

Statutory Instrument 1999 No. 2611

The Organic Farming (Wales) Regulations 1999

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STATUTORY INSTRUMENTS

1999 No. 2611

AGRICULTURE, WALES

The Organic Farming (Wales) Regulations 1999

<i>Made</i>	<i>17th September 1999</i>
<i>Laid before Parliament</i>	<i>21st September 1999</i>
<i>Coming into force</i>	<i>12th October 1999</i>

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 that section, and all other powers enabling him in that behalf, after obtaining the approval of the European Commission to zonal programmes submitted in draft in accordance with Article 7.1 of Council Regulation (EEC) No. 2078/92 on agricultural production methods compatible with the protection of the environment and the maintenance of the countryside^[3], hereby makes the following Regulations -

Title, commencement and extent

1. These Regulations may be cited as the Organic Farming (Wales) Regulations 1999, shall apply to Wales and shall come into force on 12th October 1999.

Interpretation

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

"the 1994 Regulations" means the Organic Farming (Aid) Regulations 1994[4];

"aid" means the payments under the Community aid scheme referred to in Article 1 of Council Regulation 2078/92 in so far as it relates to farmers who undertake to introduce organic farming methods;

"agriculture" includes horticulture, fruit growing, seed growing, dairy farming, livestock breeding and keeping and the use of land for grazing, meadow land, market gardens or nursery grounds, but does not include the use of land -

(i) as osier land; or

(ii) for woodlands, except where that use is ancillary to any other use of land for the purposes of agriculture;

"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 into an agreement in relation to the use or management of land; and

(b) approved by the Commission of the European Communities under Article 7(3) of Council Regulation 2078/92 as part of a zonal programme drawn up pursuant to Article 3 of that Regulation;

"application" means an application for aid made in accordance with regulation 9 in respect of one or more organic parcels, but does not include a request under regulation 13(1), and "applicant" and "apply" shall be construed accordingly;

"approved" means approved by an inspection authority;

"the Assembly" means the National Assembly for Wales;

"authorised person" means a person (whether or not an officer of the Assembly) who is authorised by the Assembly, either generally or specifically, to act in relation to matters arising under these Regulations;

"beneficiary" means -

(a) a person whose application, or whose request under regulation 13(1) in respect of land comprising one or more organic parcels, has been accepted by the Assembly; or

(b) a person who occupies the whole or any part of an organic unit following a change of occupation of the holding, who has given an undertaking to comply with all the obligations assumed by its previous occupier under these Regulations, in so far as they relate to land comprised in that organic unit, or the part of that organic unit occupied by him, and whose undertaking in such terms has been accepted by the Assembly;

"certificate of registration" means a certificate issued by an inspection authority in respect of an organic parcel, specifying the conversion period which applies in relation to that organic parcel, or the date on which that conversion period

begins; and for this purpose a certificate so issued is issued "in respect of" an organic parcel if it relates to that organic parcel, whether or not it also relates to any other organic parcel;

"Commission Regulation" means Commission Regulation (EC) No. 746/96 laying down detailed rules for the application of Council Regulation (EEC) No. 2078/92[5], as amended by Commission Regulation (EC) No. 435/97[6];

"conversion", in relation to an organic parcel, means the conversion of that organic parcel to being fully organic;

"conversion period", in relation to an organic parcel, means the period determined by the inspection authority as the period in which the conversion of that organic parcel is expected to be completed, being a period starting -

(a) in relation to the first organic parcel, not later than the date of acceptance; and

(b) in relation to any other organic parcel, not later than the fifth anniversary of the date of acceptance;

"Council Regulation 2092/91" means Council Regulation (EEC) No. 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs[7] as last amended by Commission Regulation (EC) No. 1900/98[8];

"Council Regulation 2078/92" means Council Regulation (EEC) No. 2078/92 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside[9], as last amended by Commission Regulation (EC) No. 2772/95[10] as in turn rectified by Commission Regulation (EC) No. 1962/96[11];

"date of acceptance" means the date on which the Assembly accepts an application in accordance with regulation 3;

"date of receipt", in relation to an organic parcel, means the date on which the Assembly received an application in accordance with regulation 9 in respect of that organic parcel;

"financial year" means the twelve months ending with 31st March;

"first organic parcel" means, of all the organic parcels comprised in an application, the organic parcel the conversion period for which begins first;

"first year" means -

(a) in relation to an organic parcel -

(i) in a case where the conversion period in respect of the organic parcel has commenced no later than the date of acceptance, the year beginning with the date of acceptance; and

(ii) in any other case, the year beginning with the anniversary of the date of acceptance which is the first such anniversary to occur during the conversion period relating to the organic parcel in question; and

(b) in relation to an organic unit, the first year in relation to the first organic

parcel to which an application relates, being the first such application relating to land comprised in that organic unit;

and any reference to any successive year is a reference to the relevant successive year following in sequence from the first year;

