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WELSH STATUTORY INSTRUMENTS

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**2004 No. 3280 (W.284)**

**AGRICULTURE, WALES**

**The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) Regulations 2004**

*Made* - - - - 8 December 2004

*Coming into force* - - 1 January 2005

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 upon it by that section hereby makes the following Regulations:

**Title, commencement and application**

1.—(1) These Regulations may be cited as the Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) Regulations 2004.

(2) These Regulations come into force on 1 January 2005 and apply in relation to Wales.

**Interpretation**

2.—(1) In these Regulations—

“agri-environment commitment” means a commitment under Council Regulation 2078/92 or Articles 22 to 24 of Council Regulation 1257/1999;

“authorised person” means any person authorised by the National Assembly to act in matters relating to these Regulations, the Council Regulation or the Commission Regulation;

“the Commission Regulation” means Commission Regulation (EC) No. 796/2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in the Council Regulation<sup>(3)</sup>;

“the Council Regulation” means Council Regulation (EC) No. 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers<sup>(4)</sup>;

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(1) S.I.1999/2788.

(2) 1972 c. 68.

(3) O.J. No. L141, 30.04.2004, p. 18.

(4) O.J. L270, 21.10.2003 p.1, as last amended by Council Regulation (EC) No. 864/2004 (O.J. No. L161, 30.04.2004, p.48)

“Council Regulation 2078/92” means Council Regulation (EC) No. 2078/92 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside<sup>(5)</sup>; “Council Regulation 1257/1999” means Council Regulation (EC) No. 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF)<sup>(6)</sup>;

“the Countryside Council” means the Countryside Council for Wales as established under Section 128 of the Environmental Protection Act 1990<sup>(7)</sup>;

“the Environment Agency” means the Environment Agency as established under section 1 of the Environment Act 1995<sup>(8)</sup>;

“farmer” has the meaning given to it by Article 2(a) of the Council Regulation;

“holding” has the meaning given to it by Article 2(b) of the Council Regulation;

“the National Assembly” means the National Assembly for Wales;

“non compliance” has the meaning given to it by Article 2(35) of the Commission Regulation;

“permanent pasture” has the meaning given to it by Article 2(2) of the Commission Regulation;

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

(3) Other expressions used in these Regulations are to be construed in accordance with the Council Regulation and the Commission Regulation.

(4) In these Regulations any reference to a numbered regulation or the schedule is to be construed as a reference to the regulation or the schedule so numbered in these Regulations.

### **Designation**

3. The National Assembly is designated as the competent national authority for the purpose of Article 3(2) of the Council Regulation.

### **Standards of good agricultural and environmental condition**

4.—(1) The standards of good agricultural and environmental condition referred to in Article 5(1) of the Council Regulation are set out in the Schedule.

(2) If, in relation to any land under an agri-environment commitment, a requirement of the agri-environment commitment conflicts with a standard in the Schedule, any breach of the standard which is a necessary and direct consequence of meeting that requirement is not to be treated as a non compliance.

### **Permanent pasture**

5.—(1) Where the National Assembly establishes that the ratio in Article 3(1) of the Commission Regulation is decreasing, it must prohibit a farmer from converting land under permanent pasture, in accordance with Article 4(1) of the Commission Regulation.

(2) Where the National Assembly establishes that the obligation in Article 3(2) of the Commission Regulation cannot be met, it must require a farmer to re-convert land to permanent pasture in accordance with Article 4(2) of the Commission Regulation.

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(5) O.J. L215, 30.07.1992, p.85, as last amended by Council Regulation (EC) No.583/2004 (O.J. L91, 30.03.2004, p.1). This Council is no longer in force, but agri-environment commitments entered into under it remain extant.

(6) O.J. L160, 26.06.1999, p.80, as last amended by Council Regulation (EC) No.583/2004 (O.J. L91, 30.03.2004, p.1).

(7) 1990 C.43.

(8) 1995 c. 25.

### **Competent Control Authority and Relevant Authorities**

6.—(1) The National Assembly is designated as the Competent Control Authority for the purposes of the derogation in Article 42(2) of the Commission Regulation.

