
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 143

**The Common Agricultural Policy Single Farm Payment
and Support Schemes (Scotland) Regulations 2005**

PART 4

Set-aside

Minimum area and dimensions of set aside parcels

11.—(1) For the purposes of the second sentence of Article 54(4) of Council Regulation 1782/2003, land may be set aside from production if—

- (a) it is eligible for set aside entitlement pursuant to Article 54(2) of Council Regulation 1782/2003; or counted as eligible for set aside entitlement as a result of an application granted under regulation 13;
- (b) it is at least 6 metres wide at all points;
- (c) it is at least 0.05 hectares in size; and
- (d) it borders—
 - (i) a hedgerow;
 - (ii) a drystone or flagstone dyke or wall;
 - (iii) woodland;
 - (iv) a permanent watercourse feature of the land;
 - (v) an area of land that has been notified under section 28(1)(b) of the Wildlife and Countryside Act 1981(1) or section 3(6) of the Nature Conservation (Scotland) Act 2004(2) as a site of special scientific interest; or
 - (vi) an area of land under an agri environment agreement in connection with support paid under Chapter VI of Title II of Council Regulation 1257/1999.

(2) For the purposes of paragraph (1)(d)(iv), the land can border the watercourse if separated from the watercourse by a fence, any wall, vegetation that has grown up from inside the watercourse, a bank or a belt of single trees.

Additional standards of good agricultural and environmental condition in relation to set aside land

12.—(1) Subject to paragraphs (3) to (6), the standards of good agricultural and environmental condition referred to in Article 32(2) of Commission Regulation 795/2004 that apply in relation to land set aside from production are set out in Schedule 1.

(1) 1981 c. 69.

(2) Section 28 of the Wildlife and Countryside Act 1981 (c. 69) is revoked by paragraph 4 of schedule 7 to the [Nature Conservation \(Scotland\) Act 2004 \(asp 6\)](#) as a consequence of the coming into force on 29th November 2004 of Part 2 of that Act, subject to transitional arrangements contained in schedule 5 to that Act.

(2) Subject to paragraphs (3) to (6), the standards of good agricultural and environmental condition referred to in Article 32(2) of Commission Regulation 795/2004 that apply in relation to land set aside for non-food purposes are set out in Schedule 2.

(3) The standards of good agricultural and environmental condition referred to in paragraphs (1) and (2) shall apply to land set aside from production and land set aside for non-food purposes respectively in addition to the standards of good agricultural and environment condition that apply to the land by virtue of regulation 4 of the Cross Compliance Regulations.

(4) The provisions of paragraphs (1) and (2) shall not apply to land–

(a) set aside or afforested pursuant to Articles 22 to 24 or 31 of Council Regulation 1257/1999; and

(b) counting as set aside for the purposes of Article 54 of Council Regulation 1782/2003, to the extent that the requirements of Schedule 1 and 2 are incompatible with the environmental or afforestation requirements laid down pursuant to those Articles.

(5) A farmer shall be exempt from any given requirement of Schedule 1 or 2 in relation to particular set aside land if, on an application being made to the Scottish Ministers regarding that requirement, the Scottish Ministers are satisfied that the farmer should be exempted from it–

(a) to facilitate research into the effect of employing particular methods of managing set-aside land;

(b) in the interests of environmental protection;

(c) where the farmer is an educational establishment, to facilitate the fulfilment of its educational purpose;

(d) because during the set-aside period–

(i) by virtue of any power or authorisation conferred by or under any enactment, a pipeline, cable or pylon is being or will be laid through, or constructed on or across, the land, the laying or construction of which was not a proposal of which the farmer had been notified more than 5 months before 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 under statutory authority on the particular set-aside land; or

(iii) an archaeological excavation is to be carried out on the land;

(e) for reasons of human or animal health or safety;

(f) because such exemption is necessary, either to enable a serious cause of harm to plant health, serious weed infestation or serious pest infestation to be treated or to permit measures to be taken to prevent the development of such a problem or infestation; or

(g) in order to benefit a charity (as defined in section 96(1) of the Charities Act 1993⁽³⁾) or a recognised body within the meaning of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990⁽⁴⁾.

(6) The Scottish Ministers may specify that any exemption granted pursuant to paragraph (5) shall be effective only until a date, or the occurrence of a particular event, specified in that exemption.

(7) For the purposes of this regulation, a “serious weed infestation” means an infestation with one or more of the injurious weeds listed in section 1(2) of the Weeds Act 1959⁽⁵⁾, *Rhododendron ponticum*, Japanese knotweed (*Reynoutria japonica*), giant hogweed (*Heracleum mantegazzianum*) or Himalayan balsam (*Impatiens glandulifera*).

(3) 1993 c. 10.

(4) 1990 c. 40.

(5) 1959 c. 54.

Exchange of eligible and ineligible land

13.—(1) In a situation specified in sub-paragraph (a), (b) or (c) of the first paragraph of Article 33 of Commission Regulation 795/2004, a farmer may apply to the Scottish Ministers for land not otherwise eligible for set-aside entitlement to be counted as eligible for set aside entitlement.

