

Statutory Instrument 1999 No. 1176

The Land in Care Scheme (Tir Gofal) (Wales) Regulations 1999

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STATUTORY INSTRUMENTS

1999 No. 1176

AGRICULTURE

The Land in Care Scheme (Tir Gofal) (Wales) Regulations 1999

<i>Made</i>	<i>15th April 1999</i>
<i>Laid before Parliament</i>	<i>20th April 1999</i>
<i>Coming into force</i>	<i>11th May 1999</i>

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

Title, commencement and extent

1. - (1) These Regulations may be cited as the Land in Care Scheme (Tir Gofal) (Wales) Regulations 1999 and shall come into force on 11th May 1999.

(2) These Regulations extend 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 Gofal agreement;

"agreement year", in relation to any Tir Gofal agreement, means a period of 12 months commencing with the date of, or any anniversary of the date of, the coming into effect of the agreement;

"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;

"the Commission Regulation" means Commission Regulation (EC) No. 746/96[3] laying down detailed rules for the application of the Council Regulation, as last amended by Commission Regulation (EC) No. 435/97[4];

"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 in turn by Commission Regulation (EC) No. 1962/96[7];

"Countryside Council" means the Countryside Council for Wales established by section 128 of the Environmental Protection Act 1990[8];

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

"eligible person" means a Tir Gofal agreement holder who applies for aid under these Regulations and is not excluded from eligibility for that aid at the time at which his application is considered 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 covered by that provision who, intentionally or by reason of gross negligence, makes a false declaration to be excluded from all aid under the Council Regulation);

"general environmental conditions" means the environmental conditions set out in Part I of Schedule 1;

"interest", in relation to land, means a freehold or leasehold interest in it;

"special project activity" means an activity in relation to agreement land which the Countryside Council considers-

(a) should be carried out to enable one or more of the specified purposes in relation to that land to be fully achieved; and

(b) is outside the range of activities specified in Schedules 2 to 4;

"specified purposes" means-

(a) the conservation or enhancement of the natural beauty or amenity of the countryside (including its flora and fauna and geological and physiographical features) or of any features of archaeological interest there; or

(b) the promotion of the enjoyment of the countryside by the public;

"Tir Gofal agreement" has the meaning given to it by regulation 3(3); and

"Tir Gofal agreement holder" means any person who has entered into a Tir Gofal agreement.

(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.

(3) Words and phrases used in Schedules 1 to 4 and not defined in paragraph (1) shall be construed in accordance with Schedule 5.

Power to enter into agreements

3. - (1) In any case where the Countryside Council is of the opinion that, in relation to any land, the following of the general environmental conditions and the carrying out of activities by any person who has an interest in that land would be conducive to the specified purposes, that body may, subject to paragraphs (6) and (7) below, enter into a Tir Gofal agreement with that person.

(2) In this regulation "the other party" means a person within the description in paragraph (1), being the particular person in the case in question.

(3) For the purposes of paragraph (1) above, a Tir Gofal agreement means an agreement which remains in force for a term specified in the agreement, provides for the other party to follow the general environmental conditions and to carry out the activities in question in relation to the agreement land and requires the Countryside Council to make payments of aid to the other party in respect of the following of the general environmental conditions and the carrying out of those activities on that land.

(4) A Tir Gofal agreement-

(a) shall include provision that the other party must follow, in relation to the whole of the agreement land, the general environmental conditions;

(b) shall include provision that the other party shall carry out on the agreement land the management activities specified in an entry in column 1 of Schedule 2 insofar as the habitats relevant to those activities exist on the agreement land;

(c) shall, if both the Countryside Council and the other party so wish, include provision that the other party shall carry out one or more of the activities

referred to in paragraph (5);

(d) shall, in relation to the general environmental conditions and the activities referred to in subparagraphs (b) and (c), require or enable the Countryside Council to make payments of aid at the rates referred to in regulation 9; and

(e) may include provision for the carrying out by the other party of a special project activity and for requiring or enabling the Countryside Council to make payments of aid for such an activity.

(5) The activities mentioned in subparagraph (4)(c) of this regulation are-

(a) the management activities specified in an entry in column 1 of Schedule 3 to be carried out on any part of the agreement land; and

(b) the capital activities specified in an entry in column 1 of Schedule 4 to be carried out on any part of the agreement land.