(2) The National Assembly may require a relevant authority to carry out controls or checks for the purposes of Article 9 and Chapter I and Chapter III of Title III of the Commission Regulation.

(3) In this regulation, “a relevant authority ” means—

- (a) The Environment Agency; or
- (b) The Countryside Council.

(4) When engaged pursuant to paragraph (2), a relevant authority must —

- (a) send to the National Assembly a provisional control report ;
- (b) for the purposes of Article 65(4) of the Commission Regulation, notify the National Assembly of any non compliance established.

(5) The functions conferred on the Countryside Council by paragraphs 2 and 4 are to be treated for the purposes of section 132(2), section 133 and paragraphs 19 and 20 of Schedule 6 to the Environmental Protection Act 1990(9) as though they were conferred on the Countryside Council under section 132 of that Act.

(6) The National Assembly must pursuant to Article 48 of the Commission Regulation establish the final control report and where the National Assembly is not the Paying Agency, send the final control report to the Paying Agency.

### **Powers of authorised persons**

7.—(1) An authorised person may exercise any of the powers specified in this regulation for the purpose of—

- (a) providing a control report pursuant to Article 48 of the Commission Regulation; or
- (b) establishing whether there has been any non compliance; or
- (c) ascertaining whether an offence under these Regulations has been or is being committed.

(2) An authorised person—

- (a) on producing, if so required, some duly authenticated document showing his or her authority, has a right at all reasonable hours to enter any land, other than a building used only as a dwelling, for the purposes of administering these Regulations, the Council Regulation and the Commission Regulation, but
- (b) may only do so if the land is a holding occupied by, or in the possession of a farmer or employee, agent, contractor or tenant of a farmer, or if he or she has reasonable cause to believe so.

(3) An authorised person may—

- (a) carry out any inquiry, check, examination and test;
- (b) take any sample;
- (c) inspect all or any part of the land whether it is farmed or is withdrawn from agricultural production including land set aside pursuant to Articles 54 and 55(b) of the Council Regulation;
- (d) inspect any crops growing on that land or kept on it;
- (e) mark any animal or other thing for identification purposes;

- (f) have access to, inspect and copy any records (in whatever form they are held) kept for purposes connected with any duties or obligations arising under these Regulations or remove such records to enable them to be copied;
- (g) have access to, inspect and check the operation of, any computer and any associated apparatus or material, which is or has been in use in connection with any records referred to in paragraph (f), and for this purpose require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material, to afford him or her such assistance as he or she may reasonably require and, where a record is kept by means of a computer, require the records to be produced in a form in which they can be taken away.

(4) An authorised person entering any land or premises by virtue of this Regulation may take with him or her such other persons as the authorised person considers necessary which may include any representative of the European Commission acting for the purposes of the Council Regulation or the Commission Regulation.

(5) If an authorised person enters any unoccupied land or premises, he or she must leave them as effectively secured against unauthorised entry as he or she found them.

(6) Where an authorised person has entered any land, other than a building used only as a dwelling, under a power bestowed on him or her by any enactment, he may exercise any of the powers specified in paragraphs (3) and (4) for the purposes of paragraph (1).

#### **Assistance to authorised persons**

8. A farmer or any employee, agent, contractor or tenant of a farmer must give an authorised person such assistance as the authorised person may reasonably request so as to enable the authorised person to exercise any power conferred on him or her by regulation 7.

#### **Offences and penalties**

9.—(1) Any person who—

- (a) intentionally obstructs an authorised person (or person accompanying the authorised person and acting under his or her instructions) in the exercise of a power conferred by regulation 7; or
- (b) without reasonable cause fails to comply with a request made under regulation 8,

is guilty of an offence.

(2) Nothing in paragraph 1(b) is to be construed as requiring any person to answer any question if to do so might incriminate him or her.

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

(4) Where a body corporate is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar person of the body corporate, or
- (b) any person purporting to act in such capacity,

he or she, as well as the body corporate, is guilty of an offence.

