

Statutory Instrument 2000 No. 3044

The England Rural Development Programme (Enforcement) Regulations 2000

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STATUTORY INSTRUMENTS

2000 No. 3044

AGRICULTURE, ENGLAND

The England Rural Development Programme (Enforcement) 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 ("the Minister") 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 that section, 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 England Rural Development Programme (Enforcement) 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 -

"applicant" means any person who makes an application;

"application" means an application to the Minister to enter into a commitment, which was received by the Minister after 29th July 1999;

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

"beneficiary" means a person who has entered into a commitment;

"the Commission" means the Commission of the European Communities;

"the Commission Regulation" means Commission Regulation (EC) No. 1750/1999^[3] laying down detailed rules for the application of the Council Regulation, as amended by Commission Regulation (EC) No. 2075/2000^[4];

"commitment" means an undertaking by an applicant to comply with any requirement which is a condition of payment by the Minister under a relevant enactment;

"Community assistance" means assistance granted by the European Community in respect of a commitment and financed by the European Agricultural Guidance and Guarantee Fund pursuant to the Council Regulation and the Commission Regulation;

"the Council Regulation" means Council Regulation (EC) No. 1257/1999^[5] on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF);

"electronic communication" has the same meaning as in the Electronic Communications Act 2000^[6];

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

"relevant enactment" means an enactment specified in the Schedule.

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

(3) 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.

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 on any land, other than land used solely for the purpose of a dwelling-house -

(a) to which an application or commitment relates, or

(b) on which 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 referred to in paragraph (1) 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 a commitment; and
- (c) determining whether or not a beneficiary has complied with a commitment.

(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, to produce, or secure the production of, any document or supply any additional information in his possession or under his control relating to the application or commitment, as the case may be;
- (c) where any information referred to in sub-paragraph (b) is kept by means of a computer, have access to any computer and any associated apparatus or material which is or has been used for storing that information and 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 such 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; and
- (f) seize and retain any document or other record which he reasonably believes may be required as evidence in proceedings under these Regulations.

(4) An applicant or beneficiary, and any employee, servant or agent of such applicant or beneficiary shall give an authorised person all reasonable assistance in relation to the exercise of his powers under paragraphs (1) and (3).

(5) An authorised person entering any land under paragraph (1) may be accompanied by -

- (a) any official of the Commission, and
- (b) such other persons as he considers necessary,

and paragraphs (3) and (4) shall apply in relation to any person referred to in sub-paragraph (b), when acting under the instructions of an authorised person, as if he were an authorised person.

Breaches of commitments

4. - (1) Subject to paragraph (2), where -

- (a) any information furnished to the Minister by the beneficiary is false or misleading,
- (b) the beneficiary is in breach of any of the terms of a commitment, or

(c) the beneficiary is in breach of any requirement to which he is subject under any relevant enactment or under the Commission Regulation,

the Minister may exercise any of the powers specified in regulation 6.

(2) 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 Minister to assume the commitment in place of the beneficiary, and

(c) the Minister 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 Minister of the transferee's undertaking.

Other cases in which recovery etc. powers apply

5. Except in relation to any commitment under an enactment specified in Part I of the Schedule, the Minister may exercise the powers specified in paragraphs (1)(a) and (b) and (2) of regulation 6 where -

(a) 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;

(b) 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;

(c) the whole or part of the sum payable under a commitment would duplicate 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;

and for the purposes of paragraph (c), a sum duplicates such assistance if it would be paid for any of the same purposes.

Minister's powers of recovery etc.

6. - (1) Where regulation 4 or 5 applies, the Minister may exercise such of the following powers as are conferred on him by that regulation -

(a) to withhold the whole or any part of the sums payable to the beneficiary;

(b) to recover on demand the whole or any part of the sums already paid to the beneficiary; and

(c) to require the beneficiary to pay to the Minister an additional sum equal to no more than 10% of the sums paid or payable to him.

(2) Where the Minister takes any step specified in paragraph (1), he may also suspend or terminate the commitment, and thereupon any entitlement of the beneficiary to payment in respect of the unexpired period of the commitment shall likewise be suspended or terminated, as the case may be.

(3) Where the Minister terminates a commitment under paragraph (2), he may also prohibit the beneficiary from entering into any new commitment for such period (not exceeding two years) from the date of the termination as he may specify.

(4) The powers conferred on the Minister by paragraphs (2) and (3) shall be exercisable by a notice served on the beneficiary by post at his last known address, and in paragraph (3) "specify" means specify in such notice.

(5) Before taking any step specified in paragraph (1), (2) or (3) the Minister shall -

(a) give to the beneficiary a written explanation of the reasons for the step proposed to be taken;

(b) afford the beneficiary the opportunity of making written representations within such time as the Minister considers reasonable; and

(c) consider any such representations.

(6) This regulation applies without prejudice to any dispute procedure contained in a commitment made under any enactment specified in Part I of the Schedule.

(7) In this regulation, "dispute procedure" means a mechanism for resolving disputes between the Minister and the beneficiary.

