

**1995 No. 381****AGRICULTURE****Arable Area Payments Regulations (Northern Ireland) 1995***Made* . . . . . *5th October 1995**Coming into operation* . . . . . *6th November 1995***INDEX***Regulation*

1. Citation and commencement
2. Interpretation
3. Production regions
4. Calculation of projected regional reference amount
5. Minimum size of agricultural plot
6. Derogation from requirement to have farmed for two years land set aside
7. Derogation from requirement to set land aside in the production region where the related arable land is situated
8. Requirements in relation to set-aside land
9. Transfer of the obligation to set aside to another farmer
10. Requirements in relation to rapeseed
11. Keeping and retention of records by a farmer
12. Keeping and retention of records by a collector and by a processor
13. Reduction or cancellation of compensatory payments for breach of Schedules 2 and 3
14. Rate of interest applicable where compensatory payments fall to be returned
15. Powers of authorised persons
16. Assistance to authorised persons
17. Offences and penalties
18. Revocations

Schedule 1: Derogation from requirement to have farmed set-aside land for two years

Schedule 2: Management requirements in relation to set-aside land

A. MANAGEMENT OPTIONS FOR SET-ASIDE LAND

*Paragraph*

- 1-2. General

- 3-4. Exemptions from the requirement to establish a green cover on set-aside land
- 5. The Grassland Option
- 6. The Natural Regeneration Option
- 7. The Wild Bird Cover Option
- 8. The Field Margins Option
- 9. Cutting the green cover
- B. GENERAL MANAGEMENT CONDITIONS APPLYING TO ALL SET-ASIDE LAND
  - 10. Application of conditions to all set-aside land
  - 11. Exemptions from the requirement to maintain a green cover on set-aside land
  - 12-13. Cultivation of the set-aside land and replacement of the green cover
  - 14. Use of legumes in the green cover
  - 15. Classification of seed permitted to be sown on set-aside land
  - 16. Replacement of the green cover and changing management options
  - 17. Use of the green cover
  - 18-22. Application of fertilisers, waste and lime to the set-aside land
  - 23-25. Application of fungicides, insecticides and herbicides to the set-aside land
  - 26. Retention of features on the set-aside land
- C. SPECIAL CONDITIONS APPLYING TO GUARANTEED SET-ASIDE LAND
  - 27. Application of conditions to guaranteed set-aside land
  - 28-30. The application of fertilisers
  - 31. Permitted agricultural production
- D. EXCEPTION RELATING TO ENVIRONMENTAL TRANSFERRED SET-ASIDE LAND
  - 32. The application of organic waste

Schedule 3: Requirements in relation to land set aside for the provision of specified raw materials

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 that section and of every other power enabling it in that behalf, hereby makes the following Regulations:—

(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

*Citation and commencement*

1. These Regulations may be cited as the Arable Area Payments Regulations (Northern Ireland) 1995 and shall come into operation on 6th November 1995.

*Interpretation*

2.—(1) In these Regulations—

“agricultural parcel” has the same meaning as in Article 1(4) of Council Regulation 3508/92 as read with the first indent of Article 6(1) of that Regulation;

“agricultural plot” means a cultivated plot as referred to in Article 2(1)(e) of Commission Regulation 2294/92 or in Article 2(e) of Commission Regulation 2295/92 or a separate piece of an area as referred to in Article 4(3) of Commission Regulation 2780/92;

“arable compensatory payment” means a compensatory payment other than a compensatory payment made in respect of set-aside land;

“arable crop” has the same meaning as in Article 1(2) of Council Regulation 1765/92;

“authorised person” means any person who is authorised by the Department, either generally or specially, to act in matters arising under these Regulations;

“collector” has the same meaning as in Article 1 of Commission Regulation 334/93;

“combinable crop” means any crop commonly harvested using a combine harvester;

“Commission Regulation 2294/92” means Commission Regulation (EEC) No. 2294/92(a) on detailed rules for the application of the support system for producers of the oilseeds referred to in Council Regulation 1765/92, as last amended by Commission Regulation (EC) No. 762/95(b);

“Commission Regulation 2295/92” means Commission Regulation (EEC) No. 2295/92(c) on detailed rules for the application of the support system for producers of the protein crops referred to in Article 6 of Council Regulation 1765/92, as last amended by Commission Regulation (EC) No. 3347/93(d);

“Commission Regulation 2780/92” means Commission Regulation (EEC) No. 2780/92(e) on the conditions for the grant of compensatory payments under the support system for producers of certain arable crops, as last amended by Commission Regulation (EC) No. 868/95(f);

---

(a) O.J. No. L221, 6.8.92, p. 22

(b) O.J. No. L76, 5.4.95, p. 1

(c) O.J. No. L221, 6.8.92, p. 28

(d) O.J. No. L300, 7.12.93, p. 5

(e) O.J. No. L281, 25.9.92, p. 5

(f) O.J. No. L89, 21.4.95, p. 5

“Commission Regulation 3887/92” means Commission Regulation (EEC) No. 3887/92(a) laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes as last amended by Commission Regulation (EC) No. 229/95(b);

“Commission Regulation 334/93” means Commission Regulation (EEC) No. 334/93(c) laying down detailed implementing rules for the use of land set aside for the provision of materials for the manufacture within the Community of products not primarily intended for human or animal consumption, as amended by Commission Regulation (EC) No. 608/94(d);

“Commission Regulation 2595/93” means Commission Regulation (EEC) No. 2595/93(e) laying down detailed rules as regards the use of land set aside for the production of multiannual raw materials for the manufacture within the Community of products not intended for human or animal consumption;

“Commission Regulation 762/94” means Commission Regulation (EC) No. 762/94(f) laying down detailed rules for the application of Council Regulation 1765/92 with regard to the set-aside scheme as last amended by Commission Regulation (EC) No. 229/95;

“compensatory payment” means a compensatory payment under Article 2(2) of Council Regulation 1765/92;

“Council Regulation 2092/91” means Council Regulation (EEC) No. 2092/91(g) on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs as last amended by Commission Regulation (EC) No. 2381/94(h);

“Council Regulation 1765/92” means Council Regulation (EEC) No. 1765/92(i) establishing a support system for producers of certain arable crops (as last amended by Council Regulation (EC) No. 1460/95(j)) as read with Commission Regulation (EEC) No. 3738/92(k) and Council Regulation (EC) No. 2990/94(l);

“Council Regulation 2078/92” means Council Regulation (EEC) No. 2078/92(m) on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside;

- 
- (a) O.J. No. L391, 31.12.92, p. 36
  - (b) O.J. No. L27, 4.2.95, p. 3
  - (c) O.J. No. L38, 16.2.93, p. 12
  - (d) O.J. No. L77, 19.3.94, p. 7
  - (e) O.J. No. L238, 23.9.93, p. 21
  - (f) O.J. No. L90, 7.4.94, p. 9
  - (g) O.J. No. L198, 22.7.91, p. 1
  - (h) O.J. No. L255, 1.10.94, p. 84
  - (i) O.J. No. L181, 1.7.92, p. 12
  - (j) O.J. No. L144, 28.6.95, p. 1
  - (k) O.J. No. L380, 24.12.92, p. 24
  - (l) O.J. No. L316, 9.12.94, p. 1
  - (m) O.J. No. L215, 30.7.92, p. 85

“Council Regulation 2080/92” means Council Regulation (EEC) No. 2080/92(a) instituting a Community aid scheme for forestry measures in agriculture;

“Council Regulation 3508/92” means Council Regulation (EEC) No. 3508/92(b) establishing an integrated administration and control system for certain Community aid schemes as last amended by Council Regulation (EC) No. 3233/94(c);

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

“eligible land” means land—

(a) for which aid has been granted under Title I of Council Regulation (EEC) No. 2328/91(d) on improving the efficiency of agricultural structures or in respect of which an application for direct payments has been accepted under Council Regulation (EEC) No. 3766/91(e) establishing a support system for producers of soya beans, rape seed, colza seed and sunflower seed;

(b) not under permanent pasture (as defined in the Annex to Commission Regulation 2780/92), permanent crops (as defined in the same Annex), forest or non-agricultural uses on 31st December 1991;

(c) which the Department has declared to be eligible land in accordance with the third paragraph of Article 9 of Council Regulation 1765/92 and Article 3(3) of Commission Regulation 2780/92; or

(d) which falls to be treated as eligible land in accordance with the fourth paragraph of Article 9 of Council Regulation 1765/92 and Article 3(4) of Commission Regulation 2780/92,

except for land which the Department has declared, in accordance with the second, third or fourth paragraph of Article 9 of Council Regulation 1765/92, no longer to be eligible land.

