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STATUTORY INSTRUMENTS

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**1996 No. 1482**

**AGRICULTURE**

**The Arable Area Payments (Amendment) Regulations 1996**

<i>Made</i>	- - - -	<i>5th June 1996</i>
<i>Laid before Parliament</i>		<i>10th June 1996</i>
<i>Coming into force</i>	- -	<i>1st July 1996</i>

The Minister of Agriculture, Fisheries and Food and the Secretary of State, being Ministers 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, acting jointly in the 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, extent and commencement**

1. These Regulations may be cited as the Arable Area Payments (Amendment) Regulations 1996, shall extend to Great Britain and shall come into force on 1st July 1996.

**Amendments to the Arable Area Payments Regulations 1995**

2.—(1) The Arable Area Payments Regulations 1995(3) shall be amended in accordance with the following paragraphs of this regulation.

(2) In paragraph (1) of regulation 2 (interpretation)—

- (a) in the definition of “agricultural plot” for the phrase which begins with “Article 2(1)(e)” and ends with “2780/92” there shall be substituted “Article 3(1)(d) of Commission Regulation 658/96”;
- (b) the definitions of “Commission Regulation 2294/92”, “Commission Regulation 2295/92” and “Commission Regulation 2780/92” shall be deleted;
- (c) in the definition of “Commission Regulation 3887/92” for “Commission Regulation (EC) No. 229/95(4)” there shall be substituted “Commission Regulation (EC) No. 2015/95(5)”;

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(1) S.I. 1972/1811.

(2) 1972 c. 68.

(3) S.I. 1995/1738, amended by S.I. 1995/2780.

(4) OJ No. L 27, 4.2.95, p.3.

(5) OJ No. L 197, 22.8.95, p.2.

- (d) in the definition of “Commission Regulation 334/93” for “Commission Regulation (EC) No. 1870/95(6)” there shall be substituted “Commission Regulation (EC) No. 2991/95(7)”;
- (e) in the definition of “Commission Regulation 762/94” for “Commission Regulation (EC) No. 229/95” there shall be substituted “Commission Regulation (EC) No. 2930/95(8)”;
- (f) after the definition of “Commission Regulation 762/94” there shall be inserted the following definition—
- “‘Commission Regulation 658/96’ means Commission Regulation (EC) No. 658/96 on certain conditions for granting compensatory payments under the support system for producers of certain arable crops(9)
- (g) in the definition of “Council Regulation 2092/91” for “Commission Regulation (EC) No. 2381/94(10)” there shall be substituted “Commission Regulation (EC) No. 418/96(11)”;
- (h) in the definition of “Council Regulation 1765/92” for “Council Regulation (EC) No. 1460/95(12)” there shall be substituted “Council Regulation (EC) No. 2989/95(13)”;
- (i) in the definition of “Council Regulation 2078/92” after “countryside” there shall be added “as last amended by Commission Regulation (EC) No. 2772/95(14)”;
- (j) in the definition of “eligible land”—
- (i) in sub-paragraph (b) for “the Annex to Commission Regulation 2780/92” there shall be substituted “Annex I to Commission Regulation 658/96”,
- (ii) in sub-paragraph (c) before the phrase “Article 3(3) of Commission Regulation 2780/92” there shall be added “with” and after that phrase there shall be added “or Article 2(4) of Commission Regulation 658/96”, and
- (iii) in sub-paragraph (d) for “Article 3(4) of Commission Regulation 2780/92” there shall be substituted “Article 2(5) of Commission Regulation 658/96”; and
- (k) for the definition of “farm-saved rapeseed” there shall be substituted the following definition—
- “‘farm-saved rapeseed’ means seed which—
- (a) is the product of a harvest obtained from the planting, on a particular holding, of certified seed of a variety listed in Annex II to Commission Regulation 658/96, and
- (b) is, or is to be, sown on the same holding;”.
- (3) In paragraph (1) of regulation 5 (minimum size of agricultural plot) for the phrase beginning with “Article 2(1)(e)” and ending with “2780/92,” there shall be substituted “Article 3(1)(d) of Commission Regulation 658/96”.
- (4) In paragraph (1) of regulation 5A (exchanges of eligible and ineligible land) for “Article 3(4) of Commission Regulation 2780/92” there shall be substituted “Article 2(5) of Commission Regulation 658/96”.
- (5) For regulation 10 (requirements in relation to rapeseed), there shall be substituted—

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(6) OJ No. L 179, 29.7.95, p.40.  
 (7) OJ No. L 312, 23.12.95, p.9.  
 (8) OJ No. L 307, 20.12.95, p.8.  
 (9) OJ No. L 91, 12.4.96, p.46.  
 (10) OJ No. L 255, 1.10.94, p.84.  
 (11) OJ No. L 59, 8.3.96, p.10.  
 (12) OJ No. L 144, 28.6.95, p.1.  
 (13) OJ No. L 312, 23.12.95, p.5.  
 (14) OJ No. L 288, 1.12.95, p.35.