(5) For the purposes of paragraph (4), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(10)

8 December 2004

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

## SCHEDULE

Regulation 4(1)

## Standards of good agricultural and environmental condition

**Retention of guidance on soils**

1. A farmer must complete a soil management checklist form, which he or she must lodge with the National Assembly for Wales no later than 28 February 2005.

**Post-harvest management of land after combinable crops**

2.—(1) If land has carried a crop of oil-seeds, grain legumes or cereals which has been harvested using a combine harvester or a mower, a farmer must ensure that, throughout the period beginning with the first day after harvest and ending on the first day of March in the following year, one of the following conditions is met on that land at all times—

- (a) the stubble of the harvested crop remains in the land;
- (b) the land is left with a rough surface, following ploughing, discing, tine cultivation or any other suitable agricultural method;
- (c) the land is prepared as a seedbed for a crop, with the crop to be sown within a period of 10 days beginning with the day after final seedbed preparation;
- (d) the land is under cultivation sequences used to create a stale seedbed; or
- (e) the land is sown with a temporary cover crop, so long as, if the cover crop is grazed out or cultivated out, the condition in sub-paragraph (b) must be met on the land, as soon as is practicable without breaching the requirements in paragraph 2, and for the remainder of the period.

(2) In this paragraph, “stale seedbed” means an area of land which is subject to shallow cultivations to stimulate weed germination as part of a strategy of weed control.

**Waterlogged soil**

3.—(1) A farmer must not carry out a mechanical field operation on waterlogged soil unless—

- (a) the soil is within 20 metres of the access point to an area of soil which is not waterlogged;
- (b) the soil forms part of a track to an area of soil which is not waterlogged;
- (c) the mechanical field operation is necessary—
  - (i) to improve the drainage of the soil, or
  - (ii) to incorporate gypsum into the soil following an intrusion of saltwater, or
  - (iii) for reasons of animal welfare or human safety, or
  - (iv) in order to harvest a crop of fruit or vegetables—
    - (aa) in order to meet contractual obligations, or
    - (bb) where the quality of the crop would deteriorate if it was not harvested;
- (d) the National Assembly has, in accordance with its obligation under sub-paragraph (2), published written directions stating, with reasons—
  - (i) that in its opinion an area of Wales is affected by exceptional weather conditions,
  - (ii) that in its opinion those weather conditions justify the suspension or variation of the requirement in this paragraph, taking into consideration the economic impact of the weather conditions and the environmental effects of any variation or suspension of the requirements,

- (iii) the details of the suspension or variation, and
  - (iv) the period during which the suspension or variation will apply, provided that the period does not last more than two months,
- in which case any farmer in the area of Wales concerned must comply with the requirement as varied in the directions, or in the case of a suspension of the requirement, need not comply with the requirement, during the period stated.

(2) The National Assembly must publish such directions, in such a way as it considers appropriate to bring in the notice of those likely to be affected by them, whenever it considers it justified in consequence of such weather conditions to do so.

(3) In this paragraph, “mechanical field operation” includes any harvesting, cultivation or spreading operation (including the spreading of manure or slurry) and all vehicle activity over the land in question.

### **Burning of crop residues**

4. A farmer must not, on agricultural land, burn any crop residue of a kind specified in Schedule 1 to the Crop Residues (Burning) Regulations 1993<sup>(11)</sup> unless the burning is for the purposes of—

- (a) education or research;
- (b) disease control or the elimination of plant pests where a notice has been served under article 22 of the Plant Health (Great Britain) Order 1993<sup>(12)</sup>;
- (c) the disposal of straw stack remains or broken bales.

5. A farmer must not, on agricultural land, burn—

- (a) any crop residue of a kind specified in Schedule 1 to the Crop Residues (Burning) Regulations 1993 to which an exemption specified in paragraph 4(a) or (b) applies; or
- (b) any linseed residues;

otherwise than in accordance with the restrictions and requirements set out in Schedule 2 to those Regulations.

### **Overgrazing and unsuitable supplementary feeding methods**

6.—(1) If the National Assembly has given a farmer written directions concerning the management of land which is in its opinion subject to overgrazing or the use of unsuitable supplementary feeding methods, he or she must comply with those directions on any area of land specified in them.

