

Statutory Instrument 1994 No. 1729

The Nitrate Sensitive Areas Regulations 1994

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STATUTORY INSTRUMENTS

1994 No. 1729

AGRICULTURE

The Nitrate Sensitive Areas Regulations 1994

<i>Made</i>	<i>1st July 1994</i>
<i>Laid before Parliament</i>	<i>1st July 1994</i>
<i>Coming into force</i>	<i>26th July 1994</i>

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

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Nitrate Sensitive Areas Regulations 1994 and shall come into force on 26th July 1994.

(2) These Regulations shall extend to England only.

Interpretation

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

"agriculture" includes horticulture, fruit growing, seed growing, dairy farming, livestock breeding and keeping and freshwater fish farming, the use of land as grazing land, osier land, reed beds, market gardens and nursery grounds, and "agricultural" shall be construed accordingly;

"autumn sown" in relation to cereals or oilseed rape means a variety of cereals or oilseed rape normally sown between 31st July in one year and 1st January in the following year;

"basic scheme" means the scheme under which a farmer gives the Minister the undertakings set out in Schedules 2 and 3;

"controlled waters" means the waters referred to in section 104(1) of the Water Resources Act 1991^[3];

"cover crop" means a crop sown primarily in order to take up nitrogen from the soil;

"crop requirement" means the amount of nitrogen in the form of inorganic nitrogen fertiliser applied in any year, such that if extra inorganic nitrogen fertiliser were applied in that year, having regard to the crop in question and the characteristics of the land on which it was planted and taking account of any applications of organic manure, the cost of that fertiliser would be greater than the value of the additional crop produced;

"farmer" means a person who has an interest in agricultural land in a nitrate sensitive area or is a party to a share farming agreement in respect of land in a nitrate sensitive area;

"grassland" means land on which the vegetation consists predominantly of grass species;

"holding" means land which is occupied as a unit for agricultural purposes;

"inorganic nitrogen fertiliser" means material containing nitrogen, in which the main function of the nitrogen is to provide plant food, and in which the nitrogen is in the form of inorganic salts obtained by any process including extraction, physical industrial processes, chemical industrial processes, or a combination of any or all of these, and includes calcium cyanamide, and urea and its condensation products;

"intensive grassland" means grassland which receives more than 250kg per hectare of nitrogen in the form of inorganic nitrogen fertiliser in any year;

"livestock unit" means—

- (a) 6.66 sheep,
 - (b) 6.66 goats,
 - (c) one bovine animal more than two years old,
 - (d) 1.66 bovine animals from six months old to two years old inclusive,
- or
- (e) one horse or pony more than six months old, or
 - (f) 4.35 farmed deer;

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

"nitrate sensitive area" means any of the areas referred to in Schedule 1 and more particularly shown coloured pink on the maps contained in the volume of maps marked "Volume of maps of Nitrate Sensitive Areas" dated, signed and sealed by the Minister and deposited at the offices of the Ministry of Agriculture, Fisheries and Food, Nobel House, 17 Smith Square, London SW1P 3JR;

"nitrogen fertiliser" means inorganic nitrogen fertiliser and organic nitrogen fertiliser;

"organic nitrogen fertiliser" means animal manure, sewage sludge or any other organic products containing nitrogen, but excluding calcium cyanamide, and urea and its condensation products;

"original occupier" shall be construed in accordance with regulation 13(1)(c);

"original undertakings" shall be construed in accordance with regulation 12(1)

(a);

"permanent crop" means any non-rotational crop (other than permanent pasture) which occupies the ground for five years or longer and which yields repeated harvests;

"permanent grassland" includes moorland, rough grazing, pasture, and any other land which has been in grass for more than five years on 31st December 1991;

"premium arable scheme" means the scheme under which a farmer gives the Minister the undertakings set out in Schedules 2 and 4;

"premium grass scheme" means the scheme under which a farmer gives the Minister the undertakings set out in Schedules 2 and 5;