## **“10 Requirements in relation to rapeseed**

(1) Subject to paragraphs (2) to (5) inclusive of this regulation, access to the compensatory payments in respect of rapeseed and colzaseed referred to in paragraph (3) of Article 4 of Commission Regulation 658/96 shall be permitted for each of the seed categories listed at subparagraphs (a) to (e) inclusive of that paragraph.

(2) In respect of the seed category listed in Article 4(3)(b) of Commission Regulation 658/96—

(a) a farmer who sows any variety of seed of that category on his holding shall not be entitled to receive compensatory payments in respect of the land sown with that seed unless that seed is qualifying seed and has been cleaned and dressed separately from any farm-saved rapeseed of a different variety produced on that holding and from seed not produced on that holding;

(b) for the purposes of sub-paragraph (a) above, seed is qualifying seed if it was harvested—

(i) during the pre-sowing harvest; or

(ii) subject to sub-paragraph (c) below, during the harvest immediately preceding the pre-sowing harvest; and

(b) seed harvested during the harvest immediately preceding the pre-sowing harvest is qualifying seed for the purposes of sub-paragraph (a) above only if—

(i) climatic conditions during the pre-sowing harvest were such that it was either not possible to harvest farm-saved rapeseed or not possible to clean and dress it as specified in sub-paragraph (a) above or to obtain the results of the mandatory analysis before the time at which it would be necessary to sow seed in order to obtain a successful crop; and

(ii) the farmer has informed the seed sampler, before sowing such seed, that he intended to sow it because the conditions of paragraph (i) above were satisfied.

(3) In respect of the seed category listed in Article 4(3)(c) of Commission Regulation 658/96, seed sown or to be sown by a farmer shall be regarded as registered for inspection and control as required by that provision where—

(a) sufficient documentary evidence to show the intended use of the crop of that seed (as specified in that provision) comes into being before the sowing of that seed; and

(b) a copy of such evidence is lodged with the Minister not later than the application for the compensatory payment in respect of the land on which that seed is or is to be sown.

(4) In respect of the seed category listed in Article 4(3)(d) of Commission Regulation 658/96—

(a) a person who wishes to be specially approved as a buyer (as referred to in that provision) shall apply to the Minister for approval in such form as the Minister may reasonably require;

(b) subject to sub-paragraphs (c), (d) and (e) below, the Minister shall approve such an application;

(b) the Minister may refuse an application if he believes that such a refusal is necessary to ensure that seed is not diverted from an intended use referred to in that provision;

- (d) the Minister may revoke such an approval at any time after it has been given if he believes that such a revocation is necessary to ensure that seed is not diverted from an intended use referred to in that provision; and
  - (e) such an approval, refusal or revocation shall be given in writing to the person concerned and in the case of a refusal or revocation shall state the reasons for the Minister's belief.
- (5) In respect of the seed category listed in Article 4(3)(e) of Commission Regulation 658/96—
- (a) a person who wishes to be approved as a first buyer (as referred to in that provision) shall apply to the Minister for approval in such form as the Minister may reasonably require;
  - (b) subject to sub-paragraphs (c), (d) and (e) below, the Minister shall approve such an application;
  - (b) the Minister may refuse an application if he believes that such a refusal is necessary to ensure that seed is not diverted from an intended use referred to in that provision;
  - (d) the Minister may revoke such an approval at any time after it has been given if he believes that such a revocation is necessary to ensure that seed is not diverted from an intended use referred to in that provision; and
  - (e) such an approval, refusal or revocation shall be given in writing to the person concerned and in the case of a refusal or revocation shall state the reasons for the Minister's belief.
- (6) For the purposes of Article 3(1)(b) of Commission Regulation 658/96 (which restricts eligibility for compensatory payments in respect of arable crops to areas fully sown in accordance with local standards)—
- (a) a farmer who sows—
    - (i) a crop of winter high erucic acid rapeseed within 50 metres of a crop of previously sown winter double zero rapeseed;
    - (ii) a crop of spring high erucic acid rapeseed within 50 metres of a crop of previously sown spring double zero rapeseed;
    - (iii) a crop of winter double zero rapeseed within 50 metres of a crop of previously sown winter high erucic acid rapeseed; or
    - (iv) a crop of spring double zero rapeseed within 50 metres of a crop of previously sown spring high erucic acid rapeseed,shall not be recognised as having sown that crop in accordance with local standards; and
  - (b) a farmer who, in any case referred to in paragraphs (i) to (iv) of sub-paragraph (a) above, has also sown the previously sown crop, shall not be recognised as having sown that previously sown crop in accordance with local standards.
- (7) As provided for in Article 4 of Commission Regulation 334/93 (which permits exclusion of particular raw materials from the scheme implemented by that Regulation if they raise difficulties as regards agricultural practice, control, public health or the environment or in terms of criminal law)—
- (a) where—
    - (i) a crop of winter high erucic acid rapeseed is sown within 50 metres of a crop of previously sown winter double zero rapeseed;

