
STATUTORY INSTRUMENTS

1996 No. 3142

The Arable Area Payments Regulations 1996

Title, extent and commencement

1. These Regulations may be cited as the Arable Area Payments Regulations 1996, shall extend to Great Britain and shall come into force on 15th January 1997.

Interpretation

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

“accepted organic farmer” means a farmer who—

- (a) satisfies the Minister that he farms the land by organic means or is converting to so farming the land; and
- (b) has pursuant to Article 8(1) of Council Regulation 2092/91 notified the appropriate Minister (as defined by regulation 2(1) of the Organic Products Regulations 1992⁽¹⁾) that by so farming the land or converting it as aforesaid he produces products of a kind specified in Article 1 of that Regulation and has submitted to the inspection system referred to in its Article 9;

“agricultural land” has—

- (a) in relation to land in England or Wales, the same meaning as in section 1(4) of the Agricultural Holdings Act 1986⁽²⁾; and
- (b) in relation to land in Scotland, the same meaning as in section 1(2) of the Agricultural Holdings (Scotland) Act 1991⁽³⁾;

“agricultural parcel” has the same meaning as in Article 1(4) of Council Regulation 3508/92 as read with the first indent of Article 6(1) of that Regulation;

“Annex I raw materials” means specified raw materials other than the raw materials listed in Annex II to Commission Regulation 334/93;

“arable compensatory payment” means a compensatory payment other than a compensatory payment made in respect of set-aside land;

“arable crop” has the same meaning as in Article 1(2) of Council Regulation 1765/92;

“authorised person” means any person who is authorised by the Minister, either generally or specifically, to act in matters arising under these Regulations;

“collector” has the same meaning as in Article 1 of Commission Regulation 334/93;

“combinable crop” means any crop commonly harvested using a combine harvester;

“Commission Regulation 2780/92” means Commission Regulation (EEC) No. 2780/92 on the conditions for the grant of compensatory payments under the support system for producers of certain arable crops⁽⁴⁾;

(1) S.I.1992/2111, amended by S.I. 1993/405 and S.I. 1994/2286.

(2) 1986 c. 5.

(3) 1991 c. 55.

(4) OJ No. L 281, 25.9.92, p. 5, repealed by Commission Regulation 658/96.

“Commission Regulation 3887/92” means Commission Regulation (EEC) No. 3887/92 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes(5);

“Commission Regulation 334/93” means Commission Regulation (EEC) No. 334/93 laying down detailed implementing rules for the use of land set aside for the provision of materials for the manufacture within the Community of products not primarily intended for human or animal consumption(6);

“Commission Regulation 762/94” means Commission Regulation (EC) No. 762/94 laying down detailed rules for the application of Council Regulation 1765/92 with regard to the set-aside scheme(7);

“Commission Regulation 658/96” means Commission Regulation (EC) No. 658/96 on certain conditions for granting compensatory payments under the support system for producers of certain arable crops(8);

“compensatory payment” means a compensatory payment under Article 2(2) of Council Regulation 1765/92;

“Council Regulation 2092/91” means Council Regulation (EEC) No. 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs(9);

“Council Regulation 1765/92” means Council Regulation (EEC) No. 1765/92 establishing a support system for producers of certain arable crops(10) as read with Commission Regulation (EEC) No. 3738/92(11) and Council Regulation (EC) No. 1598/96(12);

“Council Regulation 2078/92” means Council Regulation (EEC) No. 2078/92 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside(13);

“Council Regulation 2080/92” means Council Regulation (EEC) No. 2080/92 instituting a Community aid scheme for forestry measures in agriculture(14);

“Council Regulation 3508/92” means Council Regulation (EEC) No. 3508/92 establishing an integrated administration and control system for certain Community aid scheme(15);

“eligible land” means land–

- (a) for which aid has been granted under Title I of Council Regulation (EEC) No. 2328/91 on improving the efficiency of agricultural structures(16) or in respect of which an application for direct payments has been accepted under Council Regulation (EEC) No. 3766/91 establishing a support system for producers of soya beans, rapeseed, colza seed and sunflower seed(17);
- (b) not under permanent pasture (as defined in Annex I to Commission Regulation 658/96), permanent crops (as defined in the same Annex), forest or non-agricultural uses on 31 December 1991;

(5) OJ No. L 391, 31.12.92, p. 36, as last amended by Commission Regulation (EC) No. 2015/95 (OJ No. L 197, 22.8.95, p. 2).

(6) OJ No. L 38, 16.2.93, p. 12, as last amended by Commission Regulation (EC) No. 2991/95 (OJ No. L 312, 23.12.95, p. 9).

(7) OJ No. L 90, 7.4.94, p. 9, as last amended by Commission Regulation (EC) No. 2930/95 (OJ No. L 307, 20.12.95, p. 8).

(8) OJ No. L 91, 12.4.96, p. 46, as last amended by Commission Regulation (EC) No. 1647/96 (OJ No. L 207, 17.8.96, p. 6).

(9) OJ No. L 198, 22.7.91, p. 1, as last amended by Commission Regulation (EC) No. 418/96 (OJ No. L 59, 8.3.96, p. 10).

(10) OJ No. L 181, 1.7.92, p. 12, as last amended by Council Regulation (EC) No. 1575/96 (OJ No. L 206, 16.8.96, p. 24).

(11) OJ No. L 380, 24.12.92, p. 24.

(12) OJ No. L 206, 16.8.96, p. 41.

(13) OJ No. L 215, 30.7.92, p. 85, as last amended by Commission Regulation (EC) No. 2772/95 (OJ No. L 288, 1.12.95, p. 35).

(14) OJ No. L 215, 30.7.92, p. 96, as last amended by Commission Regulation (EC) No. 231/96 (OJ No. L 30, 8.2.96, p. 33).

(15) OJ No. L 355, 5.12.92, p. 1, as last amended by Council Regulation (EC) No. 1577/96 (OJ No. L 206, 16.8.96, p. 4).

(16) OJ No. L 218, 6.8.91, p. 1, as last amended by Commission Regulation (EC) No. 2387/95 (OJ No. L 244, 12.10.95, p. 50).

(17) OJ No. L 356, 24.12.91, p. 17, repealed by Council Regulation (EC) No. 2800/95 (OJ No. L 291, 6.12.95, p. 1).