“environmental transferred set-aside land” means all land set aside by a farmer to satisfy the set-aside requirement of another farmer, except for land in respect of which evidence showing that it falls within the location specified in regulation 9(3)(a) has been provided by the transferee (as defined in regulation 9(2));

“farmer” means a farmer within the meaning of Article 1(4) of Council Regulation 3508/92 who applies to the Department for a compensatory payment;

“farm-saved rapeseed” means seed conforming to the provisions of Article 3(1)(b) of Commission Regulation 2294/92;

---

(a) O.J. No. L215, 30.7.92, p. 96

(b) O.J. No. L355, 5.12.92, p. 1

(c) O.J. No. L338, 28.12.94, p. 13

(d) O.J. No. L218, 6.8.91, p. 1

(e) O.J. No. L356, 24.12.91, p. 17

- “flexible set-aside land” means land set aside pursuant to the set-aside requirement or the option to set aside, except for rotational set-aside land;
- “green cover” means a green cover established or, as the case may be, falling to be established in accordance with Schedule 2;
- “green cover season” means the period commencing on 15th January and ending on 30th April in the same year (both dates inclusive);
- “guaranteed set-aside land” means flexible set-aside land which a farmer has undertaken to keep set aside for five successive marketing years pursuant to Article 5(1) of Commission Regulation 762/94;
- “holding” has the same meaning as in Article 1(4) of Council Regulation 3508/92;
- “land set aside for non-food purposes” means land set aside for the provision of raw materials for the manufacture within the European Community of products not primarily intended for human or animal consumption, in accordance with either Commission Regulation 334/93 or Commission Regulation 2595/93;
- “legal requirement”, in relation to a farmer, means an obligation which the Department is satisfied is legally binding on the farmer;
- “the option to set aside” means the option (under Article 7(6) Council Regulation 1765/92 and subject to the requirements thereof) for a farmer to set aside more land than would be required to satisfy his set-aside requirement;
- “organic waste” means any waste material produced by or from animals or plants as a by-product of agricultural production, including animal bedding;
- “penalty set-aside land” means land set aside to satisfy the penalty set-aside requirement;
- “penalty set-aside requirement” means the requirement referred to in the second indent of the first sub-paragraph of Article 2(6) of Council Regulation 1765/92;
- “permitted agricultural production” means—
- (a) the production of products for non-food purposes in accordance with Commission Regulation 334/93 or Commission Regulation 2595/93; and
  - (b) during the period commencing on 1st September in any year and ending on the following 14th January (both dates inclusive) the use of set-aside land for keeping and feeding animals and the harvesting of crops from that land in circumstances where—
    - (i) no payment or benefit in kind is received by the farmer in respect of such use or harvesting; and
    - (ii) such use or harvesting is not required to be prohibited by Article 3(3) of Commission Regulation 762/94;
- “processor” means a processor referred to in Article 11 of Commission Regulation 334/93;

“production region” has the same meaning as in Article 3 of Council Regulation 1765/92;

“rotational set-aside land” means land set aside (pursuant to the set-aside requirement or the option to set aside) in accordance with Article 4(1) of Commission Regulation 762/94;

“scheme year” means a year beginning on 15th January in any year and ending on the following 14th January (both dates inclusive);

“seed crop” means a crop grown so that the seed of the crop may be harvested and sown to establish a further crop;

“set aside” means withdrawn from agricultural production other than permitted agricultural production;

“set-aside compensatory payment” means a compensatory payment made in respect of set-aside land, as provided for in Articles 7(5) and 7(6) of Council Regulation 1765/92;

“set-aside land” means land set aside pursuant to—

(a) the set-aside requirement;

(b) the penalty set-aside requirement; or

(c) the option to set aside,

including land so set aside which has been set aside pursuant to Council Regulation 2078/92 or afforested pursuant to Council Regulation 2080/92 and (in either case) is counted as being set aside pursuant to Article 7(2) of Council Regulation 1765/92;

“set-aside period” means (except in the case of guaranteed set-aside land) the period within a scheme year commencing on 15th January and ending on the next following 31st August (both dates inclusive) and in the case of guaranteed set-aside land, means the period commencing on 15th January in the first year in which the land is set aside as guaranteed set-aside land and ending on the expiry of the undertaking to set that land aside for five marketing years given pursuant to Article 5(1) of Commission Regulation 762/94 (both dates inclusive);

“set-aside requirement” (except in the expression “penalty set-aside requirement”) means the requirement, imposed by Article 2(5) of Council Regulation 1765/92, on all farmers claiming arable compensatory payments (except those to whom Article 8(3) of that Regulation applies) to set aside land in accordance with Articles 7(1) of that Regulation;

“shallow cultivate” means cultivate to a depth of no more than 7 centimetres;

“sharefarming agreement” means an agreement for the use of agricultural land for the purposes of a farming enterprise, made between the owner of that land (including a person entitled for a term of years certain or other limited estate) and a farmer who does not have a right to exclusive possession of that land or any legal interest or charge in or over it, under which—

- (a) the relationship between the contracting parties is not one of partnership or employer and employee or landlord and tenant;
- (b) the respective liabilities of the contracting parties for the farming enterprise remain separate and defined in the agreement;
- (c) the contracting parties have joint responsibility for planning and managing the farming enterprise, and
- (d) each contracting party's reward for participation in the farming enterprise is an agreed share of the output from that enterprise, including agricultural produce of all kinds produced on or from the land and, in any case where produce is sold on behalf of each party to the sharefarming agreement, revenues from such sale;

“specified control measure” means any check, test, verification, inspection, investigation, control or other operation in relation to arable land which a member State is required to carry out under Council Regulation 3508/92 or Title IV of Commission Regulation 3887/92;

“specified raw materials” means the raw materials, listed in Annex I to Commission Regulation 334/93 and in Annex I to Commission Regulation 2595/93, produced on land set aside for non-food purposes;

“vernacular building” means a building of a design or style traditional in its locality;

“waste” (except in the expression “organic waste”) means any type of agricultural, industrial, or domestic waste.

(2) 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.

### *Production regions*

3.—(1) For the purposes of Article 3 of Council Regulation 1765/92, the production regions in Northern Ireland shall be—

- (a) land which is included in the list of less-favoured farming areas adopted by the Council of the European Communities under Article 2(2) of Council Directive 75/268/EEC(b) on mountain and hill farming in less-favoured areas (as last amended by Council Regulation (EEC) No. 797/85(c), which list is contained in Council Directive 84/169/EEC(d), as amended by Commission Decision 91/25/EEC(e) made as provided by Article 2(3) of Council Directive 75/268/EEC as amended by Council Directive 80/666/EEC(f); and
- (b) all other land.

---

(a) 1954 c. 33 (N.I.)

(b) O.J. No. L128, 19.5.75, p. 1

(c) O.J. No. L93, 30.3.85, p. 1

(d) O.J. No. L82, 26.3.84, p. 67

(e) O.J. No. L16, 22.1.91, p. 25

(f) O.J. No. L180, 14.7.80, p. 34



(2) In order to take account of structural differences between the production regions of the United Kingdom as envisaged by the second paragraph of Article 3(1) of Council Regulation 1765/92, the average cereals yields calculated in accordance with Article 3(2) of that Regulation shall be adjusted and the adjusted average cereals yield for each production region of Northern Ireland (determined in accordance with the regionalisation plan submitted by the United Kingdom to the Commission of the European Communities pursuant to Article 3(3) of Council Regulation 1765/92) shall be calculated as follows—

- (a) the adjusted average cereals yield for each production region of Northern Ireland shall be the sum of 60% of the average cereals yield for that region determined in accordance with Article 3(2) of Council Regulation 1765/92, and 40% of the average cereals yield for the United Kingdom; and
- (b) for the purposes of sub-paragraph (a) the average cereals yield for the United Kingdom shall be calculated in accordance with the method set out in Article 3(2) of Council Regulation 1765/92, by treating the United Kingdom as if it were a single production region.

