

1994 No. 430

HORTICULTURAL PRODUCE

**Apple Orchard Grubbing Up (Amendment) Regulations
(Northern Ireland) 1994**

Made 3rd November 1994

Coming into operation 3rd November 1994

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 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, commencement and application

1.—(1) These Regulations may be cited as the Apple Orchard Grubbing Up (Amendment) Regulations (Northern Ireland) 1994 and shall come into operation on 3rd November 1994.

(2) These Regulations shall apply in respect of applications (within the meaning of the Apple Orchard Grubbing Up Regulations (Northern Ireland) 1991(c)) made on or after 3rd November 1994.

Amendments to the Apple Orchard Grubbing Up Regulations (Northern Ireland) 1991

2. The Apple Orchard Grubbing Up Regulations (Northern Ireland) 1991 shall be amended as provided in Regulations 3 to 9.

Interpretation

3. In regulation 2(1)—

(a) for the definition of “applicant” there shall be substituted the following definition—

“ “applicant” means a person who makes an application and includes his personal representatives;”;

(b) in the definition of “the Commission Regulation” at the end there shall be inserted the words:

“as amended by Commission Regulation (EC) No. 2264/94(d)”;

(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) S.R. 1991/157

(d) O.J. No. L246, 21.9.94, p. 2

- (c) after the definition of “the Commission Regulation” there shall be inserted the following definition:—
- “ “the continuing control objective” means the objective that no planting of an apple tree shall be carried out on any holding containing or new holding containing the whole or any part of a former orchard or of a retained orchard during the restriction period relating to that former or (as the case may be) retained orchard, other than planting on a retained orchard or other orchard;”;
- (d) in the definition of “the Council Regulation” at the end there shall be inserted the words “as last amended by Council Regulation (EC) No. 1890/94(a);”;
- (e) for the definition of “holding” there shall be substituted the following definition—
- “ “holding” means, except in the expression “new holding”, land formerly an apple orchard in respect of which an application is made, occupied as a unit for the time being for agricultural purposes by the applicant;”;
- (f) after the definition of “holding” there shall be inserted the following definitions—
- “ “legal estate” means any estate in land other than an equitable estate;
- “new holding” means land, occupied as a unit for agricultural purposes by an occupier at any time after he has begun occupation of a former orchard or part of a former orchard or a retained orchard or part of a retained orchard;”;
- (g) for the definition of “occupier” there shall be substituted the following definition—
- “ “occupier” means a person, other than the applicant, who occupies a former orchard or part of a former orchard or a retained orchard or part of a retained orchard at any time during the restriction period relating to the former or (as the case may be) retained orchard and includes the occupiers personal representatives;”;
- (h) after the definition of “occupier” there shall be inserted the following definitions—
- “ “other orchard” means, in relation to a new holding, any apple orchard which was on that holding at or was added to that holding after the time that the restricted parcels became part of it, other than a retained orchard transferred to the occupier by the applicant or previous occupier;
- “owner” means any person having any legal estate in land and includes his personal representatives;”;

- (i) after the definition of “premium” there shall be inserted the following definitions—

“ “restricted parcel” means any parcel the planting of any apple tree on which would for the time being be incompatible with the continuing control objective;

“restriction” means any restriction on planting apple trees on a holding or new holding (as the case may be) imposed by or under the Council Regulation, the Commission Regulation or these Regulations and includes a restriction deriving from an undertaking to observe planting controls;”;

- (j) for the definition of “the restriction period” there shall be substituted the following definition—

“ “the restriction period” means—

(a) in relation to a former orchard, the period of fifteen years commencing with the day on which grubbing up for which premium is payable is completed in that orchard; and

(b) in relation to a retained orchard, the period of fifteen years commencing with the day on which grubbing up for which premium is payable is completed in its linked former orchard, and for this purpose a former orchard is linked to a retained orchard where the identification of the latter as a retained orchard derives from the identification of the former as a former orchard;”;

- (k) after the definition of “the restriction period” there shall be added the following definitions—

“ “retained orchard” means any part of an applicant’s apple orchard in respect of which premium had not been paid;

“undertaking to observe planting controls” means a written undertaking in favour of the Department by the occupier of a new holding not to act in a manner incompatible with the continuing control objective in relation to his new holding.”.