(2) On any other land a farmer must —

- (a) not allow overgrazing;
- (b) not use unsuitable supplementary feeding methods;
- (c) not locate within 10 metres of a watercourse, sites where supplementary feeding for livestock is provided; or
- (d) regularly rotate sites where supplementary feeding for livestock is provided.

(3) In this paragraph—

“natural vegetation” means any self-seeded or self-propagated vegetation characteristic of the area in which the land is situated, the presence of which has not been influenced by human activities;

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<sup>(11)</sup> S.I. 1993/1366.

<sup>(12)</sup> S.I. 1993/1320, as last amended by S.I. 2004/2365.

“overgrazing” means grazing with so many livestock that the growth, quality or diversity of natural or semi-natural vegetation is adversely affected;

“semi-natural vegetation” means any self-seeded or self-propogated vegetation characteristic of the area in which the land is situated, the presence of which has been influenced by human activities; and

“unsuitable supplementary feeding methods” means methods that provide supplementary feed for livestock in a way that adversely affects the quality or diversity of natural or semi-natural vegetation through trampling or poaching of land by livestock, or through rutting by vehicles used to transport feed.

### **Management of land which is not in agricultural production**

7.—(1) Except where sub-paragraph (2) applies, and except on land which is set aside pursuant to a set aside obligation under Article 54 of the Council Regulation, on any eligible hectare which is not used for agricultural production a farmer must—

- (a) cut down any scrub and cut down or graze any rank vegetation at least once every 5 years, but—
  - (i) where vegetation has not been cut down or grazed for 3 years, he or she must only cut down or graze 50% of the area of that vegetation in either of the next two years; and
  - (ii) he or she must not cut down or graze any vegetation between 15th March and 31st July in any year, unless cutting or grazing are necessary in order for the farmer to comply with paragraph 8 (control of weeds);
- (b) on any land which has carried a crop of oil-seeds, grain legumes or cereals which has been harvested using a combine harvester or a mower, establish a green cover (either through sowing or self-seeding) as soon as is practicable on or after 1st March in the first year after the land has ceased to be used for agricultural production, unless the farmer can prove that he or she intends to bring the land back into agricultural production before 15th May in that year;
- (c) not use the land for non-farm vehicular use;
- (d) not apply any inorganic fertiliser to the land;
- (e) not apply organic fertilisers to the land, except as part of seedbed preparation during a period beginning two months before the day the crop is sown.

(2) The requirements under sub-paragraph (1), or any particular requirement specified, do not apply where—

- (a) the requirement in sub-paragraph (1)(a)(ii) would conflict with the farmer’s obligations under paragraph 8 or 9 of this Schedule (control of weeds);
- (b) the requirements in sub-paragraphs (1)(a) and (b) would conflict with the farmer’s obligations under paragraph 24 of this Schedule (protection of scheduled monuments);
- (c) any of the requirements would conflict with the farmer’s obligations under paragraphs 17 to 20 of this Schedule (sites of special scientific interest);
- (d) any of the requirements would, in relation to a particular area of land, conflict with an obligation on the farmer under an agri-environment commitment; or
- (e) the National Assembly has in order to enhance the environment, given the farmer written permission to manage the land in a different way.

(3) In this paragraph, “eligible hectare” has the meaning given to it by Article 44(2) of the Council Regulation.



## Control of weeds

**8.**—(1) If a notice has been served on a farmer under section 1 of the Weeds Act 1959(13), he or she must not unreasonably fail to comply with the requirements of that notice.

(2) A farmer must take all reasonable steps to prevent the spread of ragwort (*Senecio jacobaea*), spear thistle (*Cirsium vulgare*), creeping or field thistle (*Cirsium arvense*), broad-leaved dock (*Rumex obtusifolius*) and curled dock (*Rumex crispus*) on his or her land.

(3) If, in any appeal against a determination of the National Assembly in relation to this paragraph, a code of practice providing guidance on how to prevent the spread of ragwort (*Senecio jacobaea*) made under section 1A(1) of the Weeds Act 1959 appears to be relevant to any question arising in the appeal, it is to be taken into account in determining that question.

