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STATUTORY INSTRUMENTS

1996 No. 3106

AGRICULTURE

The Habitat (Water Fringe) (Amendment) (No. 2) Regulations 1996

<i>Made</i>	- - - -	<i>10th December 1996</i>
<i>Laid before Parliament</i>		<i>11th December 1996</i>
<i>Coming into force</i>	- -	<i>1st January 1997</i>

The Minister of Agriculture, Fisheries and Food, 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, and after consulting the Secretary of State for the Environment, the Countryside Commission, the Nature Conservancy Council for England and the Historic Buildings and Monuments Commission for England in accordance with section 99 of the Environment Act 1995⁽³⁾, hereby makes the following Regulations:

Title, commencement and extent

1. These Regulations may be cited as the Habitat (Water Fringe) (Amendment) (No. 2) Regulations 1996, and shall come into force on 1st January 1997, and shall apply to England.

Commencement Information

II Reg. 1 in force at 1.1.1997, see [reg. 1](#)

Amendments to previous Regulations

2.—(1) The Habitat (Water Fringe) Regulations 1994⁽⁴⁾ shall be amended in accordance with the following provisions of this regulation.

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

(1) S.I.1972/1811.

(2) 1972 c. 68.

(3) 1995 c. 25.

(4) S.I. 1994/1291, amended by S.I. 1996/1480.

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- (a) after the definition of “agriculture” and “agricultural” there shall be inserted the following definition—
- ““agri-environment scheme” means an arrangement which is—
- (a) regulated by statutory instrument providing for the payment of aid to persons who give an undertaking or enter an agreement in relation to land to which that instrument 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) for the definition of “arable land” there shall be substituted the following definition—
- ““arable land” includes agricultural grassland other than permanent grassland;”
- (c) after the definition of “beneficiary” there shall be inserted the following definitions—
- ““the Commission Regulation” means Commission Regulation (EC) No. 746/96⁽⁵⁾ laying down detailed rules for the application of the Council Regulation;
- “the Council Regulation” means Council Regulation (EEC) No. 2078/92⁽⁶⁾ 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⁽⁷⁾ as rectified by Commission Regulation (EC) No. 1962/96⁽⁸⁾;”;
- (d) for the definition of “eligible person” there shall be substituted the following definition—
- ““eligible person” means a person who on the date of submission of his application—
- (a) occupies eligible land as an owner or tenant; and
 - (b) is not prohibited from providing an undertaking pursuant to an agri-environment scheme either by application of a penalty 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 undertakings) or by application of Article 20(3) of the Commission Regulation (which requires a person who, intentionally or by reason of gross negligence, makes a false declaration, to be excluded from all aid under the Council Regulation);”;
- (e) after the definition of “eligible person” there shall be inserted the following definition—
- ““former scheme period”, in relation to an area, means the period elapsed under an undertaking given or an agreement entered in relation thereto under an agri-environment scheme, including any period elapsed under any other such undertaking or agreement and treated in effect as aggregated with that period for the purposes of that scheme—
- (a) by virtue of a change of occupation of the land to which the undertaking or agreement relates;
 - (b) by application of Article 11 of the Commission Regulation (which governs transfers of holdings); or

⁽⁵⁾ OJ No. L102, 25.4.96, p.19.

⁽⁶⁾ OJ No. L215, 30.7.92, p.85.

⁽⁷⁾ OJ No. L288, 1.12.95, p.35.

⁽⁸⁾ OJ No. L259, 12.10.96, p.7.

