

**1988 No. 1352**

**AGRICULTURE**

**The Set-Aside Regulations 1988**

*Made* - - - - - *28th July 1988*

*Coming into force in accordance  
with regulation 1(1)* *29th July 1988*

**ARRANGEMENT OF REGULATIONS**

*Regulation*

1. Citation, commencement and extent
2. Interpretation
3. Aid for set aside of arable land
4. Requirements in relation to the set-aside area
5. Applications for aid
6. Restrictions on acceptance of applications for aid
7. Requirements in relation to use for fallow
8. Requirements in relation to use for woodland
9. Requirements in relation to use for non-agricultural purposes
10. Termination of undertakings
11. Change of use of set-aside land
12. Change of occupation
13. Amounts and payment of aid
14. Claims for aid
15. Obligation to permit entry and inspection
16. Withholding and recovery of aid
17. False statements

*Schedule*

1. Arable crops
2. Requirements relating to the management of set-aside land

The Minister of Agriculture, Fisheries and Food and the Secretary of State, being Ministers designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the common agricultural policy of the European Economic Community, acting jointly in exercise of the powers conferred on them by the said section 2(2) and all other powers enabling them in that behalf, hereby make the following Regulations, of which a draft has been laid before, and approved by resolution of, each House of Parliament:

#### **Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Set-Aside Regulations 1988 and shall come into force on the day after the day on which these Regulations are made.

(2) These Regulations shall apply to Great Britain.

#### **Interpretation**

2.—(1) In these Regulations, unless the context otherwise requires—

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, livestock breeding and keeping and freshwater fish farming, the use of land as grazing land, meadow land, osier land, reed beds, market gardens and nursery grounds, and “agricultural” shall be construed accordingly;

“application” means an application for aid under regulation 5 and “applicant” and “apply” shall be construed accordingly;

“the appropriate Minister” means—

- (a) in relation to England, the Minister of Agriculture, Fisheries and Food;
- (b) in relation to Scotland or Wales, the Secretary of State;

“arable crops” means crops of a type listed in Schedule 1;

“arable land” means land used for the production of arable crops;

“beneficiary” means—

- (a) a person whose application has been accepted; or
- (b) a person who occupies a holding or part of a holding following a change of occupation of that holding or part and who has given an undertaking to comply with set-aside obligations relating to that holding or part assumed by the previous occupier;

“the Broads” shall have the same meaning as in section 2(3) of the Norfolk and Suffolk Broads Act 1988(c);

“designated maps” means—

- (a) in relation to England, the 3 volumes of maps numbered 1 to 3, each such volume being marked “volume of maps of less-favoured farming areas in England”, and with the number of the volume, dated 3rd April 1984, signed and sealed by the Minister of Agriculture, Fisheries and Food and deposited at the offices of the Ministry of Agriculture, Fisheries and Food at Great Westminster House, Horseferry Road, London SW1P 2AE;
- (b) in relation to Wales, the 2 volumes of maps numbered 1 and 2, both volumes being marked “volume of maps of less-favoured farming areas in Wales” and with the number of the volume, dated 29th March 1984, signed by the Secretary of State for Wales and deposited at the offices of the Welsh Office Agriculture Department at Plas Crug, Aberystwyth, Dyfed SY23 1NG;
- (c) in relation to Scotland, the 4 maps numbered 1 to 4, each such map being marked “map of less-favoured farming areas in Scotland” and with the number of the map, dated 2nd April 1984, signed by the Secretary of State for Scotland and deposited at the offices of the Department of Agriculture and Fisheries for Scotland at Chesser House, Gorgie Road, Edinburgh EH11 3AW;

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(a) S.I. 1972/1811.

(b) 1972 c.68; section 2 is subject to Schedule 2 to that Act and it is to be read, as regards England and Wales, with section 40 of the Criminal Justice Act 1982 (c.48) and S.I. 1984/447, and, as regards Scotland, with sections 289F and 289G of the Criminal Procedure (Scotland) Act 1975 (c.21), as inserted by section 54 of the Criminal Justice Act 1982 (c.48), and S.I. 1984/526.

(c) 1988 c.4.