#### *Calculation of projected regional reference amount*

4. For the purposes of Article 5(1)(c) of Council Regulation 1765/92, the projected regional reference amount shall be calculated by comparing the oilseeds yield for each production region with the average oilseeds yield for the Community of 2.36 tonnes per hectare.

#### *Minimum size of agricultural plot*

5.—(1) Subject to paragraph (2), for the purposes of Article 2(1)(e) of Commission Regulation 2294/92, Article 2(e) of Commission Regulation 2295/92 and Article 4(3) of Commission Regulation 2780/92, the minimum size of an agricultural plot for which an arable compensatory payment may be made shall be 0.10 hectare.

(2) In the case of land used for seed production or research, the minimum size of an agricultural plot for which an arable compensatory payment may be made shall be 0.01 hectare.

#### *Derogation from requirement to have farmed for two years land set-aside*

6. For the purposes of Article 3(4) of Commission Regulation 762/94, the special cases, where a farmer shall be entitled to claim set-aside compensatory payment on land which he has not farmed for the two years prior to the commencement of the set-aside period, shall be those specified in Schedule 1.

#### *Derogation from requirement to set land aside in the production region where the related arable land is situated*

7.—(1) For the purposes of Article 9(3) of Commission Regulation 762/94, paragraphs (2) to (5) shall apply where a farmer farms land in more than one production region.

(2) Where pursuant to Article 9(2) of Commission Regulation 762/94, a farmer would be required (except as provided by Article 9(4) of that Regulation and but for this provision) to set aside an area no larger than 2 hectares of land in a particular production region, he may set aside that land in any one or more of the production regions in which he farms.

(3) Where pursuant to Article 9(2) of Commission Regulation 762/94, a farmer would be required (except as provided by Article 9(4) of that Regulation and but for this provision) to set aside an area of land in any particular production region, and part of the land he farms in another production region is contiguous to land he farms in the first production region, he may set aside the required area of land or any part of it anywhere in that contiguous area of land.

(4) Where pursuant to Article 9(2) of Commission Regulation 762/94, a farmer would be required (except as provided by Article 9(4) of that Regulation and but for this provision) to set aside an area of land in any particular production region and the cereals yield in that production region and in any other production region in which he farms is the same, he may set aside the required area of land in any one or more of those production regions.

(5) For the purposes of paragraph (4), the cereals yield of a production region is its adjusted average cereals yield calculated in accordance with regulation 3(2).

*Requirements in relation to set-aside land*

8.—(1) A farmer shall, subject to paragraphs (2) to (8), comply with the requirements of Schedule 2 in relation to his set-aside land other than land which is—

- (a) set aside pursuant to Council Regulation 2078/92; or
- (b) afforested pursuant to Council Regulation 2080/92.

(2) A farmer may use relevant set-aside land for the provision of specified raw materials, in which case he—

- (a) shall not be required to comply with any provision of Schedule 2 (except as applied by Schedule 3); but
- (b) shall comply with the requirements set out in Schedule 3,

in relation to that land, and for the purposes of this paragraph “relevant set-aside land” means set-aside land which is neither environmental transferred set-aside land nor land to which paragraph (1)(a) or (b) refers.

(3) A farmer shall be exempt from any particular requirement of Schedule 2 or 3 in relation to particular set-aside land, if he satisfies the Department that he should be exempted from it—

- (a) to facilitate research into the effect of the observance of particular methods of managing set-aside land;
- (b) for environmental reasons;
- (c) in the case of an educational establishment, to facilitate the fulfilment of its educational purpose;
- (d) because during the set-aside period—

- (i) a pipeline, cable or pylon is or will be laid through, or constructed on or across, the particular set-aside land and the farmer cannot reasonably prevent that laying or construction, provided that, in the case of land set aside as rotational set-aside land, laying or construction was not already in progress on the date on which the land was set aside;
  - (ii) maintenance of a pipeline, cable or pylon which the farmer cannot reasonably prevent is or will be carried out on the particular set-aside land; or
  - (iii) an archaeological excavation is to be carried out on the particular set-aside land;
- (e) for reasons of human or animal health or safety;
- (f) because, at the time at which compliance with that requirement would otherwise be required, it is likely that the cost or difficulty of complying with that requirement would be disproportionately high in comparison with the environmental benefit which compliance with that requirement would yield; or
- (g) because such exemption is necessary either to enable a serious plant health problem to be treated, or to permit preventative measures to be taken to prevent the development of such a problem.
- (4) The Department may specify that any exemption granted pursuant to paragraph (3) shall be effective only until a date, or the occurrence of a particular event, specified in the exemption.
- (5) Where the Department considers that—
- (a) the circumstances of all set-aside land (apart from that to which paragraph (1)(a) or (b) refers)—
    - (i) situated in a particular geographical location;
    - (ii) planted with a particular variety or species of crop; or
    - (iii) both situated in a particular geographical location and planted with a particular variety or species of crop,
 are such that each farmer of the land would be able to satisfy the Department that he should be exempt under paragraph 3(e), (f) or (g) or under paragraph 25(a) of Schedule 2, or treated as having been exempted under paragraph 11(2) of Schedule 2, from the requirement to comply with any or all of the requirements set out in Schedule 2, in respect of that land; and
  - (b) the circumstances are such that it would be reasonably practicable for the Department to publish an exemption notice in accordance with paragraph (6),
- then the Department shall so publish that exemption notice.
- (6) Every exemption notice to which paragraph (5) refers shall be published in the farming press and shall—
- (a) specify—
    - (i) (in a case to which paragraph (5)(a)(i) applies) the geographic location;

(ii) (in a case to which paragraph (5)(a)(ii) applies) the variety or species of crop; or

(iii) (in a case to which paragraph (5)(a)(iii) applies) the geographical location and variety or species of crop,

to which the exemption applies;

(b) specify the scope of the exemption;

(c) specify any conditions attaching to the exemption; and

(d) specify the period of applicability of the exemption.

(7) Where an exemption notice is published, any farmer who applies or has applied to the Department for a compensatory payment in respect of any land—

(a) (in a case to which paragraph (5)(a)(i) applies) situated in a geographic location;

(b) (in a case to which paragraph (5)(a)(ii) applies) planted with a variety or species of crop; or

(c) (in a case to which paragraph (5)(a)(iii) applies) situated in a geographical location and planted with a variety or species of crop,

specified in that notice shall (except as may be required by the notice) by virtue of this provision be treated as exempt (or, as the case may be, as having been exempted) from the requirement to comply with such provisions of Schedule 2 as are specified in that notice, during the period of applicability of that exemption.

(8) For the purposes of paragraphs (6) and (7)—

(a) the “farming press” means any publication or group of publications which in the Department’s opinion is read by sufficient of those farmers to whom the exemption applies that knowledge of it will be disseminated to substantially all of those affected farmers; and

(b) the “period of applicability of the exemption” means either a period of a specified length commencing on a date specified in the exemption notice or the period from that date until the occurrence of a particular event specified in the exemption notice as bringing the period of applicability to an end.

*Transfer of the obligation to set aside to another farmer*

9.—(1) Where a farmer transfers his set-aside requirement either in whole or part to another farmer purportedly in compliance with the plan submitted by the United Kingdom to the Commission of the European Communities pursuant to the second indent of Article 7(7) of Council Regulation 1765/92 as read with Article 10 of Commission Regulation 762/94, the Department shall accept that transfer as carried out in accordance with the Plan where the transferee provides the evidence specified in the following paragraphs to the Department’s satisfaction.

(2) For the purposes of this regulation, the “transferor” means the farmer who is so transferring his set-aside requirement and the “transferee” means the farmer to whom that requirement is so transferred.

