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STATUTORY INSTRUMENTS

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**1996 No. 3073**

**AGRICULTURE**

**The Habitat (Water Fringe) (Wales)  
(Amendment) Regulations 1996**

*Made* - - - - *11th December 1996*  
*Laid before Parliament* *11th December 1996*  
*Coming into force* - - *1st January 1997*

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 Habitat (Water Fringe) (Wales) (Amendment) Regulations 1996, shall come into force on 1st January 1997, and shall apply to Wales.

**Amendments to previous Regulations**

2.—(1) The Habitat (Water Fringe) (Wales) Regulations 1994<sup>(3)</sup> shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 2(1) (interpretation)—

(a) after the definition of “agriculture” and “agricultural” 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
- (b) approved by the Commission of the European Communities under Article 7(3) of the Council Regulation as part of a zonal programme drawn up pursuant to Article 3 of the Council Regulation;”;

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(1) S.I.1972/1811.  
(2) 1972 c. 68.  
(3) S.I. 1994/3100.

- (b) after the definition of “coastal belt” there shall be inserted the following definitions—
- ““the Commission Regulation” means Commission Regulation (EC) No. 746/96(4) laying down detailed rules for the application of the Council Regulation;
- “the Council Regulation” 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 as last amended by Commission Regulation (EC) No. 2772/95(6) as rectified by Commission Regulation (EC) No. 1962/96(7);”;
- (c) for the definition of “eligible person” there shall be substituted the following definition—
- ““eligible person” means a person who on the date of submission of his application—
- (a) occupies eligible land as an owner or tenant; and
  - (b) 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 the Commission Regulation (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 the Commission Regulation (which requires a person who, intentionally or by reason of gross negligence, makes a false declaration, to be excluded from all aid under the Council Regulation);”;
- (d) after the definition of “eligible person” there shall be inserted the following definition—
- ““former scheme period”, in relation to an area, means the period elapsed under an undertaking given or an agreement entered in relation thereto under an agri-environment scheme, including any period elapsed under any other such undertaking or agreement and treated in effect as aggregated with that period for the purposes of that scheme—
- (a) by virtue of a change of occupation of the land to which the undertaking or agreement relates;
  - (b) by application of Article 11 of the Commission Regulation (which governs transfers of holdings); or
  - (c) by application of Article 13 of the Commission Regulation (which authorises replacement of an agri-environment scheme undertaking or agreement by another such undertaking or agreement);”;
- (e) for the definition of “landlord” there shall be substituted the following definition—
- ““landlord” means, in relation to any land occupied by a tenant, any person who is entitled for the time being to receive the rents and profits of the land from the tenant so occupying the land;”;
- (f) for the definition of “management period”, there shall be substituted the following definition—
- ““management period”, in relation to an application accepted by the Secretary of State, means—
- (i) where an application is made pursuant to Article 13 of the Commission Regulation (which authorises replacement of an agri-environment scheme

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

(5) OJ No. L215, 30.7.92, p.85.

(6) OJ No. L288, 1.12.95, p.35.

(7) OJ No. L259, 12.10.96, p.7.

undertaking or agreement by another such undertaking or agreement), a continuous period, which, when aggregated with the former scheme period, makes 10 consecutive years, or

- (ii) in any other case, 10 consecutive years, commencing on a date to be agreed by the Secretary of State and the beneficiary;”.

(3) In regulation 3 (aid for eligible land), after the word “undertakes” there shall be inserted the words “in writing”.

(4) In regulation 5 (restrictions on acceptance of applications), after paragraph (2) there shall be inserted the following paragraph—

“(2A) The Secretary of State shall not accept an application in relation to any land made pursuant to Article 13 of the Commission Regulation (which authorises replacement of an agri-environment scheme undertaking or agreement by another such undertaking or agreement) unless he is satisfied that the conditions set out in that Article are fulfilled.”.

(5) In regulation 6 (change of occupation)—

- (a) the words “in writing” shall be inserted after the word “undertaking” in paragraph (1)(b); and

- (b) the following paragraph shall be substituted for paragraph (2)—

“(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—

- (a) occupies the land or part as an owner or tenant or as the personal representative of the original occupier, and

- (b) is not prohibited from providing an undertaking pursuant to an agri-environment scheme by application of Article 10 of the Commission Regulation (which restricts duplication of aid payments), by application of a penalty consequent upon Article 20(2) of the Commission Regulation (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 the Commission Regulation (which requires a person who, intentionally or by reason of gross negligence, makes a false declaration, to be excluded from all aid under the Council Regulation)”, and

- (c) the following paragraph shall be substituted for paragraph (7)—

“(7) The foregoing provisions of this Regulation shall be subject to Article 11 of the Commission Regulation (which governs transfers of holdings) and Article 12 of the Commission Regulation (force majeure).”.

(6) In regulation 7 (amounts and payment of aid), after the phrase “Subject to the provisions of these Regulations” there shall be inserted the phrase “, of Article 20(3) of the Commission Regulation (which requires a person who, intentionally or by reason of gross negligence, makes a false declaration, to be excluded from all aid under the Council Regulation) and, in respect of an application made on or after 1st January 1997, of Article 10 of the Commission Regulation (which restricts duplication of aid payments)”.

(7) 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 the Commission Regulation (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 management obligations;
- (b) fails 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 the Commission Regulation (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) above, he may also treat as terminated the undertakings given by the beneficiary under these Regulations.

(4) Where under paragraph (3) above the Secretary of State treats the undertakings given by the beneficiary as terminated, in connection with any step taken under paragraph (2) above, he may also, insofar as is consequent upon Article 20(2) of the Commission Regulation, 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) Before taking any steps specified in paragraph (2), (3) or (4) above by reference to paragraph (2)(a) above, 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.”.

(8) 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 the Commission Regulation (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 the Commission Regulation.

(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 also 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.** 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 the Commission Regulation insofar as it relates to land subject to management obligations, the amount so falling to be paid shall be recoverable as a debt.”

Signed by authority of the Secretary of State for Wales

11th December 1996

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

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

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

These Regulations amend the Habitat (Water Fringe) (Wales) Regulations 1994 (“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 restricts duplication of aid payments), Article 11 (which governs transfers of holdings entered into agreements or undertakings under the Agri-environment Regulation), Article 12 (force majeure), Article 13 (which authorises replacement of an agri-environment scheme undertaking or agreement by another such undertaking or agreement) and Article 20 (which provides for recovery of wrongful payments with interest, a penalty system and exclusion for false declarations).

The Regulations—

- (a) make provision for the Secretary of State to accept replacements for undertakings made pursuant to a scheme approved under the Agri-environment Regulation and to count the period elapsed under that scheme towards the management period for the purposes of the principal Regulations, where the conditions set out in Article 13 of the Commission Regulation are fulfilled (the primary conditions being that the transfer is of unquestionable benefit to the environment and that the existing undertaking is significantly reinforced),
- (b) specify that entitlement to payment under the principal Regulations is subject to the provisions of Article 10 and Article 20(3) of the Commission Regulation,
- (c) 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,
- (d) set a rate of interest where recovery of money is to include interest in accordance with Article 20(1) of the Commission Regulation, and
- (e) amend the definition of “landlord” in the principal Regulations and provide that any undertaking given under regulation 3 or 6 of those Regulations shall be in writing.

The Regulations form part of a package submitted to the Commission under Article 23 of the Commission Regulation.

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