

SCHEDULE 1

Regulations 2(1) and 12(1), (4) and (5)

Additional standards of good agricultural and environmental  
condition that apply to land set aside from production

**PART A**

Management options for land set aside from production

**Management options for land set aside from production**

1.—(1) Subject to sub-paragraph (2), in respect of each field or part of a field which is set aside from production in a particular calendar year, a farmer shall, during that year, comply with the conditions applicable to one of the following management options—

- (a) the Green Cover Option (the applicable conditions are set out in paragraph 2);
- (b) the Natural Regeneration Option (the applicable conditions are set out in paragraph 3); or
- (c) the Wild Bird Cover Option (the applicable conditions are set out in paragraph 4).

(2) Where—

- (a) a farmer has applied in writing to the Scottish Ministers for permission to manage land set aside from production in accordance with a management plan set out in that application; and
- (b) has obtained the written consent of the Scottish Ministers to that plan,

the farmer need not comply with the conditions set out in the following paragraphs of this Schedule, but shall instead manage the land in accordance with that management plan.

(3) In this Schedule—

- “the current scheme year” means the particular year referred to in sub-paragraph (1);
- “the current set-aside period” means the set-aside period during the current scheme year;
- and expressions such as “the previous scheme year” and “the following scheme year” shall be construed accordingly.

(4) In paragraphs 2(1)(b), 3(1)(b) and 4(1)(c), “the relevant period” in relation to a field or part of a field (as the case may be) set aside from production means—

- (a) where the farmer does not intend to set aside the field or part of a field (as the case may be) from production in the following year or intends to set it aside for a non-food purpose in the following year, the current scheme year; and
- (b) where the farmer intends to set aside the field or part of a field (as the case may be) from production in the following year (but does not intend to set it aside for a non-food purpose), the current set-aside period.

**The Green Cover Option**

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

- (a) subject to sub-paragraph (2) and paragraph 6, establish a green cover by the start of the current set-aside period by sowing—
  - (i) grass seed;

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- (ii) a mixture of grass seed and the seed of native broad-leaved plants not commonly used for agricultural production (which mixture shall not contain more than 50 per cent by weight of legumes);
  - (iii) mustard seed; or
  - (iv) phacelia seed;
  - (b) subject to paragraphs 7, 11 and 12, maintain the green cover thereafter until the end of the relevant period; and
  - (c) cut or destroy the green cover in accordance with paragraph 5.
- (2) The requirement to establish a green cover in accordance with paragraph (1)(a) shall not apply where—
- (a) in 2005—
    - (i) the field or part of a field was set aside in 2004 pursuant to Article 6 of Council Regulation 1251/1999;
    - (ii) the field or part of a field was managed during that year in accordance with the grassland option set out in paragraph 2 of Schedule 2 to the Arable Area Payments Regulations 1996; and
    - (iii) the green cover established in accordance with the requirements of that option has been maintained until the beginning of the current scheme year; and
  - (b) in 2006 and thereafter—
    - (i) the field or part of a field was set aside in the previous year;
    - (ii) the field or part of a field was managed during that year in accordance with the sown green cover option; and
    - (iii) the green cover established in accordance with the requirements of that option has been maintained until the beginning of the current scheme year.

### **The Natural Regeneration Option**

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

- (a) subject to sub-paragraph (2) and paragraph 6, establish a green cover by the beginning of the current Scheme year by allowing natural regeneration of a herbage seed crop or combinable crop (other than a crop including maize or legumes) produced in that field or part of a field;
  - (b) subject to paragraphs 7, 11 and 12, maintain the green cover thereafter until the end of the relevant period; and
  - (c) cut or destroy the green cover in accordance with paragraph 5.
- (2) The requirement to establish a green cover in accordance with paragraph (1)(a) shall not apply where—
- (a) in 2005—
    - (i) the field or part of a field was set aside in 2004 pursuant to Article 6 of Council Regulation 1251/1999;
    - (ii) the field or part of a field was managed during that year in accordance with the natural regeneration option set out in paragraph 3 of Schedule 2 to the Arable Area Payments Regulations 1996; and
    - (iii) the green cover established in accordance with the requirements of that option has been maintained until the beginning of the current scheme year; and

- (b) in 2006 and thereafter—
  - (i) the field or part of a field was set aside in the previous year;
  - (ii) the field or part of a field was managed during that year in accordance with the natural regeneration option; and
  - (iii) the green cover established in accordance with the requirements of that option has been maintained until the beginning of the current scheme year.