- (c) which the Minister has declared to be eligible land in accordance with the third paragraph of Article 9 of Council Regulation 1765/92 and with either Article 3(3) of Commission Regulation 2780/92 or Article 2(4) of Commission Regulation 658/96; or
- (d) which falls to be treated as eligible land in accordance with the fourth paragraph of Article 9 of Council Regulation 1765/92, Article 2(5) of Commission Regulation 658/96 and regulation 6,

except land which–

- (a) the Minister has declared, in accordance with the third paragraph of Article 9 of Council Regulation 1765/92 and with either Article 3(3) of Commission Regulation 2780/92 or Article 2(4) of Commission Regulation 658/96, no longer to be eligible land; or
- (b) which no longer falls to be treated as eligible land, in accordance with the fourth paragraph of Article 9 of Council Regulation 1765/92, Article 2(5) of Commission Regulation 658/96 and regulation 6;

“environmental transferred set-aside land” means all land set aside by a farmer to satisfy the set-aside requirement of another farmer, except land in respect of which evidence showing that it falls within a location such as if specified in regulation 10(3)(a) has been provided by a transferee (as defined by regulation 10(2));

“farmer” means a farmer within the meaning of Article 1(4) of Council Regulation 3508/92 who applies to the Minister for a compensatory payment;

“farm-saved rapeseed” means seed which–

- (a) is the product of a harvest obtained from the planting, on a particular holding, of certified seed of a variety listed in Annex II to Commission Regulation 658/96; and
- (b) is, or is to be, sown on that holding;

“green cover” means a green cover established or, as the case may be, falling to be established in accordance with Schedule 2;

“green cover season” means the period commencing on 15th January in a given year and ending on 30th June in the same year;

“guaranteed set-aside land” means set-aside land which a farmer has undertaken to keep set aside for five successive marketing years pursuant to Article 5(1) of Commission Regulation 762/94;

“holding” has the same meaning as in Article 1(4) of Council Regulation 3508/92;

“land set aside for non-food purposes” means land set aside (in accordance with Commission Regulation 334/93) for the provision of raw materials for the manufacture within the European Community of products not primarily intended for human or animal consumption;

“legal requirement”, in relation to a farmer, means an obligation which the Minister is satisfied on reasonable grounds is legally binding on the farmer;

“the Minister” means–

- (a) in relation to England, the Minister of Agriculture, Fisheries and Food; and
- (b) in relation to the rest of Great Britain, the Secretary of State;

“the option to set aside” means the option (under Article 7(6) of Council Regulation 1765/92) for a farmer to set aside more land than is required to satisfy his set-aside requirement;

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

“penalty set-aside land” means land set aside to satisfy the penalty set-aside requirement;

“penalty set-aside requirement” means the requirement referred to in the second indent of the first sub-paragraph of Article 2(6) of Council Regulation 1765/92;

“permitted agricultural production” means, during the period commencing on 1st September in any given year and ending on the following 14th January, the use of set-aside land for the keeping and feeding of animals or for the harvesting of crops from it, in circumstances where—

- (a) no payment or benefit in kind is received by the farmer in respect of such use or harvesting; and
- (b) such use or harvesting is not required to be prohibited by Article 3(3) of Commission Regulation 762/94;

“processor” means a processor referred to in Article 11 of Commission Regulation 334/93;

“production region” has the same meaning as in Article 3 of Council Regulation 1765/92;

“scheme year” means a year beginning on 15th January and ending on the following 14th January;

“seed crop” means a crop grown so that the seed of the crop may be harvested and sown to establish a further crop;

“set aside” means withdraw, or as the case may be withdrawn, from agricultural production other than permitted agricultural production or (in accordance with Commission Regulation 334/93) the provision of raw materials for the manufacture within the European Community of products not primarily intended for human or animal consumption;

“set-aside compensatory payment” means a compensatory payment made in respect of set-aside land, as provided for in Article 7(5) and (6) of Council Regulation 1765/92;

“set-aside land” means land set aside pursuant to—

- (a) the set-aside requirement;
- (b) the penalty set-aside requirement; or
- (c) the option to set aside;

including land set aside which has been set aside pursuant to Council Regulation 2078/92 or afforested pursuant to Council Regulation 2080/92 and (in either case) is counted as being set aside pursuant to Article 7(2) of Council Regulation 1765/92;

“set-aside period” means (except in the case of guaranteed set-aside land) the period within a scheme year commencing on the first day of that year and ending on 31st August and, in the case of guaranteed set-aside land, means a scheme year;

“set-aside requirement” (except in the expression “penalty set-aside requirement”) means the requirement, imposed by Article 2(5) Council Regulation 1765/92 on all farmers claiming arable compensatory payment (except those to whom Article 8(3) of that Regulation applies), to set aside land in accordance with Article 7(1) of that Regulation;

“shallow cultivate” means cultivate to a depth of no more than 7 centimetres;

“sharefarming agreement” means an agreement for the use of agricultural land for the purposes of a farming enterprise, made between the owner of that land (including a person entitled for a term of years certain or other limited estate) and a farmer who does not have a right to exclusive possession of that land or any legal interest or charge in or over it, under which—

- (a) the relationship between the contracting parties is not one of partnership or employer and employee or landlord and tenant;
- (b) the respective liabilities of the contracting parties for the farming enterprise remain separate and defined in the agreement;
- (c) the contracting parties have joint responsibility for planning and managing the farming enterprise; and

- (d) each contracting party's reward for participation in the farming enterprise is an agreed share of the output from that enterprise, which output shall include agricultural produce of all kinds produced on or from the land and, in any case where produce is sold on behalf of each party to the sharefarming agreement, revenues from such sale;

“specified control measure” means any check, test, verification, inspection, investigation, control or other operation in relation to arable land which a Member State is required to carry out under Council Regulation 3508/92 or Title IV of Commission Regulation 3887/92;

“specified raw materials” means the raw materials, listed in Annex I and Annex II to Commission Regulation 334/93, produced on land set aside for non-food purposes;

“vernacular building” means a building of a design or style traditional in its locality;

“waste” (except in the expression “organic waste”) means any type of agricultural, industrial or domestic waste.

(2) In these Regulations, a reference to a numbered regulation or Schedule is a reference to the regulation or Schedules so numbered in these Regulations.

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

Production regions

3.—(1) For the purposes of Article 3 of Council Regulation 1765/92, the production regions in Great Britain shall be—

- (a) England;
- (b) land in Wales which is included in the list of less-favoured farming areas adopted by the Council of the European Communities under Article 2(2) of Council Directive [75/268/EEC](#) on mountain and hill farming in less-favoured areas⁽¹⁸⁾ which list is contained in Council Directive [84/169/EEC](#)⁽¹⁹⁾;
- (c) all other land in Wales;
- (d) land in Scotland which is included in the list described in sub-paragraph (b) above; and
- (e) all other land in Scotland.

