

2007 No. 75

AGRICULTURE, ENGLAND

**The Rural Development (Enforcement) (England) Regulations
2007**

<i>Made</i>	- - - -	<i>9th January 2007</i>
<i>Laid before Parliament</i>		<i>19th January 2007</i>
<i>Coming into force</i>	- -	<i>12th February 2007</i>

The Secretary of State has been 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 measures relating to the promotion of rural development.

He makes the following Regulations under the powers conferred by that section.

Title, commencement and application

1. These Regulations may be cited as the Rural Development (Enforcement) (England) Regulations 2007, come into force on 12th February 2007, and apply in relation to England only.

Interpretation

2.—(1) In these Regulations—

“accountable body” means a body administering rural development payments which relate to the measures in Article 63 of Council Regulation 1698/2005, which may be—

- (a) an administrative and financial lead actor selected by a local action group in accordance with Article 62(2) of Council Regulation 1698/2005; or
- (b) a local action group whose structure and constitution meet the requirements specified in that Article;

“applicant” means any person who makes an application;

“application” (save where the context otherwise requires) means an application to the Secretary of State or to a delivery body to enter into a commitment;

“authorised person” means any person who is authorised by the Secretary of State, the Forestry Commissioners(c), Natural England(d) or a Regional Development Agency(e), either generally or specifically, to act in relation to matters arising under these Regulations;

“beneficiary” means a person who has entered into a commitment;

(a) S.I. 1972/1811 and S.I. 1995/751.

(b) 1972 c.68.

(c) See section 1 of the Forestry Act 1967 (c.10).

(d) See section 1 of the Natural Environment and Rural Communities Act 2006 (c.16).

(e) See section 1 of the Regional Development Agencies Act 1998 (c.45).

“Commission Regulation 1974/2006” means Commission Regulation (EC) No. 1974/2006 laying down detailed rules for the application of Council Regulation (EC) No. 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)(a);

“Commission Regulation 1975/2006” means Commission Regulation (EC) No. 1975/2006 laying down detailed rules for the implementation of Council Regulation (EC) No. 1698/2005 as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures(b);

“commitment” means an undertaking by an applicant to the Secretary of State or a delivery body to comply with any requirement which is a condition of receiving a rural development payment;

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

“Council Regulation 1782/2003” means Council Regulation (EC) No. 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers(d);

“Council Regulation 1698/2005” means Council Regulation (EC) No. 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)(e);

“Cross-compliance (England) Regulations” means the Common Agricultural Policy Single Payment and Support Schemes (Cross-compliance) (England) Regulations 2005(f);

“delivery body” means—

- (a) the Forestry Commissioners;
- (b) Natural England;
- (c) any Regional Development Agency except the London Development Agency(g); or
- (d) any local action group and, where relevant, its accountable body;

“local action group” means a group which has been selected to implement a local development strategy in accordance with Article 37 of Commission Regulation 1974/2006;

“rural development payment” means any payment—

- (a) made by the Secretary of State which relates to any of the measures in Article 20, 36, 52 or 63 of Council Regulation 1698/2005, including any such payment made by the Secretary of State on behalf of a delivery body;
- (b) made by a Regional Development Agency which relates to any of the measures in Article 20, 52 or 63 of Council Regulation 1698/2005; or
- (c) made by an accountable body which relates to any of the measures in Article 63 of Council Regulation 1698/2005.

(2) Other expressions used in these Regulations which are also used in Council Regulation 1698/2005 or Commission Regulation 1975/2006 shall be construed in accordance with the appropriate Regulation.

(a) O.J. No. L368, 23.12.2006, p.15.

(b) O.J. No. L368, 23.12.2006, p.74.

(c) O.J. No. L160, 26.6.1999, p.1, as last amended by Council Regulation 1698/2005.

(d) O.J. No. L270, 21.10.2003, p.1, as last amended by Council Regulation (EC) No. 1405/2006, O.J. L265, 26.9.2006, p.1.