(6) The Countryside Council shall not enter into any Tir Gofal agreement in circumstances to which Article 13 of the Commission Regulation (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.

(7) The Countryside Council shall not enter into any Tir Gofal agreement unless the amount of land subject to that agreement comprises more than 3 hectares.

Aid for purposes conducive to conservation etc

4. Subject to regulation 6, the Countryside Council may make payments of aid in accordance with a Tir Gofal agreement to any eligible person.

Conditions for payment of aid

5. Any requirement in a Tir Gofal agreement to make a payment of aid under these Regulations to any person shall be subject to the condition that he is an eligible person and also to the following conditions-

(a) that he is not in breach of any of the terms of the Tir Gofal agreement by which he is bound;

(b) that he complies with the requirements of regulations 7 and 8 below; and

(c) that he maintains an interest in the agreement land for the duration of the Tir Gofal agreement.

Payment of aid

6. Payments of aid under any Tir Gofal agreement may be made at any time during or after the agreement year provided that any such payment shall be made, in the case of a payment in relation to any capital activity in a Tir Gofal agreement specified in an entry in column 1 of Schedule 4, upon completion of the work.

Applications for aid

7. An application by a Tir Gofal agreement holder for aid under these Regulations shall be made at such time and in such form and shall contain or be accompanied by such information as the Countryside Council reasonably may require.

Notification of change of occupation

8. - (1) A Tir Gofal agreement holder (or, if he has died, his personal representative) shall notify the Countryside Council 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 Gofal agreement is in force.

(2) Notification under this regulation shall be given within three months after the change of occupation concerned, or, where the Tir Gofal agreement holder has died and no personal representative has been appointed within three months, as soon as is practicable after the appointment of a personal representative.

(3) Where there has been a change of occupation of all or part of any agreement land, and the Countryside Council enters into a Tir Gofal 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 shall, for the purposes of calculating agreement years, be deemed to have commenced on the date on which the original agreement commenced.

(4) 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*).

Amounts of aid

9. - (1) Payments of aid made in relation to the general environmental conditions and the activities referred to in subparagraphs (4)(b) and (c) of regulation 3 shall be-

(a) in relation to following all the general environmental conditions included in a Tir Gofal agreement, at the rates specified in Part II of Schedule 1;

(b) in relation to each of the activities specified in column 1 of Schedules 2 to 4 and included in a Tir Gofal agreement, at rates not exceeding the maximum payment rates specified in column 2 of those Schedules corresponding to that activity.

(2) Aid payable in relation to any special project activity shall not exceed 120% of the loss of income and additional costs incurred as a result of carrying out that activity.

Obligation to permit entry and inspection

10. - (1) A Tir Gofal agreement holder who applies for aid under these Regulations shall permit any person duly authorised by the Countryside Council at all reasonable times and on production of his authority on demand, to enter upon the land to which a Tir Gofal 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 Gofal agreement have been duly complied with.

(2) A Tir Gofal agreement holder shall render all reasonable assistance to the authorised person in relation to the matters mentioned in paragraph (1), and in

particular shall-

- (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**
- (d) at the request of the authorised person, accompany him 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 8.**

Withholding and recovery of aid

11. - (1) Where any Tir Gofal agreement holder, 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 Countryside Council 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 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 part of any sums already paid by way of aid thereunder to that person or such other person.

(2) Where a Tir Gofal agreement holder-

- (a) has failed to do something which he undertook to do if the aid was paid, or**
- (b) is in breach of any conditions subject to which the aid was paid,**

the Countryside Council may withhold the whole or any part of any aid payable to that agreement holder under these Regulations and may recover the whole or any part of any aid already paid to him.

(3) Any dispute in any particular case as to the withholding or recovery of aid by reference to paragraph (1) or (2) above shall be referred to and determined by a single arbitrator to be agreed between the parties or in default of agreement to be appointed by the President of the Royal Institution of Chartered Surveyors and in accordance with the provisions of the Arbitration Act 1996[9] or any statutory modification or re-enactment thereof for the time being in force.

(4) Where the Countryside Council withholds or recovers aid under paragraph (2) above, it 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 the agreement holder to pay to the Countryside Council a sum equal to no more than 10% of the aid paid or payable to the agreement holder under these Regulations.

