
STATUTORY INSTRUMENTS

1995 No. 1708

AGRICULTURE

The Nitrate Sensitive Areas (Amendment) Regulations 1995

<i>Made</i> - - - -	<i>5th July 1995</i>
<i>Laid before Parliament</i>	<i>6th July 1995</i>
<i>Coming into force</i>	
<i>(except regulation 3)</i>	<i>27th July 1995</i>
<i>Regulation 3</i>	<i>1st June 1996</i>

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

Title, commencement and extent

1.—(1) These Regulations may be cited as the Nitrate Sensitive Areas (Amendment) Regulations 1995 and shall come into force on 27th July 1995, except for regulation 3 which shall come into force on 1st June 1996.

(2) These Regulations shall extend to England only.

Amendment of the Nitrate Sensitive Areas Regulations 1994

2.—(1) The Nitrate Sensitive Areas Regulations 1994⁽³⁾ shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 2 (“Interpretation”), in paragraph (1)—

(a) the following definition shall be inserted before the definition of “agriculture”—

“‘the 1990 Order’ means the Nitrate Sensitive Areas (Designation) Order 1990⁽⁴⁾”;

(b) the following definition shall be inserted before the definition of “farmer”—

(1) S.I. 1972/181.
(2) 1972 c. 68.
(3) S.I. 1994/1729.
(4) S.I. 1990/1013, amended by S.I. 1990/1187 and S.I. 1993/3198.

“‘Farm Woodland Scheme’, ‘basic scheme agreement’ and ‘premium scheme agreement’ have the meaning respectively assigned to each of them by article 2 of the 1990 Order.”;

- (c) in the definitions of “basic scheme”, “premium arable scheme” and “premium grass scheme”, for the words “the undertakings” in each case there shall be substituted the words “undertakings to comply with the requirements”;
 - (d) the following definition shall be substituted for the definition of “nitrate sensitive area”—
 - “‘nitrate sensitive area’ means any of the areas referred to in Schedule 1 and more particularly shown coloured pink on the maps contained in two volumes of maps marked ‘Volume of maps of Nitrate Sensitive Areas’ dated 1st July 1994 and 4th July 1995, respectively, signed and sealed by the Minister and deposited at the offices of the Ministry of Agriculture, Fisheries and Food, Nobel House, 17 Smith Square, London SW1P 3JR.”;
 - (e) at the end of the definition of “permanent grassland”, there shall be added the words, “but excluding such land where, in the opinion of the Minister, it has been in grass as a result of being subject to a premium scheme agreement”;
 - (f) the definition of “scheme” shall be deleted; and
 - (g) in paragraph (2), for the words “map in the”, there shall be substituted the words “map in either of the two volumes of maps marked”.
- (3) For regulation 5, there shall be substituted the following regulation—

“Land which is eligible for aid

5.—(1) For the purposes of regulation 3(1)(b), land in a nitrate sensitive area is eligible for payments of aid under these Regulations, if at the date the undertakings mentioned in regulation 7 are to take effect (or, if there is more than one such date, the first date), it satisfied the condition set out in whichever one of paragraphs (2) to (5) apply to the scheme in respect of which application is made.

(2) In respect of the basic scheme, the conditions are that—

- (a) since 31st December 1991, but except for such period as it has been set-aside land or land to which paragraphs (6) or (7) below applies, the land has been used only for the production of any agricultural crop other than—
 - (i) a permanent crop; or
 - (ii) grass grown for more than five consecutive years; and
- (b) the land has at no time been subject to a premium scheme agreement which includes the obligations in Option D in Schedule 2 to the 1990 Order.

(3) In respect of the premium arable scheme, where the undertakings given or to be given include undertakings to comply with the requirements in Options A, B, C, or D of Schedule 4, the conditions are—

- (a) since 31st December 1991, but except for such period as it has been set-aside land or land to which paragraphs (6) or (7) below apply, the land has not been woodland or permanent grassland and has been used only for the production of any agricultural crop other than—
 - (i) a permanent crop; or
 - (ii) grass grown for more than one consecutive year;