"fully organic" in relation to an organic parcel or organic unit means that -

(a) the inspection authority is satisfied that the conversion of that organic parcel or organic unit is completed; and

(b) notification having been given under Article 8 of the Council Regulation 2092/91[12], details of such organic parcel or organic unit have appeared in the list referred to in that Article;

"holding" means all the production units managed by a producer situated within the same member State's territory;

"inspection authority", in relation to an organic unit or organic parcel, means -

(a) the authority designated by the Organic Products Regulations 1992[13] for the purposes of Article 9 of Council Regulation 2092/91, or

(b) a private inspection body approved by that authority in accordance with Article 9 of that Regulation (which concerns the inspection system to which organic farming is subject),

being the authority or private inspection body to whom the applicant has applied to carry out inspection functions in relation to that organic unit or organic parcel;

"land" means land which is used for agriculture;

"landlord", in relation to the tenant of a holding, means any person who either solely or jointly owns, or has a superior tenancy of, that holding, and "immediate landlord" means the landlord from whose title (or, as the case may be, joint title) the tenant directly derives his title;

"last organic parcel" means, of all the organic parcels which are the subject of an application, the organic parcel the conversion period for which begins last;

"livestock" means any animal or fowl kept for the production of food, wool or skins or for the breeding of any animal for any such purpose;

"livestock undergoing conversion" means livestock which are identified in an approved plan as being in the process of being converted into organic livestock, and which fully conform to those UKROFS standards which apply in relation to the organic farming of livestock undergoing conversion;

"organic farming" means farming by organic farming methods;

"organic farming methods" has the same meaning as in Article 2(1)(a) of Council Regulation 2078/92;

"organic livestock" means livestock that are identified in an approved plan as

being livestock that fully conform to those UKROFS standards which apply in relation to the organic farming of livestock;

"organic parcel" means an area of land which comprises the whole or part of an organic unit and which is identified in an approved plan by reference to such system of field numbering as the Assembly may direct;

"organic unit" means an area of land which comprises the whole or part of a holding, and which has been established as an organic unit in accordance with Annex III to Council Regulation 2092/91 (which concerns the delineation of the organic unit by any inspection authority in a report countersigned by the producer);

"owner" means the person who owns the fee simple of the holding, and "owns" shall be construed accordingly;

"plan" means a schedule in writing specifying, in relation to an organic unit -

- (a) those parcels which have been registered by the inspection authority;
- (b) those parcels which it is intended to register in the future;
- (c) the dates on which such organic parcels have been or (as the case may be) are to be registered; and
- (d) where the plan relates to land on which livestock are kept, the livestock that are undergoing conversion or are organic livestock;

"specified period", in relation to an application, means the period beginning with the date of acceptance and ending on the expiry of the period of five years from the date on which the first payment becomes payable in respect of the last organic parcel which is the subject of that application;

"tenant" means a person whose right to occupation of a holding derives from -

- (a) an agreement which has effect by virtue of section 2 of the Agricultural Holdings Act 1986^[14] as an agreement for the letting of land on a tenancy from year to year;
- (b) a tenancy agreement falling within section 1 of the Agricultural Tenancies Act 1995^[15]; or
- (c) a contract for a tenancy for a fixed term of years; and

"UKROFS standards" means the production standards for organic farming of the United Kingdom Register of Organic Food Standards published in January 1999 by the Ministry of Agriculture, Fisheries and Food and known as the UKROFS Standards for Organic Food Production.

(2) Any reference in these Regulations to:

- (a) a numbered regulation or Schedule shall be construed as a reference to the regulation or Schedule so numbered in these Regulations; and
- (b) a numbered paragraph is a reference to the paragraph so numbered in the regulation in which the reference occurs.

(3) Words and phrases used in the Regulations and not defined in paragraph (1) shall be construed in accordance with Schedule 1.

Aid for organic farming

3. - (1) Subject to the provisions of regulations 6 and 7, the Assembly may make payments of aid in accordance with these Regulations -

(a) in respect of an organic parcel, to any person who is a beneficiary in respect of that organic parcel; and

(b) in respect of an organic unit, to any person who is a beneficiary in respect of an organic parcel comprised in that organic unit;

provided that, in relation to any payment in respect of any given year, the beneficiary has made a claim for payment in respect of that year in accordance with regulation 9, and has supplied such further information and evidence in relation to that claim as the Assembly reasonably may direct to be supplied.

(2) If, following the receipt of an application made in accordance with regulation 9, and such information and evidence as the Assembly reasonably may direct to be supplied, it appears to the Assembly that the applicant satisfies the conditions of eligibility specified in regulation 5 in respect of all, some or any one of the organic parcels that are the subject of that application ("the eligible organic parcels"), the Assembly shall, subject to regulations 6, 7 and 8, accept the application with respect to the eligible organic parcel or parcels and notify the applicant in writing of the acceptance and the date from which aid shall become payable in respect of the eligible organic parcel or parcels.