“eligible person” means a person who on the date of the submission of his application occupies a holding comprising arable land as an owner or tenant and who at the commencement of the set-aside period will have so occupied that holding for a period of at least twelve months;

“holding” means land which is occupied as a unit for agricultural purposes;

“landlord” means—

- (a) in England and Wales, in relation to the tenant of a holding or part of a holding, any person who either solely or jointly owns or has a superior tenancy of that holding or part;
- (b) in Scotland—
  - (i) in the case of an agricultural holding to which the Agricultural Holdings (Scotland) Act 1949(a) (the “1949 Act”) applies, the landlord within the meaning of section 93(1) of that Act;
  - (ii) in the case of a croft within the meaning of the Crofters (Scotland) Act 1955(b), the landlord within the meaning of section 37(1) of that Act;
  - (iii) in the case of a holding within the meaning of the Small Landholders (Scotland) Act 1911(c) to which the 1949 Act does not apply, the same as it means in the 1911 Act;

and, where appropriate, includes a head tenant;

“less-favoured area” means land—

- (a) which is situated in an area included in the list of less-favoured farming areas adopted by the Council or the Commission of the European Communities under Article 2 of Council Directive No. 75/268/EEC on mountain and hill farming and farming in certain less-favoured areas(d), and
- (b) which—
  - (i) is, in the opinion of the appropriate Minister, inherently suitable for extensive livestock production but not for the production of crops in quantity materially greater than that necessary to feed such livestock as are capable of being maintained on such land, and whose agricultural production is, in the opinion of the appropriate Minister, restricted in its range by, or by any combination of, soil, relief, aspect or climate, or
  - (ii) is situated in the Isles of Scilly,

which land is within the area shaded blue or pink on the designated maps;

“National Park Authority” means a special planning board or a joint planning board or a National Park Committee constituted or re-constituted in accordance with Part I of Schedule 17 to the Local Government Act 1972(e);

“permanent fallow” means land which is fallowed for the whole of the set-aside period;

“reference period” means the period commencing on 1st July 1987 and ending on 30th June 1988;

“relevant arable crops” means crops of a type listed in List A in Schedule 1;

“relevant arable land” means land used for the production of relevant arable crops;

“rotational fallow” means land fallowed as part of the arable rotation;

“the set-aside area” means the area of arable land which a beneficiary undertakes to set aside under the provisions of these Regulations;

“set-aside land” means any land forming part of the set-aside area;

“the set-aside obligations” means—

- (a) the obligations assumed by a beneficiary by virtue of the undertakings referred to in regulation 3; and
- (b) (where these apply) the requirements laid down in regulations 4, 7(1), 8 and 9(1) and (2);

“the set-aside period” means—

- (a) in relation to an application accepted by the appropriate Minister in 1988, the period commencing on the date of acceptance of that application or 1st October 1988, whichever is later, and ending on 30th September 1993;

(a) 1949 c.75.

(b) 1955 c.21.

(c) 1911 c.49.

(d) OJ No. L128, 19.5.75, p.1; Article 2 was amended by Council Directive No. 80/666/EEC (OJ No. L180, 14.7.80, p.34).

(e) 1972 c.70.

- (b) in relation to an application accepted by the appropriate Minister in a year subsequent to 1988, the period of five consecutive years from 1st October in that year;

“to set aside” means, in relation to arable land, to withdraw that land from agricultural production;

“Site of Special Scientific Interest” means any area of land notified by the Nature Conservancy Council under the provisions of section 28(1) of the Wildlife and Countryside Act 1981(a);

“tenant” means—

- (a) in England and Wales, a person who occupies a holding or part of a holding either—

- (i) under an agreement for the letting of land for a tenancy from year to year; or  
(ii) under an agreement which has effect by virtue of section 2(1) of the Agricultural Holdings Act 1986(b) as an agreement for the letting of land for a tenancy from year to year; or  
(iii) under a contract of tenancy for a fixed term of years of which at least five years remain unexpired at the commencement of the set-aside period;

- (b) in Scotland—

- (i) in the case of an agricultural holding to which the Agricultural Holdings (Scotland) Act 1949 (the “1949 Act”) applies, the tenant within the meaning of section 93(1) of that Act;  
(ii) in the case of a croft within the meaning of the Crofters (Scotland) Act 1955, the crofter within the meaning of section 3(2) of that Act;  
(iii) in the case of a holding within the meaning of the Small Landholders (Scotland) Act 1911 to which the 1949 Act does not apply, the tenant within the meaning of section 2(2) of the 1911 Act;

and, where appropriate, includes a sub-tenant;

“the Woodland Grant Scheme” means the scheme made by the Forestry Commissioners and published in June 1988 under which the Forestry Commissioners enter into agreements to make grants pursuant to section 1 of the Forestry Act 1979(c) for and in connection with the use and management of land for forestry purposes.

