
STATUTORY INSTRUMENTS

1995 No. 2780

The Arable Area Payments (Amendment) Regulations 1995

Amendments to the Arable Area Payments Regulations 1995

2.—(1) The Arable Area Payments Regulations 1995(1) shall be amended in accordance with the following paragraphs of this regulation.

(2) In paragraph (1) of regulation 2 (interpretation)—

- (a) in the definition of “Commission Regulation 334/93” for the phrase “as amended by Commission Regulation (EC) No. 608/94(2)” substitute the phrase “as last amended by Commission Regulation (EC) No. 1870/95(3)”;
- (b) delete the definition of “Commission Regulation 2595/93”;
- (c) in the definition of “Council Regulation 1765/92” for “and Council Regulation (EC) No. 2990/94(4)” insert “, Council Regulation (EC) No. 2290/94 and Council Regulation (EC) No. 2336/95(5)”;
- (d) in the definition of “eligible land” before “means” insert “, subject to regulation 5A,”;
- (e) in the definition of “land set aside for non-food purposes” delete “either” and delete “or Commission Regulation 2595/93”;
- (f) in the definition of “permitted agricultural production” delete “or Commission Regulation 2595/93”; and
- (g) in the definition of “specified raw materials” after “Annex I” where it first appears insert “and Annex II” and delete “and in Annex I to Commission Regulation 2595/93”.

(3) After regulation 5, insert the following regulation—

“Exchanges of eligible and ineligible land

5A.—(1) Where a farmer believes he is obliged to exchange ineligible land for eligible land within his holding for agronomic, phytosanitary or environmental reasons, as provided for in Article 3(4) of Commission Regulation 2780/92, he may apply to the Minister for approval of the exchange and the following provisions of this regulation shall apply in respect of his application.

(2) Subject to paragraphs (3) and (4) below, the application shall be in such form as the Minister may reasonably require.

(3) Where the applicant holds any of the eligible land as a tenant then his application shall include a declaration that he has obtained the written consent of his immediate landlord to the proposed exchange in respect of each part of the eligible land so held.

(1) S.I.1995/1738.

(2) OJ No. L 77, 19.3.94, p.7.

(3) OJ No. L 179, 29.7.95, p.40.

(4) OJ No. L 316, 9.12.94, p.1.

(5) OJ No. L 236, 5.10.95, p.1.

(4) Where the applicant holds any of the ineligible land as a tenant then his application shall include a declaration that he has informed his immediate landlord of the proposed exchange in respect of each part of the ineligible land so held.

(5) If the Minister is satisfied that the applicant is obliged to exchange the ineligible land for the eligible land for agronomic, phytosanitary or environmental reasons then, subject to the following paragraphs of this regulation, he shall give approval for the exchange.

(6) The Minister shall not give approval for the exchange if any of the ineligible land—

(a) is situated within, or within 100 metres of, an area of special scientific interest as notified pursuant to section 28(1) of the Wildlife and Countryside Act 1981(6) unless he is satisfied that neither the ineligible land nor that area of special scientific interest will suffer any material environmental damage as a result of the exchange;

(b) is situated within, or within 100 metres of, an area to which section 29(3) of the Wildlife and Countryside Act 1981 applies unless he is satisfied that neither the ineligible land nor that area will suffer any material environmental damage as a result of the exchange;

(c) is situated within, or within 100 metres of—

(i) particular land classified as a European site under regulation 10 of the Conservation (Natural Habitats &c.) Regulations 1994(7); or

(ii) particular land included in the list referred to in regulation 7 of the Conservation (Natural Habitats &c.) Regulations 1994,

unless he is satisfied that neither the ineligible land nor that particular land will suffer any material environmental damage as a result of the exchange;

(d) is situated within ten metres of any watercourse (which for the purposes of this provision includes any coastal water, estuary, lake, pond, river, stream, canal or field ditch) unless he is satisfied that neither the ineligible land nor the watercourse will suffer any material environmental damage as a result of the exchange;

