
STATUTORY INSTRUMENTS

1996 No. 3107

AGRICULTURE

**The Habitat (Former Set-Aside Land)
(Amendment) (No. 2) Regulations 1996**

Made - - - - *10th December 1996*
Laid before Parliament *11th December 1996*
Coming into force - - *1st January 1997*

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 on him by that section, and of all other powers enabling him in that behalf, and after consulting the Secretary of State for the Environment, the Countryside Commission, the Nature Conservancy Council for England and the Historic Buildings and Monuments Commission for England in accordance with section 99 of the Environment Act 1995⁽³⁾, hereby makes the following Regulations:

Title, commencement and extent

1. These Regulations may be cited as the Habitat (Former Set-Aside Land) (Amendment) (No. 2) Regulations 1996, shall come into force on 1st January 1997, and shall apply to England.

Amendments to previous Regulations

2.—(1) The Habitat (Former Set-Aside Land) Regulations 1994⁽⁴⁾ shall be amended in accordance with the following provisions of this regulation.

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

(a) after the definition of “agriculture” and “agricultural” there shall be inserted the following definition—

““agri-environment scheme” means an arrangement which is—

(a) regulated by statutory instrument providing for the payment of aid to persons who give an undertaking or enter an agreement in relation to land to which that instrument relates; and

(1) S.I. 1972/1811.

(2) 1972 c. 68.

(3) 1995 c. 25.

(4) S.I. 1994/1292, amended by S.I. 1996/1478.

- (b) approved by the Commission of the European Communities under Article 7(3) of the Council Regulation as part of a zonal programme drawn up pursuant to Article 3 of the Council Regulation;”;
- (b) after the definition of “beneficiary” there shall be inserted the following definitions—
- ““the Commission Regulation” means Commission Regulation (EC) No. 746/96⁽⁵⁾ laying down detailed rules for the application of the Council Regulation;
- “the Council Regulation” means Council Regulation (EEC) No. 2078/92⁽⁶⁾ on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside as last amended by Commission Regulation (EC) No. 2772/95⁽⁷⁾ as rectified by Commission Regulation (EC) No. 1962/96⁽⁸⁾;”;
- (c) for the definition of “eligible person” there shall be substituted the following definition—
- ““eligible person” means a person who on the date of the submission of his application—
- (a) occupies eligible land as an owner or tenant and has so occupied that land for a continuous period starting at least twelve months before the start of his management period; and
- (b) is not prohibited from providing an undertaking pursuant to an agri-environment scheme either by application of a penalty consequent upon Article 20(2) of the Commission Regulation (which requires member states to determine a system of penalties which are effective, commensurate with their purpose and of adequate deterrent effect to be imposed for breaches of undertakings) or by application of Article 20(3) of the Commission Regulation (which requires a person who, intentionally or by reason of gross negligence, makes a false declaration, to be excluded from all aid under the Council Regulation);”.
- (3) In regulation 6 (change of occupation)—
- (a) there shall be substituted for paragraph (2) the following paragraph—
- “(2) The Minister shall not accept an undertaking referred to in paragraph (1)(b) above unless he is satisfied that the new occupier—
- (a) occupies the land or part as an owner or tenant or as the personal representative of the original occupier; and
- (b) is not prohibited from providing an undertaking pursuant to an agri-environment scheme by application of Article 10 of the Commission Regulation (which restricts duplication of aid payments), by application of a penalty consequent upon Article 20(2) of the Commission Regulation (which requires member states to determine a system of penalties which are effective, commensurate with their purpose and of adequate deterrent effect to be imposed for breaches of undertakings) or by application of Article 20(3) of the Commission Regulation (which requires a person who, intentionally or by reason of gross negligence, makes a false declaration, to be excluded from all aid under the Council Regulation).”;
- (b) there shall be substituted for paragraph (7) the following paragraph—

⁽⁵⁾ O.J. No. L102, 25.4.96, p. 19.

⁽⁶⁾ O.J. No. L215, 30.7.92, p. 85.

⁽⁷⁾ O.J. No. L288, 1.12.95, p. 35.

⁽⁸⁾ O.J. No. L259, 12.10.96, p. 7.

“(7) The foregoing provisions of this Regulation shall be subject to Article 11 of the Commission Regulation (which governs transfers of holdings) and Article 12 of the Commission Regulation (force majeure).”.

