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STATUTORY INSTRUMENTS

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**2004 No. 3385**

**AGRICULTURE, ENGLAND**

**The Common Agricultural Policy Single Payment  
Scheme (Set-aside) (England) Regulations 2004**

*Made* - - - - 20th December 2004  
*Laid before Parliament* 21st December 2004  
*Coming into force* - - 15th January 2005

The Secretary of State, 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 upon her by that section hereby makes the following Regulations:

**Title, commencement and application**

1. These Regulations may be cited as the Common Agricultural Policy Single Payment Scheme (Set-aside) (England) Regulations 2004, shall come into force on 15th January 2005 and shall apply in relation to England only.

**Interpretation**

2.—(1) In these Regulations —

“collector” has the meaning given by Article 144(b) of Commission Regulation 1973/2004;

“Commission Regulation 795/2004” means Commission Regulation (EC) No. 795/2004<sup>(3)</sup> laying down detailed rules for the implementation of the single payment scheme provided for in Council Regulation (EC) No. 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers;

“Commission Regulation 1973/2004” means Commission Regulation (EC) No. 1973/2004<sup>(4)</sup> laying down detailed rules for the application of Council Regulation (EC) No. 1782/2003 as regards the support schemes provided for in Titles IV and IVa of that Regulation and the use of land set aside for the production of raw materials;

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(1) S.I. 1972/1811.

(2) 1972 c. 68.

(3) O.J. No. L 141, 30.4.2004, p. 1, as last amended by Commission Regulation (EC) No. 1974/2004 (O.J. No. L 345, 20.11.2004, p. 85).

(4) O.J. No. L 345, 20.11.2004, p. 1.

“the Council Regulation” means Council Regulation (EC) No. 1782/2003<sup>(5)</sup> establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No. 2019/93, (EC) No. 1452/2001, (EC) No. 1453/2001, (EC) No. 1454/2001, (EC) 1868/94, (EC) No. 1251/1999, (EC) No. 1254/1999, (EC) No. 1673/2000, (EEC) No. 2358/71 and (EC) No. 2529/2001;

“Council Regulation 1251/1999” means Council Regulation (EC) No. 1251/1999 establishing a support system for producers of certain arable crops<sup>(6)</sup>;

“the Cross Compliance Regulations 2004” mean the Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (England) Regulations 2004<sup>(7)</sup>;

“farmer” has the meaning given by Article 2(a) of the Council Regulation;

“green cover” means a green cover established or, as the case may be, falling to be established in accordance with Schedule 1;

“green cover season” means the period from 15th January to 14th July (inclusive) in any given year;

“holding” has the meaning given by Article 2(b) of the Council Regulation;

“land set aside for non-food purposes” means land set aside pursuant to Article 55(b) of the Council Regulation under the conditions laid down in Chapter 16 of Commission Regulation 1973/2004 for the provision of materials for the manufacture within the European Community of products not primarily intended for human or animal consumption, and any reference to a farmer setting aside land for that purpose shall be construed accordingly;

“land set aside from production” means land set aside pursuant to Article 54(3) of the Council Regulation (other than land set aside for non-food purposes), and any reference to a farmer setting aside land from production shall be construed accordingly;

“organic waste” means waste material produced by or from animals or plants as a by-product of agricultural production, including animal bedding;

“processor” has the same meaning as in Commission Regulation 1973/2004;

“set-aside period” means the period from 15th January to 31st August (inclusive) in any given year; and

“watercourse” includes a canal and field ditch.

(2) Any reference in these Regulations to a Community instrument is a reference to that instrument as amended on the date on which these Regulations are made.

(3) Other expressions used in these Regulations and in the Council Regulation, Commission Regulation 795/2004 or Commission Regulation 1973/2004 have the same meanings in these Regulations as in the Council Regulation, Commission Regulation 795/2004 or Commission Regulation 1973/2004 as the case may be.

### **Minimum area and dimensions of set aside parcels**

3. For the purposes of the second sentence of Article 54(4) of the Council Regulation, land may be set aside from production if —

- (a) it is eligible for set-aside entitlement pursuant to Article 54(2) of the Council Regulation or counted as eligible for set-aside entitlement as a result of an application granted under regulation 5;

(5) O.J. No. L 270, 21.10.2003, p. 1, as last amended by Council Regulation (EC) No. 864/2004 (O.J. No. L 161, 30.4.2004, p. 48, as corrected by corrigendum at O.J. No. L 206, 9.6.2004, p. 20).

