1994 No. 181

AGRICULTURE

Arable Area Payments Regulations (Northern Ireland) 1994

Made	*10th May 1994*
Coming into operation . .	*13th May 1994*

The Department of Agriculture, being a Department designated(**a**) for the purposes of section 2(2) of the European Communities Act 1972(**b**) in relation to the common agricultural policy of the European Community, in exercise of the powers conferred on it by that section and of every other power enabling it in that behalf, hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Arable Area Payments Regulations (Northern Ireland) 1994 and shall come into operation on 13th May 1994.

Interpretation

2.—(1) In these Regulations—

"agricultural parcel" means a cultivated plot referred to in Article 2(1)(e) of Commission Regulation 2294/92 or in Article 2(e) of Commission Regulation 2295/92 or a separate piece of an area referred to in Article 4(3) of Commission Regulation 2780/92;

"arable compensatory payment" means a compensatory payment other than a compensatory payment made in respect of set-aside land;

"authorised person" means any person who is authorised by the Department, either generally or specially, to act in matters arising under these Regulations;

"collector" has the same meaning as in Article 1 of Commission Regulation 334/93;

"combinable crop" means any crop commonly harvested using a combine harvester;

"Commission Regulation 2293/92" means Commission Regulation (EEC) No. 2293/92(**c**) laying down detailed rules for the application of Council Regulation 1765/92 with regard to the set-aside scheme referred to in Article 7, as amended by Commission Regulation (EEC)

(**a**) S.I. 1972/1811

(**b**) 1972 c. 68; section 2 is subject to Schedule 2 to that Act and is to be read with S.I. 1984/703 (N.I. 3) and S.R. 1984 No. 253

(**c**) OJ No. L221, 6.8.92, p. 19

No. 1379/93(**a**) and further amended by Commission Regulation (EEC) No. 2594/93(**b**);

"Commission Regulation 2294/92" means Commission Regulation (EEC) No. 2294/92(**c**) on detailed rules for the application of the support system for producers of the oilseeds referred to in Council Regulation 1765/92, as amended by Commission Regulation (EEC) No. 2890/92(**d**), Commission Regulation (EEC) No. 819/93(**e**), Commission Regulation (EEC) No. 1664/93(**f**), Commission Regulation (EEC) No. 2776/93(**g**) and Commission Regulation (EC) 243/94(**h**);

"Commission Regulation 2295/92" means Commission Regulation No. 2295/92(**i**) on detailed rules for the application of the support system for producers of the protein crops referred to in Article 6 of Council Regulation 1765/92, as amended by Commission Regulation (EEC) No. 2891/92(**j**), Commission Regulation (EEC) No. 1664/93 and Commission Regulation (EC) No. 3347/93(**k**);

"Commission Regulation 2780/92" means Commission Regulation (EEC) No. 2780/92(**l**) on the conditions for the grant of compensatory payments under the support system for producers of certain arable crops;

"Commission Regulation 334/93" means Commission Regulation (EEC) No. 334/93(**m**) laying down detailed implementing rules for the use of land set aside for the provision of materials for the manufacture within the Community of products not primarily intended for human or animal consumption;

"Commission Regulation 2595/93" means Commission Regulation (EEC) No. 2595/93(**n**) laying down detailed rules as regards the use of land set aside for the production of multiannual raw materials for the manufacture within the Community of products not intended for human or animal consumption;

"compensatory payment" means a compensatory payment under Article 2(2) of Council Regulation 1765/92;

"Council Regulation 2092/91" means Council Regulation (EEC) No. 2092/91(**o**) on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs;

(**a**) OJ No. L136, 5.6.93, p. 17
(**b**) OJ No. L238, 23.9.93, p. 19
(**c**) OJ No. L221, 6.8.92, p. 22
(**d**) OJ No. L288, 3.10.92, p. 10
(**e**) OJ No. L85, 6.4.93, p. 13
(**f**) OJ No. L158, 30.6.93, p. 19
(**g**) OJ No. L252, 9.10.93, p. 7
(**h**) OJ No. L30, 3.2.94, p. 41
(**i**) OJ No. L221, 6.8.92, p. 28
(**j**) OJ No. L288, 3.10.92, p. 12
(**k**) OJ No. L300, 7. 12.93, p. 5
(**l**) OJ No. L281, 25.9.92, p. 5
(**m**) OJ No. L38, 16.2.93, p. 12
(**n**) OJ No. L238, 23.9.93, p. 21
(**o**) OJ No. L198, 22.7.91, p. 1

