
STATUTORY INSTRUMENTS

1996 No. 3123

COUNTRYSIDE

**The Countryside Stewardship
(Amendment) (No. 2) Regulations 1996**

Made - - - - *11th December 1996*
Laid before Parliament *11th December 1996*
Coming into force - - *1st January 1997*

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 in relation to the common agricultural policy of the European Community⁽²⁾, in exercise of the powers contained in that section insofar as these Regulations could not have been made under the powers hereinafter mentioned and otherwise in exercise of the powers conferred on him by section 98 of the Environment Act 1995⁽³⁾ and of all other powers enabling him in that behalf, with the consent of the Treasury and after consulting the Secretary of State, the Countryside Commission, the Nature Conservancy Council for England and the Historic Buildings and Monuments Commission for England in accordance with section 99 of that Act, hereby makes the following Regulations:

Title, commencement and extent

1.—(1) These Regulations may be cited as the Countryside Stewardship (Amendment) (No. 2) Regulations 1996, shall come into force on 1st January 1997, and shall apply to England including the Isles of Scilly⁽⁴⁾.

Amendment of previous Regulations

2.—(1) The Countryside Stewardship Regulations 1996⁽⁵⁾ shall be amended in accordance with the following provisions of this regulation.

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

(a) after the definition of “agreement year” there shall be inserted the following definitions—

(1) S.I. 1972/1811.

(2) 1972 c. 68.

(3) 1995 c. 25; section 98(5) contains a definition of the appropriate Minister.

(4) For application to the Isles of Scilly, see section 117 of the Environment Act 1995 (c. 25), the Environment Act 1995 (Isles of Scilly) Order 1996 (S.I. 1996/1030) and the Countryside Stewardship (Amendment) (Extension to the Isles of Scilly) Regulations 1996 (S.I. 1996/1481).

(5) S.I. 1996/695, amended by S.I. 1996/1481.

““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;

“the Commission Regulation” means Commission Regulation (EC) No. 746/96(6) laying down detailed rules for the application of the Council Regulation;

“the Council Regulation” means Council Regulation (EEC) No. 2078/92(7) 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(8) as rectified by Commission Regulation (EC) No. 1962/96(9);”;

- (b) for the definition of “eligible person” there shall be substituted the following definition—

““eligible person” means—

- (a) a stewardship agreement holder, or
- (b) a former scheme agreement holder,

who applies for a grant under these Regulations and is not excluded at the time at which his application is considered from eligibility for that grant 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 covered by that provision who, intentionally or by reason of gross negligence, makes a false declaration, to be excluded from all aid under the Council Regulation);”.

- (3) In regulation 3 (power to enter into agreements)—

- (a) in paragraph (1), for the words “paragraph (4)” there shall be substituted the words “paragraphs (3A) and (4)”; and
- (b) after paragraph (3) there shall be inserted the following paragraph—

“(3A) The Minister shall not enter into any stewardship agreement in circumstances to which Article 13 of the Commission Regulation (which authorises replacement of an agri-environment scheme undertaking or agreement by another such undertaking or agreement) applies unless he is satisfied that the conditions set out in that Article are fulfilled.”.

- (4) In regulation 5 (conditions) for the words “to an eligible person shall be subject” there shall be substituted the words “to any person shall be subject to the condition that he is an eligible person and also”.

- (5) At the end of regulation 8 (notification of change of occupation) there shall be added the following paragraph—

(6) OJ No. L102, 25.4.96, p. 19.

(7) OJ No. L215, 30.7.92, p. 85.

(8) OJ No. L288, 1.12.95, p. 35.

(9) OJ No. L259, 12.10.96, p. 7.

“(4) 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)”.

(6) For regulation 9 (withholding and recovery of grant) there shall be substituted the following regulations—

“Withholding and recovery of grant

9.—(1) Where any person, with a view to obtaining the payment of grant 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 payments of grant payable thereunder 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 part of any sums already paid by way of grant thereunder to that person or to such other person.

(2) Where an agreement holder—

- (a) has failed to do something which he undertook to do if the grant was made, or
- (b) is in breach of any conditions subject to which the grant was made,

the Minister may withhold the whole or any part of any grant payable to that agreement holder under these Regulations and may recover the whole or any part of any grant already paid to him.

(3) Any dispute in any particular case as to the withholding or recovery of grant by reference to paragraph (1) or (2) above shall be referred to and determined by a single arbitrator to be agreed between the parties or in default of agreement to be appointed by the President of the Royal Institution of Chartered Surveyors and in accordance with the provisions of the Arbitration Act 1950⁽¹⁰⁾ or any statutory modification or re-enactment thereof for the time being in force.

(4) Where the Minister withholds or recovers grant under paragraph (2) above, he may also, insofar 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 the agreement holder to pay to the Minister a sum equal to no more than 10% of the grant paid or payable to the agreement holder under these Regulations.

(5) Where the Minister takes any steps specified in paragraph (1), (2) or (4) above, he may also terminate the agreement referred to therein by giving notice of such termination to the agreement holder.

(6) Where under paragraph (5) above the Minister treats the agreement so referred to 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 agreement holder 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.

Recovery of Interest

10.—(1) Where a grant is paid under these Regulations by the Minister and by virtue of Article 20(1) of the Commission Regulation (which provides for recovery of wrongful

⁽¹⁰⁾ 1950 c. 27; Part I will be repealed by the Arbitration Act 1996 (c. 23), s.107 and Schedule 4, on the bringing of those provisions into force under s.109.

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

11. 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 Regulations insofar as it relates to agreement land, the amount so falling to be paid shall be recoverable as a debt.

Effect on former scheme agreements

12. Powers derived from a former scheme agreement to withhold grant or to require any sum to be paid to the Minister shall not be exercised by the Minister in circumstances where it would exceed the powers in regulations 9 to 11 to exercise them, but subject to that nothing in those regulations shall be taken to add to the Minister's powers under any former scheme agreement where that addition is not required by the Commission Regulation."

Ministry of Agriculture,
Fisheries and Food
10th December 1996

Tim Boswell
Parliamentary Secretary,

We consent

11th December 1996

Michael Bates
Patrick McLoughlin
Two of the Lords Commissioners of Her
Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Countryside Stewardship Regulations 1996 (S.I. 1996/695 as amended by S.I. 1996/1481) (“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 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).

These Regulations—

- (a) ensure that entry into an agreement under the principal Regulations, if in substitution for other obligations under the Agri-environment Regulation, is effected only where the conditions set out in Article 13 of the Commission Regulation are fulfilled (the principal conditions being that the transfer is of unquestionable benefit to the environment and that the existing undertaking is significantly reinforced),
- (b) specify that entitlement to payment under the principal Regulations is subject to the provisions of Article 20 of the Commission Regulation;
- (c) make provision to enable the Minister to recover grant and impose penalties in accordance with Articles 11, 12 and 20 of the Commission Regulation, and
- (d) set a rate of interest where recovery of money is to include interest in accordance with Article 20(1) of the Commission Regulation.

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

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