Powers of entry and inspection

4. In regulation 5—

- (a) after paragraph (1) there shall be inserted the following paragraph—

“(1A) At any time after a new holding has been created until the end of the restriction period relating to it, an authorised officer may at all reasonable times, and on production of his authority on demand, enter upon the new holding and inspect any land or apple tree, whether planted or grubbed up, in order to determine whether any apple tree has been planted on the new holding during the restriction period.”;

- (b) in paragraph (2), for the words “paragraph (1)” there shall be substituted “paragraph (1) or (1A)”.

Retention of grubbed up apple trees

5. In regulation 7 after the words “removed from the holding” there shall be inserted “or rendered unsuitable for inspection”.

Extension of undertakings

6. For regulation 8 there shall be substituted the following regulations—

“Conditions of acceptance

8.—(1) This regulation applies where an applicant’s occupation of or interest in his holding or any of it is derived directly or indirectly from the legal estate of an owner.

(2) The applicant’s application shall not be accepted unless it includes—

(a) the consent of each such owner to the grubbing up operation to which the application relates; and

(b) a requisite undertaking by each such owner.

(3) For the purposes of this regulation the requisite undertaking of an owner or (as the case may be) successor is a written undertaking in favour of the Department that—

(a) so long as he is an owner of any relevant parcel, he will secure from each relevant subsequent occupier of that relevant parcel (if any) an undertaking to observe planting controls;

(b) if at any time he becomes an occupier of any relevant parcel he will not act in a manner incompatible with the continuing control objective in relation to his new holding; and

(c) he will secure from each successor of his (if any) the requisite undertaking.

(4) In this regulation—

(a) “relevant parcel” means—

(i) a restricted parcel the restriction relating to which arises on account of a grubbing up operation referred to in paragraph (2)(a); or

(ii) a retained orchard;

(b) a subsequent occupier of a relevant parcel is a relevant subsequent occupier if he is not already bound in relation to that parcel by his undertaking to observe planting controls; and

(c) “successor” means, in relation to an owner of a relevant parcel, any person who,

(i) acquires from that owner a legal estate in, but

(ii) is not the occupier of—

the whole or any part of that relevant parcel.

8A.—(1) This regulation applies in relation to any application to which regulation 8 does not apply.

(2) The application shall not be accepted unless it includes an undertaking to secure from the next occupier (if any) of any relevant parcel the requisite undertakings.

(3) For the purposes of this regulation the requisite undertakings of an occupier are—

- (a) an undertaking to observe planting controls; and
 - (b) a written undertaking in favour of the Department that he will secure from the next occupier after him (if any) of any relevant parcel the requisite undertakings.
- (4) In this regulation “relevant parcel” means—
- (a) a restricted parcel the restriction relating to which arises on account of a grubbing up operation for which premium is sought in the application; or
 - (b) a retained orchard.

Obligations on securing of undertaking

8B. Where any person secures an undertaking under regulation 8 or 8A he shall—

- (a) give written notice to the person from whom he secured it of the consequences under these Regulations of failure to comply with it;
- (b) forward the undertaking to the Department; and
- (c) give by notice in writing to the Department—
 - (i) particulars of the giving of notice referred to in sub-paragraph (a); and
 - (ii) particulars of the change of ownership or, as the case may be, occupation which gave rise to the securing of the undertaking.”.

Recovery of premiums

7. In regulation 9—

- (a) in paragraph (1) and (2) after the word “recover” in each place where it occurs there shall be inserted “on demand”;
- (b) in paragraph (3), after the word “occupier” there shall be inserted “who gave an undertaking to observe planting controls”; and
- (c) paragraph (4) shall be deleted.

Powers in cases of default

8. For regulation 10 there shall be substituted the following regulation—

“Failure to act in manner compatible with the continuing control objective

10.—(1) This regulation applies where an applicant in receipt of premium has acted in a manner incompatible with the continuing control objective in relation to his holding.