"Council Regulation 1765/92" means Council Regulation (EEC) No. 1765/92(**a**) establishing a support system for producers of certain arable crops, as amended by Council Regulations (EEC) Nos. 364/93(**b**) and 1552/93(**c**) and Council Regulations (EC) Nos. 231/94(**d**) and 232/94(**e**), as read with Commission Regulation (EEC) No. 3738/92(**f**);

"Council Regulation 3508/92" means Council Regulation (EEC) No. 3508/92(**g**) establishing an integrated administration and control system for certain Community aid schemes;

"the Department" means the Department of Agriculture for Northern Ireland;

"eligible land" means land—

(*a*) for which aid has been granted under Title I of Council Regulation (EEC) No. 2328/91(**h**) or in respect of which an application for direct payments has been accepted under Council Regulation (EEC) No. 3766/91(**i**); or

(*b*) not under permanent pasture (as defined in the Annex to Commission Regulation 2780/92), permanent crops (as defined in the same Annex), forest or non-agricultural uses on 31st December 1991;

"farmer" means a farmer within the meaning of Article 1(4) of Council Regulation 3508/92 who applies to the Department for a compensatory payment;

"farm-saved rapeseed" means seed conforming to the provisions of Article 3(1)(b) of Commission Regulation 2294/92;

"green cover" means a green cover established or, as the case may be, failing to be established in accordance with Part III of Schedule 2;

"green cover season" means the period commencing on 15th January and ending on 30th April;

"holding" has the same meaning as in Article 1(4) of Council Regulation 3508/92;

"land set aside for non-food purposes" means land set aside for the provision of raw materials for the manufacture within the European Community of products not primarily intended for human or animal consumption, in accordance with either Commission Regulation 334/93 or Commission Regulation 2595/93;

(**a**) OJ No. L181, 1.7.92, p. 12
(**b**) OJ No. L42, 19.2.93, p. 3
(**c**) OJ No. L154, 25.6.93, p. 19
(**d**) OJ No. L30, 3.2.94, p. 2
(**e**) OJ No. L30, 3.2.94, p. 7
(**f**) OJ No. L380, 24.12.92, p. 24
(**g**) OJ No. L355, 5.12.92, p. 1
(**h**) OJ No. L218, 6.8.90, p. 1
(**i**) OJ No. L356, 24.12.91, p. 17

"legal requirement", in relation to a farmer, means an obligation which the Department is satisfied is legally binding on the farmer;

"non-rotational set-aside land" means land set aside in accordance with the provisions of Article 3a(1) of Commission Regulation 2293/92;

"organic waste" means any waste material produced by or from animals or plants as a by-product of agricultural production, including animal bedding;

"permitted agricultural production" means—

(*a*) the production of products for non-food purposes in accordance with Commission Regulation 334/93 or Commission Regulation 2595/93; or

(*b*) during the period commencing on 1st September and ending on 14th January only and to the extent not prohibited by Article 3(3) of Commission Regulation 2293/92, the use of set-aside land for keeping animals and feeding animals and the harvesting of crops from that land provided that no payment or benefit in kind is received by the farmer in respect of such use or harvesting;

"processor" means a processor referred to in Article 11 of Commission Regulation 334/93;

"production region" has the same meaning as in Article 3 of Council Regulation 1765/92;

"rotational set-aside land" means land, other than non-rotational set-aside land, set aside in order to satisfy the conditions specified in Article 3(4) of Commission Regulation 2293/92;

"seed crop" means a crop grown so that the seed of the crop may be harvested and sown to establish a further crop;

"set-aside" means withdraw from agricultural production other than permitted agricultural production;

