
STATUTORY RULES OF NORTHERN IRELAND

1997 No. 477

AGRICULTURE
EUROPEAN COMMUNITIES

Arable Area Payments Regulations (Northern Ireland) 1997

Made - - - - 3rd November 1997

Coming into operation 12th December 1997

The Department of Agriculture, being a Department designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ 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:

Citation and commencement

1. These Regulations may be cited as the Arable Area Payments Regulations (Northern Ireland) 1997 and shall come into operation on 12th December 1997.

Interpretation

2.—(1) In these Regulations—

“accepted organic farmer” means a farmer who—

- (a) satisfies the Department that he farms the land by organic means or is converting to so farming the land; and
- (b) has pursuant to Article 8(1) of Council Regulation 2092/91 notified the Department that by so farming the land or converting it as aforesaid 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 of that Regulation;

“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;

“Annex I raw materials” means specified raw materials other than the raw materials listed in Annex II to Commission Regulation 1586/97;

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

(1) [S.I. 1972/1811](#)

(2) [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.I. 1994/2795 \(N.I. 15\)](#)

- “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 specifically, to act in matters arising under these Regulations;
- “collector” has the same meaning as in Article 1 of Commission Regulation 1586/97;
- “combinable crop” means any crop commonly harvested using a combine harvester;
- “Commission Regulation 2780/92” means Commission Regulation (EEC) No. 2780/92 on the conditions for the grant of compensatory payments under the support system for producers of certain arable crops(3);
- “Commission Regulation 3887/92” means Commission Regulation (EEC) No. 3887/92 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes(4);
- “Commission Regulation 1586/97” means Commission Regulation (EC) No. 1586/97 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(5);
- “Commission Regulation 762/94” means Commission Regulation (EC) No. 762/94 laying down detailed rules for the application of Council Regulation 1765/92 with regard to the set-aside scheme(6);
- “Commission Regulation 658/96” means Commission Regulation (EC) No. 658/96 on certain conditions for granting compensatory payments under the support system for producers of certain arable crops(7);
- “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 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs(8);
- “Council Regulation 1765/92” means Council Regulation (EEC) No. 1765/92 establishing a support system for producers of certain arable crops(9) as read with Commission Regulation (EEC) No. 3738/92(10) and Council Regulation (EC) No. 1598/96(11);
- “Council Regulation 2078/92” means Council Regulation (EEC) No. 2078/92 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside(12);
- “Council Regulation 2080/92” means Council Regulation (EEC) No. 2080/92 instituting a Community aid scheme for forestry measures in agriculture(13);
- “Council Regulation 3508/92” means Council Regulation (EEC) No. 3508/92 establishing an integrated administration and control system for certain Community aid schemes(14);
- “the Department” means the Department of Agriculture for Northern Ireland;

(3) O.J. No. L281, 25.9.92, p. 5, repealed by Commission Regulation 658/96 (O.J. No. L91, 12.4.96, p. 46)

(4) O.J. No. L391, 31.12.92, p. 36, as last amended by Commission Regulation (EC) No. 2015/95 (O.J. No. L197, 22.8.95, p. 2)

(5) O.J. No. L215, 7.8.97, p. 3

(6) O.J. No. L90, 7.4.94, p. 8, as last amended by Commission Regulation (EC) No. 2930/95 (O.J. No. L307, 20.12.95, p. 8)

(7) O.J. No. L91, 12.4.96, p. 46, as last amended by Commission Regulation (EC) No. 729/97 (O.J. No. L108, 25.4.97, p. 25)

(8) O.J. No. L198, 22.7.91, p. 1, as last amended by Commission Regulation (EC) No. 418/96 (O.J. No. L59, 8.3.96, p. 10)

(9) O.J. No. L181, 1.7.92, p. 12, as last amended by Council Regulation (EC) No. 922/97 (O.J. No. L133, 24.5.97, p. 1)

(10) O.J. No. L380, 24.12.92, p. 24

(11) O.J. No. L206, 16.8.96, p. 41

(12) O.J. No. L215, 30.7.92, p. 85, as last amended by Commission Regulation (EC) No. 2772/95 (O.J. No. L288, 1.12.95, p. 35)

(13) O.J. No. L215, 30.7.92, p. 96, as last amended by Commission Regulation (EC) No. 231/96 (O.J. No. L30, 8.2.96, p. 33)

(14) O.J. No. L355, 5.12.92, p. 1, as last amended by Council Regulation (EC) No. 2466/96 (O.J. No. L335, 24.12.96, p. 1)

“eligible land” means land—

- (a) for which aid has been granted under Title I of Council Regulation (EEC) No. 2328/91 on improving the efficiency of agricultural structures⁽¹⁵⁾ or in respect of which an application for direct payments has been accepted under Council Regulation (EEC) No. 3766/91 establishing a support system for producers of soya beans, rape seed, colza seed and sunflower seed⁽¹⁶⁾;
- (b) not under permanent pasture (as defined in Annex I to Commission Regulation 658/96), 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 with either Article 3(3) of Commission Regulation 2780/92 or Article 2(4) of Commission Regulation 658/96; or
- (d) which falls to be treated as eligible land in accordance with the fourth paragraph of Article 9 of Council Regulation 1765/92, Article 2(5) of Commission Regulation 658/96 and regulation 6,

except land which—

- (a) the Department has declared, in accordance with the third paragraph of Article 9 of Council Regulation 1765/92 and with either Article 3(3) of Commission Regulation 2780/92 or Article 2(4) of Commission Regulation 658/96, no longer to be eligible land; or
- (b) which no longer falls to be treated as eligible land, in accordance with the fourth paragraph of Article 9 of Council Regulation 1765/92, Article 2(5) of Commission Regulation 658/96 and regulation 6;

“environmental transferred set-aside land” means all land set aside by a farmer to satisfy the set-aside requirement of another farmer, except land in respect of which evidence showing that it falls within a location such as is specified in regulation 10(3)(a) has been provided by a transferee (as defined by regulation 10(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 which—

- (a) is the product of a harvest obtained from the planting, on a particular holding, of certified seed of a variety listed in Annex II to Commission Regulation 658/96; and
- (b) is, or is to be, sown on that holding;

“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 in a given year and ending on 30th June in the same year (both dates inclusive);

“guaranteed set-aside land” means 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 (in accordance with Commission Regulation 1586/97) for the provision of raw materials for the manufacture within the European Community of products not primarily intended for human or animal consumption;

⁽¹⁵⁾ O.J. No. L218, 6.8.91, p. 1, as last amended by Commission Regulation (EC) No. 2387/95 (O.J. No. L244, 12.10.95, p. 50)

⁽¹⁶⁾ O.J. No. L356, 24.12.91, p. 17, repealed by Council Regulation (EC) No. 2800/95 (O.J. No. L291, 6.12.95, p. 1)

“legal requirement”, in relation to a farmer, means an obligation which the Department is satisfied on reasonable grounds is legally binding on the farmer;

“the option to set aside” means the option (under Article 7(6) of Council Regulation 1765/92) for a farmer to set aside more land than is 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, and includes 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, during the period commencing on 1st September in any given year and ending on the following 14th January (both dates inclusive), the use of set-aside land for the keeping and feeding of animals or for the harvesting of crops from it, in circumstances where—

- (a) no payment or benefit in kind is received by the farmer in respect of such use or harvesting; and
- (b) 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 9 of Commission Regulation 1586/97;

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

“scheme year” means a year beginning on 15th January 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 withdraw, or as the case may be withdrawn, from agricultural production other than permitted agricultural production or (in accordance with Commission Regulation 1586/97) the provision of raw materials for the manufacture within the European Community of products not primarily intended for human or animal consumption;

“set-aside compensatory payment” means a compensatory payment made in respect of set-aside land, as provided for in Article 7(5) and (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 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 the first day of that year and ending on 31st August (both dates inclusive) and, in the case of guaranteed set-aside land, means a scheme year;

“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 Article 7(1) of that Regulation;

“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, which output shall include 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 and Annex II to Commission Regulation 1586/97, 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; and

“working day” means a week-day other than a Saturday or a public holiday.

