

1990 No. 314

EUROPEAN COMMUNITIES

AGRICULTURE

**The Set-Aside (Amendment) Regulations
(Northern Ireland) 1990**

Made 23rd August 1990

Coming into operation 24th August 1990

The Department of Agriculture, being a Department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the common agricultural policy of the European Economic Community, in exercise of the powers conferred on it by the said section 2(2) and of every other power enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Set-Aside (Amendment) Regulations (Northern Ireland) 1990, and shall come into force on 24th August 1990.

(2) The Interpretation Act (Northern Ireland) 1954(c) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

Amendment of the Set-Aside Regulations (Northern Ireland) 1988

2. The Set-Aside Regulations (Northern Ireland) 1988(d) shall be amended as provided in regulations 3 to 18.

Definitions

3. In regulation 2(1) (Interpretation)—

(a) after the definition of “eligible person” there shall be inserted the following definition:

“ “fallow land” means permanent fallow or rotational fallow;”;

(b) after the definition of “the Farm Woodland Scheme” there shall be inserted the following definition:

“ “grazed fallow” means fallow land grazed extensively by livestock;”;

(a) S.I. 1972/1811

(b) 1972 c. 68

(c) 1954 c. 33

(d) S.R. 1988 No. 279, as amended by S.R. 1989 No. 239

- (c) after the definition of “less-favoured area” there shall be inserted the following definition:
- “ “livestock” includes any creature kept for the production of food, wool, skins, or fur or for the purpose of its use in farming the land or in the carrying on, in relation to land, of any agricultural activity;”;
- (d) in the definition of “the set-aside obligations”, in paragraph (b) after “7(1)” there shall be inserted “and (2)”;
- (e) after the definition of “tenant” there shall be inserted the following definition:
- “ “vernacular building” means buildings traditionally found in the locality;”;
- (f) after the definition of “the Woodland Grant Scheme” there shall be inserted the following definition:
- “ “year” means, except for the purposes of the definitions of “the set-aside period” and “tenant”, a period of 12 months commencing on 1st October.”.

Aid for set-aside of arable land

4. In regulation 3—

- (a) for paragraph (1)(b) there shall be substituted the following sub-paragraph:
- “(b) to use the set-aside area for one of the following—
- (i) permanent fallow;
 - (ii) rotational fallow;
 - (iii) grazed fallow (subject to regulation 7A);
 - (iv) woodland;
 - (v) non-agricultural purposes;
 - (vi) a combination of any two or more of (iii), (iv) and (v);
 - (vii) a combination of any two or more of (i), (ii), (iv) and (v); and”;
- (b) for sub-paragraph (b) of paragraphs (2) and (3) there shall be substituted, in each case, the following sub-paragraph:
- “(b) to use that additional set-aside area for one of the purposes set out in paragraph (1)(b)(ii)-(vi) or a combination of any two or more of (ii), (iv) and (v), provided that—
- (i) if he has undertaken to use any land for either of the purposes set out in paragraph (1)(b)(i) or (ii) he shall undertake not to use that additional set-aside area for the purposes set out in paragraph (1)(b)(iii) or (vi);
 - (ii) if he has undertaken to use any land for the purpose set out in paragraph (1)(b)(iii) he shall undertake not to use that additional set-aside area for the purposes set out in paragraph (1)(b)(i) or (ii), or any one of the following combinations—
 - (1)(b)(ii) and (iv)
 - (1)(b)(ii) and (v)
 - (1)(b)(ii), (iv) and (v); and”.

Applications for aid

5. In regulation 5(1) for the full stop at the end of sub-paragraph (d) there shall be substituted—

“; and

- (e) where an applicant proposes to use set-aside land for grazed fallow, details of the number of each type of livestock kept in the reference period on the holding of which the land he proposes to set aside for grazed fallow formed part and the amount of feed required by them in the reference period.”.