- (b) for such period as paragraph (6) below applies, the premium scheme agreement referred to in that paragraph has been complied with to the satisfaction of the Minister, and
 - (c) the land has at no time been subject to a premium scheme agreement which includes the obligations in Option D in Schedule 2 to the 1990 Order.
- (4) In respect of the premium arable scheme, where the undertakings given or to be given include undertakings to comply with the requirements in Option E of Schedule 4, the conditions are that—
- (a) the land has been subject to a premium scheme agreement which includes the obligations in Option D in Schedule 2 to the 1990 Order; and
 - (b) that premium scheme agreement has been complied with to the satisfaction of the Minister.
- (5) In respect of the premium grass scheme, the condition is that the land is grassland which has been receiving more than 250kg of nitrogen in the form of inorganic nitrogen fertiliser per hectare per year, in each of the three years immediately preceding the date when the undertakings given or to be given in respect of it are to commence.
- (6) This paragraph applies to any land in a nitrate sensitive area in relation to any period of time when the land is subject to obligations under a premium scheme agreement, which includes the obligations in Options A, B or C of Schedule 2 to the 1990 Order.
- (7) This paragraph applies to any land which has been used during any period not exceeding 24 months, as part of an arable rotation for the keeping of livestock which are housed in mobile or temporary structures and which are fed mainly on feed concentrates.”
- (4) In regulation 7 (“Undertakings by farmer”)—
- (a) for the words “The undertakings”, there shall be substituted the words
“*(1) Subject to the following paragraphs of this regulation, the undertakings*”;
 - (b) in paragraph (1)(b)(ii), for the words “C or D” there shall be substituted the words “C, D or E”;
 - (c) after paragraph (1), there shall be added the following paragraphs—
 - “(2) In relation to land—
 - (a) which has been subject to a premium scheme agreement; and
 - (b) in respect of which the application is for aid under the premium arable scheme, the undertakings mentioned in paragraph (1) shall commence immediately on expiry of the premium scheme agreement and shall continue for a period of five consecutive years and until the next following 1st October.
 - (3) Paragraph (2) above shall not apply where the Minister is satisfied that the farmer could not have given the undertakings because he was not then in occupation of the land.
 - (4) The reference in paragraph (3) above to the farmer shall include—
 - (a) the wife, husband, brother, sister, child or parent of the farmer; or
 - (b) any person who, on the date the premium scheme agreement expired, had control, or had control together with any of the persons mentioned in (a) above, of any business (whether incorporated or not) which is now carried on by the farmer.
 - (5) In relation to land (other than land mentioned in paragraph (2) above) which has been subject to an agreement under the 1990 Order, and where the application for aid under these Regulations is made in the year in which the agreement under the 1990 Order expires, the undertakings mentioned in paragraph (1) shall commence immediately on expiry of

the said agreement and shall continue for a period of five consecutive years and until the next following 1st October.

(6) Where the land in respect of which the application for aid under these Regulations is made includes set-aside land or grassland, and the application is for aid under the premium arable scheme or the premium grass scheme, the farmer shall also undertake, if so required by the Minister, to take such steps as the Minister may reasonably require (to which the farmer shall agree prior to the acceptance of his application) for the purpose of improving the grass sward.

(7) Where land has been subject to a premium scheme agreement which includes the obligations in Options A, B or C of Schedule 2 to the 1990 Order, and the application is for aid under the basic scheme, the farmer shall undertake that the land shall not be ploughed—

- (a) where a crop is to be sown prior to 31st December in the year in which the application for aid under these Regulations is made, prior to 1st September in that year; and
- (b) where a crop is to be sown prior to 31st May in the year following the year in which the application for aid under these Regulations is made, prior to 1st December in the year in which the application is made (or, in the case of sandy soils, 1st February in the following year)."

(5) In regulation 8 ("Restrictions on acceptance of applications for aid")—

(a) in paragraph (2), for subparagraphs (a) and (b), the following subparagraphs shall be substituted—

- "(a) the farmer is, or is likely to be, for the whole or any part of the period for which they are or are to be given, unable to comply with his undertakings;
- (b) the undertakings given or to be given by the farmer will not be effective in preventing, to the extent contemplated by the Minister in establishing the scheme in respect of which the application is made, the entry of nitrate into controlled waters; or
- (c) in relation to land which is or has been the subject of an agreement under the 1990 Order, the undertakings given or to be given by the farmer will not be as effective in preventing the entry of nitrate into controlled waters as if the obligations in relation to the land by virtue of the 1990 Order had continued until the end of the period for which the undertakings are or are to be given.";

(b) after paragraph (4), the following paragraph shall be inserted—

"(5) Paragraph (1)(a) shall not apply if the land is a part field of less than four hectares where—

- (a) the land has been subject to a premium scheme agreement;
- (b) the Minister is satisfied there is a positive conservation benefit; and
- (c) the land is being managed so as to maintain that benefit, in particular by the farmer not cutting grass between 1st April and 15th July in any year."

(6) In regulation 9(1) for the words "servants or agents" there shall be substituted the words "servants or agent".

(7) In regulation 12, ("Upgrading of scheme") after paragraph (4), the following paragraph shall be inserted—

"(5) The Minister shall not accept an application under paragraph (1) to enter the premium arable scheme in respect of land which has been subject to a premium scheme

agreement and where the land has subsequently been the subject to undertakings in respect of the basic scheme.”.

