

Statutory Instrument 2000 No. 3042

The Energy Crops Regulations 2000

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STATUTORY INSTRUMENTS

2000 No. 3042

AGRICULTURE, ENGLAND

The Energy Crops Regulations 2000

<i>Made</i>	<i>9th November 2000</i>
<i>Laid before Parliament</i>	<i>14th November 2000</i>
<i>Coming into force</i>	<i>5th December 2000</i>

The Minister of Agriculture, Fisheries and Food, being a Minister designated^[1] for the purposes of section 2(2) of the European Communities Act 1972^[2] in relation to the common agricultural policy of the European Community and measures relating to the promotion of rural development, in exercise of the powers conferred on him by the said section 2(2) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Title, commencement and extent

1. - (1) These Regulations may be cited as the Energy Crops Regulations 2000 and shall come into force on 5th December 2000.

(2) These Regulations shall extend to England only.

Interpretation

2. - (1) In these Regulations -

"agricultural land" means land used for agriculture for the purposes of a trade or business;

"agriculture" has the meaning given to it by section 109(3) of the Agriculture Act 1947[3];

"applicant" means any person who has made an application pursuant to regulation 4, the result of which is still pending;

"approved project" means a project which has been approved by the Minister under these Regulations, and "approve" and "approval" are to be construed accordingly;

"area of archaeological importance" means an area designated as such by an order under section 33 of the Ancient Monuments and Archaeological Areas Act 1979[4];

"area of outstanding natural beauty" means an area designated as such by an order under section 87(1) of the National Parks and Access to the Countryside Act 1949[5];

"area of special scientific interest" means an area which is the subject of a notification under section 28 of the Wildlife and Countryside Act 1981[6];

"beneficiary" means a person or producer organisation who, or which, has been granted approval for a project;

"Community assistance" means assistance from the European Agricultural Guidance and Guarantee Fund granted pursuant to the Community legislation;

"the Community legislation" means the instruments listed in the Schedule to these Regulations, in so far as they relate to expenditure for which support may be granted pursuant to Article 4, 30 or 31 of Council Regulation 1257/1999/EC;

"Council Regulation 1257/1999/EC" means Council Regulation (EC) No. 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF)[7];

"designated" means designated at the time of the making of these Regulations;

"electronic communication" has the same meaning as in the Electronic Communications Act 2000[8];

"energy crops" means crops of miscanthus or short rotation coppice;

"energy producer" means any person who operates an energy production unit;

"energy production unit" means equipment or a plant which produces energy through the use of energy crops as a fuel supply;

"the ERDP" means the England Rural Development Programme approved by the Commission in the Decision referred to in the Schedule to these Regulations, and "the relevant part of the ERDP" means that part of the ERDP which relates to expenditure for which support may be granted pursuant to Article 4, 30 or 31 of Council Regulation 1257/1999/EC;

"European site" has the meaning given to it by regulation 10(1) of the Conservation (Natural Habitats, &c.) Regulations 1994[9];

"financial assistance" means an amount paid or payable under these Regulations;

"holding" has the same meaning as in Article 1(4) of Council Regulation (EEC) No. 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes^[10];

"large-scale energy production unit" means an energy production unit which produces electricity or heat or both, and which has a net rated thermal input of more than four megawatts;

"local authority" means the council of a county or district, or the council of a London borough;

"the Minister" means the Minister of Agriculture, Fisheries and Food;

"miscanthus" means perennial rhizomatous grasses of the *Miscanthus* species;

"National Park" means an area designated as such by an order under section 5(3) of the National Parks and Access to the Countryside Act 1949;

"nature reserve" means -

(a) land subject to an agreement under section 16 of the National Parks and Access to the Countryside Act 1949 that it shall be managed as a nature reserve; or

(b) land declared to be a national nature reserve by the Nature Conservancy Council for England pursuant to section 35 of the Wildlife and Countryside Act 1981;

"net rated thermal input" means the rate at which fuel can be burned at the maximum continuous rating for an appliance multiplied by the net calorific value of that fuel, expressed in megawatts thermal;

"project" means a project involving -

(a) the establishment of energy crops; or

(b) the formation of a producer organisation for the purposes of managing the production and supply of short rotation coppice;

"scheduled monument" means any monument included in the Schedule compiled by the Secretary of State under section 1(1) of the Ancient Monuments and Archaeological Areas Act 1979;

"short rotation coppice" means fast-growing species of the genera *Salix* and *Populus*, densely planted, coppiced and cultivated in the short term and regularly harvested;

"small-scale energy production unit" means an energy production unit which produces electricity or heat or both, and which has a net rated thermal input of no more than four megawatts; and

"the statutory countryside bodies" means the Countryside Agency^[11] and the Nature Conservancy Council for England^[12].

(2) A reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication which has been recorded and is consequently capable of being reproduced.

Assistance for the establishment of energy crops and the formation of producer organisations

3. The Minister may pay financial assistance to a beneficiary towards expenditure incurred or to be incurred by him in connection with an approved project.

Applications for approval of projects

4. An application for the approval of a project shall be made in such form and contain such information as the Minister reasonably may require.