(4) In regulation 7 (amount and payment of aid) after the phrase “Subject to the provisions of these Regulations” there shall be inserted the phrase “, of Article 20(3) of the Commission Regulation (which requires a person who, intentionally or by reason of gross negligence, makes a false declaration, to be excluded from all aid under the Council Regulation) and, in respect of an application made on or after 1st January 1997, of Article 10 of the Commission Regulation (which restricts duplication of aid payments),”.

(5) For regulation 10 (withholding and recovery of aid and termination) there shall be substituted the following regulation—

“Withholding and recovery of aid, termination and exclusion

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, the Minister may withhold the whole or any part of any aid payable to that person or to such other person and may, subject to the provisions of Article 20 of the Commission Regulation (which provides for recovery of wrongful payments with interest, a penalty system and exclusion for false declarations), 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 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 to comply with any other requirement 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 and may also, in so far as is consequent upon Article 20(2) of the Commission Regulation (which requires member states to determine a system of penalties which are effective, commensurate with their purpose and of adequate deterrent effect to be imposed for breaches of undertakings), require him to pay to the Minister a sum equal to no more than 10% of the aid paid or payable to the beneficiary.

(3) Where the Minister takes any step specified in paragraph (1) or (2) above, he may also treat as terminated the undertakings given by the beneficiary under these Regulations.

(4) Where under paragraph (3) above the Minister treats the undertakings given by the beneficiary as terminated, in connection with any step taken under paragraph (2) above, he may also, in so far as is consequent upon Article 20(2) of the Commission Regulation, by notice in writing to the beneficiary prohibit him from providing a new undertaking or entering a new agreement under an agri-environment scheme for such period (not exceeding two years) from the date of that termination as is specified in the notice.

(5) Before taking any step specified in paragraph (2), (3) or (4) above by reference to paragraph (2)(a) above, the Minister shall—

- (a) give to the beneficiary a written explanation of the reasons for the step proposed to be taken;
- (b) afford the beneficiary the 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.”.

(6) After regulation 10 (withholding and recovery of aid and termination) there shall be added the following regulations—

“Recovery of Interest

10A.—(1) Where a payment of aid is made to a beneficiary by the Minister and, by virtue of Article 20(1) of the Commission Regulation (which provides for recovery of wrongful payments with interest), a reimbursement of all or part of the payment with interest is required, the rate of interest shall be one percentage point above LIBOR on a day to day basis.

(2) For the purposes of this regulation, LIBOR means the sterling three month London interbank offered rate in force during the period specified in Article 20(1) of the Commission Regulation.

(3) In any proceedings relating to this regulation, a certificate of the Minister stating the LIBOR applicable during a period specified in the certificate shall be conclusive evidence of the rate applicable in the specified period if the certificate also states that the Bank of England notified the Minister of that rate.

Recovery of payments

10B. In any case, where an amount falls to be paid to the Minister by virtue of (or by virtue of action taken under) these Regulations or the Commission Regulation insofar as it relates to eligible land in relation to which a beneficiary has assumed management obligations, the amount so falling to be paid shall be recoverable as a debt.”.

Ministry of Agriculture,
Fisheries and Food
10th December 1996

Tim Boswell
Parliamentary Secretary,

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Habitat (Former Set-Aside Land) Regulations 1994 (as amended by S.I.1996/1478) (“the principal Regulations”) which implement in part a zonal programme approved by the European Commission (“the Commission”) under Article 7 of Council Regulation (EEC) No. 2078/92 (O.J. No. L215, 30.7.92, p. 85) (“the Agri-environment Regulation”) on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside.

These Regulations make provision to implement Commission Regulation (EC) No. 746/96 (O.J. No. L102, 25.4.96, p. 19) (“the Commission Regulation”) laying down detailed rules for the application of the Agri-environment Regulation, in particular Article 10 (which restricts duplication of aid payments), Article 11 (which governs transfers of holdings entered into agreements or undertakings under the Agri-environment Regulation), Article 12 (force majeure) and Article 20 (which provides for recovery of wrongful payments with interest, a penalty system and exclusion for false declarations).

The Regulations—

- (a) specify that entitlement to payment under the principal Regulations is subject to the provisions of Article 10 and Article 20(3) of the Commission Regulation,
- (b) make provision to enable the Minister to recover grant and impose penalties in accordance with Articles 11, 12 and 20 of the Commission Regulation, and
- (c) set a rate of interest where recovery of money is to include interest in accordance with Article 20(1) of the Commission Regulation.

The Regulations form part of a package submitted to the Commission under Article 23 of the Commission Regulation.

No Compliance Cost Assessment in relation to these Regulations has been prepared.