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WELSH STATUTORY INSTRUMENTS

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**2015 No. 1252 (W. 84)**

**AGRICULTURE, WALES**

**The Common Agricultural Policy Basic Payment  
and Support Schemes (Wales) Regulations 2015**

<i>Made</i>	- - - -	<i>22 April 2015</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>23 April 2015</i>
<i>Coming into force</i>	- -	<i>14 May 2015</i>

The Welsh Ministers are designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to the common agricultural policy of the European Union.

These Regulations make provision for a purpose mentioned in that section and it appears to the Welsh Ministers that it is expedient for any reference in these Regulations to EU instruments to be construed as a reference to those instruments as amended from time to time.

The Welsh Ministers make these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972.

**Title, application and commencement**

1.—(1) The title of these Regulations is the Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015.

(2) These Regulations apply in relation to Wales.

(3) These Regulations come into force on 14 May 2015.

**Interpretation**

2.—(1) In these Regulations—

“non-native invasive weeds” (“*chwyn goresgynnol estron*”) means the following—

Japanese knotweed (*Fallopia japonica*)

Giant hogweed (*Heracleum mantegazzianum*)

Himalayan balsam (*Impatiens glandulifera*)

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(1) [S.I. 2010/2690](#).

(2) [1972 c. 68](#). Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 ([c. 51](#)) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 ([c. 7](#)). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006.

Rhododendron ponticum (*Rhododendron ponticum*);

“permanent grassland” (“*glaswelltir parhaol*”) has the same meaning given in Article 4(1)(h) of the Direct Payments Regulation but also includes land where native dwarf shrubs including those in the family Ericaceae (heathers) and the species *Ulex gallii* (western gorse), and/or native species in the families Juncaceae (rushes) and Cyperaceae (sedges), are predominant and can be grazed;

“single application” (“*cais sengl*”) means an application for direct payments in relation to area related aid schemes;

“the Direct Payments Delegated Regulation” (“*y Rheoliad Taliadau Uniongyrchol Dirprwyedig*”) means Commission Delegated Regulation (EU) No. 639/2014 supplementing the Direct Payments Regulation<sup>(3)</sup>;

“the Direct Payments Implementing Regulation” (“*y Rheoliad Gweithredu Taliadau Uniongyrchol*”) means Commission Implementing Regulation (EU) No. 641/2014 laying down rules for the application of the Direct Payments Regulation<sup>(4)</sup>;

“the Direct Payments Regulation” (“*y Rheoliad Taliadau Uniongyrchol*”) means Regulation (EU) No. 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy<sup>(5)</sup>;

“the European Regulations” (“*y Rheoliadau Ewropeaidd*”) means—

- (a) the Direct Payments Regulation;
- (b) the Direct Payments Delegated Regulation;
- (c) the Direct Payments Implementing Regulation; and
- (d) the Horizontal Implementing Regulation;

“the Horizontal Implementing Regulation” (“*y Rheoliad Gweithredu Llorweddol*”) means Commission Implementing Regulation (EU) No. 809/2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance<sup>(6)</sup>.

(2) Terms used in these Regulations that are also used in any of the European Regulations have the meaning they bear in those Regulations.

(3) Any reference in these Regulations to an EU instrument is a reference to that instrument as amended from time to time.

### **Minimum eligible area of holding**

**3.** For the purposes of Article 10(1) and (2) of the Direct Payments Regulation, no direct payments may be granted to a farmer where the eligible area of the holding for which the payments are claimed or due to be granted in accordance with Article 10(1)(b) is less than 5 hectares.

### **Date on which eligible land must be at farmer’s disposal**

**4.** In relation to any year in which the farmer makes a declaration in respect of parcels pursuant to Article 33(1) of the Direct Payments Regulation, the date on which those parcels must be at the farmer’s disposal is the 15 May of that year.

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(3) OJ No. L 181, 20.6.2014, p. 1.

(4) OJ No. L 181, 20.6.2014, p. 74.

(5) OJ No. L 347, 20.12.2013, p. 608, as amended by Regulation (EU) No. 1310/2013 (OJ No. L 347, 20.12.2013, p. 865).

(6) OJ No. L 227, 31.7.2014, p. 69.

### **Maintenance of an agricultural area in a state suitable for grazing or cultivation**

5. For the purposes of Articles 4(1)(c)(ii) and 4(2)(a) of the Direct Payments Regulation and Article 4 of the Direct Payments Delegated Regulation, an agricultural area will be deemed to be maintained in a state suitable for grazing or cultivation where a farmer controls non-native invasive weeds and scrub on that area.

