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STATUTORY INSTRUMENTS

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**1991 No. 1847**

**AGRICULTURE**

**The Temporary Set-Aside Regulations 1991**

<i>Made</i>	- - - -	<i>9th August 1991</i>
<i>Laid before Parliament</i>		<i>12th August 1991</i>
<i>Coming into force</i>	- -	<i>16th August 1991</i>

The Minister of Agriculture, Fisheries and Food and the Secretary of State, being Ministers designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to the common agricultural policy of the European Economic Community, acting jointly in exercise of the powers conferred on them by that section and of all other powers enabling them in that behalf, hereby make the following Regulations:—

**Title, commencement, and extent**

1.—(1) These Regulations may be cited as the Temporary Set-Aside Regulations 1991 and shall come into force on 16th August 1991.

(2) These Regulations shall apply to Great Britain.

**Interpretation**

2.—(1) In these Regulations, unless the context otherwise requires—

“aid” means the aid referred to in articles 2(a) and (b) of the Council Regulation;

“application” means an application under regulation 3 and “applicant” shall be construed accordingly;

“the appropriate Minister” means—

(a) in relation to England, the Minister of Agriculture, Fisheries and Food;

(b) in relation to Scotland or Wales, the Secretary of State;

“the Broads” shall have the same meaning as in section 2(3) of the Norfolk and Suffolk Broads Act 1988<sup>(3)</sup>;

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

(2) [1972 c. 68](#); section 2 is subject to Schedule 2 to that Act and is to be read, as regards England and Wales, with sections 37, 40 and 46 of the Criminal Justice Act [1982 \(c. 48\)](#), [S.I. 1984/447](#) and section 52(4) of the Criminal Justice Act [1988 \(c. 33\)](#) and, as regards Scotland, with sections 289F and 289G of the Criminal Procedure (Scotland) Act [1975 \(c. 21\)](#), as inserted by section 54 of the Criminal Justice Act 1982, [S.I. 1984/526](#) and section 66 of the Criminal Justice (Scotland) Act [1987 \(c. 41\)](#).

(3) [1988 c. 4](#).

“beneficiary” means a person whose application has been accepted;

“claim” means a claim for aid under regulation 7;

“the Commission Regulation” means Commission Regulation (EEC) No. 2069/91<sup>(4)</sup> laying down detailed rules for the application of the temporary set-aside scheme for arable land in the 1991/92 marketing year;

“Community Scheme” means the scheme for the temporary set-aside of arable land introduced by the Council Regulation;

“the Council Regulation” means Council Regulation (EEC) No. 1703/91<sup>(5)</sup> introducing a temporary set-aside scheme for arable land for the 1991/92 marketing year and laying down special measures for that marketing year under the set-aside scheme provided for in Regulation (EEC) No. 797/85;

“designated maps” means—

- (a) in relation to England, the 3 volumes of maps numbered 1 to 3, each such volume being marked “volume of maps of less-favoured farming areas in England” and with the number of the volume, dated 20th May 1991, signed and sealed by the Minister of Agriculture, Fisheries and Food and deposited at the offices of the Ministry of Agriculture, Fisheries and Food at Nobel House, 17 Smith Square, London SW1P 3JR;
- (b) in relation to Wales, the 2 volumes of maps numbered 1 and 2, both volumes being marked “volume of maps of less-favoured farming areas in Wales” and with the number of the volume, dated 20th May 1991, signed by the Secretary of State for Wales and deposited at the offices of the Welsh Office Agriculture Department at Trawsgoed, Aberystwyth, Dyfed SY23 4HT;
- (c) in relation to Scotland, the 4 maps numbered 1 to 4, each such map being marked “map of less-favoured farming areas in Scotland” and with the number of the map, dated 15th May 1991, signed by the Secretary of State for Scotland and deposited at the offices of the Scottish Office Agriculture and Fisheries Department at Pentland House, 47 Robb’s Loan, Edinburgh EH14 1TW;

“eligible arable crops” means those crops which are referred to in Article 1(2) of the Commission Regulation;