- (c) by application of Article 13 of the Commission Regulation (which authorises replacement of an agri-environment scheme undertaking or agreement by another such undertaking or agreement);”;
- (f) for the definition of “management period”, there shall be substituted the following definition—
 - ““management period”, in relation to an application accepted by the Minister, means—
 - (a) in relation to an undertaking given pursuant to regulation 3(1)—
 - (i) where an application is made pursuant to Article 13 of the Commission Regulation (which authorises replacement of an agri-environment scheme undertaking or agreement by another such undertaking or agreement), a continuous period, which, when aggregated with the former scheme period, makes 20 consecutive years, or
 - (ii) in any other case, 20 consecutive years, and
 - (b) in relation to an undertaking given pursuant to regulation 3(2)—
 - (i) where an application is made pursuant to Article 13 of the Commission Regulation, a continuous period, which, when aggregated with the former scheme period, makes 10 consecutive years, or
 - (ii) in any other case, 10 consecutive years,commencing on a date to be agreed by the Minister and the beneficiary;”;
- (g) for the definition of “permanent grassland” there shall be substituted the following definition—
 - ““permanent grassland”, in relation to any application, means land which is agricultural grassland at the time of the application and which—
 - (a) was established as such at least 5 years before the application; and
 - (b) has either—
 - (i) not been ploughed or re-seeded during the 5 years preceding the application, or
 - (ii) been ploughed, re-seeded or both as a single exercise during that period, but only for the purpose of cultivation of an arable crop removed from the land within a year of the commencement of that exercise;” and
- (h) for the definition of “set-aside land”, there shall be substituted the following definition—
 - ““set-aside land” means an area of water fringe—
 - (a) to which the requirements of Schedule 2 apply;
 - (b) in relation to which—
 - (i) (where the application relating to that area has been accepted pursuant to Article 13 of the Commission Regulation (which authorises replacement of an agri-environment scheme undertaking or agreement by another such undertaking or agreement)) the application for aid under the agri-environment scheme to which the commencement of the former scheme period relates, and
 - (ii) otherwise, the application by the beneficiary, was made on or after 28th June 1995; and

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- (c) in relation to which the application made pursuant to these Regulations included a declaration by the beneficiary that he intended to count the area as being set aside for the purposes of the set-aside requirement”.
- (3) In regulation 3 (aid for water fringes)—
- (a) in paragraph (1), for the words “a period of 20 consecutive years commencing in the year in which his application is accepted” there shall be substituted the words “the management period”; and
- (b) in paragraph (2), for the words “a period of 10 consecutive years, commencing in the year his application is accepted,” there shall be substituted the words “the management period”.
- (4) In regulation 4 (applications for aid) after the phrase “count an area of eligible arable land” in paragraph (e), there shall be inserted the phrase “to which he intends the requirements of Schedule 2 to apply”.
- (5) In regulation 5 (restrictions on acceptance of applications), after paragraph (2) there shall be inserted the following paragraph—
- “(2A) The Minister shall not accept an application in relation to any land made pursuant to Article 13 of the Commission Regulation (which authorises replacement of an agri-environment scheme undertaking or agreement by another such undertaking or agreement) unless he is satisfied that the conditions set out in that Article are fulfilled.”.
- (6) In regulation 6 (change of occupation)—
- (a) there shall be substituted for paragraph (2) the following paragraph—
- “(2) The Minister shall not accept an undertaking referred to in paragraph (1)(b) above unless he is satisfied that the new occupier—
- (a) occupies the land or part as an owner or tenant or as the personal representative of the original occupier; and
- (b) is not prohibited from providing an undertaking pursuant to an agri-environment scheme by application of Article 10 of the Commission Regulation (which restricts duplication of aid payments), by application of a penalty 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 undertakings) or by application of Article 20(3) of the Commission Regulation (which requires a person who, intentionally or by reason of gross negligence, makes a false declaration, to be excluded from all aid under the Council Regulation).”; and
- (b) there shall be substituted for paragraph (7) the following paragraph—
- “(7) The foregoing provisions of this Regulation shall be subject to Article 11 of the Commission Regulation (which governs transfers of holdings) and Article 12 of the Commission Regulation (force majeure).”.
- (7) In regulation 7 (amount and payment of aid)—
- (a) in paragraph (1) after the phrase “Subject to the provisions of these Regulations” there shall be inserted the phrase “, of Article 20(3) of the Commission Regulation (which requires a person 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)”; and
- (b) in paragraph (2), after the word “Where” there shall be inserted the phrase “payment falls to be made under paragraph (1) above and”; and

