
STATUTORY INSTRUMENTS

1994 No. 3100

AGRICULTURE

The Habitat (Water Fringe) (Wales) Regulations 1994

Made - - - - 12th December 1994
Laid before Parliament 14th December 1994
Coming into force - - 9th January 1995

The Secretary of State, being a Minister 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 him by the said section 2(2) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement and extent

1. These Regulations may be cited as the Habitat (Water Fringe) (Wales) Regulations 1994, shall come into force on 9th January 1995 and shall apply to Wales.

Interpretation

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

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, livestock breeding and keeping and freshwater fish farming, the use of land as grazing land, meadow land, osier land, reed beds, market gardens and nursery grounds, and “agricultural” shall be construed accordingly;

“application” means an application for aid under regulation 4 and “applicant” shall be construed accordingly;

“bank” means a bank made of stone or earth falling within or forming the boundary of a field;

“beneficiary” means a person whose application has been accepted;

“boulder” means a rock projecting partly or wholly above the surface of the land to a height of at least 0.1 metres and covering a minimum area above ground of 0.5 square metres;

“coastal belt” means land on cliff tops or coastal slopes, where the natural vegetation consists primarily of dwarf shrubs, including ericoids and maritime species, or grassland which includes maritime grass species;

(1) S.I.1972/1811.
(2) 1972 c. 68.

“eligible land” means any grassland or arable land which borders a river or stream and—

- (a) which is not coastal belt or semi-natural rough grazings;
- (b) which is not situated in an environmentally sensitive area designated under section 18 of the Agriculture Act 1986(3);
- (c) which is not subject to an experimental scheme made by the Countryside Council for Wales under section 4(1) of the Countryside Act 1968(4);
- (d) which is not the subject of an agreement entered into under section 15 of the Countryside Act 1968 or under section 16 of the National Parks and Access to the Countryside Act 1949(5); and
- (e) in respect of which no grant has been paid by the Secretary of State under the Farm Woodland Scheme 1988(6) or by the Forestry Commissioners;

“eligible person” means a person who on the date of the submission of his application occupies eligible land as an owner or tenant and who at the commencement of the management period will have so occupied that land for a period of at least twelve months;

“heather” means vegetation consisting of *Calluna vulgaris*, *Erica tetralix*, *Erica cinerea* or *Vaccinium myrtillus*;

“holding” means land which is occupied as a unit for agricultural purposes;

“landlord” means, in relation to a tenant of any land, any person who either solely or jointly owns or has a superior tenancy of that land;

“livestock unit” means—

- (a) 1 bovine animal more than two years old, or
- (b) 1.66 bovine animals from six months old to two years old inclusive, or
- (c) 6.66 sheep;

“management obligations” means the obligations assumed by a beneficiary by virtue of the undertakings referred to in regulation 3 or 6;

“management period”, in relation to an application accepted by the Secretary of State, means the period of 10 consecutive years commencing on a date agreed by the Secretary of State and the beneficiary;

“rock outcrop” means an area of land where a stratum of underlying rock is exposed above the surface of the ground and which covers an area above ground of not less than nine square metres;

“scrub” means vegetation consisting of locally native shrub species and tree saplings usually less than 5 metres in height and with a trunk diameter of less than 150 millimetres at a height of 1.3 metres;

“semi-natural rough grazings” means land where the vegetation consists predominantly of bent (*Agrostis*), fescue (*Festuca*), bracken (*Pteridium aquilinum*), purple moor grass (*Molinia caerulea*), mat grass (*Nardus stricta*), heather (*Calluna vulgaris*, *Erica tetralix*, *Erica cinerea*), bilberry (*Vaccinium myrtillus*), cotton grass (*Eriophorum*) or deer grass (*Trichophorum cespitosum*);

(3) 1986 c. 49.

(4) 1968 c. 41; section 4(1) was substituted by section 40 of the Wildlife and Countryside Act 1981 (c. 69) and was later amended by paragraph 2 of Schedule 8 to the Environmental Protection Act 1990 (c. 43); section 15 was amended by the Nature Conservancy Council Act 1973 (c. 54) and by paragraph 4 of Schedule 9 to the Environmental Protection Act 1990.

(5) 1949 c. 97; section 16 was amended by the Nature Conservancy Council Act 1973 and paragraph 1(2) of Schedule 9 to the Environmental Protection Act 1990 provides a new meaning of “Nature Conservancy Council”.

