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STATUTORY INSTRUMENTS

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**1996 No. 3109**

**AGRICULTURE**

**The Organic Farming (Aid) (Amendment) Regulations 1996**

*Made* - - - - *10th December 1996*

*Laid before Parliament* *11th December 1996*

*Coming into force* - - *1st January 1997*

The Minister of Agriculture, Fisheries and Food and the Secretary of State, being Ministers 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, acting jointly, in exercise of the powers conferred on them by that section, and of all other powers enabling them in that behalf, and after consulting the Secretary of State for the Environment, the Countryside Commission, the Nature Conservancy Council for England and the Historic Buildings and Monuments Commission for England in accordance with section 99 of the Environment Act 1995<sup>(3)</sup>, hereby make the following Regulations:

**Title, commencement and extent**

1. These Regulations may be cited as the Organic Farming (Aid) (Amendment) Regulations 1996, shall come into force on 1st January 1997, and shall apply to England and Wales.

**Amendments to previous Regulations**

2.—(1) The Organic Farming (Aid) Regulations 1994<sup>(4)</sup> shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) for the definition of “aid” there shall be substituted the following definition—

““aid” means the payments under the Community aid scheme referred to in Article 1 of Council Regulation 2078/92 insofar as it relates to farmers who undertake to introduce organic farming methods as referred to in Article 2(1) (a) of that Regulation;”;

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(1) S.I.1972/1811.

(2) 1972 c. 68.

(3) 1995 c. 25.

(4) S.I. 1994/1721 (see also correction issued by HMSO in September 1994)

- (ii) after the definition of “aid” there shall be inserted the following definition—
- ““agri-environment scheme” means an arrangement which is—
- (a) regulated by statutory instrument providing for the payment of aid to persons who give an undertaking or enter an agreement in relation to land to which that instrument relates; and
  - (b) approved by the Commission of the European Communities under Article 7(3) of Council Regulation 2078/92 as part of a zonal programme drawn up pursuant to Article 3 of Council Regulation 2078/92;”;
- (iii) after the definition of “beneficiary” there shall be inserted the following definition—
- ““the Commission Regulation” means Commission Regulation (EC) No. 746/96<sup>(5)</sup> laying down detailed rules for the application of Council Regulation 2078/92;”;
- (iv) in the definition of “Council Regulation 2092/91” for the words “as amended” there shall be substituted the phrase “as last amended by Commission Regulation (EC) No. 418/96<sup>(6)</sup>”;
- (v) at the end of the definition of “Council Regulation 2078/92” there shall be inserted the words “as last amended by Commission Regulation (EC) No. 2772/95<sup>(7)</sup> as rectified by Commission Regulation (EC) No. 1962/96<sup>(8)</sup>”;
- (vi) at the end of the definition of “landlord” there shall be inserted the phrase “and from whose title (or, as the case may be, joint title) the tenant directly derives his title”; and
- (vii) for the definition of “UKROFS standards” there shall be substituted the following definition—
- ““UKROFS standards” means the United Kingdom Register of Organic Food Standards production standards for organic farming published in August 1996 by the Ministry of Agriculture, Fisheries and Food and known as the UKROFS Standards for Organic Food Production”; and
- (b) in paragraph (2), in both places where the words “or paragraph” appear, those words shall be deleted.
- (3) In regulation 4 (conditions of eligibility)—
- (a) for paragraph (1) there shall be substituted the following paragraphs—
    - “(1) The conditions of eligibility referred to in regulation 3(1)(a) are set out in the following paragraphs of this regulation.
    - (1A) At the date of his application, the applicant shall—
      - (a) be the lawful occupier of a holding of not less than one hectare and intend to remain in such occupation for the specified period; and
      - (b) not be 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,

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(5) OJ No. L102, 25.4.96, p. 19.

(6) OJ No. L059, 8.3.96, p. 10.

(7) OJ No. L288, 1.12.95, p. 35.

(8) OJ No. L259, 12.10.96, p. 7.

- makes a false declaration, to be excluded from all aid under the Council Regulation 2078/92).”; and
- (b) in paragraph (7), for the phrase “the Minister may prescribe” there shall be substituted the phrase “the Minister may reasonably require”.
- (4) In regulation 5 (application for aid)—
- (a) in paragraph (1), for the phrase “the Minister may prescribe” there shall be substituted the phrase “the Minister may reasonably require”, and
- (b) in paragraph (2), for the phrase “the Minister may prescribe” there shall be substituted the phrase “the Minister may reasonably require”.
- (5) In regulation 6 (notification by the Minister) the phrase “under these Regulations” shall be revoked where it first appears.
- (6) In regulation 7 (restrictions on acceptance of applications) in paragraph (2)(b), the phrase “under these Regulations” shall be revoked.
- (7) In regulation 8 (change of occupation)—
- (a) in paragraph (1)(b), after the phrase “may give an undertaking” there shall be inserted the phrase “in writing”;
- (b) there shall be substituted for paragraph (3) the following paragraph—
- “(3) The Minister shall not accept an undertaking referred to in paragraph (1)(b) above unless he is satisfied that the new occupier—
- (a) occupies the holding or part as an owner or tenant or as the personal representative of the beneficiary; and
- (b) is not prohibited from providing an undertaking pursuant to an agri-environment scheme by application of Article 10 of the Commission Regulation (which restricts duplication of aid payments), by application of a penalty consequent upon Article 20(2) of the Commission Regulation (which requires member states to determine a system of penalties which are effective, commensurate with their purpose and of adequate deterrent effect to be imposed for breaches of undertakings) or by application of Article 20(3) of the Commission Regulation (which requires a person who, intentionally or by reason of gross negligence, makes a false declaration, to be excluded from all aid under the Council Regulation).”;
- (c) paragraph (5)(a) shall be revoked;
- (d) in paragraph (6), after the phrase “has not given an undertaking” there shall be inserted the phrase “in writing”, and
- (e) there shall be substituted for paragraph (7) 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).”.
- (8) For regulation 9 (aid payments to be made in arrear) there shall be substituted the following regulation—