(2) In order to take account of structural differences between the production regions of the United Kingdom as envisaged by the second paragraph of Article 3(1) of Council Regulation 1765, 92, the average cereals yields calculated in accordance with Article 3(2) of that Regulation shall be adjusted, and the adjusted average cereals yield for each production region of Great Britain (determined in accordance with the regionalisation plan submitted by the United Kingdom to the Commission of the European Communities pursuant to Article 3(3) of Council Regulation 1765/92) shall be calculated as follows—

- (a) the adjusted average cereals yield for each production region of Great Britain shall be the sum of 60% of the average cereals yield for that region determined in accordance with Article 3(2) of Council Regulation 1765/92 and 40% of the average cereals yield for the United Kingdom; and
- (b) for the purposes of sub-paragraph (a) above, the average cereals yield for the United Kingdom shall be calculated in accordance with the method set out in Article 3(2) of Council Regulation 1765/92, by treating the United Kingdom as if it were a single production region.

⁽¹⁸⁾ OJ No. L 128, 19.5.75, p. 1, as last amended by the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded.

⁽¹⁹⁾ OJ No. L 82, 26.3.84, p. 67, as amended by Commission Decision [91/25/EEC](#) (OJ No. L 16, 22.1.91, p. 25).

Calculation of projected regional reference amount

4. For the purposes of Article 5(1)(c) of Council Regulation 1765/92, the projected regional reference amount shall be calculated by comparing the oilseeds yield for each production region (as specified in regulation 3(1)) with the average oilseeds yield for the Community of 2.36 tonnes per hectare.

Minimum size of cultivate plot

5.—(1) Subject to paragraph (2) below, for the purposes of Article 3(1)(d) of Commission Regulation 658/96, the minimum size of a cultivated plot for which an arable compensatory payment may be made shall be 0.10 hectare.

(2) In the case of land used for seed production or for research, the minimum size of a cultivated plot for which an arable compensatory payment may be made shall be 0.01 hectare.

Exchanges of eligible and ineligible land

6.—(1) Where a farmer believes that he is obliged to exchange ineligible land for eligible land within his holding for agronomic, phytosanitary or environmental reasons, as provided for in Article 2(5) of Commission Regulation 658/96, he may apply to the Minister for approval of the exchange and the following provisions of this regulation shall apply in respect of his application.

(2) Subject to paragraphs (3) and (4) below, the application shall be in such form as the Minister may reasonably require.

(3) Where the applicant holds any of the eligible land as a tenant then his application shall include a declaration that he has obtained the written consent of his immediate landlord to the proposed exchange in respect of each part of the eligible land so held.

(4) Where the applicant holds any of the ineligible land as a tenant then his application shall include a declaration that he has informed his immediate landlord of the proposed exchange in respect of each part of the ineligible land so held.

(5) If the Minister is satisfied on reasonable grounds that the applicant is obliged to exchange the ineligible land for the eligible land for agronomic, phytosanitary or environmental reasons then, subject to the following paragraphs of this regulation, he shall give approval for the exchange.

(6) The Minister shall not give approval for the exchange if any of the ineligible land—

- (a) is situated within, or within 100 metres of, an area of special scientific interest as notified pursuant to section 28(1) of the Wildlife and Countryside Act 1981(20) unless he is satisfied on reasonable grounds that neither the ineligible land nor that area of special scientific interest will suffer any material environmental damage as a result of the exchange;
- (b) is situated within, or within 100 metres of, an area to which section 29(3) of the Wildlife and Countryside Act 1981 applies unless he is satisfied on reasonable grounds that neither the ineligible land nor that area will suffer any material environmental damage as a result of the exchange;
- (c) is situated within, or within 100 metres of—
 - (i) particular land classified as a European site under regulation 10 of the Conservation (Natural Habitats &c.) Regulations 1994(21); or

(20) 1981 c. 69; section 28 was amended, so far as relevant to these Regulations, by the Wildlife and Countryside (Amendments) Act 1985 (c. 31), section 2, and section 29 by the Environmental Protection Act 1990 (c. 43), sections 132 and 133 and Schedule 9, paragraph 11.

(21) S.I. 1994/2716.

- (ii) particular land included in the list referred to in regulation 7 of the Conservation (Natural Habitats &c.) Regulations 1994,
unless he is satisfied on reasonable grounds that neither the ineligible land nor that particular land will suffer any material environmental damage as a result of the exchange;
- (d) is situated within 10 metres of any watercourse (which for the purposes of this subparagraph includes any coastal water, estuary, lake, pond, river, stream, canal or field ditch), unless he is satisfied on reasonable grounds that neither the ineligible land nor the watercourse will suffer any material environmental damage as a result of the exchange;
- (e) is subject to an agreement made under section 18(3) of the Agriculture Act 1986(22) unless he is satisfied on reasonable grounds that neither the ineligible land nor other land (if any) subject to the same agreement will suffer any material environmental damage as a result of the exchange;
- (f) is—
- (i) subject to an agreement made (in England or Wales) under the Nitrate Sensitive Areas (Designation) Order 1990(23) or (in Scotland) under section 31B of the Control of Pollution Act 1974(24) as it applies to Scotland, or
- (ii) situated within land in respect of which payments of aid may be made under the Nitrate Sensitive Area Regulations 1994(25) following an application thereunder,
unless he is satisfied on reasonable grounds that neither the ineligible land nor other land (if any) subject to the same agreement or, as the case may be, covered by the same application will suffer any material environmental damage as a result of the exchange;
- (g) is subject to an agreement entered into under section 4 of the Countryside Act 1968(26) which has been designated a Countryside Stewardship Scheme agreement (in England) or Tir Cymen agreement (in Wales), unless he is satisfied on reasonable grounds that neither the ineligible land nor other land (if any) subject to the same agreement will suffer any material environmental damage as a result of the exchange;
- (h) is situated within land in respect of which payments of aid may be made under the Habitat (Water Fringe) Regulations 1994(27), the Habitat (Former Set-Aside Land) Regulations 1994(28), the Habitat (Salt-Marsh) Regulations 1994(29), the Habitat (Broadleaved Woodland) (Wales) Regulations 1994(30), the Habitat (Water Fringe) (Wales) Regulations 1994(31), the Habitat (Coastal Belt) (Wales) Regulations 1994(32), the Habitat (Species-Rich Grassland) (Wales) Regulations 1994(33) or the Habitats (Scotland) Regulations 1994(34) following an application made thereunder, unless he is satisfied on reasonable grounds that neither the ineligible land nor other land (if any) covered by the same application will suffer material environmental damage as a result of the exchange;

(22) 1986 c. 49.

(23) S.I. 1990/1013, amended by S.I. 1990/1187 and S.I. 1993/3198.

(24) 1974 c. 40; section 31B as it applies to Scotland was inserted by the Water Act 1989 (c. 15), section 169 and Schedule 23.

(25) S.I. 1994/1729, amended by S.I. 1995/1708 and S.I. 1995/2095.

