***Status:*** *This is the original version (as it was originally made).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

STATUTORY RULES OF NORTHERN IRELAND

# 1996 No. 608

# AGRICULTURE

## Habitat Improvement (Amendment) Regulations (Northern Ireland) 1996

| | |
|---|---|
| *Made - - - -* | *23rd December 1996* |
| *Coming into operation* | *1st January 1997* |

The Department of Agriculture, being a Department 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 it by that section, and of all powers enabling it in that behalf, hereby makes the following Regulations:

### Citation, commencement and interpretation

**1.**—(1) These Regulations may be cited as the Habitat Improvement (Amendment) Regulations (Northern Ireland) 1996 and shall come into operation on 1st January 1997.

(2) The Interpretation Act (Northern Ireland) 1954(**3**) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

### Amendments to the Habitat Improvement Regulations (Northern Ireland) 1995

**2.**—(1) The Habitat Improvement Regulations (Northern Ireland) 1995(**4**) shall be amended as provided by paragraphs (2) to (7).

(2) In regulation 2(2) (Interpretation)—

(a) after the definition of "agriculture" there shall be inserted the following definition—

""agri-environment scheme" means an arrangement which is—

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

(**1**) S.I.1972/1811
(**2**) 1972 c. 68; Section 2 is subject to Schedule 2 to that Act and is to be read with S.I. 1984/703 (N.I. 3) and S.I. 1994/2795 (N.I. 15)
(**3**) 1954 c. 33 (N.I.)
(**4**) S.R. 1995 No. 134

(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;"; and

(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**);.

(3) In regulation 4(1) (Conditions of eligibility) after sub-paragraph (*c*) there shall be inserted the following sub-paragraph—

"; and

(d) and 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);".

(4) In regulation 7 (Change of occupation)—

(a) after paragraph (3) there shall be inserted the following paragraph—

"(3A) The Department shall not accept an undertaking referred to in paragraph (1)(*b*) unless it is satisfied that the new occupier 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)"; and

(b) for paragraph (7) there shall be substituted the following paragraph—

"(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)".

(5) In regulation 8 (Amounts of aid and claims) for paragraph (1) there shall be substituted—

"(1) Subject to regulation 7(6) and 10(1) and (2), 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 for all aid under the Council Regulation) and, in respect of an application made after 1st January 1997, of Article 10 of the Commission Regulation (which restricts duplication of aid payments), payments of aid under a scheme to a beneficiary shall be made annually, in arrears";

(**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

(6) For regulation 10 (Withholding and recovery of aid) 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 a 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 Department 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 undertakings referred to in regulation 3;

(b) fails to permit entry or 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 Department may withhold the whole of part of any aid payable to that beneficiary and may recover the whole or 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 it to pay to the Department a sum equal to no more than 10% of the aid paid or payable to the beneficiary.

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

(4) Where under paragraph (3) the Department treats the undertakings given by the beneficiary as terminated, in connection with any step taken under paragraph (1) or (2), it may also 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) by reference to paragraph (2) (*a*), the Department 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 Department; and

(c) consider the report by the person so appointed and supply a copy of the report to the beneficiary."

(7) After regulation 10 (Withholding and recovery of aid) there shall be added the following regulations—

"**Recovery of interest**

**10A.**—(1) Where a payment of aid is paid to a beneficiary by the Department and, by virtue of Article 20(1) of the Commission Regulation (which provides for recovery of wrongful payments with interest), the beneficiary is required to reimburse all or part of the payment with interest, 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 Department stating the LIBOR applicable during a period specified in the certificate shall also be conclusive evidence of the rate applicable in the specified period if the certificate also states that the Bank of England notified the Department of that rate.

**Recovery of payments**

**10B.** In any case, where an amount falls to be paid to the Department by virtue of (or by virtue of action taken under) these Regulations or the Commission Regulation the amount so falling to be paid shall be recoverable as a civil debt.”.

Sealed with the Official Seal of the Department of Agriculture for Northern Ireland on 23rd December 1996.

L.S.

*Liam McKibben*
Assistant Secretary

## EXPLANATORY NOTE

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

These Regulations amend the Habitat Improvement Regulations (Northern Ireland) 1995 ("the principal Regulations") which implement in part a zonal programme approved by the European Commission ("the Commission") under Article 7 of the 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 as respects Northern Ireland 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, Article 10 (which restricts duplication of aid payments), 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 the 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 Department to recover grant and impose penalties in accordance with Articles 11, 12 and 20 of the Commission Regulation,

(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.