(6) O.J. No. L 160, 26.6.1999, p. 1, as last amended by the Council Regulation.

(7) S.I. 2004/ 3196.

- (b) it is at least 6 metres (but less than 10 metres) wide;
- (c) it is at least 0.05 hectares in size; and
- (d) it borders –
  - (i) a hedgerow;
  - (ii) woodland;
  - (iii) watercourse; or
  - (iv) an area of land that has been notified under section 28(1)(b) of the Wildlife and Countryside Act 1981<sup>(8)</sup> as a site of special scientific interest.

#### **Additional standards of good agricultural and environmental condition in relation to set-aside land**

4.—(1) Subject to paragraphs (3) to (6), the standards of good agricultural and environmental condition referred to in Article 32(2) of Commission Regulation 795/2004 that apply in relation to land set aside from production are set out in Schedule 1.

(2) Subject to paragraphs (3) to (6), the standards of good agricultural and environmental condition referred to in Article 32(2) of Commission Regulation 795/2004 that apply in relation to land set aside for non-food purposes are set out in Schedule 2.

(3) The standards of good agricultural and environmental condition referred to in paragraphs (1) and (2) shall apply to land set aside from production and land set aside for non-food purposes respectively in addition to the standards of good agricultural and environmental condition that apply to the land by virtue of regulation 4 of the Cross Compliance Regulations 2004.

(4) The provisions of paragraphs (1) and (2) shall not apply to land —

(a) set aside or afforested pursuant to Articles 22 to 24 or Article 31 of Council Regulation (EC) No. 1257/1999<sup>(9)</sup> on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations, and

(b) counting as set-aside for the purposes of Article 54 of the Council Regulation, to the extent that the requirements of Schedule 1 or 2 are incompatible with the environmental or afforestation requirements laid down pursuant to those Articles.

(5) A farmer shall be exempt from any given requirement of Schedule 1 or 2 in relation to particular set-aside land if, on an application being made to the Secretary of State regarding that requirement, he satisfies the Secretary of State that he should be exempted from it —

(a) to facilitate research into the effect of employing particular methods of managing set-aside land;

(b) in the interests of environmental protection;

(c) where the farmer is an educational establishment, to facilitate the fulfilment of its educational purpose;

(d) because during the set-aside period—

(i) by virtue of any power or authorisation conferred by or under any enactment, a pipeline, cable or pylon is being or will be laid through, or constructed on or across, the land, the laying or construction of which was not a proposal of which the farmer had been notified more than 5 months before the date on which the land was set aside;

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<sup>(8)</sup> 1981 c. 69.

<sup>(9)</sup> O.J. No. L160, 26.6.99, p.80, as last amended by Council Regulation (EC) No. 1783/2003 (O.J. No. L270, 21.10.2003, p.70).

- (ii) maintenance of a pipeline, cable or pylon is being or will be carried out under statutory authority on the particular set-aside land; or
- (iii) an archaeological excavation is being or will be carried out on the land;
- (e) in the interests of human or animal health or safety;
- (f) because such exemption is necessary, either to enable a serious cause of harm to plant health or serious infestation of any pest or specified weed to be treated, or to permit measures to be taken to prevent the development of any such cause of harm or infestation; or
- (g) in order to benefit a charity (as defined in section 96(1) of the Charities Act 1993)(10).

(6) The Secretary of State may specify that any exemption granted pursuant to paragraph (5) shall be effective only until a date, or the occurrence of a particular event, specified in the exemption.

(7) For the purposes of this regulation, a “specified weed” means any of the injurious weeds listed in section 1(2) of the Weeds Act 1959(11), *Rhododendron ponticum*, Japanese knotweed (*Reynoutria japonica*), giant hogweed (*Heracleum mantegazzianum*) or Himalayan balsam (*Impatiens glandulifera*).

#### **Exchange of eligible and ineligible land**

5.—(1) In a situation specified in sub-paragraph (a), (b) or (c) of the first paragraph of Article 33 of Commission Regulation 795/2004, a farmer may apply to the Secretary of State for land not otherwise eligible for set-aside entitlement to be counted as eligible for set-aside entitlement.

(2) Subject to paragraph (3), the application shall be in such form as the Secretary of State may reasonably require, and, where the farmer intends to exchange the land in respect of which the application is made for other land which is eligible for set-aside entitlement (including land counted as eligible for set-aside entitlement as a result of an application granted under this regulation), he shall give particulars of that land, as well as the land in respect of which the application is made, in his application.