Restriction on acceptance of applications for aid

6. In regulation 6(2) for the words “or rotational fallow” there shall be substituted the words “, rotational fallow or grazed fallow”.

Requirements in relation to use for fallow

7. For regulation 7 there shall be substituted the following regulations—

- (a) “7.—(1) A beneficiary whose undertaking takes effect on or after 1st October 1990 or who, in accordance with regulation 10, terminates part of the undertakings given by him shall observe in relation to any land which he has undertaken to set aside for permanent fallow or rotational fallow the requirements set out in paragraphs 1(a), 2, 3, 4(a) and 5 to 14 of Schedule 2.

(2) A beneficiary whose undertaking takes effect before 1st October 1990 may elect before 1st October 1990 to observe in relation to any land which he has undertaken to set aside for permanent fallow or rotational fallow the requirements set out in paragraphs 1(a), 2, 3, 4(a) and 5 to 14 of Schedule 2 but shall, if he does not so elect, observe in relation to that land the requirements set out in paragraphs 1(b), 2, 3, 4(b), 5 to 12, 13 in so far as it relates to the features listed in heads (a) and (b), and 14 of Schedule 2.

(3) Where any set aside land is used for rotational fallow, the beneficiary shall, before 1st October in each year of the set-aside period, notify the Department of the location of the area of set-aside land to be used for that purpose in that year.

(4) Where a beneficiary has undertaken to use any set-aside land for rotational fallow, and provided that he observes the requirements set out in paragraphs 1(a), 2, 3, 4(a) and 5 to 14 of Schedule 2—

- (a) subject to sub-paragraph (b), he may in any year alter the area of the land which he undertook to set aside for rotational fallow if the amount by which he increases or reduces that area does not:
- (i) exceed 10 per cent. of the area of land which he undertook to set aside for rotational fallow, or
- (ii) reduce the area of set-aside land below 20 per cent. of the relevant arable land on the holding in the reference period or increase the said area above that which is equal in size to such relevant arable land; and

(b) he may only reduce the area of the land which he undertook to set aside for rotational fallow if he has in any previous year increased the area of land which he undertook to set aside for rotational fallow by at least that same amount.

(5) Where any set-aside land is used for grazed fallow, the beneficiary shall observe in relation to that land the requirements set out in Schedule 4.”; and

(b) “*Grazed fallow*

7A.—(1) Subject to paragraph (4) where a beneficiary uses set-aside land for grazed fallow he shall not allow the number of livestock units on his holding to exceed the maximum number of livestock units in the reference period on the holding of which the set-aside land formed part.

(2) Subject to paragraph (4), where livestock were not kept in the reference period on the holding of which the set-aside land formed part, the beneficiary shall only use the fallow land on that set-aside land for grazed fallow for deer or goats, and he shall not allow the number of livestock units on his holding to exceed the number of livestock units representing one livestock unit per hectare of the forage area of his holding.

(3) Subject to paragraph (4) except where the beneficiary’s holding is identical to that of which the set-aside land referred to in paragraph (1) formed part, where that holding comprises a greater or lesser forage area than the forage area of the holding referred to in that paragraph, for the purposes of paragraph (1), the maximum number of livestock units in the reference period on the holding of which the set-aside land formed part shall be deemed to bear the same proportion to the total number of livestock units on that holding in the reference period as the forage area of the beneficiary’s holding at the time he gives his undertaking to set aside land for grazed fallow bears to the forage area in the reference period of the holding of which the set-aside land formed part.

