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STATUTORY INSTRUMENTS

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**1994 No. 1292**

**AGRICULTURE**

**The Habitat (Former Set-Aside Land) Regulations 1994**

<i>Made</i>	- - - -	<i>12th May 1994</i>
<i>Laid before Parliament</i>		<i>16th May 1994</i>
<i>Coming into force</i>	- -	<i>6th June 1994</i>

The Minister of Agriculture, Fisheries and Food, being a Minister 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 Community, in exercise of the powers conferred on her by the said section 2(2) and of all other powers enabling her in that behalf, hereby makes the following Regulations:

**Citation, commencement and extent**

1. These Regulations may be cited as the Habitat (Former Set-Aside Land) Regulations 1994, shall come into force on 6th June 1994 and shall apply to England.

**Interpretation**

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

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, livestock breeding and keeping and freshwater fish farming, the use of land as grazing land, meadow land, osier land, reed beds, market gardens and nursery grounds, and “agricultural” shall be construed accordingly;

“application” means an application for aid under regulation 4 and “applicant” shall be construed accordingly;

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

“eligible land” means any land—

- (a) which has been set-aside land at any time within the period of thirteen months preceding the date of the commencement of the undertakings referred to in regulation 3;
- (b) which is not set-aside land on the date of the commencement of those undertakings;
- (c) which, after it has ceased to be set-aside land and before the date of the commencement of those undertakings, has not been cultivated with a view to agricultural production;

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(1) S.I.1972/1811.  
(2) 1972 c. 68.

- (d) which, during the period when the land was set-aside land and during any subsequent period before the date of the commencement of those undertakings has, in the opinion of the Minister, been managed in such a way as to establish or protect a habitat which is valuable in terms of the diversity or rarity of wildlife; and
- (e) in respect of which no grant has been paid by the Minister under the Farm Woodland Scheme 1988(3) or the Farm Woodland Premium Scheme 1992(4) or by the Forestry Commissioners under the Woodland Grant Scheme;

“eligible person” means a person who on the date of the submission of his application occupies eligible land as an owner or tenant and who at the commencement of the management period will have so occupied that land for a period of at least twelve months;

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

“landlord” means, in relation to a tenant of any land, any person who either solely or jointly owns or has a superior tenancy of that land;

“management obligations” means the obligations assumed by a beneficiary by virtue of the undertakings referred to in regulation 3 or 6;

“management period”, in relation to an application accepted by the Minister, means the period of 20 consecutive years commencing on 1st October in the year in which the application is accepted;

“the Minister” means the Minister of Agriculture, Fisheries and Food;

“set-aside land” means land set aside under the provisions of the Set-Aside Regulations 1988(5);

“tenant” means a person who occupies land—

- (a) under an agreement for the letting of land for a tenancy from year to year;
- (b) under an agreement which has effect by virtue of section 2(1) or 3(1) of the Agricultural Holdings Act 1986(6) as an agreement for the letting of land for a tenancy from year to year; or
- (c) under a contract of tenancy for a fixed term of years of which at least 20 years remain unexpired at the commencement of the management period;

“wildlife” means—

- (a) any animal (other than a bird) which is ordinarily resident in England in a wild state;
- (b) any bird which is ordinarily resident in or is a visitor to England in a wild state; and
- (c) any plant which is of a kind which ordinarily grows in England in a wild state;

“the Woodland Grant Scheme” means the scheme made by the Forestry Commissioners and published in June 1988 under which the Forestry Commissioners enter into agreements to make grants pursuant to section 1 of the Forestry Act 1979(7) for aid in connection with the use and management of land for forestry purposes.

(2) Any reference in these Regulations to a numbered regulation or “the Schedule” shall be construed as a reference to the regulation so numbered in these Regulations or the Schedule to these Regulations.

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(3) S.I. 1988/1291, amended by S.I. 1991/1631, 1992/905.

(4) S.I. 1992/905.

(5) S.I. 1988/1352, amended by S.I. 1989/1042, 1990/1716, 1991/1993.

(6) 1986 c. 5.

(7) 1979 c. 21.

### **Aid for former set-aside land**

3. Subject to the provisions of these Regulations, the Minister may make payments of aid to any eligible person who undertakes for the duration of the management period—

- (a) not to use an area of eligible land for agricultural production, other than for the management of reed beds; and
- (b) to manage that area of eligible land and any features bordering on that area in accordance with the requirements set out in the Schedule.