- (ii) a crop of spring high erucic acid rapeseed is sown within 50 metres of a crop of previously sown spring double zero rapeseed;
      - (iii) a crop of winter double zero rapeseed is sown within 50 metres of a crop of previously sown winter high erucic acid rapeseed;
      - (iv) a crop of spring double zero rapeseed is sown within 50 metres of a crop of previously sown spring high erucic acid rapeseed,
    - the later sown crop shall be excluded from that scheme; and
  - (b) where—
    - (i) any later sown crop referred to in one of paragraphs (i) to (iv) of sub-paragraph (a) above is sown in a location referred to in that paragraph; and
    - (ii) the farmer who sowed that crop is also the farmer who sowed the previously sown crop referred to in that paragraph,
  - the previously sown crop shall be excluded from that scheme.
- (8) For the purposes of this regulation—
- (a) the “pre-sowing harvest”, in relation to the sowing of any seed, is the harvest immediately preceding the autumn or spring in which the seed is sown;
  - (b) the “seed sampler” is an appointed agent of the Minister whom the Minister has authorised by letter to take the samples required for mandatory analysis;
  - (b) a “mandatory analysis” is the analysis required by sub-paragraph (b) of Article 4(3) of Commission Regulation 658/96 to ensure that farm-saved rapeseed conforms to the minimum quality criterion specified in that sub-paragraph;
  - (d) “double zero rapeseed” is any variety of rapeseed or colzaseed conforming to the glucosinolate and erucic acid requirements of Article 4(2) of Commission Regulation 658/96 and listed in Annex II to that Regulation;
  - (e) “high erucic acid rapeseed” means rapeseed or colzaseed of any variety conforming to the erucic acid requirement of Article 4(3)(e) of Commission Regulation 658/96;
  - (f) “winter double zero rapeseed” and “winter high erucic acid rapeseed” means double zero rapeseed or high erucic acid rapeseed (as the case may be) sown in the year before the intended year of harvest of the crop derived from it; and
  - (g) “spring double zero rapeseed” and “spring high erucic acid rapeseed” means double zero rapeseed or high erucic acid rapeseed (as the case may be) sown in the calendar year as it is intended to harvest the crop derived from it.”.
- (6) In regulation 13 (reduction or cancellation of compensatory payments for breach of Schedules 2 and 3)—
- (a) in paragraph (1) after “26,” there shall be inserted “or paragraph 1A of Schedule 3,”; and
  - (b) the following paragraph shall be inserted after paragraph 1—
    - “(1A) Any reduction in the set-aside compensatory payment made by virtue of paragraph (1) above by reason of a breach of paragraph 1A of Schedule 3 shall have effect notwithstanding the exclusion of civil liability—
      - (a) (in England and Wales) for the contravention of a code of practice approved or having effect as if approved under section 97 of the Water Resources Act 1991(15) provided for in paragraph (2) of that section; or