(3) Where a farmer holds any of the land in respect of which his application is made, or any land that he intends to exchange for that land, as a tenant, he shall obtain the written consent of his landlord to the exchange, and the application shall include a declaration by the applicant that such consent has been obtained.

(4) The Secretary of State may approve the application made under paragraph (1) if she is satisfied —

- (a) that the relevant sub-paragraph of the first paragraph of Article 33 of Commission Regulation 795/2004 specified in the farmer’s application applies in relation to the land in respect of which the application has been made;
- (b) where the application has been made on the basis of sub-paragraph (c) of the first paragraph of Article 33 of Commission Regulation, with the reasons given by the farmer for wanting to exchange ineligible land for eligible land on his holding; and
- (c) that —
  - (i) where the land in respect of which the application is made is to be exchanged for other eligible land, the area of land in respect of which the application is made does not exceed the area of the land which is to be exchanged by more than 5%; or

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(10) 1993 c. 10.

(11) 1959 c. 54.

(ii) where there is to be no exchange of land, the approval of the application will not result in a significant increase in the total area of land eligible for set-aside entitlements.

(5) Where approval is given under paragraph (4) but any declaration included in, or information given by the farmer in connection with the application was false in any material particular, the Secretary of State may revoke such approval.

(6) In this regulation “eligible for set-aside entitlement”, in relation to land, has the meaning given by the first paragraph of Article 54(2) of the Council Regulation.

### **Provisions relating to raw materials produced for non-food purposes**

6.—(1) The Secretary of State is designated as the competent authority for the purposes of Chapter 16 of Commission Regulation 1973/2004 (use of land set aside for the production of raw materials for non-food purposes).

(2) Raw materials to which Article 146(2)(b) of Commission Regulation 1973/2004 applies shall be weighed by an operator of public weighing equipment holding a certificate issued under section 18 of the Weights and Measures Act 1985(12).

(3) For the purposes of Article 146(4) of Commission Regulation 1973/2004, cereals and oilseeds to which that paragraph applies shall be denatured by dyeing them with a brightly coloured dye.

(4) For the purposes of Article 157(1) of Commission Regulation 1973/2004, the last day on which a contract to which that paragraph applies may be deposited with the Secretary of State shall be 15th May of the year in which the relevant claim for the associated set-aside entitlement is made.

(5) For the purposes of Article 157(3) of Commission Regulation 1973/2004, the last day on which a collector or first processor to whom that paragraph applies may provide the Secretary of State with the information specified in that paragraph shall be 31st January of the year following the year in which the relevant claim for the associated set-aside entitlement is made.

(6) In this regulation —

“the associated set-aside entitlement” means the set-aside entitlement which is being claimed on the land which has been set aside to produce the raw materials to which the contract referred to in paragraph (4), and the information referred to in paragraph (5), relates; and

“first processor” has the meaning given by Article 144(c) of Commission Regulation 1973/2004.

### **Keeping and retention of records by a collector and by a processor**

7.—(1) This regulation applies where a farmer sets aside land for non-food purposes, and in paragraphs (2) to (5) references to “raw materials” are to raw materials produced on that land.

(2) During any month when a collector purchases or sells any raw materials, he shall make a record of the quantity of all raw materials which he has purchased or sold during that month, and the names and addresses of the subsequent buyers or processors to whom he has sold those raw materials.

(3) A collector shall retain the records referred to in paragraph (2) until the earlier of —

(a) the end of the third calendar year following the calendar year in which he delivers to a processor the raw materials to which those records relate; or

(b) the seventh anniversary of the date of their creation.

(4) On any day during which a processor purchases, processes, destroys, sells or otherwise disposes of any raw materials, or sells or otherwise disposes of any products obtained from the processing of such raw materials, he shall make a record showing —

- (a) the quantities of the different raw materials purchased by him for processing;
  - (b) the quantity of the raw materials processed by him together with the quantity and type of end products, co-products and by-products obtained from the processing;
  - (c) the wastage of the raw materials during the processing;
  - (d) the quantity of the raw materials destroyed, if any, together with the reason for such destruction;
  - (e) the quantity and type of products sold or otherwise disposed of by him and the price obtained; and
  - (f) the names and addresses of any subsequent buyers or processors to whom he sells such raw materials or products of processing.
- (5) A processor shall retain the records referred to in paragraph (4) for two years from —
- (a) where the records relate to the purchasing, processing, wastage, destruction, sale or other disposal of the raw materials, the date on which he purchases, processes, wastes, destroys, sells or otherwise disposes of the raw materials, as the case may be; and
  - (b) where the records relate to the sale or other disposal of products obtained from the processing of such raw materials, the date on which such products were sold or otherwise disposed of, as the case may be.