"sandy" in relation to soil means soil which contains—

(a) more than 50 per cent by weight of sand sized particles (that is particles more than 0.06 millimetres and less than 2 millimetres in diameter),

(b) less than 18 per cent by weight of clay sized particles (that is particles less than 0.02 millimetres in diameter), and

(c) less than 6 per cent by weight of organic carbon;

"scheme" (except in the phrase "aid scheme" in the definition in this regulation of "set-aside land") means a scheme for the payment of aid under these Regulations, being the basic scheme, the premium arable scheme or the premium grass scheme;

"set-aside land" means land set aside in accordance with an aid scheme established by Article 1 of Council Regulation (EEC) 1703/91^[4], or under Article 2 of Council Regulation (EEC) 2328/91^[5] or in accordance with Article 7 of Council Regulation (EEC) 1765/92^[6];

"share farming agreement" means an agreement in writing 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 agreement, revenues from such sale;

"slurry" means animal manure with a dry matter content by weight of less than 15 per cent at any time;

"stocking level" means the average daily number of livestock grazing the land in the period of 12 months ending on the day in question;

"undertaking" in relation to a farmer means any undertaking given by him in connection with an application for aid under these Regulations;

"vegetable brassica crop" means Brassica oleracea, including cabbage, cauliflower, calabrese and Brussels sprouts.

(2) Any reference in these Regulations to a nitrate sensitive area by any name appearing in an entry in column (1) of Schedule 1 is a reference to the nitrate sensitive area shown on the map in the "Volume of maps of Nitrate Sensitive Areas" referred to in the definition of "nitrate sensitive area" in paragraph (1) bearing the

number in the corresponding entry in column (2) of Schedule 1.

(3) Any reference in these Regulations to—

- (a) a numbered regulation or Schedule is a reference to the regulation in or Schedule to these Regulations so numbered; and
- (b) a numbered paragraph is a reference to the paragraph so numbered in the regulation in which the reference appears.

Aid for farmers in nitrate sensitive areas

3. Subject to the provisions of these Regulations, the Minister may make payments of aid to any farmer where—

- (a) the land in respect of which application for aid is made and the farmer satisfy the qualifying conditions set out in regulation 4;
- (b) the land in respect of which application for aid is made is eligible, in accordance with regulation 5, for payment under the scheme in respect of which application for aid is made;
- (c) the farmer makes an application for aid in accordance with regulation 6;
- (d) the farmer gives to the Minister such of the undertakings mentioned in regulation 7 as relate to the application;
- (e) the Minister has accepted the application for aid in accordance with regulation 8; and
- (f) the farmer submits a claim in accordance with regulation 10.

Qualifying conditions for land and farmer

4.—(1) The qualifying conditions referred to in regulation 3(a) are that the land is in a nitrate sensitive area and that—

- (a) the land is occupied by the farmer or on his behalf for agricultural purposes and he is the owner of the freehold interest in the land; or
- (b) the land is occupied by the farmer or on his behalf for agricultural purposes and he has—
 - (i) an interest in the land as a tenant, and
 - (ii) subject to paragraph (2), the consent in writing of his landlord to him making the application; or
- (c) the farmer is a party to a share farming agreement in respect of the land and—
 - (i) the application is made jointly by all the parties to the share farming agreement ("the applicants"),
 - (ii) the applicants have entered into the share farming agreement for a period of five years or more from the date the undertakings given or to be given by the applicants would commence, and
 - (iii) where the owner of the freehold interest is not an applicant, the applicants have the consent in writing of the owner of the freehold interest to the applicants making the application.

(2) A farmer may make an application in respect of land in a nitrate sensitive area where the farmer holds a tenancy in the land from a landlord who has given his consent in writing to the giving of the undertakings required by these Regulations notwithstanding the fact that the farmer has other land in that nitrate sensitive area which he holds under a tenancy from a landlord who has not given his consent in writing to the giving of the undertakings required by these Regulations.