"set-aside compensatory payment" means a compensatory payment made in respect of set-aside land, as provided for in Article 7(5) of Council Regulation 1765/92;

"set-aside land" means non-rotational set-aside land or rotational set-aside land;

"set-aside period" means the period commencing on 15th January and ending on 31st August during which rotational set-aside land must remain set aside in accordance with Article 3(4) of Commission Regulation 2293/92;

"shallow cultivate" means cultivate to a depth of no more than 7 centimetres;

"sharefarming agreement" means an agreement for the use of agricultural land for the purposes of a farming enterprise, made between the owner of that land (including a person entitled for a term of years certain or other limited estate) and a farmer who does not have a right to exclusive possession of that land or any legal interest or charge in or over it, under which—

(*a*) the relationship between the contracting parties is not one of partnership or employer and employee or landlord and tenant;

(*b*) the respective liabilities of the contracting parties for the farming enterprise remain separate and defined in the agreement;

(*c*) the contracting parties have joint responsibility for planning and managing the farming enterprise; and

(*d*) each contracting party's reward for participation in the farming enterprise is an agreed share of the output from that enterprise, including agricultural produce of all kinds produced on or from the land and, in any case where produce is sold on behalf of each party to the sharefarming agreement, revenues from such sale;

"specified control measure" means any check, test, verification, inspection, investigation, control or other operation in relation to arable land which a Member State is required to carry out under Council Regulation 3508/92 or Title IV of Commission Regulation (EEC) No. 3887/92(**a**) laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes;

"specified raw materials" means the raw materials listed in Annex I to Commission Regulation 334/93 and in Annex I to Commission Regulation 2595/93, produced on land set aside for non-food purposes;

"vernacular building" means a building of a design or style traditional in its locality;

"waste" means any type of agricultural, industrial or domestic waste.

(2) The Interpretation Act (Northern Ireland) 1954(**b**), except section 20(2) and (3), shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

Production region

3. For the purposes of Article 3 of Council Regulation 1765/92, Northern Ireland shall be a separate production region within the United Kingdom.

Calculation of projected regional reference amount

4. For the purpose of Article 5(1)(c) of Council Regulation 1765/92, the projected regional reference amount for Northern Ireland shall be calculated by comparing the oilseeds yield for Northern Ireland with the average oilseeds yield for the Community of 2.36 tonnes per hectare.

Minimum size of agricultural parcel

5.—(1) Subject to paragraph (2), for the purposes of Article 2(1)(e) of Commission Regulation 2294/92, Article 2(e) of Commission Regulation 2295/92 and Article 4(3) of Commission Regulation 2780/92 the minimum

(**a**) OJ No. L391, 31.12.92, p. 36
(**b**) 1954 c. 33 (N.I.)

size of an agricultural parcel for which an arable compensatory payment may be made shall be 0.10 hectare.

(2) In the case of a plot of land used for seed production or research, the minimum size of an agricultural parcel for which an arable compensatory payment may be made shall be 0.01 hectare.

Derogation from requirement to have farmed for two years land set aside

6. For the purposes of Article 3(4) of Commission Regulation 2293/92 the special cases, where a farmer shall be entitled to claim set-aside compensatory payment on land which he has not farmed for the two years prior to the commencement of the set-aside period, shall be those specified in Schedule 1.

Derogation from requirement to set aside land in Northern Ireland

7.—(1) For the purposes of the first paragraph of Article 4(2) of Commission Regulation 2293/92, paragraphs (2) and (3) shall apply where a farmer farms land in Northern Ireland and in any other production region within the United Kingdom.

(2) Where a farmer would be required (but for this provision) to set aside up to 2 hectares of land in Northern Ireland, he may set aside the required area of land in any one or more of the production regions in which he farms.

(3) Where a farmer would be required (but for this provision) to set aside land in Northern Ireland and the cereals yield in that region and in any other production region or regions in which he farms is the same, he may set aside the required area of land in any one or more of those production regions.

(4) For the purposes of paragraph (3) the cereals yield of a production region is the cereals yield calculated in accordance with Article 3(2) of Council Regulation 1765/92.