### **Minimum agricultural activity on land naturally kept in a state suitable for grazing or cultivation**

6. For the purposes of Articles 4(1)(c)(iii) and 4(2)(b) of the Direct Payments Regulation and Article 5 of the Direct Payments Delegated Regulation, on agricultural areas naturally kept in a state suitable for grazing or cultivation, a farmer will be deemed to be carrying out the minimum activity where that—

- (a) area is grazed at an annual stocking density of 0.01-0.05 livestock units per hectare; or
- (b) farmer controls non-native invasive weeds and scrub on that area.

### **Short rotation coppice**

7. For the purposes of Article 4(1)(k) and (2)(c) of the Direct Payments Regulation—

- (a) the list of planted tree species is—
  - Alder (*Alnus* spp)
  - Silver Birch (*Betula pendula*);
  - Hazel (*Corylus avellana*);
  - European Ash (*Fraxinus excelsior*);
  - Lime (*Tilia cordata*);
  - Sweet chestnut (*Castanea sativa*);
  - Sycamore (*Acer pseudoplatanus*);
  - Willow (*Salix* spp);
  - Poplar (*Populus* spp); and
- (b) the maximum harvest cycle is 20 years.

### **Young farmers**

8.—(1) For the purposes of the payment calculation required by Article 50(6) of the Direct Payments Regulation, the number of entitlements a young farmer has activated in accordance with Article 32(1) of that Regulation will be multiplied by 25% of an amount calculated by dividing a fixed percentage of the national ceiling for the calendar year 2019 by the number of all eligible hectares declared on the single application for the claim year 2015.

(2) For the purpose of Article 50(9) of the Direct Payments Regulation, a single maximum limit of 25 is applicable to the number of eligible hectares declared by the farmer.

### **Active farmers**

9.—(1) For the purposes of Article 9(2) sub-paragraph 3(b) of the Direct Payments Regulation, a farmer's agricultural activities are not insignificant if that farmer's total holding size is greater than or equal to 21 hectares, in accordance with the third sub-paragraph of Article 13(1) of the Direct Payments Delegated Regulation.

(2) For the purposes of Article 9(2) sub-paragraph 3(c) of the Direct Payments Regulation, a farmer's principal business or company objects consist of exercising an agricultural activity where that farmer provides the Welsh Ministers with evidence that at least 40% of the total receipts obtained by the business in the most recent fiscal year for which evidence is available were obtained from agricultural activities, in accordance with the third sub-paragraph of Article 13(3) of the Direct Payments Delegated Regulation.

(3) For the purposes of Article 9(4) of the Direct Payments Regulation, the maximum amount is EUR 5,000.

### **Basic Payment Scheme entitlements**

**10.**—(1) For the purposes of Article 22(1) of the Horizontal Implementing Regulation, applications for allocation of payment entitlements under the basic payment scheme in accordance with Article 24 or Article 30, except paragraph 7(e), of the Direct Payments Regulation, must be submitted to the Welsh Ministers no later than the 15 May of the relevant calendar year.

(2) An application for allocation of payment entitlements must be submitted to the Welsh Ministers at the same time as the aid application under the basic payment scheme, in accordance with Article 22(2) of the Horizontal Implementing Regulation.

(3) For the purposes of the third sub-paragraph of Article 24(1) of the Direct Payments Regulation, the Welsh Ministers will allocate payment entitlements to farmers who—

- (a) are entitled to be granted direct payments in accordance with Article 9 of the Direct Payments Regulation; and
- (b) submit an application for allocation of payment entitlements under the basic payment scheme in accordance with paragraphs (1) and (2) of this regulation; and
- (c) either—
  - (i) were producing fruits, vegetables, ware potatoes, seed potatoes or ornamental plants; or
  - (ii) were cultivating vineyards; or
  - (iii) never held owned or leased-in single payment scheme entitlements but can submit verifiable evidence that on 15 May 2013 they produced, reared or grew agricultural products, including through harvesting, milking, breeding animals and keeping animals for farming purposes.

(4) For the purposes of Article 24(2) of the Direct Payments Regulation, the date on which the number of eligible hectares must be at the disposal of the farmer is the 15 May 2015.

### **Transfer of entitlements**

**11.**—(1) In the case of a sale of a holding or part of it, a farmer may, by contract signed before 15 May 2015, transfer together with the holding or part of it, the corresponding payment entitlements to be allocated, in accordance with Article 20 of the Direct Payments Delegated Regulation.

(2) In the case of a lease of a holding or part of it, a farmer may, by contract signed before 15 May 2015, lease-out together with the holding or part it, the corresponding payment entitlements to be allocated, in accordance with Article 21 of the Direct Payments Delegated Regulation.

(3) For the purposes of Article 8(1) of the Direct Payments Implementing Regulation, the period within which the transferor of payment entitlements must notify the Welsh Ministers of the transfer is from 16 May of the preceding calendar year to 30 April (both those dates included) of the first calendar year in which the transferee may include those entitlements in the transferee's application for direct payments.

