

The Arable Area Payments Regulations 1995

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STATUTORY INSTRUMENTS

1995 No. 1738

AGRICULTURE

The Arable Area Payments Regulations 1995

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Explanatory Note

The Minister of Agriculture, Fisheries and Food and the Secretary of State, being Ministers 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, acting jointly in exercise of the powers conferred on them by that section, and of all other powers enabling them in that behalf, hereby make the following Regulations:—

Title, extent and commencement

1. These Regulations may be cited as The Arable Area Payments Regulations 1995, shall apply to Great Britain and shall come into force on 31st July 1995.

Interpretation

2.—(1) In these regulations, unless the context otherwise requires—

"agricultural land" has—

(a) in relation to land in England or Wales, the same meaning as in section 1(4) of the Agricultural Holdings Act 1986[3]; and

(b) in relation to land in Scotland, the same meaning as in section 1(2) of the Agricultural Holdings (Scotland) Act 1991[4];

"agricultural parcel" has the same meaning as in Article 1(4) of Council Regulation 3508/92 as read with the first indent of Article 6(1) of that Regulation;

"agricultural plot" means a cultivated plot as referred to in Article 2(1)(e) of Commission Regulation 2294/92 or in Article 2(e) of Commission Regulation 2295/92 or a separate piece of an area as referred to in Article 4(3) of Commission Regulation 2780/92;

"arable compensatory payment" means a compensatory payment other than a compensatory payment made in respect of set-aside land;

"arable crop" has the same meaning as in Article 1(2) of Council Regulation 1765/92;

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

"collector" has the same meaning as in Article 1 of Commission Regulation 334/93;

"combinable crop" means any crop commonly harvested using a combine harvester;

"Commission Regulation 2294/92" means Commission Regulation (EEC) No. 2294/92 on detailed rules for the application of the support system for producers of the oilseeds referred to in Council Regulation 1765/92[5], as last amended by Commission Regulation (EC) No. 762/95[6];

"Commission Regulation 2295/92" means Commission Regulation (EEC) No. 2295/92 on detailed rules for the application of the support system for producers of the protein crops

referred to in Article 6 of Council Regulation 1765/92[7], as last amended by Commission Regulation (EC) No. 3347/93[8];

"Commission Regulation 2780/92" means Commission Regulation (EEC) No. 2780/92 on the conditions for the grant of compensatory payments under the support system for producers of certain arable crops[9], as last amended by Commission Regulation (EC) No. 868/95[10];

"Commission Regulation 3887/92" means Commission Regulation (EEC) No. 3887/92 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes[11] as last amended by Commission Regulation (EC) No. 229/95[12];

"Commission Regulation 334/93" means Commission Regulation (EEC) No. 334/93 laying down detailed implementing rules for the use of land set aside for the provision of materials for the manufacture within the Community of products not primarily intended for human or animal consumption[13], as amended by Commission Regulation (EC) No. 608/94[14];

"Commission Regulation 2595/93" means Commission Regulation (EEC) No. 2595/93 laying down detailed rules as regards the use of land set aside for the production of multiannual raw materials for the manufacture within the Community of products not intended for human or animal consumption[15];

"Commission Regulation 762/94" means Commission Regulation (EC) No. 762/94 laying down detailed rules for the application of Council Regulation 1765/92 with regard to the set-aside scheme[16] as last amended by Commission Regulation (EC) No. 229/95;

"compensatory payment" means a compensatory payment under Article 2(2) of Council Regulation 1765/92;

"Council Regulation 2092/91" means Council Regulation (EEC) No. 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs[17] as last amended by Commission Regulation (EC) No. 2381/94[18];

"Council Regulation 1765/92" means Council Regulation (EEC) No. 1765/92 establishing a support system for producers of certain arable crops[19] (as last amended by Council Regulation (EC) No. 1460/95[20]) as read with Commission Regulation (EEC) No. 3738/92[21] and Council Regulation (EC) No. 2990/94[22];

"Council Regulation 2078/92" means Council Regulation (EEC) No. 2078/92 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside[23];

"Council Regulation 2080/92" means Council Regulation (EEC) No. 2080/92 instituting a Community aid scheme for forestry measures in agriculture[24];

"Council Regulation 3508/92" means Council Regulation (EEC) No. 3508/92 establishing an integrated administration and control system for certain Community aid schemes[25] as last amended by Council Regulation (EC) No. 3233/94[26];

"eligible land" means land—

(a) for which aid has been granted under Title I of Council Regulation (EEC) No. 2328/91 on improving the efficiency of agricultural structures[27] or in respect of which an application for direct payments has been accepted under Council Regulation (EEC) No. 3766/91 establishing a support system for producers of soya beans, rape seed, colza seed and sunflower seed[28];

(b) not under permanent pasture (as defined in the Annex to Commission Regulation 2780/92), permanent crops (as defined in the same Annex), forest or non-agricultural uses on 31 December 1991;

(c) which the Minister has declared to be eligible land in accordance with the third paragraph of Article 9 of Council Regulation 1765/92 and Article 3(3) of Commission Regulation 2780/92; or

(d) which falls to be treated as eligible land in accordance with the fourth paragraph of Article 9 of Council Regulation 1765/92 and Article 3(4) of Commission Regulation 2780/92, except for land which the Minister has declared, in accordance with the second, third or fourth paragraph of Article 9 of Council Regulation 1765/92, no longer to be eligible land.

"environmental transferred set-aside land" means all land set aside by a farmer to satisfy the set-aside requirement of another farmer, except for land in respect of which evidence showing that it falls within the location specified in regulation 9(3)(a) has been provided by the transferee (as therein defined);

"farmer" means a farmer within the meaning of Article 1(4) of Council Regulation 3508/92 who applies to the Minister for a compensatory payment;

"farm-saved rapeseed" means seed conforming to the provisions of Article 3(1)(b) of Commission Regulation 2294/92;

"flexible set-aside land" means land set aside pursuant to the set-aside requirement or the option to set aside, except for rotational set-aside land;

"green cover" means a green cover established or, as the case may be, falling to be established in accordance with Schedule 2;

"green cover season" means the period commencing on 15th January and ending on 30th April in the same year;

"guaranteed set-aside land" means flexible set-aside land which a farmer has undertaken to keep set aside for five successive marketing years pursuant to Article 5(1) of Commission Regulation 762/94;

"holding" has the same meaning as in Article 1(4) of Council Regulation 3508/92;

"land set aside for non-food purposes" means land set aside for the provision of raw materials for the manufacture within the European Community of products not primarily intended for human or animal consumption, in accordance with either Commission Regulation 334/93 or Commission Regulation 2595/93;

"legal requirement" , in relation to a farmer, means an obligation which the Minister is satisfied is legally binding on the farmer;

"the Minister" means—

(a) in relation to England, the Minister of Agriculture, Fisheries and Food; and

(b) in relation to Wales or Scotland, the Secretary of State;

"the option to set aside" means the option (under Article 7(6) Council Regulation 1765/92 and subject to the requirements thereof) for a farmer to set aside more land than would be required to satisfy his set-aside requirement;

"organic waste" means any waste material produced by or from animals or plants as a by-product of agricultural production, including animal bedding;

"penalty set-aside land" means land set aside to satisfy the penalty set-aside requirement;

"penalty set-aside requirement" means the requirement referred to in the second indent of the first sub-paragraph of Article 2(6) of Council Regulation 1765/92;

"permitted agricultural production" means—

(a) the production of products for non-food purposes in accordance with Commission Regulation 334/93 or Commission Regulation 2595/93; and

(b) during the period commencing on 1st September and ending on the following 14th January the use of set-aside land for keeping and feeding animals and the harvesting of crops from that land in circumstances where—

(i) no payment or benefit in kind is received by the farmer in respect of such use or harvesting; and

(ii) such use or harvesting is not required to be prohibited by Article 3(3) of Commission Regulation 762/94;

"processor" means a processor referred to in Article 11 of Commission Regulation 334/93;

"production region" has the same meaning as in Article 3 of Council Regulation 1765/92;

"rotational set-aside land" means land set aside (pursuant to the set-aside requirement or the option to set aside) in accordance with Article 4(1) of Commission Regulation 762/94;

"scheme year" means a year beginning on 15th January and ending on the following 14th January;

"seed crop" means a crop grown so that the seed of the crop may be harvested and sown to establish a further crop;

"set aside" means withdraw from agricultural production other than permitted agricultural production;