(5) Where the Countryside Council takes any steps specified in paragraph (1), (2) or (4) above, it may also terminate the agreement referred to therein by giving notice of such termination to the agreement holder.

(6) Where under paragraph (5) above the Countryside Council terminates an agreement in connection with any step taken under paragraph (2) above, it may also, in so far as is consequent upon Article 20(2) of the Commission Regulation, by notice in writing to the agreement holder 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.

Recovery of interest

12. - (1) Where aid is paid under these Regulations by the Countryside Council 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 purpose 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 Countryside Council 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 Countryside Council of that rate.

Recovery of payments

13. In any case where an amount falls to be paid to the Countryside Council by virtue of, or by virtue of action taken under, these Regulations or the Commission Regulation in so far as it relates to agreement land, the amount so falling to be paid shall be recoverable as a debt.

Amendment of agri-environment schemes

14. After regulation 11 of each of the statutory instruments set out in Schedule 6 there shall be inserted the following regulation:-

" Closing date for applications for aid

12. The Secretary of State shall not make a payment of aid under these Regulations unless an application for aid under regulation 4 is received by him before 11th May 1999."

15. After regulation 11 of the Moorland (Livestock Extensification) (Wales) Regulations 1995[10] there shall be inserted the following regulation-

" Closing date for applications for aid

12. The Secretary of State shall not make a payment of aid under these Regulations unless an application for aid under regulation 4 is received by him before 31st May 1999."

Signed by authority of the Secretary of State for Wales

Jon Owen Jones

Parliamentary Under Secretary of State, Welsh Office

15th April 1999

SCHEDULE 1

Regulations 2(1) and 9(a)

PART I

General Environmental Conditions

- 1. Traditional field boundaries shall be retained and maintained.**
- 2. Individual trees and small groups of trees shall be retained and protected unless-**
 - (a) they cause a hazard or obstruction for people or livestock; or**
 - (b) the Tir Gofal agreement holder is authorised to fell trees by virtue of a felling licence or with the approval of the Countryside Council.**
- 3. Weatherproof traditional buildings shall be maintained and other features of archaeological or historic interest on agreement land shall be protected.**
- 4. The agreement land shall be kept free of rubbish, litter and derelict machinery.**
- 5. Fertilisers, lime and pesticides shall not be applied to a strip of land one metre wide adjacent to any traditional field boundary.**
- 6. Geological features shall be protected and fertilisers, lime and pesticides shall not be applied to a strip of land two metres wide adjacent to any surface rock feature.**
- 7. Water features shall be protected and fertilisers, lime and pesticides shall not be applied to a strip of land one metre wide on land adjacent to the banks of such features.**
- 8. Overall stocking levels on the agreement land shall not be increased above the levels agreed with the Countryside Council before the commencement of the Tir Gofal agreement.**
- 9. All activities on or affecting the agreement land shall be carried out in accordance with any Code of Good Agricultural Practice which may be issued from time to time by the Secretary of State for Wales or the National Assembly for Wales.**
- 10. Public access on foot to all unenclosed moorland, heathland and grassland shall be provided.**
- 11. The prior approval of the Countryside Council shall be obtained before any of the following activities are carried out on the agreement land-**
 - (a) introducing any non-native species of plant or animal;**
 - (b) erecting new buildings and modifying existing buildings other than farmhouses;**
 - (c) constructing tracks, roads, yards or hardstandings;**
 - (d) constructing new hedges, walls, fences or earth banks;**

- (e) excavating land and depositing spoil;
- (f) realigning, damming or dredging watercourses or altering the water level of a water feature;
- (g) creating new water abstraction points or increasing existing levels of abstraction from established water abstraction points;
- (h) controlling bracken;
- (i) organised recreational activities;
- (j) locating new livestock feeding sites;
- (k) depositing any off farm wastes;
- (l) quarrying or removing stone (including isolated boulders), scree, sand, shingle, gravel, clay or peat; and
- (m) clearing any areas of scrub, planting trees and any work in woodland not included in a Woodland Grant Scheme agreement.