(26) 1968 c. 41; section 4 was amended by the Wildlife and Countryside Act 1981 (c. 69), section 40, and the Environmental Protection Act 1990 (c. 43), section 130 and Schedule 8, paragraph 2.

(27) S.I. 1994/1291, amended by S.I. 1996/1480.

(28) S.I. 1994/1292, amended by S.I. 1996/1478.

(29) S.I. 1994/1293, amended by S.I. 1995/2871 (itself corrected by S.I. 1995/2891) and S.I. 1996/1479.

(30) S.I. 1994/3099.

(31) S.I. 1994/3100.

(32) S.I. 1994/3101.

(33) S.I. 1994/3102.

(34) S.I. 1994/2710 (S.138).

- (i) is situated within an area which has never been cropped during the period of twenty years ending on 22nd April 1995, unless that ineligible land is situated within an existing orchard planted after 22nd April 1965;
 - (j) is situated within an existing orchard planted before 23rd April 1965, unless he is satisfied on reasonable grounds that such of the ineligible land as is situated within that orchard will not suffer material environmental damage as a result of the exchange;
 - (k) is situated within land comprising an Ancient Monument which is included in the schedule compiled by the Secretary of State pursuant to section 1(1) of the Ancient Monuments and Archaeological Areas Act 1979(35), unless the Minister is satisfied on reasonable grounds that there will not be a harmful effect on the preservation of the Ancient Monument as a result of the exchange;
 - (l) is situated within an area designated as an area of archaeological importance by the Secretary of State under section 33 of the Ancient Monuments and Archaeological Areas Act 1979, unless the Minister is satisfied on reasonable grounds that there will not be a harmful effect on the preservation of the archaeological importance of that area as a result of the exchange; or
 - (m) is situated within a production region (as specified in regulation 3(1)) different from that in which any of the eligible land is situated.
- (7) Where approval has been given under paragraph (5) above, but—
- (a) any declaration included in, or information given by the applicant in connection with, the application was false in any material particular; or
 - (b) any declaration required to have been included in the application by virtue of paragraph (3) or (4) above was not so included,

then the application shall for all purposes be treated as if it had never been approved.

Derogations from requirement to have farmed for two years land set aside

7. For the purposes of Article 3(4) of Commission Regulation 762/94, the special cases where a farmer shall be entitled to claim set-aside compensatory payment on land which he has not farmed for the two years prior to the commencement of the set-aside period shall be—

- (a) in relation to land in England or Wales, those specified in Part I of Schedule 1; and
- (b) in relation to land in Scotland, those specified in Part II of Schedule 1.

Derogations from requirement to set land aside in the production region where the related arable land is situated

8.—(1) For the purposes of Article 9(3) of Commission Regulation 762/94, paragraphs (2) to (5) below shall apply where a farmer farms land in more than one production region (as specified in regulation 3(1)).

(2) Where, pursuant to Article 9(2) of Commission Regulation 762/94, a farmer would be required (except as provided by Article 9(4) of that Regulation and but for this provision) to set aside an area no larger than 2 hectares of land in a particular production region, he may set aside that land in any one or more of the production regions in which he farms.

(3) Where pursuant to Article 9(2) of Commission Regulation 762/94, a farmer would be required (except as provided by Article 9(4) of that Regulation and but for this provision) to set aside an area of land in any particular production region, and part of the land he farms in another production region

(35) 1979 c. 46; section 33 was amended by the National Heritage Act 1983 (c. 47), section 33 and Schedule 4, paragraph 54, and by the Local Government Act 1985 (c. 51), section 6 and Schedule 2, paragraph 2.

is contiguous to land he farms in the particular production region, he may set aside the required area of land or any part of it anywhere in that contiguous area of land.

(4) Where pursuant to Article 9(2) of Commission Regulation 762/94, a farmer would be required (except as provided by Article 9(4) of that Regulation and but for this provision) to set aside an area of land in any particular production region and the cereals yield in any other production region in which he farms is the same as that of the particular production region, he may set aside the required area of land in any one or more of those production regions.

(5) For the purposes of paragraph (4) above, the cereals yield of a production region is its adjusted average cereals yield calculated in accordance with regulation 3(2).

Requirements in relation to set-aside land

9.—(1) A farmer shall, subject to paragraphs (3) to (8) below, comply with the requirements of Schedule 2 in relation to his set-aside land, other than land which is—

- (a) set aside pursuant to Council Regulation 2078/92;
- (b) afforested pursuant to Council Regulation 2080/92; or
- (c) land set aside for non-food purposes.

(2) A farmer shall, subject to paragraphs (3) to (8) below, comply with the requirements of Schedule 3 in relation to land set aside for non-food purposes.

(3) A farmer shall be exempt from any given requirement of Schedule 2 or 3 in relation to particular set-aside land if, on application being made to the Minister regarding that requirement, he satisfies the Minister that he should be exempted from it—

- (a) to facilitate research into the effect of the observance of particular methods of managing set-aside land;
- (b) for environmental reasons;
- (c) where the farmer is an educational establishment, to facilitate the fulfilment of its educational purpose;
- (d) because during the set-aside period—
 - (i) a pipeline, cable or pylon is being or will be laid through, or constructed on or across, the particular set-aside land and the farmer cannot reasonably prevent that laying or construction, provided that that laying or construction was not already in progress on the date on which the land was set aside,
 - (ii) maintenance of a pipeline, cable or pylon which the farmer cannot reasonably prevent is being or will be carried out on the particular set-aside land, or
 - (iii) an archaeological excavation is to be carried out on the particular set-aside land;
- (e) for reasons of human or animal health or safety;
- (f) because, at the time when compliance with that requirement would otherwise be required, it is likely that the cost (whether financial or otherwise) of complying with that requirement would be disproportionately high in comparison with the environment benefit which compliance with that requirement would yield;
- (g) because such exemption is necessary, either to enable a serious plant health problem, serious weed infestation or serious pest infestation to be treated or to permit appropriate measures to be taken to prevent the development of such a problem or, as the case may be, infestation; or

- (h) in order to benefit a charity (as defined in section 96(1) of the Charities Act 1993⁽³⁶⁾) or a recognised body within the meaning of section 1(7) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990⁽³⁷⁾.

(4) The Minister may specify that any exemption granted pursuant to paragraph (3) above shall be effective only until a date, or the occurrence of a particular event, specified in the exemption.

(5) Where the Minister considers that—

(a) the circumstances of all set-aside land—

(i) situated in a particular geographical location,

(ii) planted with a particular variety or species of crop, or

(iii) both situated in a particular geographical location and planted with a particular variety or species of crop,

are such that each farmer of that land would in the event of an application being made to him under paragraph (3)(e), (f) or (g) above or paragraph 9(2) of Schedule 2 be able to satisfy the Minister that he should be exempt, or as the case may be, treated as having been exempted, from the obligation to comply with one or more of the requirements set out in Schedule 2 in respect of that land; and

(b) the circumstances are such that it would be reasonably practicable for the Minister to publish a notice (“an exemption notice”) in accordance with paragraph (6) below,

then the Minister shall so publish that exemption notice.