"set-aside compensatory payment" means a compensatory payment made in respect of set-aside land, as provided for in Articles 7(5) and 7(6) of Council Regulation 1765/92;

"set-aside land" means land set aside pursuant to—

- (a) the set-aside requirement;
- (b) the penalty set-aside requirement; or
- (c) the option to set aside,

including land so set aside which has been set aside pursuant to Council Regulation 2078/92 or afforested pursuant to Council Regulation 2080/92 and (in either case) is counted as being set aside pursuant to Article 7(2) of Council Regulation 1765/92;

"set-aside period" means (except in the case of guaranteed set-aside land) the period within a scheme year commencing on 15th January and ending on 31st August, and in the case of guaranteed set-aside land, means the period commencing on 15th January in the first year in which the land is set aside as guaranteed set-aside land and ending on the expiry of the undertaking to set that land aside for five marketing years given pursuant to Article 5(1) of Commission Regulation 762/94;

"set-aside requirement" (except in the expression "penalty set-aside requirement") means the requirement, imposed by Article 2(5) Council Regulation 1765/92, on all farmers claiming arable compensatory payments (except those to whom Article 8(3) of that Regulation applies) to set aside land in accordance with Article 7(1) of that Regulation;

"shallow cultivate" means cultivate to a depth of no more than 7 centimetres;

"sharefarming agreement" means an agreement for the use of agricultural land for the purposes of a farming enterprise, made between the owner of that land (including a person entitled for a term of years certain or other limited estate) and a farmer who does not have a right to exclusive possession of that land or any legal interest or charge in or over it, under which—

(a) the relationship between the contracting parties is not one of partnership or employer and employee or landlord and tenant;

(b) the respective liabilities of the contracting parties for the farming enterprise remain separate and defined in the agreement;

(c) the contracting parties have joint responsibility for planning and managing the farming enterprise; and

(d) each contracting party's reward for participation in the farming enterprise is an agreed share of the output from that enterprise, including agricultural produce of all kinds produced on or from the land and, in any case where produce is sold on behalf of each party to the sharefarming agreement, revenues from such sale;

"specified control measure" means any check, test, verification, inspection, investigation, control or other operation in relation to arable land which a Member State is required to carry out under Council Regulation 3508/92 or Title IV of Commission Regulation 3887/92

"specified raw materials" means the raw materials, listed in Annex I to Commission Regulation 334/93 and in Annex I to Commission Regulation 2595/93, produced on land set aside for non-food purposes;

"vernacular building" means a building of a design or style traditional in its locality;

"waste" (except in the expression "organic waste") means any type of agricultural, industrial or domestic waste.

(2) In these Regulations, unless the context otherwise requires, a reference to a numbered regulation or Schedule is a reference to the regulation or Schedule so numbered in these Regulations.

Production regions

3.—(1) For the purposes of Article 3 of Council Regulation 1765/92, the production regions in Great Britain shall be—

(a) England;

(b) land in Wales which is included in the list of less-favoured farming areas adopted by the Council of the European Communities under Article 2(2) of Council Directive 75/268/EEC on mountain and hill farming in less-favoured areas^[29] (as last amended by Council Regulation (EEC) No. 797/85^[30]), which list is contained in Council Directive 84/169/EEC^[31], as amended by Commission Decision 91/25/EEC^[32] made as provided by Article 2(3) of Council Directive 75/268/EEC as amended by Council Directive 80/666/EEC^[33];

- (c) all other land in Wales;
- (d) land in Scotland which is included in the list described in sub-paragraph (b) above; and
- (e) all other land in Scotland.

(2) In order to take account of structural differences between the production regions of the United Kingdom as envisaged by the second paragraph of Article 3(1) of Council Regulation 1765/92, the average cereals yields calculated in accordance with Article 3(2) of that Regulation shall be adjusted, and the adjusted average cereals yield for each production region of Great Britain (determined in accordance with the regionalisation plan submitted by the United Kingdom to the Commission of the European Communities pursuant to Article 3(3) of Council Regulation 1765/92) shall be calculated as follows—

(a) the adjusted average cereals yield for each production region of Great Britain shall be the sum of 60% of the average cereals yield for that region determined in accordance with Article 3(2) of Council Regulation 1765/92, and 40% of the average cereals yield for the United Kingdom, and

(b) for the purposes of sub-paragraph (a) above, the average cereals yield for the United Kingdom shall be calculated in accordance with the method set out in Article 3(2) of Council Regulation 1765/92, by treating the United Kingdom as if it were a single production region.

Calculation of projected regional reference amount

4. For the purposes of Article 5(1)(c) of Council Regulation 1765/92, the projected regional reference amount shall be calculated by comparing the oilseeds yield for each production region with the average oilseeds yield for the Community of 2.36 tonnes per hectare.

Minimum size of agricultural plot

5.—(1) Subject to paragraph (2) below, for the purposes of Article 2(1)(e) of Commission Regulation 2294/92, Article 2(e) of Commission Regulation 2295/92 and Article 4(3) of Commission Regulation 2780/92, the minimum size of an agricultural plot for which an arable compensatory payment may be made shall be 0.10 hectare.

(2) In the case of land used for seed production or research, the minimum size of an agricultural plot for which an arable compensatory payment may be made shall be 0.01 hectare.

Derogation from requirement to have farmed for two years land set aside

6. For the purposes of Article 3(4) of Commission Regulation 762/94, the special cases, where a farmer shall be entitled to claim set-aside compensatory payment on land which he has not farmed for the two years prior to the commencement of the set-aside period, shall be—

- (a) in relation to land in England or Wales, those specified in Schedule 1, Part I; and
- (b) in relation to land in Scotland, those specified in Schedule 1, Part II.

Derogation from requirement to set land aside in the production region where the related arable land is situated

7.—(1) For the purposes of Article 9(3) of Commission Regulation 762/94, paragraphs (2) to (5) below shall apply where a farmer farms land in more than one production region.

(2) Where pursuant Article 9(2) of Commission Regulation 762/94, a farmer would be required (except as provided by Article 9(4) of that Regulation and but for this provision) to

set aside an area no larger than 2 hectares of land in a particular production region, he may set aside that land in any one or more of the production regions in which he farms.

(3) Where pursuant to Article 9(2) of Commission Regulation 762/94, a farmer would be required (except as provided by Article 9(4) of that Regulation and but for this provision) to set aside an area of land in any particular production region, and part of the land he farms in another production region is contiguous to land he farms in the first production region, he may set aside the required area of land or any part of it anywhere in that contiguous area of land.

(4) Where pursuant to Article 9(2) of Commission Regulation 762/94, a farmer would be required (except as provided by Article 9(4) of that Regulation and but for this provision) to set aside an area of land in any particular production region and the cereals yield in that production region and in any other production region in which he farms is the same, he may set aside the required area of land in any one or more of those production regions.

(5) for the purposes of paragraph (4) above, the cereals yield of a production region is its adjusted average cereals yield calculated in accordance with regulation 3(2) above.

Requirements in relation to set-aside land

8.—(1) A farmer shall, subject to paragraphs (2) to (8) below, comply with the requirements of Schedule 2 in relation to his set-aside land other than land which is—

- (a) set aside pursuant to Council Regulation 2078/92; or
- (b) afforested pursuant to Council Regulation 2080/92.

(2) A farmer may use relevant set-aside land for the provision of specified raw materials, in which case he—

(a) shall not be required to comply with any provision of Schedule 2 (except as applied by Schedule 3), but

(b) shall comply with the requirements set out in Schedule 3, in relation to that land, and for the purposes of this paragraph "relevant set-aside land" means set-aside land which is neither environmental transferred set-aside land nor land to which paragraph (1)(a) or (b) above refers.

(3) A farmer shall be exempt from any particular requirement of Schedule 2 or 3 in relation to particular set-aside land, if he satisfies the Minister that he should be exempted from it—

(a) to facilitate research into the effect of the observance of particular methods of managing set-aside land;

(b) for environmental reasons;

(c) in the case of an educational establishment, to facilitate the fulfilment of its educational purpose;

(d) because during the set-aside period—

(i) a pipeline, cable or pylon is or will be laid through, or constructed on or across, the particular set-aside land and the farmer cannot reasonably prevent that laying or construction, provided that, in the case of land set aside as rotational set-aside land, laying or construction was not already in progress on the date on which the land was set aside;

(ii) maintenance of a pipeline, cable or pylon which the farmer cannot reasonably prevent is or will be carried out on the particular set-aside land; or

(iii) an archaeological excavation is to be carried out on the particular set-aside land;

(e) for reasons of human or animal health or safety;

(f) because, at the time at which compliance with that requirement would otherwise be required, it is likely that the cost or difficulty of complying with that requirement would be disproportionately high in comparison with the environmental benefit which compliance with that requirement would yield; or

(g) because such exemption is necessary either to enable a serious plant health problem to be treated, or to permit preventative measures to be taken to prevent the development of such a problem.

