

Statutory Instrument 1994 No. 1701 (S.75)

The Organic Aid (Scotland) Regulations 1994

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STATUTORY INSTRUMENTS

1994 No. 1701 (S.75)

AGRICULTURE

The Organic Aid (Scotland) Regulations 1994

Made

27th June 1994

Laid before Parliament

1st July 1994

Coming into force

22nd July 1994

The Secretary of State, 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, hereby makes the following Regulations:

Citation, commencement and extent

1. These Regulations may be cited as the Organic Aid (Scotland) Regulations 1994, shall come into force on 22nd July 1994 and shall apply to Scotland only.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—
"application" means an application for aid under the scheme, made in accordance with regulation 7, and "applicant" and
"apply" shall be construed accordingly;
"arable land" means land—
(a) on which an arable crop is growing, or has been planted; or
(b) which is lying fallow as part of a normal crop rotation (including short-term leys); or
(c) set aside and which has been land within the meaning of paragraph (a) or (b) above or improved grassland for a period of at least 3 years before the date of application;

"beneficiary" means—

(a) a person or grazings committee whose application has been accepted by the Secretary of State; or
(b) a person who occupies a farm or part of a farm following a change of occupation of that farm or part and who has given an undertaking to comply with the obligations relating to that farm or part assumed by its previous occupier;

"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[3];

"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[4];

"date of entry into the scheme" means the date on which an applicant proposes to assume obligations under the scheme in accordance with regulation 7(c);

"farm" includes a common grazing;

"farmer" includes a grazings committee;

"grazings committee" means a committee appointed under section 47(1) or (3) of the Crofters (Scotland) Act 1993[5] and

includes a grazings constable;
"holding" means all the production units farmed by an applicant or beneficiary;
"improved grassland" means either land used for grazing where over one third of the sward comprises, singly or in mixture,
ryegrass, coxsfot or timothy, or land that has been improved by management practices such as liming and top dressing,
where there is not a significant presence of sensitive plant species indicative of native unimproved grassland;

"landlord" means-

- (a) in the case of an agricultural holding to which the Agricultural Holdings (Scotland) Act 1991[6] (the "1991 Act") applies, the landlord within the meaning of section 85 of that Act;
- (b) in the case of a croft within the meaning of the Crofters (Scotland) Act 1993, the landlord within the meaning of section 61(1) of that Act;
- (c) in the case of a holding within the meaning of the Small Landholders (Scotland) Act 1911[7] to which the 1991 Act does not apply, the same as it means in the 1911 Act, and, where appropriate, includes a head tenant;

"organic farming" means farming in accordance with the standards set out by the UKROFS;

"organic standard" means the standard attained by land on the converted land register of the UKROFS;

"production unit" means land, other than a common grazing, farmed in Scotland by an applicant or beneficiary which would be accepted by the UKROFS as viable for conversion to organic standards;

"rough grazings" means land containing semi-natural vegetation including heathland, heather moorland, bog and rough grassland used or suitable for use as grazing;

"scheme" means the scheme to encourage organic farming methods as specified in Article 2(1)(a) of Council Regulation 2078/92;

"set-aside" means set-aside in accordance with the provisions of Council Regulation (EEC) No.1765/92 establishing a support system for certain arable crops[8] and Article 5 of Commission Regulation (EEC) No.762/94 laying down detailed rules for the application of Council Regulation (EEC) No.1765/92 with regard to set-aside[9];

"specified period" means the period, being not less than 5 years from the date of entry into the scheme and ending on the date of receipt by a beneficiary of the final payment of aid in respect of any land under the scheme;

"tenant" means-

- (a) in the case of an agricultural holding to which the Agricultural Holdings (Scotland) Act 1991 (the "1991 Act") applies, the tenant within the meaning of section 85 of that Act;
- (b) in the case of a croft within the meaning of the Crofters (Scotland) Act 1993, the crofter within the meaning of section 3(3) of that Act;

(c) in the case of a holding within the meaning of the Small Landholders (Scotland) Act 1911 to which the 1991 Act does not apply, the tenant within the meaning of section 2(2) of the 1911 Act, and, where appropriate, includes a sub-tenant;

"unimproved grassland" means land used for grazing or mowing which does not constitute improved pasture or rough grazing;

"UKROFS" means the United Kingdom Register of Organic Food Standards as being the body, having responsibility for administering the European Community Organic Farming Standards under Council Regulation No.2092/91.

(2) Any reference in these Regulations to a numbered regulation or Schedule shall be construed as a reference to the regulation or Schedule so numbered in these Regulations.