(2) Any reference in these Regulations to a numbered regulation or Schedule shall be construed as a reference to the regulation or Schedule bearing that number in these Regulations.

#### **Aid for set aside of arable land**

3.—(1) Subject to the provisions of these Regulations, the appropriate Minister may make payments of aid to any eligible person who undertakes for the duration of the set-aside period—

- (a) to set aside an area of the arable land on his holding which was arable land in the reference period and which is equal in size to at least 20 per cent of the relevant arable land on that holding in the reference period; and  
(b) to use the set-aside area for one or more of the following—  
(i) permanent fallow;  
(ii) rotational fallow;  
(iii) woodland;  
(iv) non-agricultural purposes; and  
(c) to ensure that the area of relevant arable land on his holding shall not exceed the area of relevant arable land on his holding in the reference period, less an area equal in size to the set-aside area.

(2) Subject to the provisions of these Regulations, the appropriate Minister may make payments of aid to any beneficiary who, within three years from the date of acceptance of his original application, undertakes for the remainder of the set-aside period—

(a) 1981 c.69.

(b) 1986 c.5.

(c) 1979 c.21.

- (a) to set aside an additional area of the arable land on his holding which was arable land in the reference period; and
- (b) to use that additional set-aside area for one or more of the purposes set out in paragraph (1)(b) above; and
- (c) to ensure that the area of relevant arable land on his holding shall not exceed the area of relevant arable land on his holding in the reference period, less an area equal in size to the sum of the original set-aside area and the additional set-aside area.

(3) Subject to the provisions of these Regulations, the appropriate Minister may make payments of aid to any beneficiary who enlarges his holding by the acquisition of arable land which was arable land in the reference period and who, within four years from the date of acceptance of his original application, undertakes for the remainder of the set-aside period—

- (a) to set aside an area of that acquired arable land; and
- (b) to use that additional set-aside area for one or more of the purposes set out in paragraph (1)(b) above; and
- (c) to ensure that the area of relevant arable land on his enlarged holding shall not exceed the sum of the area of relevant arable land on his holding in the reference period and the area of relevant arable land comprised in the acquired arable land in the reference period, less an area equal in size to the sum of the original set-aside area and the additional set-aside area.

(4) In determining whether any arable land was arable land in the reference period for the purposes of paragraphs (1) to (3) above, no account shall be taken of any land which was converted to the production of arable crops in the period commencing on 1st January 1988 and ending on 30th June 1988.

#### **Requirements in relation to the set-aside area**

4.—(1) The set-aside area shall include either—

- (a) one whole field amounting to at least one hectare; or
- (b) an area consisting of adjacent whole fields and amounting to at least one hectare.

(2) Where any set-aside land consists of a strip of land, that strip shall be at least 15 metres wide.

#### **Applications for aid**

5.—(1) An application for aid under these regulations shall be made at such time and in such form as the appropriate Minister reasonably may require and shall include—

- (a) a map of the applicant's holding showing—
  - (i) the boundaries of the holding and internal field boundaries;
  - (ii) the area of land which the applicant proposes to set aside;
  - (iii) the area of land on which the applicant intends to continue production of relevant arable crops;
- (b) details of the type of production carried out or to be carried out on each individual field during the reference period and during the period of twelve months immediately preceding the commencement of the set-aside period;
- (c) a description of the intended use or uses of the proposed set-aside area;
- (d) if required by the appropriate Minister, documentary evidence showing the nature of the applicant's estate or interest in the holding.

(2) An application by a beneficiary who proposes to set aside additional areas of arable land under the provisions of regulation 3(2) or (3) shall contain such information and shall be made at such time and in such form as the appropriate Minister reasonably may require.

#### **Restrictions on acceptance of applications for aid**

6.—(1) The appropriate Minister shall not accept an application from a tenant who proposes to use any set-aside land for woodland or for non-agricultural purposes unless

he is satisfied that that tenant has obtained the consent in writing of the landlord of that land to the making of the application.

(2) The appropriate Minister shall not accept an application from a tenant who proposes to use any set-aside land for permanent fallow or rotational fallow unless he is satisfied that that tenant has notified the landlord of that land in writing of his intention to make the application.