(4) The Minister may specify that any exemption granted pursuant to paragraph (3) above shall be effective only until a date, or the occurrence of a particular event, specified in the exemption.

(5) Where the Minister considers that—

(a) the circumstances of all set-aside land (apart from that to which paragraph (1)(a) or (b) above refers)—

(i) situated in a particular geographical location;

(ii) planted with a particular variety or species of crop; or

(iii) both situated in a particular geographical location and planted with a particular variety or species of crop,

are such that each farmer of that land would be able to satisfy the Minister that he should be exempt, under paragraph (3)(e), (f) or (g) above or under paragraph 25(a) of Schedule 2, or treated as having been exempted under paragraph 11(2) of Schedule 2, from the requirement to comply with any or all of the requirements set out in Schedule 2 in respect of that land; and

(b) the circumstances are such that it would be reasonably practicable for the Minister to publish an exemption notice in accordance with paragraph (6) below, then the Minister shall so publish that exemption notice.

(6) Every exemption notice to which paragraph (5) above refers shall be published in the farming press and shall—

(a) specify—

(i) (in a case to which paragraph (5)(a)(i) above applies) the geographic location;

(ii) (in a case to which paragraph (5)(a)(ii) above applies) the variety or species of crop; or

(iii) (in a case to which paragraph (5)(a)(iii) above applies) the geographical location and variety or species of crop,

to which the exemption applies;

(b) specify the scope of the exemption;

(c) specify any conditions attaching to the exemption; and

(d) specify the period of applicability of the exemption.

(7) Where an exemption notice is published, any farmer who applies or has applied to the Minister for a compensatory payment in respect of any land—

(a) (in a case to which paragraph (5)(a)(i) above applies) situated in a geographic location;

(b) (in a case to which paragraph (5)(a)(ii) above applies) planted with a variety or species of crop; or

(c) (in a case to which paragraph (5)(a)(iii) above applies) situated in a geographical location and planted with a variety or species of crop,

specified in that notice shall (except as may be required by the notice) by virtue of this provision be treated as exempt (or, as the case may be, as having been exempted) from the requirement to comply with such provisions of Schedule 2 of these Regulations as are specified in that notice, during the period of applicability of that exemption.

- (8) For the purposes of paragraphs (6) and (7) above—
- (a) the "farming press" means any publication or group of publications which in the Minister's opinion is read by sufficient of those farmers to whom the exemption applies that knowledge of it will be disseminated to substantially all of those affected farmers; and
 - (b) the period of applicability of the exemption means either a period of a specified length commencing on a date specified in the exemption notice or the period from that date until the occurrence of a particular event specified in the exemption notice as bringing the period of applicability to an end.

Transfer of the obligation to set aside to another farmer

9.—(1) Where a farmer transfers his set-aside requirement either in whole or part to another farmer purportedly in compliance with the plan submitted by the United Kingdom to the Commission of the European Communities pursuant to the second indent of Article 7(7) of Council Regulation 1765/92 as read with Article 10 of Commission Regulation 762/94, the Minister shall accept that transfer as carried out in accordance with the Plan where the transferee provides the evidence specified in the following paragraphs of this regulation to the Minister's satisfaction.

(2) For the purposes of this regulation, the "transferor" means the farmer who is so transferring his set-aside requirement and the "transferee" means the farmer to whom that requirement is so transferred.

(3) The transferee shall provide evidence that all the land which is set aside by him to satisfy the set-aside requirement of the transferor falls within—

(a) a location within the coverage of the restriction as to distance referred to in the second indent of Article 7(7) of Council Regulation 1765/92, as read with Article 10(9) of Commission Regulation 762/94;

(b) a Nitrate Sensitive Area as designated (in England and Wales) by the Nitrate Sensitive Areas (Designation) Order 1990[34] or (in Scotland) under Section 31B of the Control of Pollution Act 1974[35] as it applies to Scotland;

(c) a site of archaeological or historical importance; or

(d) (in Scotland) a water features protection area,
or comprises a continuous area of land immediately adjoining a site of special scientific interest or a site of archaeological or historical importance, with (in the former case) at least 25% of the length of the boundary of that continuous area of land being contiguous with the boundary of that site.

(4) For the purposes of paragraph (3) above, land falls within a site of archaeological or historical importance if it comprises all or part of—

(a) an Ancient Monument which is included in the schedule compiled by the Secretary of State pursuant to section 1(1) of the Ancient Monuments and Archaeological Areas Act 1979[36];

(b) an area designated as an area of archaeological importance by the Secretary of State under section 33 of the Ancient Monuments and Archaeological Areas Act 1979;

(c) an area in England and Wales in respect of which the transferee supplies evidence satisfactory to the Minister (to the extent that it is not already available to him) showing—

(i) that the responsible officer of a local authority in whose area it lies considers management of it as set-aside land to be of potential archaeological value; and

(ii) that it comprises all or part of a site listed in a register of sites of archaeological interest maintained by that local authority; or

(d) an area in Scotland in respect of which the transferee supplies evidence satisfactory to the Minister (to the extent that it is not already available to him) showing that it is listed in a register of sites of archaeological interest maintained by a public authority.

(5) For the purposes of paragraph (3)(d) above, a water features protection area is an area in Scotland which is adjacent to a water feature, and in respect of which the transferee provides evidence satisfactory to the Minister (to the extent that it is not already available to him) showing that the management of that area as set-aside land would have a beneficial effect on the ecological status of that water feature, and "water feature" means any river, loch, wetland or other similar feature.

(6) For the purposes of paragraph (3) above, a site of special scientific interest is an area of special scientific interest as notified pursuant to section 28(1) of the Wildlife and Countryside Act 1981[37] or an area to which section 29(3) of the same Act applies.

(7) Where a transferee sets land aside as environmental transferred set-aside land, he shall provide (in addition to any evidence he is required to provide by virtue of the previous provisions of this regulation) evidence that—

(a) he is satisfying the set-aside requirement in relation to his holding by setting land aside as flexible set-aside land;

(b) all land set aside by him as environmental transferred set-aside land in the two scheme years immediately before the previous scheme year remained set aside for at least two consecutive scheme years; and

(c) any land set aside by him as environmental transferred set-aside land in the previous scheme year has been set aside again in the current scheme year.

Requirements in relation to rapeseed

10.—(1) A farmer who sows farm-saved rapeseed on his holding shall not be entitled to receive compensatory payments in respect of the land sown with that seed unless that seed is qualifying seed and has been cleaned and dressed separately from any farm-saved rapeseed of a different variety produced on that holding and from seed not produced on that holding.

(2) For the purposes of paragraph (1) above seed is qualifying seed if it was harvested—

(a) during the pre-sowing harvest; or

(b) subject to paragraph (3) below, during the harvest immediately preceding the pre-sowing harvest.

(3) Seed harvested during the harvest immediately preceding the pre-sowing harvest is qualifying seed for the purposes of paragraph (1) above only if—

(a) climatic conditions during the pre-sowing harvest were such that it was either not possible to harvest farm-saved rapeseed or not possible to clean and dress it as specified in paragraph (1) above or to obtain the results of the mandatory analysis, before the time at which it would be necessary to sow seed in order to obtain a successful crop; and

(b) the farmer has informed the seed sampler, before sowing such seed, that he intended to sow it because the conditions of sub-paragraph (a) above were satisfied.

(4) For the purposes of Article 2(1)(d) of Commission Regulation 2294/92 (which restricts eligibility for compensatory payments in respect of oil seed crops to areas sown in accordance with locally recognised standards)—

(a) a farmer who sows—

(i) a crop of winter high erucic acid rapeseed within 50 metres of a crop of previously sown winter OO rapeseed;

(ii) a crop of spring high erucic acid rapeseed within 50 metres of a crop of previously sown spring OO rapeseed;

(iii) a crop of winter OO rapeseed within 50 metres of a crop of previously sown winter high erucic acid rapeseed; or

(iv) a crop of spring OO rapeseed within 50 metres of a crop of previously sown spring high erucic acid rapeseed,

shall not be regarded as having sown that crop in accordance with locally recognised standards; and

(b) a farmer who in any case referred to in paragraphs (i) to (iv) of sub-paragraph (a) above, has also sown the previously sown crop, shall not be regarded as having sown that previously sown crop in accordance with locally recognised standards.