(8) The following regulation shall be inserted after regulation 16—

“Duplication of aid

17.—(1) The Minister may withhold the whole or any part of any aid payable to a farmer, or, as the case may be, the new occupier under these Regulations or recover the whole or any part of any such aid already paid to him where the Minister is satisfied that the aid payable or paid has duplicated or will duplicate any assistance previously given or to be given out of money provided by Parliament or the European Community.

(2) Where the Minister withholds or recovers aid under paragraph (1) above, he may give notice to the farmer or, as the case may be, the new occupier, that the Minister is treating as terminated, from the date specified in the notice, the undertakings given by the farmer or new occupier.”.

(9) In Schedule 1 (“NITRATE SENSITIVE AREAS”), in the table, after the entries in respect of “Birchmoor”, there shall be added the entries shown in the table in Schedule 1 to these Regulations.

(10) In Schedule 4 (“REQUIREMENTS UNDER THE PREMIUM ARABLE SCHEME”), after the requirements in relation to “Option D”, there shall be added the provisions in Schedule 2 to these Regulations.

(11) In Schedule 6 (“RATES OF PAYMENT”)—

- (a) the tables shall be amended in accordance with Part I of Schedule 3 to these Regulations; and
- (b) after paragraph 6, the provisions in Part II of Schedule 3 to these Regulations shall be inserted.

Revocations

3. The Nitrate Sensitive Areas (Designation) Order 1990, the Nitrate Sensitive Areas (Designation) (Amendment) Order 1990⁽⁵⁾ and the Nitrate Sensitive Areas (Designation) (Amendment) Order 1993⁽⁶⁾, are hereby revoked.

5th July 1995

Howe
Parliamentary Secretary, Ministry of Agriculture,
Fisheries and Food

(5) S.I. 1990/1187.

(6) S.I. 1993/3198.

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

SCHEDULE 1

Regulation 2(9)

ADDITIONAL NITRATE SENSITIVE AREAS

<i>Column (1)</i> <i>Name of Nitrate Sensitive Area</i>	<i>Column (2)</i> <i>Map Number</i>
“Sleaford	23
Branston Booths	24
Boughton	25
Wildmoor	26
Wellings	27
Tom Hill	28
Ogbourne St. George	29
Egford	30
Old Chalford	31
Kilham	32”

SCHEDULE 2

Regulation 2(10)

ADDITIONAL OPTION

“Option E – conversion of arable land to grassland with woodland

- (i) The farmer shall not apply any nitrogen fertilizer to the grassland or land planted with grass seed;
- (ii) the farmer shall not cut the grass between 1st April and 15th July in any year;
- (iii) the farmer shall not allow the grass to be grazed;
- (iv) the farmer shall maintain woodland complying with the conditions of the Farm Woodland Scheme;
- (v) the farmer shall ensure that—
 - (a) at least 50 per cent of the woodland is broadleaved species of tree; and
 - (b) any conifers planted shall be interspersed with broadleaved species of tree;
- (vi) the farmer shall not plant or maintain alder trees;
- (vii) when planting trees, the farmer shall not remove an area of grass of more than one square metre per tree.”.

SCHEDULE 3

Regulation 2(11)

PART 1

RATES OF PAYMENT IN ADDITIONAL N.S.As.

1. In the table relating to the Basic scheme, Option A—
 - (a) after “Duckaller”, insert “Sleaford, Branston Booths, Boughton, Wildmoor, Wellings, Tom Hill, Ogbourne St. George, Kilham”;
 - (b) after “Birchmoor”, insert “Egford, Old Chalford”.
2. In the table relating to the Premium arable scheme, Option A—
 - (a) after “Aswarby”, insert “Sleaford, Branston Booths, Boughton, Ogbourne St. George, Kilham”;
 - (b) after “Birchmoor”, insert “Wildmoor, Wellings, Tom Hill, Egford, Old Chalford”.
3. In the table relating to the Premium arable scheme, Option B—
 - (a) after “Aswarby”, insert “Sleaford, Branston Booths, Boughton, Ogbourne St. George, Kilham”;
 - (b) after “Birchmoor”, insert “Wildmoor, Wellings, Tom Hill, Egford, Old Chalford”.
4. In the table relating to the Premium arable scheme, Option C—
 - (a) after “Aswarby”, insert “Sleaford, Branston Booths, Boughton, Ogbourne St. George, Kilham”;
 - (b) after “Birchmoor”, insert “Wildmoor, Wellings, Tom Hill, Egford, Old Chalford”.
5. In the table relating to the Premium arable scheme, Option D—
 - (a) after “Aswarby”, insert “Sleaford, Branston Booths, Boughton, Ogbourne St. George, Kilham”;
 - (b) after “Birchmoor”, insert “Wildmoor, Wellings, Tom Hill, Egford, Old Chalford”.