### **Applications for aid**

4. An application for aid under these Regulations shall be made at such time and in such form as the Minister reasonably may require and shall include—

- (a) a map of the area of eligible land in respect of which the applicant proposes to assume management obligations;
- (b) a description of the use or uses of that land during the period when the land was set-aside land and during any subsequent period;
- (c) proposals for a management plan relating to that land which set out the objective of the plan in terms of the maintenance, improvement or protection of a specified habitat which is valuable in terms of the diversity or rarity of wildlife and the methods by which he proposes to manage the land so as to achieve that objective; and
- (d) if required by the Minister, evidence showing the nature of the applicant's estate or interest in that land.

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

5.—(1) The Minister shall not accept an application in relation to any land unless she is satisfied that, having regard to the condition of the land at the time of the submission of the application, the management of the land in accordance with the applicant's proposals for a management plan relating to that land will maintain, improve or protect a habitat which is valuable in terms of the diversity or rarity of wildlife.

(2) The Minister shall not accept an application in relation to any land which is occupied by a tenant unless she is satisfied that the tenant has obtained the consent in writing of the landlord of that land to the making of the application.

(3) The Minister may refuse to accept an application in relation to any land where she is satisfied that—

- (a) the management of that land in accordance with the proposed management plan contained in the application would frustrate the purposes of any assistance previously given or to be given out of money provided by Parliament or the European Community; or
- (b) the payment of aid under these Regulations in relation to that land would duplicate any assistance given or to be given out of money provided by Parliament or by the European Community.

### **Change of occupation**

6.—(1) Where, during the course of the management period, there is a change of occupation of the entirety or any part of a beneficiary's land which is subject to management obligations by reason of the devolution of that land or part on the death of the beneficiary, or otherwise—

- (a) the beneficiary (or, if he has died, his personal representatives) shall notify the Minister in writing of the change of occupation within three months of its occurrence and shall supply

to the Minister such information relating to that change of occupation in such form and within such period as the Minister reasonably may determine;

- (b) the new occupier of that land or part may give an undertaking to the Minister to comply with the management obligations relating to that land or part for the remainder of the management period.

(2) The Minister shall not accept an undertaking referred to in paragraph (1)(b) above unless she is satisfied that the new occupier occupies the land or part as an owner or tenant or as the personal representative of the original occupier.

(3) A new occupier who gives an undertaking to comply with the management obligations assumed by the original occupier shall supply to the Minister such information in such form and within such period following the change of occupation as the Minister may reasonably determine.

(4) Where the Minister has accepted an undertaking from a new occupier to comply with the management obligations undertaken by the original occupier—

- (a) the new occupier shall be deemed to be a beneficiary and, subject to paragraph 5 below, shall be entitled to payments of aid in place of the original occupier for the remainder of the management period; and
- (b) his undertaking to comply with those management obligations shall be deemed to take effect on the date of the acceptance by the Minister of that undertaking.

(5) Where there is a change of occupation of part of the land subject to management obligations, the new occupier shall be entitled to payments of aid in the same proportion as the area of such land occupied by him bears to the area of such land occupied by the original occupier prior to the change of occupation.

(6) Where within three months of the date of change of occupation a new occupier has not given an undertaking to comply with the management obligations assumed by the original occupier, the Minister may—

- (a) withhold the whole or any part of any payments due to the original occupier; and
- (b) recover from that original occupier or his personal representatives the whole or any part of any payments of aid already made to him.

(7) Paragraph (6) above shall not apply where the change of occupation of the entirety or any part of a beneficiary's land which is subject to management obligations is the result of—

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

### **Amount and payment of aid**

7. Subject to the provisions of these Regulations, payments of aid shall be made annually at a rate of £275 per hectare of land managed for the purpose of the maintenance, improvement or protection of a wildlife habitat.

### **Claims for aid**

8. Any claim for the payment of aid under these Regulations shall be made at such time and in such form and shall contain such information as the Minister reasonably may require.

### **Obligation to permit entry and inspection**

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

- (a) the accuracy of any particulars given in any application or claim under regulation 8 or in any undertaking given by a new occupier pursuant to regulation 6(1)(b); and
- (b) compliance with the management obligations.

(2) A beneficiary shall render all reasonable assistance to the authorised person in relation to the matters mentioned in paragraph (1) above, and in particular shall—

- (a) produce such document or record as may be required by that person for inspection; and
- (b) at the request of that person, accompany him in making the inspection of any land and shall identify any area of land which is concerned in any application or claim or in any undertaking given by a new occupier to comply with the management obligations undertaken by the original occupier.