(5) For the purposes of this regulation—

(a) the "pre-sowing harvest" is the harvest immediately preceding the autumn or spring in which the seed is sown;

(b) the "seed sampler" is an appointed agent of the Minister whom the Minister has authorised by letter to take the samples required for mandatory analyses;

(c) a "mandatory analysis" is the analysis required by Annex III of Commission Regulation 2294/92 to ensure that farm-saved rapeseed to which Article 3(1)(b) of that Regulation applies conforms to the minimum quality criterion specified in that Annex;

(d) "OO rapeseed" is any variety of oilseed rape listed in Annex II to Commission Regulation 2294/92;

(e) "high erucic acid rapeseed" means rapeseed of any variety conforming to the requirements of Annex IV to Commission Regulation 2294/92, except OO rapeseed;

(f) "winter OO rapeseed" and "winter high erucic acid rapeseed" means OO or high erucic acid (as the case may be) rapeseed sown in the year before the intended year of harvest of the crop; and

(g) "spring OO rapeseed" and "spring high erucic acid rapeseed" means OO or high erucic acid (as the case may be) rapeseed sown in the same calendar year as it is intended to harvest the crop.

Keeping and retention of records by a farmer

11.—(1) A farmer shall retain all commercial documents relating to seed sown on land in respect of which he makes an application for compensatory payment from the time at which he makes such application (or the time at which the commercial document concerned comes into his possession if later) until the end of the fourth year following the year of harvest relating to that seed.

(2) A farmer who sows farm-saved seed on land in respect of which he makes an application for compensatory payment shall retain all commercial documents—

(a) relating to the seed which produced the crop from which the farm-saved seed was obtained; and

(b) relating to the cleaning and dressing of the farm-saved seed,

from the time at which he makes such application (or the time at which the commercial document concerned comes into his possession if later) until the end of the fourth year following the year of harvest relating to that seed.

(3) Where a farmer claims a compensatory payment in respect of land set aside for non-food purposes, he shall retain any delivery note relating to the crop grown on that land from the time at which it comes into his possession until the end of the fourth year following the year of harvest relating to that crop.

(4) For the purposes of this regulation—

(a) the year of harvest relating to seed is the calendar year in which the crop grown from that seed is harvested, destroyed or otherwise removed from the land, and the year of harvest relating to any crop is the calendar year in which that crop is harvested, destroyed or otherwise removed from the land;

(b) a "commercial document" in relation to seed includes any invoice, seed label, sales note and delivery note relating to it, and in relation to the cleaning and dressing of farm-saved seed includes all invoices and delivery notes relating to such cleaning and dressing; and

(c) "farm-saved seed" is seed which is the product of a harvest on the holding on which it is sown.

Keeping and retention of records by a collector and by a processor

12.—(1) This regulation applies where a farmer claims a compensatory payment in respect of land set aside for non-food purposes, other than flexible set-aside land used for the production of multiannual raw materials in accordance with the provisions of Commission Regulation 2595/93.

(2) A collector shall keep records of the quantity of all specified raw materials produced on that land, which he has purchased and sold for processing, and the names and addresses of all subsequent buyers or processors to whom he has sold those specified raw materials.

(3) A collector shall retain the records referred to in paragraph (2) above until the earlier of—

(a) the third anniversary of the date on which he delivers to a processor the specified raw materials to which those records relate, with a view to their being processed to obtain one or more of the products mentioned in Annex II to Commission Regulation 334/93; and

(b) the seventh anniversary of the date of creation of those records.

(4) A processor shall keep records showing on a daily basis in relation to specified raw materials so produced—

(a) the quantity of all specified raw materials purchased by him for processing;

(b) the quantity of specified raw materials processed by him together with the quantity and type of products and by-products obtained from the processing;

(c) the losses of specified raw materials resulting from processing;

(d) the quantity of specified raw materials destroyed, if any, together with the reason for such destruction;

(e) the quantity and type of products and by-products sold or otherwise disposed of by him and the price obtained; and

(f) the names and addresses of all subsequent buyers or processors to whom he sells the specified raw materials or products or by-products of processing.

(5) A processor shall retain the records referred to in paragraph (4) above for two years from the date on which he processes, destroys, sells or otherwise disposes of, as the case may be, specified raw materials to which those records relate.

Reduction or cancellation of compensatory payments for breach of Schedules 2 and 3

13.—(1) In the event of a breach by a farmer of any requirement of Schedule 2, other than the requirements of paragraphs 13(2)(b), 13(2)(c), 17(1) and 26, the set-aside compensatory payment shall be reduced in relation to each agricultural parcel in respect of any part of which any such requirement is breached by the greater of—

- (a) £100; and
- (b) £100 per hectare multiplied by the area of that part of that parcel (measured in hectares to the nearest 0.01 hectare) in respect of which any such requirement is breached.

(2) In the event of a breach by a farmer of any requirement of paragraph 26 of Schedule 2 or paragraph 1 of Schedule 3, the set-aside compensatory payment he shall be entitled to receive shall be reduced by—

- (a) £100 for each feature (other than a linear feature) which, in contravention of that requirement, he destroys, damages or removes; and
- (b) the greater of—
 - (i) £100; and
 - (ii) £1 per metre multiplied by the length measured to the nearest whole metre of the feature destroyed, damaged or removed,for each linear feature which, in contravention of that requirement, he destroys, damages or removes.

(3) For the purposes of paragraph (2) above—

- (a) subject to sub-paragraph (b) below, a linear feature is a hedge, row of trees, ditch or watercourse; and
- (b) where two or more parts of such a linear feature, not immediately adjacent to each other, are destroyed, damaged or removed, each shall be treated as a separate linear feature.

(4) Where a farmer—

- (a) sows or makes preparations for sowing an arable crop, temporary grass ley or traditional forage crop, in contravention of paragraph 13(2)(b) or 13(2)(c) of Schedule 2, or fails to comply with any requirement of paragraph 17(1) of Schedule 2; and
 - (b) the area of set-aside land on which the contravention or failure referred to in sub-paragraph (a) above occurred is not, by virtue of paragraph (2) of Article 9 of Commission Regulation 3887/92, treated for the purposes of that paragraph, as an area for which all the conditions laid down in the rules have not been met,
- the set-aside compensatory payment he shall be entitled to receive shall be reduced by the amount by which it would have been reduced had the area been so treated.

(5) In the event of a breach by the farmer of any requirement referred to in paragraphs 2 to 4 of Schedule 3, no set-aside compensatory payment shall be paid in respect of the land no longer to be used for the provision of specified raw materials.

(6) Where a farmer has already been paid all or part of the compensatory payment to which he would have been entitled but for the application of this regulation, any amount by which the compensatory payment which he has received exceeds that to which, following the

application of this regulation, he is entitled shall be treated as if it were a wrong payment which fell to be recovered in accordance with Article 14(1) of Commission Regulation 3887/92 and regulation 4A of the Integrated Administration and Control System Regulations 1993[38].

Rate of interest applicable where compensatory payments fall to be returned

14.—(1) This regulation applies where any compensatory payment is paid to a farmer by the Minister and, by virtue of Article 14(1) of Commission Regulation 3887/92 (whether applying directly or treated by these Regulations as applying), the farmer is required to reimburse all or part of that payment.

(2) Except where the Minister recovers from any person any compensatory payment made as a result of the error of that Minister, interest shall be charged at the rate of one percentage point above LIBOR on a day to day basis for the period specified in that Article on the amount falling to be so reimbursed.

(3) For the purposes of this regulation, LIBOR means the sterling three month London interbank offered rate in force during the period specified in that Article.

(4) 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.

Powers of authorised persons

15.—(1) An authorised person may at all reasonable hours and on producing, if so required, some duly authenticated document showing his authority, exercise the powers specified in this regulation for the purposes of—

- (a) carrying out any specified control measure; or
- (b) ascertaining whether an offence under these Regulations has been or is being committed.

(2) An authorised person may enter any premises, other than premises used only as a dwelling, which are, or which such person has reasonable cause to believe to be, occupied by, or in the possession of, a farmer, collector or processor or an employee or agent of a farmer, collector or processor.

- (3) An authorised person who has entered any premises by virtue of this regulation may—
- (a) inspect all or any part of the land farmed or set aside by a farmer;
 - (b) inspect any crops growing on that land or kept on it.