- (b) (in Scotland) for the contravention of a code of practice approved under section 51 of the Control of Pollution Act 1974<sup>(16)</sup> provided for in paragraph (2) of that section.”.
- (7) In Schedule 1 (derogation from requirement to have farmed set-aside land for two years)—
- (a) in both Part I (derogations in respect of land in England and Wales) and Part II (derogations in respect of land in Scotland), for paragraph 1(e) there shall be substituted the following sub-paragraph—
- “(e) where he—
- (i) satisfies the Minister that he farms the land by organic means or is converting to doing so; and
- (ii) has pursuant to Article 8(1) of Council Regulation 2092/91 notified the appropriate Minister (as defined by regulation 2(1) of the Organic Products Regulations 1992<sup>(17)</sup>) that by so farming the land he produces products of a kind specified in Article 1 of that Regulation, and has submitted to the inspection system referred to in Article 9 thereof.”;
- and
- (b) in Part I, for paragraph 2(b) there shall be substituted the following sub-paragraph—
- “(b) a farmer has relevant tenure of agricultural land where he is—
- (i) a tenant of the land under an agricultural tenancy from year to year,
- (ii) a tenant of the land under a tenancy for a fixed term subject to the Agricultural Holdings Act 1986<sup>(18)</sup>,
- (iii) a tenant of the land under an agreement approved by the Minister in accordance with section 2 or 5 of the Agricultural Holdings Act 1986,
- (iv) a tenant of the land under a farm business tenancy as defined in section 1 of the Agricultural Tenancies Act 1995<sup>(19)</sup>,
- (v) farming the land under an agreement which would have been an agricultural tenancy from year to year had the Agricultural Tenancies Act 1995 not come into force, or
- (vi) farming the land under a sharefarming agreement;”
- (8) In Schedule 2 (management requirements in relation to set-aside land), Part A (management options for set-aside land), for paragraph 9(2)(b) there shall be substituted the following paragraph—
- “(b) where the field is to remain set aside in the following scheme year, leave a further 25 per cent of the area set aside in that field uncut provided that any area left uncut in accordance with this paragraph which has also been left uncut in the previous two scheme years in accordance with this paragraph is cut in accordance with sub-paragraph (1) in the following scheme year.”.
- (9) In Schedule 2 (management requirements in relation to set-aside land), Part B (general management conditions applying to all set-aside land)—
- (a) after paragraph 11 there shall be inserted the following paragraph—

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<sup>(16)</sup> 1974 c. 40, section 51 was substituted by the Water Act 1989 (c. 15) section 169 and Schedule 23, paragraph 5.

<sup>(17)</sup> S.I. 1992/2111, amended by S.I. 1993/405 and S.I. 1994/2286.

<sup>(18)</sup> 1986 c. 5.

<sup>(19)</sup> 1995 c. 8.

**“Restriction on cutting the green cover**

**11A.**—(1) In relation to set-aside land situated in England and Wales, where a farmer has applied a non-selective herbicide to that set-aside land during the set-aside period but not earlier than 15th April and not later than 30th June during that period, then he shall not subsequently cut any green cover on that set-aside land before the 1st July prior to the end of that period.

(2) In relation to set-aside land situated in Scotland, in respect of the scheme year beginning on 15th January 1997 and any subsequent scheme year—

(a) subject to an exemption being granted in accordance with paragraph (b) below, and subject to paragraph (c) below, a farmer shall neither cut any green cover on that set-aside land nor apply any herbicide to that set-aside land between the dates 1st May to 15th July inclusive during the set-aside period;

(b) the Minister may grant an exemption from the restrictions on cutting green cover on and applying herbicide to set-aside land imposed by paragraph (a) above to a farmer in respect of any particular area of set-aside land where—

(i) that farmer applies to the Minister for such an exemption;

(ii) the Minister believes that that particular area of set-aside land is infested with one or more of the injurious weeds listed in section 1(2) of the Weeds Act 1959<sup>(20)</sup>; and

(iii) no cutting of green cover or application of herbicide which constitutes a breach of the requirements of paragraph (a) above has taken place in respect of that particular area of set-aside land during the set-aside period in respect of which the exemption is sought; and

(b) the restrictions on cutting green cover on set-aside land imposed by paragraph (a) above shall not apply to any set-aside land managed by a farmer who—

(i) satisfies the Minister that he farms the land by organic means or is converting to doing so; and

(ii) has pursuant to Article 8(1) of Council Regulation 2092/91 notified the appropriate Minister (as defined by regulation 2(1) of the Organic Products Regulations 1992) that by so farming the land he produces products of a kind specified in Article 1 of that Regulation, and has submitted to the inspection system referred to in Article 9 thereof.”;

and

(b) in paragraph 13—

(i) for paragraph (a) of sub-paragraph (1) there shall be substituted the following paragraph—

“(a) subject to paragraph (aa) below, cultivate the land (except where the land is guaranteed set-aside land or environmental transferred set-aside land) for the purpose of controlling weeds—

(i) where the land is situated in England and Wales, at any time on or after 1st July prior to the end of the set-aside period;