Approval of projects

5. - (1) Subject to the duty imposed on him by section 17 of the Agriculture Act 1986^[13] (duty to balance agricultural, economic, social, environmental and recreational interests in exercising agricultural functions), the Minister may -

- (a) refuse to approve a project for the receipt of financial assistance; or
- (b) approve it in whole or in part, unconditionally or subject to such conditions as he may determine,

but he shall not approve a project unless he is satisfied that -

- (i) it is eligible for Community assistance and is in accordance with the relevant part of the ERDP; and
- (ii) the conditions specified in paragraph (2) have been fulfilled.

(2) The conditions referred to in paragraph (1) are that -

(a) the land to which the project relates -

- (i) is agricultural land, where that project involves the establishment of short rotation coppice pursuant to Article 31 of Council Regulation 1257/1999/EC;
- (ii) is not agricultural land, where that project involves the establishment of short rotation coppice pursuant to Article 30 of Council Regulation 1257/1999/EC;
- (iii) is part of a holding, where that project involves the establishment of miscanthus; and
- (iv) in every case, is located within the catchment area of the energy production unit to which the energy crops established on that land are to be supplied;

(b) the applicant occupies the land to which the project relates either -

- (i) as freehold owner; or
- (ii) as lessee under a tenancy from year to year or granted for a term of not less than two years;

(c) where the applicant occupies the land to which the project relates in accordance with sub-paragraph (b)(ii), the owner or, where there is more than one, each owner of

that land has given his consent in writing to the project in such form as the Minister reasonably may require, and for the purposes of this sub-paragraph, "owner" means a freehold owner and any superior tenant where the applicant occupies that land as a sub-tenant; and

(d) following the harvesting of the energy crops to be established under the project, the whole of the yield resulting from that harvesting is either -

(i) under the terms of a written agreement between the applicant and an energy producer, sent to the energy producer for use in an energy production unit; or

(ii) used by the applicant in a small-scale energy production unit.

(3) For the purposes of paragraph (2)(a)(iv), the land to which a project relates is located within the catchment area of an energy production unit where -

(a) in the case of a small-scale energy production unit, it is located within 10 miles of that energy production unit; and

(b) in the case of a large-scale energy production unit, it is located within 25 miles of that energy production unit, or within such distance as the Minister may direct in the light of representations made to that effect by an energy producer.

(4) The Minister may vary an approval by varying any condition to which it is subject, or imposing conditions.

(5) Before approving a project under paragraph (1) or varying an approval under paragraph (4), the Minister shall consult -

(a) in all cases, in order to determine whether the land to which the project relates is land forming part of an area of archaeological importance, the relevant local authority;

(b) in the case of a project involving the establishment of short rotation coppice, the Forestry Commissioners, having regard to their opinion in relation to the project under regulation 6 or 15 of the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999[[14](#)] and, where in their opinion the project is a relevant project for the purposes of those Regulations, having regard to their determination in relation to the project under regulation 15 of those Regulations;

(c) in the case of a project relating to land on which a scheduled monument is situated, the relevant local authority and the Historic Buildings and Monuments Commission for England[[15](#)]; and

(d) in the case of a project relating to land forming part of an area of outstanding natural beauty, an area of special scientific interest, the Broads[[16](#)], a European site, a nature reserve or a National Park, the statutory countryside bodies.

(6) Where the Minister decides to refuse an approval under paragraph (1) or to vary an approval under paragraph (4), he shall -

- (a) give the applicant or beneficiary, as the case may be, notice in writing of his decision with a statement of his reasons;
- (b) give that applicant or beneficiary an opportunity to make written representations within such time as the Minister considers reasonable; and
- (c) consider any such representations.

(7) An approval or variation under this regulation shall be in writing.

Claims

6. A claim for financial assistance shall be made at such time or within such period and in such form, and be accompanied by such information, as the Minister reasonably may require.

Payment

7. - (1) The Minister may pay financial assistance by payment of a single lump sum or by instalments.

(2) Payments under paragraph (1) may be made -

- (a) at such time or times as the Minister reasonably may determine; and
- (b) subject to such conditions as the Minister reasonably may determine.

Information

8. - (1) A beneficiary shall supply the Minister with such information about an approved project as the Minister reasonably may require.

(2) Where the Minister requires such information, the beneficiary shall supply him with it within such period as the Minister reasonably may determine.

Record keeping

9. - (1) Subject to paragraphs (2) and (3), a beneficiary shall keep any invoice, account or other document relating to an approved project for the period of six years beginning with the day on which the last payment of financial assistance under these Regulations is made to him in connection with that project.

(2) If the beneficiary transfers the original of any such document to another person in the normal course of business, he must instead keep a copy of that document for that period.

(3) Paragraph (1) shall not apply where the document has been removed by any person lawfully authorised to remove it.