(6) Every exemption notice to which paragraph (5) above refers shall be published in the farming press and shall—

(a) specify—

(i) (in a case to which paragraph (5)(a)(i) above applies) the geographical location,

(ii) (in a case to which paragraph (5)(a)(ii) above applies) the variety or species of crop, or

(iii) (in a case to which paragraph (5)(a)(iii) above applies) the geographical location and variety or species of crop,

to which the exemption applies;

(b) specify the requirement, or as the case may be, requirements of Schedule 2 to which the exemption applies;

(c) specify any conditions attaching to the exemption; and

(d) specify the period of applicability of the exemption.

(7) Where an exemption notice is published in accordance with paragraph (6) above, any farmer who applies or has applied to the Minister for a compensatory payment in respect of any land specified in that notice shall by virtue of this provision (except as may be required by the notice) be treated as exempt (or, as the case may be, as having been exempted) from the requirement to comply with those provisions of Schedule 2 to these Regulations as are specified in that notice, during the period of applicability of that exemption.

(8) For the purposes of this regulation, a “serious weed infestation” means an infestation with one or more of the injurious weeds listed in section 1(2) of the Weeds Act 1959⁽³⁸⁾.

(9) For the purposes of paragraphs (6) and (7) above—

⁽³⁶⁾ 1993 c. 10.

⁽³⁷⁾ 1990 c. 40.

⁽³⁸⁾ 1959 c. 54.

- (a) “the farming press” means any publication or group of publications which in the Minister’s opinion is read by sufficient of those farmers to whom the exemption applies that knowledge of it will be disseminated to substantially all of those affected farmers; and
- (b) the period of applicability of the exemption means either a period of a given length commencing on a date specified in the exemption notice or the period from such a date until the occurrence of a particular event specified in the exemption notice as bringing its period of applicability to an end.

Transfer of the obligation to set aside to another farmer

10.—(1) Where a farmer transfers his set-aside requirement either in whole or in part to another farmer purportedly in compliance with the plan submitted by the United Kingdom to the Commission of the European Communities pursuant to the second indent of Article 7(7) of Council Regulation 1765/92 as read with Article 10 of Commission Regulation 762/94, the Minister shall accept that transfer as carried out in accordance with the plan where the transferee provides the evidence specified in the following paragraphs of this regulation to the Minister’s satisfaction.

(2) For the purposes of this regulation, the “transferor” means the farmer who so transfers his set-aside requirement and the “transferee” means the other farmer to whom that requirement is transferred as aforesaid.

(3) The transferee shall provide evidence that all the land which is set aside by him to satisfy the set-aside requirement of the transferor falls within—

- (a) a location within the coverage of the restriction as to distance referred to in the second indent of Article 7(7) of Council Regulation 1765/92, as read with Article 10(9) of Commission Regulation 762/94;
- (b) either—
 - (i) a nitrate sensitive area as designated (in England and Wales) by the Nitrate Sensitive Areas (Designation) Order 1990 or (in Scotland) under section 31B of the Control of Pollution Act 1974 as it applies in Scotland, or
 - (ii) a nitrate sensitive area as defined in the Nitrate Sensitive Area Regulations 1994;
- (c) a site of archaeological or historical importance; or
- (d) (in Scotland) a water features protection area,

or comprises a continuous area of land immediately adjoining a site of special scientific interest or a site of archaeological or historical importance, with (in the former case) at least 25% of the length of the boundary of that continuous area of land being contiguous with the boundary of that site of special scientific interest.

(4) For the purposes of paragraph (3)(c) above, land falls within a site of archaeological or historical importance if it comprises all or part of—

- (a) an Ancient Monument which is included in the schedule compiled by the Secretary of State pursuant to section 1(1) of the Ancient Monuments and Archaeological Areas Act 1979⁽³⁹⁾;
- (b) an area designated as an area of archaeological importance by the Secretary of State under section 33 of the Ancient Monuments and Archaeological Areas Act 1979;
- (c) an area in England and Wales in respect of which the transferee supplies evidence (to the extent that it is not already available to the Minister) showing—
 - (i) that the responsible officer of a local authority in whose area it lies considers management of it as set-aside land to be of potential archaeological value, and

⁽³⁹⁾ 1979 c. 46; section 1 was amended by the National Heritage Act 1983 (c. 47), section 33 and Schedule 4, paragraph 25.

(ii) that it comprises all or part of a site listed in a register of sites of archaeological interest maintained by that local authority; or

(d) an area in Scotland in respect of which the transferee supplies evidence (to the extent that it is not already available to the Minister) showing that it is listed in a register of sites of archaeological interest maintained by a public authority.

(5) For the purposes of paragraph (3)(d) above, a water features protection area is an area in Scotland which is adjacent to a water feature, and in respect of which the transferee provides evidence (to the extent that it is not already available to the Minister) showing that the management of that area as set-aside land would have a beneficial effect on the ecological status of that water feature; and in this paragraph “water feature” means any river, loch, wetland or other similar feature.

(6) For the purposes of paragraph (3) above, a site of special scientific interest is an area of special scientific interest as notified pursuant to section 28(1) of the Wildlife and Countryside Act 1981 or an area to which section 29(3) of that Act applies.

(7) Where a transferee shows to the satisfaction of the Minister that he has set land aside as environmental transferred set-aside land in a given scheme year, he shall provide (in addition to any evidence he is required to provide by virtue of the previous provisions of this regulation) evidence that—

(a) the land set aside by him as environmental transferred set-aside land in the preceding scheme year (which was not also set aside by him as environmental transferred set-aside land in the pre-preceding scheme year) was also set aside by him in the given scheme year;

(b) all land set aside by him as environmental transferred set-aside land in the pre-preceding scheme year (which was not also set aside by him as environmental transferred set-aside land in the pre-pre-preceding scheme year) was also set aside by him in the preceding scheme year;

(c) all land set aside by him as environmental transferred set-aside land in the pre-pre-preceding scheme year (which was not also set aside by him as environmental transferred set-aside land in the scheme year immediately preceding the pre-pre-preceding scheme year) was also set aside by him in the pre-preceding scheme year; and

(d) he is not using the land set-aside as environmental transferred set-aside land as land set aside for non-food purposes.

(8) For the purposes of paragraph (7) above—

(a) “the preceding scheme year” means the scheme year immediately preceding the given scheme year referred to in that paragraph;

(b) “the pre-preceding scheme year” means the scheme year immediately preceding the preceding scheme year; and

(c) “the pre-pre-preceding scheme year” means the scheme year immediately preceding the pre-preceding scheme year.