(3) The transferee shall provide evidence that all the land which is set aside by him to satisfy the set-aside requirement of the transferor falls within—

- (a) a location within the coverage of the restriction as to distance referred to in the second indent of Article 7(7) of Council Regulation 1765/92, as read with Article 10(9) of Commission Regulation 762/94;
- (b) waterside habitats within the meaning of the Habitat Improvement Regulations (Northern Ireland) 1995(a);
- (c) a site of archaeological or historical importance,

or comprises a continuous area of land immediately adjoining an area of special scientific interest or a site of archaeological or historical importance, with (in the former case) at least 25% of the length of the boundary of that continuous area of land being contiguous with the boundary of that area or site.

(4) For the purposes of paragraph (3), land falls within a site of archaeological or historical importance if it comprises all or part of land which is or is associated with a historic monument within the meaning of the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995(b).

(5) For the purposes of paragraph (3) an area of special scientific interest is an area declared by the Department of the Environment as an area of special scientific interest pursuant to Article 24(1) of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985(c).

(6) Where a transferee sets land aside as environmental transferred set-aside land, he shall provide (in addition to any evidence he is required to provide by virtue of paragraph (1) or (3)) evidence that—

- (a) he is satisfying the set-aside requirement in relation to his holding by setting land aside as flexible set-aside land;
- (b) all land set aside by him as environmental transferred set-aside land in the two scheme years immediately before the previous scheme year remained set aside for at least two consecutive scheme years; and
- (c) any land set aside by him as environmental transferred set-aside land in the previous scheme year has been set aside again in the current scheme year.

#### *Requirements in relation to rapeseed*

**10.**—(1) A farmer who sows farm-saved rapeseed on his holding shall not be entitled to receive compensatory payments in respect of the land sown with that seed unless that seed is qualifying seed and has been cleaned and dressed separately from any farm-saved rapeseed of a different variety produced on that holding and from seed not produced on that holding.

(2) For the purposes of paragraph (1) seed is qualifying seed if it was harvested—

---

(a) S.R. 1995 No. 134  
(b) S.I. 1995/1625 (N.I. 9)  
(c) S.I. 1985/170 (N.I. 1)

- (a) during the pre-sowing harvest; or
- (b) subject to paragraph (3), during the harvest immediately preceding the pre-sowing harvest.

(3) Seed harvested during the harvest immediately preceding the pre-sowing harvest is qualifying seed for the purposes of paragraph (1) only if—

- (a) climatic conditions during the pre-sowing harvest were such that it was either not possible to harvest farm-saved rapeseed or not possible to clean and dress it as specified in paragraph (1) or to obtain the results of the mandatory analysis, before the time at which it would be necessary to sow seed in order to obtain a successful crop; and
- (b) the farmer has informed the seed sampler, before sowing such seed, that he intended to sow it because the conditions of sub-paragraph (a) were satisfied.

(4) For the purposes of Article 2(1)(d) of Commission Regulation 2294/92 (which restricts eligibility for compensatory payments in respect of oilseed crops to areas sown in accordance with locally recognised standards)—

(a) a farmer who sows—

- (i) a crop of winter high erucic acid rapeseed within 50 metres of a crop of previously sown winter OO rapeseed;
- (ii) a crop of spring high erucic acid rapeseed within 50 metres of a crop of previously sown spring OO rapeseed;
- (iii) a crop of winter OO rapeseed within 50 metres of a crop previously sown winter high erucic acid rapeseed; or
- (iv) a crop of spring OO rapeseed within 50 metres of a crop of previously sown spring high erucic acid rapeseed,

shall not be regarded as having sown that crop in accordance with locally recognised standards; and

(b) a farmer who in any case referred to in heads (i) to (iv) of sub-paragraph (a), has also sown the previously sown crop, shall not be regarded as having sown that previously sown crop in accordance with locally recognised standards.

(5) For the purposes of this regulation—

- (a) the “pre-sowing harvest” is the harvest immediately preceding the autumn or spring in which the seed is sown;
- (b) the “seed sampler” is an appointed agent of the Department whom the Department has authorised by letter to take the samples required for mandatory analyses;
- (c) a “mandatory analysis” is the analysis required by Annex III of Commission Regulation 2294/92 to ensure that farm-saved rapeseed to which Article 3(1)(b) of that Regulation applies conforms to the minimum quality criterion specified in that Annex;
- (d) “OO rapeseed” is any variety of oilseed rape listed in Annex II to Commission Regulation 2294/92;

- (e) “high erucic acid rapeseed” means rapeseed of any variety conforming to the requirements of Annex IV to Commission Regulation 2294/92, except OO rapeseed;
- (f) “winter OO rapeseed” and “winter high erucic acid rapeseed” means OO or high erucic acid (as the case may be) rapeseed sown in the year before the intended year of harvest of the crop; and
- (g) “spring OO rapeseed” and “spring high erucic acid rapeseed” means OO or high erucic acid (as the case may be) rapeseed sown in the same calendar year as it is intended to harvest the crop.

*Keeping and retention of records by a farmer*

**11.**—(1) A farmer shall retain all commercial documents relating to seed sown on land in respect of which he makes an application for compensatory payment from the time at which he makes such application (or the time at which the commercial document concerned comes into his possession if later) until the end of the fourth year following the year of harvest relating to that seed.

(2) A farmer who sows farm-saved seed on land in respect of which he makes an application for compensatory payment shall retain all commercial documents—

- (a) relating to the seed which produced the crop from which the farm-saved seed was obtained; and
- (b) relating to the cleansing and dressing of the farm-saved seed,

from the time at which he makes such application (or the time at which the commercial document concerned comes into his possession if later) until the end of the fourth year following the year of harvest relating to that seed.

(3) Where a farmer claims a compensatory payment in respect of land set aside for non-food purposes, he shall retain any delivery note relating to the crop grown on that land from the time at which it comes into his possession until the end of the fourth year following the year of harvest relating to that crop.

(4) For the purposes of this regulation—

- (a) the year of harvest relating to seed is the calendar year in which the crop grown from that seed is harvested, destroyed or otherwise removed from the land, and the year of harvest relating to any crop is the calendar year in which that crop is harvested, destroyed or otherwise removed from the land;
- (b) a “commercial document” in relation to seed includes any invoice, seed label, sales note and delivery note relating to it, and in relation to the cleaning and dressing of farm-saved seed includes all invoices and delivery notes relating to such cleaning and dressing; and
- (c) “farm-saved seed” is seed which is the product of a harvest on the holding on which it is sown.

*Keeping and retention of records by a collector and by a processor*

**12.**—(1) This regulation applies where a farmer claims a compensatory payment in respect of land set-aside for non-food purposes, other than flexible set-aside land used for the production of multiannual raw materials in accordance with the provisions of Commission Regulation 2595/93.

(2) A collector shall keep records of the quantity of all specified raw materials produced on that land, which he has purchased and sold for processing, and the names and addresses of all subsequent buyers or processors to whom he has sold those specified raw materials.

(3) A collector shall retain the records referred to in paragraph (2) until the earlier of—

(a) the third anniversary of the date on which he delivers to a processor the specified raw materials to which those records relate, with a view to their being processed to obtain one or more of the products mentioned in Annex II to Commission Regulation 334/93; and

(b) the seventh anniversary of the date of creation of those records.

(4) A processor shall keep records showing on a daily basis in relation to specified raw materials so produced—

(a) the quantity of all specified raw materials purchased by him for processing;

(b) the quantity of specified raw materials processed by him together with the quantity and type of products and by-products obtained from the processing;

(c) the losses of specified raw materials resulting from processing;

(d) the quantity of specified raw materials destroyed, if any, together with the reason for such destruction;

(e) the quantity and type of products and by-products sold or otherwise disposed of by him and the price obtained; and

(f) the names and addresses of all subsequent buyers or processors to whom he sells the specified raw materials or products or by-products of processing.

(5) A processor shall retain the records referred to in paragraph (4) for two years from the date on which he processes, destroys, sells or otherwise disposes of, as the case may be, specified raw materials to which those records relate.

*Reduction or cancellation of compensatory payments for breach of Schedules 2 and 3*

**13.**—(1) In the event of a breach by a farmer of any requirement of Schedule 2, other than the requirements of paragraphs 13(2)(b), 13(2)(c), 17(1) and 26 of that Schedule, the set-aside compensatory payment shall be reduced in relation to each agricultural parcel in respect of any part of which any such requirement is breached by the greater of—

(a) £100; and



(b) £100 per hectare multiplied by the area of that part of that parcel (measured in hectares to the nearest 0.01 hectare) in respect of which any such requirement is breached.