(3) An application may be withdrawn by a notice in writing given by the applicant at any time before the application is accepted by the Assembly.

(4) A claim for the payment of aid shall be made at such time as the Assembly may reasonably direct.

(5) A payment of aid made by the Assembly to a beneficiary pursuant to these Regulations may be made at any time during the year in respect of which the payment in question is to be made.

Determination of amount of aid and periods for which aid is paid

4. - (1) Subject to the provisions of these Regulations, where a beneficiary is entitled to the payment of aid, the aid shall be paid in respect of the following periods -

(a) in respect of an organic parcel, five years -

(i) in the case of the first organic parcel, beginning with the date of acceptance; and

(ii) in any other case, beginning with the anniversary of the date of acceptance which is the first such anniversary to occur during the conversion period relating to the organic parcel in question; and

(b) in respect of an organic unit, three years beginning with the date of acceptance of the first application relating to land comprised in that organic

unit.

(2) The amount of aid payable under paragraph (1)(a) shall be determined in accordance with Part I of Schedule 1; the amount of aid payable under paragraph (1)(b) shall be determined in accordance with Part II of Schedule 1.

Conditions of eligibility

5. - (1) The conditions of eligibility referred to in Regulation 3(2) are that -

(a) the application shall be made in respect of not less than one hectare of land;

(b) at the date of his application, the applicant -

(i) shall be the owner or tenant of the land which is the subject of his application and in lawful occupation of that land; and

(ii) shall not be disqualified from eligibility to participate in 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 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 Council Regulation 2078/92);

(c) the use of any land in accordance with the proposals contained in the application relating to it shall not be such as to frustrate the purposes of any assistance previously given or to be given out of money provided by Parliament or by the European Community; and

(d) the applicant shall give the undertakings mentioned in paragraph (2) in support of his application.

(2) The undertakings referred to in paragraph (1)(d) are -

(a) before claiming aid in respect of any organic parcel, to furnish to the Assembly a certificate of registration in respect of that organic parcel;

(b) for the duration of the specified period -

(i) to retain a certificate of registration in respect of each organic parcel on which aid has been claimed;

(ii) to farm the land that is the subject of his application, and such part of the organic unit comprising that land as at any given time is being farmed by organic farming methods, in accordance with the proposals set out in his application and with UKROFS standards and the standards set out in Schedule 2;

(iii) to ensure that any organic livestock or livestock undergoing conversion which are kept on his organic unit are kept in accordance with UKROFS standards; and

(iv) where at the date of his application the applicant has introduced organic farming on a part of his holding other than the part which is the subject of the application, to ensure that that other part conforms to UKROFS standards and continue with organic farming on that other part of his holding, in accordance with UKROFS standards and standards set out in Schedule 2; and

(c) to complete the conversion of each organic parcel no later than the fifth anniversary of the date on which the conversion period in respect of the organic parcel in question begins.

Restrictions on acceptance of applications

6. - (1) The Assembly shall not accept an application unless -

(a) it is accompanied by a certificate of registration given by the inspection authority in respect of the first organic parcel; and

(b) it contains a declaration by the applicant that the inspection authority has approved a plan relating to the whole of the organic unit comprising the organic parcel to which the application relates.

(2) Subject to paragraph (4) below, the Assembly shall not accept an application for aid under these Regulations unless it is made within three months of the date on which a certificate of registration is first issued by the inspection authority in respect of the first organic parcel.

(3) The Assembly shall not accept an application from an applicant who occupies his holding as a tenant unless the applicant has satisfied the Assembly that he has notified his immediate landlord in writing of the making of such application.

(4) Paragraph (2) shall not apply to an application in relation to an organic parcel for which a certificate of registration was first issued by an inspection authority -

(a) at any time after 1st April 1998 and before 12th October 1999; or

(b) at any time between a date which is 3 months before the date of any decision by the Assembly to suspend applications for aid in accordance with regulation 8(1), and the start of the financial year following the date of any such decision.

Restrictions on payment of aid

7. - (1) Aid shall not be payable in respect of an application in respect of any period before the date of acceptance.

(2) The Assembly may refuse or reduce aid which would duplicate any assistance previously given or to be given out of money provided by Parliament or by the European Community, and for this purpose aid shall be taken to be such as to duplicate such assistance if it would (if paid) be paid for any of the same purposes in respect of any of the same land.

(3) No payment of aid shall be made in respect of an organic parcel until the Assembly has received a certificate of registration in respect of that organic parcel.

(4) Where an application in respect of an organic parcel is accepted before the date on which the conversion period in respect of that organic parcel begins, no payment of aid in respect of that organic parcel shall be made in respect of any period beginning before the anniversary of the date of acceptance which is the first such anniversary to occur during that conversion period.