- (c) in paragraph (3), for the word “Any” there shall be substituted the phrase “Where payment falls to be made under paragraph (1) above, any additional”.
- (8) In regulation 7A (changes to the area of set-aside land) for sub-paragraphs (b) and (c) of paragraph (1) there shall be substituted the following sub-paragraphs—
- “(b) to which the requirements of Schedule 2 apply, and
- (c) in relation to which—
- (i) (where the application relating to that area has been accepted pursuant to Article 13 of the Commission Regulation (which authorises replacement of an agri-environment scheme undertaking or agreement by another such undertaking or agreement)) the application for aid under the agri-environment scheme to which the commencement of the former scheme period relates, and
- (ii) otherwise, the application by the beneficiary, was made on or after 28th June 1995”.
- (9) In regulation 8 (claims for aid) after the phrase “intends to count an area of water fringe” in paragraph 8(a) there shall be inserted the words “to which the requirements of Schedule 2 apply”.
- (10) For regulation 10 (withholding and recovery of aid and termination) there shall be substituted the following regulation—

“Withholding and recovery of aid, termination and exclusion

10.—(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, the Minister may withhold the whole or any part of any aid payable to that person or to such other person and may, subject to the provisions of Article 20 of the Commission Regulation (which provides for recovery of wrongful payments with interest, a penalty system and exclusion for false declarations), 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 management obligations;
- (b) fails to permit entry and inspection by an authorised person or to render all reasonable assistance to such authorised person as required by regulation 9; or
- (c) fails to comply with any other requirement of these Regulations,

the Minister 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 and may also, 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 undertakings), require him to pay to the Minister a sum equal to no more than 10% of the aid paid or payable to the beneficiary.

(3) Where the Minister takes any step specified in paragraph (1) or (2) above, he may also treat as terminated the undertakings given by the beneficiary under these Regulations.

(4) Where under paragraph (3) above the Minister treats the undertakings given by the beneficiary as terminated, in connection with any step taken under paragraph (2) above, he may also, in so far as is consequent upon Article 20(2) of the Commission Regulation, by notice in writing to the beneficiary 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.

(5) Before taking any step specified in paragraph (2), (3) or (4) above by reference to paragraph (2)(a) above, the Minister shall—

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- (a) give to the beneficiary a written explanation of the reasons for the step proposed to be taken;
- (b) afford the beneficiary the opportunity of appearing before and being heard by a person appointed for that purpose by the Minister; and
- (c) consider the report by the person so appointed and supply a copy of the report to the beneficiary.

(6) Where a beneficiary, in his area aid application in any year, counts an area of water fringe which is arable land as being set aside for the purposes of the set-aside requirement and that land, on the date of the submission of the area aid application, is neither set-aside land nor land which is being treated as set-aside land pursuant to regulation 7A, the Minister may, subject to the provisions of Article 20 of the Commission Regulation (which provides for recovery of wrongful payments with interest, a penalty system and exclusion for false declarations), recover from that beneficiary an amount not exceeding the difference between the aid paid to that beneficiary under regulation 7 that year and the amount that would have been paid to him under regulation 7 that year if that land had been set-aside land.”

(11) After regulation 10 (withholding and recovery of aid and termination) there shall be added the following regulations—

“Recovery of Interest

10A.—(1) Where a payment of aid is made to a beneficiary by the Minister and, by virtue of Article 20(1) of the Commission Regulation (which provides for recovery of wrongful payments with interest), a reimbursement of all or part of the payment with interest is required, the rate of interest shall be one percentage point above LIBOR on a day to day basis.