(2) In the event of a breach by a farmer of any requirement of paragraph 26 of Schedule 2 or paragraph 1 of Schedule 3, the set-aside compensatory payment he shall be entitled to receive shall be reduced by—

(a) £100 for each feature (other than a linear feature) which, in contravention of that requirement, he destroys, damages or removes; and

(b) the greater of—

(i) £100; and

(ii) £1 per metre multiplied by the length measured to the nearest whole metre of the feature destroyed, damaged or removed,

for each linear feature which, in contravention of that requirement, he destroys, damages or removes.

(3) For the purposes of paragraph (2)—

(a) subject to sub-paragraph (b), a linear feature is a hedge, row of trees, ditch or watercourse; and

(b) where two or more parts of such a linear feature, not immediately adjacent to each other, are destroyed, damaged or removed, each shall be treated as a separate linear feature.

(4) Where a farmer—

(a) sows or makes preparations for sowing an arable crop, temporary grass ley or traditional forage crop, in contravention of paragraph 13(2)(b) or 13(2)(c) of Schedule 2, or fails to comply with any requirement of paragraph 17(1) of Schedule 2; and

(b) the area of set-aside land on which the contravention or failure referred to in sub-paragraph (a) occurred is not, by virtue of paragraph (2) of Article 9 of Commission Regulation 3887/92, treated for the purposes of that paragraph, as an area for which all the conditions laid down in the rules have not been met,

the set-aside compensatory payment he shall be entitled to receive shall be reduced by the amount by which it would have been reduced had the area been so treated.

(5) In the event of a breach by the farmer of any requirement referred to in paragraphs 2 to 4 of Schedule 3, no set-aside compensatory payment shall be paid in respect of the land no longer to be used for the provision of specified raw materials.

(6) Where a farmer has already been paid all or part of the compensatory payment to which he would have been entitled but for the application of this regulation, any amount by which the compensatory payment which he has received exceeds that to which, following the application of this regulation, he is entitled shall be treated as if it were a wrong payment which fell to be recovered in accordance with Article 14(1) of Commission Regulation

3887/92 and regulation 4A of the Integrated Administration and Control System Regulations 1993(a).

*Rate of interest applicable where compensatory payments fall to be returned*

14.—(1) This regulation applies where any compensatory payment is paid to a farmer by the Department and, by virtue of Article 14(1) of Commission Regulation 3887/92 (whether applying directly or treated by these Regulations as applying), the farmer is required to reimburse all or part of that payment.

(2) Except where the Department recovers from any person any compensatory payment made as a result of the error of the Department, interest shall be charged at the rate of one percentage point above LIBOR on a day to day basis for the period specified in that Article on the amount falling to be so reimbursed.

(3) For the purposes of this regulation, LIBOR means the sterling three month London interbank offered rate in force during the period specified in that Article.

(4) In any proceedings relating to this regulation, a certificate of the Department 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 Department of that rate.

*Powers of authorised persons*

15.—(1) An authorised person may at all reasonable hours and on producing, if so required, some duly authenticated document showing his authority, exercise the powers specified in this regulation for the purposes of—

(a) carrying out any specified control measure; or

(b) ascertaining whether an offence under these Regulations has been or is being committed.

(2) An authorised person may enter any premises, other than premises used only as a dwelling, which are, or which such person has reasonable cause to believe to be, occupied by, or in the possession of, a farmer, collector or processor or an employee or agent of a farmer, collector or processor.

(3) An authorised person who has entered any premises by virtue of this regulation may—

(a) inspect all or any part of the land farmed or set aside by a farmer;

(b) inspect any crops growing on that land or kept on it.

(4) An authorised person may—

(a) require any farmer, collector or processor or any employee or agent of a farmer, collector or processor to produce any record and to supply such additional information in that person's possession or under his

control relating to an application for a compensatory payment as the authorised person may reasonably request;

- (b) inspect any such record and, where any such record is kept by means of a computer, have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with that record;
- (c) require that copies of, or extracts from, any such record be produced;
- (d) seize and retain any such record which he has reason to believe may be required as evidence in proceedings under these Regulations and, where any such record is kept by means of a computer, require it to be produced in a form in which it may be taken away.

(5) An authorised person entering any premises by virtue of this regulation may take with him such other persons as he considers necessary.

#### *Assistance to authorised persons*

**16.** A farmer, collector or processor or any employee or agent of a farmer, collector or processor shall give to an authorised person such assistance as the authorised person may reasonably request so as to enable the authorised person to exercise any power conferred upon him by regulation 15.

#### *Offences and penalties*

**17.—(1)** If any person fails to comply with an obligation imposed on him by regulation 11 or 12 he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) If any person—

- (a) intentionally obstructs an authorised person in the exercise of a power conferred by regulation 15; or
- (b) fails without reasonable excuse to comply with a requirement of an authorised person imposed under regulation 15(4)(a) or (c) or with a request made under regulation 16,

he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) If any person for the purpose of obtaining the whole or any part of a compensatory payment or in purported compliance with any requirement imposed under regulation 15(4) knowingly or recklessly makes a statement which is false or misleading in a material respect, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Proceedings for an offence under paragraph (1), (2) or (3) may, subject to paragraph (5), be brought within the period of six months from the date on which evidence sufficient in the opinion of the prosecutor to justify proceedings came to his knowledge.

(5) No proceedings under paragraph (2) or (3) shall be brought by virtue of this regulation more than 12 months after the commission of the offence.

(6) A certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient in his opinion to warrant the proceedings came to his knowledge shall be conclusive evidence of that fact.

(7) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

(8) Where an offence under this regulation 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 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.

(9) Where the affairs of a body corporate are managed by its members, the provisions of paragraph (8) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

#### *Revocations*

**18.** The Arable Area Payments Regulations (Northern Ireland) 1994(a) and the Arable Area Payments (Amendment) Regulations (Northern Ireland) 1994(b) are hereby revoked.

Sealed with the Official Seal of the Department of Agriculture for Northern Ireland on 5th October 1995.

(L.S.)

*L. G. McKibben*

Assistant Secretary

**Derogation from requirement to have farmed set-aside land for two years**

1. In the following special cases a farmer shall be entitled to claim set-aside compensatory payment on land which he has not farmed for a period of two years prior to the commencement of the set-aside period:

- (a) during the specified period, he—
  - (i) inherited the land or succeeded to a tenancy from year to year of it; or
  - (ii) having owned the land for at least two years at the commencement of the set-aside period, commenced farming it following the termination of an agreement with another farmer under which that other farmer farmed the land;
- (b) the land forms part of a unit of sixty hectares or more of agricultural land of which he acquired ownership or relevant tenure during the specified period—
  - (i) in a single transaction; or
  - (ii) in more than one transaction, where the land thereby acquired formed part of the same unit of agricultural land immediately prior to the first such transaction;
- (c) during the specified period he acquired ownership or relevant tenure of the land and at the commencement of the set-aside period he owned, or occupied under relevant tenure (other than a tenancy which is less than a tenancy from year to year) no more than fifteen hectares of other agricultural land;
- (d) although he is the farmer of the land, he let the land to another person for a period of less than two years within that part of the specified period which preceded the set-aside period;
- (e) where—
  - (i) more than 10 per cent of the eligible land farmed by him is normally farmed under one or more sharefarming agreements or under one or more agreements which are for an interest or interests which are less than a tenancy from year to year; and
  - (ii) the land, farmed by him under the agreements referred to in head (i), is situated in the vicinity of the other land farmed by him, and can be reasonably farmed as a single unit with such other land; or
- (f) he farms insufficient eligible land within any particular production region which he would (but for this provision) be entitled to set aside under Article 7 of Council Regulation 1765/92 and Commission Regulation 762/94 to be able—
  - (i) to satisfy the set-aside requirement in respect of the total area on which he claims a compensatory payment; or
  - (ii) to satisfy the set-aside requirement at the rate referred to in the third subparagraph of Article 7(1) of Council Regulation 1765/92, where the farmer intends to satisfy that requirement of setting land aside as flexible set-aside land,

in which case he may set-aside such additional eligible land within that production region as is necessary to enable him to comply with the set-aside requirement referred to in head (i) or (ii) (as the case may be).