(3) A farmer who is a tenant and his landlord may make a joint application for aid under these Regulations notwithstanding the fact that the land is not occupied by the landlord or on his behalf for agricultural purposes.

Land which is eligible for aid

5.—(1) For the purposes of regulation 3(1)(b) land in a nitrate sensitive area is eligible for payments of aid under a scheme if, at the date the undertakings mentioned in regulation 7 are to take effect, it satisfies the condition set out in whichever one of the following paragraphs applies to that scheme.

(2) In respect of the basic scheme, the condition is that, since 31st December 1991, but except for such period as it has been set-aside land, the land has been used only for the production of any agricultural crop other than—

- (a) a permanent crop; or
- (b) grass grown for more than five consecutive years.

(3) In respect of the premium arable scheme, the condition is that, since 31st December 1991, but except for such period as it has been set-aside land, the land has not been woodland or permanent grassland and has been used only for the production of any agricultural crop other than—

- (a) a permanent crop; or
- (b) grass grown for more than one consecutive year.

(4) In respect of the premium grass scheme, the condition is that the land is grassland which has been receiving more than 250kg of nitrogen in the form of inorganic nitrogen fertiliser per hectare per year in each of the three years immediately preceding the date when the undertakings given or to be given in respect of it are to commence.

Applications for aid

6. An application for aid under these Regulations shall be made at such time and in such form as the Minister reasonably may require and shall include—

- (a) a map in a form approved by the Minister showing—
 - (i) the land in respect of which the farmer proposes to give undertakings to the Minister in accordance with sub-paragraph (b) of regulation 7, and
 - (ii) all land within the nitrate sensitive area which forms part of the farmer's holding;
- (b) a description of the use or uses of the land described in sub-paragraphs (a) (i) and (a)(ii) above;
- (c) a description of the use or uses the farmer intends for the land described in sub-paragraph (a)(i) above if the Minister accepts the farmer's application for aid under these Regulations; and
- (d) such evidence as the Minister may reasonably require of the farmer's interest in the land described in sub-paragraph (a)(i) above.

Undertakings by farmer

7. The undertakings referred to in regulation 3(1)(d) are undertakings that the farmer will, for a period of five consecutive years commencing on 1st October in the year in which his application for aid is made—

- (a) comply with the requirements set out in Schedule 2 in relation to all land which is in the nitrate sensitive area and which is on the farmer's holding;
- (b) subject to the following sub-paragraphs of this regulation, comply, in relation to each field or part field in respect of which the application is made, with the requirements set out in whichever of Schedules 3, 4 or 5 is appropriate for the scheme for which application is made, namely—
 - (i) where the application is for aid under the basic scheme, Schedule 3 (including the requirements of either Option A or Option B in that Schedule),
 - (ii) where the application is for aid under the premium arable scheme,

Schedule 4 (including the requirements of one of Options A, B, C or D in that Schedule),

(iii) where the application is for aid under the premium grass scheme, Schedule 5;

(c) where the application is for aid under the basic scheme, comply with the requirements set out in paragraph (8) of Schedule 3 in relation to all land which is in the nitrate sensitive area and which is on the farmer's holding;

(d) where the application is for aid under the premium arable scheme, comply with the requirements set out in paragraph (2) of Schedule 4 in relation to all land which is in the nitrate sensitive area and which is on the farmer's holding; and

(e) where the application is for aid under the premium grass scheme, comply with the requirements set out in paragraph (6) of Schedule 5 in relation to all land which is in the nitrate sensitive area and which is on the farmer's holding.

