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STATUTORY RULES OF NORTHERN IRELAND

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**1996 No. 606**

**AGRICULTURE**

**Environmentally Sensitive Areas Designation Orders  
(Amendment) Regulations (Northern Ireland) 1996**

*Made - - - - 23rd December 1996*

*Coming into operation 1st January 1997*

The Department of Agriculture, being a Department 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 it by that section, and of all other powers enabling it in that behalf, hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Environmentally Sensitive Areas Designation Orders (Amendment) Regulations (Northern Ireland) 1996 and shall come into operation on 1st January 1997.

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954(3) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

(2) In these Regulations, “the principal Orders” means the Orders set out in the Schedule.

**Amendment of the principal Orders**

3.—(1) Each of the principal Orders shall be amended as provided by paragraphs (2) to (5).

(2) In Article 2 (Interpretation) of each of the principal Orders, after the definition of “agreement” there shall be inserted—

(a) ““agri-environment scheme” means an arrangement which is—

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(1) S.I.1972/1811

(2) 1972 c. 68; Section 2 is subject to Schedule 2 to that Act and is to be read with S.I. 1984/703 (N.I. 3) and S.R. 1994/2795 (N.I. 15)

(3) 1954 c. 33 (N.I.)

- (a) regulated by a statutory provision providing for the payment of aid to persons who give an undertaking or enter an agreement in relation to land to which that statutory provision 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) ““the Commission Regulation” means Commission Regulation (EC) No. 746/96(4) laying down detailed rules for the application of the Council Regulation;”;
  - (c) “ “the Council Regulation” means Council Regulation (EEC) No. 2078/92(5) 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(6) as rectified by Commission Regulation (EC) No. 1962/96(7);”
- (3) In Article 5 (Breach of requirements and provisions of agreement) of each of the principal Orders set out in the Schedule—
- (a) at the beginning for the words “An agreement shall include provisions” there shall be substituted the following—
    - “(1) Subject to paragraph (2), an agreement shall include provisions”; and
  - (b) at the end of the Article there shall be added—
    - “(2) Nothing in paragraph (1) requires an agreement to include remedies for the Department which it has by virtue of Articles 5A, 5B and 5C or by virtue of Article 20 of the Commission Regulation (which provides for recovery of wrongful payments with interest, a penalty system and exclusion for false declarations).”
- (4) After Article 5 of each of the principal Orders set out in the Schedule there shall be inserted the following Articles—

**“Breach of requirements or provisions: supplementary**

**5A.**—(1) Subject to the provisions of Article 12 of the Commission Regulation (force majeure) and Article 20 of the Commission Regulation (which provides for recovery of wrongful payments with interest, a penalty system and exclusion for false declarations), and without prejudice to any rights the Department may have under an agreement, the Department may, where the farmer breaches any of the provisions of the agreement he has entered or any other requirement that applies to the making of any payment under this Order—

- (a) withhold the whole or any part of any aid payable to the farmer;
  - (b) recover the whole or any part of any aid already paid to him; and
  - (c) 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 undertaking), require him to pay to the Department a sum equal to no more than 10% of the aid paid or payable to the farmer.
- (2) Where the Department takes any step specified in paragraph (1), it may also terminate the agreement by notice in writing to the farmer.

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(4) O.J. No. L102, 25.4.96, p. 19  
 (5) O.J. No. L215, 30.7.92, p. 85  
 (6) O.J. No. L288, 1.12.95, p. 35  
 (7) O.J. No. L259, 12.10.96, p. 7

(3) Where under paragraph (2) the Department treats the agreement as terminated, it may also, in so far as is consequent upon Article 20(2) of the Commission Regulation by notice in writing to the farmer prohibit him from providing a new undertaking or entering a new agreement under an agri-environment scheme for such period (not exceeding two years) from the date of that termination as is specified in the notice.

#### **Recovery of interest**

**5B.**—(1) Where a payment is made under an agreement by the Department and, by virtue of Article 20(1) of the Commission Regulation (which provides for recovery of wrongful payments with interest), the beneficiary is required to reimburse all or part of the payment with interest, the rate of interest shall be one percentage point above LIBOR on a day to day basis.

