised person or to render all reasonable assistance to such authorised person as required by regulation 9; or
- (c) fails to comply with any other requirement of these Regulations;

the Secretary of State may withhold the whole or any part of any aid payable to that beneficiary and may recover the whole or any part of any aid already paid to him and may also, in so far as is consequent upon Article 20(2) of Commission Regulation 746/96 (which requires member states to determine a system of penalties which are effective, commensurate with their purpose and of adequate deterrent effect to be imposed for breaches of undertakings), require him to pay to the Secretary of State a sum equal to no more than 10% of the aid paid or payable to the beneficiary.

(3) Where the Secretary of State takes any step specified in paragraph (1) or (2), he may also treat as terminated the undertakings given by the beneficiary under these Regulations.

(4) Where under paragraph (3) the Secretary of State treats the undertakings given by the beneficiary as terminated, in connection with any step taken under paragraph (2), he may also, insofar as is consequent upon Article 20(2) of Commission Regulation 746/96, by notice in writing to the beneficiary prohibit him from providing a new undertaking or entering a new agreement under an agri-environment scheme for such period (not exceeding two years) from the date of that termination as is specified in the notice.

(5) The Secretary of State may treat the undertakings given by any beneficiary as terminated where the beneficiary receives or is entitled to receive any assistance out of moneys provided by Parliament or the European Community and the Secretary of State is satisfied that such assistance would duplicate the payment of aid under these Regulations.

(6) Subject to Article 10 of Commission Regulation 746/96 (which applies to undertakings given on or after 1st January 1997 and, inter alia, prohibits duplication of aid for an undertaking) and Article 20(1) of Commission Regulation 746/96 (which requires wrongful

payments to be reimbursed with interest), nothing in paragraph (5) entitles the Secretary of State to withhold any aid payable or to recover any aid already paid in respect of a period before the Secretary of State acted under that paragraph.

(7) Before taking any step specified in paragraphs (2), (3) or (4) by reference to paragraph (2)(a), or any step specified in paragraph (5), the Secretary of State 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 appearing before and being heard by a person appointed for that purpose by the Secretary of State; and
- (c) consider the report by the person so appointed and supply a copy of the report to the beneficiary”.

(6) After regulation 10 (withholding and recovery of aid and termination) there shall be added the following regulations—

**“Recovery of Interest**

**10A.**—(1) Where a payment of aid is made to a beneficiary by the Secretary of State and, by virtue of Article 20(1) of Commission Regulation 746/96 (which provides for recovery of wrongful payments with interest), a reimbursement of all or part of the payment with interest is required, 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 specified in Article 20(1) of Commission Regulation 746/96.

(3) In any proceedings relating to this regulation, a certificate of the Secretary of State 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 Secretary of State of that rate.

**Recovery of payments**

**10B.**—(1) In any case, where an amount falls to be paid to the Secretary of State by virtue of (or by virtue of action taken under) these Regulations or Commission Regulation 746/96 insofar as it relates to land subject to extensification obligations, the amount so falling to be paid shall be recoverable as a debt.”.

Signed by authority of the Secretary of State for Wales

*Jonathan Evans*  
Parliamentary Under Secretary of State, Welsh  
Office

11th December 1996

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## EXPLANATORY NOTE

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

These Regulations amend the Moorland (Livestock Extensification) (Wales) Regulations 1995 (as amended by S.I.1996/2449) (“the principal Regulations”) which implement in part a zonal programme approved by the European Commission (“the Commission”) under Article 7 of Council Regulation (EEC) No. 2078/92 (OJ No. L215, 30.7.92, p.85) (“the Agri-environment Regulation”) on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside.

These Regulations make provision to implement Commission Regulation (EC) No. 746/96 (OJ No. L102, 25.4.96, p.19) (“the Commission Regulation”) laying down detailed rules for the application of the Agri-environment Regulation, in particular Article 10 (which, inter alia, prohibits duplication of aid under Community schemes in respect of an undertaking), Article 11 (which governs transfers of holdings entered into agreements or undertakings under the Agri-environment Regulation), Article 12 (force majeure) and Article 20 (which provides for recovery of wrongful payments with interest, a penalty system and exclusion for false declarations).

The Regulations—

- (a) specify that entitlement to payment under the principal Regulations is subject to the provisions of Article 10 and Article 20(3) of Commission Regulation 746/96,
- (b) make provision to enable the Secretary of State to recover grant and impose penalties in accordance with Articles 11, 12 and 20 of the Commission Regulation 746/96,
- (c) set a rate of interest where recovery of money is to include interest in accordance with Article 20(1) of Commission Regulation 746/96.

The Regulations form part of a package submitted to the Commission under article 23 of Commission Regulation 746/96.

No Compliance Cost Assessment in relation to these Regulations has been prepared.