Requirements in relation to rapeseed

11.—(1) Subject to paragraphs (2) to (5) of this regulation, access to the compensatory payments in respect of rapeseed and colzaseed referred to in paragraph (3) of Article 4 of Commission Regulation 658/96 shall be permitted for each of the seed categories listed at sub-paragraphs (a) to (e) of that paragraph.

(2) In respect of the seed category listed in Article 4(3)(b) of Commission Regulation 658/96—

(a) a farmer who sows any variety of seed of that category on his holding shall not be entitled to receive compensatory payments in respect of the land sown with that seed unless that seed is qualifying seed and has been cleaned and dressed separately from any farm-saved

- rapeseed of a different variety produced on that holding and from seed not produced on that holding;
- (b) for the purposes of sub-paragraph (a) above, seed is qualifying seed if it was harvested—
 - (i) during the pre-sowing harvest, or
 - (ii) subject to sub-paragraph (c) below, during the harvest immediately preceding the pre-sowing harvest; and
 - (c) seed harvested during the harvest immediately preceding the pre-sowing harvest is qualifying seed for the purposes of sub-paragraph (a) above only if—
 - (i) climatic conditions during the pre-sowing harvest were such that it was either not possible to harvest farm-saved rapeseed or not possible to clean and dress it as specified in sub-paragraph (a) above or to obtain the results of the mandatory analysis before the time at which it would be necessary to sow seed in order to obtain a successful crop, and
 - (ii) the farmer informed the seed sampler, before sowing such seed, that he intended to sow it because the conditions of paragraph (i) above were satisfied.
- (3) In respect of the seed category listed in Article 4(3)(c) of Commission Regulation 658/96, seed sown or to be sown by a farmer shall be regarded as registered for inspection and control as required by that provision where—
- (a) sufficient documentary evidence to show the intended use of the crop of that seed (as specified in that provision) comes into being before the sowing of that seed; and
 - (b) a copy of such evidence is lodged with the Minister not later than the application for the compensatory payment in respect of the land on which that seed is or is to be sown.
- (4) In respect of the seed category listed in Article 4(3)(d) of Commission Regulation 658/96—
- (a) a person who wishes to be specially approved as a buyer (as referred to in that provision) shall apply to the Minister for such approval in such form as the Minister may reasonably require;
 - (b) subject to sub-paragraphs (c), (d) and (e) below, the Minister shall approve such an application;
 - (c) the Minister may refuse an application for an approval if he believes on reasonable grounds that such a refusal is necessary to ensure that seed is not diverted from an intended use referred to in that provision;
 - (d) the Minister may revoke such an approval at any time after it has been given if he believes on reasonable grounds that such a revocation is necessary to ensure that seed is not diverted from an intended use referred to in that provision; and
 - (e) any such approval, refusal or revocation shall be given in writing to the person concerned and in the case of a refusal or revocation shall state the reasons for the Minister's belief.
- (5) In respect of the seed category listed in Article 4(3)(e) of Commission Regulation 658/96—
- (a) a person who wishes to be approved as a first buyer (as referred to in that provision) shall apply to the Minister for such approval in such form as the Minister may reasonably require;
 - (b) subject to sub-paragraphs (c), (d) and (e) below, the Minister shall approve such an application;
 - (c) the Minister may refuse an application for an approval if he believes on reasonable grounds that such a refusal is necessary to ensure that seed is not diverted from an intended use referred to in that provision;

- (d) the Minister may revoke such an approval at any time after it has been given if he believes on reasonable grounds that such a revocation is necessary to ensure that seed is not diverted from an intended use referred to in that provision; and
 - (e) such an approval, refusal or revocation shall be given in writing to the person concerned and in the case of a refusal or revocation shall state the reasons for the Minister's belief.
- (6) For the purposes of Article 3(1)(b) of Commission Regulation 658/96 (which restricts eligibility for compensatory payments in respect of arable crops to areas fully sown in accordance with local standards)–
- (a) a farmer who sows–
 - (i) a crop of winter high erucic acid rapeseed within 50 metres of a crop of previously sown winter double zero rapeseed,
 - (ii) a crop of spring high erucic acid rapeseed within 50 metres of a crop of previously sown spring double zero rapeseed,
 - (iii) a crop of winter double zero rapeseed within 50 metres of a crop of previously sown winter high erucic acid rapeseed, or
 - (iv) a crop of spring double zero rapeseed within 50 metres of a crop of previously sown spring high erucic acid rapeseed, shall not be recognised as having sown that crop in accordance with local standards; and
 - (b) a farmer who, in any case referred to in paragraphs (i) to (iv) of sub-paragraph (a) above, has also sown the previously sown crop, shall not be recognised as having sown that previously sown crop in accordance with local standards.
- (7) As provided for in Article 4 of Commission Regulation 334/93 (which permits exclusion of particular raw materials from the scheme implemented by that Regulation if they raise difficulties as regards agricultural practice, control, public health or the environment or in terms of criminal law)–
- (a) where–
 - (i) a crop of winter high erucic acid rapeseed is sown within 50 metres of a crop of previously sown winter double zero rapeseed,
 - (ii) a crop of spring high erucic acid rapeseed is sown within 50 metres of a crop of previously sown spring double zero rapeseed,
 - (iii) a crop of winter double zero rapeseed is sown within 50 metres of a crop of previously sown winter high erucic acid rapeseed, or
 - (iv) a crop of spring double zero rapeseed is sown within 50 metres of a crop of previously sown spring high erucic acid rapeseed,the crop sown later shall be excluded from that scheme; and
 - (b) where–
 - (i) any crop sown later which is referred to in one of paragraphs (i) to (iv) of sub-paragraph (a) above is sown in the location referred to in the paragraph concerned; and
 - (ii) the farmer who sowed that crop is also the farmer who sowed the previously sown crop referred to in that paragraph,the previously sown crop shall be excluded from that scheme.
- (8) For the purposes of this regulation–
- (a) the “pre-sowing harvest”, in relation to the sowing of any seed, is the harvest immediately preceding the autumn or as the case may be spring in which the seed is sown;

- (b) the “seed sampler” is an appointed agent of the Minister whom the Minister has authorised by letter to take the samples required for mandatory analysis;
- (c) a “mandatory analysis” is the analysis required by sub-paragraph (b) of Article 4(3) of Commission Regulation 658/96 to ensure that farm-saved rapeseed conforms to the minimum quality criterion specified in that sub-paragraph;
- (d) “double zero rapeseed” is any variety of rapeseed or colzaseed conforming to the glucosinolate and erucic acid requirements of Article 4(2) of Commission Regulation 658/96 and listed in Annex II to that Regulation;
- (e) “high erucic acid rapeseed” means rapeseed or colzaseed of any variety conforming to the erucic acid requirement of Article 4(3)(e) of Commission Regulation 658/96;
- (f) “winter double zero rapeseed” and “winter high erucic acid rapeseed” mean respectively double zero rapeseed and high erucic acid rapeseed sown in the year before the intended year of harvest of the crop derived from it;
- (g) “spring double zero rapeseed” and “spring high erucic acid rapeseed” mean respectively double zero rapeseed and high erucic acid rapeseed sown in the calendar year in which it is intended to harvest the crop derived from it; and
- (h) where a farmer, or a servant or agent of a farmer, is a seed sampler, the authorisation concerned shall not be taken to include authorisation to take seed samples in respect of seed which is to be sown by that farmer.