Requirements in relation to set-aside land

8.—(1) A farmer shall, subject to paragraphs (3) and (4), comply with the requirements set out in Part I of Schedule 2 in relation to his rotational set-aside land, and with the requirements set out in Part II of Schedule 2 in relation to his non-rotational set-aside land.

(2) Part III of Schedule 2, has effect for the purposes of supplementing Parts I and II thereof.

(3) If a farmer uses set-aside land for the provision of specified raw materials he—

(*a*) shall not be required to comply with any provision of Schedule 2, but

(*b*) shall comply with the requirements set out in Schedule 3, in relation to that land.

(4) A farmer shall be exempted from any requirement set out in Schedule 2 or 3 in relation to particular set-aside land, if he satisfies the Department that he should not be required to comply with it for any of the following reasons:—

(*a*) to facilitate research into the effect of the observance of particular methods of managing set-aside land;

(*b*) for environmental reasons;

(*c*) in the case of an educational establishment, to facilitate the fulfilment of its educational purpose;

(*d*) because during the set-aside period—

(i) a pipeline, cable or pylon is or will be laid through, or constructed on or across, the particular set-aside land and the farmer cannot reasonably prevent that laying or construction, provided that, in the case of land set aside as rotational set-aside land, laying or construction was not already in progress on the date on which the land was set aside;

(ii) maintenance of a pipeline, cable or pylon which the farmer cannot reasonably prevent is or will be carried out on the particular set-aside land; or

(iii) an archaeological excavation is or will be carried out on the particular set-aside land;

(*e*) for reasons of human or animal health or safety; or

(*f*) because, at the time at which compliance with that requirement would otherwise be required, it is likely that the cost of difficulty of complying with that requirement would be disproportionately high in comparison with the environmental benefit which compliance with that requirement would yield.

(5) The Department may specify that any exemption granted pursuant to paragraph (4) shall be effective only until a date, or the occurrence of a particular event, specified in the exemption.

Requirements in relation to rapeseed

9.—(1) A farmer who sows farm-saved rapeseed on his holding shall not be entitled to receive compensatory payments in respect of the land sown with that seed unless that seed is qualifying seed and has been cleaned and dressed separately from any farm-saved rapeseed of a different variety produced on that holding and from seed not produced on that holding.

(2) For the purposes of paragraph (1) seed is qualifying seed if it was harvested—

(*a*) during the pre-sowing harvest; or

(*b*) subject to paragraph (3) during the harvest immediately preceding the pre-sowing harvest.

(3) Seed harvested during the harvest immediately preceding the pre-sowing harvest is qualifying seed for the purposes of paragraph (1) only if—

(*a*) climatic conditions during the pre-sowing harvest were such that it was either not possible to harvest farm-saved rapeseed or not possible to clean and dress it as specified in paragraph (1) or to obtain the results of the mandatory analysis, before the time at which it would be necessary to sow seed in order to obtain a successful crop; and

(*b*) the farmer has informed the seed sampler, before sowing such seed, that he intended to sow it because the conditions of sub-paragraph (*a*) were satisfied.

(4) A farmer—

(*a*) who sows—

(i) a crop of high erucic acid rapeseed within 100 metres of a previously sown crop of 00 rapeseed, or

(ii) a crop of 00 rapeseed within 100 metres of a previously sown crop of high erucic acid rapeseed,

shall not be regarded as having sown the crop sown later; and

(*b*) who, where sub-paragraph (*a*) applies, sowed both crops, shall not be regarded as having sown either crop,

in accordance with locally recognised standards as required by Article 2(1)(d) of Commission Regulation 2294/92.

(5) For the purposes of this regulation—

(*a*) the ''pre-sowing harvest'' is the harvest immediately preceding the autumn or spring in which the seed is sown;

(*b*) the ''seed sampler'' is an appointed agent of the Department whom the Department has authorised by letter to take the samples required for mandatory analyses;

(*c*) a ''mandatory analysis'' is the analysis required by Annex III of Commission Regulation 2294/92 to ensure that farm-saved rapeseed to which Article 3(1)(b) of that Regulation applies conforms to the minimum quality criterion specified in that Annex; and

(*d*) ''00 rapeseed'' is any variety of oilseed rape listed in Annex II to Commission Regulation 2294/92.