(4) An authorised person may—

- (a) require any farmer, collector or processor or any employee or agent of a farmer, collector or processor to produce any record and to supply such additional information in that person's possession or under his control relating to an application for a compensatory payment as the authorised person may reasonably request;
- (b) inspect any such record and, where any such record is kept by means of a computer, have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with that record;
- (c) require that copies of, or extracts from, any such record be produced;

(d) seize and retain any such record which he has reason to believe may be required as evidence in proceedings under these Regulations and, where any such record is kept by means of computer, require it to be produced in a form in which it may be taken away.

(5) An authorised person entering any premises by virtue of this regulation may take with him such other persons as he considers necessary.

Assistance to authorised persons

16. A farmer, collector or processor or any employee or agent of a farmer, collector or processor shall give to an authorised person such assistance as the authorised person may reasonably request so as to enable the authorised person to exercise any power conferred upon him by regulation 15.

Offences and penalties

17.—(1) If any person fails to comply with an obligation imposed on him by regulation 11 or 12 he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) If any person—

(a) intentionally obstructs an authorised person in the exercise of a power conferred by regulation 15; or

(b) fails without reasonable excuse to comply with a requirement of an authorised person imposed under regulation 15(4)(a) or (c) or with a request made under regulation 16, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) If any person for the purpose of obtaining the whole or any part of a compensatory payment or in purported compliance with any requirement imposed under regulation 15(4) knowingly or recklessly makes a statement which is false or misleading in a material respect, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Proceedings for an offence under paragraph (1), (2) or (3) above may, subject to paragraph (5) below, in England and Wales be brought, and in Scotland commenced, within the period of six months from the date on which evidence sufficient in the opinion of the prosecutor to justify proceedings came to his knowledge.

(5) No proceedings under paragraph (2) or (3) above shall be brought, or commenced, by virtue of this regulation more than 12 months after the commission of the offence.

(6) A certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient in his opinion to warrant the proceedings came to his knowledge shall be conclusive evidence of that fact.

(7) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

(8) In relation to proceedings in Scotland, subsection (3) of section 331 of the Criminal Procedure (Scotland) Act 1975[39] (date of commencement of proceedings) shall apply for the purposes of this regulation as it applies for the purposes of that section.

(9) Where an offence under this regulation which has been 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, any director, manager, secretary or similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(10) Where the affairs of a body corporate are managed by its members, the provisions of paragraph (9) above shall apply 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 corporate.

(11) In paragraphs (9) and (10) above references to a "body corporate" include references to a Scottish partnership and, in relation to such partnership, any reference to a director or other officer of a body corporate is a reference to a partner.

Revocation of Existing Legislation

18. The Arable Area Payments Regulation 1994[40] and the Arable Area Payments (Amendment) Regulations 1994[41] are hereby revoked.

Michael Jack

Minister of State, Ministry of Agriculture, Fisheries and Food

5th July 1995

Hector Monro

Parliamentary Under Secretary of State,
Scottish Office

5th July 1995

SCHEDULE 1
Regulation 6

DEROGATION FROM REQUIREMENT TO HAVE FARMED SET-ASIDE LAND FOR
TWO YEARS

PART I

(DEROGATIONS IN RESPECT OF LAND IN ENGLAND OR WALES)

1. In the following special cases a farmer shall be entitled to claim set-aside compensatory payment on land in England or Wales that he has not farmed for a period of two years prior to the commencement of the set-aside period:

- (a) during the specified period, he—
 - (i) inherited the land;
 - (ii) was granted an agricultural tenancy from year to year of it by succession; or
 - (iii) having owned the land for at least two years at the commencement of the set-aside period, commenced farming it following the termination of an agreement with another farmer under which that other farmer farmed the land;
- (b) the land forms part of a unit of sixty hectares or more of agricultural land of which he acquired ownership or relevant tenure during the specified period—
 - (i) in a single transaction; or
 - (ii) in more than one transaction, where the land thereby acquired formed part of the same unit of agricultural land immediately prior to the first such transaction;
- (c) during the specified period he acquired ownership or relevant tenure of the land and at the commencement of the set-aside period he owned, or occupied under relevant tenure, no more than fifteen hectares of other agricultural land;
- (d) although he is the farmer of the land, he let the land to another person for a period of less than two years within that part of the specified period which preceded the set-aside period;
- (e) where—
 - (i) more than 10 per cent of the eligible land farmed by him is normally farmed under one or more sharefarming agreements or under one or more agreements none of which constitute an agricultural tenancy from year to year; and
 - (ii) the land, farmed by him under the agreements referred to in sub-paragraph (i) above, is situated in the vicinity of the other land farmed by him, and can be reasonably farmed as a single unit with such other land; or
- (f) he farms insufficient eligible land within any particular production region which he would (but for this provision) be entitled to set aside under Article 7 of Council Regulation 1765/92 and Commission Regulation 762/94 to be able—
 - (i) to satisfy the set-aside requirement in respect of the total area on which he claims a compensatory payment; or

(ii) to satisfy the set-aside requirement at the rate referred to in the third sub-paragraph of Article 7(1) of Council Regulation 1765/92, where the farmer intends to satisfy that requirement by setting land aside as flexible set-aside land, in which case he may set aside such additional eligible land within that production region as is necessary to enable him to comply with the set-aside requirement referred to in paragraph (i) or (ii) above (as the case may be).

2. For the purposes of this Part of this Schedule—

(a) "agricultural tenancy from year to year" means a tenancy from year to year created under a contract for an agricultural tenancy as defined by section 1(2) of the Agricultural Holdings Act 1986, or an agreement to which section 2 or 3 of that Act applies unless that agreement takes effect as an agreement approved by the minister in accordance with section 2 or 5 of that Act;

(b) a farmer has relevant tenure of agricultural land where he is the tenant of that land under an agricultural tenancy from year to year, a tenancy for a fixed term or an agreement approved by the Minister in accordance with section 2 or 5 of the Agricultural Holdings Act 1986, or where he farms that land under a sharefarming agreement;

(c) "specified period" means the set-aside period and the period of two years prior to its commencement; and

(d) an agricultural tenancy from year to year has been granted by succession where it was—
(i) obtained by virtue of a direction under section 39 or 53 of the Agricultural Holdings Act 1986 (direction for a grant of tenancy to successor on death or retirement of the previous tenant);

(ii) granted (following a direction under section 39 of that Act) in circumstances within section 45(6) of that Act (new tenancy granted by agreement to persons entitled to a tenancy under direction); or

(iii) granted in circumstances within section 37(1)(b) or (2) of that Act (tenancy granted by agreement to a close relative).

PART II

(DEROGATIONS IN RESPECT OF LAND IN SCOTLAND)

1. In the following special cases a farmer shall be entitled to claim set-aside compensatory payment on land in Scotland that he has not farmed for a period of two years prior to the commencement of the set-aside period:

(a) during the specified period, he—

(i) acquired a right to an agricultural tenancy of the land by virtue of a bequest or under section 16 of the Succession (Scotland) Act 1964[42];

(ii) being a close relative of the previous tenant, acquired a right to an agricultural tenancy of the land on the retirement of that tenant; or

(iii) having owned the land for at least two years at the commencement of the set-aside period, commenced farming it following the termination of an agreement with another farmer under which that other farmer farmed the land;

(b) the land forms part of a unit of sixty hectares or more of agricultural land of which he acquired ownership or relevant tenure during the specified period—

(i) in a single transaction; or

- (ii) in more than one transaction, where the land thereby acquired formed part of the same unit of agricultural land immediately prior to the first such transaction;
- (c) during the specified period he acquired ownership or relevant tenure of the land and at the commencement of the set-aside period he owned, or occupied under relevant tenure, no more than fifteen hectares of other agricultural land;
- (d) although he is the farmer of the land, he let the land to another person for a period of less than two years within that part of the specified period which preceded the set-aside period;
- (e) where—
 - (i) more than 10 per cent of the eligible land farmed by him is normally farmed under one or more sharefarming agreements or under one or more agreements none of which constitute an agricultural tenancy; and
 - (ii) the land, farmed by him under the agreements referred to in sub-paragraph (i) above, is situated in the vicinity of the other land farmed by him, and can be reasonably farmed as a single unit with such other land; and
- (f) he farms insufficient eligible land within any particular production region which he would (but for this provision) be entitled to set aside under Article 7 of Council Regulation 1765/92 and Commission Regulation 762/94 to be able—
 - (i) to satisfy the set-aside requirement in respect of the total area on which he claims a compensatory payment; or
 - (ii) to satisfy the set-aside requirement at the rate referred to in the third paragraph of Article 7(1) of Council Regulation 1765/92, where the farmer intends to satisfy that requirement by setting land aside as flexible set-aside land, in which case he may set aside such additional eligible land within that production region as is necessary to enable him to comply with the set-aside requirement referred to in the paragraph (i) or (ii) above (as the case may be).

