
STATUTORY INSTRUMENTS

1994 No. 2731

AGRICULTURE

**The Apple Orchard Grubbing Up
(Amendment) Regulations 1994**

<i>Made</i>	- - - -	<i>19th October 1994</i>
<i>Laid before Parliament</i>		<i>24th October 1994</i>
<i>Coming into force</i>	- -	<i>25th October 1994</i>

The Minister of Agriculture, Fisheries and Food and the Secretary of State, being Ministers 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, acting jointly in exercise of the powers conferred on them by that section, and of all other powers enabling them in that behalf, hereby make the following Regulations:—

Title, extent and commencement

1. These Regulations may be cited as the Apple Orchard Grubbing Up (Amendment) Regulations 1994, shall apply throughout Great Britain and shall come into force on 25th October 1994.

Amendments to the Apple Orchard Grubbing Up Regulations

2.—(1) The Apple Orchard Grubbing Up Regulations 1991(3) shall be amended in accordance with the following paragraphs of this regulation in respect of applications made on or after the date on which these Regulations come into force, and for the purposes of this paragraph “applications” shall have the same meaning as in those Regulations.

(2) In the definition of “applicant” in regulation 2(1), the words “and includes his personal representatives” shall be inserted at the end.

(3) In the definition of “the Commission Regulation” in regulation 2(1), the words “as amended by Commission Regulation (EC) No.2264/94(4)” shall be inserted at the end.

(4) The following definition shall be inserted after the definition of “the Commission Regulation” in regulation 2(1):

(1) S.I.1972/1811.
(2) 1972 c. 68.
(3) S.I. 1991/3.
(4) OJ No. L246, 21.9.94, p.2.

“the continuing control objective” means the objective that no planting of an apple tree shall be carried out on any holding containing or new holding containing the whole or any part of a former orchard or of a retained orchard during the restriction period relating to that former or (as the case may be) retained orchard, other than planting on a retained orchard or other orchard;”.

(5) In the definition of “the Council Regulation” in regulation 2(1), the words “as last amended by Council Regulation (EC) No. 1890/94(5)” shall be inserted at the end.

(6) In the definition of “holding” in regulation 2(1), the words “except in the expression “new holding” shall be inserted after “means” and the words “for the time being for agricultural purposes by the applicant” shall be substituted for the words “by the applicant at the time of making the application”.

(7) The following definition shall be inserted after the definition of “holding” in regulation 2(1):

“new holding” means land, occupied as a unit for agricultural purposes by an occupier at any time after he has begun occupation of a former orchard or part of a former orchard or a retained orchard or part of a retained orchard;”.

(8) In the definition of “occupier” in regulation 2(1), the words “or a retained orchard or part of a retained orchard” shall be inserted after “part of a former orchard” and the words “relating to that former or (as the case may be) retained orchard, and includes the occupier’s personal representatives” shall be inserted at the end.

(9) The following definitions shall be inserted after the definition of “occupier” in regulation 2(1):

“other orchard” means, in relation to a new holding, any apple orchard which was on that holding at, or was added to that holding after, the time that the restricted parcels became part of it, other than a retained orchard transferred to the occupier by the applicant or previous occupier;

“owner” means any person having any legal estate (within the meaning of section 1(4) of the Law of Property Act 1925(6)) in land and includes his personal representatives;”.

(10) The following definitions shall be inserted after the definition of “premium” in regulation 2(1):

“restricted parcel” means any parcel the planting of any apple tree on which would for the time being be incompatible with the continuing control objective;

“restriction” means any restriction on planting apple trees on a holding or new holding (as the case may be) imposed by or under the Council Regulation, the Commission Regulation or these Regulations and includes a restriction deriving from an undertaking to observe planting controls;”.

(11) The definition of “the restriction period” in regulation 2(1) shall be replaced by the following:

“the restriction period” means—

- (a) in relation to a former orchard, the period of fifteen years commencing with the day on which grubbing up for which premium is payable is completed in that orchard, and
- (b) in relation to a retained orchard, the period of fifteen years commencing with the day on which grubbing up for which premium is payable is completed in its linked former orchard,

and for this purpose a former orchard is linked with a retained orchard where the identification of the latter as a retained orchard derives from the identification of the former as a former orchard;”.