### **The Wild Bird Cover Option**

4.—(1) In each field or part of a field to be managed in accordance with the wild bird cover option, a farmer—

- (a) shall, subject to sub-paragraph (3) and paragraph 6, either—
  - (i) establish a green cover by the start of the current scheme year 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 previous scheme year; or
  - (ii) establish a green cover by the start of the current scheme year by sowing a cover comprising a mixture of crops of different types which—
    - (aa) is a mixture of crops that it would not be practicable to harvest separately;
    - (bb) is not a mixture only of different types of cereal or of different types of brassica; and
    - (cc) is not a mixture only of one type of crop and legumes, a mixture only of cereals and legumes, or a mixture only of brassicas and 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 green cover established in accordance with the requirements of the Green Cover Option has been maintained until the beginning of the current scheme year;
- (b) shall, where a green cover was established by the start of the current scheme year in accordance with sub-paragraph (a)(i)—
  - (i) maintain that green cover until it is replaced in accordance with sub-paragraph (ii); and
  - (ii) replace that green cover by sowing a new green cover in accordance with paragraph (a)(ii) as early as is practicable after the start of the current scheme year;
- (c) subject to sub-paragraph (d) and paragraphs 7, 11 and 12, maintain the green cover established under paragraph (a)(ii) or (b)(ii) until the end of the relevant period; and
- (d) shall cut or destroy the cover in accordance with paragraph 5, unless—
  - (i) the field is to be set aside from production in the following year; and
  - (ii) the farmer has not harvested any of the green cover, or permitted any of it to be harvested or grazed, in the current scheme year.

(2) A farmer shall ensure, when replacing the green cover pursuant to sub-paragraph (1)(d), that the requirements of paragraph 12(1) are satisfied.

(3) The requirement to establish a green cover in accordance with sub paragraph (1)(a) shall not apply where—

- (a) in 2005—
  - (i) the field or part of a field was set aside in 2004 pursuant to Article 6 of Council Regulation 1251/1999;

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- (ii) the field or part of a field was managed during that year in accordance with the wild bird cover option set out in paragraph 4 of Schedule 2 to the Arable Area Payments Regulations 1996; and
  - (iii) the green cover established in accordance with the requirements of that option has been maintained until the beginning of the current scheme year; and
- (b) in 2006 and thereafter–
- (i) the field or part of a field was set aside in the previous year;
  - (ii) the field or part of a field was managed during that year in accordance with the wild bird cover option; and
  - (iii) the green cover established in accordance with the requirements of that option has been maintained until the beginning of the current scheme year.

#### **Cutting or destruction of the green cover**

5.—(1) In each field or part of a field to which this paragraph is applied by virtue of any of paragraphs 2 to 4, 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 during the current set-aside period; or
- (b) destroy the green cover between 15th July and 31st August during the current set aside period.

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

- (a) leave uncut a strip of green cover up to 2 metres wide adjacent to any hedgerow, woodland or watercourse; and
- (b) in the case of a field which is to be set aside in the following scheme year, leave uncut a further 25% of the area set aside in that field, provided that any area left uncut in accordance with this paragraph which has also been left uncut in the previous two years in accordance with this paragraph (or paragraph 7(2)(b) of Schedule 2 to the Arable Area Payments Regulations 1996(1)) is cut in accordance with sub-paragraph (1) in the following year.

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

6.—(1) In each field or part of a field to which this paragraph is applied by virtue of any of paragraphs 2 to 4, a farmer is not required to establish a green cover by the start of the current scheme year where the farmer satisfies the Scottish Ministers that for climatic reasons it was not practicable for there to be such a green cover by that time, in which case the farmer shall establish a green cover as soon as reasonably possible thereafter.

(2) In each field or part of a field to which this paragraph is applied by virtue of any of paragraphs 2 to 4, a farmer need not establish a green cover on–

- (a) a strip of land up to 1 metre wide forming part of the land set aside and bordering its edge, where the strip of land set aside adjoins land planted with a crop other than a seed crop;
- (b) a strip of land up to 2 metres wide forming part of the land set aside and bordering its edge, where the strip of land set aside adjoins land planted with a seed crop; or

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(1) S.I. 1996/3142 as amended by S.I. 1997/2969, S.I. 1998/3169 and S.I. 1999/8.

- (c) a strip of land up to 5 metres wide forming part of the land set aside and bordering its edge 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 the land set aside from production**

7.—(1) In each field or part of a field to which this paragraph is applied by virtue of any of paragraphs 2 to 4, a farmer is not required to maintain a green cover on the land set aside from production where that green cover is destroyed following the application of herbicide to the land on or after 15th April in the current scheme year, 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 the production of raw materials) the commencement of the following Scheme year.

(2) In each field or part of a field to which this paragraph is applied by virtue of any of paragraphs 2 to 4, a farmer shall by virtue of this provision be treated as exempt from a requirement to maintain a green cover where the farmer satisfies the Scottish Ministers that the green cover which the farmer established failed and the farmer could not reasonably have prevented such failure, such exemption lasting from the time of the failure to the end of the current scheme year.

(3) In each field or part of a field to which this paragraph is applied by virtue of any of paragraphs 2 to 5, and where a farmer has chosen not to establish a green cover on a strip of land pursuant to paragraph 6(2), the farmer need not maintain any green cover which nevertheless subsequently becomes established on that strip.