2. For the purposes of this Part of this Schedule—

- (a) "agricultural tenancy" means a tenancy of land which is—
 - (i) an agricultural holding within the meaning of section 1(1) of the Agricultural Holdings (Scotland) Act 1991;
 - (ii) a croft within the meaning of section 3(1) of the Crofters (Scotland) Act 1993[43];
 - (iii) a holding within the meaning of section 2(1) of the Small Landholders (Scotland) Act 1911[44]; or
 - (iv) a holding of a statutory small tenant within the meaning of section 32(1) of the Small Landholders (Scotland) Act 1911, and includes any part of any such tenancy which is treated as a separate entity for the purposes of succession, assignation or sub-letting;
- (b) a farmer has relevant tenure of agricultural land where he is the tenant of that land under an agricultural tenancy or by virtue of a letting approved by the Minister under section 2 of the Agricultural Holdings (Scotland) Act 1991 or where he farms that land under a sharefarming agreement;
- (c) "specified period" means the set-aside period and the period of two years prior to its commencement; and
- (d) "close relative of the previous tenant" means—
 - (i) the previous tenant's wife or husband;
 - (ii) the previous tenant's brother or sister;
 - (iii) the previous tenant's child; or
 - (iv) any person (not falling within paragraph (ii) or (iii) above), who, in the case of any marriage to which the previous tenant has been at any time a party, has been treated by the previous tenant as a child of the family in relation to that marriage.

SCHEDULE 2
Regulation 8(1)

MANAGEMENT REQUIREMENTS IN RELATION TO SET-ASIDE LAND

A. MANAGEMENT OPTIONS FOR SET-ASIDE LAND

General

1.—(1) Subject to paragraphs 2 to 4 below, for each field or part field of set-aside land, a farmer shall comply with such conditions set out in the following paragraphs as relate to one of the following management options—

- (a) the Grassland Option referred to in paragraph 5 below;
- (b) the Natural Regeneration Option referred to in paragraph 6 below;
- (c) the Wild Bird Cover Option referred to in paragraph 7 below; or
- (d) where part only of a field is set aside, the Field Margins Option referred to in paragraph 8 below.

(2) Any requirement to establish a green cover, when included in one of the above management options, shall, except as otherwise provided by this Schedule, be taken to require that that cover be established by the start of the green cover season.

(3) Any requirement to maintain a green cover, when included in one of the above management options shall except as otherwise provided by this Schedule, be taken to require that that cover be maintained—

- (a) in the case of a green cover established on penalty set-aside land or rotational set-aside land, until the end of the green cover season;
- (b) in the case of a green cover established on flexible set-aside land (except for guaranteed set-aside land), until the end of the green cover season in the final year in which that land is set aside; and
- (c) in the case of guaranteed set-aside land, until the end of the set-aside period relating to that land,
except as otherwise provided by this Schedule.

2.—(1) If—

- (a) a farmer applies in writing to the Minister for permission to manage set-aside land in accordance with a management plan set out in his application; and
 - (b) the written consent of the Minister to this plan is obtained,
- the farmer shall, following the grant of that consent, manage the land in accordance with that management plan.

(2) Where environmental transferred set-aside land lies with a Nitrate Sensitive Area (as described in regulation 9(3)(b), then a farmer must comply with the conditions of the Grassland Option referred to in paragraph 5 below in respect of that land.

Exemptions from the requirement to establish a green cover on set-aside land

3.—(1) A farmer shall by virtue of this provision be treated as having been exempted from the requirement to establish a green cover by the start of the green cover season where he

satisfies the Minister that for climatic reasons it was not practicable for there to be such a green cover by that time, in which case he shall establish a green cover as soon as reasonably possible thereafter.

(2) A farmer shall be exempt from the requirement to establish a green cover on penalty set-aside land and on land in which there was a crop at 1st October prior to the commencement of the set-aside period, in which case the farmer shall either—

(a) establish and maintain a green cover on that land in accordance with one of the management options referred to in paragraph 1 above; or

(b) not sow a green cover, in which case he shall—

(i) maintain throughout the green cover season any natural cover which develops on that land, except to the extent that a circumstance in paragraph 4 or paragraph 11(1) below applies; and

(ii) prior to the end of the green cover season, carry out no operation affecting the surface of the land except for discing or shallow cultivating it.

4. A farmer need not establish a green cover on—

(a) a strip of land up to 1 metre wide at the edge of the land set aside, where the land set aside adjoins land planted with a crop other than a seed crop;

(b) a strip of land up to 2 metres wide at the edge of land set aside, where the land set aside adjoins land planted with a seed crop; or

(c) a strip of land up to 5 metres wide at the edge of the land set aside in any place where vehicular access to that land from a road or track adjacent to that land may be possible, provided that the strip is ploughed and left as bare fallow,

and shall not be required to maintain any green cover which nevertheless becomes established on such a strip.

The Grassland Option

5.—(1) In respect of each field to be managed in accordance with the Grassland Option, a farmer shall—

(a) establish a green cover by sowing grass seed or a mixture of grass seed and the seed of native broad-leaved plants not commonly used for agricultural production as soon as is practicable following the harvest of the previous crop and maintain it thereafter; and

(b) cut the green cover in accordance with paragraph 9 below.

(2) A green cover established in accordance with sub-paragraph (1) above may also include legumes.

The Natural Regeneration Option

6. In each field to be managed in accordance with the Natural Regeneration Option, a farmer—

(a) shall establish a green cover by allowing natural regeneration of—

(i) the previous herbage seed crop or combinable crop (other than a crop including maize or legumes); or

(ii) with the consent in writing of the Minister, any other crop; and maintain it thereafter;

(b) shall not carry out any operation likely to inhibit the establishment or maintenance of that green cover except that—

(i) in the first 12 months that the field is set aside; and

(ii) if the Minister consents, in subsequent years in which the field remains set aside,

the farmer may disc or shallow cultivate the field; and

(c) shall cut the green cover in accordance with paragraph 9 below.

The Wild Bird Cover Option

7.—(1) In each field to be managed in accordance with the Wild Bird Cover Option, a farmer—

(a) shall—

(i) where practicable establish a green cover in accordance with paragraph 6(a)(i) of this Schedule; or

(ii) where that is not practicable establish a green cover by sowing a cover comprising a mixture of crops of different types which—

(aa) produces a mixture of crops which it would not be practicable to harvest separately;

(bb) is not a mixture only of different types of cereal or of different types of brassica; and

(cc) is not a mixture only of one type of crop and legumes, of cereals and legumes, or of brassicas and legumes.

and shall maintain it until it falls to be replaced as specified below;

(b) shall replace any green cover established in accordance with paragraph (a)(i) above by sowing a new green cover in accordance with paragraph (a)(ii) above, as early as is practicable during the first calendar year that the field is set aside; and

(c) shall (where land is set aside for more than one scheme year) replace the existing green cover established in accordance with paragraph (a)(ii) or (b) above, by sowing a new green cover in accordance with paragraph (a)(ii) as early as is practicable either in the calendar year following that in which the existing green cover was established or in the calendar year following that; and

(d) shall cut the cover in accordance with paragraph 9 below, unless—

(i) the field is to be set aside again in the following scheme year; and

(ii) the farmer does not harvest any of the green cover or permit any of it to be harvested or grazed.

(2) A farmer shall ensure, when replacing the green cover as required by sub-paragraph (1)(b) and (c) above, that the requirements of paragraph 16(1)(a) to (c) below are satisfied.

The Field Margins Option

8. In each part field to be managed in accordance with the Field Margins Option, a farmer—

(a) shall establish a green cover in accordance with paragraph 5(1)(a) or 6(a) of this Schedule and maintain it thereafter;

(b) shall cut the green cover at least once during each period of 12 months that the part field remains set aside, except that he may leave uncut a strip of green cover up to 2 metres wide adjacent to any hedge or woodland;

(c) shall not harvest any of the green cover or permit any of it to be harvested or grazed unless—

(i) he has previously notified the Minister of his intention to use the green cover for permitted agricultural production; and

(ii) he cuts the green cover to an average length of no more than 10 centimetres at least once between 15th July and 15th August prior to the end of the set-aside period in any year in which he wishes to harvest the green cover, or permit it to be harvested or grazed, in which case he may use the green cover for permitted agricultural production.