PART II

Payment Rates for Following the General Environmental Conditions

1. The amount of aid payable for following all the general environmental conditions shall be at the rate of £25 per hectare per agreement year, except that insofar as the agreement land exceeds 20 hectares the rates shall be-

- (a) £15 per hectare per agreement year for each hectare which exceeds 20 hectares up to and including 50 hectares,
- (b) £10 per hectare per agreement year for each hectare which exceeds 50 hectares up to an including 100 hectares, and
- (c) £5 per hectare per agreement year for each hectare which exceeds 100 hectares up to and including 410 hectares.

2. No aid shall be payable for following the general environmental conditions insofar as the agreement land exceeds 410 hectares.

SCHEDULE 2

Regulations 2(1), 3(4)(b) and 9(1)(b)

Mandatory Management Activities

<i>Column 1</i>	<i>Column 2</i>
<i>Activity</i>	<i>Maximum payment rate</i>

<p>1. In relation to woodland and scrub-</p> <p>(a) management of semi-natural broadleaved woodland which is-</p> <p>(i) ungrazed</p>	£125 per hectare per agreement year
(ii) lightly grazed	£95 per hectare per agreement year
(iii) grazed but not lightly grazed	£10 per hectare per agreement year
(b) management of scrub	£30 per hectare per agreement year
(c) management of orchards and farmed parklands which are-	£80 per hectare per agreement year
(i) semi-improved grassland	
(ii) improved grassland	£80 per hectare per agreement year
(iii) arable land	£20 per hectare per agreement year
<p>2. In relation to the management of heathland which is-</p> <p>(a) high mountain heath</p>	£30 per hectare per agreement year
(b) upland heath	£50 per hectare per agreement year
(c) lowland heath	£80 per hectare per agreement year
<p>3. In relation to grassland-</p>	£55 per hectare per agreement year

<p>(a) management of unimproved acid grassland which is-</p> <p>(i) enclosed land</p>	
<p>(ii) unenclosed land</p>	<p>£40 per hectare per agreement year for the first 200 hectares and then £30 per hectare per agreement year for land which exceeds 200 hectares up to and including 500 hectares and £15 per hectare per agreement year for land which exceeds 500 hectares</p>
<p>(iii) common land</p>	<p>£40 per hectare per agreement year for the first 200 hectares and then £30 per hectare per agreement year for land which exceeds 200 hectares</p>
<p>(b) management of unimproved neutral grassland which is-</p> <p>(i) grazing land</p>	<p>£90 per hectare per agreement year</p>
<p>(ii) haymeadow</p>	<p>£145 per hectare per agreement year</p>
<p>(c) management of unimproved limestone grassland</p>	<p>£130 per hectare per agreement year</p>
<p>(d) management of semi-improved grassland which is-</p> <p>(i) grazing land</p>	<p>£90 per hectare per agreement year</p>
<p>(ii) haymeadow</p>	<p>£145 per hectare per agreement year</p>
<p>(e) management of marshy grassland</p>	<p>£80 per hectare per agreement year</p>
<p>4. In relation to wetlands-</p> <p>(a) management</p>	<p>£40 per hectare per agreement year</p>

of blanket bogs	
(b) management of raised bogs	£50 per hectare per agreement year
(c) management of reedbeds, swamps and species-rich fens	£35 per hectare per agreement year
5. In relation to coastal areas (a) management of improved land which is coastal grazing marsh and floodplain grassland	£180 per hectare per agreement year
(b) the management of saltmarshes which are-	
(i) short turf	£80 per hectare per agreement year
(ii) managed for breeding birds	£170 per hectare per agreement year
(iii) ungrazed saltmarsh	£40 per hectare per agreement year
(c) management of maritime cliffs and slopes which are- (i) grazed land	£110 per hectare per agreement year
(ii) ungrazed land	£10 per hectare per agreement year
(d) management of sand dunes	£70 per hectare per agreement year

Notes

- [1] S.I. 1972/1811.back
- [2] 1972 c. 68.back
- [3] OJ No. L102, 25.4.96, p. 19.back
- [4] OJ No. L67, 7.3.97, p. 2.back
- [5] OJ No. L215, 30.7.92, p. 85.back
- [6] OJ No. L288, 1.12.95, p. 35.back
- [7] OJ No. L259, 12.10.96, p. 7.back
- [8] 1990 c. 43.back
- [9] 1996 c. 23.back
- [10] S.I. 1995/1159 amended by S.I. 1996/2449.back



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