

## SCHEDULE 1

Regulation 6

### DEROGATION FROM REQUIREMENT TO HAVE FARMED SET-ASIDE LAND FOR TWO YEARS

#### PART I

##### (Derogations in respect of land in England or Wales)

1. In the following special cases a farmer shall be entitled to claim set-aside compensatory payment on land in England or Wales that he has not farmed for a period of two years prior to the commencement of the set-aside period:

- (a) during the specified period, he—
  - (i) inherited the land;
  - (ii) was granted an agricultural tenancy from year to year of it by succession; or
  - (iii) having owned the land for at least two years at the commencement of the set-aside period, commenced farming it following the termination of an agreement with another farmer under which that other farmer farmed the land;
- (b) the land forms part of a unit of sixty hectares or more of agricultural land of which he acquired ownership or relevant tenure during the specified period—
  - (i) in a single transaction; or
  - (ii) in more than one transaction, where the land thereby acquired formed part of the same unit of agricultural land immediately prior to the first such transaction;
- (c) during the specified period he acquired ownership or relevant tenure of the land and at the commencement of the set-aside period he owned, or occupied under relevant tenure, no more than fifteen hectares of other agricultural land;
- (d) although he is the farmer of the land, he let the land to another person for a period of less than two years within that part of the specified period which preceded the set-aside period;
- (e) where—
  - (i) more than 10 per cent of the eligible land farmed by him is farmed under one or more sharefarming agreements or under one or more agreements which do not constitute an agricultural tenancy or tenancies from year to year; and
  - (ii) the land, farmed by him under one or more of the agreements referred to in subparagraph (i) above, is situated in the vicinity of the other land farmed by him, and can be reasonably farmed as a single unit with such other land; or
- (f) he farms insufficient eligible land which he would be entitled to set aside under Article 7 of Council Regulation 1765/92 and Commission Regulation 2293/92, within the production region where his land is situated, to be able—
  - (i) to comply with the requirement in Article 7 of Council Regulation 1765/92 to set aside 15 per cent of the total area on which he claims either arable compensatory payment or set-aside compensatory payment; or
  - (ii) to set-aside 18 per cent of the total area on which he claims either arable compensatory payment or set-aside compensatory payment, where the farmer wishes to set aside the land as non-rotational set-aside land.

2. For the purposes of this Part of this Schedule—

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- (a) “agricultural tenancy from year to year” means a tenancy from year to year created under a contract for an agricultural tenancy as defined by section 1(2) of the Agricultural Holdings Act 1986, or an agreement to which section 2 or 3 of that Act applies unless that agreement takes effect as an agreement approved by the Minister in accordance with section 2 or 5 of that Act;
- (b) a farmer has “relevant tenure” of agricultural land where he is the tenant of that land under an agricultural tenancy from year to year, a tenancy for a fixed term or an agreement approved by the Minister in accordance with section 2 or 5 of the Agricultural Holdings Act 1986; or where he farms that land under a sharefarming agreement;
- (c) “specified period” means the set-aside period and the period of two years prior to its commencement; and
- (d) an agricultural tenancy from year to year was granted by “succession” where it was—
  - (i) obtained by virtue of a direction under section 39 or 53 of the Agricultural Holdings Act 1986 (direction for a grant of tenancy to successor on death or retirement of the previous tenant);
  - (ii) granted (following a direction under section 39 of that Act) in circumstances within section 45(6) of that Act (new tenancy granted by agreement to persons entitled to a tenancy under direction); or
  - (iii) granted in circumstances within section 37(1)(b) or (2) of that Act (tenancy granted by agreement to a close relative).

## PART II

### Derogations in respect of land in Scotland)

1. In the following special cases a farmer shall be entitled to claim set-aside compensatory payment on land that he has not farmed for a period of two years prior to the commencement of the set-aside period:

- (a) during the specified period, he—
  - (i) acquired a right to an agricultural tenancy of the land by virtue of a bequest or under section 16 of the Succession (Scotland) Act 1964<sup>(1)</sup>;
  - (ii) being a close relative of the previous tenant, acquired a right to an agricultural tenancy of the land on the retirement of that tenant; or
  - (iii) having owned the land for at least two years at the commencement of the set-aside period, commenced farming it following the termination of an agreement with another farmer under which that other farmer farmed the land;
- (b) the land forms part of a unit of sixty hectares or more of agricultural land of which he acquired ownership or relevant tenure during the specified period,—
  - (i) in a single transaction; or
  - (ii) in more than one transaction, where the land thereby acquired formed part of the same unit of agricultural land immediately prior to the first such transaction;
- (c) during the specified period he acquired ownership or relevant tenure of the land and at the commencement of the set-aside period he owned, or occupied under relevant tenure, no more than fifteen hectares of other agricultural land;

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<sup>(1)</sup> 1964 c. 41.

- (d) although he is the farmer of the land, he let the land to another person for a period of less than two years within that part of the specified period which preceded the set-aside period;
  - (e) where—
    - (i) more than 10 per cent of the eligible land farmed by him is farmed under one or more sharefarming agreements or under one or more agreements which do not constitute an agricultural tenancy or tenancies; and
    - (ii) the land, farmed by him under one or more of the agreements referred to in subparagraph (i) above, is situated in the vicinity of the other land farmed by him, and can be reasonably farmed as a single unit with such other land; or
  - (f) he farms insufficient eligible land which he would be entitled to set aside under Article 7 of Council Regulation 1765/92 and Commission Regulation 2293/92, within the production region where his land is situated, to be able—
    - (i) to comply with the requirement in Article 7 of Council Regulation 1765/92 to set aside 15 per cent of the total area on which he claims either arable compensatory payment or set-aside compensatory payment; or
    - (ii) to set-aside 18 per cent of the total area on which he claims either arable compensatory payment or set-aside compensatory payment, where the farmer wishes to set aside the land as non-rotational set-aside land.
2. For the purposes of this Part of this Schedule—
- (a) “agricultural tenancy” means a tenancy of land which is—
    - (i) an agricultural holding within the meaning of section 1(1) of the Agricultural Holdings (Scotland) Act 1991;
    - (ii) a croft within the meaning of section 3(a) of the Crofters (Scotland) Act 1993<sup>(2)</sup>;
    - (iii) a holding within the meaning of section 2(1) of the Small Landholders (Scotland) Act 1911<sup>(3)</sup>; or
    - (iv) a holding of a statutory small tenant within the meaning of section 32(1) of the Small Landholders (Scotland) Act 1911,and includes any part of any such tenancy which is treated as a separate entity for the purposes of succession, assignation or sub-letting;
  - (b) a farmer has “relevant tenure” of agricultural land where he is the tenant of that land under an agricultural tenancy or by virtue of a letting approved by the Minister under section 2 of the Agricultural Holdings (Scotland) Act 1991; or where he farms that land under a sharefarming agreement;
  - (c) “specified period” means the set-aside period and the period of two years prior to its commencement; and
  - (d) “close relative of the previous tenant” means—
    - (i) the previous tenant’s wife or husband;
    - (ii) the previous tenant’s brother or sister;
    - (iii) the previous tenant’s child; or
    - (iv) any person (not falling within paragraph (ii) or (iii) above), who, in the case of any marriage to which the previous tenant has been at any time a party, has been treated by the previous tenant as a child of the family to that marriage.

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(2) 1993 c. 44.

(3) 1911 c. 49.

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