(4) Where a beneficiary enlarges his holding by the acquisition of arable land or temporary grassland which was arable land in the reference period, and

(a) he—

(i) already uses for grazed fallow set-aside land forming part or all of a holding on which livestock were kept in the reference period; and

(ii) undertakes to set aside an area of that acquired land for grazed fallow, where such land forms part or all of a holding on which no livestock were kept in the reference period; or

(b) he—

(i) already uses for grazed fallow set-aside land forming part or all of a holding on which no livestock were kept in the reference period; and

- (ii) undertakes to set aside an area of that acquired land for grazed fallow, where such land forms part or all of a holding on which livestock were kept in the reference period,

then if he uses his holding for the grazing of only deer or goats, he shall not allow to be grazed on that holding more than the sum of:

- (i) the number of livestock units in the reference period on the holding of which the set-aside land formed part; and
- (ii) the number of livestock units representing one livestock unit per hectare of the forage area of the acquired land; but

if he uses his holding for the grazing of livestock (other than exclusively deer or goats), he shall not allow to be grazed on that holding more than the number of livestock units in the reference period on the land forming part or all of the holding on which livestock were kept in the reference period.

(5) For the purposes of this regulation—

- (a) “his holding” means all the land occupied by the beneficiary as a unit at the time he gave his undertaking to set aside land for grazed fallow, together with any land subsequently acquired by him; and
- (b) the equivalent in livestock units of an animal of the type described in the first column of Schedule 5 shall be the number specified opposite thereto in the second column.”.

Requirements in relation to use for woodland

8. For regulation 8(1) there shall be substituted the following paragraph:

“(1) Where a beneficiary has undertaken to use any set-aside land for woodland, that beneficiary shall, until planting commences, undertake to use that set-aside land for permanent fallow and shall observe in relation to it the relevant requirements set out in Schedule 2.”.

Requirements in relation to use for non-agricultural purposes

9. For regulation 9(1) there shall be substituted the following paragraph:

“(1) Where a beneficiary has undertaken to use any set-aside land for non-agricultural purposes, that beneficiary shall, until the conversion of that land to use for non-agricultural purposes commences, undertake to use that set-aside land for permanent fallow and shall observe in relation to it the relevant requirements set out in Schedule 2.”.

Termination of undertakings

10. In regulation 10—

- (a) in paragraph (1) after the word “all” there shall be inserted the words “or any part of”;
- (b) at the end of paragraph (1) there shall be inserted the words “and provided that, if he terminates those undertakings in relation to only part of that land, he does not thereby reduce the area of land set aside below 20 per cent. of the relevant arable land on the holding in the reference period”; and

- (c) in paragraph (4) after “paragraph (1)” there shall be inserted the words “or has been notified that his undertakings are treated as terminated by the Department under the provisions of regulation 16(3A)”.

Change of use of set-aside land

11. In regulation 11—

- (a) in paragraph (1) for the words “to one or more of the other uses mentioned in regulation 3(1)(b)(ii)-(iv)” at the end there shall be substituted the words “if he undertakes to put that land to one of the other uses specified in regulation 3(1)(b)(ii)-(vi) or a combination of the uses specified in (ii), (iv) and (v)”;
- (b) for paragraphs (3) and (4) there shall be substituted the following paragraphs—
- “(3) Subject to regulation 13(2)(b), and (4)(b) where, on or after 1st October 1990, a beneficiary changes the use of set-aside land in any year he shall receive payment at the rate payable in respect of the use made by him of that land in that year which attracts the lowest rate of payment as set out in Schedule 3.
- (4) Except where a beneficiary receives the rate for permanent fallow in accordance with the provisions of regulation 13(2), (3) or (4), where he changes the use of any set-aside land from use for permanent fallow to any other use, the Department shall recover or withhold from that beneficiary the difference between any payments made or due to him under these Regulations on the basis of the use of that land for permanent fallow and payments made or due to him on the basis of the use of that land for rotational fallow.”; and
- (c) in paragraph (5) for the words “or rotational fallow” there shall be substituted “, fallow, rotational fallow or grazed fallow”.