Keeping and retention of records by a farmer

10.—(1) A farmer shall keep all invoices, seed labels, sales and delivery notes relating to seed planted on land in respect of which he makes an application for compensatory payment, and retain them for 4 years from the end of the year of harvest relating to that seed.

(2) A farmer who sows farm-saved seed shall keep and retain for 4 years from the end of the year of harvest relating to that seed—

(*a*) all invoices, seed labels, sales and delivery notes relating to the seed which produced the crop from which the farm-saved seed was obtained; and

(*b*) all invoices and delivery notes relating to the cleaning and dressing of the farm-saved seed.

(3) Where a farmer claims a compensatory payment in respect of land set-aside for non-food purposes, he shall keep all delivery notes relating to the crop grown on that land and retain them for 4 years from the end of the year of harvest relating to that crop.

(4) For the purposes of this regulation—

(*a*) the year of harvest relating to seed is the calendar year in which the crop grown from that seed is harvested, destroyed or otherwise removed from the land, and the year of harvest relating to any crop is the calendar year in which that crop is harvested, destroyed or otherwise removed from the land; and

(*b*) "farm-saved seed" is seed which is the product of a harvest on the holding on which it is sown.

Keeping and retention of records by a collector and by a processor

11.—(1) This regulation applies where a farmer claims a compensatory payment in respect of land set-aside for non-food purposes, other than non-rotational set-aside land used for the production of multiannual raw materials in accordance with the provisions of Commission Regulation 2595/93.

(2) A collector shall keep records of the quantity of all specified raw materials produced on that land, which he has purchased and sold for processing, and the names and addresses of all subsequent buyers or processors to whom he has sold those specified raw materials.

(3) A collector shall retain the records referred to in paragraph (2) for the shorter of—

(*a*) three years from the date on which he delivers to a processor the specified raw materials to which those records relate, with a view to their being processed to obtain one or more of the products mentioned in Annex II to Commission Regulation 334/93; or

(*b*) seven years from the date of creation of those records.

(4) A processor shall keep records showing on a daily basis in relation to specified raw materials so produced—

(*a*) the quantity of all specified raw materials purchased by him for processing;

(*b*) the quantity of specified raw materials processed by him together with the quantity and type of products and by-products obtained from the processing;

(*c*) the losses of specified raw materials resulting from processing;

(*d*) the quantity of specified raw materials destroyed, if any, together with the reason for such destruction;

(*e*) the quantity and type of products and by-products sold or otherwise disposed of by him and the price obtained; and

(*f*) the names and addresses of all subsequent buyers or processors to whom he sells the specified raw materials or products or by-products of processing.

(5) A processor shall retain the records referred to in paragraph (4) for two years from the date on which he processes, destroys, sells or otherwise disposes of, as the case may be, specified raw materials to which those records relate.

Reduction of compensatory payments for breach of Schedule 2 and 3

12.—(1) In the event of a breach by a farmer of any requirement referred to in Schedule 2, other than the requirements referred to in paragraph 11 of Part I of Schedule 2 and paragraph 20 of Part II of Schedule 2, the set-aside compensatory payment shall be reduced by £100 for each hectare of land in respect of which any requirement is breached.

(2) In the event of a breach by a farmer of the requirements referred to in paragraph 11 of Part I of Schedule 2, paragraph 20 of Part II of Schedule 2, or paragraph 1 of Schedule 3, the set-aside compensatory payment he shall be entitled to receive shall be reduced by £100 for each feature referred to in that paragraph which he destroys, damages or removes.

(3) In the event of a breach by the farmer of any requirement referred to in paragraphs 2 to 4 of Schedule 3, no set-aside compensatory payment shall be paid in respect of the land no longer to be used for the provision of specified raw materials.

Rate of interest where compensatory payments fail to be returned

13.—(1) This regulation applies where any compensatory payment is paid to a farmer by the Department and, by virtue of Article 14(1) of Commission Regulation (EEC) No. 3887/92 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes, the farmer is required to reimburse all or part of that payment.