“eligible person” means a person who on the date of submission of his application occupies a holding as an owner or tenant;

“holding” means land which is occupied as a unit for agricultural purposes;

“landlord” means—

- (a) in England and Wales, in relation to the tenant of a holding or part of a holding, any person who either solely or jointly owns or has a superior tenancy of that holding or part;
- (b) in Scotland—
  - (i) in the case of an agricultural holding to which the Agricultural Holdings (Scotland) Act 1949<sup>(6)</sup> (“the 1949 Act”) applies, the landlord within the meaning of section 93(1) of that Act;
  - (ii) in the case of a croft within the meaning of the Crofters (Scotland) Act 1955<sup>(7)</sup>, the landlord within the meaning of section 37(1) of that Act;

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<sup>(4)</sup> OJ No. L191, 16.7.91, p. 19.

<sup>(5)</sup> OJ No. L162, 26.6.91, p. 1.

<sup>(6)</sup> 1949 c. 75.

<sup>(7)</sup> 1955 c. 21.

(iii) in the case of a holding within the meaning of the Small Landholders (Scotland) Act 1911<sup>(8)</sup> to which the 1949 Act does not apply, the same as it means in the 1911 Act;

and, where appropriate, includes a head tenant;

“less-favoured area” means land—

(a) which is situated in an area included in the list of less-favoured farming areas adopted by the Council or the Commission of the European Communities under Article 2(2) of Council Directive 75/268/EEC<sup>(9)</sup> on mountain and hill farming and farming in certain less-favoured areas, as amended by Council Directive 80/666/EEC<sup>(10)</sup>, which list is contained in Council Directive 84/169/EEC<sup>(11)</sup>, as amended by Commission Decision 91/25/EEC<sup>(12)</sup>, and

(b) which—

(i) is, in the opinion of the appropriate Minister, inherently suitable for extensive livestock production but not for the production of crops in quantity materially greater than that necessary to feed such livestock as are capable of being maintained on such land, and whose agricultural production is, in the opinion of the appropriate Minister, restricted in its range by, or by any combination of, soil, relief, aspect or climate, or

(ii) is situated in the Isles of Scilly,

which land is within the area shaded blue or pink on the designated maps;

“National Park Authority” means a special planning board or a joint planning board or a National Park Committee constituted or reconstituted in accordance with Part I of Schedule 17 to the Local Government Act 1972<sup>(13)</sup>;

“Nature Conservancy Council” means in relation to England, the Nature Conservancy Council for England; in relation to Scotland, the Nature Conservancy Council for Scotland, and in relation to Wales, the Countryside Council for Wales;

“obligations” means the obligations specified in regulation 4;

“plant cover types” means those types listed in Schedule 1;

“premium” means that part of the aid which is referred to in article 2(a) of the Council Regulation;

“registration” means the process of registering for the Community scheme with the appropriate Minister by supplying the information required by article 3 of the Commission Regulation, and “registered” and “registration form” shall be construed accordingly;

“to set aside” means, in relation to land, to withdraw it from agricultural production, and

“setting aside” shall be construed accordingly;

“Site of Special Scientific Interest” means any area of land notified by the Nature Conservancy Council under the provisions of section 28(1) of the Wildlife and Countryside Act 1981<sup>(14)</sup>;

“temporary set-aside period” means the period starting with 1st September 1991 and ending with 31st August 1992;

“tenant” means—

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<sup>(8)</sup> 1911 c. 49.

<sup>(9)</sup> OJ No. L128, 19.5.75, p. 1.

<sup>(10)</sup> OJ No. L180, 14.7.80, p. 34.

<sup>(11)</sup> OJ No. L82, 26.3.84, p. 67.

<sup>(12)</sup> OJ No. L16, 22.1.91, p. 25.

<sup>(13)</sup> 1972 c. 70.

<sup>(14)</sup> 1981 c. 69; the provisions concerning Nature Conservancy Councils were amended by Part VII and Schedule 9 of the Environmental Protection Act 1990 (c. 43).