2, For the purposes of this Schedule—

- (a) a farmer has “relevant tenure” of agricultural land where he has entered into a tenancy or was granted a licence in respect of it or where he farms that land under a sharefarming agreement;
- (b) “specified period” means the set-aside period and the period of two years prior to its commencement.

**Management requirements in relation to set-aside land****A. MANAGEMENT OPTIONS FOR SET-ASIDE LAND***General*

1.—(1) Subject to paragraphs 2 to 4, for each field or part field of set-aside land, a farmer shall comply with such conditions set out in the following paragraphs as relate to one of the following management options:—

- (a) the Grassland Option referred to in paragraph 5;
- (b) the Natural Regeneration Option referred to in paragraph 6;
- (c) the Wild Bird Cover Option referred to in paragraph 7; or
- (d) where part only of a field is set-aside, the Field Margins Option referred to in paragraph 8.

(2) Any requirement to establish a green cover, when included in one of the management options mentioned in sub-paragraph (1), shall, except as otherwise provided by this Schedule, be taken to require that that cover be established by the start of the green cover season.

(3) Any requirement to maintain a green cover, when included in one of the management options mentioned in sub-paragraph (1) shall, except as otherwise provided by this Schedule, be taken to require that that cover be maintained:—

- (a) in the case of a green cover established on penalty set-aside land or rotational set-aside land, until the end of the green cover season;
- (b) in the case of a green cover established on flexible set-aside land (except for guaranteed set-aside land), until the end of the green cover season in the final year in which that land is set-aside; and
- (c) in the case of guaranteed set-aside land, until the end of the set-aside period relating to that land.

2. If:—

- (a) a farmer applies in writing to the Department for permission to manage set-aside land in accordance with a management plan set out in his application; and
- (b) the written consent of the Department to this plan is obtained,

the farmer shall, following the grant of that consent, manage the land in accordance with that management plan.

*Exemptions from the requirement to establish a green cover on set-aside land*

3.—(1) A farmer shall by virtue of this provision be treated as having been exempted from the requirement to establish a green cover by the start of the green cover season where he satisfies the Department that for climatic reasons it was not practicable for there to be such a green cover by that time, in which case he shall establish a green cover as soon as reasonably possible thereafter.

(2) A farmer shall be exempt from the requirement to establish a green cover on penalty set-aside land and on land in which there was a crop at 1st October prior to the commencement of the set-aside period, in which case the farmer shall either:—

- (a) establish and maintain a green cover on that land in accordance with one of the management options referred to in paragraph 1; or
- (b) not sow a green cover, in which case he shall—

- (i) maintain throughout the green cover season any natural cover which develops on that land, except to the extent that a circumstance in paragraph 4 or paragraph 11(1) applies; and
- (ii) prior to the end of the green cover season, carry out no operation affecting the surface of the land except for discing or shallow cultivating it.

4. A farmer need not establish a green cover on—

- (a) a strip of land up to 1 metre wide at the edge of the land set aside, where the land set aside adjoins land planted with a crop other than a seed crop;
- (b) a strip of land up to 2 metres wide at the edge of land set aside, where the land set aside adjoins land planted with a seed crop; or
- (c) a strip of land up to 5 metres wide at the edge of the land set aside in any place where vehicular access to that land from a road or track adjacent to that land may be possible, provided that the strip is ploughed and left as bare fallow,

and shall not be required to maintain any green cover which nevertheless becomes established on such a strip.

#### *The Grassland Option*

5.—(1) In respect of each field to be managed in accordance with the Grassland Option, a farmer shall—

- (a) establish a green cover by sowing grass seed or a mixture of grass seed and the seed of native broad-leaved plants not commonly used for agricultural production as soon as is practicable following the harvest of the previous crop and maintain it thereafter; and
- (b) cut the green cover in accordance with paragraph 9.

(2) A green cover established in accordance with sub-paragraph (1) may also include legumes.

#### *The Natural Regeneration Option*

6. In each field to be managed in accordance with the Natural Regeneration Option, a farmer—

- (a) shall establish a green cover by allowing natural regeneration of—
  - (i) the previous herbage seed crop or combinable crop (other than a crop including maize or legumes); or
  - (ii) with the consent in writing of the Department, any other crop;

and maintain it thereafter;

- (b) shall not carry out any operation likely to inhibit the establishment or maintenance of that green cover except that:—

- (i) in the first 12 months that the field is set-aside; and
- (ii) if the Department consents, in subsequent years in which the field remains set-aside,

the farmer may disc or shallow cultivate the field; and

- (c) shall cut the green cover in accordance with paragraph 9.

#### *The Wild Bird Cover Option*

7.—(1) In each field to be managed in accordance with the Wild Bird Cover Option, a farmer:—



(a) shall—

- (i) where practicable establish a green cover in accordance with paragraph 6(a)(i); or
- (ii) where that is not practicable establish a green cover by sowing a cover comprising a mixture of crops of different types which—
  - (aa) produces a mixture of crops which it would not be practicable to harvest separately;
  - (bb) is not a mixture only of different types of cereal or of different types of brassica; and
  - (cc) is not a mixture only of one type of crop and legumes, of cereals and legumes, or of brassicas and legumes,

and shall maintain it until it falls to be replaced as specified in paragraph (b) or (c);

- (b) shall replace any green cover established in accordance with paragraph (a)(i) by sowing a new green cover in accordance with paragraph (a)(ii), as early as is practicable during the first calendar year that the field is set aside; and
- (c) shall (where land is set aside for more than one scheme year) replace the existing green cover established in accordance with paragraph (a)(ii) or (b), by sowing a new green cover in accordance with paragraph (a)(ii) as early as is practicable either in the calendar year following that in which the existing green cover was established or in the calendar year following that; and
- (d) shall cut the cover in accordance with paragraph 9, unless—
  - (i) the field is to be set aside again in the following scheme year; and
  - (ii) the farmer does not harvest any of the green cover or permit any of it to be harvested or grazed.

(2) A farmer shall ensure, when replacing the green cover as required by subparagraph (1)(b) and (c), that the requirements of paragraph 16(1)(a) to (c) are satisfied.

#### *The Field Margins Option*

8. In each part field to be managed in accordance with the Field Margins Option, a farmer—

- (a) shall establish a green cover in accordance with paragraph 5(1)(a) or 6(a) and maintain it thereafter;
- (b) shall cut the green cover at least once during each period of 12 months that the part field remains set aside, except that he may leave uncut a strip of green cover up to 2 metres wide adjacent to any hedge or woodland;
- (c) shall not harvest any of the green cover or permit any of it to be harvested or grazed unless—
  - (i) he has previously notified the Department of his intention to use the green cover for permitted agricultural production; and
  - (ii) he cuts the green cover to an average length of no more than 10 centimetres at least once between 15th July and 15th August (both dates inclusive) prior to the end of the set-aside period in any year in which he wishes to harvest the green cover, or permit it to be harvested or grazed, in which case he may use the green cover for permitted agricultural production.

*Cutting the green cover*

9.—(1) In each field to which this paragraph applies, a farmer shall (subject to sub-paragraphs (2) and (3)), cut the green cover to an average length of no more than 10 centimetres at least once each year between 15th July and 15th August (both dates inclusive) prior to the end of the set-aside period.

(2) A farmer may—

(a) leave a strip of green cover up to 2 metres wide uncut adjacent to any hedge or woodland; and

(b) where the field is to remain set aside in the following scheme year, leave a further 10% of the area set aside in each field uncut, provided that any area left uncut in accordance with this paragraph is cut in accordance with sub-paragraph (1) in the following year.

(3) The Department shall, on application from a farmer, exempt the farmer from the requirements of sub-paragraph (1) to such an extent as it considers to be necessary for environmental reasons.

#### B. GENERAL MANAGEMENT CONDITIONS APPLYING TO ALL SET-ASIDE LAND

*Application of conditions to all set-aside land*

10. The provisions in paragraphs 11 to 26 apply to all set-aside land managed by a farmer in accordance with any of the provisions of paragraphs 1 to 9.