(2) Any reference in these Regulations to a Community instrument is a reference to that instrument as amended on the date these Regulations are made.

(3) The Interpretation Act (Northern Ireland) 1954⁽¹⁷⁾ 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](#) on mountain and hill farming in less-favoured areas⁽¹⁸⁾ which list is contained in Council Directive [84/169/EEC](#)⁽¹⁹⁾; and
- (b) all other land.

(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

⁽¹⁷⁾ 1954 c. 33 (N.I.)

⁽¹⁸⁾ O.J. No. L128, 19.5.75, p. 1, as last amended by the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded

⁽¹⁹⁾ O.J. No. L82, 26.3.84, p. 67, as amended by Commission Decision [91/25/EEC](#) (O.J. No. L16, 22.1.91, p. 25)

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 (as specified in regulation 3(1)) with the average oilseeds yield for the Community of 2.36 tonnes per hectare.

Minimum size of cultivated plot

5.—(1) Subject to paragraph (2), for the purposes of Article 3(1)(d) of Commission Regulation 658/96, the minimum size of a cultivated 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 for research, the minimum size of a cultivated plot for which an arable compensatory payment may be made shall be 0.01 hectare.

Exchanges of eligible and ineligible land

6.—(1) Where a farmer believes that he is obliged to exchange ineligible land for eligible land within his holding for agronomic, phytosanitary or environmental reasons, as provided for in Article 2(5) of Commission Regulation 658/96, he may apply to the Department for approval of the exchange and paragraphs (2) to (7) shall apply in respect of his application.

(2) Subject to paragraphs (3) and (4), the application shall be in such form as the Department may reasonably require.

(3) Where the applicant holds any of the eligible land as a tenant or under licence then his application shall include a declaration that he has obtained the written consent of his immediate landlord or the licensor, as the case may be, to the proposed exchange in respect of each part of the eligible land so held.

(4) Where the applicant holds any of the ineligible land as a tenant or under licence then his application shall include a declaration that he has informed his immediate landlord or the licensor, as the case may be, of the proposed exchange in respect of each part of the ineligible land so held.

(5) If the Department is satisfied on reasonable grounds that the applicant is obliged to exchange the ineligible land for the eligible land for agronomic, phytosanitary or environmental reasons then, subject to paragraphs (6) and (7) it shall give approval for the exchange.

(6) The Department shall not give approval under paragraph (5) for the exchange if any of the ineligible land—

- (a) is situated within, or within 100 metres of, an area of special scientific interest as notified pursuant to Article 24 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985(20) unless it is satisfied on reasonable grounds that neither the ineligible land nor that area of special scientific interest will suffer any material environmental damage as a result of the exchange;
- (b) is situated within, or within 100 metres of,

- (i) particular land identified as a European site under regulation 9 of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995⁽²¹⁾, or
 - (ii) particular land included in the list referred to in regulation 6 of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995, unless it is satisfied on reasonable grounds that neither the ineligible land nor that particular land will suffer any material environmental damage as a result of the exchange;
 - (c) is situated within, or within 10 metres of any watercourse (which for the purposes of this sub-paragraph includes any coastal water, estuary, lake, pond, river, stream, canal or field ditch) unless it is satisfied on reasonable grounds that neither the ineligible land nor the watercourse will suffer any material environmental damage as a result of the exchange;
 - (d) is subject to an agreement made under the Agriculture (Environmental Areas) (Northern Ireland) Order 1987⁽²²⁾ unless it is satisfied on reasonable grounds that neither the ineligible land nor other land (if any) subject to the same agreement will suffer any material environmental damage as a result of the exchange;
 - (e) is situated within land in respect of which payments of aid may be made under the Habitat Improvement Regulations (Northern Ireland) 1995⁽²³⁾ following an application thereunder, unless it is satisfied on reasonable grounds that neither the ineligible land nor other land (if any) subject to the same agreement or, as the case may be, covered by the same application will suffer any material environmental damage as a result of the exchange;
 - (f) is situated within an area which has never been cropped during the period of twenty years ending on 22nd April 1995, unless that ineligible land is situated within an existing orchard planted after 22nd April 1965;
 - (g) is situated within an existing orchard planted before 23rd April 1965, unless it is satisfied on reasonable grounds that such of the ineligible land as is situated within that orchard will not suffer material environmental damage as a result of the exchange;
 - (h) is situated within land comprising an historic monument within the meaning of the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995⁽²⁴⁾ unless it is satisfied on reasonable grounds that there will be no harmful effect on the preservation of the historic monument as a result of the exchange;
 - (i) is situated within a site of archaeological or historical importance (as specified in regulation 10(4)) unless it is satisfied on reasonable grounds that there will be no harmful effect on the preservation of the archaeological or historical importance of that site as a result of the exchange; or
 - (j) is situated within a production region (as specified in regulation 3(1)) different from that in which any of the eligible land is situated.
- (7) Where approval has been given by the Department under paragraph (5) in relation to any exchange, but—
- (a) any declaration included in, or information given by the applicant in connection with, the application under paragraph (1) for that approval was false in any material particular; or
 - (b) any declaration required to have been included in the application by virtue of paragraph (3) or (4) was not so included,

then the application shall for all purposes be treated as if it had never been approved.

(21) S.R. 1995 No. 380

(22) S.I. 1987/458 (N.I. 3) as amended by S.R. 1994 No. 419

(23) S.R. 1995 No. 134 as amended by S.R. 1996 No. 608

(24) S.I. 1995/1625 (N.I. 9)

Derogations from requirement to have farmed for two years land set aside

7. 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.

Derogations from requirement to set land aside in the production region where the related arable land is situated

8.—(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 (as specified in regulation 3(1)).

(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 particular 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 any other production region in which he farms is the same as that of the particular production region, 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

9.—(1) A farmer shall, subject to paragraphs (3) 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;
- (b) afforested pursuant to Council Regulation 2080/92; or
- (c) land set aside for non-food purposes.

(2) A farmer shall, subject to paragraphs (3) to (8), comply with the requirements of Schedule 3 in relation to land set aside for non-food purposes.

