
STATUTORY INSTRUMENTS

1994 No. 3085 (S.165)

AGRICULTURE

The Set-Aside Access (Scotland) Regulations 1994

Made - - - - *5th December 1994*
Laid before Parliament *7th December 1994*
Coming into force - - *28th December 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 Set-Aside Access (Scotland) Regulations 1994, shall come into force on 28th December 1994 and shall apply to Scotland only.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“access area” means the area of land in relation to which the beneficiary assumes access obligations under the provisions of these Regulations;

“access obligations” means the obligations assumed by the beneficiary by virtue of the undertakings referred to in regulation 3 or 7;

“access period”, in relation to an application accepted by the Secretary of State, means the period of 5 consecutive years commencing on 15 January of the year in which that date first occurs after the date of acceptance of that application;

“access route” has the meaning assigned to that expression in regulation 4(1)(a);

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, livestock breeding and keeping and freshwater fish farming, the use of land as grazing land, meadow land, osier land, reed beds, market gardens and nursery grounds and “agricultural” shall be construed accordingly;

(1) S.I.1972/1811.
(2) 1972 c. 68.

“application” means an application for aid under regulation 5 and “applicant” shall be construed accordingly;

“beneficiary” means—

- (a) a person whose application has been accepted; or
- (b) a person who is deemed to be a beneficiary by virtue of regulation 7(4)(a);

“holding” means land which is occupied as a unit for agricultural purposes;

“landlord” means—

- (a) in the case of an agricultural holding to which the Agricultural Holdings (Scotland) Act 1991(3) applies, the landlord within the meaning of section 85(1) of that Act;
- (b) in the case of a croft within the meaning of the Crofters (Scotland) Act 1993(4), 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(5) to which the 1991 Act does not apply, the same as it means in the 1911 Act;

and, where appropriate, includes a head tenant;

“landscape feature” includes the sea, an area of woodland, a river or a loch;

“open field site” has the meaning assigned to that expression in regulation 4(1)(b);

“quiet recreation” includes walking, viewing and picnicking;

“set aside” means set aside in accordance with the provisions of—

- (a) Council Regulation (EEC) No.1765/92 establishing a support system for certain arable crops(6) as amended by Council Regulation (EEC) No.1541/93(7) and Council Regulation (EC) No.231/94(8), and
- (b) Article 5(1) of Commission Regulation (EC) No.762/94 laying down detailed rules for the application of Council Regulation (EEC) No.1765/92 with regard to set-aside(9);

“tenant” means—

- (a) in the case of an agricultural holding to which the Agricultural Holdings (Scotland) Act 1991 applies, the tenant within the meaning of section 85(1) 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;

“wildlife” means—

- (a) any animal species (other than a species of bird) which is ordinarily resident in Scotland in a wild state;
- (b) any species of bird which is ordinarily resident or is a visitor to Scotland in a wild state; and
- (c) any species of plant which ordinarily grows in Scotland in a wild state.

(3) 1991 c. 55.

(4) 1993 c. 44.

(5) 1911 c. 49.

(6) OJ No.L181, 1.7.92, p.12.

(7) OJ No.L154, 25.6.93, p.1.

(8) OJ No.L30, 3.2.94, p.2.

(9) OJ No.L90, 7.4.94, p.8.

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

Aid for access to land

3. Subject to the provisions of these Regulations the Secretary of State may make payments of aid to any person who on the date of the submission of his application occupies the land to which the application relates as owner or tenant and who undertakes for the duration of the access period—

- (a) to set aside an area of land on his holding;
- (b) to permit members of the public to have access to that area for the purposes of quiet recreation; and
- (c) to manage that area and any parcel of land on his holding crossed by an access route in accordance with the requirements set out in the Schedule.

Requirements in relation to the access area

4.—(1) The access area shall be a continuous area of land consisting of—

- (a) a strip or strips of land 10 metres wide (“access route”); and
- (b) whole or part fields (“open field site”).

