
STATUTORY INSTRUMENTS

1998 No. 1131

AGRICULTURE

The Apple and Pear Orchard Grubbing Up Regulations 1998

<i>Made</i>	- - - -	<i>23rd April 1998</i>
<i>Laid before Parliament</i>		<i>28th April 1998</i>
<i>Coming into force</i>	- -	<i>25th May 1998</i>

The Minister of Agriculture, Fisheries and Food and the Secretary of State, being Ministers 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, acting jointly in the exercise of the powers conferred on them by that section, and of all other powers enabling them in that behalf, make the following Regulations:—

Title, extent and commencement

1. These Regulations may be cited as the Apple and Pear Orchard Grubbing Up Regulations 1998, shall apply throughout Great Britain and shall come into force on 25th May 1998.

Interpretation

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

“the appropriate Minister” means—

- (a) in relation to England, the Minister of Agriculture, Fisheries and Food; and
- (b) in relation to Scotland or Wales, the Secretary of State;

“authorised person” means a person authorised by the appropriate Minister for the purposes of these Regulations;

“the Commission Regulation” means Commission Regulation (EC) No. 2467/97 laying down detailed rules for the application of Council Regulation (EC) No. 2200/97 on the improvement of the Community production of apples, pears, peaches and nectarines⁽³⁾;

“the Council Regulation” means Council Regulation (EC) No. 2200/97 on the improvement of the Community production of apple, pears, peaches and nectarines⁽⁴⁾;

(1) S.I. 1972/1811.

(2) 1972 c. 68.

(3) OJ No. L341, 12.12.97, p. 3.

(4) OJ No. L303, 6.11.97, p. 3.

“former orchard” means land formerly an apple or pear orchard (within the meaning of the Council Regulation) affected by a grubbing up operation in respect of which premium has been paid;

“holding” means land including an apple or pear orchard or a former apple or pear orchard occupied as a unit for agricultural purposes, and for the purposes of this definition “apple orchard” or “pear orchard” includes all parcels planted with apple or pear trees that are part of a holding, regardless of the age of the trees or the density of their planting;

“non-eligible orchard” means all parcels on the holding under apple trees which are not apple or pear orchards (within the meaning of the Council Regulation);

“occupier” means a person who occupies a former orchard or part of a former orchard, or an orchard or part of an orchard, at any time during the restriction period;

“premium” means the grubbing up premium provided for in Article 1 of the Council Regulation;

“recipient” means a recipient of premium and includes his personal representatives;

“restriction period” means, in relation to a holding, the period of fifteen years commencing with the day when grubbing up for which premium is payable is completed on that holding; and

“retained orchard” means land which is an apple or pear orchard in respect of which no premium has been paid.

(2) Expressions in these Regulations other than those defined in paragraph (1) of this regulation, and which also appear in the Council Regulation or the Commission Regulation, have the same meanings as in those Regulations.

Revocation of the Grubbing Up Regulations

3. The Apple Orchard Grubbing Up Regulations 1991(5), the Apple Orchard Grubbing Up (Amendment) Regulations 1994(6) and the Apple Orchard Grubbing Up (Amendment) Regulations 1995(7) (together “the Grubbing Up Regulations”) are revoked, subject to regulation 4(2) below.

Existing undertakings and obligations under the Grubbing Up Regulations

4.—(1) Any undertaking given to the appropriate Minister in relation to an application for premium—

- (a) which is being fulfilled on the date these Regulations come into force, shall be treated for the purposes of these Regulations as being fulfilled on that date;
- (b) which is not being fulfilled on that date, shall be treated for the purposes of these Regulations as not fulfilled on that date.

(2) The revocation of the Grubbing Up Regulations shall not affect—

- (a) the obligations of any recipient of premium, or other owner or occupier of a holding, arising under a Council Regulation or a Commission Regulation in respect of that receipt, ownership or occupation, to the extent that any such obligation continued to subsist immediately before the revocation, or
- (b) any remedy in relation to a breach of any such obligations.

Grubbing up on a holding

5.—(1) This regulation applies where—

(5) S.I. 1991/3.
(6) S.I. 1994/2731.
(7) S.I. 1995/40.