- (a) in England and Wales, a person who occupies a holding or part of a holding either—
  - (i) under an agreement for the letting of land for a tenancy from year to year; or
  - (ii) under an agreement which has effect by virtue of section 2(1) or section 3(1) of the Agricultural Holdings Act 1986<sup>(15)</sup> as an agreement for the letting of land for a tenancy from year to year; or
  - (iii) under a contract of tenancy for a fixed term of years of which at least one year remains unexpired at the commencement of the temporary set-aside period;
- (b) in Scotland—
  - (i) in the case of an agricultural holding in which the Agricultural Holdings (Scotland) Act 1949 (“the 1949 Act”) applies, the tenant within the meaning of section 93(1) of that Act;
  - (ii) in the case of a croft within the meaning of the Crofters (Scotland) Act 1955, the crofter within the meaning of section 3(2) of that Act;
  - (iii) in the case of a holding within the meaning of the Small Landholders (Scotland) Act 1911 to which the 1949 Act does not apply, the tenant within the meaning of section 2(2) of the 1911 Act;
 and, where appropriate, includes a sub-tenant;

“vernacular buildings” means buildings traditionally found in the locality.

(2) Any reference in these Regulations to a numbered regulation or Schedule shall be construed as a reference to the regulation or Schedule bearing that number in these Regulations.

### Applications

**3.—**(1) An application for aid under the Community Scheme may be submitted to the appropriate Minister by an eligible person who has registered his land with that Minister on or before 31st July 1991.

- (2) Such an application—
  - (a) shall be made to the appropriate Minister on or before 31st August 1991;
  - (b) shall contain the information specified in article 9 of the Commission Regulation (which deals with the content of applications);
  - (c) shall include details of any changes in the information given on the applicant’s registration form; and
  - (d) shall contain an undertaking that the applicant will abide by the obligations referred to in regulation 4 for the duration of the temporary set-aside period.

### Obligations

**4.** The obligations referred to in regulation 3(2)(d) are as follows:

- (a) to set aside on the holding an area of land which was planted in preparation for the 1991 harvest with one or more of the eligible arable crops in accordance with the terms of Article 1(3) of the Council Regulation (which deals with the areas of land to be set aside and the areas to remain under cultivation);
- (b) to observe the requirements of Article 1(3) of the Council Regulation with regard to the area of the holding left under cultivation;

- (c) to plant the land set aside with one or more of the plant cover types in accordance with the terms of Article 2(2) of the Commission Regulation (which deals with conditions relating to the land set aside);
- (d) to observe the conditions set out in Schedule 2 for management of the land set aside.

#### **Additional requirements in relation to land area**

5.—(1) The area set aside under the Community Scheme shall include either—

- (a) one whole field amounting to at least half a hectare;

or

- (b) an area consisting of adjacent whole fields and amounting to at least half a hectare.

(2) Where any land set aside consists of a strip of land, that strip shall be at least 15 metres wide.

(3) Land acquired by a beneficiary during the temporary set-aside period shall not be eligible for inclusion in the Community Scheme.

(4) Land acquired by an eligible person before 31st August 1991 may be the subject of an application provided that land has been registered.

#### **Restrictions on acceptance of applications**

6.—(1) The appropriate Minister shall not accept an application from an eligible person who proposes to set aside land within a Site of Special Scientific Interest, a National Park or the Broads unless he is satisfied that that person has notified the Nature Conservancy Council, the National Parks Authority or the Broads Authority respectively in writing of his intention to make the application.

(2) The appropriate Minister shall not accept an application from a tenant unless he is satisfied that the tenant has notified the landlord of the land which is the subject of the application in writing of his intention to make the application.

(3) The appropriate Minister shall not accept an application where he is satisfied that—

- (a) the setting aside of any land or the use of any land that would be set aside in accordance with the proposals contained in that application would frustrate the purposes of any assistance previously given or to be given out of money provided by Parliament or by the European Economic Community; or
- (b) payment of aid in respect of any land which an applicant proposes to set aside would duplicate any assistance previously given or to be given out of money provided by Parliament or by the European Economic Community.