- (ii) where the land is situated in Scotland, in respect of the scheme year which began on 15th January 1996, at any time after 1st July 1996; and
  - (iii) where the land is situated in Scotland, in respect of the scheme year starting on 15th January 1997 or any subsequent scheme year, at any time during the set-aside period other than between the dates 1st May to 15th July inclusive during that period;”;
- (ii) after paragraph (a) of sub-paragraph (1) there shall be added the following paragraph—
- “(aa) cultivate the land (except where the land is guaranteed set-aside land or environmental transferred set-aside land) for the purpose of controlling weeds at any time on or after 1st May prior to the end of the set-aside period where he—
- (i) satisfies the Minister that he farms the land by organic means or is converting to doing so; and
  - (ii) has pursuant to Article 8(1) of Council Regulation 2092/91 notified the appropriate Minister (as defined by regulation 2(1) of the Organic Products Regulations 1992) that by so farming the land he produces products of a kind specified in Article 1 of that Regulation, and has submitted to the inspection system referred to in Article 9 thereof; and”;
- (iii) in paragraph (b) of sub-paragraph (1) and in sub-paragraph (2) for “or traditional forage crop” there shall be substituted “, traditional forage crop or other permitted crop”; and
- (iv) the following sub-paragraph shall be inserted after sub-paragraph (3)—
- “(4) For the purposes of this paragraph, ‘other permitted crop’ shall mean a crop which consists of one or more of the following—
- (a) ornamental bulbs (which phrase shall be taken not to include onions or garlic);
  - (b) field grown trees or shrubs;
  - (c) cane fruits; or
  - (d) strawberries.”.
- (10) In Schedule 3 (requirements in relation to land set aside for the provision of specified raw materials) there shall be inserted after paragraph 1—
- “**1A.** If a farmer applies any fertiliser, waste or lime to the set-aside land he shall only do so—
- (a) in accordance with the needs of the specified raw materials being produced thereon; and
  - (b) in a manner which is consistent—
- (i) where the land is in England and Wales, with the Code of Good Agricultural Practice for the Protection of Water approved by the Water (Prevention of Pollution) (Code of Practice) Order 1991(21); and
  - (ii) where the land is in Scotland, with the provisions of the Code of Good Practice for the Prevention of Environmental Pollution from Agricultural

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(21) S.I. 1991/2285, having effect as if approved under section 97 of the Water Resources Act 1991 by virtue of section 2(2) and paragraph 1(1) and (2) of Schedule 2 to the Water Consolidation (Consequential Provisions) Act 1991 (1991 c. 60).



Activity approved by the Water (Prevention of Pollution) (Code of Practice) (Scotland) Order 1992(22).”

3rd June 1996

*Tony Baldry*  
Minister of State Ministry of Agriculture,  
Fisheries and Food

Scottish Office  
5th June 1996

*Lindsay*  
Parliamentary Under Secretary of State,

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

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## EXPLANATORY NOTE

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

1. These Regulations amend the Arable Area Payments Regulations 1995 (S.I.1995/1738, as amended by S.I. 1995/2780) (“the Existing Regulations”). Like those Regulations, these Regulations apply throughout Great Britain. They make further provision for the implementation and supplementing of Council Regulation (EEC) No. 1765/92 which establishes a support system for producers of certain arable crops and the Commission Regulations made under it, namely Commission Regulation (EEC) 334/93 and Commission Regulations (EC) 762/94 and 658/96 (which repeals and replaces Commission Regulations (EEC) Nos. 2294/92, 2295/92 and 2780/92 with effect from 1st July 1996).

2. Regulation 2(1) of the Existing Regulations defines these various Regulations and the definitions include amendments to them. These Regulations bring these references up to date by amending relevant definitions in the light of amendments to these EC Regulations and make consequential textual changes to the Existing Regulations.

3. These regulations also make provision for the implementation of Articles 3 and 4 of Commission Regulation 658/96 (on certain conditions for granting compensatory payments under the support system for producers of certain arable crops) by the substitution of a new regulation 10 for regulation 10 of the Existing Regulations which deals with rapeseed. New provision is made in respect of local standards for sowing distance separation for the sowing of rapeseed; and a quality policy for rapeseed is implemented by setting out the restrictions on types of seeds eligible for compensatory payments.

4. The new regulation 10 also provides for the application of Article 4 of Commission Regulation 334/93 (which lays down implementing rules for the use of land set aside for the provision of non-food crops). It specifies the standards for sowing distance in relation to rapeseed subject to which access to set-aside compensatory payments is permitted.

5. Schedule 1, Part I of the Existing Regulation (derogations in England and Wales from the requirement to have farmed land for two years prior to setting in aside) is amended to take account of the changes made to agricultural tenancy legislation in England and Wales made by the Agricultural Tenancies Act 1995.

6. Schedules 2 and 3 to the Existing Regulations (management requirements in relation to set-aside land and requirements in relation to land set aside for the provision of specified raw materials) are amended to vary the controls on cutting and spraying the green cover on set-aside land, to widen the range of crops which may be sown on set-aside land before the end of the set-aside period and to apply controls to the application of fertiliser, waste or lime to land set-aside to produce non-food crops.