Amounts and payment of aid

12. In regulation 13 of the principal Regulations—

- (a) after paragraph (1) there shall be inserted the following paragraph:
- “(1A) Where the set-aside land has been used for both permanent fallow and rotational fallow, in calculating for the purposes of paragraphs 1 and 2 of Schedule 3 at which rate per hectare payments should be made, the number of hectares of set-aside land used for rotational fallow shall be counted before counting the number of hectares used for permanent fallow.”;
- (b) in sub-paragraph (b) of paragraphs (2), (3) and (4) after the words “the rate for permanent fallow” there shall, in each case, be inserted, “, having regard to regulation 7(1) and (2),”.

Obligation to permit entry and inspection

- 13.** In regulation 15 for “7(2)” where it appears in paragraphs (1)(a) and (2)(b) there shall be substituted, in each case, “7(3)”.

*Withholding and recovery of aid***14.** In regulation 16—

(a) in paragraph (2)(b) for “7(2)” there shall be substituted “7(3)”; and

(b) after paragraph (3) there shall be inserted the following paragraph:

“(3A) In addition to withholding or recovering aid under paragraphs (1), (2) or (3) the Department may treat as terminated all the undertakings given by the beneficiary under these Regulations.”.

Amendment of Schedules

15. In the reference note to Schedule 2 after “Regulation 7(1)” there shall be inserted “and (2)”.

16. In Schedule 2—

(a) in the heading, for the words “set-aside land” there shall be substituted “permanent fallow or rotational fallow”;

(b) for paragraph 1 there shall be substituted the following paragraph:

“1. The beneficiary shall—

(a) sow a plant cover immediately after the commencement of the set-aside period unless the crop or plant cover on the land immediately prior to the commencement of the set-aside period consisted of one or more of the following: common wheat, durum wheat, rye, barley, oats, buckwheat, millet, canary seed, triticale, lucerne/alfalfa, sainfoin, clover, vetches, grass (whether for grazing or for herbage seed), mustard. If the beneficiary is prevented from establishing a plant cover by exceptional weather conditions, he shall do so as soon as practicable; or

(b) establish a plant cover immediately after the commencement of the set-aside period. If the crop planted in the year prior to the commencement of the set-aside period has not yet been harvested, the plant cover shall be established immediately after the harvest. If the beneficiary is prevented from establishing a plant cover by exceptional weather conditions, he shall do so as soon as practicable. The establishment of a plant cover may take the form of the regeneration of naturally-occurring vegetation.”;

(c) in paragraph 3(b) after the word “re-established” there shall be inserted the words “by sowing a plant cover”;

(d) in paragraph 3(c) after the word “established” there shall be inserted the words “by sowing a plant cover”;

(e) for paragraph 4 there shall be substituted the following paragraph:

“4. The beneficiary shall—

(a) cut the plant cover at least twice in every year, such cuts to be taken at intervals of at least 1 month and one such cut to be taken in the period between 30th June and 1st September; or

- (b) cut the plant cover at least once in every year; and shall not in either case sell cuttings or use them for feeding livestock.”; and
- (f) in paragraph 13:

 - (i) in sub-paragraph (a) the word “and” shall be omitted where it appears the second time; and
 - (ii) after sub-paragraph (b) there shall be added the following sub-paragraphs:
“(c) all existing unimproved grassland, moorland and heath; and
(d) all existing vernacular buildings and stone walls.”.

17. For Schedule 3 there shall be substituted the Schedule set out in Schedule 1 to these Regulations.

18. After Schedule 3 there shall be inserted the Schedule set out in Schedules 2 and 3 to these Regulations.

Sealed with the Official Seal of the Department of Agriculture for Northern Ireland on 23rd August 1990.

(L.S.)