*Exemptions from the requirement to maintain a green cover on set-aside land*

11.—(1) A farmer shall be exempt from the requirement to maintain a green cover on set-aside land (except for guaranteed set-aside land and environmental transferred set-aside land) following the application of herbicide, where herbicide is applied to land on or after 15th April in accordance with paragraph 24 or 25(a), from the time of such application until (where the land is to remain set aside in the next scheme year) the commencement of the next green cover season.

(2) The Department shall on the application of a farmer treat him as having being exempted from any requirement set out in paragraph 1(3), where he provides evidence sufficient to satisfy the Department that the green cover which he established failed and he could not reasonably have prevented such failure, from the time of the failure until (where the land is to remain set aside in the next scheme year) the commencement of the next green cover season.

*Cultivation of the set-aside land and replacement of the green cover*

12. A farmer shall neither sow nor carry out any preparation for sowing a crop on the set-aside land prior to the end of the set-aside period, except in accordance with paragraph 13.

13.—(1) A farmer may—

(a) cultivate the land (except where the land is guaranteed set-aside land or environmental transferred set-aside land) for the purpose of controlling weeds at any time on or after 1st May prior to the end of the set-aside period;

(b) make (subject to sub-paragraph (2)) preparations for sowing and sow any arable crop, temporary grass ley or traditional forage crop on or after the final 15th July prior to the end of the set-aside period.

(2) A farmer may neither sow nor make preparations for sowing an arable crop, temporary grass ley or traditional forage crop, as otherwise permitted by sub-paragraph (1)—

- (a) in any field or part of a field which he intends to set-aside in the following scheme year;
  - (b) in relation to a crop of a species or variety where, if the farmer followed standard agricultural practice in the locality in which that crop is sown, it would be expected that it would be harvested within the same scheme year as it is sown; or
  - (c) where the farmer intends to harvest any crop so sown within the same scheme year as it is sown.
- (3) For the purposes of this paragraph, a traditional forage crop is a crop of a type commonly sown in the locality of the set-aside land for the purpose of being grazed by animals.

*Use of legumes in the green cover*

14.—(1) A green cover shall not (subject to sub-paragraph (2)) be established on set-aside land by sowing a seed mixture containing more than 5 per cent by weight of legumes unless the farmer—

- (a) satisfies the Department that he farms the land by organic means or is converting to doing so; and
- (b) has pursuant to Article 8(1) of Council Regulation 2092/91 notified the Secretary of State that by so farming, the land he produces products of a kind specified in Article 1 of that Regulation, and has submitted to the inspection system referred to in Article 9 thereof.

(2) A green cover may not be established on guaranteed set-aside land (except where that land is managed in accordance with paragraph 7) by sowing a seed mixture which contains clover, lucerne or sainfoin.

*Classification of seed permitted to be sown on set-aside land*

15.—(1) For the purposes of paragraph 5(1)(a), breeder's, pre-basic or basic seed may not be sown in order to establish a green cover.

(2) For the purposes of sub-paragraph (1), seed is breeder's, pre-basic or basic seed if it is so classified in any Regulations made under the Seeds Act (Northern Ireland) 1965(a) which are in operation at the time the seed intended to establish the green cover is sown.

*Replacement of the green cover and changing management options*

16.—(1) A farmer may replace existing green cover in a field with another provided that—

- (a) seed sufficient to sow a replacement green cover is stored on land which the farmer farms as a single unit with the land set aside before replacement of the existing green cover is commenced;
- (b) it is likely, having regard to the condition of the soil and expected climatic conditions, that sowing the stored seed at this time will result in the successful growth of a green cover;
- (c) such seed is sown as soon as is practicable after the destruction of the existing green cover; and
- (d) where the land is managed in accordance with a management plan approved by the Department under paragraph 2, the Department's consent is obtained before the farmer commences replacement of the green cover.

(2) The farmer shall comply with the conditions relating to one of the management options set out at paragraph 1 in respect of the replacement green cover, unless the Department approves a management plan in accordance with paragraph 2, in which case the farmer shall comply with the provisions of that plan.

*Use of the green cover*

17.—(1) A farmer shall ensure that, subject to sub-paragraph (2), no green cover or cuttings produced by cutting any green cover are used for any commercial or agricultural purpose, except with the prior consent of the Department.

(2) A farmer may use any such green cover or cuttings for permitted agricultural production.

(3) A farmer shall ensure that no green cover established in accordance with this Schedule is burnt, except with the prior consent of the Department.

(4) A farmer shall ensure that no cuttings produced by cutting the green cover are:—

(a) removed from the set-aside land except in accordance with sub-paragraph (2) or with the prior consent of the Department; or

(b) burnt on the set-aside land except with the prior consent of the Department.

*Application of fertilisers, waste and lime to the set-aside land*

18. A farmer shall not apply any fertiliser, waste or lime to the set-aside land except in accordance with—

(a) paragraphs 19 to 22 where the land is neither guaranteed set-aside land nor environmental transferred set-aside land;

(b) paragraphs 28 to 30 where the land is guaranteed set-aside land; or

(c) paragraph 32 where the land is environmental transferred set-aside land.

19. A farmer may apply fertiliser to set-aside land if prior to such application he satisfies the Department that the land is situated in an area known to be used as a feeding area by geese in winter and is to be managed as a feeding area for such geese.

20. A farmer may apply organic waste to the set-aside land if that organic waste was produced on land which he farms as a single unit with the set-aside land and he satisfies the Department, before applying the waste to the land, that he would not otherwise be able to dispose of it satisfactorily.

21. A farmer may apply fertiliser with a total nitrogen content of not more than 30 kilograms per hectare to any agricultural parcel of land managed in accordance with paragraph 7(1), in any calendar year in which a new green cover is being established in accordance with paragraph 7(1)(b) or (c).

22. A farmer shall not store, dump or otherwise dispose of any waste on the set-aside land except that he may store organic waste in a field which forms all or part of the set-aside land where that organic waste is to be applied by him to that field in accordance with paragraph 20.

*Application of fungicides, insecticides and herbicides to the set-aside land*

23. A farmer shall not apply fungicides or insecticides to the set-aside land unless he satisfies the Department that such application is necessary in order to control plant health problems which cannot be remedied by any other reasonable means.

24. Subject to paragraph 25, a farmer shall not apply herbicide to the set-aside land unless—

- (a) it is of a type which either—
  - (i) is absorbed into a plant primarily through the leaves and stem; or
  - (ii) has been approved by the Department under regulation 5 of the Control of Pesticides Regulations (Northern Ireland) 1987(a) or under regulation 5, 7, 8 or 11 of the Plant Protection Products Regulations (Northern Ireland) 1995(b) and its application is not outside the coverage of the uses for which it has been approved; and
- (b) such application, if undertaken on guaranteed set-aside land or prior to 15th April in any calendar year on any other form of set-aside land—
  - (i) is not likely significantly to damage green cover on the land;
  - (ii) is made prior to replacing green cover on the land in accordance with paragraph 16;
  - (iii) is undertaken using herbicide applied either as a spot treatment or with a wick applicator; or
  - (iv) is undertaken in order to create or maintain a strip permitted by paragraph 4.

25. The Department shall on application from a farmer exempt him from the restriction imposed by paragraph 24 so as to permit him to apply any herbicide to set-aside land—

- (a) where the Department is satisfied that such application is necessary to control a serious infestation of weeds or pests or the spread of any disease in which case the farmer shall replace any green cover following the application in accordance with paragraph 16(1)(a) and (c) or in accordance with such other conditions of the exemption as the Department includes; or
- (b) in order to create or maintain a bare fallow strip permitted under paragraph 4, where the Department is satisfied that the application of herbicides in accordance with paragraph 24(b)(iv) has not been effective to prevent the growth of vegetation on that strip.