(e) O.J. No. L277, 21.10.2005, p.1, to which there are amendments not relevant to these Regulations.

(f) S.I. 2005/3459, amended by S.I. 2006/2522, 2006/3254.

(g) See section 1 of, and Schedule 1 to, the Regional Development Agencies Act 1998 (c.45).

Powers of authorised persons

3.—(1) An authorised person may at all reasonable times, on producing, if so required, some duly authenticated document showing his authority, enter any land, other than a building used solely for the purpose of a dwelling—

- (a) to which an application or commitment relates, or
- (b) where he has reasonable grounds to believe that documents relating to an application or commitment are being kept,

for any of the purposes mentioned in paragraph (2).

(2) The purposes are—

- (a) inspecting the land to which the application or commitment relates;
- (b) verifying the accuracy of any information provided by an applicant or beneficiary relating to an application or commitment;
- (c) determining whether or not a beneficiary has complied with a commitment;
- (d) providing a control report in accordance with Article 13 or 19(2) of Commission Regulation 1975/2006;
- (e) determining whether there has been a non-compliance.

(3) An authorised person who has entered any land under paragraph (1) may—

- (a) inspect the land and any document, record or equipment on it which he reasonably believes relates to an application or a commitment;
- (b) require the applicant or beneficiary, or any employee, servant or agent of such applicant or beneficiary—
 - (i) to produce, or secure the production of, any document relating to the application or commitment, and
 - (ii) to supply any additional information relating to the application or commitment which is in his possession or under his control;
- (c) where any document or information referred to in sub-paragraph (b) is kept by means of a computer—
 - (i) have access to any computer and any associated apparatus or material which is or has been used for storing that information, and
 - (ii) require the information to be reproduced in a form in which it is legible and can be taken away;
- (d) require copies of or extracts from any document or other record referred to in sub-paragraph (a) or (b) to be produced;
- (e) retain a copy of any document produced to him;
- (f) seize and retain any document or other record which he reasonably believes may be required as evidence in proceedings under these Regulations; and
- (g) if necessary for the purposes of paragraph (2)(b) or (c)—
 - (i) inspect and count livestock on the land, and
 - (ii) require the applicant or beneficiary, or any employee, servant or agent of such beneficiary, to arrange for the collection, penning and securing of such livestock.

(4) An authorised person entering any land under paragraph (1) may be accompanied by—

- (a) any official of the European Commission; and
- (b) such other persons as he considers necessary for any of the purposes mentioned in paragraph (2).

(5) Paragraph (3) applies in relation to a person referred to in paragraph (4)(b), when he is acting under the instructions of an authorised person, as if he were an authorised person.

Assistance to authorised persons

4. An applicant or beneficiary, and any employee, servant or agent of his, shall give an authorised person such assistance as he may reasonably request so as to enable him to exercise any power conferred on him by regulation 3 or 5(2).

Cross-compliance

5.—(1) Regulations 4 and 6 of, and the Schedule to, the Cross-compliance (England) Regulations apply in relation to commitments to which Article 51(1) of Council Regulation 1698/2005 applies.

(2) An authorised person who enters any land under regulation 3(1) for the purposes referred to in regulation 3(2)(d) or (e) may exercise, in addition to the powers specified in regulation 3(3), any of the powers specified in regulation 7(3) of the Cross-compliance (England) Regulations.

Payment of rural development payments

6. The Secretary of State may enter into arrangements with a delivery body to pay rural development payments on its behalf.

Transfers of land

7.—(1) Where—

- (a) a beneficiary has transferred all or part of the land to which a commitment relates to another person (“the transferee”),
- (b) the transferee has, within three months of the date of the transfer, given an undertaking to the Secretary of State, or to the appropriate delivery body, to assume the commitment in place of the beneficiary, and
- (c) the Secretary of State, or the appropriate delivery body, has accepted that undertaking,

the beneficiary shall be released from his commitment, other than in respect of any breach or other matter occurring before the acceptance by the Secretary of State or the appropriate delivery body of the transferee’s undertaking.

