WELSH STATUTORY INSTRUMENTS

2006 No. 41 (W.7)

AGRICULTURE, WALES

The Tir Cynnal (Wales) Regulations 2006

Made - - - -	*10 January 2006*
Coming into force - -	*13 January 2006*

The National Assembly, being designated (**1**) for the purposes of section 2(2) of the European Communities Act 1972 in relation to the common agricultural policy of the European Community(**2**), in exercise of the powers conferred on it by the said section 2(2) and of all other powers enabling it in that behalf hereby makes the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Tir Cynnal (Wales) Regulations 2006 and they come into force on 13 January 2006.

(2) These Regulations apply in relation to Wales only.

Interpretation

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

"agreement land" means land which is the subject of a Tir Cynnal agreement;

"Code of Good Farming Practice" means the Good Farming Practice provisions set out in section 9.1 of the Rural Development Plan for Wales 2000-2006;

"the Commission Regulation" means Commission Regulation (EC) No. 817/2004(**3**) laying down detailed rules for the application of the Council Regulation;

"the Council Regulation" means Council Regulation (EC) No. 1257/1999(**4**) on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside;

"carrying out", in relation to an activity, includes ensuring that it is carried out, and "carry out" will be construed accordingly;

(**1**) S.I.2005/2766
(**2**) 1972 c. 68
(**3**) OJ No. L74/1, 26.2.04
(**4**) OJ No. L343, 23.6.99

"eligible person" means a Tir Cynnal agreement holder who applies for aid under these Regulations and is not excluded from eligibility for that aid at the time at which that person's application is considered;

"farm resource management plan" means the activity set out in Part 3 of the Schedule;

"force majeure" means abnormal and unforeseeable circumstances outside the control of the claimant the effect of which would not have been avoided by the exercise of all due care by the applicant;

"landlord indemnity form" means the form drafted by the National Assembly wherein the Landlord of a Tenant who wishes to participate in the Tir Cynnal scheme but has less than five years to run under his or her tenancy agreement, undertakes to the Tenant to maintain the land within the Tir Cynnal scheme until at least the end of the first 5 years of any agreement made by the Tenant to enter into the Tir Cynnal scheme;

"National Assembly" means the National Assembly for Wales;

"other party" means a person who is party to a Tir Cynnal agreement with the National Assembly;

"resource management plan" means the activity set out in Part 3 of the Schedule;

"specified purposes" means the conservation of biodiversity, protection of landscape features, safeguarding the historic environment and reducing pollution;

"Tir Cynnal agreement" has the meaning given to it by regulation 4(2); and

"Tir Cynnal agreement holder" means any person who has entered into a Tir Cynnal agreement;

"whole farm section" means the environmental conditions set out in Part I of the Schedule which have to be complied with as part of the Tir Cynnal scheme;

"wildlife habitat" means the environmental conditions set out in Part 2 of Schedule 1.

"working day" means a day which is not a Saturday, Sunday, a common law holiday in Wales and England, or a Bank Holiday in Wales under the Banking and Financial Dealings Act(**5**).

"the 5% habitat condition" means the conditions set out in Part 2 of the Schedule."

(2) Any reference in these regulations to —

(a) a numbered regulation or Schedule is a reference to the regulation in or Schedule to these regulations so numbered;

(b) a numbered paragraph is a reference to the paragraph so numbered in the regulation in which the reference occurs; and

(c) a numbered or denoted sub-paragraph is a reference to the sub-paragraph so numbered or denoted in the paragraph in which the reference occurs.

Applications

3. An application by an eligible person to join the Tir Cynnal scheme will be made at such time and in such form and will contain or be accompanied by such information and subject to such conditions as the National Assembly may require.

Power to enter into agreements

4.—(1) In any case where the National Assembly is of the opinion that, in relation to any land, the following of the conditions set out in Parts 1, 2, 3 and 4 of the Schedule by any person who has an interest in that land would be conducive to the specified purposes, the National Assembly may, subject to paragraphs (4) and (5) below, enter into a Tir Cynnal agreement with that eligible person.

(**5**) 1971 c. 80

(2) For the purposes of paragraph (1) above, a Tir Cynnal agreement means an agreement which remains in force for a minimum period of five years, provides for the agreement holder to follow the conditions set out in Parts 1, 2, 3 and 4 of the Schedule in relation to the agreement land and requires the National Assembly to make payments of aid to the agreement holder in respect of the following of these conditions on the agreement land.

(3) The National Assembly will not enter into any Tir Cynnal agreement in circumstances to which Article 42 of Commission Regulation 817/2004 (which authorises replacement of an agri-environment scheme undertaking or agreement by another such undertaking or agreement) applies unless it is satisfied that the conditions set out in that Article are fulfilled.

(4) The National Assembly will not enter into any Tir Cynnal agreement unless the amount of land subject to that agreement comprises at least 3 hectares.

(5) A Tir Cynnal agreement—

(a) will include provision that the other party will carry out on the agreement land, the whole farm section as specified in Part 1 of the Schedule ;

(b) will include that the other party will carry out on the agreement land activities so as to protect the wildlife habitats specified in Part 2 of the Schedule insofar as the habitats exist on the agreement land;

(c) will include that the other party will agree that at least 5% of the agreement land will consist of wildlife habitat. If less than 5% of the area of the agreement land is wildlife habitat then the other party can include existing hedgerows and create new habitats in order to meet the 5% habitat condition;

(d) will include provision that the other party will complete a farm resource management plan as detailed in Part 3 of the Schedule;

(e) will, in relation to the activities referred to in paragraphs (a), (b), (c) and (d) require or enable the National Assembly to make payment of aid which at the date of the coming into force of this instrument, (but which may be adjusted at the National Assembly's discretion) are at the rates referred to in Part 4 of the Schedule.