(6) S.I. 1988/1291, amended by S.I. 1991/1631, 1992/905.

“strip”, in relation to eligible land, means a strip which is at least 10 metres wide as measured from the bank of the river or stream to a line running parallel to that bank;

“tenant” means a person who occupies land—

- (a) under an agreement for the letting of land for a tenancy from year to year;
- (b) under an agreement which has effect by virtue of section 2(1) or 3(1) of the Agricultural Holdings Act 1986(7) as an agreement for the letting of land for a tenancy from year to year; or
- (c) under a contract of tenancy for a fixed term of years of which at least 10 years remain unexpired at the commencement of the management period;

“traditional farm buildings” means buildings which are in current agricultural use, but excluding living accommodation, and which are built of materials traditional to the locality;

“wildlife” means—

- (a) any animal (other than a bird) which is ordinarily resident in Wales in a wild state;
- (b) any bird which is ordinarily resident in or is a visitor to Wales in a wild state; and
- (c) any plant which is of a kind which ordinarily grows in Wales in a wild state.

(2) Any reference in these Regulations to a numbered regulation or “the Schedule” shall be construed as a reference to the regulation so numbered in these Regulations or the Schedule to these Regulations.

Aid for eligible land

3. Subject to the provisions of these Regulations, the Secretary of State may make payments of aid to any eligible person who undertakes for the duration of the management period—

- (a) not to use a strip of eligible land for agricultural production, except that there shall be permitted on that land—
 - (i) mowing carried out as part of a programme for managing the land agreed under paragraph (21) of the Schedule, and
 - (ii) grazing with livestock in accordance with the requirements set out in the Schedule; and
- (b) to manage that strip and any features bordering on that strip in accordance with the requirements set out in the Schedule.

Applications for aid

4. An application for aid under these Regulations shall be made at such time and in such form as the Secretary of State reasonably may require and shall include—

- (a) a map of the area of the eligible land in respect of which the applicant proposes to assume management obligations;
- (b) a description of the use or uses of that land; and
- (c) if required by the Secretary of State, evidence showing the nature of the applicant’s estate or interest in that land.

Restrictions on acceptance of applications

5.—(1) The Secretary of State shall not accept an application in relation to any land unless he is satisfied that the management of the land in accordance with the requirements set out in the Schedule will maintain, improve or protect a habitat for wildlife on that land.

(2) The Secretary of State shall not accept an application in relation to any land which is occupied by a tenant unless he is satisfied that the tenant has obtained the consent in writing of the landlord of that land to the making of the application.

(3) The Secretary of State may refuse to accept an application in relation to any land where he is satisfied that—

- (a) the management of the land in accordance with the requirements set out in the Schedule would frustrate the purposes of any assistance previously given or to be given out of money provided by Parliament or by the European Community; or
- (b) the payment of aid under these Regulations in relation to that land would duplicate any assistance given or to be given out of money provided by Parliament or by the European Community.

Change of occupation

6.—(1) Where, during the course of the management period, there is a change of occupation of the entirety or any part of a beneficiary's land which is subject to management obligations by reason of the devolution of that land or part on the death of the beneficiary, or otherwise—

- (a) the beneficiary (or, if he has died, his personal representatives) shall notify the Secretary of State in writing of the change of occupation within three months of its occurrence and shall supply to the Secretary of State such information relating to that change of occupation in such form and within such period as the Secretary of State reasonably may determine;
- (b) the new occupier of that land or part may give an undertaking to the Secretary of State to comply with the management obligations relating to that land or part for the remainder of the management period.

(2) The Secretary of State shall not accept an undertaking referred to in paragraph (1)(b) above unless he is satisfied that the new occupier occupies the land or part as an owner or tenant or as the personal representative of the original occupier.

(3) A new occupier who gives an undertaking to comply with the management obligations assumed by the original occupier shall supply to the Secretary of State such information in such form and within such period following the change of occupation as the Secretary of State may reasonably determine.

(4) Where the Secretary of State has accepted an undertaking from a new occupier to comply with the management obligations undertaken by the original occupier—

- (a) the new occupier shall be deemed to be a beneficiary and, subject to paragraph (5) below shall be entitled to payments of aid in place of the original occupier for the remainder of the management period; and
- (b) his undertaking to comply with those management obligations shall be deemed to take effect on the date of the acceptance by the Secretary of State of that undertaking.