Delivery notifications for non-food raw materials

12.—(1) The declaration which a farmer is required to make by Article 7(3) of Commission Regulation 334/93 shall be made by 15th November in the scheme year in respect of which set-aside compensatory payments have been claimed in respect of the land used to grow the raw material referred to in that provision.

(2) For the purposes of sub-paragraph (a) of Article 8(4) of Commission Regulation 334/93, the date by which a collector or first processor is to provide the information referred to in that sub-paragraph shall be 15th November in the scheme year in respect of which set-aside compensatory payments have been claimed in respect of the land used to grow the raw material referred to in that provision.

(3) The declaration referred to in paragraph (1) above shall be made, and the information referred to in paragraph (2) above provided, in such form as the Minister may reasonably require.

(4) If the declaration referred to in paragraph (1) above is not made by the date specified in that paragraph, the Minister may reduce the set-aside compensatory payment due to the farmer in respect of the land used to grow the raw material referred to in that paragraph—

- (a) by up to 10% if the notification is made after, but not more than 20 working days after, the said date; or
- (b) by up to 15% if the notification is made more than 20 working days after the said date.

Keeping and retention of records by a farmer

13.—(1) A farmer shall retain all commercial documents relating to seed sown on land in respect of which he makes an application for compensatory payment from the time at which he makes such application (or the time at which the commercial document concerned comes into his possession, if later) until the end of the fourth year following the year of harvest relating to that seed.

(2) A farmer who sows farm-saved seed on land in respect of which he makes an application for compensatory payment shall retain all commercial documents—

- (a) relating to the seed which produced the crop from which the farm-saved seed was obtained; and
 - (b) relating to the cleaning and dressing of the farm-saved seed,
- from the time at which he makes such application (or the time at which the commercial document concerned comes into his possession, if later) until the end of the fourth year following the year of harvest relating to that seed.
- (3) Where a farmer claims a compensatory payment in respect of land set aside for non-food purposes, he shall retain any delivery note relating to the crop grown on that land from the time at which it comes into his possession until the end of the fourth year following the year of harvest relating to that crop.
- (4) A farmer who makes an application under regulation 6 which is approved by the Minister shall retain all documents relating to that application from the time he makes the application until the end of the fourth year following the year in which the approval is granted.
- (5) For the purposes of this regulation—
- (a) the year of harvest relating to seed is the calendar year in which the crop grown from that seed is harvested, destroyed or otherwise removed from the land, and the year of harvest relating to any crop is the calendar year in which that crop is so harvested, destroyed or otherwise removed;
 - (b) a “commercial document” in relation to seed includes any invoice, seed label, sales note or delivery note relating to it, and (in relation to the cleaning and dressing of farm-saved seed) includes all invoices and delivery notes relating to such cleaning and dressing; and
 - (c) “farm-saved seed” is seed which is the product of a harvest on the holding on which it is sown.

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

- 14.—(1) This regulation applies where a farmer claims a compensatory payment in respect of land set aside for non-food purposes which is used for the production of Annex I raw materials.
- (2) A collector shall keep records of the quantity of all Annex I raw materials produced on that last-mentioned land which he has purchased and sold for processing, and the names and addresses of all subsequent buyers or processors to whom he has sold those raw materials.
- (3) A collector shall retain the records referred to in paragraph (2) above until the earlier of—
- (a) the end of the third calendar year following the year in which he delivers to a processor the Annex I raw materials to which those records relate with a view to their being processed to obtain one or more of the products mentioned in Annex III to Commission Regulation 334/93; or
 - (b) the seventh anniversary of the date of their creation.
- (4) A processor shall make records showing on a daily basis in relation to Annex I raw materials produced on the land referred to in sub-paragraph (1) above—
- (a) the quantity of all such Annex I raw materials purchased by him for processing;
 - (b) the quantity of such Annex I raw materials processed by him together with the quantity and type of products and by-products obtained from the processing;
 - (c) the losses of such Annex I raw materials resulting from processing;
 - (d) the quantity of such Annex I raw materials destroyed, if any, together with the reason for such destruction;
 - (e) the quantity and type of products and by-products sold or otherwise disposed of by him and the price obtained; and

- (f) the names and addresses of all subsequent buyers or processors to whom he sells such Annex I raw materials or products or by-products of processing.
- (5) A processor shall retain the records referred to in paragraph (4) above for two years from the date on which he processes, destroys, sells or otherwise disposes of the Annex I raw materials to which they relate.

Reduction or cancellation of compensatory payments for breach of Schedule 2 and 3

15.—(1) In the event of a breach by a farmer of any requirement of or prohibition imposed by Schedule 2 (other than those set out in its paragraphs 13(2)(b) and (c), 16(1) and 21) or by paragraph 2 of Schedule 3, the set-aside compensatory payment shall be reduced in relation to each part of an agricultural parcel in respect of which any such requirement or prohibition has been breached, by the greater of—

- (a) £100; and
- (b) £100 multiplied by the area of that part of that parcel (measured in hectares to the nearest 0.01 hectare) in respect of which the requirement or prohibition concerned is breached.

(2) Any reduction in the set-aside compensatory payment made by virtue of paragraph (1) above by reason of a breach of paragraph 2 of Schedule 3 shall have effect notwithstanding the exclusion of civil liability—

- (a) (in England and Wales) for the contravention of a code of practice approved or having effect as if approved under section 97 of the Water Resources Act 1991⁽⁴⁰⁾ provided for in paragraph (2) of that section; or
- (b) (in Scotland) for the contravention of a code of practice approved under section 51 of the Control of Pollution Act 1974⁽⁴¹⁾ provided for in paragraph (2) of that section.

(3) In the event of a breach by a farmer of any prohibition imposed by paragraph 21 of Schedule 2 or paragraph 1 of Schedule 3, the set-aside compensatory payment he shall be entitled to receive shall be reduced by—

- (a) £100 for each feature (other than a linear feature) which, in contravention of that prohibition, he damages, destroys or removes; and
- (b) the greater of—
 - (i) £100; and
 - (ii) £1 multiplied by the length measured to the nearest whole metre of the feature concerned,

for each linear feature which, in contravention of that prohibition, he damages, destroys or removes.