**9.** A farmer must take all reasonable steps to prevent the spread of Rhododendron ponticum, Japanese knotweed (*Reynoutria japonica*), giant hogweed (*Heracleum mantegazzianum*) and Himalayan balsam (*Impatiens glandulifera*) on his or her land.

## Boundary Features

**10.**—(1) Except where sub-paragraph (2) applies, a farmer must not remove, destroy or damage stone walls, stone faced banks, hedges, earthbanks, slate fences, stone gate posts and traditional stiles which serve as boundaries to agricultural land without the prior consent of—

- (a) the National Assembly,
- (b) by or under any enactment, another authority as shall be notified to the farmer by the National Assembly when the farmer applies to it for consent.

(2) A farmer may remove, or remove stone from, a stone feature —

- (a) to widen an existing gap in the stone feature to no more than 10 metres in order to provide access to the land for machinery or livestock, but the ends of the feature created by the widening operation must be finished with a vertical face; or
- (b) if the National Assembly has given the farmer written permission to do so because it considers that the removal is necessary in the circumstances of the particular case.

(3) In this paragraph,

- (a) “stone feature” includes a stone wall, a stone faced bank, a slate fence, and a stone gate post.
- (b) “stone wall” means a stone wall used as a field boundary—
  - (i) a continuous length of 10 metres or more;
  - (ii) a continuous length of less than 10 metres which meets (whether by intersection or junction) another field boundary at each end; or
  - (iii) a continuous length of less than 10 metres which forms an enclosure.

## Hedgerows

**11.** A farmer must not remove a hedgerow in breach of regulation 5(1) or (9) of the Hedgerows Regulations 1997(14).

**12.**—(1) Except where sub-paragraphs (2), (3) or (4) apply, a farmer must not cut or trim any hedgerow on his or her farm during the period beginning on 1st March and ending on 31st August .

(2) A farmer may cut or trim a hedgerow at any time if—

(13) 1959 c. 54, as amended by the Ragwort Control Act 2003 (2003 c. 40).

(14) S.I. 1997/1160, amended by S.I. 2003/2155.

- (a) it is necessary to cut or trim it because it—
    - (i) overhangs a highway or any other road or footpath to which the public has access so as to endanger or obstruct the passage of vehicles or pedestrians;
    - (ii) obstructs or interferes with the view of drivers of vehicles or the light from a public lamp; or
    - (iii) overhangs a highway so as to endanger or obstruct the passage of horse-riders.
  - (b) it is necessary to cut or trim it because—
    - (i) it is dead, diseased, damaged or insecurely rooted, and
    - (ii) because of its condition it, or part of it, is likely to cause danger by falling on the highway, road or footpath; or
  - (c) the cutting or trimming is carried out in order to maintain a ditch.
- (3) A farmer may carry out hedge-laying and coppicing during the period beginning on 1 March and ending on 31st March if he or she does not disturb any birds nesting in the hedgerow.
- (4) A farmer may trim a hedgerow by hand during a period of six months beginning with the first day after the hedgerow was laid.

#### **Definition of “hedgerow” in paragraphs 11 and 12**

- 13.**—(1) Subject to sub-paragraph (3), paragraph 12 applies to any hedgerow growing in, or adjacent to, any land which forms part of the farmer’s holding, if—
- (a) it has a continuous length of at least 20 metres; or
  - (b) it has a continuous length of less than 20 metres and, at each end, meets (whether by intersection or junction) another hedgerow.
- (2) Subject to sub-paragraph (3), a hedgerow is also one to which these Regulations apply if it is a stretch of hedgerow forming part of a hedgerow such as is described in sub-paragraph (1).
- (3) Paragraphs 11 and 12 do not apply to any hedgerow within the curtilage of, or marking a boundary of the curtilage of, a dwelling-house.
- (4) A hedgerow which meets (whether by intersection or junction) another hedgerow is to be treated as ending at the point of intersection or junction.
- (5) For the purposes of ascertaining the length of any hedgerow—
- (a) any gap resulting from a contravention of the Hedgerows Regulations 1997; and
  - (b) any gap not exceeding 20 metres,
- is treated as part of the hedgerow.