*Retention of features on the set-aside land*

26. A farmer shall not damage, destroy or remove—

- (a) any existing hedge or row of trees (including hedgerow trees);
- (b) any tree (not forming part of a hedge or row of trees) whose largest trunk, when measured 1.3 metres above the average ground level of the base of the tree, exceeds 25 centimetres in circumference;
- (c) any existing lake, lough, ditch, watercourse, pond or pool;
- (d) any existing vernacular building or stone wall; or
- (e) any archaeological feature or feature of historical importance,

which is situated on or adjacent to the set-aside land unless he satisfies the Department either that it should be so damaged, destroyed or removed for environmental or for safety reasons or that he is obliged to do so to comply with a legal requirement.

---

(a) S.R. 1987 No. 414

(b) S.R. 1995 No. 371

## C. SPECIAL CONDITIONS APPLYING TO GUARANTEED SET-ASIDE LAND

*Application of conditions to guaranteed set-aside land*

27. The provisions of paragraphs 28 to 31 apply to guaranteed set-aside land.

*The application of fertilisers*

28. Where guaranteed set-aside land is managed in accordance with paragraph 7, fertiliser may be applied to that land at any time between 1st March and 30th May (both dates inclusive) in any year in which a green cover is to be established in accordance with that paragraph, provided that the total nitrogen content of all fertiliser applied to any agricultural parcel of the land during that period is no more than 30 kilograms per hectare and that any fertiliser so applied contains no potassium or phosphorus in any form.

29. A farmer may apply fertiliser to guaranteed set-aside land if he satisfies the Department that the land is situated in an area known to be used as a feeding area by geese in winter and is to be managed as a feeding area for such geese.

30.—(1) A farmer may (subject to paragraph (2)) apply organic waste to guaranteed set-aside land if that organic waste was produced on land which he farms as a single unit with the set-aside land and he satisfies the Department before applying the waste to the land that were he prevented from so applying it—

- (a) he could not reasonably otherwise deal with it except by applying it to the remainder of his holding; and
- (b) such application to the remainder of his holding would result in an application of a greater concentration of nitrogen than is compatible with good agronomic or environmental practice,

and observes such conditions or limitations (if any) as are imposed by the Department in relation to any application so permitted.

(2) The application to any agricultural parcel in any 12 month period of organic waste with a nitrogen content greater than 250 kilogrammes per hectare shall not be permitted.

*Permitted agricultural production*

31.—(1) A farmer may undertake permitted agricultural production on guaranteed set-aside land only to such extent as does not result in overgrazing of that land.

(2) For the purposes of sub-paragraph (1), “over-grazing” means grazing or otherwise stocking land with livestock in such numbers as adversely to affect the growth, quality or species composition on that land to a significant degree.

## D. EXCEPTION RELATING TO ENVIRONMENTAL TRANSFERRED SET-ASIDE LAND

*The application of organic waste*

32. A farmer may apply organic waste to an agricultural parcel of environmental set-aside land where that waste was created as a result of the maintenance of a tree, hedge, stream or ditch on or immediately adjoining that agricultural parcel.

**Requirements in relation to land set-aside for the provision of specified raw materials**

1. A farmer shall not damage, destroy or remove—

- (a) any existing hedge or row of trees (including hedgerow trees);
- (b) any tree (not forming part of a hedge or row of trees) whose largest trunk, when measured 1.3 metres above the average ground level of the base of the tree, exceeds 25 centimetres in circumference;
- (c) any existing lake, lough, ditch, watercourse, pond or pool;
- (d) any existing vernacular building or stone wall; or
- (e) any archaeological feature or feature of historical importance,

which is situated on or adjacent to the set-aside land unless he satisfies the Department either that it should be so damaged, destroyed or removed for environmental or for safety reasons or that he is obliged to do so to comply with a legal requirement.

2. A farmer shall not adjust or annul any contract relating to that land, submitted to the Department in accordance with Article 6(1) of Commission Regulation 334/93, pursuant to Article 7(2) of that Regulation, unless he has notified the Department of the proposed adjustment or annulment, and the collector or processor with whom the contract was made has similarly notified the Intervention Board for Agricultural Produce, at least 10 working days before such adjustment or annulment takes effect.

3. Where as a result of such adjustment or annulment any land set aside for the provision of specified raw materials is no longer to be used for such provision, the farmer shall—

- (a) dispose of any crop remaining on the land by a method which the Department is satisfied will result in its destruction; and
- (b) subject to paragraph 4, establish a green cover on the land in accordance with Schedule 2.

4. The Department may grant the farmer an exemption from the requirement to establish a green cover pursuant to paragraph 3(b) where it considers that to require the establishment of a green cover would be unreasonable having regard to the date on which the contract was adjusted or annulled in accordance with paragraph 2.

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

These Regulations revoke and replace the Arable Area Payments Regulations (Northern Ireland) 1994, and the Arable Area Payments (Amendment) Regulations (Northern Ireland) 1994. As respects Northern Ireland the Regulations implement and supplement provisions of Council Regulation (EEC) No. 1765/92 ("the Council Regulation"), which establishes a support system for producers of certain arable crops, and of the Commission Regulations made under it, namely Commission Regulations (EEC) Nos. 2294/92, 2295/92, 2780/92, 334/93 and 2595/93 and Commission Regulation (EC) No. 762/94. Regulation 2(1) defines these various Regulations, and the definitions include amendments to them.

Under the support system established under the Council Regulation, producers of particular arable crops are entitled to receive a compensatory payment calculated according to the area which they have sown with such crops.

The level of compensatory payment per hectare in a particular locality is determined (in accordance with Articles 4 and 5 of the Council Regulation) by multiplying an amount per tonne by the average yield per hectare for the production region in which the land lies. Member States are required to define production regions for the purposes of this calculation in accordance with the criteria set out in Article 3 of the Council Regulation, which permits the yields so calculated to be adjusted in order to take account of structural differences between production regions. The production regions in Northern Ireland are defined in regulation 3(1), while regulation 3(2) sets out the method by which the yield calculated for each region should be adjusted. Regulation 4 provides for yield calculation in relation to oilseed rape.

Article 7 of the Council Regulation requires all producers claiming compensatory payments to set aside part of their arable land, unless they come within the exception for small producers, as defined in Article 8(2) of the Council Regulation. Except in circumstances justified by objective criteria laid down by Member States, land qualifying to be set aside must have been previously farmed by the producer setting it aside for at least 2 years (Article 3(4) of Commission Regulation 762/94) and the minimum area of land which he sets aside in each production region must be in a specified ratio to the cropped land in that region for which he claims payment (Article 9(2) of the same Regulation). The circumstances in which producers are exempted from the first requirement are set out in regulation 6 and Schedule 1, and those in which producers are exempted from the second requirement are set out in regulation 7.

To ensure protection of the environment, Member States are required to take appropriate measures relating to set-aside land (Article 3(3) of Commission Regulation (EC) No. 762/94). Regulation 8 and Schedules 2 and



3 specify the requirements to be met in relation to land set aside and set out how a green cover is to be established on land set aside.

Article 7(7) of Council Regulation (EEC) 1765/92 permits a producer to transfer his set-aside requirement to another producer, in accordance with a plan presented in advance to the Commission. Regulation 9 requires producers transferring their set-aside requirement in reliance on Article 7(7) to provide evidence to the Department that the transfer is undertaken in accordance with the plan submitted by the UK to the European Commission.

Land sown with specified categories of oilseed qualifies for compensatory payment only when seed is sown in accordance with locally recognised standards (Article 2(1)(d) of Commission Regulation (EEC) No. 2294/92) and conforms to a quality policy established by the Member State in accordance with Article 3(1) of that Regulation. Regulation 10 sets out the qualifying requirements for cleaning, dressing and harvesting farm-saved rapeseed and the qualifying planting distances for particular types of rapeseed.

The Regulations also—

- (a) prescribe the minimum size of an agricultural plot for which certain compensatory payments may be claimed (regulation 5);
- (b) require farmers, collectors and processors to keep, retain and produce records (regulations 11 and 12);
- (c) specify the reductions in compensatory payments applicable to breaches of requirements relating to land set aside (regulation 13);
- (d) prescribe the rate of interest payable where a compensatory payment is recovered by the Department (regulation 14);
- (e) confer on authorised persons powers of entry for the purposes of the Regulations and require that such assistance be given to them for the exercise of their powers as they may reasonably request (regulations 15 and 16); and
- (f) create offences and penalties (regulation 17).