(e) is subject to an agreement under section 18(3) of the Agriculture Act 1986(8) unless he is satisfied that neither the ineligible land nor other land (if any) subject to the same agreement will suffer any material environmental damage as a result of the exchange;

(f) is—

(i) subject to an agreement made (in England and Wales) under the Nitrate Sensitive Areas (Designation) Order 1990(9) or (in Scotland) under section 31B of the Control of Pollution Act 1974(10) as it applies to Scotland; or

(ii) situated within land in respect of which payments of aid may be made under the Nitrate Sensitive Area Regulations 1994(11) following a particular application thereunder,

unless he is satisfied that neither the ineligible land nor other land (if any) subject to the same agreement or, as the case may be, covered by the same application will suffer any material environmental damage as a result of the exchange;

(6) 1981 c. 69; section 28 was amended, so far as relevant to these Regulations, by the Wildlife and Countryside (Amendment) Act 1985 (c. 31), section 2, and section 29 by the Environmental Protection Act 1990 (c. 43), sections 132, 133 and Schedule 9, paragraph 11.

(7) S.I. 1994/2716.

(8) 1986 c. 49.

(9) S.I. 1990/1013, amended by S.I. 1990/1187 and S.I. 1993/3198.

(10) 1974 c. 40; section 31B as it applies to Scotland was inserted by the Water Act 1989 (c. 15), section 169 and Schedule 23.

(11) S.I. 1994/1729, amended by S.I. 1995/1708.

- (g) is subject to an agreement entered into under section 4 of the Countryside Act 1968⁽¹²⁾ and designated a Countryside Stewardship Scheme agreement (in England) or Tir Cymen agreement (in Wales) unless he is satisfied that neither the ineligible land nor other land (if any) subject to the same agreement will suffer any material environmental damage as a result of the exchange;
 - (h) is situated within land in respect of which payments of aid may be made under the Habitat (Water Fringe) Regulations 1994⁽¹³⁾, the Habitat (Former Set-Aside Land) Regulations 1994⁽¹⁴⁾, the Habitat (Salt-Marsh) Regulations 1994⁽¹⁵⁾, the Habitat (Broadleaved Woodland) (Wales) Regulations 1994⁽¹⁶⁾, the Habitat (Water Fringe) (Wales) Regulations 1994⁽¹⁷⁾, the Habitat (Coastal Belt) (Wales) Regulations 1994⁽¹⁸⁾, the Habitat (Species-Rich Grassland) (Wales) Regulations 1994⁽¹⁹⁾ or the Habitats (Scotland) Regulations 1994⁽²⁰⁾ following a particular application thereunder, unless he is satisfied that neither the ineligible land nor other land (if any) covered by the same application will suffer material environmental damage as a result of the exchange;
 - (i) is situated within an area which has never been cropped during the period of twenty years ending on 22nd April 1995 unless that ineligible land is situated within an existing orchard planted after 22nd April 1965;
 - (j) is situated within an existing orchard planted before 23rd April 1965 unless he is satisfied that such of the ineligible land as is situated within that orchard will not suffer material environmental damage as a result of that exchange;
 - (k) is situated within land comprising an Ancient Monument which is included in the schedule compiled by the Secretary of State pursuant to section 1(1) of the Ancient Monuments and Archaeological Areas Act 1979⁽²¹⁾ unless the Minister is satisfied that there will not be a harmful effect on the preservation of the Ancient Monument as a result of the exchange;
 - (l) is situated within an area designated as an area of archaeological importance by the Secretary of State under section 33 of the Ancient Monuments and Archaeological Areas Act 1979 unless the Minister is satisfied that there will not be a harmful effect on the preservation of the archaeological importance of that area as a result of the exchange; or
 - (m) is situated within a production region (as specified in regulation 3(1)) different from that in which any of the eligible land is situated.
- (7) Where approval has been given under paragraph (5) above, but—
- (a) any declaration included in, or information given by the applicant in connection with, the application was false in any material particular; or
 - (b) any declaration required to have been included in the application by virtue of paragraph (3) or (4) above was not so included,

then the application shall for all purposes be treated as if it had never been approved.”.