Restrictions on acceptance of applications for aid

8.—(1) The Minister shall refuse any application for aid under—

(a) the premium arable scheme unless the application relates to—

(i) a whole field or fields,

(ii) a part field or part fields of not less than four hectares in each case, or

(iii) a combination of the above;

(b) the basic scheme or premium grass scheme unless the application relates to

—
(i) a whole field or fields,

(ii) a part field or part fields where the remaining part of each field is subject to an application for aid under the premium arable scheme which the Minister has accepted, or

(iii) a combination of the above.

(2) The Minister may refuse an application for aid under these Regulations if she is satisfied that—

(a) the farmer will be unable to comply with his undertakings throughout the whole of the period for which they are given; or

(b) the undertakings given by the farmer will not be effective in preventing, to the extent contemplated by the Minister in establishing the scheme in respect of which the application is made, the entry of nitrate into controlled waters.

(3) Where the Minister is satisfied that—

(a) the farmer will be unable to comply with his undertakings throughout the whole of the period for which they are given in respect of part of the land in relation to which they are given but will be so able in respect of the remaining part of such land; or

(b) the undertakings given by the farmer will not be effective in preventing, to the extent contemplated by the Minister in establishing the scheme in respect of which the application is made, the entry of nitrate into controlled waters from part of the land in relation to which such undertakings are given but will be so effective in respect of the remaining part of such land,

she may refuse the application in relation to that part of the land in respect of which she is satisfied that the farmer will not be able to comply with such undertakings throughout such period or, as the case may be, that such undertakings will not be effective but accept the application in relation to the remaining part.

(4) The Minister may refuse an application for aid under these Regulations if she

is satisfied that—

- (a) the implementation of the undertakings referred to in regulation 3(1)(d) in respect of the land would frustrate the purposes of any assistance previously given or to be given out of money provided by Parliament or the European Community; or
- (b) the payment of aid under these Regulations in relation to that land would duplicate any assistance previously given or to be given out of money provided by Parliament or the European Community.

Monitoring of undertakings and of effectiveness of schemes

9.—(1) A farmer whose application for aid under these Regulations has been accepted shall permit the Minister, her servants or agents, accompanied by such persons acting under her instructions as appear to her, her servant or agent to be necessary for the purpose, at all reasonable times, where necessary in order to monitor compliance with the farmer's undertakings or to assess their effectiveness in preventing the entry of nitrate into controlled waters, to—

- (a) enter upon any land which is the subject of such undertakings;
- (b) take samples from the land;
- (c) install equipment on the land; or
- (d) examine all records kept in compliance with undertakings given under these Regulations.

(2) A farmer whose application for aid under these Regulations has been accepted shall render all reasonable assistance to any person acting by virtue of paragraph (1) and in particular shall—

- (a) produce for inspection such document or record as may be required by that person; and
- (b) at the request of that person, accompany him in making the inspection of any land and shall identify any area of land which is concerned in any application or claim made or in any undertaking given under these Regulations.

(3) A farmer whose application for aid under these Regulations has been accepted shall provide the Minister with such information relating to the farmer's interest in, use of, and intended use of the land in respect of which he has given undertakings as the Minister may reasonably require to enable her to monitor compliance with the farmer's undertakings or to assess their effectiveness in preventing the entry of nitrate into controlled waters.

Claims for aid

10. Any claim for payment of aid under these Regulations shall be made at such time and in such form and shall contain such information as the Minister reasonably may require.

Payments of aid

11. The Minister shall, following receipt by her of a claim from the farmer, make payments in accordance with Schedule 6 in respect of land which is the subject of undertakings in accordance with sub-paragraph (b) of regulation 7 given in connection with an application under these Regulations which the Minister has accepted.

Upgrading of scheme

12.—(1) A farmer may make an application for aid in respect of which undertakings are given for a period of less than five years where—

- (a) the farmer has previously given undertakings to the Minister in accordance

with the requirements of a scheme and option mentioned in column (1) of Schedule 7 (the "original undertakings");

(b) the application is made before the date specified in column (2) of Schedule 7 in the entry corresponding to the original undertakings;

(c) the application is made for aid under a scheme and option mentioned in column (3) of Schedule 7 in the entry corresponding to the original undertakings; and

(d) the application includes or is accompanied by undertakings that the farmer will comply with the requirements of the scheme in respect of which the application is made from 1st October next following the date of the application until the date when the original undertakings expire.