#### **Environmental impact assessment**

- 14.**—(1) A farmer must not begin or carry out a project without first obtaining either a decision that the project is not a relevant project or a decision granting consent for the project in accordance with the EIA (Uncultivated Land) Regulations.
- (2) A farmer must not breach a stop notice served on him or her under regulation 22(1) of the EIA (Uncultivated Land) Regulations.
- (3) In this paragraph—
- (a) “consent”, “project” and “relevant project” have the meanings given to them in regulation 2(1) of the EIA (Uncultivated Land) Regulations; and

- (b) “the EIA (Uncultivated Land) Regulations” means the Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (Wales) Regulations 2002<sup>(15)</sup>.

**15.—**(1) A farmer must not carry out, on any land, work or operations relating to a relevant project unless—

- (a) consent has been granted for that project by the Commissioners or by the appropriate authority; or
- (b) the project is carried out in accordance with the consent (including any conditions to which the consent is subject).

(2) A farmer must not carry out work in relation to a relevant project in contravention of a requirement to discontinue that work in an enforcement notice served in accordance with regulation 20 of the EIA (Forestry) Regulations.

(3) Subject to sub-paragraph (2) a farmer on whom an enforcement notice has been served in accordance with regulation 20 of the EIA (Forestry) Regulations must not fail, within the period specified in the enforcement notice, to carry out any measure required by the enforcement notice

(4) In this paragraph—

- (a) “the appropriate authority” and “the Commissioners” have the meanings given to them by regulation 2(1) of the EIA (Forestry) Regulations, and “relevant project” has the meaning given to it by regulation 3(1) of those Regulations; and
- (b) “the EIA (Forestry) Regulations” means the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999<sup>(16)</sup>.

### **Heather and grass burning**

**16.—**(1) A farmer must not commence burning heather, rough grass, bracken, gorse or vaccinium on any land between sunset and sunrise.

(2) A farmer must not burn heather, rough grass, bracken, gorse or vaccinium unless—

- (a) there are, where the burning is taking place, sufficient persons and equipment to control and regulate the burning during the entire period of the operation;
- (b) he or she takes, before commencing burning and during the entire period of the operation, all reasonable precautions to prevent injury or damage to any adjacent land, or to any person or thing whatsoever on that land; and
- (c) he or she has, not less than 24 hours and not more than 7 days before commencing burning on any land, given notice in writing of the date or dates, time and place at which, and the extent of the area on which it is his or her intention to burn—
  - (i) to any person who has an interest in the land either as owner or occupier, and
  - (ii) to any person whom he or she knows, or could with reasonable diligence have discovered, to be in charge of any land adjacent to that on which the burning is to take place.

(3) A farmer must not burn heather, rough grass, bracken, gorse or vaccinium—

- (a) on land which is within an upland area, during the period beginning on 16th April and ending on 30th September, and
- (b) on land which is not within an upland area, during the period beginning on 1st April and ending on 31st October,

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<sup>(15)</sup> S.I. 2002/2127.

<sup>(16)</sup> S.I. 1999/2228.

except under, and in accordance with any conditions specified in, a licence issued by the National Assembly(17) under regulation 7 of the Heather and Grass etc (Burning) Regulations 1986(18).

(4) In sub-paragraph (3), “upland area” means any area of land shaded pink on the two volumes of maps numbered 1 and 2, each volume being marked “Volume of maps of less-favoured farming areas in Wales”, dated 20th May 1991, signed by the Secretary of State for Wales and deposited in the Library of the National Assembly for Wales, Cathays Park, Cardiff CF10 3NQ.

(5) Regulations 8 and 9 of the Heather and Grass etc (Burning) Regulations 1986 apply to the giving of any notices under sub-paragraphs (2) and (3).