20th December 2004

*Whitty*  
Parliamentary Under Secretary of State,  
Department for Environment, Food and Rural  
Affairs

SCHEDULE 1

Regulations 2(1) and 4(1) and (4)

ADDITIONAL STANDARDS OF GOOD AGRICULTURAL AND ENVIRONMENTAL  
CONDITION THAT APPLY IN RELATION TO LAND SET ASIDE FROM PRODUCTION

PART A

Management options for land set aside from production

**Management options for land set aside from production**

1.—(1) Subject to sub-paragraphs (2) to (4), in respect of each field or part of a field which is set aside from production in a particular calendar year, a farmer shall, during that year, comply with the conditions applicable to one of the following management options (as set out in paragraphs 2, 3 and 4 respectively) —

- (a) the sown green cover option;
- (b) the natural regeneration option; or
- (c) the wild bird cover option.

(2) In 2005, in respect of each part of a field to which regulation 3 applies and which is set aside from production in that year, a farmer may instead comply with the conditions applicable to the under 10 metre strips option (as set out in paragraph 5).

(3) Where in 2006 or any year thereafter a farmer sets aside from production land to which regulation 3 applies, he shall comply with the conditions applicable to the sown green cover option set out in paragraph 2 during that year.

(4) Where a farmer —

- (a) a farmer has applied in writing to the Secretary of State for permission to manage land set aside from production in accordance with a management plan set out in his application, and
- (b) has obtained the written consent of the Secretary of State to the plan,

the farmer shall manage the land in accordance with that management plan instead of complying with the conditions set out in the following paragraphs of this Schedule that would otherwise be applicable.

(5) For the purposes of this Schedule —

“the current green cover season” means the green cover season during the current year;

“the current year” means the year referred to in sub-paragraph (1);

“the current set-aside period” means the set-aside period during the current year;

“the following year” means the calendar year immediately following the current year;

“the previous year” means the calendar year immediately preceding the current year;

“a relevant mixture of seed” means a mixture of seed of crops of different types —

- (a) which is not a mixture only of different types of cereal seed or of different types of Brassica seed;
- (b) which is not a mixture only of one type of crop and legumes seed, a mixture only of cereals and legumes seed, or a mixture only of brassicas and legumes seed; and
- (c) the crops from which it would not be practicable to harvest separately; and

“seed of a relevant kind” means —

- (a) grass seed;

*Status: This is the original version (as it was originally made).*

- (b) a mixture of grass seed and the seed of native broad-leaved plants not commonly used for agricultural production (which mixture shall not contain more than 50 per cent by weight of legume seed);
  - (c) mustard seed; or
  - (d) phacelia seed.
- (6) In paragraphs 2(1)(b), 3(1)(b), 4(1)(c) and 5(1)(b), “the relevant period” in relation to a field or part of a field (as the case may be) set aside from production means —
- (a) where the farmer does not intend to set aside the field or part of a field (as the case may be) from production in the following year or intends to set it aside for a non-food purpose in the following year, the current green cover season; and
  - (b) where the farmer intends to set aside the field or part of a field (as the case may be) from production in the following year (but does not intend to set it aside for a non-food purpose), the current set-aside period.

### **The sown green cover option**

2.—(1) In respect of each field or part of a field to be managed in accordance with the sown green cover option, a farmer shall —

- (a) subject to sub-paragraph (2) and paragraphs 7 and 9, establish a green cover by the start of the current green cover season by sowing seed of a relevant kind;
- (b) subject to paragraphs 8, 13 and 14, maintain the green cover thereafter until the end of the relevant period; and
- (c) cut or destroy the green cover in accordance with paragraph 6.

(2) The requirement to establish a green cover in accordance with paragraph (1)(a) shall not apply —

- (a) in 2005, where —
  - (i) the field or part of a field was set aside in 2004 pursuant to Article 6 of Council Regulation 1251/1999 and was managed during that year in accordance with the grassland option set out in paragraph 2 of Schedule 2 to the Arable Area Payments Regulations 1996<sup>(13)</sup>; and
  - (ii) the green cover established in accordance with the requirements of that option has been maintained until the beginning of the current green cover season; and
- (b) in 2006 and in each year thereafter, where —
  - (i) the field or part of a field was set aside in the previous year and was managed during that year in accordance with the sown green cover option; and
  - (ii) the green cover established in accordance with the requirements of that option has been maintained until the beginning of the current green cover season in the year in question.