(2) Subject to paragraph (3), the application shall be in such form as the Scottish Ministers may reasonably require, and, where the farmer intends to exchange the land in respect of which the application is made for other land which is eligible for set-aside entitlement, that application shall include particulars of that land, as well as the land in respect of which the application is made.

(3) Where a farmer holds any of the land in respect of which such an application is made, or any land that the farmer intends to exchange for that land, as a tenant the farmer shall obtain the written consent of the landlord to the exchange, and the application shall include a declaration by the applicant that such consent has been obtained.

(4) The Scottish Ministers may approve the application made under paragraph (1) if they are satisfied—

- (a) that the relevant sub-paragraph of the first paragraph of Article 33 of Commission Regulation 795/2004 specified in the farmer’s application applies in relation to the land in respect of which the application has been made;
- (b) where the application has been made on the basis of sub-paragraph (c) of the first paragraph of Article 33 of Commission Regulation, with the reasons given by the farmer for wanting to exchange ineligible land for eligible land on the holding; and
- (c) that—
 - (i) where the land in respect of which the application is made is to be exchanged for other eligible land, the area of land in respect of which the application is made does not exceed the area of the land which is to be exchanged by more than 5%; or
 - (ii) where there is to be no exchange of land, the approval of the application will not result in a significant increase in the total area of land eligible for set aside entitlements.

(5) Where approval is given under paragraph (4) but any declaration included in, or information given by the farmer in connection with, the application was false in any material particular, the Scottish Ministers may revoke such approval.

(6) In this regulation, “eligible for set-aside entitlement”, in relation to land, has the meaning given by the first paragraph of Article 54(2) of Council Regulation 1782/2003.

Provisions relating to raw materials produced for non-food purposes

14.—(1) The Scottish Ministers are designated as the competent authority for the purposes of Chapter 16 of Commission Regulation 1973/2004 (use of land set aside for the production of raw materials for non-food purposes).

(2) Raw materials to which Article 146(2)(b) of Commission Regulation 1973/2004 applies shall be weighed by an operator of public weighing equipment holding a certificate issued under section 18 of the Weights and Measures Act 1985(6).

(3) For the purposes of Article 146(4) of Commission Regulation 1973/2004, cereals and oilseeds to which that paragraph applies shall be denatured by dyeing them with a brightly coloured dye.

(4) For the purposes of Article 157(1) of Commission Regulation 1973/2004, the last day on which a contract to which that paragraph applies may be deposited with the Scottish Ministers, which may be sent to such person as they may specify in writing, shall be by the last date for the

(6) 1985 c. 72.

submission of the single application in the year in which the relevant claim for the associated set-aside entitlement is made.

(5) For the purposes of Article 157(3) of Commission Regulation 1973/2004, the last day on which a collector or first processor to whom that paragraph applies may provide the information to the Scottish Ministers, which may be sent to such person as they may specify in writing, specified in that paragraph shall be 31st January of the year following the year in which the relevant claim for the associated set-aside entitlement is made.

(6) In this regulation—

“the associated set-aside entitlement” means the set-aside entitlement which is being claimed on the land which has been set aside to produce the raw materials to which the contract referred to in paragraph (4), and the information referred to in paragraph (5), relates; and

“first processor” has the meaning given by Article 144(c) of Commission Regulation 1973/2004.

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

15.—(1) This regulation applies where a farmer sets aside land for non-food purposes and in paragraphs (2) to (5) references to “raw materials” are to such materials produced on that land.

(2) During any month when a collector purchases or sells any raw materials, that collector shall make a record of the quantity of all raw materials which that collector has purchased or sold during that month, and the names and addresses of the subsequent buyers or processors to whom those raw materials have been sold.

(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 the collector delivers to a processor the raw materials to which those records relate; or
- (b) the seventh anniversary of the date of their creation.

(4) On any day during which a processor purchases, processes, destroys, sells or otherwise disposes of any raw materials, or sells or otherwise disposes of any products obtained from the processing of such raw materials, the processor shall make a record showing—

- (a) the quantities of the different raw materials purchased for processing;
- (b) the quantity of the raw materials processed together with the quantity and type of end products, co-products and by-products obtained from the processing;
- (c) the wastage of the raw materials during the processing;
- (d) the quantity of the raw materials destroyed, if any, together with the reason for such destruction;
- (e) the quantity and type of products sold or otherwise disposed of and the price obtained; and
- (f) the names and addresses of any subsequent buyers or processors to whom such raw materials or products of processing are sold.

(5) A processor shall retain the records referred to in paragraph (4) for 2 years from—

- (a) where the records relate to the purchasing, processing, wastage, destruction, sale or other disposal of the raw materials, the date on which the purchase, processing, wastage, destruction, sale or other disposal of the raw materials occurs, as the case may be; and
- (b) where the records relate to the sale or other disposal of products obtained from the processing of such raw materials, the date on which such products were sold or otherwise disposed of, as the case may be.