(3) A farmer shall be exempt from any given requirement of Schedule 2 or Schedule 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) where the farmer is 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 being 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 that 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 being 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 when compliance with that requirement would otherwise be required, it is likely that the cost (whether financial or otherwise) of complying with that requirement would be disproportionately high in comparison with the environmental benefit which compliance with that requirement would yield;

(g) because such exemption is necessary, either to enable a serious plant health problem, serious weed infestation or serious pest infestation to be treated or to permit appropriate measures to be taken to prevent the development of such a problem or, as the case may be, infestation; or

(h) in order to benefit a charity within the meaning of section 35 of the Charities Act (Northern Ireland) 1964(25).

(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—

(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 that land would in the event of an application being made to him under paragraph (3)(e), (f) or (g) or paragraph 9(2) of Schedule 2 be able to satisfy the Department that he should be exempt, or as the case may be, treated as having been exempted, from the obligation to comply with one or more 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 a notice (“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 geographical 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 requirement, or as the case may be, requirements of Schedule 2 to which the exemption applies;

(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 in accordance with paragraph (6), any farmer who applies or has applied to the Department for a compensatory payment in respect of any land specified in that notice shall by virtue of this provision (except as may be required by the notice) be treated as exempt (or, as the case may

(8) For the purposes of this regulation, a “serious weed infestation” means an infestation with one or more of the noxious weeds listed in Schedule 1 to the Noxious Weeds (Northern Ireland) Order 1977⁽²⁶⁾.

(9) 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 given length commencing on a date specified in the exemption notice or the period from such a date until the occurrence of a particular event specified in the exemption notice as bringing its period of applicability to an end.

Transfer of the obligation to set aside to another farmer

10.—(1) Where a farmer transfers his set-aside requirement either in whole or in 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 so transfers his set-aside requirement and the “transferee” means the other 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; or
- (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 of special scientific interest.

(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.

(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⁽²⁷⁾.

⁽²⁶⁾ S.I. 1977/52 (N.I. 1)

⁽²⁷⁾ S.I. 1985/170 (N.I. 1)

(6) Where a transferee shows to the satisfaction of the Department that he has set land aside as environmental transferred set-aside land in a given scheme year, he shall provide, in addition to any evidence he is required to provide by virtue of paragraph (3), evidence that—

- (a) the land set aside by him as environmental transferred set-aside land in the preceding scheme year (which was not also set aside by him as environmental transferred set-aside land in the pre-preceding scheme year) was also set aside by him in the given scheme year;
 - (b) all land set aside by him as environmental transferred set-aside land in the pre-preceding scheme year (which was not also set aside by him as environmental transferred set-aside land in the pre-pre-preceding scheme year) was also set aside by him in the preceding scheme year;
 - (c) all land set aside by him as environmental transferred set-aside land in the pre-pre-preceding scheme year (which was not also set aside by him as environmental transferred set-aside land in the scheme year immediately preceding the pre-pre-preceding scheme year) was also set aside by him in the pre-preceding scheme year; and
 - (d) he is not using the land set-aside as environmental transferred set-aside land as land set aside for non-food purposes.
- (7) For the purposes of paragraph (6)—
- (a) “the preceding scheme year” means the scheme year immediately preceding the given scheme year referred to in that paragraph;
 - (b) “the pre-preceding scheme year” means the scheme year immediately preceding the preceding scheme year; and
 - (c) “the pre-pre-preceding scheme year” means the scheme year immediately preceding the pre-preceding scheme year.

Requirements in relation to rapeseed

11.—(1) Subject to paragraphs (2) to (5), access to the compensatory payments in respect of rapeseed and colzaseed referred to in paragraph (3) of Article 4 of Commission Regulation 658/96 shall be permitted for each of the seed categories listed at sub-paragraphs (a) to (e) of that paragraph.

- (2) In respect of the seed category listed in Article 4(3)(b) of Commission Regulation 658/96—
- (a) a farmer who sows any variety of seed of that category 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;
 - (b) for the purposes of sub-paragraph (a), seed is qualifying seed if it was harvested—
 - (i) during the pre-sowing harvest; or
 - (ii) subject to sub-paragraph (c), during the harvest immediately preceding the pre-sowing harvest; and
 - (c) seed harvested during the harvest immediately preceding the pre-sowing harvest is qualifying seed for the purposes of sub-paragraph (a) only if—
 - (i) 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 sub-paragraph (a) 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
 - (ii) the farmer has informed the seed sampler, before sowing such seed, that he intended to sow it because the conditions of paragraph (i) were satisfied.

(3) In respect of the seed category listed in Article 4(3)(c) of Commission Regulation 658/96, seed sown or to be sown by a farmer shall be regarded as registered for inspection and control as required by that provision where—

- (a) sufficient documentary evidence to show the intended use of the crop of that seed (as specified in that provision) comes into being before the sowing of that seed; and
- (b) a copy of such evidence is lodged with the Department not later than the application for the compensatory payment in respect of the land on which that seed is or is to be sown.

(4) In respect of the seed category listed in Article 4(3)(d) of Commission Regulation 658/96—

- (a) a person who wishes to be specially approved as a buyer (as referred to in that provision) shall apply to the Department for such approval in such form as it may reasonably require;
- (b) subject to sub-paragraphs (c), (d) and (e), the Department shall approve such an application;
- (c) the Department may refuse an application for an approval if it believes on reasonable grounds that such a refusal is necessary to ensure that seed is not diverted from an intended use referred to in that provision;
- (d) the Department may revoke such an approval at any time after it has been given if it believes on reasonable grounds that such a revocation is necessary to ensure that seed is not diverted from an intended use referred to in that provision; and
- (e) any such approval, refusal or revocation shall be given in writing to the person concerned and in the case of a refusal or revocation shall state the reasons for the Department's belief.

(5) In respect of the seed category listed in Article 4(3)(e) of Commission Regulation 658/96—

- (a) a person who wishes to be approved as a first buyer (as referred to in that provision) shall apply to the Department for approval in such form as it may reasonably require;
- (b) subject to sub-paragraphs (c), (d) and (e), the Department shall approve such an application;
- (c) the Department may refuse an application for an approval if it believes on reasonable grounds that such a refusal is necessary to ensure that seed is not diverted from an intended use referred to in that provision;
- (d) the Department may revoke such an approval at any time after it has been given if it believes on reasonable grounds that such a revocation is necessary to ensure that seed is not diverted from an intended use referred to in that provision; and
- (e) such an approval, refusal or revocation shall be given in writing to the person concerned and in the case of a refusal or revocation shall state the reasons for the Department's belief.

(6) For the purposes of Article 3(1)(b) of Commission Regulation 658/96 (which restricts eligibility for compensatory payments in respect of arable crops to areas fully sown in accordance with local 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 double zero rapeseed;
 - (ii) a crop of spring high erucic acid rapeseed within 50 metres of a crop of previously sown spring double zero rapeseed;
 - (iii) a crop of winter double zero rapeseed within 50 metres of a crop of previously sown winter high erucic acid rapeseed; or
 - (iv) a crop of spring double zero rapeseed within 50 metres of a crop of previously sown spring high erucic acid rapeseed,

shall not be recognised as having sown that crop in accordance with local 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 recognised as having sown that previously sown crop in accordance with local standards.