(5) Aid shall not be payable in respect of any organic parcel, or any organic unit comprising land to which an application relates, which -

(a) is fully organic on the date of receipt; or

(b) has been fully organic at any time during the period beginning on 1st January 1996 and ending on the date of receipt.

(6) Aid shall not be payable under Part I of Schedule 1 in respect of any organic parcel in respect of any period beginning more than five years after the date on which the first payment of aid became payable in respect of that organic parcel.

(7) Aid shall not be payable on more than 300 hectares of the total area of AAPS eligible land, permanent crops and enclosed land on any holding which is the subject of an application.

Financial limits

8. - (1) If, in view of the total number of applications already accepted or received, the Assembly is at any time of the opinion that the financial resources which are available for payment of aid under these Regulations during any financial year are insufficient to satisfy any payment during that financial year which would result from the acceptance of any further application, it may suspend further consideration of any application received at the date of its decision but not yet accepted, or any application it may receive after the date of its decision but before the date of publication of a notice in the London Gazette in accordance with paragraph 3, until the start of the next financial year.

(2) No application shall be made in any financial year between the date of publication of a notice in the London Gazette in accordance with paragraph 3, and 1st April following such publication.

(3) Notice of a decision by the Assembly under paragraph (1) shall be published in the London Gazette.

Form and content of application

9. Each of the following -

(a) an application,

(b) a claim for payment,

(c) an undertaking given by a new occupier in accordance with regulation 12, and

(d) a request under regulation 13(1) for the substitution of entitlement to payment under these Regulations for entitlement under the 1994 Regulations,

shall be made in writing and in such form, and shall be accompanied by such information, as the Assembly reasonably may direct.

Power to vary undertakings

10. - (1) Subject to paragraph (2), the Assembly may in writing, at the request of the beneficiary, vary the terms of any undertaking given by the beneficiary under regulations 5(1)(d), 12(1)(b), 12(6)(d) or 13(3), and any such variation may be subject to such conditions as the Assembly reasonably may determine and may be expressed to apply only for a specified period.

(2) The Assembly shall not vary the terms of an undertaking unless it is satisfied that, having regard to any conditions proposed to be attached to the variation, the purposes for which the undertaking was given will not be adversely affected by the variation.

Amendment of approved plan

11. No amendment to a plan approved by an inspection authority shall have effect unless such amendment has been approved by the inspection authority.

Change of occupation

12. - (1) Where during the specified period there is a change of occupation of the whole or any part of a beneficiary's organic unit by reason of the devolution of that organic unit or part on the death of the beneficiary or otherwise -

(a) the beneficiary (or, if he has died, his personal representatives) shall within 28 days notify the Assembly in writing of the change of occupation, and shall supply to the Assembly such information relating to the change of occupation in such form and within such period as the Assembly reasonably may direct; and

(b) subject to the provisions of this regulation, the new occupier of that organic unit or part may give an undertaking in writing to the Assembly to comply, with effect from the date on which he entered into occupation of the organic unit or part (as the case may be) and for the remainder of the specified period, with the obligations assumed by the beneficiary under his application relating to the land comprised in that organic unit, in so far as they apply in relation to the land transferred to the new occupier.

(2) Where the change of occupation referred to in paragraph (1) is consequent on the beneficiary's death, the power conferred on the Assembly by regulation 16(2) shall not apply in relation to the beneficiary's estate, in respect of the beneficiary's failure to comply with any undertaking by reason of his death.

(3) Subject to paragraph (4), where the change of occupation referred to in paragraph (1) is not consequent on the beneficiary's death, the powers which are conferred on the Assembly by regulation 16(2) in respect of the beneficiary's obligations of reimbursement under Article 11(1) of the Commission Regulation (which governs transfers of holdings), or in respect of any failure by the beneficiary to comply with any undertaking, and which are in either case exercisable as a consequence of his ceasing to be in occupation of the organic unit or part of the organic unit (as the case may be), shall not apply, provided that -

(a) within three months of the date on which the beneficiary ceased to be in occupation of the land in question, a new occupier gives an undertaking under paragraph (1)(b) in relation to that land; and

(b) where the new occupier occupies part only of the beneficiary's organic unit, the beneficiary satisfies the conditions of eligibility in regulation 5(1)(a), (b) and (c), as they would apply in relation to that part of the organic unit of which he

remains in occupation, if an application had been made by him in relation to that part.

(4) Provisos (a) and (b) to paragraph (3) shall not apply in relation to any land transferred if, in respect of the whole of the land transferred, the conversion period has been completed and all payments due under these Regulations have been made.

(5) Where there is a change of occupation of part of an organic unit, the Assembly shall determine the extent to which the obligations assumed by the beneficiary relate to that part, having regard to -

(a) the area of land comprised in that part and in the remainder of the organic unit, and

(b) the use to which that part is put;

and an undertaking given under paragraph (1)(b) in respect of part of the organic unit shall apply in relation to that part to the extent so determined.