(12) 1968 c. 41; section 4 was amended by the Wildlife and Countryside Act 1981 (c. 69), section 40, and the Environmental Protection Act 1990 (c. 43), section 130 and Schedule 8, paragraph 2.

(13) S.I. 1994/1291.

(14) S.I. 1994/1292

(15) S.I. 1994/1293.

(16) S.I. 1994/3099.

(17) S.I. 1994/3100.

(18) S.I. 1994/3101.

(19) S.I. 1994/3102.

(20) S.I. 1994/2710 (S. 138).

(21) 1979 c. 46; section 33 was amended by the National Heritage Act 1983 (c. 47), section 33 and Schedule 4, paragraph 54, and by the Local Government Act 1985 (c. 51), section 6 and Schedule 2, paragraph 2.

(4) Paragraph (3)(b) of regulation 9 (transfer of the obligation to set aside to another farmer) shall be replaced by the following—

“(b) either—

(i) a nitrate sensitive area as designated (in England and Wales) by the Nitrate Sensitive Areas (Designation) Order 1990 or (in Scotland) under section 31B of the Control of Pollution Act 1974 as it applies in Scotland; or

(ii) a nitrate sensitive area as defined in the Nitrate Sensitive Area Regulations 1994;”.

(5) After regulation 10, insert the following regulation—

“Delivery notifications for non-food raw materials

10A.—(1) The declaration which a farmer is required to make by Article 7(3) of Commission Regulation 334/93 shall be made by 15th November in the scheme year in respect of which set-aside compensatory payments have been claimed in respect of the land used to grow the raw material referred to in that provision.

(2) For the purposes of sub-paragraph (a) of Article 8(4) of Commission Regulation 334/93, the date by which a collector or first processor shall provide the information referred to in that sub-paragraph shall be 15th November in the scheme year in respect of which set-aside compensatory payments have been claimed in respect of the land used to grow the raw material referred to in that provision.

(3) The declaration referred to in paragraph (1) above shall be made, and the information referred to in paragraph (2) above provided, in such form as the Minister may reasonably require.

(4) If the declaration referred to in paragraph (1) above is not made by the date specified in that paragraph, the Minister may deduce the set-aside compensatory payment due to the farmer in respect of the land used to grow the raw material referred to in that paragraph—

(a) by up to 10% if the notification is made after, but not more than 20 working days after, the date specified in that paragraph; or

(b) by up to 15% if the notification is made more than 20 working days after the date specified in that paragraph.”.

(6) In regulation 11 (keeping and retention of records by a farmer), insert the following paragraph after paragraph 3—

“(3A) A farmer who makes an application under regulation 5A which is approved by the Minister shall retain all documents relating to that application from the time at which he makes the application until the end of the fourth year following the year in which the approval is granted.”.

(7) In regulation 12 (keeping and retention of records by a collector and by a processor)—

(a) in paragraph (1) for “multiannual raw materials in accordance with the provisions of Commission Regulation 2595/93” substitute “raw materials, listed in Annex II to Commission Regulation 334/93, in accordance with the provisions of that Regulation”; and

(b) in paragraph (3)(a) for “Annex II” substitute “Annex III”.

(8) In Schedule I (derogation from requirement to have farmed set-aside land for two years), in both Part I (derogations in respect of land in England or Wales) and Part II (derogations in respect of land in Scotland)—

(a) in paragraph 1(b)—

(i) delete “of sixty hectares or more”; and

- (ii) after paragraph (ii) insert “and he sets aside no more than 10 per cent of that part of the unit for which he claims a compensatory payment”; and
- (b) at the end of paragraph 1(d) insert “or”, and for paragraphs 1(e) and 1(f) substitute—
 - “(e) where he satisfies the Minister that he farms his holding by organic means or is converting to doing so.”