(2) The access area shall comply with at least one of the following requirements:—

- (a) its proximity to a centre of population is such that in the opinion of the Secretary of State members of the public would make significant use of it;
- (b) it shall provide access to, or to the vicinity of, a landscape feature, a vantage point or a site of archaeological, historical or wildlife interest;
- (c) it shall provide a link between two or more existing public rights of way; or
- (d) it shall provide a continuous circular walk of at least 1.5 kilometres in length.

Applications for aid

5. An application for aid under these Regulations shall be made at such time and in such form as the Secretary of State reasonably may require and shall include—

- (a) a map showing the proposed access area, and identifying any existing public rights of way and permissive access and any landscape feature, vantage point or site of archaeological, historic or wildlife interest in or adjacent to that area, and indicating, where appropriate, the route of any proposed circular walk; and
- (b) if required by the Secretary of State, evidence showing the nature of the applicant’s estate or interest in the holding.

Restrictions on acceptance of applications

6.—(1) The Secretary of State shall not accept an application in relation to any land unless he is satisfied that—

- (a) having regard in particular to the existence of public rights of way or permissive access on or over that land at the time of the making of the application, the terms of the application would provide new or significant additional access to members of the public; and
- (b) that land is readily accessible to members of the public by public road, footpath or bridleway.

(2) The Secretary of State shall not accept an application in relation to any land proposed as an open field site unless in his opinion that site would provide significant possibilities for quiet recreation to members of the public additional to those which would be provided by an access route over that land.

(3) The Secretary of State shall not accept an application in relation to any land which is occupied by a tenant unless he is satisfied that the tenant has notified the landlord of that land in writing of his intention to make the application.

(4) The Secretary of State may refuse to accept an application in relation to any land where he is satisfied that—

- (a) access to that land by members of the public would have an adverse effect on any site of archaeological, historical or wildlife interest on or adjacent to that land;
- (b) access to that land by members of the public or the management of that land in accordance with the requirements of the Schedule would frustrate the purposes of any assistance previously given or to be given out of money provided by Parliament or the European Community; or
- (c) the payment of aid under these Regulations in relation to that land would duplicate any assistance given or to be given out of money provided by Parliament or by the European Community.

Change of occupation

7.—(1) Where on the death of the beneficiary or otherwise, there is a change of occupation of the entirety or any part of that beneficiary's land which is or will be subject to access obligations—

- (a) the beneficiary (or, if he has died, his executors) shall notify the Secretary of State in writing of the change of occupation within three months of its occurrence 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) the new occupier of that land or part may give an undertaking to the Secretary of State to comply with the access obligations relating to that land or part for the remainder of the access period.

(2) The Secretary of State shall not accept an undertaking referred to in paragraph (1)(b) above unless he is satisfied that the new occupier occupies the land or part as an owner or tenant or as the executor of the original occupier.

(3) A new occupier who gives an undertaking to comply with the access obligations assumed by the original occupier 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.

(4) Where the Secretary of State has accepted an undertaking from a new occupier to comply with the access obligations undertaken by the original occupier—

- (a) the new occupier shall be deemed to be a beneficiary and, subject to paragraph (5) below, shall be entitled to payments of aid in place of the original occupier for the remainder of the access period; and
- (b) his undertaking to comply with those access obligations shall be deemed to take effect on the date of the acceptance by the Secretary of State of that undertaking.

(5) Where there is a change of occupation of part of the land subject to access obligations, and the Secretary of State has accepted an undertaking given under paragraph (1)(b) above by the new occupier of that part, the new occupier shall be entitled to payments of aid in the same proportion as the area of such land occupied by him bears to the area of such land occupied by the original occupier prior to the change of occupation.

(6) Where within 3 months from the date of change of occupation a new occupier has not given an undertaking to comply with the access obligations assumed by the original occupier, the Secretary of State may—

- (a) withhold the whole or any part of any payments due to the original occupier;
- (b) recover from that original occupier or his executors the whole or any part of any payments of aid already made to him; and
- (c) treat as terminated the undertakings given by the original occupier under these Regulations.