(7) As provided for in Article 13 of Commission Regulation 1586/97 (which permits exclusion of particular raw materials from the scheme implemented by that Regulation if they raise difficulties as regards agricultural practice, control, public health or the environment or in terms of criminal law)—

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

the crop sown later shall be excluded from that scheme; and

- (b) where—
 - (i) any crop sown later which is referred to in one of heads (i) to (iv) of sub-paragraph (a) is sown in the location referred to in the head concerned; and
 - (ii) the farmer who sowed that crop is also the farmer who sowed the previously sown crop referred to in that head,
- the previously sown crop shall be excluded from that scheme.

(8) For the purposes of this regulation—

- (a) the “pre-sowing harvest”, in relation to the sowing of any seed, is the harvest immediately preceding the autumn or as the case may be 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 analysis;
- (c) a “mandatory analysis” is the analysis required by sub-paragraph (b) of Article 4(3) of Commission Regulation 658/96 to ensure that farm-saved rapeseed conforms to the minimum quality criterion specified in that sub-paragraph;
- (d) “double zero rapeseed” is any variety of rapeseed or colzaseed conforming to the glucosinolate and erucic acid requirements of Article 4(2) of Commission Regulation 658/96 and listed in Annex II to that Regulation;
- (e) “high erucic acid rapeseed” means rapeseed or colzaseed of any variety conforming to the erucic acid requirement of Article 4(3)(e) of Commission Regulation 658/96;
- (f) “winter double zero rapeseed” and “winter high erucic acid rapeseed” mean respectively double zero rapeseed and high erucic acid rapeseed sown in the year before the intended year of harvest of the crop derived from it;
- (g) “spring double zero rapeseed” and “spring high erucic acid rapeseed” mean respectively double zero rapeseed and high erucic acid rapeseed sown in the calendar year in which it is intended to harvest the crop derived from it; and
- (h) where a farmer, or a servant or agent of a farmer, is a seed sampler, the authorisation concerned shall not be taken to include authorisation to take seed samples in respect of seed which is to be sown by that farmer.

Delivery declarations for non-food raw materials

12.—(1) The declaration which a farmer is required to make by Article 5(4) of Commission Regulation 1586/97 shall be made by 15th November in the scheme year in respect of which set-aside compensatory payments have been claimed in respect of the land used to grow the raw material referred to in that provision.

(2) For the purposes of Article 6(4) of Commission Regulation 1586/97, the date by which a collector or first processor is to provide the information referred to in that paragraph shall be 15th November in the scheme year in respect of which set-aside compensatory payments have been claimed in respect of the land used to grow the raw material referred to in that provision.

(3) The declaration referred to in paragraph (1) shall be made, and the information referred to in paragraph (2) provided, in such form as the Department may reasonably require.

(4) If the declaration referred to in paragraph (1) is not made by the date specified in that paragraph, the Department may reduce the set-aside compensatory payment due to the farmer in respect of the land used to grow the raw material referred to in that paragraph—

- (a) by up to 10% if the declaration is made after, but not more than 20 working days after, the said date; or
- (b) by up to 15% if the declaration is made more than 20 working days after the said date.

Keeping and retention of records by a farmer

13.—(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 cleaning 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) A farmer who makes an application under regulation 6 which is approved by the Department shall retain all documents relating to that application from the time he makes the application until the end of the fourth year following the year in which the approval is granted.

(5) 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 so harvested, destroyed or otherwise removed;
- (b) a “commercial document” in relation to seed includes any invoice, seed label, sales note or 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

14.—(1) This regulation applies where a farmer claims a compensatory payment in respect of land set aside for non-food purposes which is used for the production of Annex I raw materials.

(2) A collector shall keep records of the quantity of all Annex I raw materials produced on that land referred to in paragraph (1) 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 raw materials.

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

- (a) the end of the third calendar year following the year in which he delivers to a processor the Annex I 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 III to Commission Regulation 1586/97; or
- (b) the seventh anniversary of the date of their creation.

(4) A processor shall make records showing on a daily basis in relation to Annex I raw materials produced on the land referred to in sub-paragraph (1)—

- (a) the quantity of all such Annex I raw materials purchased by him for processing;
- (b) the quantity of such Annex I raw materials processed by him together with the quantity and type of products and by-products obtained from the processing;
- (c) the losses of such Annex I raw materials resulting from processing;
- (d) the quantity of such Annex I 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 such Annex I 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 the Annex I raw materials to which they relate.

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

15.—(1) In the event of a breach by a farmer of any requirement of or prohibition imposed by Schedule 2 (other than those set out in its paragraphs 13(2)(b) and (c), 16(1) and 21) or by paragraph 2 of Schedule 3, the set-aside compensatory payment shall be reduced in relation to each part of an agricultural parcel in respect of which any such requirement or prohibition has been 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 the requirement or prohibition concerned is breached.

(2) In the event of a breach by a farmer of any prohibition imposed by paragraph 21 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 prohibition, he damages, destroys 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 concerned,for each linear feature which, in contravention of that prohibition, he damages, destroys 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 damaged, destroyed or removed, each shall be treated as a separate linear feature.
- (4) Where—
 - (a) a farmer sows or makes preparations for sowing an arable crop, temporary grass ley, traditional forage crop or other permitted crop, in contravention of paragraph 13(2)(b) or (c) of Schedule 2, or fails to comply with any requirement of paragraph 16(1) of that Schedule; 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 the operation of paragraph (2) of Article 9 of Commission Regulation 3887/92(28), to be treated as an area in regard to which all the obligations referred to in that paragraph 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 or prohibition imposed by paragraph 3 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(29).

Rate of interest applicable where compensatory payments fall to be returned

16.—(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 Article 14 of that Regulation 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 Article 14(1) of Commission Regulation 3887/92.

(28) O.J. No. L391, 31.12.92, p. 36, as last amended by Commission Regulation (EC) No. 2015/95 (O.J. No. L197, 22.8.95, p. 2)
(29) S.I. 1993/1317, as amended by S.I. 1994/1134

(4) In any proceedings relating to this regulation, a certificate of the Department stating the LIBOR applicable during a period specified in it shall be conclusive evidence of the rate applicable in that period if the certificate also states that the Bank of England notified the Department of that rate.

Powers of authorised persons

17.—(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 or not 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; and
- (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 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

18. 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 17.

Offences and penalties

19.—(1) If any person fails to comply with an obligation imposed on him by regulation 13 or 14 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.

(2) If any person—

- (a) intentionally obstructs an authorised person in the exercise of a power conferred on him by regulation 17; or

- (b) fails without reasonable excuse to comply with a requirement of an authorised person directed at him under regulation 17(4)(a) or (c) or with a request made to him under regulation 18,

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 directed at him under regulation 17(4) knowingly or recklessly furnishes information 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) For the purposes of this regulation, 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.

Revocation

- 20.** The Arable Area Payments Regulations (Northern Ireland) 1995(**30**) are hereby revoked.

Sealed with the Official Seal of the Department of Agriculture for Northern Ireland on

L.S.

3rd November 1997.