### **The natural regeneration option**

3.—(1) In each field or part of a field to be managed in accordance with the natural regeneration option, a farmer shall —

- (a) subject to sub-paragraph (2) and paragraphs 7 and 9, establish a green cover by the start of the current green cover season by allowing natural regeneration following the last crop produced in that field or part of a field in the previous year;

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<sup>(13)</sup> S.I. 1996/3142, to which there are amendments not relevant to these Regulations.



- (b) subject to paragraphs 8, 13 and 14, maintain the green cover thereafter until the end of the relevant period; and
  - (c) cut or destroy the green cover in accordance with paragraph 6.
- (2) The requirement to establish a green cover in accordance with paragraph (1)(a) shall not apply —
- (a) in 2005, where —
    - (i) the field or part of a field was set aside in 2004 pursuant to Article 6 of Council Regulation 1251/1999 and was managed during that year in accordance with the natural regeneration option set out in paragraph 3 of Schedule 2 to the Arable Area Payments Regulations 1996; and
    - (ii) the green cover established in accordance with the requirements of that option has been maintained until the beginning of the current green cover season; and
  - (b) in 2006 and in each year thereafter, where —
    - (i) the field or part of a field was set aside in the previous year and was managed during that year in accordance with the natural regeneration option; and
    - (ii) the green cover established in accordance with the requirements of that option has been maintained until the beginning of the current green cover season in the year in question.

#### **The wild bird cover option**

- 4.—(1) In each field or part of a field to be managed in accordance with the wild bird cover option, a farmer —
- (a) shall, subject to sub-paragraph (2) and paragraphs 7 and 9, either —
    - (i) establish a green cover by the start of the current green cover season by allowing natural regeneration following the last crop produced in that field or part of a field in the previous year; or
    - (ii) establish a green cover by the start of the current green cover season by sowing a relevant mixture of seed.
  - (b) shall, where a green cover was established by the start of the current green cover season in accordance with sub-paragraph (a)(i) —
    - (i) maintain that green cover until it is replaced in accordance with sub-paragraph (ii); and
    - (ii) replace that green cover by sowing a new green cover comprising a relevant mixture of seed as early as is practicable after the start of the current green cover season and the destruction of the green cover that is to be replaced;
  - (c) shall, subject to paragraphs 8, 13 and 14, maintain the green cover established under paragraph (a)(ii) or (b)(ii) until the end of the relevant period; and
  - (d) shall cut or destroy the cover in accordance with paragraph 6, unless —
    - (i) the field is to be set aside from production in the following year; and
    - (ii) the farmer has not harvested any of the green cover, or permitted any of it to be harvested or grazed, in the current year.
- (2) The requirement to establish a green cover in accordance with sub-paragraph (1)(a) shall not apply —
- (a) in 2005, where —

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- (i) the field or part of a field was set aside in 2004 pursuant to Article 6 of Council Regulation 1251/1999 and was managed during that year in accordance with the wild bird cover option set out in paragraph 4 of Schedule 2 to the Arable Area Payments Regulations 1996; and
- (ii) the green cover established in accordance with the requirements of that option has been maintained until the beginning of the current green cover season; and
- (b) in 2006 and in each year thereafter, where —
  - (i) the field or part of a field was set aside in the previous year;
  - (ii) the field or part of a field was managed during that year in accordance with the wild bird cover option; and
  - (iii) the green cover established in accordance with the requirements of that option has been maintained until the beginning of the current green cover season in the year in question.

#### **The under 10 metre strips option**

5.—(1) In each part of a field to be managed in accordance with the under 10 metre strips option, a farmer —

- (a) shall, subject to sub-paragraph (2) and paragraphs 7 and 9, establish a green cover by the start of the current green cover season —
  - (i) by sowing seed of a relevant kind; or
  - (ii) by allowing natural regeneration following the last crop which was produced on that part of the field in question in the previous year;
- (b) shall, subject to paragraphs 8, 13 and 14, maintain the green cover until the end of the relevant period; and
- (c) shall cut the green cover at least once during the current year, except that he may leave uncut a strip of green cover up to 2 metres wide by way of margin bordering any hedgerow, woodland or watercourse.