#### **Claims**

7.—(1) A claim for aid shall be made on or before 31st August 1992.

(2) A claim shall include details of any changes in the information given in the application.

(3) A claim shall include a declaration that the beneficiary has fulfilled the obligations.

#### **Rates of premium**

8. The premium shall be payable at the rate per hectare of the land set aside shown in the table set out overleaf:

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

	Payment per hectare of land set aside	
	Less-favoured area £	Elsewhere £
(i) Where the beneficiary has undertaken to set aside more than 100 hectares and more than 75 per cent of the land which was planted with eligible arable crops for the 1991 harvest, each hectare in excess of the first 100 hectares	79.20	91.20
(ii) Each hectare to which (i) above does not apply	109.20	121.20

#### **Change of occupation of whole of holding**

9.—(1) Where during the temporary set-aside period there is a change of occupation on a holding of the whole of the area set aside and the whole of the area left under cultivation in accordance with Article 1(3) of the Council Regulation by reason of the devolution of those areas on the death of a beneficiary or otherwise—

- (a) the beneficiary (or, if he has died, his personal representatives) shall notify the appropriate Minister in writing of the change of occupation and shall supply to that Minister in writing details of that change of occupation;
- (b) the new occupier may give an undertaking to the appropriate Minister to comply with the obligations relating to that holding for the remainder of the temporary set-aside period.

(2) The appropriate Minister shall not accept an undertaking given under paragraph 1(b) above unless that Minister is satisfied that that new occupier occupies that holding as an owner or tenant or as the personal representative of the original occupier.

(3) Where the appropriate Minister has accepted an undertaking given under paragraph 1(b) above that occupier shall be deemed to be a beneficiary and the undertaking to comply with the obligations shall take effect on the date of the acceptance by that Minister of that undertaking.

(4) Where a new occupier is deemed to be a beneficiary the Minister may make payments of the aid due under the Community Scheme to that beneficiary and accordingly the original occupier shall cease to be treated as a beneficiary.

(5) Where within a period of three months from the date of change of occupation a new occupier has not given an undertaking to comply with the obligations assumed by the original occupier, the appropriate Minister may withhold or recover the whole or any part of any payments of aid due or made to the original occupier or his personal representative.

(6) Paragraph (5) above shall not apply where the change of occupation of a holding is the result of—

- (a) the compulsory purchase of that holding;
- (b) the death of the original occupier, and
  - (i) that original occupier occupied that holding as a tenant; and
  - (ii) following the death of that original occupier the tenancy or lease under which he occupied that holding was terminated by the landlord; or

- (c) in England and Wales, the termination of a tenancy following the operation of a notice to quit to which the Agricultural Land Tribunal has consented under section 26(1) of the Agricultural Holdings Act 1986<sup>(16)</sup>, having been satisfied as to any of the matters specified in section 27(3) of that Act, or the termination of a tenancy following the service of a notice to quit stating that the circumstances in Case A, B, G or H of Schedule 3 to that Act apply; or
- (d) in Scotland, the termination of a tenancy following the operation of a notice to quit to which the Scottish Land Court has consented under section 25(1) of the Agricultural Holdings (Scotland) Act 1949<sup>(17)</sup>, having been satisfied as to any of the matters referred to in section 26(1)(b) to (e) of that Act, or the termination of a tenancy following service of a notice to quit to which section 25(2)(c) of that Act applies.

### **Change of occupation of part of holding**

**10.**—(1) Where during the temporary set-aside period there is a change of occupation on a holding of the whole or part of the area set aside under the Community Scheme, the original occupier shall no longer be treated as a beneficiary and accordingly shall not be entitled to aid.

(2) Where during the temporary set-aside period there is a change of occupation on a holding of the whole or part of an area other than the area set aside the original occupier may continue to be treated as a beneficiary.

### **Withholding and recovery**

**11.**—(1) Where a person with a view to obtaining the payment of aid to himself or any other person, makes any statement or furnishes any information which is false or misleading in a material respect, the appropriate Minister may withhold the whole or any part of any aid payable to that person or to such other person, and may recover the whole or any part of any aid already paid to that person or to such other person.

