WELSH STATUTORY INSTRUMENTS

2005 No. 45 (W.4)

AGRICULTURE, WALES

The Common Agricultural Policy Single Payment Scheme (Set-aside) (Wales) Regulations 2005

Made - - - -	*13 January 2005*
Coming into force - -	*15 January 2005*

The National Assembly for Wales, being 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 upon it by that section hereby makes the following Regulations:

Title, commencement and application

1. These Regulations may be cited as the Common Agricultural Policy Single Payment Scheme (Set-aside) (Wales) Regulations 2005 they come into force on 15 January 2005 and apply in relation to Wales.

Interpretation

2.—(1) In these Regulations —

"collector" ("*casglwr*") has the meaning given by Article 144(b) of Commission Regulation 1973/2004;

"Commission Regulation 795/2004" ("*Rheoliad y Comisiwn 795/2004*") means Commission Regulation (EC) No. 795/2004(**3**) laying down detailed rules for the implementation of the single payment scheme provided for in 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;

"Commission Regulation 1973/2004" ("*Rheoliad y Comisiwn 1973/2004*") means Commission Regulation (EC) No. 1973/2004(**4**) laying down detailed rules for the application of Council Regulation (EC) No. 1782/2003 as regards the support schemes provided for in

(**1**) S.I. 1999/2788.
(**2**) 1972 c. 68.
(**3**) O.J. No. L 141, 30.4.2004, p. 1, as last amended by Commission Regulation (EC) No. 1974/2004 (O.J. No. L 345, 20.11.2004, p. 85).
(**4**) O.J. No. L 345, 20.11.2004, p. 1.

Titles IV and IVa of that Regulation and the use of land set aside for the production of raw materials;

"the Council Regulation" ("*Rheoliad y Cyngor*") means Council Regulation (EC) No. 1782/2003(**5**) establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No. 2019/93, (EC) No. 1452/2001, (EC) No. 1453/2001, (EC) No. 1454/2001, (EC) 1868/94, (EC) No. 1251/1999, (EC) No. 1254/1999, (EC) No. 1673/2000, (EEC) No. 2358/71 and (EC) No. 2529/2001;

"Council Regulation 1251/1999" ("*Rheoliad y Cyngor 1251/1999*") means Council Regulation (EC) No. 1251/1999 establishing a support system for producers of certain arable crops(**6**);

"the Cross Compliance Regulations 2004" ("*Rheoliadau Trawsgydymffurfio 2004*") mean the Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) Regulations 2004(**7**);

"farmer" ("*ffermwr*") has the meaning given by Article 2(a) of the Council Regulation;

"green cover" ("*gorchudd glas*") means a green cover established or, as the case may be, falling to be established in accordance with Schedule 1;

"green cover season" ("*tymor gorchudd glas*") means the period from 15 January to 14 July (inclusive) in any given year;

"holding" ("*daliad*") has the meaning given by Article 2(b) of the Council Regulation;

"land set aside for non-food purposes" ("*tir sydd wedi'i neilltuo at ddibenion di-fwyd*") means land set aside pursuant to Article 55(b) of the Council Regulation under the conditions laid down in Chapter 16 of Commission Regulation 1973/2004 for the provision of materials for the manufacture within the European Community of products not primarily intended for human or animal consumption, and any reference to a farmer setting aside land for that purpose shall be construed accordingly;

"land set aside from production" ("*tir sydd wedi'i neilltuo oddi wrth waith gynhyrchu*") means land set aside pursuant to Article 54(3) of the Council Regulation (other than land set aside for non-food purposes), and any reference to a farmer setting aside land from production shall be construed accordingly;

"the National Assembly" ("*y Cynulliad Cendlaethol*") means the National Assembly for Wales;

"organic waste" ("*gwastraff organig*") means waste material produced by or from animals or plants as a by-product of agricultural production, including animal bedding;

"processor" ("*prosesydd*") has the same meaning as in Commission Regulation 1973/2004;

"set-aside period" ("*cyfnod neilltuo*") means the period from 15 January to 31 August (inclusive) in any given year; and

"watercourse" ("*cwrs dŵr*") includes a canal and field ditch.

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

(3) Other expressions used in these Regulations and in the Council Regulation, Commission Regulation 795/2004 or Commission Regulation 1973/2004 have the same meanings in these Regulations as in the Council Regulation, Commission Regulation 795/2004 or Commission Regulation 1973/2004 as the case may be.