(2) The requirement to establish a green cover in accordance with sub-paragraph (1)(a) shall not apply in 2005 where—

- (a) the field or part of a field was set aside in 2004 pursuant to Article 6 of Council Regulation 1251/1999 and was managed during that year in accordance with the field margins option set out in paragraph 5 of Schedule 2 to the Arable Area Payments Regulations 1996; and
- (b) the green cover established in accordance with the requirements of that option has been maintained until the beginning of the current green cover season.

#### **Cutting or destruction of the green cover**

6.—(1) In each field or part of a field to which one of the options mentioned in paragraph 1(1) is applied, a farmer shall either —

- (a) subject to sub-paragraph (2), cut the green cover between 15th July and 15th August (inclusive) during the current set-aside period; or
- (b) subject to paragraph 9, destroy the green cover between 15th July and 31st August (inclusive) during the current set-aside period.

(2) A farmer may (where he cuts the green cover in a field or part of a field in accordance with sub-paragraph (1)(a)) —

- (a) leave uncut a strip of green cover up to 2 metres wide by way of margin bordering any hedgerow, woodland or watercourse; and
- (b) in the case of a field which is to be set aside in the following year, leave uncut a further 25% of the area set aside in that field, provided that any area left uncut in accordance with this paragraph which has also been left uncut in the previous two years in accordance with this paragraph (or paragraph 7(2)(b) of Schedule 2 to the Arable Area Payments Regulations 1996) is cut in accordance with sub-paragraph (1) in the following year.

### **Exemptions from the requirement to establish a green cover on set-aside land**

7.—(1) In each field or part of a field to which any of the options mentioned in paragraph 1(1) or (2) is applied, a farmer shall by virtue of this provision be treated as exempt from a requirement to establish a green cover by the start of the current green cover season, where he satisfies the Secretary of State that for climatic reasons it was not practicable for a green cover to be established by that time, and, where he is treated as exempt, he shall establish a green cover as soon as reasonably possible after the start of the green cover season.

(2) In each field or part of a field to which any of the options mentioned in paragraph 1(1) or (2) is applied, a farmer need not establish a green cover on a strip of land forming part of the land set aside and bordering its edge, of a width up to —

- (a) 1 metre, where the strip of land set aside borders land planted with a crop other than a seed crop;
- (b) 2 metres, where the strip of land set aside borders land planted with a seed crop; or
- (c) 5 metres, in any place where vehicular access to that land from a road or track adjacent to that land may be possible, provided that the strip is ploughed and left as bare fallow.

(3) Paragraph 10 of Schedule 1 to the Cross Compliance Regulations 2004 shall not apply to land which is left without a green cover pursuant to sub-paragraph (2).

(4) In sub-paragraph (2), “seed crop” means a crop grown so that the seed of the crop may be harvested and sown to establish a further crop.

### **Exemptions from the requirement to maintain a green cover on the land set aside from production**

8.—(1) In each field or part of a field to which any of the options mentioned in paragraph 1(1) or (2) is applied, a farmer is not required to maintain a green cover on the land set aside from production where that green cover is destroyed following the application of herbicide to the land on or after 15<sup>th</sup> April in the current year.

(2) In respect of each field or part of a field to which any of the options mentioned in paragraph 1(1) or (2) is applied, a farmer shall by virtue of this provision be treated as exempt from a requirement to maintain a green cover where he satisfies the Secretary of State that the green cover which he established failed and he could not reasonably have prevented such failure.

(3) The exemptions mentioned in sub-paragraphs (1) and (2) shall apply until —

- (a) in the case of the exemption in sub-paragraph (1), the commencement of the following green cover season; and
- (b) in the case of the exemption in sub-paragraph (2), the end of the current year.

(4) In each field or part of a field to which any of the options mentioned in paragraph 1(1) or (2) is applied, and in which a farmer has chosen not to establish a green cover on a strip of land pursuant to paragraph 7(2), he need not maintain any green cover which nevertheless subsequently becomes established on that strip.

### **Exemption relating to the protection of hedgerows and watercourses under the Cross Compliance Regulations 2004**

9. The requirement to establish a green cover in accordance with paragraph 2(1)(a), 3(1)(a), 4(1)(a) or 5(1)(a), and the requirement to destroy a green cover in accordance with paragraph 6(1)(b), shall not apply in relation to land to which paragraph 10 of Schedule 1 to the Cross Compliance Regulations 2004 applies to the extent that the establishment or (as the case may be) destruction of that cover would necessitate the carrying out of operations prohibited by that paragraph.