Conditions for payment of aid

5.—(1) Any requirement in a Tir Cynnal agreement to make a payment of aid under these regulations to any person will be subject to the condition that such a person is an eligible person and also to the following conditions —

(a) that such a person is not in breach of any of the terms of the Tir Cynnal agreement by which he or she is bound;

(b) that such a person complies with the requirements of regulation 7 below; and

(c) that such a person maintains an interest in the agreement land for the duration of the Tir Cynnal agreement, unless such a person is a tenant of the agreement land, such tenancy having less than five years left to run, and such a person has obtained his or her Landlord's signature to the landlord indemnity form;

(d) that such a person has complied and continues to comply with the provisions of the Code of Good Farming Practice;

(2) the conditions which have to be complied with under the Tir Cynnal scheme can be altered at any time, including alterations imposed as a result of future changes made o the Rural Development Plan for Wales 2002-2006 and any successor plan to it.

Payments

6. Payments of aid under any Tir Cynnal agreement may be made during an annual payment window determined by the National Assembly.

Claims

7.—(1) An application by a Tir Cynnal agreement holder for aid under these Regulations will be made at such time and in such form and will contain or be accompanied by such information as the National Assembly for Wales may reasonably require.

(2) The National Assembly may incorporate the claim for Tir Cynnal payments into the Single Application Payment Form.

Financial Limits

8. If, in the view of the total number of applications for grant already approved or received, the National Assembly is at any time of the opinion that the financial resources which are available for payment of grant under the Tir Cynnnal scheme during any period are insufficient to satisfy any payment during the period which would result from the approval of any further application, it may, in respect of any application received at the date of its decision but not yet accepted, or any application it may receive during the relevant period—

(a) suspend further consideration of any such application until such time as may be subsequently be specified by it: or

(b) reject any such application without further consideration

Late claims

9.—(1) Subject to paragraphs (2) and (3) below, if the applicant presents a claim for a Tir Cynnal payment in respect of a particular year later than the closing date fixed by the National Assembly, the amount otherwise payable will be reduced by one percent for every working day from the closing date to the date upon which the claim was received by the National Assembly,

(2) If the claim was presented more than 25 days (whether or not working days) later then the closing date, no payment will be made to the claimant pursuant to that claim for a Tir Cynnal payment.

(3) Paragraphs (1) and (2) above will not apply if and to the extent that a claim is lodged later then the relevant closing date by reason of force majeure.

Notification of change of occupation

10.—(1) A Tir Cynnal agreement holder (or, if the Tir Cynnal agreement holder has died, his or her personal representative) will notify the National Assembly in writing of any change in the occupation of the agreement land or any part of the agreement land where the change occurs while the Tir Cynnal agreement is in force.

(2) Notification under this regulation will be given within three months after the change of occupation concerned.

(3) Where there has been a change of occupation of all or part of any agreement land, and the National Assembly enters into a Tir Cynnal agreement for the remainder of the term of the original agreement with the new occupier in relation to the land the occupation of which has changed, then that agreement will, for the purposes of calculating agreement years, be deemed to have commenced on the date on which the original agreement commenced.

(4) If the new occupier decides not to enter into a Tir Cynnal agreement for the remainder of the term of the original agreement in relation to the land the occupation of which has changed, then the National Assembly may withhold the whole or any part of aid payable to the Tir Cynnal agreement holder under these Regulations and may recover the whole or any part of aid paid to him or her.

(5) The foregoing provisions of this regulation will be subject to Article 36 of Commission Regulation No. 817/2004 (which governs transfers of holdings).

Amounts of aid

11. Payments of aid made in relation to the whole farm section conditions and the activities referred to in the Schedule will at the time of the coming into force of this instrument be as outlined in Part 4 of the Schedule—

Obligation to permit entry and inspection

12.—(1) A Tir Cynnal agreement holder who applies for aid under these Regulations will permit any person duly authorised by the National Assembly at all reasonable times and on production of his or her authority on demand, to enter upon the land to which a Tir Cynnal agreement relates for the purpose of —

(a) carrying out any inspection of such land or any document or record in the possession or under the control of the applicant relating to, or which the authorised person may reasonably suspect relates to, the application with a view to verifying the accuracy of any particulars given in the application; and

(b) ascertaining whether the terms of the Tir Cynnal agreement have been complied with.

(c) carrying out any inspection or examination necessary for the purposes of determining whether the Code of Good Farming Practice has been complied with

(2) A Tir Cynnal agreement holder will render all reasonable assistance to the authorised person in relation to the matters mentioned in paragraph (1), and in particular will —

(a) produce any document or record which may be required by the authorised person for inspection;

(b) permit the authorised person to take copies or extracts from any such document or record;

(c) where any such document or record is kept by means of a computer, produce it in a form in which it may easily be read and taken away; and

(e) at the request of the authorised person, accompany the authorised person in making the inspection of any land and identify any area of land which relates to the application or to any change of occupation notified under regulation 10.

Withholding and recovery of aid

13.—(1) Where any Tir Cynnal agreement holder, with a view to obtaining the payment of aid under these Regulations to himself or herself, or any other person, makes any statement or furnishes any information which is false or misleading, the National Assembly may withhold the whole or part of any payments of aid payable thereunder to that person or such other person and may, subject to the provisions of Articles 71 and 72 of Commission Regulation 817/2004 (which provides for recovery of wrongful payments with interest, a penalty system and exclusion for false declarations), recover the whole or part of any sums already paid by way of aid thereunder to that person or such other person.

(2) Where a Tir Cynnal agreement holder —

(a) has failed to do something which he or she undertook to do if the aid was paid, or