Aid for organic farming

3. Subject to the provisions of these Regulations, the Secretary of State may make payments of aid under the scheme to an applicant who-

- (a) satisfies the conditions of eligibility specified in regulation 4;
- (b) has given the undertakings set out in regulation 5;
- (c) has made an application in accordance with regulation 7 which has been accepted by the Secretary of State; and
- (d) complies with any requirements made by the Secretary of State under that regulation.

Conditions of eligibility

4.—(1) An applicant shall be eligible to make an application if at the date of application the applicant-

- (a) is either the lawful occupier of a production unit or, (subject to regulation 6 below), a grazings committee;
- (b) is entering into the scheme a production unit or common grazing which extends to not less than one hectare; and
- (c) has approval from UKROFS or an UKROFS approved body for his conversion plan.

(2) An application shall not be made in respect of any area of land already converted to organic standard on or after 10th August 1993.

Undertakings by applicants

5. The applicant shall undertake-
- (a) to convert the land to which the application relates to organic farming methods;
 - (b) to continue with organic farming on that land for the specified period;
 - (c) if, at the date of the application, organic farming has already been introduced on land on the applicant's farm other than

land to which the application relates, to continue with such farming on such other land for the specified period;

(d) to ensure that the organic farming of his farm conforms to UKROFS standards; and

(e) if the applicant has chosen to phase the introduction of the conversion to organic standard of the land to which the application relates, to do so over a period not exceeding 5 years from the date of entry into the scheme.

Crofters common grazings

6.—(1) Subject to paragraph (4) below, a grazings committee shall be eligible to apply in relation to a common grazing, with the consent of a majority of the crofters ordinarily resident in the township and sharing in the common grazing.

(2) All obligations undertaken by a grazings committee in applying to enter the scheme shall be binding upon their successors in office.

(3) Subject to paragraph (4) below, payments of aid to a grazings committee shall be divided by them among the crofters who share in the common grazing in such proportion as may be determined by the grazings committee.

(4) A grazings committee shall give notice of their proposals under paragraphs (1) and (3) above by advertisement or otherwise to the crofters ordinarily resident in the township and sharing in the common grazing, and any such crofter may within one month of the date of such notice make representation in respect of the proposals to the Crofters Commission who may approve them with or without modification or reject them.

Application for aid

7.—(1) An application for aid under these Regulations shall be made in writing, in such form and at such time as the Secretary of State reasonably may require and shall include-

- (a) a map clearly showing-
- (i) the boundaries of the applicant's farm or common grazing, together with any internal field boundaries;
 - (ii) the areas of arable land, improved grassland, rough grazing and unimproved grassland;
 - (iii) the area of land, if any, which already meets the organic standard; and
 - (iv) the area of land, if any, on which organic farming is to be introduced or which is on the UKROFS register of land in conversion;
- (b) a written statement with details of the total area of the applicant's farm or common grazing and of the areas of land referred to in sub-paragraphs (a)(ii)(iii) and (iv) above, as appropriate;
- (c) the date on which he first proposes to assume obligations under the scheme;

(d) a written statement of the conversion plan if the applicant chooses to phase the conversion of his farm to organic standard; and
(e) confirmation of acceptance of the conversion plan by UKROFS or an UKROFS approved body.

(2) An applicant shall furnish to the Secretary of State such further information and evidence in relation to the application as the Secretary of State reasonably may require.

Restrictions on acceptance of applications

8.—(1) The Secretary of State shall not accept an application from an applicant who occupies the farm as a tenant unless the Secretary of State is satisfied that such applicant has notified the landlord in writing of the making of such application.

(2) The Secretary of State may refuse to accept an application where he is satisfied that-

(a) the use of any land in accordance with the proposals contained in that application would frustrate the purposes of any assistance previously given or to be given out of money provided by Parliament or by the European Community; or

(b) payment of aid under these Regulations in respect of any land on which an applicant proposes to carry on organic farming would duplicate any assistance previously given or to be given out of money provided by Parliament or by the European Community.

Change of occupation

9.—(1) Where there is a change of occupation, during the specified period, of the whole or any part of a beneficiary's farm-

(a) the beneficiary (or, if he has died, his executors) shall within 3 months notify the Secretary of State in writing of the change of occupation, and shall supply to the Secretary of State such information relating to that change of occupation in such form and within such period as the Secretary of State reasonably may determine;

(b) subject to the provisions of this regulation, the new occupier of that farm or part may give an undertaking to the Secretary of State to comply, for the remainder of the specified period, with the obligations assumed by the beneficiary under an application relating to that farm.

(2) Where there is a change of occupation of part of a farm, the Secretary of State shall determine the extent to which the

obligations assumed by the beneficiary relate to that part, having regard to-

(a) the area of land comprised in that part and in the remainder of the original farm; and

(b) the use to which that part is put.