PART II

RATES OF PAYMENT FOR ADDITIONAL OPTION

“Option E – Conversion of arable land to grassland with woodland

6A. Where the undertakings given by a farmer include undertakings to comply with the requirements set out in Option E in Schedule 4, payments under these Regulations for each hectare of land in any nitrate sensitive area named in column (1) below shall be at the rate per year specified in the corresponding entry in column (2) below

<i>Column (1)</i> <i>Name of Nitrate Sensitive Area</i>	<i>Column (2)</i> <i>Payment per hectare per year</i>
Sleaford, Branston Booths, Boughton, Ogbourne St. George, Kilham	£450
Wildmoor, Wellings, Tom Hill, Egford, Old Chalford	£350”

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations, which comply with Council Regulation (EEC) No. 2078/92 (O.J. No. L215,30.7.92, p. 85), form part of the zonal programme for England required by Article 3 of that Regulation, and amend the Nitrate Sensitive Areas Regulations 1994 (“the principal Regulations”). The principal Regulations allow the Minister of Agriculture, Fisheries and Food (“the Minister”) to make payments of aid to farmers in nitrate sensitive areas who give undertakings to manage their land in accordance with a “basic scheme”, a “premium arable scheme” or a “premium grass scheme” (as defined in the principal Regulations).

2. Under the Nitrate Sensitive Areas (Designation) Order 1990 (“the 1990 Order”), as amended, the Minister has entered into agreements to make payments to farmers in return for obligations assumed as to the management of land in ten areas. These Regulations add those areas (with boundary changes for Kilham, Sleaford and Ogbourne St. George) to the list of nitrate sensitive areas in Schedule 1 of the principal Regulations (regulation 2(2)(d) and Schedule 1).

3. All the nitrate sensitive areas are shown on maps which are deposited at the offices of the Ministry of Agriculture, Fisheries and Food, Nobel House, 17 Smith Square, London SW1P 3JR, and can be inspected during normal office hours.

4. Regulation 2(3) expands the criteria of eligibility of land for aid (by amending Regulation 5 of the principal Regulations) in the following cases:

- (i) land becomes eligible for the basic scheme where it has been subject to certain agreements under the 1990 Order, or where it has been used for keeping livestock as part of an arable rotation;
- (ii) land becomes eligible for the premium arable scheme, where there has been satisfactory compliance with certain agreements under the 1990 Order, or where it has been used for keeping livestock as part of an arable rotation;
- (iii) land becomes eligible for a new arable woodland scheme option directly, where there has been satisfactory compliance with a similar agreement option under the 1990 Order. Schedule 2 sets out the undertakings which apply to this new option.

5. Further provisions amend the undertakings to be given by the farmer (by amending regulation 7 of the principal Regulations) by providing (regulation 2(4)):

- (i) that in specified cases the undertakings will commence immediately on expiry of the agreement under the 1990 Order;
- (ii) for additional undertakings aimed at improving grass quality (if required by the Minister) in the case of grassland or set-aside land for which there is an application to enter either the premium arable scheme or the premium grass scheme;
- (iii) for additional undertakings as to the timing of ploughing, where there have been certain premium scheme agreements and there is an application to enter the basic scheme.

6. Further provisions amend the restrictions on acceptance of applications for aid (by amending regulation 8 of the principal Regulations) by adding (regulation 2(5)):

- (i) a discretion for the Minister to refuse an application, where he is satisfied that undertakings given under the principal Regulations will not be as effective in

preventing the entry of nitrate into controlled waters, as would be the case if the agreements under the 1990 Order had continued;

- (ii) a discretion permitting the entry into schemes under the principal Regulations of existing part fields of any size subject to a premium scheme agreement under the 1990 Order, where the Minister is satisfied that there is a positive conservation benefit.

7. Regulation 2(7) amends regulation 12 of the principal Regulations by prohibiting upgrading into the premium arable scheme where there has been a premium scheme agreement under the 1990 Order and the land has meanwhile been in the basic scheme.

8. Regulation 2(8) permits the Minister to withhold or recover payment, and to terminate undertakings, where aid is duplicated by other national or European Community assistance.

9. The rates of payment applicable to each of the ten new nitrate sensitive areas and for the arable woodland scheme option are set out (regulation 2(11) and Schedule 3).

10. The 1990 Order is revoked with effect from 1st June 1996 (by which date all agreements under the 1990 Order will have ended) (regulation 3)).