(2) Except where the Department recovers from any person any compensatory payment made as a result of the error of that Department, interest shall be charged at the rate of one percentage point above the sterling London Interbank Offered Rate on a day to day basis for the period specified in that Article on the amount failing to be so reimbursed.

Powers of authorised persons

14.—(1) An authorised person may at all reasonable hours and on producing, if so required, some duly authenticated document showing his authority, exercise the powers specified in this regulation for the purposes of—

(*a*) carrying out any specified control measure; or

(*b*) ascertaining whether an offence under these Regulations has been or is being committed.

(2) An authorised person may enter any premises, other than premises used only as a dwelling, which are, or which such person has reasonable cause to believe to be, occupied by, or in the possession of, a farmer, collector or processor or an employee or agent of a farmer, collector or processor.

(3) An authorised person who has entered any premises by virtue of this regulation may—

(*a*) inspect all or any part of the land farmed or set aside by a farmer;

(*b*) inspect any crops growing on that land or kept on it.

(4) An authorised person may—

(*a*) require any farmer, collector or processor or any employee or agent of a farmer, collector or processor to produce any record and to supply such additional information in that person's possession or under his control relating to an application for a compensatory payment as the authorised person may reasonably request;

(*b*) inspect any such record and, where any such record is kept by means of a computer, have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with that record;

(*c*) require that copies of, or extracts, from any such record be produced;

(*d*) seize and retain any such record which he has reason to believe may be required as evidence in proceedings under these Regulations and, where any such record is kept by means of computer, require it to be produced in a form in which it may be taken away.

(5) An authorised person entering any premises by virtue of this regulation may take with him such other persons as he considers necessary and sub-paragraphs (2), (3) and (4) shall apply to any such persons, when acting under the instructions of an authorised person, as if they were authorised persons.

Assistance to authorised persons

15. A farmer, collector or processor or any employee, or agent of a farmer, collector or processor shall give to an authorised person such assistance as the authorised person may reasonably request so as to enable the authorised person to exercise any power conferred upon him by regulation 14.

Offences and penalties

16.—(1) If any person fails to comply with an obligation imposed on him by regulation 10 or 11 he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400.

(2) If any person—

(*a*) intentionally obstructs an authorised person (or any person accompanying him and acting under his instructions) in the exercise of a power conferred by regulation 14; or

(*b*) fails without reasonable excuse to comply with a request made under regulation 15,

he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £400.

(3) If any person for the purpose of obtaining the whole or any part of a compensatory payment or in purported compliance with any requirement imposed in accordance with regulation 14(4) knowingly or recklessly makes a statement which is false or misleading in a material respect he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £2,000.

(4) Proceedings for an offence under paragraphs (1), (2) or (3) may, subject to paragraph (5), be brought within the period of six months from the

date on which evidence sufficient in the opinion of the prosecutor to justify proceedings came to his knowledge.

(5) No such proceedings under paragraphs (2) or (3) shall be brought, by virtue of this regulation more than 12 months after the commission of the offence.

(6) A certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient in his opinion to warrant the proceedings came to his knowledge shall be conclusive evidence of that fact.

(7) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

(8) Where an offence under this regulation which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(9) Where the affairs of a body corporate are managed by its members, the provisions of paragraph (8) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Sealed with the Official Seal of the Department of Agriculture for Northern Ireland on 10th May 1994.

(L.S.) *I. C. Henderson*
Assistant Secretary

SCHEDULE 1 Regulation 6

DEROGATION FROM REQUIREMENT TO HAVE FARMED SET-ASIDE LAND FOR TWO YEARS

1. In the following special cases a farmer shall be entitled to claim set-aside compensatory payment on land which he has not farmed for a period of two years prior to the commencement of the set-aside period:

(*a*) during the specified period, he—

(i) inherited the land or succeeded to a tenancy from year to year of it; or

(ii) having owned the land for at least 2 years at the commencement of the set-aside period, commenced farming it following the termination of an agreement with another farmer under which that other farmer farmed the land;