(2) The Minister may accept an application for aid made in accordance with paragraph (1) if she is satisfied that the undertakings the farmer gives under this regulation will be effective in preventing, to the extent contemplated by the Minister in establishing the scheme in respect of which the application is made, the entry of nitrate into controlled waters.

(3) Where—

(a) the application is of a type mentioned in the first entry in the table in Schedule 7 (upgrading basic scheme to premium arable scheme), and

(b) the farmer occupies the land in respect of which the application is made as a tenant,

the Minister shall not accept an application for aid in accordance with this regulation unless the farmer has the consent in writing of his landlord.

(4) Where the Minister accepts an application for aid in accordance with paragraph (1), the undertakings given under paragraph (1)(d) shall have effect as a variation of and not in addition to the original undertakings and accordingly, in respect of the period for which the undertakings given under paragraph (1)(d) have effect, any aid payable to the farmer shall be aid under the scheme referred to in paragraph (1)(c) only.

Death of farmer or change of occupation of the land

13.—(1) Where, during the period for which undertakings have been given by a farmer, the farmer dies or there is a change of occupation of the whole or any part of the land which is the subject of such undertakings—

(a) where the farmer has died, the personal representative shall notify the Minister in writing of the death and of any consequent change in occupation of the land within 3 months of the death or as soon as practicable after being appointed as personal representative (whichever is later) and shall supply to the Minister such information relating to any change of occupation in such form and within such period as the Minister reasonably may determine;

(b) where there is a change of occupation of the land or any part thereof other than consequent on the death of the farmer, the farmer shall notify the Minister in writing of the change of occupation within 3 months of its occurrence and shall supply to the Minister such information relating to the change of occupation in such form and within such period as the Minister reasonably may determine;

(c) where the farmer ("the original occupier") occupied the land or the part in respect of which there has been a change of occupation as owner of the freehold interest or as a tenant, the new occupier may give undertakings to the Minister, in respect of the land or the part thereof which he occupies, in the same terms, and expiring at the same time, as the undertakings given by the farmer who made the application for aid under these Regulations.

(2) The Minister shall not accept undertakings referred to in paragraph (1)(c) unless she is satisfied that the new occupier occupies the land, or the part thereof in respect of which he gives such undertakings, as owner of the freehold interest, tenant, or as personal representative of the original occupier.

(3) A new occupier who gives undertakings referred to in paragraph (1)(c) shall supply to the Minister such information in such form and within such period as the Minister reasonably may determine.

(4) Where the Minister has accepted from a new occupier undertakings referred to in paragraph (1)(c)—

(a) the new occupier shall be treated for the purposes of these Regulations as if he was the original occupier and, subject to paragraph (5), shall be entitled to payments of aid in place of the original occupier for the period for which the new occupier gives undertakings; and

(b) the undertakings given by the new occupier shall take effect on the date of the acceptance by the Minister of them.

(5) Where the personal representative of a farmer fails without reasonable excuse to comply with paragraph (1)(a), the Minister may withhold the whole or any part of any aid payable to the personal representative under these Regulations, recover from the personal representative the whole or any part of any such aid already paid to him and give notice to the personal representative that she is treating as terminated, with effect from the date specified in the notice, the undertakings given by the farmer.

(6) Where within 3 months of the date of a change of occupation a new occupier has not given undertakings referred to in paragraph (1)(c) in relation to all the land the occupation of which has changed, the Minister may—

(a) withhold the whole or any part of any payment due to the original occupier;

(b) recover from the original occupier or his personal representatives the whole or any part of any payments already made to him (or, in the case of the personal representative, to the original occupier); and

(c) give notice to the original occupier or his personal representative that she is treating the farmer's undertakings as terminated with effect from the date specified in the notice.