(6) The Assembly shall not accept an undertaking under paragraph (1)(b) unless it is satisfied that -

(a) the land to which the undertaking relates ("the relevant land") forms the whole or part of an organic unit comprising the whole or part of the holding of the new occupier or a holding vested in him as personal representative;

(b) the new occupier is in lawful occupation of the relevant land as owner or tenant or is in lawful possession of that land as the personal representative of the beneficiary;

(c) the conditions of eligibility specified in regulation 5(1)(a), (b)(ii) and (d) would be satisfied if the undertaking were an application in respect of the relevant land to which the undertaking relates; and

(d) the new occupier has given the undertaking mentioned in paragraph (7) in any case where, before entering into occupation of the organic unit in question, the new occupier has introduced organic farming on any part of his holding.

(7) The undertaking referred to in paragraph (6)(d) is that the new occupier shall continue to farm the part of his holding referred to in that paragraph in accordance with organic farming methods for the remainder of the specified period which is applicable in relation to the land to which the undertakings of the previous occupier of the organic unit in question related.

(8) A new occupier who gives an undertaking to comply with the obligations assumed by the beneficiary shall, within such period following the change of occupation as the Assembly reasonably may direct, supply to the Assembly such evidence and such supplementary information in such form as the Assembly reasonably may direct to be supplied.

(9) Where the Assembly has accepted an undertaking from a new occupier to comply with the obligations of a beneficiary -

(a) that undertaking shall be deemed to take effect on the date that the new occupier entered into occupation of the holding, or part of the holding, as the case may be; and

(b) with effect from that date, the previous occupier shall cease to be a beneficiary, and shall cease to be bound by the obligations assumed by virtue of his undertaking, in so far as they apply in relation to the holding or (as the case may be) that part of the holding occupied by the new occupier.

(10) Nothing in paragraph (9)(b) shall affect any liability of a beneficiary which has accrued prior to the date on which the undertaking given by the new occupier takes effect.

Payment under these Regulations in lieu of the 1994 Regulations

13. - (1) A person who after 1st April 1998 gives or has given a prior undertaking may make a request to the Assembly to be treated as entitled to aid under these Regulations in respect of the land to which that undertaking relates, in so far as it is situated in Wales, in lieu of his entitlement under the 1994 Regulations.

(2) For the purposes of these Regulations, in so far as they apply in relation to land to which a request under paragraph (1) relates -

(a) all the land subject to any given conversion period under the previous scheme shall be treated as an organic parcel;

(b) the conversion period in question under the previous scheme shall be treated as the conversion period applicable in relation to such land;

(c) the organic unit comprising land to which a request under paragraph (1) relates shall be taken to be the aggregate of the areas referred to in regulation 5(1)(a)(ii) and (iii) of the 1994 Regulations;

(d) the specified period, in relation to land comprised in an application accepted under the 1994 Regulations, shall be taken to be the period beginning with the effective date with respect to the first organic parcel and ending on the expiry of the period of five years from the date on which the first payment becomes payable in respect of the last organic parcel which is the subject of that application;

(e) in the definition of "first organic parcel" in regulation 2(1), "application" shall be taken to mean an application accepted under the 1994 Regulations;

(f) in the definition of "first year" in regulation 2(1), for sub-paragraph (a) there shall be substituted -

" (a) in relation to an organic parcel -

(i) in a case where the effective date is no later than the relevant date, the year beginning with the effective date; and

(ii) in any other case, the year beginning with the commencement of the conversion period relating to the organic parcel in question; and";

(g) in regulation 4(1), for sub-paragraphs (a) and (b) there shall be substituted -

" (a) in respect of an organic parcel, five years -

(i) in a case where the effective date is no later than the relevant date, beginning with the effective date; and

(ii) in any other case, beginning with the commencement of the conversion period relating to the organic parcel in question; and

(b) in respect of an organic unit, three years beginning with the commencement of the first specified period applicable in relation to land comprised in that organic unit."

(3) The Assembly shall not accept a request under paragraph (1) unless the person making the request has before 12th October 2000 given undertakings in the terms of sub-paragraphs (a) to (c) of regulation 5(2), with the modification that, in sub-paragraphs (b)(ii) and (iv), for "application" there shall be substituted "request under regulation 13(1)".

(4) Where the Assembly accepts a request under paragraph (1) -

(a) the beneficiary shall be entitled to be paid in accordance with Schedule 1 to these Regulations in lieu of his entitlement to payment in accordance with the 1994 Regulations, save that in relation to land in respect of which the effective date is earlier than the date of acceptance.

(i) the beneficiary shall not be so entitled in respect of the first year; and

(ii) there shall be deducted from any amount payable under these Regulations in respect of any subsequent year any amount already paid in respect of the same period under the 1994 Regulations; and

(b) the prior undertaking in question shall be treated as given by the beneficiary in an application under these Regulations.