(2) Paragraph (1) does not apply in relation to a commitment made to the Forestry Commissioners.

Breaches of commitments etc

8.—(1) The Secretary of State or a delivery body may determine, in relation to commitments made to him or it, that—

- (a) the beneficiary has furnished false or misleading information to him or it;
- (b) the beneficiary is in breach of any of the terms of a commitment;
- (c) the beneficiary is in breach of any requirement to which he is subject under Article 14(2) of Council Regulation 1257/1999, Council Regulation 1698/2005, Commission Regulation 1974/2006 or 1975/2006, or these Regulations;
- (d) the whole or any part of the sum paid or payable under a commitment duplicates assistance provided or to be provided out of monies made available by—
 - (i) the European Communities,
 - (ii) Parliament, or
 - (iii) a body exercising public functions within the United Kingdom;
- (e) there has been a material change in the nature, scale, costs or timing of the operation or project in relation to which a commitment has been made; or

(f) the operation or project in relation to which a commitment has been made, has been or is being delayed, or is unlikely to be completed.

(2) Where the Secretary of State or a delivery body makes a determination under paragraph (1), he or it may also determine that the beneficiary acted recklessly or intentionally.

(3) Where the Secretary of State or a delivery body makes a determination under paragraph (1) or (2), he or it must—

- (a) give the beneficiary a written explanation of the reasons for making the determination;
- (b) afford the beneficiary the opportunity of making written representations within such time as he or it considers reasonable; and
- (c) consider any such representations.

(4) This regulation applies without prejudice to any dispute procedure contained in a commitment.

(5) In paragraph (4), “dispute procedure” means a mechanism for resolving disputes between a beneficiary and either the Secretary of State or a delivery body.

Powers of recovery etc.

9.—(1) Where the Secretary of State or a delivery body makes a determination under regulation 8(1), the Secretary of State, or the appropriate Regional Development Agency or accountable body, may—

- (a) withhold the whole or any part of any rural development payment payable to the beneficiary; and
- (b) recover on demand the whole or any part of any rural development payment already paid to the beneficiary.

(2) Where the Secretary of State or a delivery body makes a determination under regulation 8(1), the Secretary of State or the delivery body may suspend or terminate the commitment, and any entitlement of the beneficiary to payment in respect of the unexpired period of the commitment shall consequently be suspended or terminated, as the case may be.

(3) Where the Secretary of State or a delivery body terminates a commitment under paragraph (2), the Secretary of State or any delivery body may also prohibit the beneficiary from entering into any new commitment with him or it under the same measure, for such period (not exceeding two years) from the date of the termination as he or it may specify.

(4) Where the Secretary of State or a delivery body makes a determination under regulation 8(2), the Secretary of State, or the appropriate Regional Development Agency or accountable body, may also require the beneficiary to pay him or it an additional sum equal to no more than 10% of the sums paid or payable to him or it.

(5) The powers conferred on the Secretary of State and delivery bodies by paragraphs (2), (3) and (4) shall be exercisable by a notice served on the beneficiary by post at his last known address.

Recovery of interest

10.—(1) Where the Secretary of State, a Regional Development Agency or an accountable body exercises the power conferred by regulation 9(1)(a) or (b), he or it may also recover on demand interest on the sum to be recovered, and the rate of interest shall be one percentage point above LIBOR on a day to day basis.

(2) “LIBOR” means the sterling three month London interbank offered rate in force during the period between the date on which the Secretary of State, Regional Development Agency or accountable body makes the payment to be recovered and the date on which he or it recovers it.

(3) In any proceedings relating to this regulation, a certificate of the Secretary of State 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 Secretary of State of that rate.

Sums payable to be recoverable as a debt

11. Where an amount falls to be paid to the Secretary of State, a Regional Development Agency or an accountable body by virtue of (or by virtue of action taken under) these Regulations, the amount shall be recoverable as a debt.