R. S. Johnston
Assistant Secretary

SCHEDULE 1

Regulation 7

Derogations from requirement to have farmed for two years land set aside

1. 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 where:

- (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 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 and the land thereby acquired formed part of the same unit of agricultural land immediately prior to the first such transaction; and—
 - (aa) in the case that the unit does not comprise his entire holding, he sets aside no more of it than he would be required to do under the set-aside requirement if that unit comprised his entire holding and the set-aside requirement applied to it; or
 - (bb) in the case that the unit does comprise his entire holding, he sets aside no more of it than he is required to do under the set-aside requirement;
- (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) more than 10 per cent of the eligible land farmed by him is normally farmed under one or more sharefarming arrangements or held by him under licence and the land farmed by him under those arrangements or licence 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 is an accepted organic farmer; or
- (g) he occupied or contracted to occupy the land before 12th December 1997, and—
 - (i) the land forms part of a unit of at least sixty hectares of agricultural land of which he acquired ownership or relevant tenure during the specified period—
 - (aa) in a single transaction; or
 - (bb) in more than one transaction and the land thereby acquired formed part of the same unit of agricultural land immediately prior to the first such transaction;
 - (ii) the eligible land which he farms within any particular production region (as specified in regulation 3(1)) (and which he is entitled to set aside under Article 7 of Council Regulation 1765/92 and Commission Regulation 762/94) is insufficient to be able to satisfy the set-aside requirement in respect of the total area on which he claims a compensatory payment (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 above).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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.

SCHEDULE 2

Regulation 9(1)

Management requirements in relation to set-aside land

Part A

Management Options for set-aside land

Management options for set-aside land

1.—(1) Subject to sub-paragraphs (2) to (4), in respect of each field or part field which is set-aside land in a particular scheme year, a farmer shall, during that particular scheme year, comply with the conditions applicable to a management option specified in one of the following heads as are indicated in the brackets following the description of the management option concerned—

- (a) the Grassland Option (the applicable conditions are set out in paragraph 2);
- (b) where—
 - (i) the field or part field was used to produce a herbage seed crop or combinable crop (other than a crop including maize or legumes) in the calendar year immediately preceding the calendar year during which the current scheme year commenced; or
 - (ii) the field or part field was set aside in the previous scheme year, was managed during that scheme year in accordance with the Natural Regeneration Option and the green cover established in accordance with the requirements of that option has been maintained until the beginning of the current green cover season,
 the Natural Regeneration Option (the applicable conditions are set out in paragraph 3);
- (c) the Wild Bird Cover Option (the applicable conditions are set out in paragraph 4);
- (d) where part only of a field is set aside, the Field Margins Option (the applicable conditions are set out in paragraph 5); or
- (e) where a field or part field is penalty set-aside land, or where there was a crop in a field or part field on 1st October immediately prior to the commencement of the current scheme year, the Penalty Set-Aside/Existing Crop Option (the applicable conditions are set out in paragraph 6).

(2) Where a field or part field is environmental transferred set-aside land which lies within waterside habitats within the meaning of the Habitat Improvement Regulations (Northern Ireland) 1995⁽³¹⁾ then a farmer shall comply with the conditions applicable to the Grassland Option which are set out in paragraph 2 in respect of that field or part field.

(3) Where a field or part field is guaranteed set-aside land and is managed otherwise than in accordance with the conditions applicable to the Wild Bird Cover Option which are set out in

⁽³¹⁾ S.R. 1995 No. 134 as amended by S.R. 1996 No. 608

paragraph 4, then notwithstanding the provisions of the following paragraphs, a green cover shall not be established in that field or part field by sowing the seed of clover, lucerne or sainfoin or a seed mixture which contains one or more of those crops.

(4) Where—

- (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, following the grant of that consent, need not comply with the conditions set out in one of the following paragraphs which are applicable to any of the management options listed in sub-paragraph (1), but shall instead manage the land in accordance with that management plan.

(5) For the purposes of this Schedule—

- (a) the particular scheme year referred to in sub-paragraph (1) shall be known as “the current scheme year”, the set-aside period during that scheme year shall be known as “the current set-aside period”, the green cover season during that scheme year shall be known as “the current green cover season” and expressions such as “the previous scheme year” and “the following scheme year” shall be construed accordingly; and
- (b) during the current scheme year it is to be taken to be the case that guaranteed set-aside land is to be set aside in the following scheme year.

The Grassland Option

2.—(1) In respect of each field or part field to be managed in accordance with the Grassland Option referred to in paragraph 1(1)(a), a farmer shall—

- (a) subject to paragraph 8, establish a green cover by the start of the current green cover season by sowing—
 - (i) grass seed;
 - (ii) a mixture of grass seed and the seed of native broad-leaved plants not commonly used for agricultural production (which mixture, unless the farmer is an accepted organic farmer, shall not contain more than 5 per cent by weight of legumes); or
 - (iii) mustard seed,

(which seed shall be sown, where a crop was harvested from the field or part field in the calendar year immediately preceding the calendar year during which the current scheme year commenced, as soon as is practicable following the harvest of that crop), unless the field or part field was set aside in the previous scheme year, was managed during that scheme year in accordance with the Grassland Option, and the green cover established in accordance with the requirements of that option has been maintained until the beginning of the current green cover season;

(b) subject to paragraphs 9, 14 and 15, maintain the green cover thereafter—

- (i) where the field or part field is not to be set aside in the following scheme year or is to be used as land set aside for non-food purposes in the following scheme year, until the end of the current green cover season; or
- (ii) where the field or part field is to be set aside in the following scheme year (but is not to be used as land set aside for non-food purposes), to the end of the current scheme year; and

(c) cut or destroy the green cover in accordance with paragraph 7.

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

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(3) For the purposes of sub-paragraph (2), 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⁽³²⁾ which are in operation at the time the seed intended to establish the green cover is sown.

The Natural Regeneration Option

3. In each field or part field to be managed in accordance with the Natural Regeneration Option (referred to in paragraph 1(1)(b)), a farmer—

- (a) subject to paragraph 8, shall establish a green cover by the start of the current green cover season by allowing natural regeneration of the herbage seed crop or combinable crop (other than a crop including maize or legumes) (as referred to in paragraph 1(1)(b)(i)) unless the field or part field was set aside in the previous scheme year, was managed during that scheme year in accordance with the Natural Regeneration Option, and the green cover established in accordance with the requirements of that option has been maintained until the beginning of the current green cover season;
- (b) subject to paragraphs 9, 14 and 15, maintain the green cover thereafter—
 - (i) where the field or part field is not to be set aside in the following scheme year or is to be used as land set aside for non-food purposes in the following scheme year, until the end of the current green cover season; or
 - (ii) if the field or part field is to be set aside in the following scheme year (but is not to be used as land set aside for non-food purposes), to the end of the current scheme year; and
- (c) shall cut or destroy the green cover in accordance with paragraph 7.