(2) For the purposes of this Article, 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 Article, a certificate of the Department stating the LIBOR applicable during a period specified in the certificate shall also be conclusive evidence of the rate applicable in the specified period if the certificate also states that the Bank of England notified the Department of that rate.

#### **Recovery of Payments**

**5C.** In any case, where an amount falls to be paid to the Department by virtue of (or by virtue of action taken under) this Order or the Commission Regulation insofar as it relates to an environmentally sensitive area designated by this Order, the amount so falling to be paid shall be recoverable as a civil debt.”.

(5) After Article 8 (Rates of payment under enhancement provisions) of each of the principal Orders, there shall be added the following paragraph—

#### **“False declarations**

**8A.** Any obligation of the Department in the provisions of Articles 6 to 8 to make a payment under an agreement shall be subject to the provisions of Article 20(3) of the Commission Regulation (which requires a person covered by that provision who, intentionally or by reason of gross negligence makes a false declaration to be excluded from all aid under the Council Regulation and, in respect of an application made on or after 1st January 1997, of Article 10 of the Commission Regulation (which restricts duplication of aid payments).”.

Sealed with the Official Seal of the Department of Agriculture for Northern Ireland on 23rd December 1996.

L.S.

*Liam McKibben*  
Assistant Secretary

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## SCHEDULE

Regulation 2(2)

Environmentally Sensitive Areas (Mourne Mountains and Slieve Croob) Designation Order (Northern Ireland) 1993**(8)**.

Environmentally Sensitive Areas (Antrim Coast, Glens and Rathlin) Designation Order (Northern Ireland) 1993**(9)**.

Environmentally Sensitive Areas (West Fermanagh and Erne Lakeland) Designation Order (Northern Ireland) 1993**(10)**.

Environmentally Sensitive Areas (Slieve Gullion) Designation Order (Northern Ireland) 1994**(11)**.

Environmentally Sensitive Areas (Sperrins) Designation Order (Northern Ireland) 1994**(12)**.

## EXPLANATORY NOTE

*(This note is not part of the Regulations.)*

These Regulations amend the environmentally sensitive areas Designation Orders made under Article 3(1) of the Agriculture (Environmental Areas) (Northern Ireland) Order 1987 designating areas in Northern Ireland as environmentally sensitive areas, which implement in part a zonal programme approved by the European Commission (“the Commission”) under Article 7, in compliance with Council Regulation (EEC) No. 2078/92 (O.J. No. L215, 30.7.92, p. 85) on agricultural production methods compatible with the requirements of protection of the environment and the maintenance of the countryside. The Designation Orders amended by the Regulations are set out in the Schedule.

These Regulations make provision to implement Commission Regulation (EC) No. 746/96 (O.J. No. L102, 25.4.96, p. 19) (the “Commission Regulation”) laying down detailed rules for the application of 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, in particular Article 10 (which prevents duplication of aid under Community schemes in respect of an undertaking) Article 12 (force majeure), and Article 20 (which provides for recovery of wrongful payments with interest, a penalty system and exclusion for false declarations).

The Regulations—

- (a) provide that entitlement to payment under the Orders set out in the Schedule is subject to the provisions of Article 10 and Article 20(3) of the Commission Regulation,
- (b) make provision to enable the Department to recover grant and impose penalties in accordance with Articles 11, 12 and 20 of the Commission Regulation,
- (c) set a rate of interest where recovery of money is to include interest in accordance with Article 20(1) of the Commission Regulation.

**(8)** S.R. 1994 No. 178 as amended by S.R. 1994 No. 375

**(9)** S.R. 1993 No. 179 as amended by S.R. 1994 No. 376

**(10)** S.R. 1993 No. 180 as amended by S.R. 1994 No. 377

**(11)** S.R. 1994 No. 212

**(12)** S.R. 1994 No. 213 as amended by S.R. 1995 No. 179

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These 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.