(3) The Secretary of State shall not accept an undertaking from a new occupier of a farm or part of a farm to comply with the obligations assumed by a beneficiary unless he is satisfied that that new occupier occupies the said farm or part as an owner or tenant, or as the executor of the beneficiary.

(4) A new occupier who gives an undertaking to comply with the obligations assumed by the beneficiary shall supply to the Secretary of State such information in such form and within such period following the change of occupation as the Secretary of State reasonably may determine.

(5) Where the Secretary of State has accepted an undertaking from a new occupier to comply with the obligations undertaken by the original beneficiary-

- (a) the new occupier shall be deemed to be a beneficiary; and
- (b) his undertaking to comply with the obligations undertaken by the original beneficiary shall be deemed to take effect on the date of the acceptance by the Secretary of State of that undertaking.

(6) Where within 3 months from the date of change of occupation a new occupier has not given an undertaking to comply with

- the obligations assumed by the original beneficiary, the Secretary of State may-
 - (a) withhold the whole or any part of any payments of aid under the scheme due to the original beneficiary; and
 - (b) recover from that original beneficiary or his executors the whole or any part of any payments of aid under the scheme already made to him.

(7) Paragraph (6) above shall not apply where the change of occupation of a farm or part of a farm is the result of-

- (a) the compulsory purchase of that farm or part;
- (b) the death of the original beneficiary; and
 - (i) that original beneficiary occupied that farm or part as a tenant; and
 - (ii) following the death of that original beneficiary the tenancy or lease under which he occupied that farm or part was terminated by the landlord under sections 11(6) or 12(3) of the Agricultural Holdings (Scotland) Act 1991;
- (c) resumption by the landlord under section 21(7)(a) of the Agricultural Holdings (Scotland) Act 1991;
- (d) the termination of a tenancy following the operation of a notice to quit to which the Land Court has consented under section 22(1) of the Agricultural Holdings (Scotland) Act 1991 having been satisfied as to any of the matters specified in section 24(1) of that Act, or the termination of a tenancy following the service of a notice to quit under the provisions of section 22(2)(b) of that Act;
- (e) the resumption of a croft or part thereof which the Land Court has authorised as being for a reasonable purpose in terms of section 20 of the Crofters (Scotland) Act 1993; or

(f) the resumption of a small landholding or part thereof which the Land Court has authorised as being for a reasonable purpose in terms of section 2 of the Crofters Holdings (Scotland) Act 1886[10].

(8) For the purposes of this regulation in its application to a common grazing "change of occupation" includes the apportionment to a crofter of any land from the common grazing during the period of the scheme but does not include a change in the membership of the grazings committee.

Amounts of aid and claims

10.—(1) Subject to regulations 9(6) and 12(1) and (2) payments will be made annually in arrear and the amount of each payment shall be calculated in accordance with the Schedule to these Regulations.

(2) Payments will be made in respect of a maximum of 300 hectares per holding or common grazing.

(3) The rate of payment specified in paragraph (1) above may be varied by the Secretary of State from time to time.

(4) A claim for each annual payment under paragraph (1) above shall be made at such time and in such form and shall contain such information as the Secretary of State reasonably may require.

Obligation to permit entry and inspection

11.—(1) An applicant or beneficiary shall permit any person duly authorised by the Secretary of State, accompanied by such persons acting under his instructions as appear to that authorised person, to be necessary for the purpose, at all reasonable hours and on production on demand of some duly authenticated document showing his authority, if so required, to enter upon the farm for the purposes of-

(a) carrying out any inspection of such farm or any document or record in the possession or under the control of the

applicant or beneficiary relating to, or which the authorised person may reasonably suspect relates to, an application, with a view to verifying the accuracy of any particulars given in an application or claim under regulation 10(4) or in any undertaking

made by a new occupier pursuant to regulation 9(1)(b); and

(b) ascertaining whether the applicant or beneficiary has duly complied with any undertaking given by him under these Regulations.

(2) An applicant or beneficiary shall render all reasonable assistance to the authorised person in relation to the matters

mentioned in paragraph (1) above, and in particular shall-

(a) produce such document or record as may be required by the authorised person for inspection;

- (b) permit the authorised person to take copies or extracts from any such document or record;
- (c) where any such document or record is kept by means of a computer produce it in a form in which it may easily be read and taken away; and
- (d) at the request of the authorised person, accompany him in making the inspection of any land and identify any area of land which is concerned in any application or in any undertaking given by a new occupier under regulation 9 to comply with the obligations undertaken by the original beneficiary.