### Transfer of holding

12. For the purposes of Article 8(3)(a) of the Horizontal Implementing Regulation, the period within which the transferee must inform the Welsh Ministers of the transfer and request payment of the aid or support, or both, is 30 days beginning with the first day after the date of the transfer.

### Non-agricultural activities

13.—(1) In accordance with Article 32(3) of the Direct Payments Regulation—

- (a) non-agricultural activities which may be carried out on an agricultural area of a holding for a period of up to 28 days per calendar year are listed in Part 1 of the Schedule;
- (b) areas which are classed as being predominantly used for non-agricultural activities are listed in Part 2 of the Schedule;
- (c) any area where the principal purpose of the land is for recreational activities, or a non-agricultural activity listed in Part 1 of the Schedule, is not consistent with the land being considered as remaining in agricultural use.

### Crop diversification

14. For the purposes of the first sub-paragraph of Article 40(1) of the Direct Payments Delegated Regulation, the relevant cultivation period in any year is 1 May to 15 July (both dates included).

### Permanent grassland

15.—(1) Any permanent grassland—

- (a) located in a site of special scientific interest; and
- (b) in relation to which written consent to plough is required in accordance with section 28E(7) of the Wildlife and Countryside Act 1981<sup>(8)</sup> but such consent has not been obtained,

is designated as environmentally sensitive permanent grassland for the purposes of Article 45(1) of the Direct Payments Regulation.

(2) In this regulation—

“site of special scientific interest” (“*safle o ddiddordeb gwyddonol arbennig*”) has the meaning given in section 52(1) of the Wildlife and Countryside Act 1981.

### Ecological focus areas

16.—(1) For the purposes of Article 46(2) of the Direct Payments Regulation, the areas mentioned in points (a) (land lying fallow), (g) (areas of short rotation coppice), (h) (afforested areas) and (j) (areas with nitrogen-fixing crops) and, subject to paragraph (3), point (c) (landscape features), are considered to be Ecological Focus Areas.

(2) In accordance with Article 45(2) of the Direct Payments Delegated Regulation, there shall be no agricultural production on land lying fallow in any year between 1 February and 31 July (both dates included).

(3) For the purposes of the second sub-paragraph of Article 45(4) of the Direct Payments Delegated Regulation, landscape features are limited to—

- (a) hedges up to 10 metres wide; and
- (b) traditional stone walls at least 1 metre high and no more than 4 metres wide.

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(7) In relation to land in Wales, section 28E has effect as if the reference to Natural England was a reference to the Natural Resources Body for Wales.

(8) 1981 c. 69.

- (4) For the purposes of Article 45(8) of the Direct Payments Delegated Regulation—
- (a) the list of planted tree species that can be used for short rotation coppice is—
- Alder (*Alnus spp*),
  - Silver Birch (*Betula pendula*),
  - Hazel (*Corylus avellana*),
  - European Ash (*Fraxinus excelsior*),
  - Lime (*Tilia cordata*),
  - Sweet chestnut (*Castanea sativa*),
  - Sycamore (*Acer pseudoplatanus*),
  - Willow (*Salix spp*),
  - Poplar (*Populus spp*); and
- (b) within the first 2 years of planting any of the species in paragraph (4)(a)—
- (i) no mineral fertiliser may be used on those species, and
  - (ii) plant protection products can only be used for the treatment of non-native invasive weeds; and
- (c) the maximum harvest cycle is 20 years.
- (5) For the purposes of Article 45(10) of the Direct Payments Delegated Regulation—
- (a) the list of nitrogen fixing crops is—
- Alfalfa (*Medicago sativa*),
  - Bean (*Phaseolus spp*),
  - Bean (*Vigna spp*),
  - Birdsfoot trefoil (*Lotus corniculatus*),
  - Chickpea (*Cicer spp*),
  - Clover (*Trifolium spp*),
  - Faba bean (*Vicia faba*),
  - Lentil (*Lens culinaris*),
  - Lupin (*Luninus spp*),
  - Pea (*Pisum spp*),
  - Vetch (*Vicia spp* except *Vicia faba*),
  - Medick (*Medicago lupulina*),
  - Soybean (*Glycine max*),
  - Sweet clover (*Melilotus albus*),
  - Sainfoin (*Onobrychus viciifolia*); and
- (b) in any year, any nitrogen fixing crop must be sown by 15 May and be present for 14 weeks from the date that it was sown, or until 1 August at the latest.
- (6) When calculating the total hectares represented by the Ecological Focus Area of a holding, the Welsh Ministers will make use of the conversion and weighting factors set out in Annex X to the Direct Payments Regulation.