L. Sinclair

Assistant Secretary

Amounts of Aid in Relation to the Use of Set-aside Land

<i>Column 1</i>	<i>Column 2</i>	
<i>Use of set-aside land</i>	<i>Amount of annual payment per hectare of set-aside land</i>	
	<i>Less-favoured area</i>	<i>Other</i>
	£	£
1. Permanent fallow		
(a) Subject to paragraph 1(b) where the beneficiary is required under regulation 7(1) to observe the requirements set out in paragraphs 1(a), 2, 3, 4(a) and 5 to 14 of Schedule 2—		
(i) where the beneficiary has undertaken to set aside for permanent fallow or rotational fallow more than 100 hectares, and more than 75 per cent., of the land which was relevant arable land in the reference period, each hectare of set-aside land used for permanent fallow in excess of the first 100 hectares of permanent fallow and rotational fallow;	152	172
(ii) each hectare to which head (i) does not apply;	202	222
(b) where the beneficiary elects under regulation 7(2) to observe the requirements set out in paragraphs 1(a), 2, 3, 4(a) and 5 to 14 of Schedule 2, or where the beneficiary entered into an undertaking which took effect before 1st October 1990 and enters into another undertaking which takes effect on or after that date, or in accordance with regulation 10, terminates part of the undertakings given by him —		
(i) where the beneficiary has undertaken to set aside for permanent fallow or rotational fallow more than 100 hectares,	140	160

<i>Column 1</i>	<i>Column 2</i>	
<i>Use of set-aside land</i>	<i>Amount of annual payment per hectare of set-aside land</i>	
	<i>Less-favoured area</i> £	<i>Other</i> £
and more than 75 per cent., of the land which was relevant arable land in the reference period, each hectare of set-aside land used for permanent fallow in excess of the first 100 hectares of permanent fallow and rotational fallow;		
(ii) each hectare to which head (i) does not apply;	190	210
(c) where the beneficiary is required under regulation 7(2) to observe the requirements set out in paragraphs 1(b), 2, 3, 4(b), 5 to 12, 13 in so far as it relates to the features listed in sub-paragraphs (a) and (b), and 14 of Schedule 2.	180	200
2. Rotational fallow		
(a) Subject to paragraph 2(b) where the beneficiary is required under regulation 7(1) to observe the requirements set out in paragraphs 1(a), 2, 3, 4(a) and 5 to 14 of Schedule 2—		
(i) where the beneficiary has undertaken to set aside for permanent fallow or rotational fallow more than 100 hectares, and more than 75 per cent., of the land which was relevant arable land in the reference period, each hectare of set-aside land used for rotational fallow in excess of the first 100 hectares of permanent fallow and rotational fallow;	132	152
(ii) each hectare to which head (i) does not apply;	182	202
(b) where the beneficiary elects under regulation 7(2) to observe the requirements set out in paragraphs 1(a), 2, 3, 4(a) and 5 to 14 of Schedule 2, or		

<i>Column 1</i>	<i>Column 2</i>	
	<i>Amount of annual payment per hectare of set-aside land</i>	
	<i>Less-favoured area</i> £	<i>Other</i> £
where the beneficiary entered into an undertaking which took effect before 1st October 1990 and enters into another undertaking which takes effect on or after that date, or in accordance with regulation 10, terminates part of the undertakings given by him—		
(i) where the beneficiary has undertaken to set aside for permanent fallow or rotational fallow more than 100 hectares, and more than 75 per cent., of the land which was relevant arable land in the reference period, each hectare of set-aside land used for rotational fallow in excess of the first 100 hectares of permanent fallow and rotational fallow;	120	140
(ii) each hectare to which head (i) does not apply;	170	190
(c) where the beneficiary is required under regulation 7(2) to observe the requirements set out in paragraphs 1(b), 2, 3, 4(b), 5 to 12, 13 in so far as it relates to the features listed in sub-paragraphs (a) and (b), and 14 of Schedule 2.	160	180
3. Grazed fallow.	100	110
4. Non-agricultural purposes.	130	150
5. Woodland (other than under the provisions of the Farm Woodland Scheme and where land is used for short rotation coppice under the provisions of the Woodland Grant Scheme).	180	200"

Requirements Relating to the Management of Grazed Fallow

1. The beneficiary shall sow with grass the area to be grazed by livestock and shall retain that grassland throughout the period during which the requirements in this Schedule apply to the land.

