

Statutory Instrument 1996 No. 3105

The Nitrate Sensitive Areas (Amendment) Regulations 1996

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STATUTORY INSTRUMENTS

1996 No. 3105

AGRICULTURE

The Nitrate Sensitive Areas (Amendment) Regulations 1996

Made 10th December 1996

Laid before Parliament 11th December 1996

Coming into force 1st January 1997

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 on him by that section, and of all other powers enabling him in that behalf, and after consulting the Secretary of State for the Environment, the Countryside Commission, the Nature Conservancy Council for England and the Historic Buildings and Monuments Commission for England in accordance with section 99 of the Environment Act 1995^[3], hereby makes the following Regulations:

Title, commencement and extent

1. These Regulations may be cited as the Nitrate Sensitive Areas (Amendment)

Regulations 1996, shall come into force on 1st January 1997, and shall apply to England.

Amendments to previous Regulations

2.—(1) The Nitrate Sensitive Areas Regulations 1994^[4] shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 2(1) (interpretation)—

(a) after the definition of "agriculture" and "agricultural" there shall be inserted the following definition—

""agri-environment programme" means an arrangement which is—

(a) regulated by statutory instrument providing for the payment of aid to persons who give an undertaking or enter an agreement in relation to land to which that instrument relates; and

(b) approved by the Commission of the European Communities under Article 7(3) of the Council Regulation as part of a zonal programme drawn up pursuant to Article 3 of the Council Regulation;" ;

(b) after the definition of "basic scheme" there shall be inserted the following definition—

""the Commission Regulation" means Commission Regulation (EC) No. 746/96^[5] laying down detailed rules for the application of the Council Regulation;" ; and

(c) after the definition of "controlled waters" there shall be inserted the following definition—

""the Council Regulation" means Council Regulation (EEC) No. 2078/92^[6] on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside as last amended by Commission Regulation (EC) No. 2772/95^[7] as rectified by Commission Regulation (EC) No. 1962/96^[8];"

.

(3) In regulation 4 (qualifying conditions for land and farmer), in paragraph (1) after the words "the land is in a nitrate sensitive area" there shall be inserted the words ", that the application is not covered by any prohibition on providing an undertaking pursuant to an agri-environment programme deriving either from application of a penalty consequent upon Article 20(2) of the Commission Regulation (which requires member states to determine a system of penalties which are effective, commensurate with their purpose and of adequate deterrent effect to be imposed for breaches of undertakings) or from application of Article 20(3) of the Commission Regulation (which requires a person who, intentionally or by reason of gross negligence, makes a false declaration, to be excluded from all aid under the Council Regulation)".

(4) In regulation 11 (payments of aid) after the phrase "The Minister shall" there shall be inserted the phrase ", subject to the provisions of Article 20(3) of the Commission Regulation (which requires a person who, intentionally or by reason of gross negligence, makes a false declaration, to be excluded from all aid under the Council Regulation)".

(5) In regulation 12 (upgrading of scheme) after paragraph (3) there shall be inserted the following paragraph—

" (3A) The Minister shall not accept an application for aid made in accordance with paragraph (1) unless he is satisfied that the conditions set out in Article 13

of the Commission Regulation (which authorises replacement of an agri-environment programme undertaking or agreement by another such undertaking or agreement) are fulfilled." .

(6) In regulation 13 (death of farmer or change of occupation of the land)—

- (a) there shall be substituted for paragraph (2) the following paragraph—
" (2) The Minister shall not accept undertakings referred to in paragraph (1)(c) unless he is satisfied that the new occupier—
 - (a) occupies the land, or the part thereof in respect of which he gives such undertakings, as owner of the freehold interest, as tenant or as the personal representative of the original occupier; and
 - (b) is not prohibited from providing an undertaking pursuant to an agri-environment programme by application of Article 10 of the Commission Regulation (which restricts duplication of aid payments), by application of a penalty consequent upon Article 20(2) of the Commission Regulation (which requires member states to determine a system of penalties which are effective, commensurate with their purpose and of adequate deterrent effect to be imposed for breaches of undertakings) or by application of Article 20(3) of the Commission Regulation (which requires a person who, intentionally or by reason of gross negligence, makes a false declaration, to be excluded from all aid under the Council Regulation)." ; and
- (b) there shall be substituted for paragraph (7) the following paragraph—
" (7) The foregoing provisions of this Regulation shall be subject to Article 11 of the Commission Regulation (which governs transfers of holdings) and Article 12 of the Commission Regulation (force majeure)." .

(7) For regulation 15 (withholding and recovery of aid and termination) there shall be substituted the following regulation—

"Withholding and recovery of aid, termination and exclusion

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, the Minister may withhold the whole or any part of any aid payable to that person or to such other person and may, subject to the provisions of Article 20 of the Commission Regulation (which provides for recovery of wrongful payments with interest, a penalty system and exclusion for false declarations), recover the whole or any part of any 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 to permit entry, inspection or other activity he is required to permit by regulation 9(1); or
- (c) fails 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 and may recover the whole or any part of any aid already paid to him and may also, in so far as is consequent upon Article 20(2) of the Commission Regulation (which requires member states to determine a system of penalties which are effective, commensurate with their purpose and of adequate deterrent effect to be imposed for breaches of undertakings), require him to pay to the Minister a sum equal to no more than 10% of the aid paid or payable in respect of the land.