## **PART B**

### **General standards applying to all land set aside from production**

#### **Application of conditions to all land set aside from production**

10. The provisions of paragraphs 11 to 16 of this Schedule shall apply to all land set aside from production that is managed by a farmer in accordance with any of the provisions of paragraphs 1 to 9.

#### **Prohibition on sowing and preparation for sowing a crop on, and the cultivation of, the land set aside from production**

11.—(1) Subject to paragraphs 12 and 13, during the current set-aside period, a farmer shall not sow or carry out any preparation for sowing a crop on the land set aside from production or otherwise cultivate that land.

(2) Any reference to a date in paragraph 12 or 13 is to that date falling within the current set-aside period.

#### **Exemptions from the prohibition on sowing and preparation for sowing a crop on the land set aside from production**

12.—(1) A farmer may make preparations for sowing on or after 15<sup>th</sup> July.

(2) Subject to paragraph (3), a farmer may sow any seed on or after 15<sup>th</sup> July where the seed sown is sown in order to produce a crop for harvesting in the following year.

(3) Where a farmer sows a grass ley on land set-aside from production pursuant to the exemption in sub-paragraph (2), he shall not graze any animals on that land during the remainder of the current year.

#### **Exemption from prohibition on cultivation of land set aside from production for the purpose of weed control**

13.—(1) Subject to sub-paragraph (2), a farmer may at any time on or after 1st July cultivate the land set aside from production for the purposes of controlling weeds.

(2) Sub-paragraph (1) shall not apply in relation to land to which paragraph 10 of Schedule 1 to the Cross Compliance Regulations 2004 applies to the extent that the cultivation of that land is prohibited by that paragraph.

#### **Replacement of the green cover and changing management options**

14.—(1) Subject to sub-paragraphs (2) and (3), in any period during which a farmer is required to maintain a green cover in a field or part of a field, he may nevertheless replace that green cover

with another provided that the seed is sown as soon as is practicable after the destruction of the existing green cover.

- (2) The seed to be sown to establish a replacement green cover shall —
  - (a) where the cover is to be replaced in part only of a field managed in accordance with the under 10 metre strips option, be seed of a relevant kind; and
  - (b) in other cases be —
    - (i) seed of a relevant kind; or
    - (ii) a relevant mixture of seed.

(3) A farmer shall, in respect of the field or part of a field where the green cover has been replaced, comply with such of the conditions set out in Part A of this Schedule as relate to one of the following management options —

- (a) where the seed sown is seed of a relevant kind, the sown green cover option; or
- (b) where the seed sown is a relevant mixture of seed, the wild bird cover option.

(4) Where a farmer replaces a green cover in accordance with sub-paragraph (1), he shall not graze any animals on that land, or harvest any crops produced on that land, during the remainder of the current year.

#### **Use of the green cover**

**15.**—(1) A farmer shall ensure that, subject to sub-paragraph (2), no green cover or cuttings from any green cover are used for seed production or any other commercial or agricultural purpose in the current year.

- (2) A farmer may —
  - (a) subject to paragraphs 12(3) and 14(4), use any such green cover or cuttings for any agricultural purposes after 31<sup>st</sup> August; and
  - (b) place on the market any cuttings, or crops, that are harvested from the green cover on or after 15<sup>th</sup> January in the following year.

(3) A farmer shall ensure that no cuttings from the green cover are removed from the set-aside land concerned except in accordance with sub-paragraph (2) or with the prior consent of the Secretary of State.

#### **Application of fertiliser, waste, lime and gypsum to the land set-aside from production**

**16.**—(1) A farmer shall not apply any fertiliser, waste, lime or gypsum to the land set aside from production except in accordance with the following sub-paragraphs.

(2) A farmer may apply fertilisers to the land set-aside from production if prior to such application he satisfies the Secretary of State that the land is situated in an area known to be used as a feeding area by geese in winter and is to be managed as such an area.

(3) Throughout the set-aside period a farmer may apply organic waste to the land set aside from production provided that it —

- (a) is applied only where there is an existing green cover on the set-aside land;
- (b) is applied in amounts which will not destroy that green cover; and
- (c) in the case of manure and slurry, is not applied —
  - (i) within 10 metres of any watercourse; or
  - (ii) within 50 metres of any boreholes.

*Status: This is the original version (as it was originally made).*

(4) A farmer shall not store, dump or otherwise dispose of any waste on the land set aside from production, save that he may store organic waste in a field which comprises or forms part of the set-aside land where that organic waste is to be applied by him to that field in accordance with subparagraph (3).