(**5**) O.J. No. L 270, 21.10.2003, p. 1, as last amended by Council Regulation (EC) No. 864/2004 (O.J. No. L 161, 30.4.2004, p. 48, as corrected by corrigendum at O.J. No. L 206, 9.6.2004, p. 20).
(**6**) O.J. No. L 160, 26.6.1999, p. 1, as last amended by the Council Regulation.
(**7**) S.I. 2004 / 3280 (W.284).

Minimum area and dimensions of set-aside parcels

3. For the purposes of the second sentence of Article 54(4) of the Council Regulation, land may be set aside from production if —

(a) it is eligible for set-aside entitlement pursuant to Article 54(2) of the Council Regulation or counted as eligible for set-aside entitlement as a result of an application granted under regulation 5;

(b) it is at least 6 metres (but less than 10 metres) wide;

(c) it is at least 0.05 hectares in size; and

(d) it borders —

(i) a hedgerow;

(ii) woodland;

(iii) watercourse; or

(iv) an area of land that has been notified under section 28(1)(b) of the Wildlife and Countryside Act 1981(**8**) as a site of special scientific interest.

Additional standards of good agricultural and environmental condition in relation to set-aside land

4.—(1) Subject to paragraphs (3) to (6), the standards of good agricultural and environmental condition referred to in Article 32(2) of Commission Regulation 795/2004 that apply in relation to land set aside from production are set out in Schedule 1.

(2) Subject to paragraphs (3) to (6), the standards of good agricultural and environmental condition referred to in Article 32(2) of Commission Regulation 795/2004 that apply in relation to land set aside for non-food purposes are set out in Schedule 2.

(3) The standards of good agricultural and environmental condition referred to in paragraphs (1) and (2) are to apply to land set aside from production and land set aside for non-food purposes respectively in addition to the standards of good agricultural and environmental condition that apply to the land by virtue of regulation 4 of the Cross Compliance Regulations 2004.

(4) The provisions of paragraphs (1) and (2) do not apply to land —

(a) set aside or afforested pursuant to Articles 22 to 24 or Article 31 of Council Regulation (EC) No. 1257/1999(**9**) on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations, and

(b) counting as set-aside for the purposes of Article 54 of the Council Regulation,

to the extent that the requirements of Schedule 1 or 2 are incompatible with the environmental or afforestation requirements laid down pursuant to those Articles.

(5) A farmer is exempt from any given requirement of Schedule 1 or 2 in relation to particular set-aside land if, on an application being made to the National Assembly regarding that requirement, he or she satisfies the National Assembly that he or she should be exempted from it —

(a) to facilitate research into the effect of employing particular methods of managing set-aside land;

(b) in the interests of environmental protection;

(c) where the farmer is an educational establishment, to facilitate the fulfilment of its educational purpose;

(**8**) 1981 c. 69.
(**9**) O.J. No. L160, 26.6.99, p.80, as last amended by Council Regulation (EC) No. 1783/2003 (O.J. No. L270, 21.10.2003, p.70).

(d) because during the set-aside period—

(i) by virtue of any power or authorisation conferred by or under any enactment, a pipeline, cable or pylon is being or will be laid through, or constructed on or across, the land, the laying or construction of which was not a proposal of which the farmer had been notified more than 5 months before the date on which the land was set aside;

(ii) maintenance of a pipeline, cable or pylon is being or will be carried out under statutory authority on the particular set-aside land; or

(iii) an archaeological excavation is being or will be carried out on the land;

(e) in the interests of human or animal health or safety;

(f) because such exemption is necessary, either to enable a serious cause of harm to plant health or serious infestation of any pest or specified weed to be treated, or to permit measures to be taken to prevent the development of any such cause of harm or infestation; or

(g) in order to benefit a charity (as defined in section 96(1) of the Charities Act 1993)(**10**).

(6) The National Assembly may specify that any exemption granted pursuant to paragraph (5) is effective only until a date, or the occurrence of a particular event, specified in the exemption.

(7) For the purposes of this regulation, a "specified weed" means any of the injurious weeds listed in section 1(2) of the Weeds Act 1959(**11**), *Rhododendron ponticum*, Japanese knotweed (*Reynoutria japonica*), giant hogweed (*Heracleum mantegazzianum*) or Himalayan balsam (*Impatiens glandulifera*).