Cutting the green cover

9.—(1) In each field to which this paragraph applies, a farmer shall (subject to sub-paragraphs (2) and (3) below), cut the green cover to an average length of no more than 10

centimetres at least once each year between 15th July and 15th August prior to the end of the set-aside period.

(2) A farmer may—

(a) leave a strip of green cover up to 2 metres wide uncut adjacent to any hedge or woodland; and

(b) where the field is to remain set aside in the following scheme year, leave a further 10% of the area set aside in each field uncut, provided that any area left uncut in accordance with this paragraph is cut in accordance with sub-paragraph (1) above in the following year.

(3) The Minister shall, on application from a farmer, exempt the farmer from the requirements of sub-paragraph (1) above to such an extent as he considers to be necessary for environmental reasons.

B. GENERAL MANAGEMENT CONDITIONS APPLYING TO ALL SET-ASIDE LAND

Application of conditions to all set-aside land

10. The provisions in paragraphs 11 to 26 of this Schedule apply to all set-aside land managed by a farmer in accordance with any of the provisions of paragraphs 1 to 9 above. Exemptions from the requirement to maintain a green cover on set-aside land

11.—(1) A farmer shall be exempt from the requirement to maintain a green cover on set-aside land (except for guaranteed set-aside land and environmental transferred set-aside land) following the application of herbicide, where herbicide is applied to the land on or after 15th April in accordance with paragraph 24 or 25(a) below, from the time of the application until (where the land is to remain set aside in the next scheme year) the commencement of the next green cover season.

(2) The Minister shall on the application of a farmer treat him as having been exempted from any requirement set out in paragraph 1(3) above, where he provides evidence sufficient to satisfy the Minister that the green cover which he established failed and he could not reasonably have prevented such failure, from the time of the failure until (where the land is to remain set aside in the next scheme year) the commencement of the next green cover season.

Cultivation of the set-aside land and replacement of the green cover

12. A farmer shall neither sow nor carry out any preparation for sowing a crop on the set-aside land prior to the end of the set-aside period, except in accordance with paragraph 13 below.

13.—(1) A farmer may—

(a) cultivate the land (except where the land is guaranteed set-aside land or environmental transferred set-aside land) for the purpose of controlling weeds at any time on or after 1st May prior to the end of the set-aside period;

(b) make (subject to sub-paragraph (2) below) preparations for sowing and sow any arable crop, temporary grass ley or traditional forage crop on or after the final 15th July prior to the end of the set-aside period.

(2) A farmer may neither sow nor make preparations for sowing an arable crop, temporary grass ley or traditional forage crop, as otherwise permitted by sub-paragraph (1) above—

(a) in any field or part of a field which he intends to set aside in the following scheme year;

(b) in relation to a crop of a species or variety where, if the farmer followed standard agricultural practice in the locality in which that crop is sown, it would be expected that it would be harvested within the same scheme year as it is sown; or

(c) where the farmer intends to harvest any crop so sown within the same scheme year as it is sown.

(3) For the purposes of this paragraph, a traditional forage crop is a crop of a type commonly sown in the locality of the set-aside land for the purpose of being grazed by animals.

Use of legumes in the green cover

14.—(1) A green cover shall not (subject to subparagraph (2) below) be established on set-aside land by sowing a seed mixture containing more than 5 per cent by weight of legumes unless the farmer—

(a) satisfies the Minister that he farms the land by organic means or is converting to doing so; and

(b) has pursuant to Article 8(1) of Council Regulation 2092/91 notified the appropriate Minister (as defined by regulation 2(1) of the Organic Products Regulations 1992[45]) that by so farming the land he produces products of a kind specified in Article 1 of that Regulation, and has submitted to the inspection system referred to in Article 9 thereof.

(2) A green cover may not be established on guaranteed set-aside land in England and Wales (except where that land is managed in accordance with paragraph 7 above) by sowing a seed mixture which contains clover, lucerne or sainfoin.

Classification of seed permitted to be sown on set-aside land

15.—(1) For the purposes of paragraph 5(1)(a) above, breeder's, pre-basic or basic seed may not be sown in order to establish a green cover.

(2) For the purposes of sub-paragraph (1) above, seed is breeder's, pre-basic or basic seed if it so classified in any Regulation made under the Plant Varieties and Seeds Act 1964[46] which is in force at the time the seed intended to establish the green cover is sown.

Replacement of the green cover and changing management options

16.—(1) A farmer may replace existing green cover in a field with another provided that—
(a) seed sufficient to sow a replacement green cover is stored on land which the farmer farms as a single unit with the land set aside before replacement of the existing green cover is commenced;

(b) it is likely, having regard to the condition of the soil and expected climatic conditions, that sowing the stored seed at this time will result in the successful growth of a green cover;

(c) this seed is sown as soon as is practicable after the destruction of the existing green cover; and

(d) where the land is managed in accordance with a management plan approved by the Minister under paragraph 2 above, his consent is obtained before the farmer commences replacement of the green cover.

(2) The farmer shall comply with the conditions relating to one of the management options set out at paragraph 1 above in respect of the replacement green cover, unless the Minister approves a management plan in accordance with paragraph 2 above, in which case the farmer shall comply with the provisions of that plan.

Use of the green cover

17.—(1) A farmer shall ensure that, subject to sub-paragraph (2), below no green cover or cuttings produced by cutting any green cover are used for any commercial or agricultural purpose, except with the prior consent of the Minister.

(2) A farmer may use any such green cover or cuttings for permitted agricultural production.

(3) A farmer shall ensure that no green cover established in accordance with this Schedule is burnt, except with the prior consent of the Minister.

(4) A farmer shall ensure that no cuttings produced by cutting the green cover are removed from or burnt on the set-aside land except in accordance with sub-paragraph (2) above or with the prior consent of the Minister.

Application of fertilisers, waste and lime to the set-aside land

18. A farmer shall not apply any fertiliser, waste or lime to the set-aside land except in accordance with—

(a) paragraphs 19 to 22 of this Schedule where the land is neither guaranteed set-aside land nor environmental transferred set-aside land;

(b) paragraphs 28 to 30 below where the land is guaranteed set-aside land; or

(c) paragraph 32 below where the land is environmental transferred set-aside land.

19. A farmer may apply fertiliser to land set aside if prior to such application he satisfies the Minister that the land is situated in an area known to be used as a feeding area by geese in winter and is to be managed as a feeding area for such geese.

20. A farmer may apply organic waste to the set-aside land if that organic waste was produced on land which he farms as a single unit with the set-aside land and he satisfies the Minister, before applying the waste to the land, that he would not otherwise be able to dispose of it satisfactorily.

21. A farmer may apply fertiliser with a total nitrogen content of not more than 30 kilograms per hectare to any agricultural parcel of land managed in accordance with paragraph 7(1) above, in any calendar year in which a new green cover is being established in accordance with paragraph 7(1)(b) or (c) above.

22. A farmer shall not store, dump or otherwise dispose of any waste on the set-aside land except that he may store organic waste in a field which forms all or part of the set-aside land where that organic waste is to be applied by him to that field in accordance with paragraph 20 above.

Application of fungicides, insecticides and herbicides to the set-aside land

23. A farmer shall not apply fungicides or insecticides to the set-aside land unless he satisfies the Minister that he should be exempted from this requirement because the application is necessary in order to control plant health problems which cannot be remedied by any other reasonable means.

24. Subject to paragraph 25 below, a farmer shall not apply herbicide to the set-aside land unless—

(a) it is of a type which either—

(i) is absorbed into a plant primarily through the leaves and stem; or

(ii) has been approved by the Ministers under regulation 5 of the Control of Pesticides Regulations 1986[47] or under regulations 5, 7, 8 or 11 of the Plant Protection Products Regulations 1995[48] and its application is not outside the coverage of the uses for which it has been approved,

and

(b) such application, if undertaken on guaranteed set-aside land or prior to 15th April in any calendar year on any other form of set-aside land—

(i) is not likely significantly to damage green cover on the land;

(ii) is made prior to replacing green cover on the land in accordance with paragraph 16 above;

(iii) is undertaken using herbicide applied either as a spot treatment or with a wick applicator; or

(iv) is undertaken in order to create or maintain a strip permitted by paragraph 4 above.

