

Statutory Instrument 2001 No. 431

The England Rural Development Programme (Enforcement) (Amendment) Regulations 2001

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STATUTORY INSTRUMENTS

2001 No. 431

AGRICULTURE, ENGLAND

The England Rural Development Programme (Enforcement) (Amendment) Regulations 2001

<i>Made</i>	<i>14th February 2001</i>
<i>Laid before Parliament</i>	<i>22nd February 2001</i>
<i>Coming into force</i>	<i>19th March 2001</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] as regards the common agricultural policy of the European Community and measures relating to the promotion of rural development, in exercise of the powers conferred upon him by that section, and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Title and commencement

1. These Regulations may be cited as the England Rural Development Programme (Enforcement) (Amendment) Regulations 2001 and shall come into force on 19th March 2001.

Interpretation

2. In these Regulations "the principal Regulations" means the England Rural Development Programme (Enforcement) Regulations 2000[3].

Amendment of the principal Regulations

3. The principal Regulations shall be amended as follows -

- (a) in regulation 3(3)(e), by the deletion of "and";**
- (b) in regulation 3(3)(f), by adding at the end "; and";**
- (c) after regulation 3(3)(f), by the insertion of -**

" (g) in so far as may be necessary for the purposes of paragraph (2)(b) or (c), inspect and count livestock on the land and may, for this purpose, 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.";

- (d) for regulations 4 to 6 there shall be substituted -**

" Breaches of commitments etc.

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

the Minister may exercise any of the powers specified in regulation 6(1).

(2) For the purposes of paragraph (1)(d), a sum duplicates such assistance if it is, or would be, paid for any of the same purposes.

(3) 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. The Minister may exercise the powers specified in paragraph (1)(a) and (b) 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; or

(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.

Minister's powers of recovery etc.

6. - (1) The powers conferred by regulations 4(1) and 5 are -

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

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

(2) Where all the circumstances in which the powers conferred by regulation 4(1) and specified in paragraph (1) have become exercisable are such as were intended by the beneficiary or as to which the beneficiary was reckless, the Minister may also 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.

(3) 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.

(4) Where the Minister terminates a commitment under paragraph (3), 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.

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

(6) Before taking any step specified in paragraph (1), (2), (3) or (4) 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.

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

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

- (e) in regulations 9(1)(a) and (b), by substituting "Part II, III or IV" for "Part II or III";
- (f) in regulation 9(2)(a), by the insertion of "or Part III" after "Part II";
- (g) in regulation 9(2)(b), by substituting "Part IV" for "Part III"; and
- (h) by substituting the Schedule to these Regulations for the Schedule to the principal Regulations.

Elliot Morley
Parliamentary Secretary, Ministry of Agriculture, Fisheries and Food
14th February 2001.

SCHEDULE

regulation 3(h)

" SCHEDULE

regulation 2(1)

RELEVANT ENACTMENTS

PART I

- The Countryside Stewardship Regulations 2000[4];
- The Environmentally Sensitive Areas (Stage I) Order 2000[5];
- The Environmentally Sensitive Areas (Stage II) Order 2000[6];
- The Environmentally Sensitive Areas (Stage III) Order 2000[7];

The Environmentally Sensitive Areas (Stage IV) Order 2000[8];

PART II

The Hill Farm Allowance Regulations 2001[9];

The Organic Farming (England Rural Development Programme) Regulations 2001[10];

PART III

The Energy Crops Regulations 2000[11];

The Vocational Training Grants (Agriculture and Forestry) Regulations 2000[12];

PART IV

The Rural Enterprise Regulations 2000[13];

The Agricultural Processing and Marketing Grants Regulations 2000[14];"

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the England Rural Development Programme (Enforcement) Regulations 2000 ("the principal Regulations") which implement Article 48(2) of Commission Regulation (EC) No. 1750/1999 (O.J. No. L214, 13.8.1999, p.31) which requires Member States to determine a system of penalties to be imposed in the event of a breach of obligations.

These Regulations amend the principal Regulations by adding a further power of inspection to authorised persons (*regulation 3(a), (b) and (c)*); by requiring intention or recklessness on the part of the beneficiary as a precondition of the exercise by the Minister of the power to require the beneficiary to pay a penalty equal to 10% of the sums paid or payable to him; by applying that power in relation to cases where the payment would duplicate assistance provided out of monies made available by the European Communities, Parliament or a body exercising public functions; and by creating certain summary offences (of knowingly or recklessly making false or misleading statements for the purposes of obtaining financial assistance, and of intentionally obstructing an authorised person) under the Hill Farm Allowance Regulations 2001 and the Organic Farming (England Rural Development Programme) Regulations 2001 (*regulation 3(e) to (h)*).

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

Notes:

- [1] S.I. 1972/1811 and S.I. 1995/751.back
- [2] 1972 c. 68.back
- [3] S.I. 2000/3044.back
- [4] S.I. 2000/3048.back
- [5] S.I. 2000/3049.back
- [6] S.I. 2000/3050.back
- [7] S.I. 2000/3051.back
- [8] S.I. 2000/3052.back
- [9] S.I. 2001/476.back
- [10] S.I. 2001/432.back
- [11] S.I. 2000/3042.back
- [12] S.I. 2000/3045.back
- [13] S.I. 2000/3043.back
- [14] S.I. 2000/3046.back

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