(3) The appropriate Minister shall not accept an application from any person who proposes to set aside land within a Site of Special Scientific Interest, a National Park or the Broads, unless he is satisfied that that person has notified the Nature Conservancy Council, the National Park Authority or the Broads Authority, respectively, in writing of his intention to make the application.

(4) The appropriate Minister shall not accept an application from any person who proposes to use more than 0.25 hectares of set-aside land for woodland unless that person either—

- (a) has submitted an application to the Forestry Commissioners under the Woodland Grant Scheme for a grant for the planting of woodland on that land; or
- (b) has submitted an application to the appropriate Minister for grant in relation to that land under the Farm Woodland Scheme 1988 (a).

(5) The appropriate Minister may refuse to accept an application where he is satisfied that—

- (a) the set aside of any land or the use of any set-aside land in accordance with the proposals contained in that application would frustrate the purposes of any assistance previously given or to be given out of money provided by Parliament or by the European Economic Community;
- (b) payment of aid under these Regulations in respect of any land which an applicant proposes to set aside would duplicate any assistance previously given or to be given out of money provided by Parliament or by the European Economic Community.

#### **Requirements in relation to use for fallow**

7.—(1) Where a beneficiary has undertaken to use any set-aside land for permanent fallow or rotational fallow, that beneficiary shall observe in relation to that land the requirements set out in Schedule 2.

(2) Where any set-aside land is used for rotational fallow, the beneficiary shall, before 1st October in each year of the set-aside period, notify the appropriate Minister of the location of the area of set-aside land to be used for that purpose in the twelve months following that date and the notification shall be made in such form and shall contain such information as that Minister reasonably may require.

#### **Requirements in relation to use for woodland**

8.—(1) Where a beneficiary has undertaken to use any set-aside land for woodland, that beneficiary shall, until planting commences, observe in relation to that land the requirements set out in Schedule 2.

(2) Where a beneficiary has submitted an application to the Forestry Commissioners under the Woodland Grant Scheme for a grant for the planting of woodland on any set-aside land, he shall not commence planting on that land until his application has been approved in accordance with the provisions of that Scheme.

(3) Where a beneficiary has submitted an application to the appropriate Minister under the Farm Woodland Scheme for grant in relation to any set-aside land, he shall not commence planting on that land until his application has been approved in accordance with the provisions of that Scheme.

(4) Where a beneficiary has submitted an application for grant in relation to the planting of woodlands on any set-aside land under the Woodland Grant Scheme or the Farm Woodland Scheme, and that application is not approved, that beneficiary shall,

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(a) S.I. 1988/1291.

subject to regulations 10 and 11, use that land for permanent fallow for the remainder of the set-aside period.

#### **Requirements in relation to use for non-agricultural purposes**

9.—(1) Where a beneficiary has undertaken to use any set-aside land for non-agricultural purposes, that beneficiary shall, until the conversion of that land to use for non-agricultural purposes commences, observe in relation to that land the requirements set out in Schedule 2.

(2) Where a beneficiary has undertaken to use any set-aside land for non-agricultural purposes, that beneficiary shall not use that land for—

- (a) the extraction of minerals; or
- (b) the erection of any building or other permanent structure with a view to the use of such building or structure for any of the following purposes—
  - (i) the carrying-on of any industrial process;
  - (ii) the retail or wholesale sale of goods;
  - (iii) use as a dwellinghouse, hotel or lodging house or for the purposes of a residential institution of any description;
  - (iv) use for office accommodation;
  - (v) use as a storage or distribution centre.

(3) Notwithstanding paragraph (2) above, a beneficiary may use set-aside land for the erection of any building or other permanent structure with a view to the use of that building or structure for the purposes of any business of a type specified in the Schedule to the Farm Business Specification Order 1987<sup>(a)</sup> where that business is carried on by a person also carrying on a business consisting in or partly in the pursuit of agriculture on the same or adjacent land.

#### **Termination of undertakings**

10.—(1) Within a period of three years from the commencement of the set-aside period, a beneficiary may terminate the undertakings given by him under regulations 3 or 12 in relation to all the land on his holding to which those undertakings relate, provided that the termination shall not take effect before the expiry of that three-year period.

(2) A beneficiary shall notify the appropriate Minister at least three months before the expiry of the three-year period referred to in paragraph (1) of his intention to terminate the undertakings and the notification shall be made in such form and shall contain such information relating to the termination as that Minister reasonably may require.

(3) In paragraphs (1) and (2) above, references to the beneficiary shall include the personal representatives of that beneficiary where he has died.