(5) Nothing in paragraph (4)(b) shall -

(a) require the prior undertaking to be treated as having been given on any date later than the date on which it was given, or

(b) affect any amount to which the beneficiary is or was entitled under the 1994 Regulations in respect of the first year.

(6) In this regulation -

(a) "the conversion period under the previous scheme" means the conversion period, within the meaning of the 1994 Regulations, applicable with respect to the organic parcel in question in respect of which the prior undertaking was given;

(b) "the effective date", in relation to an organic parcel, means the date on which

the conversion period under the previous scheme began;

(c) "the first specified period", in relation to an organic unit, means the specified period applicable with respect to the first application under the 1994 Regulations made in relation to land comprised in that organic unit;

(d) "prior undertaking" means an undertaking given for the purposes of an application under the 1994 Regulations; and

(e) "the relevant date" means the date on which a request under paragraph 13(1) in accordance with regulation 9 was received by the Assembly.

Obligation to keep records

14. An applicant shall keep for the duration of the specified period any correspondence or other records relating to any document mentioned in regulation 9, and any records relating to his farming of any land in accordance with his undertakings under these Regulations.

Obligation to permit entry and Inspection

15. - (1) An applicant shall permit an authorised person, accompanied by such other persons acting under his instructions as appear to that authorised person to be necessary for the purpose, at all reasonable hours and on production of evidence of his authority, if so required, to enter upon any part of the applicant's holding for the purposes of -

(a) inspecting any land forming part of an organic unit 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, any document referred to in regulation 9, with a view to verifying the accuracy of any particulars given therein, or in relation thereto; or

(b) ascertaining whether the applicant has duly complied with any undertaking given or (by virtue of regulation 13(4)(b)) to be treated as given by him under these Regulations.

(2) An applicant shall render all reasonable assistance to an 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 the authorised person for inspection; and

(b) at the request of an authorised person, accompany him in making an inspection of any land and identify any area of land to which any application or any undertaking relates.

(3) Paragraphs (1) and (2) above shall apply in relation to a beneficiary as they apply in relation to an applicant.

(4) Save in so far as is reasonably required for the purposes of inspecting a document or record as mentioned in paragraph (1)(a), paragraph (1) shall not apply in relation to any part of the holding which comprises a private dwelling.

Withholding and recovery of aid, termination and exclusion

16. - (1) Where any person, with a view to obtaining the payment of aid to himself or

any other person, makes any statement or furnishes any information which is false or misleading in a material respect, the Assembly may withhold the whole or any part of any aid payable to that person or to that other person and may recover the whole or any part of any such aid already paid to that person or to that other person.

(2) Where a beneficiary -

(a) fails to comply with any undertaking given, or (by virtue of regulation 13(4) (b)) to be treated as given, by him under these Regulations,

(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 15(2), or

(c) fails to comply with any other requirement of these Regulations,

the Assembly 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 require him to pay to the Assembly a sum not exceeding 10% of the aid paid or payable to the beneficiary.

(3) Where the Assembly takes any step specified in paragraph (1) or (2), it may also treat as terminated any entitlement of the beneficiary to the payment of aid under these Regulations.

(4) Where under paragraph (3) the Assembly treats the beneficiary's entitlement to aid as terminated, it may also by notice in writing to the beneficiary disqualify him from participating in any agri-environment scheme for such period (not exceeding two years) from the date of that termination as may be specified in the notice.

(5) Before taking any step specified in paragraph (1), (2), (3) or (4), the Assembly 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 Assembly; and

(c) consider the report by the person so appointed and supply a copy of the report to the beneficiary.

Recovery of interest

17. - (1) Where a payment of aid is made to a beneficiary by the Assembly 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 the recovery of interest in accordance with this regulation, a certificate of the Assembly stating the LIBOR applicable during a period

specified in the certificate shall be conclusive evidence of the rate applicable in the specified period if the certificate also states that the Bank of England notified the Assembly of that rate.

Recovery of payments

18. In any case where an amount falls to be paid to the Assembly by virtue of (or by virtue of action taken under) these Regulations or the Commission Regulation in so far as it relates to the holding of a beneficiary, the amount shall be recoverable as a debt.

False statements

19. If any person, for the purposes of obtaining any aid for himself or any other person, 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.

Offences by bodies corporate

20. - (1) Where a body corporate is guilty of an offence under regulation 19 and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

(a) any director, manager, secretary or other similar officer of the body corporate, or

(b) any person who was purporting to act in any such capacity,

he, as well as the body corporate, shall be guilty of the offence and be liable to be proceeded against and punished accordingly.

(2) For the purposes of paragraph (1) above, "director", in relation to a body corporate whose affairs are managed by its members, means a member of that body corporate.

Amendment of the Land in Care Scheme (Tir Gofal) (Wales) Regulations 1999

21. - (1) The Land Care Scheme (Tir Gofal) (Wales) Regulations 1999[16] shall be amended in accordance with the following paragraph.