Exchange of eligible and ineligible land

5.—(1) In a situation specified in sub-paragraph (a), (b) or (c) of the first paragraph of Article 33 of Commission Regulation 795/2004, a farmer may apply to the National Assembly for land not otherwise eligible for set-aside entitlement to be counted as eligible for set-aside entitlement.

(2) Subject to paragraph (3), the application must be made in such form as the National Assembly may reasonably require, and, where the farmer intends to exchange the land in respect of which the application is made for other land which is eligible for set-aside entitlement (including land counted as eligible for set-aside entitlement as a result of an application granted under this regulation), he or she must give particulars of that land, as well as the land in respect of which the application is made, in his or her application.

(3) Where a farmer holds any of the land in respect of which his or her application is made, or any land that he or she intends to exchange for that land, as a tenant, he or she must obtain the written consent of his or her landlord to the exchange, and the application must include a declaration by the applicant that such consent has been obtained.

(4) The National Assembly may approve the application made under paragraph (1) if it is satisfied —

(a) that the relevant sub-paragraph of the first paragraph of Article 33 of Commission Regulation 795/2004 specified in the farmer's application applies in relation to the land in respect of which the application has been made;

(b) where the application has been made on the basis of sub-paragraph (c) of the first paragraph of Article 33 of Commission Regulation 795/2004, with the reasons given by the farmer for wanting to exchange ineligible land for eligible land on his or her holding; and

(c) that —

(**10**) 1993 c. 10.
(**11**) 1959 c. 54.

(i) where the land in respect of which the application is made is to be exchanged for other eligible land, the area of land in respect of which the application is made does not exceed the area of the land which is to be exchanged by more than 5%; or

(ii) where there is to be no exchange of land, the approval of the application will not result in a significant increase in the total area of land eligible for set-aside entitlements.

(5) Where approval is given under paragraph (4) but any declaration included in, or information given by the farmer in connection with the application was false in any material particular, the National Assembly may revoke such approval.

(6) In this regulation "eligible for set-aside entitlement", in relation to land, has the meaning given by the first paragraph of Article 54(2) of the Council Regulation.

Provisions relating to raw materials produced for non-food purposes

6.—(1) The National Assembly is designated as the competent authority for the purposes of Chapter 16 of Commission Regulation 1973/2004 (use of land set aside for the production of raw materials for non-food purposes).

(2) Raw materials to which Article 146(2)(b) of Commission Regulation 1973/2004 applies must be weighed by an operator of public weighing equipment holding a certificate issued under section 18 of the Weights and Measures Act 1985(**12**).

(3) For the purposes of Article 146(4) of Commission Regulation 1973/2004, cereals and oilseeds to which that paragraph applies must be denatured by dyeing them with a brightly coloured dye.

(4) For the purposes of Article 157(1) of Commission Regulation 1973/2004, the last day on which a contract to which that paragraph applies may be deposited with the National Assembly is 15 May of the year in which the relevant claim for the associated set-aside entitlement is made.

(5) For the purposes of Article 157(3) of Commission Regulation 1973/2004, the last day on which a collector or first processor to whom that paragraph applies may provide the National Assembly with the information specified in that paragraph is 31 January of the year following the year in which the relevant claim for the associated set-aside entitlement is made.

(6) In this regulation —

"the associated set-aside entitlement" means the set-aside entitlement which is being claimed on the land which has been set aside to produce the raw materials to which the contract referred to in paragraph (4), and the information referred to in paragraph (5), relates; and

"first processor" has the meaning given by Article 144(c) of Commission Regulation 1973/2004.

Keeping and retention of records by a collector and by a processor

7.—(1) This regulation applies where a farmer sets aside land for non-food purposes, and in paragraphs (2) to (5) references to "raw materials" are to raw materials produced on that land.

(2) During any month when a collector purchases or sells any raw materials, he or she must make a record of the quantity of all raw materials which he or she has purchased or sold during that month, and the names and addresses of the subsequent buyers or processors to whom he or she has sold those raw materials.

(3) A collector must retain the records referred to in paragraph (2) until the earlier of —

(a) the end of the third calendar year following the calendar year in which he or she delivers to a processor the raw materials to which those records relate; or

(**12**) 1985 c. 72.