The Wild Bird Cover Option

4.—(1) In each field or part field to be managed in accordance with the Wild Bird Cover Option (referred to in paragraph 1(1)(c)), a farmer—

- (a) shall, subject to paragraph 8 either—
 - (i) where practicable, establish a green cover by the start of the current green cover season by allowing natural regeneration of the herbage seed crop or combinable crop (other than a crop including maize or legumes) produced in that field or part field in the calendar year immediately preceding the calendar year during which the current scheme year commenced; or
 - (ii) where that is not practicable, establish a green cover by the start of the current green cover season 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;
 - (cc) is not a mixture only of one type of crop and legumes, a mixture only of cereals and legumes, or a mixture only of brassicas and legumes; and
 - (dd) unless the farmer is an accepted organic farmer, does not contain more than 5 per cent by weight of legumes,
 unless the field or part field was set aside in the previous scheme year, was managed during that scheme year in accordance with the Wild Bird Cover Option, and the

⁽³²⁾ 1965 c. 22 (N.I.) as amended by S.R. & O. (N.I.) 1972 No. 351

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- green cover established in accordance with the requirements of that option has been maintained until the beginning of the current green cover season;
- (b) shall, where a green cover was established by the start of the current green cover season in accordance with head (a)(i)—
- (i) maintain that green cover until it is replaced in accordance with head (b)(ii); and
 - (ii) replace that green cover by sowing a new green cover in accordance with head (a)(ii) as early as is practicable after the start of the current green cover season;
- (c) shall, subject to heads (d) and (e) and paragraphs 9, 14 and 15, maintain the green cover established under head (a)(ii) or (b)(ii) thereafter—
- (i) where the field or part field is not to be set aside in the following scheme year or is to be used as land set aside for non-food purposes in the following scheme year, until the end of the current green cover season; or
 - (ii) where the field or part field is to be set aside in the following scheme year (but is not to be used as land set aside for non-food purposes), to the end of the current scheme year;
- (d) may, where the field or part field was set aside in the previous scheme year, was managed during that scheme year in accordance with the Wild Bird Cover Option, and the green cover established in accordance with the requirements of that option has been maintained until the beginning of the current green cover period, replace the existing green cover by sowing a new green cover in accordance with head (a)(ii) as early as is practicable in the current green cover season;
- (e) shall, where the field or part field was set aside in the previous two scheme years, was managed during each of those scheme years in accordance with the Wild Bird Cover Option, a green cover established in accordance with the requirements of that option has been maintained until the beginning of the current green cover season and the green cover was not replaced in the previous scheme year (whether in accordance with head (d) or otherwise), replace the existing green cover by sowing a new green cover in accordance with head (a)(ii) as early as is practicable in the current green cover season; and
- (f) shall cut or destroy the cover in accordance with paragraph 7, unless—
- (i) the field is to be set aside in the following scheme year; and
 - (ii) the farmer does not, in the current scheme year, 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 pursuant to sub-paragraph (1)(c), (d) or (e), that the requirements of paragraph 15(1)(a) to (c) are satisfied.

The Field Margins Option

5.—(1) In each part field to be managed in accordance with the Field Margins Option (referred to in paragraph 1(1)(d)), a farmer—

- (a) shall, subject to paragraph 8, establish a green cover by the start of the current green cover season—
- (i) by sowing—
 - (aa) grass seed;
 - (bb) a mixture of grass seed and the seed of native broad-leaved plants not commonly used for agricultural production (which mixture, unless the farmer is an accepted organic farmer, shall not contain more than 5 per cent by weight of legumes); or

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(cc) mustard seed,

which seed shall be sown, where a crop was harvested from the part field in the calendar year immediately preceding the calendar year during which the current scheme year commenced, as soon as is practicable following the harvest of that crop; or

(ii) where the field or part field was used to produce a herbage seed crop or combinable crop (other than a crop including maize or legumes) in the calendar year immediately preceding the calendar year during which the current scheme year commenced, by allowing natural regeneration of that crop,

unless the part field was set aside in the previous scheme year, was managed during that scheme year in accordance with the Field Margins Option, and the green cover established in accordance with the requirements of that option has been maintained until the beginning of the current green cover season;

(b) subject to paragraphs 9, 14 and 15, maintain the green cover thereafter—

(i) where the part field is not to be set aside in the following scheme year or is to be used as land set aside for non-food purposes in the following scheme year, until the end of the current green cover season; or

(ii) where the part field is to be set aside in the following scheme year (but is not to be used as land set-aside for non-food purposes), to the end of the current scheme year;

(c) shall cut the green cover at least once during the current scheme year, except that he may leave uncut a strip of green cover up to 2 metres wide adjacent to any hedge or woodland;

(d) 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 current set-aside period if he wishes to harvest the green cover, or permit it to be harvested or grazed in the current scheme year,

in which case he may use the green cover for permitted agricultural production.

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

(3) For the purposes of sub-paragraph (2), 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 which are in operation at the time the seed intended to establish the green cover is sown.

The Penalty Set-Aside/Existing Crop Option

6. In each field or part field to be managed in accordance with the Penalty Set-Aside/Existing Crop Option (referred to in paragraph 1(1)(e)) a farmer shall—

(a) subject to paragraphs 9, 14 and 15, maintain throughout the current green cover season any natural cover which develops on that land; and

(b) cut or destroy any natural cover which develops on the land in accordance with paragraph 7.

Cutting or destruction of the green cover

7.—(1) In each field or part field to which this paragraph is applied by virtue of any of paragraphs 2 to 6, a farmer shall either—

- (a) (subject to sub-paragraph (2)), cut the green cover to an average length of no more than 10 centimetres between 15th July and 15th August (both dates inclusive) during the current set-aside period; or
- (b) where he is not required to maintain the green cover after the end of the current set-aside period, destroy the green cover between 1st July and 31st August (both dates inclusive) during the current set-aside period.

(2) A farmer may (where he cuts the green cover in a field or part field in accordance with sub-paragraph (1)(a))—

- (a) leave a strip of green cover up to 2 metres wide uncut adjacent to any hedge or woodland; and
- (b) in the case of a field which is to be set aside in the following scheme year, leave a further 25% of the area set aside in that field uncut provided that any area left uncut in accordance with this paragraph which has also been left uncut in the previous two scheme years in accordance with this paragraph is cut in accordance with sub-paragraph (1) in the following scheme year.

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

8.—(1) In relation to each field or part field to which this paragraph is applied by virtue of any of paragraphs 2 to 6, a farmer shall by virtue of this provision be treated as having been exempted from a requirement to establish a green cover by the start of the current 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) In relation to each field or part field to which this paragraph is applied by virtue of any of paragraphs 2 to 6, 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.

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

9.—(1) In each field or part field to which this paragraph is applied by virtue of any of paragraphs 2 to 6, a farmer shall be exempt from a requirement to maintain a green cover on set-aside land (except for guaranteed set-aside land and environmental transferred set-aside land) where that green cover is destroyed following the application of herbicide to the land on or after 15th April in the current scheme year in accordance with paragraph 20(1), which exemption shall run from the time of the application until (where the land is to be set aside in the following scheme year but is not to be used as land set aside for non-food purposes) the commencement of the following green cover season.

(2) In respect of each field or part field to which this paragraph is applied by virtue of any of paragraphs 2 to 6, the Department shall on the application of a farmer treat him as having been

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exempted from a requirement to maintain a green cover, 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, such exemption lasting from the time of the failure until the end of the current scheme year.