(5) Where there is a change of occupation of part of the land subject to management obligations, the new occupier shall be entitled to payments of aid in the same proportion as the area of such land occupied by him bears to the area of such land occupied by the original occupier prior to the change of occupation.

(6) Where within 3 months from the date of change of occupation a new occupier has not given an undertaking to comply with the management obligations assumed by the original occupier, the Secretary of State may—

- (a) withhold the whole or any part of any payments due to the original occupier; and
- (b) recover from that original occupier or his personal representatives the whole or any part of any payments of aid already made to him.

(7) Paragraph (6) above shall not apply where the change of occupation of the entirety or any part of a beneficiary's land which is subject to management obligations is the result of—

- (a) the compulsory purchase of that land or part;
- (b) the death of the original occupier, and
 - (i) that original occupier occupied that land or part as a tenant; and
 - (ii) following the death of that original occupier the tenancy or lease under which he occupied that land or part was terminated by the landlord; or
- (c) the termination of a tenancy following the operation of a notice to quit to which the Agricultural Land Tribunal has consented under section 26(1) of the Agricultural Holdings Act 1986 having been satisfied as to any of the matters specified in section 27(3) of that Act, or the termination of a tenancy following the service of a notice to quit stating that the circumstances in Case A, B, G or H of Schedule 3 to that Act apply.

Amounts and payment of aid

7. Subject to the provisions of these Regulations, payments of aid shall be made annually at a rate of £190 per hectare of eligible land to which the requirements of the Schedule apply.

Claims for aid

8. Any claim for the payment of aid under these Regulations shall be made at such time and in such form and shall contain such information as the Secretary of State reasonably may require.

Obligation to permit entry and inspection

9.—(1) A beneficiary shall permit any person duly authorised by the Secretary of State, accompanied by such persons acting under his instructions as appear to the authorised person to be necessary for the purpose, at all reasonable times and on production of his authority on demand, to enter upon that beneficiary's holding in order to inspect any land, document or record with a view to verifying—

- (a) the accuracy of any particulars given in any application or claim under regulation 8 or in any undertaking given by a new occupier pursuant to regulation 6(1)(b); and
- (b) compliance with the management obligations.

(2) A beneficiary shall render all reasonable assistance to the authorised person in relation to the matters mentioned in paragraph (1) above, and in particular shall—

- (a) produce such document or record as may be required by that person for inspection; and
- (b) at the request of that person, accompany him in making the inspection of any land and shall identify any area of land which is concerned in any application or claim or in any undertaking given by a new occupier to comply with the management obligations undertaken by the original occupier.

Withholding and recovery of aid and termination

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 in a material respect, 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 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 management 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 without reasonable excuse to comply with any provision 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.

(3) Where the Secretary of State withholds or recovers aid under paragraph (1) or (2) above, the Secretary of State may also treat as terminated the undertakings given by the beneficiary under these Regulations.

(4) Before withholding or recovering any aid under paragraph (2)(a) above, the Secretary of State shall—

- (a) give to the beneficiary a written explanation of the reasons for the proposed withholding or recovery;
- (b) afford the beneficiary an 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.

False statements

11. If any person, for the purposes of obtaining for himself or any other person any aid under these Regulations, knowingly or recklessly makes a statement which is false in a material particular, that person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

Signed by authority of the Secretary of State for Wales

Welsh Office
12th December 1994

Gwilym Jones,
Parliamentary Under Secretary of State,

SCHEDULE

Regulation 3, 5 and 7

MANAGEMENT REQUIREMENTS

As regards any strip of eligible land which is the subject of an undertaking under regulation 3(a)—

(1) the beneficiary shall maintain existing hedges, walls, fences and banks using traditional methods and materials;

(2) the beneficiary shall not remove any existing hedges, walls, fences (other than wire fences), banks or hedgerow trees;

(3) the beneficiary shall not construct new hedges, walls, fences or banks without the prior written approval of the Secretary of State;

(4) the beneficiary shall not plough, level, reseed, cultivate or use a chain harrow or roller;

(5) the beneficiary shall not install any new drainage system nor substantially modify any existing drainage system without the prior written approval of the Secretary of State;

