

2017 No. 599

AGRICULTURE, ENGLAND

AGRICULTURE, NORTHERN IRELAND

**The Single Common Market Organisation (Emergency Aid)
(England and Northern Ireland) Regulations 2017**

<i>Made</i> - - - -	<i>25th April 2017</i>
<i>Laid before Parliament</i>	<i>26th April 2017</i>
<i>Coming into force</i> - -	<i>22nd May 2017</i>

The Secretary of State is designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to the common agricultural policy(b), and makes these Regulations in exercise of the powers conferred by that section.

PART 1

Introduction

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Single Common Market Organisation (Emergency Aid) (England and Northern Ireland) Regulations 2017 and come into force on 22nd May 2017.

(2) Except for regulation 8, these Regulations—

- (a) extend to England and Wales and to Northern Ireland, and
- (b) apply in England and Northern Ireland only.

(3) An amendment of an instrument by regulation 8 has the same extent and application as the instrument being amended.

Interpretation

2. In these Regulations—

“the 2014 Regulations” means the Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014(c);

(a) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).

(b) S.I. 1972/1811. The power of the Secretary of State to make regulations that extend to Northern Ireland is exercisable by virtue of article 3(2) of the European Communities (Designation) (No. 3) Order 2000 (S.I. 2000/2812).

(c) S.I. 2014/3263, relevant amending instruments are S.I. 2015/1325, 1997.

“Commission Regulation 2016/1613” means Commission Delegated Regulation (EU) 2016/1613 providing for exceptional adjustment aid to milk producers and farmers in other livestock sectors^(a);

“the Direct Payments Regulation” means Regulation (EU) 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy^(b);

“emergency payment” means a payment of exceptional adjustment aid made under regulation 3 of these Regulations, pursuant to Article 1(1)(b) of Commission Regulation 2016/1613;

“other measure” means a measure, other than an emergency payment, taken by the Secretary of State to provide exceptional adjustment aid to any person pursuant to Article 1(1) of Commission Regulation 2016/1613.

PART 2

Emergency payments

Emergency payments to milk producers

- 3.—(1) Before making any emergency payment, the Secretary of State must determine—
- (a) the formula for calculating the amount of any emergency payment to be paid to a milk producer in England, and
 - (b) the formula for calculating the amount of any emergency payment to be paid to a milk producer in Northern Ireland.
- (2) After determining the formulae referred to in paragraph (1) and before making any emergency payment, the Secretary of State must publish, on a website maintained by or on behalf of the Secretary of State, information setting out and explaining the formulae.
- (3) After publishing the information referred to in paragraph (2), the Secretary of State must provide that information to any person who requests it.
- (4) The Secretary of State must make an emergency payment, calculated in accordance with the applicable formula determined under paragraph (1), to each milk producer who—
- (a) submits an application, in a form approved by the Secretary of State, so that it is received by the Secretary of State on or before 31st May 2017,
 - (b) during the relevant period and on the date the application was made, managed a holding—
 - (i) that is situated in England or Northern Ireland, and
 - (ii) on which milk was produced to be marketed, or to manufacture any other milk product to be marketed, and
 - (c) marketed a combined volume of not more than 1 million litres of milk and milk equivalent during the relevant period.
- (5) For the purposes of paragraph (4)(b)(i), a holding is situated—
- (a) in England, if the Secretary of State is the competent authority for the holding under regulation 3 of the 2014 Regulations;
 - (b) in Northern Ireland, if the Department of Agriculture, Environment and Rural Affairs is the competent authority for the holding under that provision.
- (6) An emergency payment may be paid—

(a) OJ No. L 242, 9.9.2016, p 10, as last amended by Commission Delegated Regulation (EU) 2017/286 (OJ No. L 42, 18.2.2017, p 7)

(b) OJ No. L 347, 20.12.2013, p 608, as last amended by Commission Delegated Regulation (EU) 2016/142 (OJ No. L 28, 4.2.2016, p 8).

- (a) in pounds sterling, after applying the exchange rate determined in accordance with Article 1(2) of Commission Regulation 2016/1613, or
- (b) in euro.

(7) In this regulation—

“farmer” and “holding” have the same meaning as in the Direct Payments Regulation;

“markets” means delivers or makes direct sales of a product, and “marketed” is to be construed accordingly;

“milk” means the product of milking one or more cows;

“milk equivalent” means the quantity of milk used to manufacture any other milk product;

“milk producer” means a farmer who produces and markets milk;

“other milk product” means any milk product other than milk, and includes skimmed and semi-skimmed milk, cream, butter, yoghurt and cheese;

“the relevant period” means the period beginning on 1st April 2015 and ending on 31st March 2016.

PART 3

General powers of recovery and set off

Recovery of undue payments

4.—(1) A person is liable to repay any payment made to that person pursuant to Commission Regulation 2016/1613 if—

- (a) in relation to that payment, the person has made a statement or furnished any information which is false or misleading in any material particular,
- (b) the person is in breach of any term of a relevant agreement, or
- (c) the amount paid is in excess of—
 - (i) in relation to an emergency payment, the amount determined in accordance with regulation 3;
 - (ii) in relation to any other measure, any amount set out in a relevant agreement.

(2) The Secretary of State may serve on any person liable under paragraph (1) a notice requiring the repayment referred to in that paragraph.

(3) The payment referred to in paragraph (1) and any interest charged under regulation 5(1) is recoverable as a debt.