(5) OJ No. L197, 30.7.94, p.41.

(6) 1925 c. 20.

(12) The following definitions shall be inserted after the definition of “the restriction period” in regulation 2(1):

““retained orchard” means any part of an applicant’s apple orchard in respect of which premium had not been paid;

“undertaking to observe planting controls” means a written undertaking in favour of the appropriate Minister by the occupier of a new holding not to act in a manner incompatible with the continuing control objective in relation to his new holding.”.

(13) The following paragraph shall be inserted after regulation 5(1):

“**1A)** At any time after a new holding has been created until the end of the restriction period relating to it, an authorised officer may at all reasonable times, and on production of his authority on demand, enter upon the new holding and inspect any land or apple tree, whether planted or grubbed up, in order to determine whether any apple tree has been planted on the new holding during the restriction period.”.

(14) In regulation 5(2), the words “paragraph (1) or (1A)” shall be substituted for the words “paragraph (1)”.

(15) In regulation 7, the words “or rendered unsuitable for inspection” shall be inserted after “removed from the holding”.

(16) Regulation 8 shall be replaced by the following:

“Conditions of acceptance

8.—(1) This regulation applies where an applicant’s occupation of or interest in his holding or any of it is derived directly or indirectly from the legal estate of an owner.

(2) The applicant’s application shall not be accepted unless it includes—

- (a) the consent of each such owner to the grubbing up operation to which the application applies; and
- (b) the requisite undertaking of each such owner.

(3) For the purposes of this regulation, the requisite undertaking of an owner or (as the case may be) successor is a written undertaking in favour of the appropriate Minister that—

- (a) so long as he is an owner of any relevant parcel, he will secure from each relevant subsequent occupier of that relevant parcel (if any) an undertaking to observe planting controls;
- (b) if at any time he becomes an occupier of any relevant parcel he will not act in a manner incompatible with the continuing control objective in relation to his new holding; and
- (c) he will secure from each successor of his (if any) the requisite undertaking.

(4) In this regulation—

- (a) “relevant parcel” means—
 - (i) a restricted parcel the restriction relating to which arises on account of a grubbing up operation referred to in paragraph (2)(a) above, or
 - (ii) a retained orchard;
- (b) a subsequent occupier of a relevant parcel is a relevant subsequent occupier if he is not already bound in relation to that parcel by his undertaking to observe planting controls; and
- (c) “successor” means, in relation to an owner of a relevant parcel, any person who—
 - (i) acquires from that owner a legal estate in, but

- (ii) is not the occupier of—
the whole or any part of that relevant parcel.

Conditions of acceptance — continuation

8A.—(1) This regulation applies in relation to any application to which regulation 8 does not apply.

(2) The application shall not be accepted unless it includes an undertaking to secure from the next occupier (if any) of any relevant parcel the requisite undertakings.

(3) For the purposes of this regulation the requisite undertakings of an occupier are—

- (a) an undertaking to observe planting controls, and
- (b) a written undertaking in favour of the appropriate Minister that he will secure from the next occupier after him (if any) of any relevant parcel the requisite undertakings.

(4) In this regulation “relevant parcel” means—

- (a) a restricted parcel the restriction relating to which arises on account of a grubbing up operation for which premium is sought in the application, or
- (b) a retained orchard.

Obligations on securing of undertaking

8B. Where any person secures an undertaking under regulation 8 or 8A he shall—

- (a) give written notice to the person from whom he secured it of the consequences under these Regulations of failure to comply with it,
- (b) forward the undertaking to the appropriate Minister, and
- (c) give written notice to the appropriate Minister of—
 - (i) particulars of the giving of notice referred to in paragraph (a) above, and
 - (ii) particulars of the change of ownership or, as the case may be, occupation which gave rise to the securing of the undertaking.”.

(17) In regulation 9(1) and (2), the words “on demand” shall be inserted after “recover”.

(18) In regulation 9(3), the words “who gave an undertaking to observe planting controls” shall be inserted after “occupier”.

(19) Regulation 9(4) shall be deleted.

