

# Statutory Instrument 1998 No. 2138

## The Nitrate Sensitive Areas (Amendment) (No. 2) Regulations 1998

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### STATUTORY INSTRUMENTS

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#### 1998 No. 2138

#### AGRICULTURE

#### The Nitrate Sensitive Areas (Amendment) (No. 2) Regulations 1998

<i>Made</i>	<i>28th August 1998</i>
<i>Laid before Parliament</i>	<i>9th September 1998</i>
<i>Coming into force</i>	<i>30th September 1998</i>

The Minister of Agriculture, Fisheries and Food, being a Minister designated<sup>[1]</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>[2]</sup> in relation to the common agricultural policy of the European Community, in exercise of the powers conferred by that section and of all other powers enabling him in that behalf, hereby makes the following Regulations:

#### Title, commencement and interpretation

**1. - (1) These Regulations may be cited as the Nitrate Sensitive Areas (Amendment) (No. 2) Regulations 1998 and shall come into force on 30th September 1998.**

#### **(2) In these Regulations-**

**(a) "the principal Regulations" means the Nitrate Sensitive Areas Regulations**

1994[3];

(b) "current scheme", with respect to an applicant, means the scheme in which a person referred to in regulation 2(1)(b) below participates at the date of the new application made by him.

#### **Closure of schemes with respect to future applications**

2. - (1) The principal Regulations shall have effect only in so far as they apply in relation to any application made under them, and any participation in and entitlement under a scheme pursuant to such an application, being an application which-

(a) has been accepted by the Minister; or

(b) is an application (a "new application") of a kind specified in regulation 3 below made before 30th September 1998 by a person-

(i) who, at the date of his new application, participates in a scheme as a consequence of a previous application for aid made by him which was accepted by the Minister; and

(ii) who has given undertakings under regulation 7 of the principal Regulations with respect to his current scheme, and in respect of a period of five years which at the date of his new application has not expired.

(2) In so far as, by virtue of paragraph (1) above, the principal Regulations continue to have effect, they shall apply with the modification specified in regulation 4 below and subject to the amendments made in regulations 5 to 14 below.

3. An application of the kind mentioned in regulation 2(1)(b) above is an application to participate in a new scheme, and for entitlement to aid thereunder, in substitution to the applicant's participation in, and entitlement to aid under, his current scheme.

#### **Modification of the principal Regulations**

4. - (1) The Minister shall not accept an application of a kind specified in regulation 3 above unless he is satisfied that the conditions set out in Article 13 of Commission Regulation (EC) (No. 746/96[4]) will be fulfilled as a result of such acceptance.

(2) Where the Minister has accepted an application of a kind specified in regulation 3 above made by a person specified in regulation 2(1)(b) above, the applicant's participation in his current scheme, and his obligations and entitlement to aid thereunder, shall end.

#### **Amendment of the principal Regulations**

5. The principal Regulations shall be amended in accordance with the following provisions of these Regulations.

6. In regulation 5 (land which is eligible for aid), in paragraph (1), for the words "regulation 3(1)(b)" there shall be substituted the words "regulation 3(b)".

7. In regulation 7 (undertakings by farmer), in paragraph (1), for the words "regulation 3(1)(d)" there shall be substituted the words "regulation 3(d)".

8. In regulation 8 (restrictions on acceptance of applications for aid), in paragraph (4) (a), for the words "regulation 3(1)(d)" there shall be substituted the words "regulation 3(d)".

**9. In regulation 11 (payments of aid), for the words "sub-paragraph (b) of regulation 7" there shall be substituted the words "regulation 7(1)(b)".**

**10. In Schedule 2 (requirements under all schemes), for the words "regulation 7(a)" there shall be substituted the words "regulation 7(1)(a)".**

**11. In Schedule 3 (requirements under the basic scheme), for the words "regulation 7(b)(i)" there shall be substituted the words "regulation 7(1)(b)(i)".**

**12. In Schedule 4 (requirements under the premium arable scheme)-**

**(a) for the words "regulation 7(b)(ii)" there shall be substituted the words "regulation 7(1)(b)(ii)";**

**(b) for paragraph (2) there shall be substituted the following two paragraphs-**

**" (2) the farmer shall maintain as grassland for as long as any undertaking of his remains extant-**

**(a) all permanent grassland on his land within the nitrate sensitive area;  
and**

**(b) any arable land converted to grassland, excluding grass leys, after 31st December 1991;**

**(2A) the farmer shall also maintain as grassland, for the duration of any undertaking relating to it, the land converted in accordance with paragraph (1);"**

**13. In Schedule 5 (requirements under the premium grass scheme), for the words "regulation 7(b)(iii)" there shall be substituted the words "regulation 7(1)(b)(iii)".**

**14. In Schedule 6 (rates of payment), in paragraph 6B (set-aside option), for the amount "£376" there shall be substituted the amount "£356".**

*Elliot Morley*

**Parliamentary Secretary, Ministry of Agriculture, Fisheries and Food**

**26th August 1998**

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#### **EXPLANATORY NOTE**

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

**These Regulations, which extend only to England and come into force on 30th September 1998, modify and amend the Nitrate Sensitive Areas Regulations 1994 (S.I. 1994/1729) ("the principal Regulations") which allow the Minister of Agriculture, Fisheries and Food ("the Minister") to make payments of aid to farmers in nitrate sensitive areas who give undertakings to manage their land in accordance with a scheme as described therein.**

**The effect of these Regulations is to limit the application of the principal Regulations to applications made under them and already accepted by the Minister (and any participation in and entitlement under a scheme pursuant to any such application), and to applications ("new applications") made prior to 30th September 1998 by applicants who are already participating in a scheme by virtue of an earlier, accepted, application but who wish to transfer such participation, and the right to receive payments, to another scheme (regulations 2 and 3).**

**The acceptance of new applications is limited to those meeting the requirements of Article 13 of Commission Regulation (EC) No. 746/96 (OJ No. L102, 25.4.96, p. 19) ("the Commission Regulation") laying down detailed rules for the application of Council Regulation (EEC) No. 2078/92 (OJ No. L215, 30.7.92, p. 85) on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside. Article 13 authorises replacement of an agri-environment programme, undertaking or agreement by another such undertaking or agreement, where the Minister is satisfied that the conditions set out in Article 13 are fulfilled (the primary conditions being that the transfer is of unquestionable benefit to the environment and that the existing undertaking is significantly reinforced) (regulation 4(1)). This complements the existing power of the Minister, under regulation 12 of the principal Regulations and again pursuant to Article 13 of the Commission Regulation, to accept an application from a farmer to transfer from his participation in one scheme to participation in a more environmentally beneficial scheme for the remainder of the original five-year period.**

**In addition, these Regulations introduce amendments to the principal Regulations clarifying, within the premium arable scheme, for how long certain areas of grassland are required to be kept as grassland (regulation 12), reducing the amount of the annual payment for the set-aside option (regulation 14) and making some minor drafting amendments.**

**No Regulatory Impact Assessment has been prepared in respect of these Regulations.**

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*Notes:*

[1] [S.I. 1972/1811.back](#)

[2] [1972 c. 68.back](#)

[3] [S.I. 1994/1729, amended by S.I. 1995/1708, 2095, 1996/3105, 1997/990, 1998/79.back](#)

[4] [OJ No. L102, 25.4.96, p. 19, as amended by Commission Regulation \(EC\) No. 435/97 \(OJ No. L67, 7.3.97, p. 2\).back](#)

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