Set off

12. The amount of—

- (a) any rural development payment payable by the Secretary of State, a Regional Development Agency or an accountable body, or
- (b) any sum payable by the Secretary of State under Council Regulation 1782/2003,

whether as principal or agent, may be set off against the amount of any sum recoverable by the Secretary of State, a Regional Development Agency or an accountable body under regulation 9(1), 9(4) or 10(1).

Offences and penalties

13.—(1) A person is guilty of an offence if—

- (a) for the purposes of obtaining a rural development payment for himself or any other person, he knowingly or recklessly makes a statement which is false or misleading in a material particular;
- (b) he intentionally obstructs an authorised person, or a person accompanying him and acting under his instructions, in the exercise of his powers under regulation 3 or 5(2); or
- (c) without reasonable cause, he fails to comply with a request made under regulation 4.

(2) A person guilty of an offence under paragraph (1)(a) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

(3) A person guilty of an offence under paragraph (1)(b) or (c) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Where an offence under these Regulations committed by a body corporate is shown—

- (a) to have been committed with the consent or connivance of an officer, or
- (b) to be attributable to any neglect on his part,

the officer as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

(5) Where the affairs of a body corporate are managed by its members, paragraph (4) applies 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.

(6) “Officer”, in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

Amendment of the England Rural Development Programme (Enforcement) Regulations 2000

14. In regulation 2(1) of the England Rural Development Programme (Enforcement) Regulations 2000(a), for the definition of “the Commission Regulation”, substitute—

(a) S.I. 2000/3044, to which there are amendments not relevant to these Regulations.

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

9th January 2007

Barry Gardiner
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

(a) O.J. No. L231, 30.6.2004, p.24, as last amended by Commission Regulation (EC) No. 1360/2005, O.J. L214, 19.8.2005, p.55.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Article 74(1) of Council Regulation (EC) No. 1698/2005 (O.J. No. L277, 21.10.2005, p.1) (“the Rural Development Regulation”) and Article 9(1) of Council Regulation (EC) No. 1290/2005 (O.J. No. L209, 11.8.2005, p.1), which require Member States to adopt legislative and administrative provisions to ensure that the Community’s financial interests in relation to expenditure on rural development are effectively protected.

They also implement Article 51(1) of the Rural Development Regulation, which applies the cross-compliance provisions in Articles 4 and 5 of, and Annexes III and IV to, Council Regulation (EC) No. 1782/2003 (O.J. No. L270, 21.10.2003, p.1) to certain rural development measures.

Regulation 3 gives powers of entry and inspection to persons authorised by the Secretary of State, the Forestry Commission, Natural England or a Regional Development Agency, for purposes relating to rural development commitments. Regulation 4 requires certain persons to give assistance to authorised persons on request.

Regulation 5 applies certain provisions of the Common Agricultural Policy Single Payment and Support Schemes (Cross-compliance) (England) Regulations 2005 (S.I. 2005/3459) in relation to rural development commitments to which Article 51(1) of the Rural Development Regulation applies.

Regulation 6 gives a power to the Secretary of State to enter into arrangements with any of the bodies delivering rural development measures to pay rural development payments on their behalf.

Regulation 7 makes provision for situations where land subject to a rural development commitment is transferred.

Regulation 8 gives the Secretary of State, and the delivery bodies, the power to determine that a beneficiary has breached a rural development commitment or other relevant requirement, and that the beneficiary has done so recklessly or intentionally.

Regulation 9 gives powers of recovery and other powers to the Secretary of State and the delivery bodies, which can be exercised where there has been a determination under regulation 8.

Regulation 13 creates offences of making a false or misleading statement in order to obtain a rural development payment, obstructing an authorised person, and failing to give assistance to an authorised person.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available at http://www.defra.gov.uk/erdp/rdp07_13/default.htm and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

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