(20) Regulation 10 shall be replaced by the following:

“Failure to act in manner compatible with continuing control objective

10.—(1) This regulation applies where an applicant in receipt of premium has acted in a manner incompatible with the continuing control objective in relation to his holding.

(2) The applicant shall pay to the appropriate Minister on demand an amount equal to the premium.

(3) In addition, the applicant shall repay that premium to the appropriate Minister on demand.

Contravention of undertaking to observe planting controls

10A.—(1) This regulation applies where there has been a contravention of an undertaking to observe planting controls.

(2) The person who has contravened the undertaking shall pay to the appropriate Minister on demand an amount equal to the premium paid in respect of the grubbing up operation in consequence of which the undertaking was given.

(3) In addition, the applicant to whom that premium was paid shall repay it to the appropriate Minister on demand.

Failure to secure undertaking

10B.—(1) This regulation applies where:—

- (a) any apple tree is planted on a restricted parcel on a new holding;
- (b) any person obliged by or under regulation 8 or 8A to secure an undertaking has failed either—

- (i) to secure it, or

- (ii) to comply with any obligation set out in regulation 8B in relation to it,

and, as a direct or indirect consequence of that failure, the appropriate Minister has at the time of planting not received an undertaking to observe planting controls which the planting contravenes.

(2) The relevant person to whose failure paragraph (1)(b) above refers shall pay to the appropriate Minister on demand an amount equal to the premium paid in respect of the grubbing up operation in consequence of which his obligation to secure an undertaking arose and, for the purposes of this paragraph—

- (a) the relevant person is—

- (i) in any case where there is only one person to whose failure paragraph (1)(b) above refers, that person,

- (ii) in any case where there is more than one person to whose failure paragraph (1)(b) above refers, any such person who receives that demand, and

- (b) where sub-paragraph (a)(ii) of this paragraph applies, the relevant person may on payment of the amount so demanded recover on demand from each other person to whose failure paragraph (1)(b) above refers an amount equal to $X \div Y$ where—

- (i) X represents the amount so demanded and paid, and

- (ii) Y represents the number of persons to whose failure paragraph (1)(b) above refers.

(3) In addition, the applicant to whom that premium was paid shall repay it to the appropriate Minister on demand.

Recovery of interest

10C. Where premium is repayable by an applicant by virtue of regulation 10(3), 10A(3) or 10B(3), the appropriate Minister may also recover from the applicant interest thereon in respect of the period commencing on the date of payment of the premium and expiring on the date of its repayment, at a rate of one percentage point above the sterling three month London interbank offered rate for the time being in force during that period.”.

(21) Regulation 13 shall be replaced by the following:

“Recoverability of amounts

13. Any amount recoverable or payable on demand under these Regulations shall, if not recovered or paid on demand, be recoverable as a debt.”.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

In witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 19th October 1994.

L.S.

William Waldegrave
Minister of Agriculture, Fisheries and Food

Hector Monro
Parliamentary Under Secretary of State, Scottish
Office

19th October 1994

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Apple Orchard Grubbing Up Regulations 1991. They implement in Great Britain Council Regulation (EEC) No 1200/90 (OJ No L119, 11.5.90, p.63) as last amended by Council Regulation (EC) No 1890/94 (OJ No L197, 30.7.94, p.41) and Commission Regulation (EEC) No 2604/90 (OJ No L245, 8.9.90, p.23) as amended by Commission Regulation (EC) No 2264/94 (OJ No L246, 21.9.94, p.2). The Community instruments extend to 1994/5 previous arrangements for the payment of premium for the grubbing up of apple orchards (other than cider apple orchards), subject to variations. In particular, payment for partial grubbing up is now provided for in the community instruments, and the arrangements for securing undertakings in respect of planting restrictions are extended. Undertakings are provided for in regulation 2(16) and (20) and the revised and additional definitions in regulation 2(4) and 2(6) to (12). The power to enter and inspect is extended beyond orchards to other areas of holdings affected by planting restrictions (regulation 2(13)). The rendering unsuitable for inspection of grubbed up trees is added to their removal from the holding as a ground for withholding premium (regulation 2(15)). These Regulations also make consequential and drafting changes to the 1991 Regulations.