Withholding and recovery of aid

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

- (2) Where a beneficiary-
 - (a) fails without reasonable excuse to comply with any of his obligations under these Regulations; or
 - (b) fails without reasonable excuse to permit entry or inspection by an authorised person or to render all reasonable assistance to such authorised person as required by regulation 11,the Secretary of State may withhold the whole or any part of any aid under the scheme payable to that beneficiary, and may recover the whole or any part of any such aid already paid to him.

- (3) Before withholding or recovering any aid under regulation 9(6), or paragraphs (1) and (2) above, the Secretary of State shall-
 - (a) give to the beneficiary a written explanation of the reasons for the proposed withholding or recovery; and
 - (b) afford the beneficiary an opportunity of appearing before and being heard by a person appointed for that purpose by the Secretary of State; and
 - (c) consider the report by the person so appointed and supply a copy of the report to the beneficiary.

False statements

13. If any person, for the purposes of obtaining for himself or any other person any aid under the scheme, knowingly or recklessly furnishes information which is false or misleading 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.

Hector Monro

Parliamentary Under Secretary of State, Scottish Office
St Andrew's House, Edinburgh

27th June 1994

SCHEDULE

Regulation 10(1)

1. Where the production unit or common grazing in respect of which aid is to be granted is comprised of arable land or improved grassland, the rate of such aid shall be calculated as follows:-

- (a) First year
£70 per hectare
- (b) Second year
£70 per hectare
- (c) Third year
£50 per hectare
- (d) Fourth year
£35 per hectare
- (e) Fifth year
£25 per hectare

2. Where the production unit or common grazing in respect of which aid is to be granted is comprised of rough grazing or unimproved grassland, the rate of such aid shall be calculated as follows:-

- (a) First year
£10 per hectare
- (b) Second year
£10 per hectare
- (c) Third year
£ 7 per hectare
- (d) Fourth year
£ 5 per hectare
- (e) Fifth year
£ 5 per hectare

3. In addition to the aid calculated as described in paragraphs 1 and 2 of this Schedule, an additional amount calculated at the rate of £30 per hectare shall be payable in respect of the first 5 hectares to applicants eligible for aid under the scheme for one hectare or more.

4. Applicants with land on the UKROFS register of land in conversion may choose to join the scheme at the second year providing that the land will not be eligible for entry in the UKROFS register of converted land for at least 12 months.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply to Scotland and make provision for the payment of aid to farmers who undertake to introduce organic farming methods, pursuant to Article 2(1)(a) of Council Regulation (EEC) No. 2078/92 (O.J. No. L 215, 30.7.92, p.85).

The Regulations-

- (a) enable the Secretary of State to make payments of aid to applicants satisfying the conditions of, and applying in accordance with the regulations (regulation 3);
- (b) specify the conditions of eligibility to be satisfied by applicants for aid (regulation 4);
- (c) set out the undertakings to be given by applicants for aid (regulation 5);
- (d) specify the conditions for the participation of crofters common grazings committees (regulation 6);
- (e) specify the requirements in relation to applications for aid and the documents to accompany such applications (regulation 7);
- (f) specify restrictions on the acceptance of applications by the Secretary of State (regulation 8);
- (g) make provision for payment of aid to a new occupant where there has been a change in the occupation of a farm or part due to the death of a beneficiary or otherwise (regulation 9);
- (h) specify the period and method of payment of aid (regulation 10);
- (i) confer on authorised persons powers of entry for the purposes of the Regulations and require that reasonable assistance be given to them for the exercise of these powers (regulation 11);
- (j) specify circumstances when the Secretary of State may withhold aid or recover payments already made (regulation 12); and
- (k) create offences and prescribe penalties (regulation 13).

Copies of the United Kingdom Organic Farming Standards referred to in the Regulations may be obtained from the United Kingdom Register of Organic Food Standards (the body responsible for administering EC Organic Farming Standards under Council Regulation (EEC) No. 2092/91) at Room 305, West Block, Whitehall Place, London SW1A 2HH.

Notes:

- [1] S.I. 1972/1811. back
- [2] 1972 c. 68. back
- [3] O.J. No. L 198, 22.7.91, p. 1. back
- [4] O.J. No. L 215, 30.7.92, p. 85. back
- [5] 1993 c. 44. back
- [6] 1991 c. 55. back
- [7] 1911 c. 49. back
- [8] O.J. No. L 181, 1.7.92, p. 12. back
- [9] O.J. No. L 90, 7.4.94, p. 8. back
- [10] 1886 c. 29; section 2 is to be read with the Small Landholders (Scotland) Act 1911 (c. 49), section 19, and the Small Landholders and Agricultural Holdings (Scotland) Act 1931 (c. 44), section 8(1).