(7) Paragraph (6) shall not apply where the change of occupation of the entirety or any part of the original occupier's land which is subject to undertakings is the result of

(a) compulsory purchase of that land or part; or

(b) the death of the original occupier, and—

(i) the original occupier occupied that land or part as tenant, and

(ii) following the death of the original occupier, the tenancy or lease under which he occupied that land or part was terminated by the landlord; or

(c) the termination of a tenancy following the operation of a notice to quit to which the Agricultural Land Tribunal has consented under section 26(1) of the Agricultural Holdings Act 1986^[7] having been satisfied as to any of the matters specified in section 27(3) of that Act or the termination of a tenancy following the service of a notice to quit stating that the circumstances in Case A, B, G or H of Schedule 3 to that Act apply.

Power to vary undertakings

14.—(1) The Minister may in writing, at the request of the farmer, vary the terms of any undertakings given by the farmer under these Regulations and such variation may be subject to a time limit and to any conditions the Minister reasonably may determine and may be withdrawn in writing by the Minister at any time.

(2) The Minister shall not make any variation under paragraph (1) unless she is satisfied that, having regard to any conditions proposed to be attached to the variation, the purposes for which the undertakings were given will not be adversely affected by the variation.

Withholding and recovery of aid and termination

15.—(1) Where any person, with a view to obtaining the payment of aid under these Regulations to himself or any other person, makes any statement or furnishes any information which is false or misleading in a material respect, the Minister may withhold the whole or any part of any aid payable to that person or to such other person and may recover the whole or any part of any such aid already paid to that person or to such other person.

(2) Where any farmer whose application for aid under these Regulations has been accepted by the Minister—

- (a) fails to comply with any of his undertakings;
- (b) fails without reasonable excuse to permit entry, inspection or other activity he is required to permit by regulation 9; or
- (c) fails without reasonable excuse to comply with any other requirement of these Regulations,

the Minister may withhold the whole or any part of any aid payable to that farmer under these Regulations and may recover the whole or any part of any such aid already paid to him.

(3) Where any new occupier who has given undertakings in accordance with regulation 13(1)(c) in respect of any land—

- (a) fails to comply with any of his undertakings; or
- (b) fails without reasonable excuse to permit entry, inspection or other activity he is required to permit by regulation 9,

the Minister may recover from the new occupier a sum of money not exceeding the whole of the amount of any aid already paid under these Regulations in respect of that land.

(4) Where the Minister withholds or recovers aid under any of paragraphs (1) to (3), she may give notice to the farmer or, in the case of paragraph (3), the new occupier, that she is treating as terminated, with effect from the date specified in the notice, the undertakings given by the farmer or, as the case may be, new occupier.

(5) Before withholding or recovering any aid under paragraph (2)(a) or (3)(a), the Minister shall—

- (a) give to the farmer or, as the case may be, new occupier, a written explanation of the reasons for the proposed withholding or recovery of aid;
- (b) afford the farmer or, as the case may be, new occupier, an opportunity of appearing before and being heard by a person appointed for that purpose by the Minister; and
- (c) consider the report by the person so appointed and supply a copy of the report to the farmer or, as the case may be, new occupier.

False statements

16. If any person, for the purpose of obtaining for himself or any other person

any aid under these Regulations, knowingly or recklessly makes a statement which is false in a material particular, that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

In witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on
1st July 1994.

Gillian Shephard

Minister of Agriculture, Fisheries and Food

Notes:

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

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

[3] 1991 c. 57. [back](#)

[4] O.J. No. L162, 26.6.91, p1. [back](#)

[5] O.J. No. L218, 6.8.91, p1. [back](#)

[6] O.J. No. L181, 1.7.92, p12. [back](#)

[7] 1986 c. 5. [back](#)