**“Aid payments to be made in arrear**

**9. Subject to—**

- (a) 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 Council Regulation 2078/92),

- (b) Article 14(3) of the Commission Regulation (which requires payments to be made on the basis of an annual request for payment), and
- (c) in respect of an application made on or after 1 January 1997, Article 10 of the Commission Regulation (which restricts duplication of aid payments),

the Minister may make payments of aid to a beneficiary by way of payments quarterly in arrear or, where the total of any four such consecutive payments would amount to less than £500, by a single payment of the total in arrear and any request for the payment of aid shall be made at such time and in such form and shall contain such information as the Minister reasonably may require.”

(9) For regulation 11 (withholding and recovery of aid) there shall be substituted the following regulation—

**“Withholding and recovery of aid, termination and exclusion**

**11.—(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, the Minister may withhold the whole or any part of any aid payable to that person or to such other person and may, subject to the provisions of Article 20 of the Commission Regulation (which provides for recovery of wrongful payments with interest, a penalty system and exclusion for false declarations), recover the whole or any part of any such aid already paid to that person or to such other person.

(2) Where a beneficiary—

- (a) fails to comply with any of his undertakings under these Regulations;
- (b) fails to permit entry and inspection by an authorised person or to render all reasonable assistance to such authorised person as required by regulation 10; or
- (c) fails to comply with any other requirement of these Regulations,

the Minister may withhold the whole or any part of any aid payable to that beneficiary and may recover the whole or any part of any aid already paid to him and may also, in so far as is consequent upon Article 20(2) of the Commission Regulation (which requires member states to determine a system of penalties which are effective, commensurate with their purpose and of adequate deterrent effect to be imposed for breaches of undertakings), require him to pay to the Minister a sum equal to no more than 10% of the aid paid or payable to the beneficiary.

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

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

(5) Before taking any step specified in paragraph (2), (3) or (4) above by reference to regulation 8(6) or paragraph (1) or (2) above, the Minister shall—

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

(11) After regulation 11 (withholding and recovery of aid) there shall be added the following regulations—

**“Recovery of Interest**

**11A.**—(1) Where a payment of aid is made to a beneficiary by the Minister and, by virtue of Article 20(1) of the Commission Regulation (which provides for recovery of wrongful payments with interest), a reimbursement of all or part of the payment with interest is required, the rate of interest shall be one percentage point above LIBOR on a day to day basis.

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

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

**Recovery of payments**

**11B.** In any case, where an amount falls to be paid to the Minister by virtue of (or by virtue of action taken under) these Regulations or the Commission Regulations insofar as it relates to the holding of a beneficiary, the amount so falling to be paid shall be recoverable as a debt.”.

Ministry of Agriculture,  
Fisheries and Food  
10th December 1996

*Tim Boswell*  
Parliamentary Secretary,

Signed by authority of the Secretary of State for Wales

Welsh Office  
10th December 1996

*Jonathan Evans*  
Parliamentary Under Secretary of State,

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

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## EXPLANATORY NOTE

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

These Regulations amend the Organic Farming (Aid) Regulations 1994 (“the principal Regulations”) which implement in part a zonal programme approved by the European Commission (“the Commission”) under Article 7 of Council Regulation (EEC) No. 2078/92 (OJ No. L215, 30.7.92, p. 85) (“the Agri-environment Regulation”) on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside.

These Regulations make provision to implement Commission Regulation (EC) No. 746/96 (OJ No. L102, 25.4.96, p. 19) (“the Commission Regulation”) laying down detailed rules for the application of the Agri-environment Regulation, in particular Article 10 (which restricts duplication of aid payments), Article 11 (which governs transfers of holdings entered into agreements or undertakings under the Agri-environment Regulation), Article 12 (force majeure), Article 14 (which governs undertakings and payment procedures) and Article 20 (which provides for recovery of wrongful payments with interest, a penalty system and exclusion for false declarations).

The Regulations—

- (a) specify that entitlement to payment under the principal Regulations is subject to the provisions of Article 10, Article 14(3) and Article 20(3) of the Commission Regulation,
- (b) make provision to enable the Minister to recover grant and impose penalties in accordance with Articles 11, 12 and 20 of the Commission Regulation, and
- (c) set a rate of interest where recovery of money is to include interest in accordance with Article 20(1) of the Commission Regulation.

and also make drafting changes to the principal Regulations.

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

Copies of the UKROFS Standards can be obtained from the Office of the Secretary to UKROFS, Room 320(c), Nobel House, 17 Smith Square, London SW1P 3JR.

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