### Sites of special scientific interest

**17.**—(1) A farmer who owns or occupies any land included in a site of special scientific interest other than a European site, must not, while a notification under section 28(1)(b) of the Wildlife and Countryside Act 1981(19) remains in force, carry out, or cause or permit to be carried out on that land any operation notified under section 28(4)(b) unless he or she meets the conditions in section 28E(1) (a) or (b) of that Act, or unless he or she has a reasonable excuse.

(2) In this paragraph, “reasonable excuse” means a reasonable excuse within the meaning of section 28P(4) of the Wildlife and Countryside Act 1981.

**18.**—(1) On land which is a site of special scientific interest other than a European site, a farmer must not, without reasonable excuse, knowing that the land concerned is within a site of special scientific interest, intentionally or recklessly destroy or damage any of the flora, fauna, or geological or physiographical features by reason of which that land is of special scientific interest, or intentionally or recklessly disturb any of that fauna.

(2) In this paragraph, “reasonable excuse” means a reasonable excuse within the meaning of section 28P(7) of the Wildlife and Countryside Act 1981.

**19.** A farmer must not, without reasonable excuse, fail to comply with a requirement of a management notice served on him or her under section 28K(1) of the Wildlife and Countryside Act 1981.

**20.** A farmer must not, without reasonable excuse, fail to comply with a restoration order made under section 31 of the Wildlife and Countryside Act 1981.

**21.** In paragraphs 17 and 18—

- (a) “site of special scientific interest” means an area of land which has been notified under section 28(1)(b) of the Wildlife and Countryside Act 1981; and
- (b) “European site” has the meaning given to it by regulation 10 of the Conservation (Natural Habitats, etc) Regulations 1994(20).

### Tree preservation orders

**22.** A farmer must not, in breach of a tree preservation order made under section 198(1) of the Town and Country Planning Act 1990(21)—

- (a) cut down, uproot or wilfully destroy a tree; or
- (b) wilfully damage, top or lop a tree in such a manner as to be likely to destroy it.

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(17) Licensing functions were transferred to the National Assembly by Article 2 of [SI 1999/672](#).

(18) S.I. [1986/428](#) as last amended by S.I. [2003/1615](#).

(19) [1981 c. 69](#). The relevant provisions were substituted or inserted by the Countryside and Rights of Way Act 2000 ([2000 c. 37](#)), section 75(1) and Schedule 9.

(20) S.I. [1994/2716](#), amended by S.I. [2000/192](#).

(21) [1990 c. 8](#).

### **Felling of trees**

**23.**—(1) A farmer must not fell a tree without the authority of a felling licence, in circumstances where a felling licence is required under section 9(1) of the Forestry Act 1967<sup>(22)</sup>.

(2) A farmer must not, without reasonable excuse, fail to take any steps required by a notice given to him or her under section 24 of the Forestry Act 1967 (a notice to comply with conditions, directions or a restocking notice).

### **Scheduled monuments**

**24.**—(1) Subject to sub-paragraph (3), a farmer must not, without consent under section 2(3) of the Ancient Monuments and Archaeological Areas Act 1979<sup>(23)</sup>, execute any of the following works—

- (a) any works resulting in the demolition or destruction of or any damage to a scheduled monument;
- (b) any works for the purpose of removing or repairing a scheduled monument or any part of it;
- (c) any works for the purpose of making any alteration or additions to a scheduled monument or any part of it;
- (d) any flooding or tipping operations on land in, on or under which there is a scheduled monument.

(2) Subject to sub-paragraph (3), if a farmer executes any works to which a scheduled monument consent relates, he or she must comply with all conditions attached to that consent.

(3) If a farmer can show that—

- (a) in relation to works prohibited under sub-paragraph (1)(a), he or she took all reasonable precautions and exercised all due diligence to avoid or prevent damage to the monument;
- (b) in relation to works prohibited under sub-paragraph (1)(a) or (c), he or she did not know and had no reason to believe that the monument was within the area affected by the works or, as the case may be, that it was a scheduled monument; and
- (c) in relation to any works under sub-paragraph (1) or (2), the works were urgently necessary in the interests of safety or health and that notice in writing of the need for the works was given to the National Assembly as soon as reasonably practicable.