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

Recovery of payments

10B. In any case, where an amount falls to be paid to the Minister by virtue of (or by virtue of action taken under) these Regulations or the Commission Regulation in so far as it relates to water fringe, the amount so falling to be paid shall be recoverable as a debt.”

(12) In Schedule 5 (management requirements for entire fields or strips of arable land where there is no undertaking not to use the land for arable production), in paragraph 16—

- (a) in sub-paragraph (a), after the phrase “subject to sub-paragraph (b)” there shall be inserted the phrase “and, where applicable, sub-paragraph (c)”;
- (b) at the end of sub-paragraph (a), the word “and” shall be deleted, and
- (c) after sub-paragraph (b), there shall be added the word “and” and the following sub-paragraph—

“(c) shall ensure that, where the undertaking made under Regulation 3(2) was entered into on or after 1st January 1997, in grazing the land in accordance with paragraphs (a) or (b) above, the level of grazing shall comply with the obligation referred to in Article 3 of the Commission Regulation (which sets a stocking restriction on conversion of arable land to pasture);”.

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Commencement Information

I2 Reg. 2 in force at 1.1.1997, see [reg. 1](#)

10th December 1996

Tim Boswell
Parliamentary Secretary, Ministry of Agriculture,
Fisheries and Food

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Habitat (Water Fringe) Regulations 1994 (as amended by [S. I. 1996/1480](#)) (“the principal Regulations”) which implement in part a zonal programme approved by the European Commission (“the Commission”) under Article 7 of Council Regulation ([EEC](#)) [No. 2078/92](#) (OJ No. L215, 30.7.92, p. 85) (“the Agri-environment Regulation”) on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside.

These Regulations make provision to implement Commission Regulation ([EC](#)) [No. 746/96](#) (OJ No. L102, 25.4.96, p.19) (“the Commission Regulation”) laying down detailed rules for the application of the Agri-environment Regulation, in particular Article 3 (which sets a stocking restriction on conversion of arable land to pasture), Article 10 (which restricts duplication of aid payments), Article 11 (which governs transfers of holdings entered into agreements or undertakings under the Agri-environment Regulation), Article 12 (force majeure), Article 13 (which authorises replacement of an agri-environment scheme undertaking or agreement by another such undertaking or agreement) and Article 20 (which provides for recovery of wrongful payments with interest, a penalty system and exclusion for false declarations).

The Regulations—

- (a) expand the categories of eligible land to include long term grass leys in the definition of permanent grassland,
- (b) make provision for the Minister to accept replacements for undertakings made pursuant to a scheme approved under the Agri-environment Regulation and to count the period elapsed under that scheme towards the management period for the purposes of the principal Regulations, where the conditions set out in Article 13 of the Commission Regulation are fulfilled (the primary conditions being that the transfer is of unquestionable benefit to the environment and that the existing undertaking is significantly reinforced),
- (c) amend the provisions which enable arable land which is set aside under the principal Regulations to count as being set aside for the purposes of Article 7(1) of Council Regulation ([EEC](#)) [No. 1765/92](#) so as—
 - (i) to clarify that only arable land subject to the requirements of Schedule 2 can be counted as such, and
 - (ii) to extend the provisions to any such land accepted pursuant to Article 13 of the Commission Regulation,
- (d) specify that entitlement to payment under the principal Regulations is subject to the provisions of Article 10 and Article 20(3) of the Commission Regulation,
- (e) make provision to enable the Minister to recover grant and impose penalties in accordance with Articles 11, 12 and 20 of the Commission Regulation,
- (f) set a rate of interest where recovery of money is to include interest in accordance with Article 20(1) of the Commission Regulation, and
- (g) amend the stocking restrictions in Schedule 5 to comply with Article 3 of the Commission Regulation.

The Regulations form part of a package submitted to the Commission under Article 23 of the Commission Regulation.

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No Compliance Cost Assessment in relation to these Regulations has been prepared.

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