- (a) an undertaking has been given for the purposes of Article 3.2 of the Commission Regulation in relation to an application for premium by an owner or occupier of a holding the effect of which is an undertaking to refrain during the restriction period—
 - (i) from planting or having planted any apple, pear, peach, or nectarine trees on the area of his holding affected by the grubbing up operation in respect of which the undertaking was given; and
 - (ii) from extending any other area of his holding planted with apple, pear, peach, or nectarine trees;
 - (b) that owner or occupier intends, at any time after these Regulations come into force and before the end of the restriction period—
 - (i) to grub up apple or pear trees on any part of his holding which is a retained orchard; and
 - (ii) to plant or have planted apple, pear, peach or nectarine trees on that or any other part of his holding which is not a former orchard or a non-eligible orchard; and
 - (c) the planting mentioned in sub-paragraph (b)(ii) above takes place before the end of the restriction period but after the grubbing up operation described in sub-paragraph (b)(i) above.
- (2) The undertaking referred to in paragraph (1)(a) above shall not be treated for the purposes of these Regulations as being fulfilled during the period between the completion of the intended grubbing up and planting referred to in paragraph (1)(b) above and the end of the restriction period unless the conditions specified in paragraph (3) below have been satisfied.
- (3) The conditions are that the owner or occupier by whom or on whose behalf the intended grubbing up and planting is to be carried out—
- (a) notifies the appropriate Minister, in writing, of his intention to grub up and plant prior to starting the grubbing up and of the areas and locations of land which he intends to grub up and to plant or have planted with apple, pear, peach or nectarine trees;
 - (b) refrains from planting or having planted any apple, pear, peach or nectarine trees on the holding concerned other than in any non-eligible orchard until after the grubbing up is completed; and
 - (c) refrains at any time after the last grubbing up has started until the end of the restriction period from extending the area of his holding planted with apple, pear, peach or nectarine trees beyond the area so planted immediately after the grubbing up in respect of which an application for premium has been made.

Sale, transfer etc. of former orchard

6.—(1) This regulation applies where, for the purposes of Article 3.2 of the Commission Regulation, an undertaking has been given in relation to an application for premium, by the owner or occupier of a former orchard, the effect of which is that, in the event (during the restriction period) of the sale, leasing or transfer by any other method of the areas of the holding affected by the grubbing up operation, there shall be secured from any new occupier an undertaking—

- (a) to refrain during the restriction period from planting any apple, pear, peach or nectarine trees on the area of the holding affected by the grubbing up operation;
- (b) to refrain during that period from extending any other area of his holding planted with apple, pear, peach or nectarine trees; and
- (c) to secure from his successor an undertaking the effect of which is to impose on the successor the obligations imposed by the undertaking referred to in this paragraph.

(2) Where a person secures an undertaking of the type referred to in paragraph (1)(c) above from any new occupier, and where any subsequent occupier secures such an undertaking, he shall—

- (a) give written notice to the person from whom he secured it of the consequences under these Regulations of not fulfilling it; and
- (b) forward the undertaking to the appropriate Minister; together with—
 - (i) a copy of that written notice;
 - (ii) particulars of the giving of the written notice; and
 - (iii) particulars of the change of occupancy in respect of which the undertaking was secured.

Non-fulfilment of undertakings

7.—(1) This regulation applies where an undertaking referred to in regulation 4(1), 5(1)(a) or 6(1) above has been given but, at any time after these Regulations come into force and before the end of the restriction period, the undertaking is not fulfilled.

(2) Where the recipient of the premium has given an undertaking that is not fulfilled he shall on demand—

- (a) pay to the appropriate Minister an amount equal to that premium; and,
- (b) in addition, repay that premium to the appropriate Minister.

(3) Where any person other than the recipient of the premium has given the undertaking that is not fulfilled—

- (a) he shall on demand pay to the appropriate Minister an amount equal to that premium; and
- (b) the recipient of the premium shall on demand repay it to the appropriate Minister.

Failure to secure undertaking or to give notice

8.—(1) This regulation applies where, at any time after these Regulations come into force and before the end of the restriction period—

- (a) an apple, pear, peach or nectarine tree is planted on any part of a former orchard or the area of any retained orchard is increased; and
- (b) any person obliged to secure an undertaking referred to in paragraph (1) of regulation 6 above either—
 - (i) fails to secure the undertaking; or
 - (ii) secures the undertaking but fails to comply with any of the requirements in respect of it specified in paragraph (2) of that regulation.

(2) The person who has failed as described in paragraph (1)(b) above shall pay to the appropriate Minister on demand an amount equal to the premium paid under the Council Regulation in respect of the grubbing up carried out on the former orchard.

(3) In addition, the recipient of that premium, whether or not he is also liable to make a payment under paragraph (2) above, shall repay the premium to the appropriate Minister on demand.

Recovery of interest

9.—(1) Where premium is repayable by a recipient of premium by virtue of regulation 7(2)(b), 7(3)(b) or 8(3) above, the appropriate Minister shall also recover interest on the premium from the recipient.