(4) In paragraph (1), “relevant agreement” means an agreement pursuant to Commission Regulation 2016/1613.

Interest

5.—(1) Interest may be charged in respect of each day of the period beginning on the day after the date of the notice served in accordance with regulation 4(2) and ending on the day on which the Secretary of State receives the amount required under that regulation.

(2) For the purpose of paragraph (1), the rate of interest applicable on any day is one percentage point above the Bank of England base rate.

(3) In paragraph (2), “Bank of England base rate” means—

- (a) the rate announced by the Monetary Policy Committee of the Bank of England^(a) for the time being in force as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short-term liquidity in the money markets, or
- (b) if an order under section 19 of the Bank of England Act 1998 (reserve powers) is in force, any equivalent rate determined by the Treasury under that section.

Set off

6. The Secretary of State may set off—

- (a) any sum payable by the Secretary of State under these Regulations or in accordance with any other measure against any sum recoverable by the Secretary of State under Regulation (EU) No 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy^(b);
- (b) any sum recoverable under regulation 4(3) against any sum payable by the Secretary of State under—
 - (i) the Direct Payments Regulation;
 - (ii) Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)^(c).

PART 4

Miscellaneous provisions

Notices

7.—(1) For the purposes of regulation 4(2), a notice may be served on a person by—

- (a) delivering it to that person,
- (b) leaving it at that person’s proper address,
- (c) sending it by post or fax to that person’s proper address, or
- (d) sending it by email to that person’s last known email address.

(2) For the purposes of paragraph (1)(a), a notice is delivered to—

- (a) a body corporate where it is given to an officer of that body;
- (b) a partnership where it is given to a partner or person having control or management of the partnership;
- (c) an unincorporated association where it is given to an officer or member of the governing body of the association or other person having management responsibilities in respect of the association.

(3) In paragraph (1)(b) and (c), “proper address” means, in the case of—

- (a) a body corporate, the registered office (if it is in the United Kingdom) or the principal office of the body in the United Kingdom;
- (b) a partnership, the principal office of the partnership in the United Kingdom;
- (c) an unincorporated association, the principal office of the association in the United Kingdom;
- (d) any other person, that person’s last known address.

^(a) The Monetary Policy Committee was established under section 13 of the Bank of England Act 1998 (c. 11).
^(b) OJ No. L 347, 20.12.2013, p 549, as last amended by Regulation (EU) 2016/791 (OJ No. L 135, 24.5.2016, p 1).
^(c) OJ No. L 347, 20.12.2013, p 487, as last amended by Commission Delegated Regulation (EU) 2016/142 (OJ No. L 28, 4.2.2016, p 8).

- (4) For the purposes of paragraph (1)(d), a notice is sent by email to—
- (a) a body corporate, where it is sent to an email address of—
 - (i) the body corporate, or
 - (ii) an officer of that body,where that address is supplied by that body for the conduct of the affairs of that body;
 - (b) a partnership, where it is sent to an email address of—
 - (i) the partnership, or
 - (ii) a partner or person having control or management of the partnership,where that address is supplied by that partnership for the conduct of the affairs of that partnership;
 - (c) an unincorporated association, where it is sent to an email address of—
 - (i) an officer or member of the governing body of the association, or
 - (ii) another person having management responsibilities in respect of the association,where that address is supplied by that association for the conduct of the affairs of that association.

Amendment of secondary legislation

- 8.**—(1) The following Regulations are each amended as set out in paragraph (2)—
- (a) Schedule 1 to the 2014 Regulations;
 - (b) the Schedule to the Common Agricultural Policy (Control and Enforcement) Regulations (Northern Ireland) 2015(a);
 - (c) the Schedule to the Common Agricultural Policy (Review of SCMO Decisions) Regulations (Northern Ireland) 2015(b).
- (2) At the appropriate place insert—
- “Commission Delegated Regulation (EU) 2016/1613 providing for exceptional adjustment aid to milk producers and farmers in other livestock sectors(c)”.

25th April 2017

George Eustice
Minister of State
Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the implementation in England and Northern Ireland of Commission Regulation (EU) 2016/1613 providing for exceptional adjustment aid to milk producers and farmers in other livestock sectors (OJ No. L 242, 9.9.2016, p. 10).

Part 2 provides for a scheme of emergency payments to milk producers in England and Northern Ireland. Regulation 3 requires the Secretary of State to determine and to make available information about the basis on which an emergency payment to milk producers is to be calculated,

(a) S.R. 2015/192.

(b) S.R. 2015/408.

(c) OJ No. L 242, 9.9.2016, p 10, as last amended by Commission Delegated Regulation (EU) 2017/286 (OJ No. L 42, 18.2.2017, p 7).

and then to make an emergency payment to every qualifying milk producer who submits an application by 31st May 2017.

Part 3 provides for general powers to recover and to set off undue payments made in relation to Commission Regulation (EU) 2016/1613, whether under Part 2 of these Regulations or otherwise. Regulation 4 provides that any overpayments made pursuant to Commission Regulation (EU) 2016/1613 are recoverable as a debt, and regulation 5 provides for the rate of interest on recoverable amounts. Regulation 6 allows for any overpayments to be set off against any direct payment or rural development payment due to a farmer.

Regulation 8 amends specified secondary legislation so as to bring the matters covered by these Regulations within the control and enforcement and appeals regimes contained within each of the specified instruments.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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