(4) Where a beneficiary has terminated his undertakings under the provisions of paragraph (1) above, the appropriate Minister shall not, within two years of the termination, accept an application from that beneficiary for aid under these Regulations in relation to any land to which those undertakings relate.

#### **Change of use of set-aside land**

11.—(1) Subject to the provisions of this regulation, a beneficiary may, within three years of the commencement of the set-aside period, change the use of any set-aside land, with the exception of land on which woodlands have been planted, from the use to which he has undertaken to put that land to one or more of the other uses mentioned in regulation 3(1)(b).

(2) The beneficiary shall notify the Minister of an intended change of use and the notification shall be in such form and shall contain such information relating to the intended change of use as that Minister reasonably may require.

(3) For the purposes of the payment of aid under these Regulations, a change of use of set-aside land shall be deemed to take effect on 1st October following the approval of that change by the appropriate Minister.

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<sup>(a)</sup> S.I. 1987/1948.

(4) Where a beneficiary changes the use of any set-aside land from use for permanent fallow to use for rotational fallow, the appropriate Minister shall recover or withhold from that beneficiary the difference between any payments made or due to him under these Regulations on the basis of the use of that land for permanent fallow and payments made or due to him on the basis of the use of that land for rotational fallow.

(5) Where a beneficiary notifies the appropriate Minister that he intends to change the use of any set-aside land which he occupies as a tenant from use for permanent or rotational fallow to use for woodland or non-agricultural purposes, the appropriate Minister shall not approve that change of use unless he is satisfied that that beneficiary has obtained the consent in writing of the landlord of that land to that change of use.

#### **Change of occupation**

12.—(1) Where there is a change of occupation of the entirety or any part of a beneficiary's holding during the course of the set-aside period by reason of the devolution of that holding or part on the death of the beneficiary, or otherwise—

(a) the beneficiary (or, if he has died, his personal representatives) shall notify the appropriate Minister in writing of the change of occupation within three months of its occurrence and shall supply to that Minister such information relating to that change of occupation in such form and within such period as that Minister reasonably may determine;

(b) the new occupier of that holding or part may give an undertaking to the appropriate Minister to comply with the set-aside obligations relating to that holding or part for the remainder of the set-aside period.

(2) Where there is a change of occupation of part of a holding, the appropriate Minister shall determine the extent to which the set-aside obligations assumed by the original occupier relate to that part having regard to—

(a) the area of arable land comprised in that part, and

(b) the area of set-aside land (if any) comprised in that part and the use or uses to which that land is put.

(3) The appropriate Minister shall not accept an undertaking from a new occupier of a holding or part of a holding to comply with set-aside obligations assumed by the original occupier unless that minister is satisfied that that new occupier occupies that holding or part as an owner or tenant or as the personal representative of the original occupier.

(4) Any undertaking given by a new occupier to comply with set-aside obligations shall contain such information and shall be given in such form and within such period following the change of occupation as the appropriate Minister reasonably may determine.

(5) Where the appropriate Minister has accepted an undertaking from a new occupier to comply with set-aside obligations—

(a) the new occupier shall be deemed to be an eligible person who has applied for aid under the provisions of these Regulations; and

(b) the undertaking to comply with set-aside obligations shall be deemed to take effect on the date of the acceptance by that Minister of that undertaking.

(6) Where within a period of three months from the date of change of occupation a new occupier has not given an undertaking to comply with set-aside obligations assumed by the original occupier, the appropriate Minister may—

(a) withhold the whole or any part of any payments due to the original occupier; and

(b) recover from that original occupier or his personal representatives the whole or any part of any payments of aid already made to him.

(7) Paragraph (6) above shall not apply where the change of occupation of a holding or part of a holding is the result of—

(a) the compulsory purchase of that holding or part; or

(b) the death of the original occupier, and

(i) that original occupier occupied that holding or part as a tenant; and

(ii) following the death of that original occupier the tenancy or lease under which he occupied that holding or part was terminated by the landlord.



### Amounts and payment of aid

13.—(1) Subject to the provisions of this regulation and to regulations 10 and 16, payment of aid shall be by way of five payments made annually in arrears in relation to the use of set-aside land specified in column 1 of the table in this regulation at the rate per hectare of such land specified in column 2.