### **Withholding and recovery of aid and termination**

10.—(1) Where any person, with a view to obtaining the payment of aid under these Regulations to himself or any other person, makes any statement or furnishes any information which is false or misleading in a material respect, the 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 management obligations;
- (b) fails without reasonable excuse to permit entry and inspection by an authorised person or to render all reasonable assistance to such authorised person as required by regulation 9; or
- (c) fails without reasonable excuse to comply with any provision of these Regulations,

the 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 Minister withholds or recovers aid under paragraph (1) or

(2) above, she may also treat as terminated the undertakings given by the beneficiary under these Regulations.

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

- (a) give to the beneficiary a written explanation of the reasons for the proposed withholding or recovery;
- (b) afford the beneficiary an opportunity of appearing before and being heard by a person appointed for that purpose by the 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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**False statements**

11. If any person, for the purposes of obtaining for himself or any other person any aid under these Regulations, knowingly or recklessly makes a statement which is false in a material particular, that person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

In witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 12th May 1994.

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*Gillian Shephard*  
Minister of Agriculture, Fisheries and Food

## SCHEDULE

Regulation 3(b)

### MANAGEMENT REQUIREMENTS

As regards any land which is the subject of an undertaking under regulation 3(a)—

(1) the beneficiary shall within three months of the start of the management period agree in writing with the Minister a management plan for the land for the purpose of the maintenance, improvement or protection of a habitat which is valuable in terms of the diversity or rarity of wildlife, and shall thereafter implement that plan;

(2) the beneficiary shall not apply any inorganic or organic fertilisers (including farmyard manure, pig and poultry manure, slurry and sewage sludge) except on sites which are identified in the management plan referred to in paragraph (1) above as feeding areas for wildfowl, and in such cases shall not apply fertilisers other than in accordance with a programme agreed with the Minister;

(3) the beneficiary shall not apply any lime, slag or other substance designed to reduce the acidity of the soil;

(4) the beneficiary shall not apply any fungicides or herbicides;

(5) the beneficiary shall control non-indigenous weeds such as Himalayan balsam, Japanese knotweed and giant hogweed by spot treatment with non-residual herbicides or by annual pulling;

(6) the beneficiary shall not apply herbicides to control weeds other than those referred to in paragraph (5) above, except to control spear thistle, creeping or field thistle, curled dock, broad-leaved dock or ragwort, and then only by means of a hand-held weed wiper or by spot treatment;

(7) the beneficiary shall control bracken only in accordance with a programme agreed in advance with the Minister;

(8) the beneficiary shall not store or dump any materials or dispose of any pesticides, including sheep dip;

(9) the beneficiary shall not plant any trees or shrubs without the prior approval of the Minister;

(10) the beneficiary shall retain and manage existing trees, shrubs and hedges on or bordering on the land;

(11) the beneficiary shall maintain existing watercourses, ditches, ponds, pools and reedbeds for which he is responsible on or bordering on the land;

(12) the beneficiary shall not install any new land drainage system or modify any existing land drainage system so as to bring about improved drainage;

(13) the beneficiary shall not damage, destroy or remove any traditional buildings, stone walls or features of archaeological or historical value or interest;

(14) the beneficiary shall obtain from the Minister written advice on siting and materials before constructing buildings or roads or before undertaking any other engineering or construction works which do not require prior notification determination by the local planning authority under the Town and Country Planning General Development Order 1988(8), or planning permission.

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(8) S.I. 1988/1813; the relevant amending instrument is S.I. 1991/2805.

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## EXPLANATORY NOTE

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

These Regulations implement in part Council Regulation (EEC) No.2078/92 (OJNo. L215, 30.7.92, p.85) on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside.

The Regulations, which apply to England, provide for the payment of aid to eligible persons, who as regards an area of eligible land (as defined in regulation 2(1)) undertake for a period of 20 years not to use that land for agricultural production, other than for the management of reed beds, and to manage it and any features bordering on it in accordance with the requirements set out in the Schedule to the Regulations with the purpose of maintaining, improving or protecting a wildlife habitat (regulation 3).

Applications for aid must include details such as a map of the eligible land (regulation 4) and restrictions on the acceptance of applications in certain circumstances are set out (regulation 5).

Provision is made for a new occupier of land to receive aid in place of the original occupier upon the Minister's acceptance of his undertaking to comply with the obligations undertaken by the original occupier for the remainder of the management period (as defined in regulation 2(1)) (regulation 6).

Aid is payable annually and the rate is set out (regulation 7).

The Regulations also—

- (a) provide for an obligation to permit entry and inspection (regulation 9);
- (b) provide for withholding and recovery of aid and termination (regulation 10); and
- (c) create an offence, punishable on summary conviction with a fine not exceeding level 5 on the standard scale, of knowingly or recklessly making a false statement in order to obtain aid (regulation 11).