Recovery of interest

7. - (1) Where the Minister exercises the power conferred by regulation 6(1)(b) or (c), he 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) For the purposes of this regulation, "LIBOR" means the sterling three month London interbank offered rate in force during the period between the date on which the Minister makes the payment to be recovered and the date on which he recovers it.

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

Sums payable to the Minister to be recoverable as a debt

8. In any case where an amount falls to be paid to the Minister by virtue of (or by virtue of action taken under) these Regulations, the amount so falling to be paid shall be recoverable as a debt.

Offences and penalties

9. - (1) A person is guilty of an offence if -

(a) for the purposes of obtaining financial assistance for himself or any other person under an enactment specified in Part II or III of the Schedule, he knowingly or recklessly makes a statement which is false or misleading in a material particular; or

(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, in so far as exercisable in relation to a commitment entered into pursuant to an enactment specified in Part II or III of the Schedule, or an application to enter into any such commitment.

(2) A person guilty of an offence under paragraph (1)(a) shall be liable -

(a) in relation to financial assistance under an enactment specified in Part II of the Schedule, on summary conviction, to a fine not exceeding level 5 on the standard scale; and

(b) in relation to financial assistance under an enactment specified in Part III of the Schedule -

(i) on summary conviction, to a fine not exceeding the statutory maximum; or

(ii) on conviction on indictment, to a fine.

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

(4) No prosecution for an offence under paragraph (1) which, by virtue of paragraph 2(a), is triable summarily shall be commenced after the expiration of three years from the commission of the offence or one year from the date that, in the prosecutor's opinion, evidence sufficient to justify the proceedings came to his knowledge, whichever is the earlier.

(5) Where paragraph (4) applies -

(a) a statement of the date on which evidence sufficient in the prosecutor's opinion to justify the proceedings came to his knowledge is conclusive evidence of its contents if signed by or on behalf of the prosecutor; and

(b) such a statement purporting to be so signed shall be treated as being so signed unless the contrary is proved.

(6) Where an offence under this regulation 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, a director, manager, secretary or other similar officer of that body or any person who was purporting to act in such a capacity, he also is guilty of the offence and liable to be proceeded against and punished accordingly.

(7) Where the affairs of a body corporate are managed by its members, paragraph (6) applies to acts and defaults of a member in connection with his management functions as if he were a director.

Elliot Morley

Parliamentary Secretary, Ministry of Agriculture, Fisheries and Food
9th November 2000

regulation 2(1)
SCHEDULE

RELEVANT ENACTMENTS

PART I

- The Countryside Stewardship Regulations 2000[7];
- The Environmentally Sensitive Areas (Stage I) Order 2000[8];
- The Environmentally Sensitive Areas (Stage II) Order 2000[9];
- The Environmentally Sensitive Areas (Stage III) Order 2000[10];
- The Environmentally Sensitive Areas (Stage IV) Order 2000[11];

PART II

- The Energy Crops Regulations 2000[12];
- The Vocational Training Grants (Agriculture and Forestry) Regulations 2000[13];

PART III

- The Rural Enterprise Regulations 2000[14];
- The Agricultural Processing and Marketing Grants Regulations 2000[15].

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Commission Regulation (EC) No. 1750/1999 (O.J. No. L214, 13.8.1999, p. 31) ("the Commission Regulation") laying down detailed rules for the application of Council Regulation (EC) No. 1257/1999 (O.J. No. L160, 26.6.99, p. 80) on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) ("the Council Regulation").

In particular they implement Article 48(2) of the Commission Regulation (which requires member States to determine a system of penalties to be imposed in the event of a breach of obligations) by granting the Minister powers to withhold or recover payments and take certain other action, including termination of the commitment (and of entitlement to payments in respect of it), in the event of a breach of an undertaking to comply with any condition of payment by the Minister under specified enactments, and in certain other events (*regulations 4, 5 and 6*). The enactments are those specified in the Schedule, all of which implement provisions of the Council Regulation and the England Rural Development Programme approved by the Commission under Article 44 of the Council Regulation. Regulation 7 provides power to recover interest on sums recovered.

The Regulations also create offences in respect of the furnishing of false information for the purpose of obtaining aid and obstruction (*regulation 9*).

The England Rural Development Programme, together with a copy of Commission Decision No. C(2000) 3003 approving it, is available for inspection at the offices of the Ministry of Agriculture, Fisheries and Food ("MAFF"), 17 Smith Square, London SW1P 3JR.

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

Notes:

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

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

[3] O.J. No. L214, 13.8.1999, p. 31.[back](#)

[4] O.J. No. L246, 30.9.2000, p. 46.[back](#)

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

[6] 2000 c. 7.[back](#)

[7] S.I. 2000/3048.[back](#)

[8] S.I. 2000/3049.[back](#)

[9] S.I. 2000/3050.[back](#)

[10] S.I. 2000/3051.[back](#)

[11] S.I. 2000/3052.[back](#)

[12] S.I. 2000/3042.[back](#)

[13] S.I. 2000/3045.[back](#)

[14] S.I. 2000/3043.[back](#)

[15] S.I. 2000/3046.[back](#)

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