2. The beneficiary shall not sow an area of grassland using a seeds mixture which contains clover, other than a seeds mixture with a white clover content by weight of no more than 5 per cent. or of 1.5 kilograms per hectare, whichever is the lesser.

3. The beneficiary shall not irrigate the land.

4. Except during the period of 12 months from the date of sowing the grass the beneficiary shall not apply to it any organic or inorganic fertiliser, other than manure produced by livestock whilst grazing the land.

5. Except during the period of 12 months from the date of sowing the grass the beneficiary shall not apply pesticides or herbicides.

6. The beneficiary shall not cut the grass more than once in every year following the commencement of the set-aside period. The beneficiary shall not sell cuttings but may use them to feed his livestock.

7. The beneficiary shall maintain—

(a) all existing hedges and rows of trees (including hedgerow trees),

(b) all existing lakes, loughs, watercourses, ponds and pools,

(c) all existing unimproved grassland, moorland and heath, and

(d) all existing vernacular buildings and stone walls,

which he is entitled to maintain and which are situated on or adjacent to any land to which the requirements in this Schedule apply.

8. The beneficiary shall not install any new drainage system, nor substantially modify any existing drainage system."

1702

Agriculture
SCHEDULE 3
"SCHEDULE 5

No. 314
Regulation 20
Regulation 7A(5)

<i>Livestock</i>	<i>Livestock Units</i>
Bull, cow or other bovine animal over 2 years or equine animal over 6 months	1.00
Bovine animal 6 months to 2 years	0.60
Sheep	0.15
Goat or deer	0.15"

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations further amend the Set-Aside Regulations (Northern Ireland) 1988 consistently with the provisions in article 1a of Council Regulations (EEC) No. 797/85, OJ No. L93, 12.3.85, and the detailed rules in Commission Regulation (EEC) No. 1272/88 OJ No. L121, 29.4.88. They enable farmers who had livestock in the reference period (1st July 1987 — 30th June 1988) to graze on their holdings no more than the equivalent of that number of livestock units, and farmers who did not have livestock in the reference period to graze deer or goats up to one livestock unit per forage hectare (regulations 4 and 7(b) and Schedule 3). Farmers who make use of this optional use of fallow land are required to comply with certain conditions, including conditions as to the application of fertilisers (other than manure produced by the livestock), pesticides and herbicides, and as to maintenance of environmental features. Grass must be sown and may not be cut more than once in every year (regulation 7(a) and Schedule 2).

The Regulations also increase the payments made to farmers who use their set-aside land for permanent fallow or rotational fallow, and who, in addition to observing the current management conditions, agree to cut plant cover on that land twice a year, including once between 30th June and 1st September, and to maintain unimproved grassland, moorland and heath, vernacular buildings and stone walls on their holding (regulation 12 and Schedule 1). The increases will apply to all farmers who apply to set aside land with effect from 1st October 1990, who will automatically be bound, with lower increases to existing participants who elect to be bound and participants who, by changing their undertaking, are obliged to observe the new rules (regulation 7(a)). The payment rates for these categories will be reduced for each hectare over 100 hectares where a farmer has undertaken to set aside for permanent fallow or rotational fallow more than 100 hectares, and more than 75 per cent., of the relevant arable land in the reference period (Schedule 1). Other minor amendments have been made.

The Regulations also implement Commission Regulation (EEC) No. 3981/89 OJ No. L380, 20.12.89, amending Commission Regulations (EEC) No. 1272/88, by allowing farmers who set aside land for rotational fallow to offset reductions in the area set aside in one year with increases in a previous year (regulation 8). Farmers must not increase or reduce the area of the land set aside for rotational fallow by more than 10 per cent.; reduce that area below 20 per cent. of the relevant arable land on the holding in the reference period; or increase it to more than the area of relevant arable land on the holding in the reference period.