(5) Subject to the provisions of paragraph 10 of Schedule 1 to the Cross Compliance Regulations 2004 (in so far as those paragraphs relate to the application of fertilisers), a farmer may apply fertiliser during the current year to any agricultural parcel of land managed in accordance with paragraph 4 where a new green cover is being established in that year, provided that the total nitrogen content of that fertiliser is not more than 30 kilograms per hectare of the land to which it is applied.

(6) A farmer may apply lime or gypsum to the land set aside from production where that land is to be cropped in the following year.

## SCHEDULE 2

Regulation 4(2) and (4)

### ADDITIONAL STANDARDS OF GOOD AGRICULTURAL AND ENVIRONMENTAL CONDITION THAT APPLY IN RELATION TO LAND SET ASIDE FOR THE PROVISION OF NON-FOOD CROPS

#### **Application of fertilisers and waste to land set aside for the provision of non-food crops**

A farmer may only apply fertiliser or waste to land set aside for the provision of non-food crops so far as —

- (a) it is necessary to do so in order to ensure the proper growth of the crops;
- (b) the manner of application is consistent with the Code of Good Agricultural Practice for the Protection of Water approved by the Water (Prevention of Pollution) (Code of Practice) Order 1998(14); and
- (c) the application would not be inconsistent with the provisions of paragraph 10 of Schedule 1 to the Cross Compliance Regulations 2004.

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## EXPLANATORY NOTE

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

These Regulations come into force on 15<sup>th</sup> January 2005. They make provision in England for the administration of Council Regulation (EC) No. 1782/2003 (O.J. No. L 270, 21.10.2003, p. 1) (“the Council Regulation”), Commission Regulation (EC) No. 795/2004 (O.J. No. L 141, 30.4.2004, p. 1) and Commission Regulation (EC) No. 1973/2004 (O.J. No. L 345, 20.11.2004, p.1) (“Commission Regulation 1973/2004”) in relation to the obligation to set aside land under the new Single Payment Scheme for farmers (“the Scheme”). The Scheme itself comes into force on 1st January 2005.

Regulation 3 lays down the minimum size and width of land that may be set aside in specific situations as permitted by Article 54(4) of the Council Regulation. In doing so, it derogates from

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(14) S.I. 1998/3084.

the provision of Article 54(4) that otherwise lays down the minimum size and width of a land that may be set aside.

Regulation 4, as read with Schedules 1 and 2, lays down the good agricultural and environmental conditions that apply to land set aside under the Scheme. These apply in addition to the good agricultural and environmental conditions that apply by virtue of the Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (England) Regulations 2004 (S.I.2004/3196).

Regulation 5 allows farmers to apply for land that cannot be set aside under the Scheme to be counted as land that may be set aside under the Scheme. Article 33 of Commission Regulation 795/2004 lays down the cases in which this may be permitted. In some cases, this may involve an exchange of land.

Regulation 6 lays down provisions relating to raw materials grown on land which is set aside for the provision of materials for the manufacture within the European Community of products not primarily intended for human or animal consumption (“raw materials produced for non-food purposes”) as follows —

- (a) it designates the Secretary of State as the competent authority for the purposes of Chapter 16 of Commission Regulation 1973/2004 (use of land set aside for the production of raw materials for non-food purposes) (paragraph (1));
- (b) it lays down provisions relating to the weighing of certain raw materials produced for non-food purposes where they are to be used for any of the purposes specified in Article 146(1) of Commission Regulation 1973/2004 (paragraph (2));
- (c) it lays down the method of denaturing to be applied to cereals and oilseeds where they are to be used for any of the purposes specified in Article 146(1)(a) of Commission Regulation 1973/2004 (paragraph (3)); and
- (d) it lays down the date of 15th May of the year of application as the last day by which contracts made between farmer and collectors or processors in respect of raw materials produced for non-food purposes must be deposited with the Secretary of State (paragraph (4)) and the date of 31st January of the following year as the last day by which certain information relating to those materials must be deposited with the Secretary of State (paragraph (5)).

Regulation 7 lays down the records that must be kept by collectors and first processors in respect of any raw materials produced for non-food purposes purchased by them and the period for which such records should be kept.

A full regulatory impact assessment on the effect that these Regulations will have on the costs of business is available from Defra Information Resource Centre, Lower Ground Floor, Ergon House, c/o Nobel House, 17 Smith Square, London SW1P 3JR, or at [www.defra.gov.uk/corporate/consult/capsingle-payment/index.htm](http://www.defra.gov.uk/corporate/consult/capsingle-payment/index.htm).