In this paragraph, “scheduled monument” has the meaning given to it in section 1(11) of the Ancient Monuments and Archaeological Areas Act 1979 and “scheduled monument consent” is construed in accordance with sections 2(3) and 3(5) of that Act.

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## **EXPLANATORY NOTE**

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

These Regulations make provision in Wales for the administration and enforcement of Council Regulation (EC) No. 1782/2003 (OJ No. L 270, 21.10.2003, p.1) (“the Council Regulation”) and

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<sup>(22)</sup> 1967 c. 10, amended by the Forestry Act 1986 (1986 c. 30).

<sup>(23)</sup> 1979 c. 46.

Commission Regulation (EC) No. 796/2004 (OJ No. L 141, 30.4.2004, p18) (“the Commission Regulation”), in relation to the “cross compliance” aspects of the new system of direct support schemes (including the Single Payment Scheme) under the Common Agricultural Policy (“CAP”) which comes into force on 1 January 2005.

“Cross compliance” is the term which reflects the requirements of Articles 3 to 7 of the Council Regulation which make receipt of direct payments under the CAP conditional upon compliance with a range of laws and standards.

The laws are set out in Annex III to the Council Regulation, which contains a list of “statutory management requirements” in areas of Community law on the environment, public and animal health and animal welfare. Additionally under Article 5(1) of the Council Regulation, Member States must set out standards of “good agricultural and environmental condition” which will apply to all farmers, within the framework of Annex IV to that Regulation.

Within the context of the above, these Regulations provide as follows:

Regulation 3 designates the National Assembly for Wales (“the National Assembly”) as the competent national authority responsible for providing farmers with a list of the statutory management requirements and standards of good agricultural and environmental condition on his or her land.

Regulation 4, by reference to the Schedule, sets out the standards of good agricultural and environmental condition which will apply in Wales. The standards in the Schedule cover the following areas—

- Retention of guidance on soils (paragraph 1)
- Post-harvest management of land after combinable crops (paragraph 2)
- Waterlogged soil (paragraph 3)
- Burning of crop residues (paragraphs 4 and 5)
- Overgrazing and unsuitable supplementary feeding methods (paragraph 6)
- Management of land which is not in agricultural production (paragraph 7)
- Control of weeds (paragraphs 8 and 9)
- Boundary Features (paragraph 10)
- Hedgerows (paragraphs 11 to 13)
- Environmental impact assessment (paragraphs 14 and 15)
- Heather and grass burning (paragraph 16)
- Sites of special scientific interest (paragraphs 17 to 21)
- Tree preservation orders (paragraph 22)
- Felling of trees (paragraph 23)
- Scheduled monuments (paragraph 24)

Regulation 5 gives the National Assembly the power to prohibit farmers from converting land under permanent pasture and to also require farmers to reconvert land to permanent pasture, where the exercise of such a power is necessary in order for the United Kingdom to meet the requirements of Article 5(2) of the Council Regulation and Articles 3 and 4 of the Commission Regulation.

Regulation 6 gives effect to a derogation granted under Article 42 of the Commission Regulation which permits the National Assembly to be designated as the Competent Control Authority (“CCA”). The CCA bears responsibility for carrying out the controls and checks on the requirements or standards referred to above. However Regulation 6 enables the National Assembly to require the Environment Agency and the Countryside Council for Wales (“a relevant authority”), to carry out cross compliance controls and checks and subsequently submit to it a provisional report of their

findings. A relevant authority is also under a general duty to notify the National Assembly of any non-compliance established as a consequence of any kind of check.

Regulation 7 provides powers of entry for an authorised person. These powers are in addition to any existing power of entry and are for the purpose of providing a control report or establishing whether there has been a non-compliance or ascertaining whether an offence under these Regulations has been or is being committed.

Regulations 8 provides for an authorised person to request assistance.

Regulation 9 establishes offences for obstructing and failing to provide assistance to an authorised person.

A regulatory appraisal has been prepared in respect of these Regulations and is available from the Department for Environment, Planning and Countryside, National Assembly for Wales, Cathays Park, Cardiff CF10 3NQ.