Column 1 Use of set-aside land	Column 2 Amount of annual payment per hectare of set-aside land	
	Less-favoured area £	Other £
Permanent fallow	180	200
Rotational fallow	160	180
Non-agricultural purposes	130	150
Woodland (other than under the provisions of the Farm Woodland Scheme)	180	200

(2) Where a beneficiary uses any set-aside land for woodland under the provisions of the Farm Woodland Scheme<sup>(a)</sup>, he shall receive in relation to that land—

- (a) in respect of the year in which planting commences and any subsequent year in the set-aside period, the same rate as under the provisions of that Scheme;
- (b) in respect of any year in the set-aside period prior to that in which planting commences, the rate for permanent fallow specified in the table in this regulation.

(3) Where a beneficiary uses any set-aside land for woodland otherwise than under the provisions of the Farm Woodland Scheme, he shall receive in relation that land—

- (a) in respect of the year in which planting commences and any subsequent year in the set-aside period, the rate for woodland specified in the table in this regulation;
- (b) in respect of any year in the set-aside period prior to that in which planting commences, the rate for permanent fallow specified in the table in this regulation.

(4) Where a beneficiary uses any set-aside land for non-agricultural purposes, he shall receive in relation to that land—

- (a) in respect of the year in which the conversion to use for non-agricultural purposes commences and any subsequent year in the set-aside period, the rate for non-agricultural purposes specified in the table in this regulation;
- (b) in respect of any year in the set-aside period prior to that in which conversion to use for non-agricultural purposes commences, the rate for permanent fallow specified in the table in this regulation.

(5) The appropriate Minister may deduct from the annual payments payable to a beneficiary in respect of any set-aside land under these Regulations the whole or any part of any annual payments made to that beneficiary in respect of that land under an agreement made with the appropriate Minister under section 18(3) of the Agriculture Act 1986<sup>(b)</sup>.

### Claims for aid

14. Any claim for the payment of aid under these Regulations shall be made at such time and in such form and shall contain such information as the appropriate Minister reasonably may require.

<sup>(a)</sup> S.I. 1988/1291.

<sup>(b)</sup> 1986 c.49; section 18(3) provides for management agreements in environmentally sensitive areas.

### **Obligation to permit entry and inspection**

15.—(1) A beneficiary shall permit any officer duly authorised by the appropriate Minister, accompanied by such persons acting under his instructions as appear to that officer to be necessary for the purpose, at all reasonable times and on production of his authority on demand, to enter upon that beneficiary's holding in order to inspect any land, document or record with a view to verifying—

- (a) the accuracy of any particulars given in any application or claim for aid or in any undertaking made by a new occupier to comply with set-aside obligations, or in any notification made under the provisions of regulations 7(2) or 11(2); and
- (b) compliance with the set-aside obligations.

(2) A beneficiary shall render all reasonable assistance to the authorised officer in relation to the matters mentioned in paragraph (1), and in particular shall—

- (a) produce such document or record as may be required by that officer for inspection; and
- (b) at the request of that officer, accompany him in making the inspection of any land and identify any area of land which is concerned in any application or claim for aid or in any undertaking made by a new occupier to comply with set-aside obligations, or in any notification made under the provisions of regulations 7(2) or 11(2).

### **Withholding and recovery of aid**

16.—(1) Where any person with a view to obtaining the payment of aid to himself or any other person, makes any statement or furnishes any information which is false or misleading in a material respect, the appropriate Minister may withhold the whole or any part of any aid payable to that person or to such other person, and may 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 set-aside obligations; or
- (b) fails without reasonable excuse to comply with the requirements as to notification in regulations 7(2), 10(2) or 11(2); or
- (c) fails without reasonable excuse to permit entry and inspection by an authorised officer or to render all reasonable assistance to such authorised officer as required by regulation 15,

the appropriate 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.

(3) Where it appears to the appropriate Minister that a beneficiary who has planted woodland on set-aside land in accordance with the provisions of the Woodland Grant Scheme, has failed to comply with the requirements of that Scheme, that Minister may withhold the whole or any part of any aid payable to that beneficiary under these Regulations and may recover from that beneficiary the whole or any part of any aid already paid to him under these Regulations.

(4) Where the appropriate Minister recovers from a beneficiary the whole of any aid already paid to him, that Minister may in addition require from that beneficiary payment of interest on that aid at a rate to be determined annually by that Minister and calculated on the basis of the period of time elapsed between the payment of the aid and recovery from the beneficiary.