(7) Paragraph (6)(a) and (b) above shall not apply where the change of occupation of the entirety or any part of the beneficiary's land which is subject to access obligations is the result of—

- (a) the compulsory purchase of that land or part;
- (b) the death of the original occupier, and
 - (i) that original occupier occupied that land or part as a tenant; and
 - (ii) following the death of that original occupier the tenancy or lease under which he occupied that land or part was terminated by the landlord under section 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 referred to in section 24(1) of that Act, or the termination of a tenancy following service of a notice to quit under 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).

Amounts and payment of aid

8.—(1) Subject to the provisions of these Regulations, payments of aid shall be by way of five payments made annually in arrear at a rate of—

- (a) £90 per hectare in relation to any part of the access area which consists of an access route;
- (b) £45 per hectare in relation to any part of the access area which consists of an open field site.

(2) The Secretary of State shall not make payments of aid in relation to more than 15 hectares of land in any holding.

Claims for aid

9. Any claim for the payment of aid under these Regulations shall be made at such time and in such form and shall contain such information as the Secretary of State reasonably may require.

(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).

Obligation to permit entry and inspection

10.—(1) A beneficiary shall permit any officer duly authorised by the Secretary of State, accompanied by such persons acting under his instructions as appear to the officer to be necessary for the purpose, at all reasonable times and on production of his authority on demand, to enter upon that beneficiary's holding in order to inspect any land, document or record with a view to verifying—

- (a) the accuracy of any particulars given in any application or claim under regulation 9 or in any undertaking given by a new occupier pursuant to regulation 7(1)(b); and
- (b) compliance with the access obligations.

(2) A beneficiary shall render all reasonable assistance to the authorised officer in relation to the matters mentioned in paragraph (1) above, and in particular shall—

- (a) produce any document or record which may be required by that officer for inspection; and
- (b) at the request of that officer, accompany him in making the inspection of any land and shall identify any area of land which is concerned in any application or claim or in any undertaking given by a new occupier to comply with the access obligations undertaken by the original occupier.

Withholding and recovery of aid and termination

11.—(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 in a material respect, the Secretary of State may withhold the whole or any part of any aid 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 to comply with any of the access obligations;
- (b) fails without reasonable excuse to permit entry and inspection by an authorised officer or to render all reasonable assistance to such authorised officer as required by regulation 10; or
- (c) fails without reasonable excuse to comply with any other requirement of these Regulations,

the Secretary of State may withhold the whole or any part of any aid payable to that beneficiary and may recover the whole or any part of any aid already paid to him.

(3) Whether or not the Secretary of State withholds or recovers aid under paragraphs (1) or (2) above, he may treat as terminated the undertakings given by the beneficiary under these Regulations in any of the circumstances referred to in those paragraphs.

(4) Where the Secretary of State, in accordance with paragraph (3) above or regulation 7(6)(c) treats as terminated the undertakings given by a beneficiary ("the first beneficiary") under these Regulations, and he is satisfied that as a consequence the requirements of regulation 4(2) or 6(1)(b) are no longer met as respects land subject to access obligations which is occupied by any other beneficiary ("the second beneficiary"), he may—

- (a) withhold the whole or part of any aid payable to the second beneficiary;
- (b) recover the whole or part of any aid already paid to him; and
- (c) treat as terminated the undertakings given by the second beneficiary under these Regulations.

(5) Paragraph (4) above shall not apply unless the Secretary of State has indicated in writing to the second beneficiary referred to in that paragraph at the time his application under regulation 5 was submitted or his undertaking under regulation 7(1)(b) was given, as the case may be, that the powers specified in paragraph (4)(a) to (c) above could be exercised where the Secretary of State treated as terminated the undertakings given by the first beneficiary in relation to adjacent land.

(6) Before withholding or recovering any aid under paragraphs (2)(a) or (4) above, the Secretary of State shall—

- (a) give to the beneficiary a written explanation of the reasons for the proposed withholding or recovery;
- (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

12. If any person, for the purposes of obtaining for himself or any other person any aid under these Regulations, knowingly or recklessly makes a statement which is false 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.

