

**1991 No. 157****HORTICULTURAL PRODUCE****Apple Orchard Grubbing Up Regulations  
(Northern Ireland) 1991**

*Made* . . . . . 15th April 1991

*Coming into operation* . . . . . 20th May 1991

The Department of Agriculture, being a Department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the common agricultural policy of the European Economic Community, in exercise of the powers conferred on it by the said section 2(2) and of every other power enabling it in that behalf, hereby makes the following Regulations:

*Citation and commencement*

1.—(1) These Regulations may be cited as the Apple Orchard Grubbing Up Regulations (Northern Ireland) 1991 and shall come into operation on 20th May 1991.

*Interpretation*

2.—(1) In these Regulations—

“apple tree” means any plant actually or potentially capable of producing a normal and full crop of apples other than cider apples;

“applicant” means a person who makes an application;

“application” means an application for a premium;

“authorised officer” means an officer authorised by the Department for the purposes of these Regulations;

“the Commission Regulation” means Commission Regulation (EEC) No. 2604/90(c) laying down detailed rules for the application of Council Regulation (EEC) No. 1200/90(d) on the improvement of the Community production of apples and amending Commission Regulation (EEC) No. 3322/89(e) determining the operative events applicable in the fruit and vegetables sector;

“the Council Regulation” means Council Regulation (EEC) No. 1200/90 on the improvement of the Community production of apples;

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(a) S.I. 1972/1811

(b) 1972 c. 68; section 2 is subject to Schedule 2 to that Act and is to be read with S.I. 1984/703 (N.I. 3) and S.R. 1984 No. 253

(c) O.J. No. L245, 8.9.90, p. 23

(d) O.J. No. L119, 11.5.90, p. 63

(e) O.J. No. L321, 4.11.89, p. 32

“the Department” means the Department of Agriculture for Northern Ireland;

“former orchard” means land formerly an apple orchard in respect of which a premium has been paid;

“holding” means land including an apple orchard in respect of which an application is made, occupied as a unit for agricultural purposes by the applicant at the time of making the application;

“occupier” means a person, other than the applicant, who occupies a former orchard or part of a former orchard at any time during the restriction period;

“premium” means the grubbing up premium provided for in Article 1 of the Council Regulation;

“the restriction period” means, in relation to a holding, the period of fifteen years commencing with the day on which grubbing up is completed on that holding.

(2) Expressions in these Regulations, other than those defined in paragraph (1), which also appear in the Council Regulation or the Commission Regulation, have the meanings they bear therein.

(3) The Interpretation Act (Northern Ireland) 1954(a), except section 20(2) and (3), shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

#### *Applications for premium*

3. Applications shall be made to the Department.

#### *Calculation of areas*

4. For the purpose of calculating the area of parcels under apple trees which make up an apple orchard in respect of which an application is made, reasonable working headlands shall be included.

#### *Powers of entry and inspection*

5.—(1) From the date an application is made until the expiry of the restriction period which relates to the applicant’s holding, an authorised officer may, at all reasonable times and on production of his authority on demand, enter upon the holding and inspect any land or apple tree, whether planted or grubbed up, in order to—

- (a) verify the accuracy of any particulars given in the application;
- (b) determine whether grubbing up has been carried out in accordance with the Council Regulation and the Commission Regulation; or
- (c) determine whether any apple tree has been planted on the holding during the restriction period.

(2) When exercising the powers conferred upon him by paragraph (1), an authorised officer may be accompanied by such other persons acting under his instructions as appear to him to be necessary for the purpose.

*Inspection of documents*

6. An authorised officer may, in order to—

- (a) verify the accuracy of any particulars given in an application; or
- (b) determine whether the applicant has planted an apple tree or has had an apple tree planted on the holding, or whether an occupier has planted an apple tree or has had an apple tree planted on the former orchard on the applicant's holding,

require the applicant or the occupier to produce for inspection any bill, account, record or other document in his possession or under his control relating to the holding or any part of it, or the apple orchard or any apple tree on the holding, and may make copies of or take extracts from any document so produced.

*Retention of grubbed up apple trees*

7. Where an application has been made in respect of an apple orchard and apple trees grubbed up in that apple orchard have been removed from the holding before they have been inspected by an authorised officer, the Department may withhold the whole or any part of the premium applied for.

*Notification on change of occupation*

8. Where, during the restriction period—

- (a) an applicant or an occupier ceases to occupy the whole or any part of a former orchard; or
- (b) an applicant or an occupier has died while in occupation of the whole or any part of a former orchard,

the applicant or occupier or, if he has died, his personal representatives, shall at or before the time the first or next occupier, as the case may be, takes occupation, notify him in writing that the former orchard or part is subject to the provisions of these Regulations and that the planting of apple trees on it may render him liable to pay a penalty.