(5) Before withholding or recovering any aid under paragraph (2)(a), the appropriate Minister shall—

- (a) give to the beneficiary a written explanation of the reasons for the proposed withholding or recovery; and
- (b) afford the beneficiary an opportunity of appearing before and being heard by a person appointed for that purpose by the appropriate Minister; and
- (c) consider the report by the person so appointed and supply a copy of the report to the beneficiary.

### False statements

17. If any person, for the purposes of obtaining for himself or any other person any aid under these Regulations, knowingly or recklessly makes a statement which is false in a material particular, that person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £2,000.

In Witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 28th July 1988.



*John MacGregor*  
Minister of Agriculture, Fisheries and Food

28th July 1988

*Sanderson of Bowden*  
Minister of State, Scottish Office

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## SCHEDULE 1

Regulation 2(1)

### ARABLE CROPS

#### *List A*

Common wheat  
Durum wheat  
Rye  
Barley  
Oats  
Grain maize  
Buckwheat  
Millet  
Canary seed  
Triticale  
Fresh vegetables  
Peas and beans harvested in dried form for human or animal consumption  
Sugar beet  
Hops  
Oilseed rape  
Linseed  
Castor seed  
Safflower  
Sunflower seed  
Flax

#### *List B*

Potatoes  
Forage roots and tubers  
Lucerne/alfalfa  
Sainfoin  
Clover  
Lupins  
Vetches  
Fodder kale  
Fodder rape  
Fodder maize

**REQUIREMENTS RELATING TO THE MANAGEMENT OF SET-ASIDE  
LAND****Establishment and retention of plant cover**

1. The beneficiary shall establish a plant cover immediately after the commencement of the set-aside period. If the crop planted in the year prior to the commencement of the set-aside period has not yet been harvested, the plant cover shall be established immediately after the harvest. If the beneficiary is prevented from establishing a plant cover by exceptional weather conditions, he shall do so as soon as practicable. The establishment of a plant cover may take the form of the regeneration of naturally-occurring vegetation.

2. The beneficiary shall retain the plant cover throughout the period in which the requirements in this Schedule apply to the land.

3. Notwithstanding the requirement in paragraph 2 above, the beneficiary may destroy the plant cover by cultivation where this is necessary—

- (a) in order to prepare for the production of a crop, provided that the destruction of the plant cover does not take place before 1st August preceding the establishment of that crop; or
- (b) in order to control the spread of weeds, provided that where plant cover is destroyed for this purpose it shall be re-established as soon as practicable thereafter; or
- (c) in order to prepare for the establishment of an alternative plant cover, provided that that alternative cover is established as soon as practicable after the destruction of the previous cover.

4. The beneficiary shall cut the plant cover at least once in every year following the commencement of the set-aside period. The beneficiary shall not sell cuttings or use them for feeding livestock.

5. Notwithstanding the requirement in paragraph 4 above, the appropriate Minister may authorise a beneficiary not to cut plant cover on any land to which the requirements in this Schedule apply where that beneficiary has submitted to that Minister written proposals for the creation or maintenance of a wildlife habitat on that land.

**Use of fertilisers and waste materials**

6. The beneficiary shall not apply any inorganic fertiliser which contains nitrogen at any time between the end of the previous harvest and the establishment of a subsequent crop.

7. The beneficiary shall not apply any inorganic fertiliser which does not contain nitrogen (other than lime) before 1st August in the year in which a crop is to be established.

8. The beneficiary shall not apply any organic fertiliser at any time between the end of the previous harvest and the establishment of a subsequent crop. The appropriate Minister may authorise a beneficiary to apply slurry or manure where that Minister is satisfied that the application is necessary in order to prevent soil erosion.

9. The beneficiary shall not use the land as a dumping ground for any type of organic or inorganic material.

**Use of pesticides**

10. The beneficiary shall not apply pesticides.

11. Notwithstanding the requirement in paragraph 10 above, the appropriate Minister may authorise a beneficiary to apply herbicides provided that any herbicide used is of a type which is absorbed into the plant primarily through the leaves and the stem and which has little or no persistence in water and in the soil.

12. The beneficiary shall make a written record of the type, quantity, date and method of application of any herbicide used and of the reason for such use and shall keep the written record for the duration of the set-aside period.

### **Maintenance of environmental features**

**13. The beneficiary shall maintain—**

- (a) all existing hedges and rows of trees (including hedgerow trees), and
- (b) all existing lakes, lochs, watercourses, ponds and pools,

which he is entitled to maintain and which are situated on or adjacent to any land to which the requirements in this Schedule apply.