- (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;
 - (b) fails to permit entry, inspection or other activity he is required to permit by regulation 9(1); or
 - (c) fails to comply with any other requirement of these Regulations,

the Minister may recover from the new occupier a sum of money not exceeding the whole or any part of any aid already paid in respect of that land, and may also, in so far as is consequent on Article 20(2) of the Commission Regulation, require him to pay to the Minister a sum equal to no more than 10% of the aid paid or payable in respect of the land.

- (4) Where the Minister takes any step specified in paragraphs (1) to (3) above, he may give notice to the farmer, or in the case of paragraph (3) the new occupier, that he 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, the new occupier under these Regulations.

- (5) Where under paragraph (4) above the Minister treats the undertakings given by the farmer, or as the case may be, the new occupier as terminated, in connection with any step taken under paragraph (2) or (3) above, he may also, in so far as is consequent upon Article 20(2) of the Commission Regulation, by notice in writing to the farmer, or as the case may be, the new occupier prohibit him from providing a new undertaking or entering a new agreement under an agri-environment programme for such period (not exceeding two years) from the date of that termination as is specified in the notice.

- (6) Before taking any step specified in paragraph (2), (3) or (4) above by reference to paragraph (2)(a) or (3)(a) above, the Minister shall—

- (a) give to the farmer, or as the case may be, new occupier a written explanation of the reasons for the step proposed to be taken;
- (b) afford the farmer, or as the case may be, new occupier the 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, the new occupier." .

- (8) After regulation 15 (withholding and recovery of aid and termination) there shall be added the following regulations—

"Recovery of Interest

15A.—(1) Where a payment of aid is made to a farmer, or as the case may be, new occupier by the Minister and, by virtue of Article 20(1) of the Commission Regulation (which provides for recovery of wrongful payments with interest), a reimbursement of all or part of the payment with interest is required, the rate of interest shall be one percentage point above LIBOR on a day to day basis.

(2) For the purposes of this regulation, LIBOR means the sterling three month London interbank offered rate in force during the period specified in Article 20(1) of the Commission Regulation.

(3) In any proceedings relating to this regulation, a certificate of the Minister stating the LIBOR applicable during a period specified in the certificate shall be conclusive evidence of the rate applicable in the specified period if the certificate also states that the Bank of England notified the Minister of that rate.

Recovery of payments

15B. In any case, where an amount falls to be paid to the Minister by virtue of (or by virtue of action taken under) these Regulations or the Commission Regulation in so far as it relates to land in a nitrate sensitive area, the amount so falling to be paid shall be recoverable as a debt." .

Tim Boswell

Parliamentary Secretary, Ministry of Agriculture, Fisheries and Food

10th December 1996

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Nitrate Sensitive Areas Regulations 1994 (as amended by S.I. 1995/1708 and S.I. 1995/2095) ("the principal Regulations") which implement in part a zonal programme approved by the European Commission ("the Commission") under Article 7 of Council Regulation (EEC) No. 2078/92 (OJ No. L215, 30.7.92, p.85) ("the Agri-environment Regulation") on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside.

These Regulations make provision to implement Commission Regulation (EC) No. 746/96 (OJ No. L102, 25.4.96, p.19) ("the Commission Regulation") laying down detailed rules for the application of the Agri-environment Regulation, primarily Article 11 (which governs transfers of holdings entered into agreements or undertakings under the Agri-environment Regulation), Article 12 (force majeure), Article 13 (which authorises replacement of an agri-environment programme undertaking or agreement by another such undertaking or agreement) and Article 20 (which provides for recovery of wrongful payments with interest, a penalty system and exclusion for false declarations).

The Regulations—

- (a) restrict eligibility to persons who are not barred from giving an undertaking by virtue of the application of a penalty under Article 20(2) or by Article 20(3)

of the Commission Regulation,

(b) amend regulation 12 of the principal Regulations to clarify that the Minister may only accept an upgrading of a scheme for the payment of aid under the principal Regulations where the conditions set out in Article 13 of the Commission Regulation are fulfilled (the primary conditions being that the transfer is of unquestionable benefit to the environment and that the existing undertaking is significantly reinforced),

(c) specify that entitlement to payment under the principal Regulations is subject to the provisions of Article 20(3) of the Commission Regulation,

(d) make provision to enable the Minister to recover grant and impose penalties in accordance with Articles 11, 12 and 20 of the Commission Regulation, and

(e) set a rate of interest where recovery of money is to include interest in accordance with Article 20(1) of the Commission Regulation.

The Regulations form part of a package submitted to the Commission under Article 23 of the Commission Regulation.

No Compliance Cost Assessment in relation to these Regulations has been prepared.

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Notes:

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

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

[3] 1995 c. 25. [back](#)

[4] S.I. 1994/1729, amended by S.I. 1995/1708 and 1995/2095. [back](#)

[5] OJ No. L102, 25.4.96, p.19. [back](#)

[6] OJ No. L215, 30.7.92, p.85. [back](#)

[7] OJ No. L288, 1.12.95, p.35. [back](#)

[8] OJ No. L259, 12.10.96, p.7. [back](#)