*Recovery of premiums*

9.—(1) Where any person for the purpose of obtaining the payment of a premium to himself or any other person—

- (a) makes any statement which is false or misleading in a material respect; or
- (b) furnishes to the Department any inaccurate information,

the Department may recover the whole or any part of the premium paid to him or to such other person.

(2) Where an applicant—

- (a) intentionally obstructs an authorised officer in the exercise of the powers conferred upon him by regulation 5(1) or 6, or a person accompanying him and acting under his instructions; or
- (b) fails without reasonable excuse to comply with a requirement under regulation 6,

the Department may recover the whole or any part of the premium paid to him.

(3) Where an occupier—

(a) intentionally obstructs an authorised officer in the exercise of the powers conferred upon him by regulation 5(1) or 6, or a person accompanying him and acting under his instructions; or

(b) fails without reasonable excuse to comply with a requirement under regulation 6,

he shall be liable to pay to the Department on demand an amount equal to the whole or any part of the premium paid in relation to the apple orchard on the holding concerned.

(4) Where during the restriction period—

(a) an applicant plants an apple tree or has an apple tree planted on his holding; or

(b) an occupier plants an apple tree or has an apple tree planted on the former orchard on the applicant's holding,

the Department may recover from the applicant the premium paid to him and may in addition require from the applicant payment of interest on the sum recovered for the period commencing on the date of payment of the premium and expiring on the date of recovery at a rate of one percentage point above the sterling three month London interbank offered rate for the time being in force during that period.

#### *Fixed penalty for planting apple trees*

**10.**—(1) Where during the restriction period an applicant plants an apple tree or has an apple tree planted on his holding, he shall be liable, in addition to repaying the premium paid to him and paying interest, to pay to the Department on demand an amount equal to the premium.

(2) Where during the restriction period an occupier plants an apple tree or has an apple tree planted on a former orchard, he shall be liable to pay to the Department on demand an amount equal to the premium paid to the applicant whose holding contained the former orchard.

#### *False statements*

**11.** Any person who, for the purpose of obtaining the payment of a premium to himself or to any other person, knowingly or recklessly makes a statement which is false in a material respect shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £2,000.

#### *Obstruction of authorised officers*

**12.** Any person who—

(a) intentionally obstructs an authorised officer in the exercise of the powers conferred upon him by regulation 5(1) or 6, or a person accompanying him and acting under his instructions; or

(b) fails without reasonable excuse to comply with a requirement under regulation 6,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £400.

*Failure to notify*

13.—(1) Any person who fails without reasonable excuse to comply with the provisions of regulation 8 shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £400.

(2) Any complaint relating to the offence referred to in paragraph (1) which is triable by a magistrates' court may be so tried if it is made at any time within six years after the commission of the offence.

*Offences by bodies corporate*

14. Where an offence under these Regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer, of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Sealed with the Official Seal of the Department of Agriculture for Northern Ireland on 15th April 1991.

(L.S.)

*I. C. Henderson*

Assistant Secretary

## EXPLANATORY NOTE

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

These Regulations lay down the measures necessary to supervise and enforce the provisions of Council Regulation (EEC) No. 1200/90 on the improvement of the Community production of apples and Commission Regulation (EEC) No. 2604/90, which contains detailed rules for the application of the Council Regulation. The Council Regulation and the Commission Regulation provide for the payment of a premium to apple producers who grub up their orchards, and penalize, during the fifteen years following grubbing up, the planting of apple trees by the recipient of the premium on any part of his holding and by subsequent occupiers on the areas grubbed up. The premium is not available to producers of cider apples.

The present Regulations identify the Department of Agriculture as being responsible for receiving applications for premium (regulation 3), determine how orchard areas should be calculated (regulation 4), confer powers of entry and inspection on officers authorised by the Department of Agriculture (regulations 5 and 6), provide for withholding of premium where grubbed up apple trees are removed from a holding before inspection (regulation 7), require that subsequent occupiers be notified of the penalty for planting apple trees (regulation 8) and provide, in conformity with Article 6(3) of the Commission Regulation, for recovery of premium from the recipient where there has been a breach of the rules of the scheme (regulation 9) and for payment of a fixed penalty for planting apple trees (regulation 10).

Regulation 11 creates an offence of making a false statement for the purpose of obtaining premium (punishable on summary conviction by a fine not exceeding £2,000), regulation 12 creates offences of obstructing an authorised officer and failing to produce relevant documents (both punishable on summary conviction by a fine not exceeding £400) and regulation 13 creates an offence of failing to notify a subsequent occupier of the penalty for planting apple trees (punishable on summary conviction by a fine not exceeding £400).