### **Land improvement works**

**14. The beneficiary shall not install any new drainage system, nor substantially modify any existing drainage system.**

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## **EXPLANATORY NOTE**

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

These Regulations implement in part Council Regulation (EEC) No. 797/85 (OJ No. L93, 30.3.85, p.1) on improving the efficiency of agricultural structures, as amended by Council Regulation (EEC) No. 1760/87 (OJ No. L167, 26.6.87, p.1) and Council Regulation (EEC) No. 1094/88 (OJ No. L106, 27.4.88, p.28) as regards the set aside of arable land, and Commission Regulation (EEC) No. 1272/88 (OJ No. L121, 11.5.88, p.36), which laid down detailed rules for the set aside of arable land.

The Regulations, which apply to Great Britain, provide for payment of aid to farmers who undertake for a period of five years ("the set-aside period") to withdraw from agricultural production an area of land equal in size to at least 20 per cent of the area of land on the holding used in the reference period for producing relevant arable crops (as defined in regulation 2(1)). Set-aside land must be left fallow (either for the whole of the set-aside period, or as part of the arable rotation), or used for woodland or for non-agricultural purposes. In addition, farmers entering the scheme must undertake to restrict the area of land used for growing relevant arable crops during the set-aside period (regulation 3(1)).

Fallowed set-aside land and land awaiting conversion to woodland or to use for non-agricultural purposes must be managed in accordance with the requirements in Schedule 2 with a view to keeping it in good agronomic condition and to protecting the environment (regulations 7(1), 8(1) and 9(1)). Farmers who opt to plant woodland on an area of set-aside land greater than 0.25 hectares must either apply for a planting grant under the Forestry Commission's Woodland Grant Scheme or apply for grant under the Farm Woodland Scheme (regulation 6(4)).

The classes of person eligible for aid are landowners and tenants who enjoy sufficient security of tenure to take on a five-year commitment (regulation 2(1)). Tenants must notify their landlord if they intend to fallow set-aside land, and must obtain the consent of the landlord to the use of set-aside land for woodland or for non-agricultural purposes (regulation 6(1) and (2)). To benefit from aid, farmers must submit an application for acceptance by the appropriate Minister (regulation 5).

A farmer who has set-aside land may change the use of that land (with the exception of land already planted with woodland) at any time within three years of entering the scheme (regulation 11). Where a holding or part of a holding changes hands, the new occupier may assume the set-aside obligations of the previous occupier (regulation 12).

Aid under the Regulations is payable by way of five annual instalments based on the hectareage of set-aside land, and the rate varies according to the use of set-aside land and to whether it is situated in a less-favoured area ("LFA") or elsewhere. Annual payments are to be at the rate per hectare of £200 (£180 in LFAs) in respect of land used for permanent fallow or for woodland (except where woodland is planted under the Farm Woodland Scheme): £180 (£160 in LFAs) in respect of land used for rotational fallow; and £150 (£130 in LFAs) in respect of land used for non-agricultural purposes. Where a

farmer plants woodland on set-aside land under the Farm Woodland Scheme, he will receive annual payments at the same rate as under that Scheme (regulation 13).

Less-favoured areas are defined by reference to designated maps which are available for inspection during normal office hours at the addresses specified in the definition of designated maps (regulation 2(1)). Copies of the maps may also be inspected during normal office hours at any Regional or Divisional Office of the Ministry of Agriculture, Fisheries and Food, at any Divisional Office of the Welsh Office Agriculture Department and at any Area Office of the Department of Agriculture and Fisheries for Scotland.

The regulations also—

- (a) impose certain requirements as regards the determination of the set-aside area and the minimum size and configuration of that area (regulations 3(4) and 4);
- (b) impose certain restrictions on the acceptance of applications for aid (regulation 6);
- (c) impose certain restrictions on the use of set-aside land for non-agricultural purposes (regulation 9(2));
- (d) provide for termination of set-aside undertakings by the farmer after three years (regulation 10);
- (e) provide for the withholding or recovery of aid in certain circumstances (regulations 12(6) and 16);
- (f) provide for an obligation to permit entry and inspection (regulation 15);
- (g) create an offence, punishable on summary conviction with a maximum fine of £2,000, of knowingly or recklessly making a false statement in order to obtain aid (regulation 17).