(2) After paragraph (6) of regulation 11 there shall be inserted the following paragraph -

" (7) The Countryside Council may refuse or reduce aid which would duplicate any assistance previously given or to be given out of money provided by Parliament or by the European Community, and for this purpose shall be taken to be such as to duplicate such assistance if it would (if paid) be paid for any of the same purposes in respect of any of the same land."

Closure of the organic aid scheme under the 1994 Regulations

22. The Assembly shall not accept any application made under the 1994 Regulations unless such application is in respect of land situated in Wales and is received before 12th October 1999.

Paul Murphy
Secretary of State for Wales

17th September 1999

SCHEDULE 1**regulations 4(2) and 13(4)(a)****CALCULATION OF AID****PART I****PAYMENT IN RESPECT OF AN ORGANIC PARCEL****1. AAPS eligible land and permanent crops:**

(a)	in the first year	£225 per hectare
(b)	in the second year	£135 per hectare
(c)	in the third year	£50 per hectare
(d)	in the fourth year	£20 per hectare
(e)	in the fifth year	£20 per hectare

2. Enclosed land:

(a)	in the first year	£175 per hectare
(b)	in the second year	£105 per hectare
(c)	in the third year	£40 per hectare
(d)	in the fourth year	£15 per hectare
(e)	in the fifth year	£15 per hectare

3. Unenclosed land and grazed woodland:

(a)	in the first year	£25 per hectare
(b)	in the second year	£10 per hectare
(c)	in the third year	£5 per hectare
(d)	in the fourth year	£5 per hectare
(e)	in the fifth year	£5 per hectare

In Part I of this Schedule -

"AAPS eligible land" means land which is "eligible land" within the meaning of the Arable Area Payments Regulations 1996^[17];

"coastal belt" means the strip of land between the high tide mark and the field boundary nearest to the sea;

"enclosed land" means any land other than AAPS eligible land and permanent crops which is fully enclosed by a traditional boundary or fence and which, if it includes moorland, does not comprise more than 5 hectares of moorland;

"grazed woodland" means woodland used for grazing by livestock;

"moorland" means land represented by the areas coloured brown on the maps contained in the volume of maps marked "Moorland Map of Wales 1992", deposited at the offices of the National Assembly for Wales, Cathays Park, Cardiff;

"permanent crops" means any crops which occupy the soil for a period of five years or more and yield crops over several years;

"slate fence" means a fence comprising pieces of slate hammered vertically into the ground in a line and attached to each other using a single strand of wire;

"traditional field boundaries" means structures such as hedges, stone walls, earth banks and slate fences customarily used to separate fields within a farm;

"unenclosed land" means land other than enclosed land which is moorland or coastal belt.

PART II

PAYMENT IN RESPECT OF THE ORGANIC UNIT AS A WHOLE

In the first year	£300 per organic unit
In the second year	£200 per organic unit
In the third year	£100 per organic unit

SCHEDULE 2

regulation 5(2)(b)(ii) and (iv)

STANDARDS TO BE OBSERVED

1. The beneficiary shall not plough, reseed or improve, by use of drainage, manures or liming agents, any heathland, grassland of conservation value, including species-rich grassland, or rough grazing. The beneficiary shall not graze any such semi-natural habitats so as to cause poaching, over-grazing or under-grazing affecting the conservation value of those habitats.

2. The beneficiary shall avoid localised heavy stocking in the nesting season on areas of semi-natural vegetation, including heathland, species-rich grassland and

rough grazing.

3. The beneficiary shall not carry out field operations, such as harrowing or rolling, on species-rich grassland or rough grazing during the nesting season.

4. The beneficiary shall not cultivate or apply fertilisers to the land within 1 metre of any boundary features, such as fences, hedges or walls.

5. The beneficiary shall retain traditional farm boundary features, for example, hedges and walls. He shall carry out hedge-trimming in rotation, but not between 1st March and 31st August in any year. The beneficiary shall maintain any stockproof boundaries, using traditional methods and materials.

6. Ditch maintenance shall be carried out in rotation, but not between 1st March and 31st August in any year.

7. The beneficiary shall maintain streams, ponds and wetland areas.

8. The beneficiary shall retain any copses, farm woodlands or groups of trees.

9. The beneficiary shall ensure that in farming the land he does not damage, destroy or remove any feature of historical or archaeological interest, including areas of ridge and furrow.

10. The beneficiary shall abide by the terms of the Codes of Good Agricultural Practice for the Protection of Soil, Air, Water and, where applicable, Pesticides, published from time to time by the Secretary of State for Wales or the National Assembly for Wales.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply to Wales, provide for the payment of aid to farmers who undertake to introduce organic farming methods and comply with certain environmental management conditions, pursuant to Article 2(1)(a) and (d) of Council Regulation (EEC) No. 2078/92 (OJ No. L215, 30.7.92, p.85) ("the Agri-environment Regulation").