### **Revocations and savings**

- 17.—(1) Subject to paragraph (2), the following instruments are revoked—

- (a) The Common Agricultural Policy Single Payment and Support Schemes (Wales) Regulations 2010 (“the 2010 Regulations”)(**9**); and
  - (b) The Common Agricultural Policy Single Payment and Support Schemes (Wales) (Amendment) Regulations 2012(**10**).
- (2) The 2010 Regulations as in force immediately before 2015 shall continue to apply in respect of aid applications relating to 2014 and earlier claim years.

*Rebecca Evans*  
Deputy Minister for Farming and Food, under  
the authority of the Minister for Natural  
Resources, one of the Welsh Ministers

22 April 2015

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(9) S.I. 2010/1892 (W. 185).  
(10) S.I. 2012/3093 (W. 311).

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## SCHEDULE

Regulation 13

### Non-agricultural activities

#### PART 1

#### Non- agricultural activities permitted on agricultural areas up to 28 days per calendar year

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Clay pigeon shooting  
Car boot sales  
Festivals  
Country shows and fairs  
Farm auctions and sales  
Equestrian activities  
Ballooning  
Car parking\*  
Scout camps  
Guide camps  
Caravan sites  
Camping sites  
TV and film locations  
Motor sports  
Moto cross

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\* Whether or not associated with any other non-agricultural activity

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#### PART 2

#### Areas classed as being predominantly used for non-agricultural activities

Golf courses  
Gallops  
Airports  
Solar parks  
Permanent sports installations and facilities



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## EXPLANATORY NOTE

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

These Regulations make provision, in relation to Wales, for the administration of Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy (OJ No. L 347, 20.12.2013, p. 608) (“the Direct Payments Regulation”) and the three other associated EU Regulations referred to in regulation 2(1).

Regulation 3 specifies the minimum eligible area of a holding in respect of which direct payments may be granted to a farmer.

Regulation 4 fixes the date on which parcels used as the basis for a claim under the basic payment scheme must be at the disposal of farmers.

Regulation 5 specifies the activities a farmer must carry out in order to maintain an agricultural area in a state suitable for grazing or cultivation.

Regulation 6 specifies the minimum agricultural activity required to be carried out on land that is naturally kept in a state suitable for grazing or cultivation.

Regulation 7 designates the short rotation coppice trees eligible under the basic payment scheme and sets the maximum harvest cycle.

Regulation 8 provides for the basis on which an increase in direct payments to qualifying farmers aged 40 or less and participating in the young farmers schemes must be calculated.

Regulation 9 fixes the threshold at which agricultural activities will not be considered to be insignificant, sets out how a farmer demonstrates that his or her principal business consists of exercising an agricultural activity and provides for an exemption from the exclusion from eligibility for direct payments of a farmer who received EUR 5,000 or less of direct payments in the previous year.

Regulation 10 sets out how payment entitlements under the basic payment scheme will be allocated and fixes the date on which the number of eligible hectares must be at the disposal of farmers.

Regulation 11 sets out how payment entitlements under the basic payment scheme may be transferred via sale or lease and makes provision for the period within which a transferor must notify the Welsh Ministers of a transfer of payment entitlements.

Regulation 12 provides that the period within which the transferee of a holding must inform the Welsh Ministers of the transfer and request payment is 30 days beginning with the first day after the date of the transfer.

Regulation 13 sets out those non-agricultural activities which are permitted on an agricultural area for a period of up to 28 days per calendar year and designates those areas which are classed as being predominantly used for non-agricultural activities and are therefore ineligible for the purposes of the basic payment scheme.

Regulations 14 to 16 make provision relating to the “greening” component of direct payments, linking payments to agricultural practices beneficial for the climate and environment. Regulation 14 sets out the period to be taken into account for the purposes of determining whether crop diversification requirements have been met. Regulation 15 provides for the designation of permanent grasslands which are environmentally sensitive. Regulation 16 sets out the five areas which are to be Ecological Focus Areas (“EFAs”) and details the scope of the EFAs relating to land lying fallow,

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landscape features, areas of short rotation coppice, afforested areas and areas with nitrogen fixing crops.

Regulation 17 revokes Regulations which make provision in relation to Wales for the administration of the European Single Payment and Support Scheme but with a saving provision for the continued application of the Common Agricultural Policy Single Payment and Support Schemes (Wales) Regulations 2010 (S.I. 2010/1892 (W. 185)) in respect of aid applications relating to claim years before 2015.

A Regulatory Impact Assessment of the effects of these Regulations on the costs of business, in relation to farm businesses in Wales, has been prepared in respect of these Regulations. Copies can be obtained from the Department of Natural Resources, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.