## **PART B**

### **General standards applying to all land set aside from production**

#### **Application of conditions to all land set aside from production**

8. The provisions in paragraphs 9 to 14 shall apply to all land set aside from production that is managed by a farmer in accordance with any of the provisions of paragraphs 1 to 7.

#### **Prohibition on sowing and preparation for sowing a crop on, and the cultivation of, the land set aside from production**

9. Subject to paragraphs 10 and 11, 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 land set aside from production or otherwise cultivate that land.

#### **Exemptions from the prohibition on sowing and preparation for sowing a crop on the land set aside from production**

10.—(1) A farmer may make preparations for sowing on or after 15th July.

(2) Subject to sub-paragraph (3), a farmer may sow any seed on or after 15th July prior to the end of the current set-aside period where the seed sown is sown in order to produce a crop for harvesting in the following year.

(3) Where a farmer sows a grass ley on land set-aside from production pursuant to the exemption in sub-paragraph (2), the farmer shall not graze any animals on that land during the remainder of the current year.

### **Exemption from prohibition on cultivation of land set aside from production for the purpose of weed control**

11.—(1) A farmer may cultivate the land set aside from production for the purposes of controlling weeds—

- (a) where the farmer is not an accepted organic farmer, at any time on or after 15th July prior to the end of the current set aside period; and
- (b) where the farmer is an accepted organic farmer, at any time on or after 1st May prior to the end of the current set-aside period.

(2) In this paragraph, “accepted organic farmer” means a farmer who—

- (a) satisfies the Scottish Ministers that such a farmer farms the land by organic means or is converting to so farming the land; and
- (b) has notified the Secretary of State, as designated by the Organic Products Regulations 2004<sup>(2)</sup>, under Article 8(1)(a) of Council Regulation (EC) No. 2092/91 as amended<sup>(3)</sup> that by so farming the land or converting it products of a kind specified in Article 1 of that Council Regulation are produced and that the farmer has submitted to the inspection system referred to in Article 9 of that Council Regulation.

### **Replacement of the green cover and changing management options**

12.—(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 of a field, the farmer may nevertheless replace that green cover with another provided that the seed is sown as soon as is practicable after the destruction of the existing green cover.

(2) Where the cover is to be replaced in part only of a field, the farmer may nevertheless replace the green cover with another provided that the seed to be sown to establish a replacement green cover shall be seed of a type listed in paragraph 2(1)(a).

(3) A farmer shall, in respect of the field or part of a field where the green cover has been replaced, comply with such of the conditions set out in Part A of this Schedule as they relate to one of the following management options—

- (a) where the seed sown complies with the requirements of paragraph 2(1)(a), the Green Cover Option referred to in paragraph 2;
- (b) where the seed sown complies with the requirements of paragraph 4(1)(a)(ii), the Wild Bird Cover Option referred to in paragraph 4; or
- (c) where the provisions of paragraph 1(3) apply, the provisions of the management plan referred to in that paragraph,

except that the farmer shall not be required to establish a green cover (as required by paragraph 2(1)(a) or 4(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 11, the farmer 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) above.

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(2) [S.I. 2004/1604](#).

(3) O.J. No. L 198, 22.7.1991, p.1, relevantly amended by Council Regulations (EC) No. 1804/1999 (O.J. No. L 222, 24.8.1999, p.1) and (EC) No. 746/2004 (O.J. No L 65, 26.4.2004, p.10).

### **Use of the green cover**

**13.**—(1) A farmer shall ensure that, subject to sub-paragraph (2), no green cover or cuttings from any green cover are used for seed production or any other commercial or agricultural purpose in the current scheme year.

(2) A farmer may use any such green cover or cuttings—

(a) for any agricultural purposes after 31st August; and

(b) to place on the market any cuttings or crops that are produced after 15th January in the following scheme year.

(3) A farmer shall ensure that no cuttings produced by cutting the green cover are removed from the set-aside land concerned except in accordance with sub-paragraph (2) or with the prior consent of the Scottish Ministers.

### **Application of fertiliser, waste, lime and gypsum to the land set-aside from production**

**14.**—(1) A farmer shall not apply any fertiliser, waste, lime or gypsum to the land set aside from production except in accordance with the following sub-paragraphs.

(2) A farmer may apply fertilisers to the land set aside from production if prior to such application the farmer satisfies the Scottish Ministers 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) Throughout the set-aside period a farmer may apply organic waste to the land set aside from production provided that it—

(a) is applied only where there is an existing green cover on the set-aside land;

(b) is applied in amounts which will not destroy that green cover; and

(c) in the case of manure and slurry, is not applied—

(i) within 10 metres of any watercourse; or

(ii) within 50 metres of any boreholes.

(4) 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 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.

(5) A farmer shall not store, dump or otherwise dispose of any waste on the land set aside from production, except that the farmer 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 that farmer to that field in accordance with sub-paragraph (3).

(6) A farmer may apply lime or gypsum to the land set aside from production where that land is to be cropped in the following year.