25. The Minister shall on application from a farmer exempt him from the restriction imposed by paragraph 24 above so as to permit him to apply any herbicide to set-aside land—

(a) where the Minister is satisfied that such application is necessary to control a serious infestation of weeds or pests or the spread of any disease in which case the farmer shall replace any green cover following the application in accordance with paragraph 16(1)(a) and (c) above or in accordance with such other conditions of the exemption as the Minister includes; or

(b) in order to create or maintain a bare fallow strip permitted under paragraph 4 above, where the Minister is satisfied that the application of herbicides in accordance with paragraph 24(b)(iv) above has not been effective to prevent the growth of vegetation on that strip.

Retention of features on the set-aside land

26. A farmer shall not damage, destroy or remove—

(a) any existing hedge or row of trees (including hedgerow trees),

(b) any tree (not forming part of a hedge or row of trees) whose largest trunk, when measured 1.3 metres above the average ground level of the base of the tree, exceeds 25 centimetres in circumference,

(c) any existing lake, loch, ditch, watercourse, pond or pool,

(d) any existing vernacular building or stone wall, or

(e) any archaeological feature or feature of historical importance,

which is situated on or adjacent to the set-aside land unless he satisfies the Minister either that it should be so damaged, destroyed or removed for environmental or for safety reasons or that he is obliged to do so to comply with a legal requirement.

C. SPECIAL CONDITIONS APPLYING TO GUARANTEED SET-ASIDE LAND

Application of conditions to guaranteed set-aside land

27. The provisions of paragraphs 28 to 31 below apply to guaranteed set-aside land.

The application of fertilisers

28. Where guaranteed set-aside land is managed in accordance with paragraph 7 above, fertiliser may be applied to that land at any time between 1st March and 30th May inclusive in any year in which a green cover is to be established in accordance with that paragraph, provided that the total nitrogen content of all fertiliser applied to any agricultural parcel of the land during that period is no more than 30 kilogrammes per hectare and that any fertiliser so applied contains no potassium or phosphorus in any form.

29. A farmer may apply fertiliser to guaranteed set-aside land if he satisfies the Minister that the land is situated in an area known to be used as a feeding area by geese in winter and is to be managed as a feeding area for such geese.

30.—(1) A farmer may (subject to sub-paragraph (2) below) apply organic waste to guaranteed set-aside land if that organic waste was produced on land which he farms as a single unit with the set-aside land and he satisfies the Minister before applying the waste to the land that were he prevented from so applying it—

(a) he could not reasonably otherwise deal with it except by applying it to the remainder of his holding; and

(b) such application to the remainder of his holding would result in an application of a greater concentration of nitrogen than is compatible with good agronomic or environmental practice. and observes such conditions or limitations (if any) as are imposed by the Minister in relation to any application so permitted.

(2) The application to any agricultural parcel in any 12 month period of organic waste with a nitrogen content greater than 250 kilogrammes per hectare shall not be permitted.

Permitted agricultural production

31.—(1) A farmer may undertake permitted agricultural production on guaranteed set-aside land only to such extent as does not result in overgrazing of that land.

(2) For the purposes of sub-paragraph (1) above, "overgrazing" means grazing or otherwise stocking land with livestock in such numbers as adversely to affect the growth, quality or species composition on that land with livestock in such numbers as adversely to affect the growth, quality or species composition on that land to a significant degree.

D. EXCEPTION RELATING TO ENVIRONMENTAL TRANSFERRED SET-ASIDE LAND

The application of organic waste

32. A farmer may apply organic waste to an agricultural parcel of environmental set-aside land where that waste was created as a result of the maintenance of a tree, hedge, stream or ditch on or immediately adjoining that agricultural parcel.

SCHEDULE 3 Regulation 8(2)

REQUIREMENTS IN RELATION TO LAND SET ASIDE FOR THE PROVISION OF SPECIFIED RAW MATERIALS

1. A farmer shall not damage, destroy or remove—
(a) any existing hedge or row of trees (including hedgerow trees),
(b) any tree (not forming part of a hedge or row of trees) whose largest trunk, when measured 1.3 metres above the average ground level of the base of the tree, exceeds 25 centimetres in circumference,
(c) any existing lake, loch, ditch, watercourse, pond or pool,
(d) any existing vernacular building or stone wall, or
(e) any archaeological feature or feature of historical importance,
which is situated on or adjacent to the set-aside land unless he satisfies the Minister either that it should be so damaged, destroyed or removed for environmental or for safety reasons or that he is obliged to do so to comply with a legal requirement.

2. A farmer shall not adjust or annul any contract relating to that land, submitted to the Minister in accordance with Article 6(1) of Commission Regulation 334/93, pursuant to Article 7(2) of that Regulation, unless he has notified the Minister of the proposed adjustment or annulment, and the collector or processor with whom the contract was made has similarly notified the Intervention Board for Agricultural Produce, at least 10 working days before such adjustment or annulment takes effect.

3. Where as a result of such adjustment or annulment any land set aside for the provision of specified raw materials is no longer to be used for such provision, the farmer shall—
(a) dispose of any crop remaining on the land by a method which the Minister is satisfied will result in its destruction; and

(b) subject to paragraph 4 below, establish a green cover on the land in accordance with Schedule 2 to these Regulations.

4. The Minister may grant the farmer an exemption from the requirement to establish a green cover pursuant to paragraph 3(b) above where he considers that to require the establishment of a green cover would be unreasonable having regard to the date on which the contract was adjusted or annulled in accordance with paragraph 2 above.

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(a) dispose of any crop remaining on the land by a method which the Minister is satisfied will result in its destruction; and

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Notes:

- [1] S.I. 1972/1811. back
- [2] 1972 c. 68. back
- [3] 1986 c. 5. back
- [4] 1991 c. 55. back
- [5] OJ No. L 221, 6.8.92, p.22. back
- [6] OJ No. L 76, 5.4.95, p.1. back
- [7] OJ No. L 221, 6.8.92, p.28. back
- [8] OJ No. L 300, 7.12.93, p.5. back
- [9] OJ No. L 281, 25.9.92, p.5. back
- [10] OJ No. L 89, 21.4.95, p.5. back
- [11] OJ No. L 391, 31.12.92, p.36. back
- [12] OJ No. L 27, 4.2.95, p.3. back
- [13] OJ No. L 38, 16.2.93, p.12. back
- [14] OJ No. L 77, 19.3.94, p.7. back
- [15] OJ No. L 238, 23.9.93, p.21. back
- [16] OJ No. L 90, 7.4.94, p.9. back
- [17] OJ No. L 198, 22.7.91, p.1. back
- [18] OJ No. L 255, 1.10.94, p.84. back
- [19] OJ No. L 181, 1.7.92, p.12. back
- [20] OJ No. L 144, 28.6.95, p.1. back
- [21] OJ No. L 380, 24.12.92, p. 24. back
- [22] OJ No. L 316, 9.12.94, p.1. back
- [23] OJ No. L 215, 30.7.92, p.85. back
- [24] OJ No. L 215, 30.7.92, p.96. back
- [25] OJ No. L 355, 5.12.92, p.1. back

[26] OJ No. L 338, 28.12.94, p.13. back

[27] OJ No. L 218, 6.8.91, p.1. back

[28] OJ No. L 356, 24.12.91, p.17. back

[29] OJ No. L 128, 19.5.75, p.1. back

[30] OJ No. L 93, 30.3.85, p.1. back

[31] OJ No. L 82, 26.3.84, p.67. back

[32] OJ No. L 16, 22.1.91, p.25. back

[33] OJ No. L 180, 14.7.80, p.34. back

[34] S.I. 1990/1013. back

[35] 1974 c. 40; section 31B as it applies to Scotland was inserted by the Water Act 1989 (c. 15), section 169 and Schedule 23. back

[36] 1979 c. 46. back

[37] 1981 c. 69. back

[38] S.I. 1993/1317, amended by S.I. 1994/1134. back

[39] 1975 c. 21. back

[40] S.I. 1994/947, amended by S.I. 1994/2287. back

[41] S.I. 1994/2287. back

[42] 1964 c. 41. back

[43] 1993 c. 44. back

[44] 1911 c. 49. back

[45] S.I. 1992/2111, amended by S.I. 1994/2286. back

[46] 1964 c. 14. back

[47] S.I. 1986/1510. back

[48] S.I. 1995/887. back