(3) In each field or part field to which this paragraph is applied by virtue of any of paragraphs 2 to 6, and where a farmer has chosen not to establish a green cover on a strip of land pursuant to paragraph 8(2), he need not maintain any green cover which nevertheless subsequently becomes established on that strip.

Part 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 21 apply to all set-aside land managed by a farmer in accordance with any of the provisions of paragraphs 1 to 9.

Restriction on cutting the green cover

11. Where a farmer has applied a non-selective herbicide to set-aside land during the current set-aside period but not earlier than 15th April and not later than 30th June during that period, then he shall not subsequently cut any green cover on that set-aside land before the 1st July prior to the end of that period.

Prohibition on sowing and preparation for sowing a crop on the set-aside land and cultivation of the set-aside land

12. Subject to paragraphs 13 and 14, prior to the end of the current set-aside period, a farmer shall not sow or carry out any preparation for sowing a crop on the set-aside land concerned, nor shall he otherwise cultivate the set-aside land.

Exemptions from the prohibition on sowing and preparation for sowing a crop on the set-aside land

13.—(1) Subject to sub-paragraph (2), a farmer may make preparations for sowing and sow any arable crop, temporary grass ley, traditional forage crop or other permitted crop on or after 15th July prior to the end of the current set-aside period.

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

- (a) in any field or part field which is to be set aside in the following scheme year (but is not to be used as land set aside for non-food purposes);
- (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 during the current scheme year.

(3) For the purposes of this paragraph and regulation 15(4)(a), 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.

(4) For the purposes of this paragraph and regulation 15(4)(a), “other permitted crop” means a crop which consists of one or more of the following—

- (a) ornamental bulbs (which phrase includes onions or garlic);
- (b) field grown trees or shrubs;
- (c) cane fruits; or
- (d) strawberries.

Conditions regarding the cultivation of the set-aside land

14. A farmer may cultivate the land (except where the land is guaranteed set-aside land or environmental transferred set-aside land) for the purpose of controlling weeds—

- (a) where he is not an accepted organic farmer, at any time on or after 1st July prior to the end of the current set-aside period, and
- (b) where he is an accepted organic farmer, at any time on or after 1st May prior to the end of the current set-aside period.

Replacement of the green cover and changing management options

15.—(1) Subject to sub-paragraphs (2) and (3), in any period during which a farmer is required to maintain a green cover in a field or part field, he may nevertheless replace that green cover 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) this 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 1(4), its consent is obtained before the farmer commences replacement of the green cover.

(2) The seed to be sown to establish a replacement green cover shall, subject to sub-paragraph (3) of paragraph 1—

- (a) be seed of a type listed in one of sub-paragraph (1)(a)(i), (ii) or (iii) of paragraph 2;
- (b) be seed comprising a mixture of crops of different types which complies with the requirements of head (a)(ii)(aa) to (dd) of paragraph 4(1);
- (c) where the cover is to be replaced in part only of a field (and where no more of the field in which that part is situated is also set aside), be seed of a type listed in one of head (a)(i)(aa), (bb) or (cc) of paragraph 5(1); or
- (d) where the provisions of head (d) of sub-paragraph (1) apply, comply with the conditions in respect of such seed as are set out in the management plan referred to in that head.

(3) A farmer shall, in respect of the field or part field where the green cover has been replaced, and subject to sub-paragraph (2) of paragraph 1, comply with the conditions set out in Part A as relate to one of the following management options—

- (a) where the seed sown complies with the requirements of sub-paragraph (2)(a), the Grassland Option referred to in paragraph 2;

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- (b) where the seed sown complies with the requirements of sub-paragraph (2)(b), the Wild Bird Cover Option referred to in paragraph 4;
- (c) where the seed sown complies with the requirements of sub-paragraph (2)(c), the Field Margins Option referred to in paragraph 5; or
- (d) where the provisions of head (d) of sub-paragraph (1) apply, the provisions of the management plan referred to in that head,

except that he shall not be required to establish a green cover (as required by paragraph 2(1)(a), 4(1)(a) or, as the case may be, 5(1)(a)) different from the replacement green cover sown in accordance with the provisions of this paragraph.

(4) Where a farmer is exempted from a requirement to maintain a green cover pursuant to regulation 9, he shall (unless also exempted from the requirements of this sub-paragraph pursuant to that regulation) replace the green cover once destroyed in accordance with sub-paragraphs (1) to (3).

Use of the green cover

16.—(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.

(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.

Prohibition on the application of fertilisers, lime and waste to the set-aside land

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

- (a) paragraph 18 where the land is neither guaranteed set-aside land nor environmental transferred set-aside land;
- (b) paragraph 23 where the land is guaranteed set-aside land; or
- (c) paragraph 25 where the land is environmental transferred set-aside land.

Application of fertiliser, waste and lime to land which is neither guaranteed set-aside land nor environmental transferred set-aside land

18.—(1) 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 such an area.

(2) A farmer may apply organic waste to the set-aside land concerned 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.

(3) A farmer may apply fertiliser to any agricultural parcel of land managed in accordance with paragraph 4 during the current scheme year where a new green cover is being established in accordance with paragraph 4(1)(c) or (e) in that scheme year, provided that the total nitrogen content of that fertiliser is not more than 30 kilograms per hectare of the land to which it is applied.

(4) A farmer shall not store, dump or otherwise dispose of any waste on the set-aside land concerned 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 sub-paragraph (2).

(5) A farmer may apply lime to set-aside land where that land is to be cropped in the following scheme year.

Application of fungicides and insecticides to the set-aside land

19. A farmer shall not apply fungicides or insecticides to the set-aside land concerned.

Application of herbicides to the set-aside land

20.—(1) Subject to sub-paragraph (2), a farmer shall not apply herbicide to the set-aside land concerned 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⁽³³⁾ or under regulation 5, 7, 8 or 11 of the Plant Protection Products Regulations (Northern Ireland) 1995⁽³⁴⁾ 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 the current scheme 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 15;
 - (iii) is undertaken using herbicide applied either as a spot treatment or with a wick applicator; or
 - (iv) is undertaken in order to create a bare fallow strip as permitted by paragraph 8(2), or to keep such a strip bare.

(2) The Department shall on application from a farmer exempt him from the restriction imposed by sub-paragraph (1) so as to permit him to apply any herbicide to set-aside land in order to create a bare fallow strip permitted by paragraph 8(2) or keep such a strip bare, where the Department is satisfied that the application of herbicides in accordance with sub-paragraph (1)(b)(iv) has not been effective to prevent the growth of vegetation on that strip.

Retention of features on the set-aside land

21. 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,

⁽³³⁾ S.R. 1987 No. 414 as amended by S.R. 1997 No. 469

⁽³⁴⁾ S.R. 1995 No. 371 as amended by S.R. 1996 No. 456 and S.R. 1997 No. 471

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

Part C

Special conditions Applying to Guaranteed Set-aside Land

Application of conditions to guaranteed set-aside land

22. The provisions of paragraphs 23 and 24 apply to guaranteed set-aside land.

Application of fertiliser, waste and lime to guaranteed set-aside land

23.—(1) Where guaranteed set-aside land is managed in accordance with paragraph 4, fertiliser may be applied to that land at any time between 1st March and 31st May (both dates inclusive) during the current scheme year where a green cover is to be established in accordance with that paragraph during that scheme year, provided that the total nitrogen content of all fertiliser applied to any agricultural parcel of the land during that period shall be no more than 30 kilograms per hectare of that parcel and that any fertiliser so applied contains no potassium or phosphorus in any form.

