



Cynulliad Cenedlaethol Cymru The National Assembly for Wales

ADRODDIAD GAN Y PWYLLGOR DEDDFAU

LEGISLATION COMMITTEE REPORT

The Farm Enterprise Grant and Farm Improvement Grant (Wales) Regulations 2001

These regulations supplement the Community legislation listed in the Schedule to the regulations which provides, amongst other things, for support to be paid from the European Agricultural Guidance and Guarantee Fund towards investment for the improvement of agricultural holdings.

Standing Order 11.5

The following points were referred to the Minister under SO 11.4.

A copy of the Minister's response is annexed to this report.

Regulation 2(1) – definition of "farming business"

This refers to a business which undertakes agricultural activities on a holding for a minimum of 550 hours per annum.

The point which was raised with the Minister was that whilst the hours which individuals spend working on a holding can be quantified it was queried how the hours which a continuing entity such as a business "undertakes" could be quantified.

In response the Minister submits that the hours would be quantified by reference to the time spent on agricultural activities on the holding by the persons through whom the business is carried on, whether owners and/or employees. The Minister further submits that the definition fits in with other EC based agricultural legislation where the farmer is commonly defined in terms which include natural or legal persons or groups of such persons.

Having had regard to the submissions made by the Minister the Committee accepts that the reference to a business undertaking activities for a minimum of 550 hours would need to be interpreted as referring to the total time spent by individuals on agricultural activities on the holding. Given the somewhat unusual concept of specifying activities undertaken by a "business" in hourly terms, however, the Committee considers that it needs to report to the Assembly that it should pay special attention to this provision on the ground that the meaning of the definition of "farming business" has needed the further explanation which has now been given by the Minister.

Regulation 13(5) (powers of authorised persons)

The definition of "authorised person" in regulation 2(1) includes any official of the Commission who accompanies a person authorised by the Assembly.

In regulation 13, however, paragraph (5)(a) expressly provides that an "authorised person" entering land may be accompanied by any official of the Commission.

The Committee accordingly raised a query with the Minister as to the significance of regulation 13(5)(a).

The Minister acknowledges that regulation 13(5)(a) is superfluous and confirms that this will be noted for amendment when an opportunity presents itself.

Whilst accepting the Minister's comment that this drafting defect does not affect the "efficacy or workability of the relevant provisions" it is nevertheless a drafting defect and the Committee is accordingly obliged to invite the Assembly to pay special attention to it.

Regulation 16 (Assembly's powers of recovery) – Article 6 of the European Convention on Human Rights

Regulation 16(2) provides for the payment of a penalty of up to ten per cent in cases where a beneficiary acts intentionally or recklessly in relation to the circumstances specified in regulation 14(1).

Noting that these are circumstances which, essentially, will involve fraud or deception, the question was raised with the Minister as to whether regulation 16 complies with Article 6 of the European Convention on Human Rights, given that the only right to a "hearing" which the beneficiary has is the right to make written representations to the Assembly under regulation 16(6).

The Minister's response includes the following points –

- The circumstances envisaged will not necessarily involve fraud or deception.
- In those cases where a prosecution is brought, this will provide a full hearing.
- The penalty is primarily regulatory and compensatory, given the cost of administering the recovery process.
- Given the nature of the relationship between the parties and the discretionary nature of the power, regulation 16 is distinguishable from mandatory strict liability penalties that have attracted adverse comment from the courts in cases such as *International Transport Roth GmbH and others v. Secretary of State for the Home Department*.
- Judicial review would be available in respect of the exercise of the power.
- Since any penalty would, under regulation 18, be recoverable as a debt, there would be the opportunity of a hearing at that stage.

With regard to the submission that the cases in which a penalty could arise will not necessarily involve fraud or deception, the Committee did not seek to suggest the contrary. Reference was made to circumstances essentially involving fraud or deception, merely to indicate the potential nature of the allegations against the beneficiary in such cases – ie. the penalty arises because the beneficiary has intentionally or recklessly engaged in conduct which has led to the receipt, withholding or recovery of a grant to which the beneficiary is not entitled.

Nevertheless the Committee accepts that as the relationship between the parties arises from a grant application, decisions such as that in the *International Transport* case are distinguishable. Additionally, the Committee accepts that the remedy of judicial review and, to a lesser extent, the opportunity of defending recovery as a debt, provides a sufficient element of "hearing". Thus, for these reasons, it is accepted that the penalty provision in regulation 16 is not in breach of Article 6 of the Convention.

Regulation 16(2) (calculation of penalty)

It was queried whether the reference in regulation 16(2) to sums "paid or payable" should be limited to sums withheld or demanded for recovery under regulation 16(1).

The Minister confirms that the intention was for regulation 16(2) to read as it does. The Minister explains that this wide discretionary power is considered necessary in order to comply with the obligation in Commission Regulation 1750/99 to ensure that penalties are effective.

Given that the Minister has confirmed that the provision is specifically intended to refer to sums "paid or payable", the Committee does not raise any point in relation to this.

Mick Bates AM
Chair, Legislation Committee

29 January 2002