Elliot Morley

Parliamentary Secretary, Ministry of Agriculture, Fisheries and Food

9th November 2000

SCHEDULE

regulation 2(1)

MEANING OF "COMMUNITY LEGISLATION"

- 1. Council Regulation (EC) No. 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) (O.J. No. L160, 26.6.1999, p. 80).
- 2. Commission Regulation (EC) No. 1750/1999 of 23 July 1999 laying down detailed rules for the application of Council Regulation (EC) No. 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) (O.J. No. L214, 13.8.1999, p. 31, as amended by Commission Regulation (EC) No. 2075/2000 of 29 September 2000 (O.J. No. L246, 30.9.2000, p. 46)).
- 3. Commission Decision No. C(2000) 3003 of 11 October 2000 approving the rural development programming document for England (UK) for the 2000-06 programming period.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to England only, supplement the Community legislation listed in the Schedule to the Regulations ("the Community legislation"). The Community legislation *inter alia* provides for assistance to be paid from the Guarantee Section of the European Agricultural Guidance and Guarantee Fund ("Community assistance") towards investment in agricultural holdings and the afforestation of both agricultural and non-agricultural land. The Regulations operate within the scope of these provisions to encourage the development of the energy crops sector (see below) in the interests of increasing energy production from renewable sources and contributing to the fulfilment of international commitments. The Regulations enable assistance to be paid for projects involving the establishment of miscanthus and short rotation coppice ("energy crops") for subsequent use in equipment or a plant which produces energy through the use of such crops as a fuel supply. The Regulations also enable assistance to be paid for projects involving the formation of producer organisations for the purposes of managing the production and supply of short rotation coppice.

The Regulations implement a part of the England Rural Development Programme ("ERDP") approved by the European Commission under Article 44 of Council Regulation (EC) No. 1257/1999 (O.J. No. L160, 26.6.1999, p. 80), and provide for the payment of financial assistance by the Minister of Agriculture, Fisheries and Food ("the Minister") in respect of those projects which he has approved (regulation 3). Such projects may be approved if they:

- (i) are projects for the establishment of energy crops, or involving the formation of a producer organisation for the purposes of managing the production and supply of short rotation coppice;
- (ii) are in accordance with that part of the ERDP which relates to expenditure for which support may be granted pursuant to Article 4, 30 or 31 of Council Regulation (EC) No. 1257/1999; and
- (iii) satisfy certain criteria as to the nature of the land on which the crops are

established and the use of those crops after harvesting; (regulation 5).

In addition, the Regulations provide for the making of claims for, and the payment of, financial assistance following approval (regulations 6 and 7) and also contain provisions creating obligations on those in receipt of financial assistance concerning the provision of information (regulation 8) and record-keeping (regulation 9).

Further provisions concerning enforcement matters and enabling the Minister to withhold or recover assistance in the event of a breach of the Regulations by an applicant or a beneficiary, and those respectively creating and specifying the resultant criminal offences and penalties, are contained in the England Rural Development Programme (Enforcement) Regulations 2000 (S.I. 2000/3044).

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

Copies of the Commission Decision referred to in paragraph 3 of the Schedule, and of the ERDP, are available for inspection during normal office hours at the offices of the Ministry of Agriculture, Fisheries and Food, Nobel House, 17 Smith Square, London SW1P 3JR.

Notes:

[1] S.I. 1972/1811 and 1995/751.[back](#)

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

[3] 10 & 11 Geo. 6, c. 48.[back](#)

[4] 1979 c. 46; relevant amendments were made by the National Heritage Act 1983 (c. 47), the Local Government Act 1985 (c. 51) and the Norfolk and Suffolk Broads Act 1988 (c. 4).[back](#)

[5] 12, 13 and 14 Geo 6, c. 97; relevant amendments were made by the Environmental Protection Act 1990 (c. 43) and the Environment Act 1995 (c. 25).[back](#)

[6] 1981 c. 69; relevant amendments were made by the Wildlife and Countryside Amendment Act 1985 (c. 31), the Wildlife and Countryside (Service of Notices) Act 1985 (c. 59), the Norfolk and Suffolk Broads Act 1988 (c. 4) and the Planning (Consequential Provisions) Act 1990 (c. 11).[back](#)

[7] O.J. No. L160, 26.6.1999, p. 80.[back](#)

[8] 2000 c. 7.[back](#)

[9] S.I. 1994/2716.[back](#)

[10] O.J. No. L355, 5.12.92, p. 1, as last amended by Council Regulation (EC) No. 1593/2000 (O.J. No. L182, 21.7.2000, p. 4).[back](#)

[11] See section 1(1) of the National Parks and Access to the Countryside Act 1949 (c. 97) as substituted by the Environmental Protection Act 1990 (c. 43), section 130 and Schedule 8, paragraph 1(1), (2), and the Development Commission (Transfer of Functions and Miscellaneous Provisions) Order 1999 (S.I. 1999/416), article 3 and Schedule 1, paragraph 1(2).[back](#)

[12] See section 128 of the Environmental Protection Act 1990 (c. 43).[back](#)

[13] 1986 c. 49, to which there have been no relevant amendments.[back](#)

[14] S.I. 1999/2228.[back](#)

[15] See section 32 of the National Heritage Act 1983 (c. 47).[back](#)

[16] See the Norfolk and Suffolk Broads Act 1988 (c. 4).[back](#)

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