(2) 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 such an area.

(3) A farmer may (subject to sub-paragraph (4)) apply organic waste to guaranteed set-aside land if that organic waste was produced on land—

(a) 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—

(i) he could not reasonably otherwise deal with it except by applying it to the remainder of his holding; and

(ii) 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

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

(4) The application to any agricultural parcel during the current scheme year of organic waste with a nitrogen content greater than 250 kilograms per hectare of that parcel shall not be permitted.

(5) A farmer may apply lime to guaranteed set-aside land during the current scheme year where the current scheme year is the last one to which his undertaking to set aside the land (pursuant to Article 5 of Commission Regulation 762/94) is applicable and the land is to be cropped in the following scheme year.

Permitted agricultural production

24.—(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), “overgrazing” means grazing or otherwise stocking land with livestock in such numbers as adversely to affect the growth, quality or species composition of vegetation on that land to a significant degree.

Part D

Exception Relating to Environmental Transferred Set-aside Land

The application of organic waste and lime

25.—(1) A farmer may apply organic waste to an agricultural parcel of environmental transferred 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.

(2) A farmer may apply lime to environmental transferred set-aside land where the land is to be cropped in the following scheme year.

SCHEDULE 3

Regulation 9(2)

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

Retention of features on the set-aside land

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 concerned unless he satisfies the Department either that it should be damaged, destroyed or removed for environmental or for safety reasons or that he is obliged to do so to comply with a legal requirement.

Application of fertilisers and waste to the set-aside land

2. If a farmer applies any fertiliser or waste to the set-aside land he shall only do so in accordance with the needs of the specified raw materials being produced on it.

Adjustment or annulment of contracts relating to the provision of specified raw materials grown on set-aside land

3.—(1) A farmer shall not adjust or annul any contract relating to set-aside land concerned, submitted to the Department in accordance with Article 4(1) of Commission Regulation 1586/97, pursuant to Article 5(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.

(2) 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

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(b) subject to sub-paragraph (3), be subject to the requirements of Schedule 2.

(3) The Department may grant the farmer an exemption from any requirement of Schedule 2 where it considers that the imposition of such a requirement would be unreasonable having regard to the date on which the contract was adjusted or annulled in accordance with sub-paragraph (1).

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations revoke and replace the Arable Area Payments Regulations (Northern Ireland) 1995. 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 the Commission Regulations made under it, namely Commission Regulations (EC) No. 762/94, 658/96 (which repeals and replaces Commission Regulations (EEC) Nos. 2294/92, 2295/92 and 2780/92) and 1586/97 (which repeals and replaces Commission Regulation (EEC) No. 334/93).

Regulation 2(1) defines these various Regulations and by virtue of regulation 2(2) the definitions include amendments to them.

Under the support system established under Council Regulation 1765/92, 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 such region should be adjusted. Regulation 4 provides for yield calculation in relation to oilseed rape.

Article 9 of Council Regulation 1765/92 and Article 2(5) of Commission Regulation 658/96 provide for an exchange of land ineligible for compensatory payment with land which is so eligible. Regulation 6 provides for a farmer to apply for approval for such an exchange, and sets out the conditions for such approval to be granted.

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 7 and Schedule 1, and those in which producers are exempted from the second requirement are set out in regulation 8.

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 762/94). Regulation 9 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 the Council Regulation permits a producer to transfer his set-aside requirement to another producer, in accordance with a plan presented in advance to the European Commission. Regulation 10 requires producers transferring their set-aside requirement in reliance on Article 7(7) to provide evidence to the Department that that 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 conforms to a quality policy established by the Member State in accordance with Article 4 of Commission Regulation 658/96. Regulation 11 implements the quality policy in relation to each of the types of seed listed in Article 4(3) of that Regulation and also makes provision for a minimum sowing distance separation in relation to rapeseed. That regulation also provides for a similar minimum sowing distance separation in relation to rapeseed grown as a non-food crop on set-aside land (in implementation of Article 13 of Commission Regulation 1586/97).

The Regulations also—

- (a) prescribe the minimum size of an agricultural plot for which certain compensatory payments may be claimed (regulation 5);
- (b) require producers, collectors and processors to keep, retain and produce records (regulations 13 and 14);
- (c) specify the reductions in compensatory payments applicable to breaches of requirements relating to land set aside (regulation 15);
- (d) prescribe the rate of interest payable where a compensatory payment is recovered by the Department (regulation 16);
- (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 17 and 18); and
- (f) create offences and penalties (regulation 19).

The main changes to the regime effected by the Regulations are that—

- (a) amendments are made in consequence of the abolition of the distinction between rotational and non-rotational set-aside effected by an amendment to Council Regulation 1765/92;
- (b) provision is made, in implementation of Article 2(5) of Commission Regulation 658/96, for applications for approval to the exchange of ineligible and eligible land for the purpose of receipt of compensatory payments (regulation 6);
- (c) provision is made to implement Articles 3 and 4 of Commission Regulation 658/96 (on certain conditions for granting payments under the support system for producers of certain arable crops) in respect of local standards for sowing distance separation for the sowing of rapeseed and a quality policy for rapeseed implemented by setting out restrictions on types of seeds eligible for compensatory payments (regulation 11);
- (d) provision is made for application of Article 13 of Commission Regulation 1586/97 (which lays down implementing rules for the use of land set aside for the provision of non-food crops). It specifies the standards for sowing distance in relation to rapeseed subject to which access to set-aside compensatory payments is permitted (regulation 11);
- (e) a restriction is introduced so that where a farmer has been authorised to act as an agent to take samples of farm-saved rapeseed for mandatory analysis required by Article 4(3)

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of Commission Regulation 658/96, then that authorisation shall not be taken to be an authorisation to sample any such seed to be sown by that farmer (regulation 11);

- (f) a deadline is set for the declaration in respect of the delivery of non-food raw materials by a farmer to a collector or first processor as provided for by Articles 5(4) (for farmers) and 6(4) (for collectors or first processors) of Commission Regulation 1586/97. Provision is also made for the imposition of penalties for late declarations by farmers (regulation 12);
- (g) amendments are made to Schedule 1 (derogations from the requirement to have farmed land for two years in order to set it aside). The entitlement to set aside land forming part of any recently acquired unit of 60 hectares or more, and land needed to satisfy regional requirements on setting land aside, is replaced by an entitlement to set aside up to 10 per cent of any recently acquired land, and to set aside land used or destined for organic farming. Also the entitlement to set aside land of which at least 10 per cent is farmed under sharefarming or similar agreements now arises with respect to land farmed under licence;
- (h) the management rules for set-aside in Schedules 2 and 3 are clarified, notably in relation to the liming of set-aside land and the maintenance of the green cover; and
- (i) the grounds on which a farmer may on application be exempted from one or more of the requirements of the set-aside management rules are widened to include the case where such an exemption is necessary to benefit a charity.