(4) For the purposes of paragraph (3) above—

- (a) subject to sub-paragraph (b) below, a linear feature is a hedge, row of trees, ditch or watercourse; and
- (b) where two or more parts of such a linear feature, not immediately adjacent to each other, are damaged, destroyed or removed, each shall be treated as a separate linear feature.

(5) Where—

- (a) a farmer sows or makes preparations for sowing an arable crop, temporary grass ley, traditional forage crop or other permitted crop, in contravention of paragraph 13(2)(b) or (c) of Schedule 2, or fails to comply with any requirement of paragraph 16(1) of Schedule 2; and

⁽⁴⁰⁾ 1991 c. 57; section 97 was amended by the Environment Act 1995 (c. 55), section 120 and Schedule 22, paragraph 128.

⁽⁴¹⁾ 1974 c. 40; section 51 was substituted by the Water Act 1989 (c. 15) section 169 and Schedule 23, paragraph 5.

- (b) the area of set-aside land on which the contravention or failure referred to in subparagraph (a) above occurred is not, by virtue of the operation of paragraph (2) of Article 9 of Commission Regulation 3887/92, to be treated as an area in regard to which all the obligations referred to in that paragraph have not been met,

the set-aside compensatory payment he shall be entitled to receive shall be reduced by the amount by which it would have been reduced had the area been so treated.

(6) In the event of a breach by the farmer of any requirement or prohibition imposed by paragraph 3 of Schedule 3, no set-aside compensatory payment shall be paid in respect of the land no longer to be used for the provision of specified raw materials.

(7) Where a farmer has already been paid all or part of the compensatory payment to which he would have been entitled but for the application of this regulation, any amount by which the compensatory payment which he has received exceeds that to which, following the application of this regulation, he is entitled shall be treated as if it were a wrong payment which fell to be recovered in accordance with Article 14(1) of Commission Regulation 3887/92 and regulation 4A of the Integrated Administration and Control System Regulations 1993(42).

Rate of interest applicable where compensatory payments fall to be returned

16.—(1) This regulation applies where any compensatory payment is paid to a farmer by the Minister and, by virtue of Article 14(1) of Commission Regulation 3887/92 (whether applying directly or treated by these Regulations as applying), the farmer is required to reimburse all or part of that payment.

(2) Except where the Minister recovers from any person any compensatory payment made as a result of the error of that Minister, interest shall be charged at the rate of one percentage point above LIBOR on a day-to-day basis for the period specified in that Article on the amount falling to be reimbursed as aforesaid.

(3) For the purposes of this regulation, LIBOR means the sterling three month London interbank offered rate in force during the period specified in the said Article 14(1).

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

Powers of authorised persons

17.—(1) An authorised person may at all reasonable hours and on producing, if so required, some duly authenticated document showing his authority, exercise the powers specified in this regulation for the purposes of—

- (a) carrying out any specified control measure; or
- (b) ascertaining whether or not an offence under these Regulations has been or is being committed.

(2) An authorised person may enter any premises, other than premises used only as a dwelling, which are, or which such person has reasonable cause to believe to be, occupied by, or in the possession of, a farmer, collector or processor or an employee or agent of a farmer, collector or processor.

(3) An authorised person who has entered any premises by virtue of this regulation may—

- (a) inspect all or any part of the land farmed or set aside by a farmer; and
- (b) inspect any crops growing on that land or kept on it.

- (4) An authorised person may—
- (a) require any farmer, collector or processor or any employee or agent of a farmer, collector or processor to produce any record and to supply such additional information in that person's possession or under this control relating to an application for a compensatory payment as the authorised person may reasonably request;
 - (b) inspect any such record and, where any such record is kept by means of a computer, have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with that record;
 - (c) require that copies of, or extracts from, any such record be produced;
 - (d) seize and retain any such record which he has reason to believe may be required as evidence in proceedings under these Regulations and, where any such record is kept by means of computer, require it to be produced in a form in which it may be taken away.
- (5) An authorised person entering any premises by virtue of this regulation may take with him such other persons as he considers necessary.

Assistance to authorised persons

18. A farmer, collector or processor or any employee or agent of a farmer, collector or processor shall give to an authorised person such assistance as the authorised person may reasonably request so as to enable the authorised person to exercise any power conferred upon him by regulation 17.

Offences and penalties

19.—(1) If any person fails to comply with an obligation imposed on him by regulation 13 or 14 he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

- (2) If any person—
- (a) intentionally obstructs an authorised person in the exercise of a power conferred on him by regulation 17; or
 - (b) fails without reasonable excuse to comply with a requirement of an authorised person directed at him under regulation 17(4)(a) or (c) or with a request made to him under regulation 18,

he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) If any person for the purpose of obtaining the whole or any part of a compensatory payment or in purported compliance with any requirement directed at him under regulation 17(4) knowingly or recklessly furnishes information which is false or misleading in a material respect he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Proceedings for an offence under paragraph (1), (2) or (3) above may, subject to paragraph (5) below, in England and Wales be brought, and in Scotland commenced, within the period of six months from the date on which evidence sufficient in the opinion of the prosecutor to justify proceedings came to his knowledge.

(5) No proceedings under paragraph (2) or (3) above shall be brought, or as the case may be commenced, by virtue of this regulation more than 12 months after the commission of the offence.

(6) For the purposes of this regulation, a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient in his opinion to warrant the proceedings came to his knowledge shall be conclusive evidence of that fact.

(7) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

(8) In relation to proceedings in Scotland, subsection (3) of section 136 of the Criminal Procedure (Scotland) Act 1995(43) (date of commencement of proceedings) shall apply for the purposes of this regulation as it applies for the purposes of that section.

(9) Where an offence under this regulation which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(10) Where the affairs of a body corporate are managed by its members, the provisions of paragraph (9) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(11) In paragraphs (9) and (10) above references to a “body corporate” include references to a Scottish partnership and, in relation to such a partnership, any reference to a director or other officer of a body corporate is a reference to a partner.

Revocation of Existing Legislation

20. The Arable Area Payments Regulations 1995(44), the Arable Area Payments (Amendment) Regulations 1995(45) and the Arable Area Payments (Amendment) Regulations 1996(46) are revoked.

9th December 1996

Tony Baldry
Minister of State, Ministry of Agriculture,
Fisheries and Food

10th December 1996

Lindsay
Parliamentary Under Secretary of State, Scottish
Office

(43) 1995 c. 46.
(44) S.I. 1995/1738.
(45) S.I. 1995/2780.
(46) S.I. 1996/1482.