St Andrew's House,
Edinburgh
5th December 1994

Hector Monro
Parliamentary Under Secretary of State, Scottish
Office

SCHEDULE

Regulation 3(c)

MANAGEMENT REQUIREMENTS FOR THE ACCESS AREA

1. The beneficiary shall make the access area available for public access at no charge.
2. The beneficiary shall maintain free passage over the access area.
3. The beneficiary shall provide and maintain sown grass or naturally regenerated cover over the access area.
4. The beneficiary shall not erect new fences on, or on land on the boundary of, the access area without the prior written approval of the Secretary of State.
5. The beneficiary shall keep the access area and any parcel of land on his holding crossed by an access route free of litter and other refuse.
6. The beneficiary shall exclude bulls from the access area and from any parcel of land on his holding crossed by an access route except in the case of bulls which do not exceed 10 months.
7. The beneficiary shall provide and maintain adequate means of entry to the access area.
8. The beneficiary shall provide and maintain appropriate waymarking to the satisfaction of the Secretary of State, including signposting the means of entry to the access area.
9. The beneficiary shall consent to details of the access agreement being made public by the Secretary of State.
10. The beneficiary shall not without the Secretary of State's prior written approval permit any of the following activities on the access area or on any parcel of land on his holding crossed by an access route:— camping, caravanning, lighting of fires, carrying of firearms or riding or driving of motor vehicles (except for vehicles used for agricultural operations on the land).
11. The beneficiary shall ensure that any recreational activities permitted to members of the public in the access area do not hinder public access to that area.
12. The beneficiary shall mow the whole cover of any access route or routes and shall maintain the cover of each such access route to a maximum height of 15 centimetres throughout the year; provided that the beneficiary shall not be obliged to mow such cover during the period between 1st September in each year and 14th January in the following year if the cover has already been grazed short during that period.
13. The beneficiary shall mow the whole cover of any open field site at least once between 1st October in each year and 30th April in the following year, unless the cover has already been grazed in the period between 1st September in each year and 14th January in the following year, and shall maintain the cover of at least half the area of any such site to a maximum height of 15 centimetres between 1st May and 31st October in each year.
14. The beneficiary shall not permit the riding of horses or cycles or the playing of organised games in the access area without the prior written consent of the Secretary of State.
15. The beneficiary may agree with the Secretary of State in writing in advance a specified number of days in any year (but excluding public holidays), up to a maximum to be reasonably determined by the Secretary of State, when the beneficiary may close the access area or any part of it to the public, provided that signs giving notice of the intended closure and the reasons for it are posted at each entry point to the area at least 2 weeks in advance of the date of closure.
16. The beneficiary shall maintain minimum public liability insurance cover in relation to the access area and any parcel of land on his holding crossed by an access route of at least £1 million per claim in any one year.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in part Council Regulation (EEC) No.2078/92 (OJ No.L215, 30.7.92, p.85) on agricultural production methods compatible with the requirements of the protection of the environment and maintenance of the countryside.

The Regulations, which apply to Scotland, provide for the payment of aid to eligible persons who undertake for five years from 15 January in the year following acceptance of their application to permit members of the public to have access to an area of land, referred to in the Regulations as the “access area”, for the purposes of quiet recreation, to set aside that area and to manage it and any adjacent lands or fields crossed by an access way in accordance with the requirements set out in the Schedule to the Regulations (regulation 3).

Requirements in relation to the access area are set out (regulation 4).

Applications for aid must include a map identifying certain details (regulation 5) and restrictions on the acceptance of applications in certain circumstances are set out (regulation 6).

Provision is made for a new occupier to receive aid in place of the original occupier upon the Secretary of State’s acceptance of his undertaking to comply with the access obligations undertaken by the original occupier for the remainder of the access period (as defined in regulation 2(1)) (regulation 7).

Aid is payable annually in arrear in five instalments and the rates of payment are set out (regulation 8).

The Regulations also—

- (a) provide for an obligation to permit entry and inspection (regulation 10);
- (b) provide for withholding and recovery of aid and termination (regulation 11);
- (c) create an offence, punishable on summary conviction with a fine not exceeding level 5 on the standard scale, of knowingly or recklessly making a false statement in order to obtain aid (regulation 12).