(2) Where a beneficiary—

- (a) fails to comply with any of the obligations; or
- (b) fails without reasonable excuse to permit entry and inspection by an authorised officer or to render all reasonable assistance to such authorised officer as required by regulation 12,

the appropriate Minister may withhold the whole or any part of any aid payable to that beneficiary, and may recover the whole or any part of any aid already paid to him.

(3) Where the appropriate Minister recovers from a beneficiary or any other person any aid already paid to him, that Minister may in addition require from that beneficiary or other person payment of interest calculated in accordance with Article 21(1) of the Commission Regulation.

(4) Before withholding or recovering any premium under paragraph (2)(a) above, the appropriate Minister shall—

- (a) give to the beneficiary a written explanation of the reasons for the proposed withholding or recovery; and
- (b) afford the beneficiary an opportunity of appearing before and being heard by a person appointed for that purpose by the appropriate Minister; and
- (c) consider the report by the person so appointed and supply a copy of the report to the beneficiary.

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<sup>(16)</sup> 1986 c. 5.

<sup>(17)</sup> 1949 c. 75.

### **Requirement to permit entry and inspection**

**12.—**(1) A person who has registered, who has made an application or who is a beneficiary shall permit any officer duly authorised by the appropriate Minister, accompanied by such persons acting under his instructions as appear to that officer to be necessary for the purpose, at all reasonable times and on production of his authority on demand, to enter upon that person's holding in order to inspect any land, document or record with a view to verifying—

- (a) the accuracy of any particulars given in a registration form, application or claim; and
- (b) compliance with the obligations.

(2) A person to whom paragraph (1) applies shall render all reasonable assistance to paragraph (1), and in particular shall—

- (a) produce such document or record as may be required by that officer for inspection; and
- (b) at the request of that officer, accompany him in making the inspection of any land and identify any area of land which is mentioned in any registration form or concerned in any application or claim.

### **False statements**

**13.—**(1) If any person, for the purposes of obtaining for himself or any other person any aid, knowingly or recklessly makes a false statement, he shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Where an offence under paragraph (1) above 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—

- (a) any director, manager, secretary or other similar officer of the body corporate, or
- (b) 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.

(3) In this regulation, in Scotland any reference to a body corporate includes a reference to a partnership and any reference to a director, manager, secretary or other similar officer of a body corporate includes a reference to a partner.

In witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 8th August 1991.

L.S.

*Trumpington*  
Minister of State of Agriculture, Fisheries and  
Food

*Strathclyde*  
Parliamentary Under Secretary of State, Scottish  
Office

9th August 1991



## SCHEDULE 1

Regulations 2 and 4

### PLANT COVER TYPES

Grasses (Gramineae) excluding cereals

Mustards

Legumes (excluding peas, beans and lupins) where sown with any of the other plant cover types as part of a seed mixture, provided the legume content of the mixture does not exceed 5% by weight or 1.5 kg/ha, whichever is the lesser.

## SCHEDULE 2

Regulation 4

### MANAGEMENT CONDITIONS

#### **Establishment and retention of plant cover**

1. The beneficiary shall sow and establish a plant cover of one or more of the types specified in Schedule 1 immediately after the commencement of the temporary set-aside period. If the crop planted in the year prior to the commencement of the temporary set-aside period has not yet been harvested, the plant cover shall be established immediately after the harvest. If the beneficiary is prevented from establishing a plant cover by exceptional weather conditions, he shall do so as soon as practicable.

2. Notwithstanding the requirement in paragraph 1 above the beneficiary may retain unburnt cereal stubbles on the ground over winter and sow and establish in the spring a plant cover of one or more of the types specified in Schedule 1.

3. The beneficiary shall retain the plant cover throughout the temporary set-aside period and shall re-establish it if it is wholly or partially destroyed.