These Regulations implement certain provisions of Commission Regulation (EC) No. 746/96 (OJ No. L102, 25.4.96, p.19) ("the Commission Regulation"), as amended by Commission Regulation (EC) No. 435/97 (OJ No. L67, 7.3.97, p.2), laying down detailed rules for the application of the Agri-environment Regulation, in particular Article 11(3)(b) (which concerns the extension, during the currency of an undertaking, of the area subject to that undertaking), Article 13 (which provides for transfers from one undertaking to another in certain circumstances) and Article 20 (which provides for recovery of wrongful payments with interest, a penalty system and exclusion for false declarations).

The powers which are conferred by these Regulations are exercisable subject to the terms of certain other provisions of the Commission Regulation, in particular Article 10 (which restricts duplication of aid payments), Article 11 (which governs transfers of holdings which are subject to agreements or undertakings under the Agri-environment Regulation), Article 12 (*force majeure*) and Article 14 (which governs undertakings and procedures).

The Regulations -

- (a) enable the Assembly to make payments of aid, subject to specified conditions, and specify the rate of aid (*regulations 3 and 4*);
- (b) specify the conditions of eligibility to be satisfied by applicants for aid (*regulation 5*), certain procedural and formal preconditions for the acceptance of applications for aid (*regulations 6 and 9*), and certain restrictions on the payment of aid (*regulation 7*); and permit the Assembly to refuse applications for aid in the event that financial resources available for aid under the Regulations are insufficient (*regulation 8*);
- (c) provide for variations of undertakings given by applicants for aid and amendments to conversion plans (*regulations 10 and 11*);
- (d) provide for the payment of aid to a new occupant where there has been a change in the occupation of an organic unit or part of an organic unit due to the death of a beneficiary or otherwise (*regulation 12*);
- (e) enable certain beneficiaries of aid under the Organic Farming Regulations 1994 ("the 1994 Regulations") to apply to be treated as entitled to aid under these Regulations in lieu of any further entitlement under the 1994 Regulations (*regulation 13*);
- (f) impose obligations in respect of the keeping of records and confer powers of entry and inspection (*regulations 14 and 15*);
- (g) provide for the withholding or recovery of aid and the recovery of interest (*regulations 16, 17 and 18*);
- (h) provide for an offence of making a false statement, and make provision in relation to any such offence committed by a corporation (*regulations 19 and 20*);
- (i) amend the Land in Care Scheme (Tir Gofal) (Wales) Regulations 1999 to allow the aid under those Regulations to be refused or reduced where payment would otherwise lead to duplication of aid payments (*regulation 21*); and
- (j) close the scheme established by the 1994 Regulations to further applications (*regulation 22*).

The UKROFS standards are published by and copies are available from the Office of the Secretary to UKROFS, Room G47, Nobel House, 17 Smith Square, London SW1P 3JR.

Copies of the Moorland Map of Wales 1992 can be inspected during office hours at the offices of the National Assembly for Wales at:

Crown Buildings, Cathays Park, Cardiff, CF10 3NQ	Government Buildings, Penrallt, Caernarfon, LL55 1EP
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Government Buildings, Picton Terrace, Carmarthen, Dyfed, SA31 3BT	Government Buildings, Spa Road East, Llandrindod Wells, Powys, LD1 5HA
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Copies of the Codes of Good Agricultural Practice for the protection of Soil, Air, Water and Pesticides (referred to in *paragraph 10 of Schedule 2*) are available free of charge from The National Assembly for Wales, Crown Buildings, Cathays Park, Cardiff CF10 3NQ.

Notes:

[1] [S.I. 1972/1811.back](#)

[2] [1972 c. 68.back](#)

[3] [OJ L215, 30.7.92, p.85.back](#)

[4] [S.I. 1994/1721; amended by S.I. 1996/3109 and S.I. 1998/1606.back](#)

[5] [OJ No. L102, 25.4.96, p.19.back](#)

[6] [OJ No. L67, 7.3.97, p.2.back](#)

[7] [OJ No. L198, 22.7.91, p.1.back](#)

[8] [OJ No. L247, 5.9.98, p.6.back](#)

[9] [OJ No. L215, 30.7.92, p.85.back](#)

[10] [OJ No. L288, 1.12.95, p.35.back](#)

[11] [OJ No. L259, 12.10.96, p.7.back](#)

[12] **By virtue of S.I. 1992/2111, as amended by S.I. 1994/2286, the authority responsible for the receipt of notifications in relation to land in Wales under Article 8 of Council Regulation 2092/91 is the Secretary of State.[back](#)**

[13] [S.I. 1992/2111. The relevant amending instrument is S.I. 1994/2286.back](#)

[14] [1986 c. 5.back](#)

[15] [1995 c. 8.back](#)

[16] [S.I. 1999/1176.back](#)

[17] [S.I. 1996/3142, amended by S.I. 1997/2969.back](#)

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