(6) the beneficiary shall not apply any lime or any other substance designed to reduce the acidity of the soil or any inorganic or organic fertiliser;

(7) the beneficiary shall not apply fungicides or insecticides;

(8) subject to paragraph (9) below, the beneficiary shall not apply herbicides except to control nettles (*Urtica dioica*), spear thistle (*Cirsium vulgare*), creeping or field thistle (*Cirsium arvense*), curled dock (*Rumex crispus*), broadleaved dock (*Rumex obtusifolius*), ragwort (*Senecio jacobaea*) and Japanese Knotweed (*Reynoutria Japonica*) and then only by spot treatment or weed wiper;

(9) the beneficiary shall control bracken (*Pteridium aquilinum*) by mechanical means or by the use of asulam or other chemical approved by the Secretary of State and in accordance with a programme agreed in advance with the Secretary of State;

(10) the beneficiary shall burn heather, grass and scrub only in accordance with a programme agreed in advance with the Secretary of State;

(11) the beneficiary shall conserve and maintain all existing lakes, ponds and streams;

(12) the beneficiary shall ensure that he does not damage or destroy any features of archaeological or historic interest;

(13) the beneficiary shall not remove any scrub without the prior written approval of the Secretary of State;

(14) the beneficiary shall retain any broadleaved trees for which he is responsible;

(15) the beneficiary shall not move any boulders or remove any rocks from rock outcrops;

(16) the beneficiary shall maintain any weatherproof traditional farm buildings for which he is responsible in a weatherproof condition using traditional materials or other materials the use of which has been approved in writing by the Secretary of State;

(17) the beneficiary shall obtain from the Secretary of State written advice concerning siting, design and materials before constructing or altering buildings or roads or undertaking any other engineering or construction operations which do not require prior notification determination by the local planning authority under the Town and Country Planning General Development Order 1988(8), or planning permission;

(18) the beneficiary shall control pests in a lawful manner;

(19) the beneficiary shall not graze the land with cattle or sheep at a stocking rate that causes overgrazing or poaching, but shall not in any event graze the land with cattle or sheep at an average annual stocking rate exceeding 0.3 livestock units per hectare;

(8) S.I. 1988/1813; the relevant amending instrument is S.I. 1991/2805.

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(20) the beneficiary shall restrict supplementary feeding of livestock to areas agreed in writing with the Secretary of State;

(21) the beneficiary shall, within six months of the commencement of the management period, agree in writing with the Secretary of State—

(a) a programme for managing the strip, including in particular regimes for—

- (i) mowing grass late in the growing season;
- (ii) planting trees on river banks;
- (iii) determining which type of livestock should graze the strip;
- (iv) creating standing water;
- (v) excluding livestock from river banks; and
- (vi) profiling such banks; and

(b) a timescale to implement that programme;

(22) the beneficiary shall commence work on the programme for managing the strip agreed with the Secretary of State under paragraph (21) above within nine months of the start of the management period and shall thereafter implement that programme in accordance with the timescale agreed with the Secretary of State.

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations implement in part Council Regulation (EEC) No. 2078/92 (OJ No. L215, 30.7.92, p.85) on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside.

The Regulations, which apply to Wales, provide for the payment of aid to eligible persons, who as regards a strip of eligible land (as defined in regulation 2(1)), undertake for a period of 10 years not to use that land for agricultural production, other than for mowing as part of a programme for managing the eligible land and for grazing in accordance with the requirements of the Schedule to the Regulations, and to manage it and any features bordering on it in accordance with those requirements (regulation 3).

Applications for aid must include details such as a map of the eligible land (regulation 4) and restrictions on the acceptance of applications in certain circumstances are set out (regulation 5).

Provision is made for a new occupier of land to receive aid in place of the original occupier upon the Secretary of State's acceptance of his undertaking to comply with the obligations undertaken by the original occupier for the remainder of the management period (as defined in regulation 2(1)) (regulation 6).

Aid is payable annually and the rate is set out (regulation 7).

The Regulations also—

- (a) provide for an obligation to permit entry and inspection (regulation 9);
- (b) provide for withholding and recovery of aid and termination of undertakings (regulation 10); and

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- (c) create an offence, punishable on summary conviction with a fine not exceeding level 5 on the standard scale, of knowingly or recklessly making a false statement in order to obtain aid (regulation 11).