(2) The applicant shall pay to the Department on demand an amount equal to the premium.

(3) In addition to the amount mentioned in paragraph (2), the applicant shall repay that premium to the Department on demand.

Contravention of undertaking to observe planting controls

10A.—(1) This regulation applies where there has been a contravention of an undertaking to observe planting controls.

(2) The person who has contravened the undertaking shall pay to the Department on demand an amount equal to the premium paid in respect of the grubbing up in consequence of which the undertaking was given.

(3) In addition to the amount mentioned in paragraph (2) the applicant to whom that premium was paid shall repay it to the Department on demand.

Failure to secure undertaking

10B.—(1) This regulation applies where—

(a) any apple tree is planted on a restricted parcel on a new holding; and

(b) any person obliged by or under regulation 8 or 8A to secure an undertaking has failed either—

(i) to secure it; or

(ii) to comply with any obligation set out in regulation 8B in relation to it,

and, as a direct or indirect consequence of that failure, the Department has at the time of planting not received an undertaking to observe planting controls which the planting contravenes.

(2) The relevant person to whose failure paragraph (1)(b) refers shall pay to the Department on demand an amount equal to the premium paid in respect of the grubbing up in consequence of which his obligation to secure an undertaking arose and, for the purposes of this paragraph—

(a) the relevant person is—

(i) in any case where there is only one person to whose failure paragraph (1)(b) refers, that person;

(ii) in any case where there is more than one person to whose failure paragraph (1)(b) refers, any such person who receives that demand; and

(b) where sub-paragraph (a)(ii) applies, the relevant person may on payment of the amount so demanded recover on demand from each other person to whose failure paragraph (1)(b) refers an amount equal to $X \div Y$ where—

(i) X represents the amount so demanded and paid; and

(ii) Y represents the number of persons to whose failure paragraph (1)(b) above refers.

(3) In addition to any amount payable by any person under paragraph (2) the applicant to whom that premium was paid shall repay it to the Department on demand.

Recovery of interest

10C. Where premium is repayable by an applicant by virtue of regulation 10(3), 10A(3) or 10B(3), the Department may also recover from the applicant interest thereon in respect of the period commencing on the date of payment of the premium and expiring on the date of its repayment (both dates inclusive) 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.”.

Recovery of amounts

9. For regulation 13 there shall be substituted the following regulation—

“Recoverability of amounts

13. Any amount recoverable or payable on demand under these Regulations shall, if not recovered or paid on demand, be recoverable as a civil debt.”.

Sealed with the Official Seal of the Department of Agriculture for Northern Ireland on 3rd November 1994.

(L.S.)

I. C. Henderson

Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations amend the Apple Orchard Grubbing Up Regulations (Northern Ireland) 1991 (“the 1991 Regulations”). They implement, as respects Northern Ireland, Council Regulation (EEC) No. 1200/90 (O.J. No. L119, 11.5.90, p. 63) as last amended by Council Regulation (EC) No. 1890/94 (O.J. No. L197, 30.7.94, p. 41) and Commission Regulation (EEC) No. 2604/90 (O.J. No. L245, 8.9.90, p. 23) as amended by Commission Regulation (EC) No. 2264/94 (O.J. No. L246, 21.9.94, p. 2). The Community instruments extend to 1994/5 previous arrangements for the payment of premium for the grubbing up of apple orchards (other than cider apple orchards), subject to variations. In particular, payment for partial grubbing up is now provided for in the Community instruments, and the undertakings required to secure the ban on replanting for 15 years are extended beyond orchards themselves to other areas of holdings on which orchards are or were situated. The extension of undertakings is provided for in regulations 6 and 8 and the revised and additional definitions in regulation 3. The power to enter and inspect is extended to such areas (regulation 4). The rendering unsuitable for inspection of grubbed up trees is added to their removal from the holding as a ground for withholding premium (regulation 5). These Regulations also make consequential and drafting changes to the 1991 Regulations.