4. Notwithstanding the requirement in paragraph 3 above, the beneficiary may destroy the plant cover by cultivation where this is necessary—

- (a) in order to control the spread of weeds, provided that where plant cover is destroyed for this purpose it shall be re-established as soon as practicable thereafter; or
- (b) in order to prepare for the establishment of an alternative plant cover, provided that that alternative cover is established as soon as practicable after the destruction of the previous cover.

5. The beneficiary shall cut the plant cover at least twice in the temporary set-aside period. One of the cuts shall be between 1st July and 31st August 1992 and each cut must be at least one month apart from any other. The beneficiary shall not remove or sell cuttings or use them for feeding livestock.

6. Notwithstanding the requirement in paragraphs 1–5 above, the appropriate Minister may authorise a beneficiary to follow different management conditions from those in this Schedule to protect or benefit the environment or for climatic reasons.

7. The beneficiary shall not apply any inorganic or organic fertiliser (other than lime) during the temporary set-aside period.

8. Notwithstanding the requirement in paragraph 7, the appropriate Minister may authorise a beneficiary to apply an inorganic fertiliser to land where he is satisfied that the land is located in an area normally used as a feeding-ground by over-wintering migratory geese. The beneficiary shall manage any land to which an inorganic fertiliser is applied pursuant to such authorisation in such a way as to provide a feeding-ground for such geese.

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9. The beneficiary shall not use the land as a dumping ground for any type of organic or inorganic material.

#### **Use of pesticides**

10. The beneficiary shall not apply pesticides.

11. Notwithstanding the requirement in paragraph 10 above, the appropriate Minister may authorise a beneficiary to apply herbicides provided that any herbicide used is of a type which is absorbed into the plant primarily through the leaves and the stem and which has little or no persistence in water and in the soil.

12. The beneficiary shall make a written record of the type, quantity, date and method of application of any herbicide used and of the reason for such use and shall keep the written record until 31st December 1992.

#### **Maintenance of environmental features**

13. The beneficiary shall maintain—

- (a) all existing hedges and rows of trees (including hedgerow trees);
- (b) all existing lakes, lochs, watercourses, ponds and pools;
- (c) all existing unimproved grassland, moorland and heath;

and

- (d) all existing vernacular buildings and stone walls

which he is entitled to maintain and which are situated on or adjacent to any land to which the requirements in this Schedule apply.

#### **Land improvement works**

14. The beneficiary shall not install any new drainage system, nor substantially modify any existing drainage system.

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### **EXPLANATORY NOTE**

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

These Regulations implement Council Regulation (EEC) No. 1703/91 (OJ L162, 26.6.91, p. 1) insofar as it concerns the introduction of a temporary set-aside scheme for arable land for the 1991/92 marketing year (“the scheme”), and Commission Regulation (EEC) No. 2069/91 (OJ L191, 16.7.91, p. 19) laying down detailed rules for the application of the scheme. The Regulations apply to Great Britain.

The Regulations provide for applications to enter the scheme. Farmers wishing to join must have registered their land by 31st July and must apply by 31st August 1991 (regulation 3). They must also undertake for the one-year duration of the scheme to set aside a minimum percentage of land which has been in production of eligible arable crops during 1990/91, to reduce the area which is given over to the production of those crops for 1991/92, to establish a plant cover on the area set aside and

to follow provisions for the management of the land (regulation 4). The Regulations also impose requirements in relation to the land area which is eligible for inclusion in the scheme (regulation 5) and impose restrictions on the acceptance of applications (regulation 6).

Claims for aid under the scheme must be made on or before 31st August 1992 (regulation 7). Aid (defined in article 2 of the Council Regulation) comprises both reimbursement of cereals coresponsibility levy and payment of a premium in relation to the land set aside. The rates of the premium are set out in the Regulations (regulation 8) and are calculated per hectare depending on the extent and location of the land set aside.

The Regulations also—

- (a) provide for change of occupation of holdings (regulations 9 and 10);
- (b) provide for the withholding and recovery of aid in certain circumstances (regulation 11);
- (c) provide an obligation to permit entry and inspection (regulation 12);
- (d) create an offence of knowingly or recklessly making a false statement in order to obtain aid (regulation 13).