(2) Interest under this regulation is recoverable in respect of the period commencing on the date of payment of the premium and expiring on the date of its repayment, at the rate applied by the European Monetary Institute to its transactions in ecus as published in the 'C' series of the Official Journal of the European Communities, in force on the date of the undue payment and increased by three percentage points.

Powers of entry and inspection

10.—(1) An authorised person shall, on producing if so required, some duly authenticated document showing his authority, have a right at all reasonable times during the restriction period to enter upon a holding and inspect any land or apple, pear, peach or nectarine tree, whether planted or grubbed up, for the purpose of ascertaining whether—

- (a) grubbing up has been carried out on the holding or any part of the holding; or
- (b) any apple, pear, peach or nectarine tree has been planted on the holding or any part of the holding during the restriction period.

(2) An authorised person entering upon a holding by virtue of this regulation may take with him such other persons acting under his instructions as he considers necessary.

(3) An authorised person may, for the purpose described in paragraph (1) of this regulation, require the owner or occupier of a holding to produce for inspection any bill, account, record or other document in his possession or under his control relating to the holding; and he may make copies of or take extracts from any such document so produced.

Obstruction of authorised persons

11.—(1) Any person who—

- (a) intentionally obstructs an authorised person in the exercise of the powers conferred on him by regulation 10 above, or a person accompanying him and acting under his instructions; or
 - (b) without reasonable excuse, fails to comply with a requirement under regulation 10 above,
- shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

Recoverability of amounts

12. Any amount recoverable or payable on demand under these Regulations shall, if not recovered or paid on demand, be recoverable as a debt.

22nd April 1998

Donoghue
Parliamentary Secretary, Ministry of Agriculture,
Fisheries and Food

23rd April 1998

Sewel
Parliamentary Under Secretary of State, Scottish
Office

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke the Apple Orchard Grubbing Up Regulations 1991 (S.I.1991/3), the Apple Orchard Grubbing Up (Amendment) Regulations 1994 (S.I. 1994/2731) and the Apple Orchard Grubbing Up (Amendment) Regulations 1995 (S.I. 1995/40)—see regulation 3. Those Grubbing Up Regulations provided for the administration and enforcement of a scheme for the payment of a premium to growers of apples who grubbed up their apple trees. The scheme was established for three separate periods between 1991 and 1995. Restrictions apply in relation to the grubbed land and areas of retained orchards and their occupiers and owners for the time being for fifteen years after recipients of premium had grubbed up apple trees under the scheme, and are preserved by regulation 4(2).

A new Community scheme was established by Council Regulation (EC) No. 2200/97 (OJ No. L 303, 6.11.97, p. 3). The detailed rules for the scheme are laid down in Commission Regulation (EC) No. 2467/97 (OJ No. L 341, 12.12.97, p. 3).

These Regulations provide for the administration and enforcement of the restrictions and other rules of the new scheme for the remainder of the fifteen year periods in which they will apply. Undertakings already given in relation to the rules of the new scheme that are being fulfilled when these Regulations come into force are treated for the purposes of these Regulations as continuing to be fulfilled on the date they come into force. Those undertakings which are not being fulfilled on that date are not so treated (regulation 4(1)).

Regulation 5 of these Regulations provides for circumstances in which the grubbing up of apple and pear trees and replanting of apple, pear, peach or nectarine trees on the holding of the recipient of premium under the scheme may be permitted. In accordance with Article 3 of the Commission Regulation subsequent grubbing up of apple and pear trees and replanting of apple, pear, peach or nectarine trees is permitted providing the replanting does not extend the area of the holding planted with apple or pear trees. Prior notice of the intended grubbing up and replanting must be given to the appropriate Minister and no replanting may be carried out before the intended grubbing up has been completed.

Regulation 6 makes provision for the administration of the scheme rule that on a transfer of a holding affected by the grubbing up of apple or pear trees under the scheme the new owner must give an undertaking to comply with the rules of the scheme. Notice of the transfer and new undertaking must be given to the appropriate Minister. Regulation 7 provides for recovery of premium and a fixed penalty, in accordance with Article 7(3) of the Commission Regulation, where the required undertakings have not been fulfilled during the fifteen year period of the scheme after the grubbing up concerned.

Regulation 8 applies those sanctions where a required undertaking or notice has not been given. Regulation 9 provides for recovery of interest on premium repayable under the scheme rules. Regulation 10 confers powers of entry and inspection on persons authorised by the appropriate Minister. Regulation 11 provides for offences and penalties for obstruction of authorised persons. Regulation 12 specifies that an amount recoverable or payable on demand under the Regulations is recoverable as a debt.