

2005 No. 277

AGRICULTURE

**Environmentally Sensitive Areas (Enforcement) Regulations
(Northern Ireland) 2005**

Made - - - - - *26th May 2005*

Coming into operation *8th June 2005*

The Department of Agriculture and Rural Development, being a Department 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 Community, and matters relating to the promotion of rural development, in exercise of the powers conferred on it by the said section 2(2) and of every other power enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Environmentally Sensitive Areas (Enforcement) Regulations (Northern Ireland) 2005 and shall come into operation on 8th June 2005.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(c) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(2) In these Regulations –

“agreement” means an agreement made after the coming into operation of these Regulations under Article 3(2) of the Agriculture (Environmental Areas) (Northern Ireland) Order 1987(d) as regards agricultural land in any of the areas designated by Article 3 of, and Schedule 1 to, the 2005 Order;

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

- (a) regulated by a statutory provision 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
- (b) approved by the Commission of the European Communities under Article 44.2 of the Council Regulation as part of a rural development plan drawn up pursuant to Article 41 of that Regulation;

“aid” means payments under the agri-environment measure referred to in Chapter VI of Title II of the Council Regulation which are provided for in the programming document based on the rural development plan relating to Northern Ireland approved by Commission Decision C(2000) 3638 of 4th December 2000 as amended and approved by Commission Decision C(2005) 952 of 16th March 2005;

(a) S.I. 1972/1811 and S.I. 2000/3238
(b) 1972 c. 68
(c) 1954 c. 33 (N.I.)
(d) S.I. 1987/458 (N.I. 3)

“Commission Regulation 796/2004” means Commission Regulation (EEC) No. 796/2004 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes(a);

“Commission Regulation 817/2004” means Commission Regulation (EC) No. 817/2004 laying down detailed rules for the application of the Council Regulation(b);

“the Council Regulation” means Council Regulation (EC) No. 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations(c);

“the Department” means the Department of Agriculture and Rural Development;

“farmer” has the same meaning as in the 2005 Order;

“the 2005 Order” means the Environmentally Sensitive Areas Designation Order (Northern Ireland) 2005(d);

“payment” means a payment under an agreement; and

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954(e).

Department’s powers of recovery etc.

3.—(1) Where any person, with a view to obtaining a payment for himself or any other person, makes any statement or furnishes any information which is false or misleading, the Department may withhold the whole or part of any payments payable to that person or to such other person and may, subject to the provisions of Article 72 of Commission Regulation 817/2004, recover the whole or part of any payments already paid to that person or to such other person.

(2) Subject to the provisions of Article 39 of Commission Regulation 817/2004 (force majeure) and Article 73 of Commission Regulation 817/2004 (which provides for recovery of wrongful payments with interest, a penalty system to be imposed in the event of breaches of the obligations entered into and exclusion for false declarations), and without prejudice to any rights the Department may have under an agreement, the Department may, where a farmer breaches any of the provisions of the agreement he has entered or any other requirement that applies to the making of any payments –

- (a) withhold the whole or any part of any payments due to the farmer;
- (b) recover the whole or any part of any payments already paid to him;
- (c) in so far as is consequent upon Article 73 of Commission Regulation 817/2004 (which required Member States to determine a system of penalties which are effective, commensurate with their purpose and of adequate deterrent effect), require the farmer to pay to the Department a sum equal to no more than 10% of the payments paid or payable to him.

(3) Where the Department takes any step specified in paragraph (1) or (2) it may also terminate the agreement by notice in writing to the farmer.

(4) Where under paragraph (3) the Department treats the agreement as terminated, it may also by notice in writing to the farmer 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) Any question or dispute between the Department and a farmer in relation to a matter arising under the agreement shall be referred to and determined by arbitration to be agreed between the parties or in default of such agreement to be appointed by the Chairman for the time being of the Northern Ireland Branch of the Royal Institution of Chartered Surveyors and

(a) O.J. No. L141, 30.04.2004, p. 18-58
(b) O.J. No. L153, 30.04.2004, p. 30-83
(c) O.J. No. L160, 26.6.1999, p. 80-102
(d) S.R. 2005 No. 276
(e) 1954 c. 33 (N.I.); section 1(f) was amended by S.I. 1999/663

in accordance with the provisions of the Arbitration Act 1996(a) or any statutory modification or re-enactment thereof for the time being in force.

Recovery of interest

4.—(1) Where a payment is made under an agreement by the Department and, by virtue of Article 73 of Commission Regulation 796/2004 (as applied by Article 70 of Commission Regulation 817/2004), a rate of reimbursement of all or part of any 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 73(8) of Commission Regulation 796/2004.

(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 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

5. 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, Commission Regulation 796/2004 or Commission Regulation 817/2004 in so far as it relates to an environmentally sensitive area designated by the 2005 Order, the amount so falling to be paid shall be recoverable as a civil debt.

Revocation and saving

6.—(1) Subject to paragraph (2), the Environmentally Sensitive Areas (Enforcement) Regulations (Northern Ireland) 2001(b) are hereby revoked.

(2) The revocation in paragraph (1) shall not apply in relation to any agreement made under Article 3(2) of the Agriculture (Environmental Areas) (Northern Ireland) 1987 before the coming into operation of these Regulations.

Sealed with the Official Seal of the Department of Agriculture and Rural Development on 26th May 2005.

(L.S.)

David Small

A senior officer of the Department of Agriculture and Rural Development

(a) 1996 c. 23
(b) S.R. 2001 No. 270

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations supplement the Environmentally Sensitive Areas Designation Order (Northern Ireland) 2005 (S.R. 2005 No. 276) (“the 2005 Order”), which gives effect in part to the agri-environment element of the programming document based on the rural development plan for Northern Ireland submitted by the United Kingdom to the European Commission pursuant to Article 41 of Council Regulation (EC) No. 1257/1999 (O.J. No. L160, 26.06.1999, p.80) and which was approved by Commission Decision C(2000) 3638 of 4th December 2000, as amended by Commission Decision C(2005) 952 of 16th March 2005.

The Regulations provide for the withholding and recovery of payments payable under an agreement made after the coming into operation of these Regulations under Article 3(2) of the Agriculture (Environmental Areas) (Northern Ireland) Order 1987, (S.I. 1987/458 (N.I. 3)), as respects agricultural land in any of the areas designated by the 2005 Order. They also provide for the recovery of interest and the imposition of penalties (regulations 3 to 5).

These Regulations revoke, with a saving, the Environmentally Sensitive Areas (Enforcement) Regulations (Northern Ireland) 2001, (S.R. 2001 No. 270) (regulation 6).

The rural development plan for Northern Ireland, together with a copy of Commission Decision C(2000) 3638 approving it, as amended and approved by Commission Decision C(2005) 952 of 16th March 2005, is available for inspection at the Department of Agriculture and Rural Development, Dundonald House, Upper Newtownards Road, Belfast, BT4 3SB.

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Dd. N2149. C2. 6/05. Gp. 130. 14567.

£3.00

ISBN 0-337-96037-2



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