(*b*) the land forms part of a unit of sixty hectares or more of agricultural land of which he acquired ownership or relevant tenure during the specified period—

(i) in a single transaction; or

(ii) in more than one transaction, where the land thereby acquired formed part of the same unit of agricultural land immediately prior to the first such transaction;

(*c*) during the specified period he acquired ownership or relevanat tenure of the land and at the commencement of the set-aside period he owned, or occupied under relevant tenure (other than a tenancy which is less than a tenancy from year to year) no more than fifteen hectares of other agricultural land;

(*d*) although he is the farmer of the land, he let the land to another person for a period of less than 2 years within that part of the specified period which preceded the set-aside period;

(*e*) where—

(i) more than 10 per cent of the eligible land farmed by him is farmed under one or more sharefarming agreements or under one or more agreements which are for an interest or interests which are less than a tenancy from year to year; and

(ii) the land, farmed by him under one or more of the agreements referred to in sub-paragraph (i), is situated in the vicinity of the other land farmed by him, and can be reasonably farmed as a single unit with such other land; or

(*f*) he farms insufficient eligible land which he would be entitled to set aside under Article 7 of Council Regulation 1765/92 and Commission Regulation 2293/92, to be able—

(i) to comply with the requirement in Article 7 of Council Regulation 1765/92 to set aside 15 per cent of the total area on which he claims either arable compensatory payment or set-aside compensatory payment; or

(ii) to set-aside 18 per cent of the total area on which he claims either arable compensatory payment or set-aside compensatory payment, where the farmer wishes to set aside the land as non-rotational set-aside land.

2. For the purposes of this Schedule—

(*a*) a farmer has "relevant tenure" of agricultural land where he has entered into a tenancy or was granted a licence in respect of it or where he farms that land under a sharefarming agreement;

(*b*) "specified period" means the set-aside period and the period of two years prior to its commencement.

SCHEDULE 2 Regulation 8(1) and (2)

PART I

(REQUIREMENTS IN RELATION TO ROTATIONAL SET-ASIDE LAND)

Establishment and Maintenance of a Green Cover on Rotational Set-Aside Land

1.—(1) A farmer shall, except as provided in sub-paragraphs (2) to (4), establish a green cover on all his rotational set-aside land to which this Part applies before the commencement of the green cover season, and shall maintain it throughout that season.

(2) A farmer shall be exempt from the requirement in sub-paragraph (1) where—

(*a*) he satisfies the Department that for climatic reasons it was not practicable for there to be such a green cover at the commencement of the set-aside period, in which case he shall establish a green cover as soon as reasonably possible after that time and maintain it for the remainder of the green cover season; or

(*b*) a crop was in that land at 1st October prior to the commencement of the set-aside period, in which case the farmer may either—

(i) establish and maintain a green cover on that land in accordance with the requirement in sub-paragraph (1); or

(ii) not sow a green cover, in which case he shall—

(*aa*) maintain throughout the green cover season any natural cover which develops on that land, except to the extent that a circumstance in sub-paragraph (3)(*a*) or sub-paragraph (4) applies; and

(*bb*) prior to the end of the green cover season, carry out no operation affecting the surface of the land except for discing or shallow cultivating it.

(3) A farmer shall be exempt from the requirement to maintain a green cover—

(*a*) following the application of herbicide, where herbicide is applied to the land after 15th April in accordance with paragraph 9; or

(*b*) following the failure of the green cover, where he satisfies the Department that the green cover which he established failed and he could not reasonably have prevented such failure.

(4) A farmer shall not be required to establish or maintain a green cover on a strip of set-aside land of no more than the specified width, but may instead leave such a strip as bare fallow—

(*a*) where the set-aside land lies adjacent to a road or track likely to permit vehicular access to it, the strip so left is in any place where access to that land from that road or track is possible and that strip is ploughed; or

(*b*) where the set-aside land lies adjacent to any crop and the strip left lies between the crop and that part of the set-aside land on which a green cover has been established,

and the specified width for the purposes of paragraph (*a*) shall be 5 metres and that for paragraph (*b*) shall be 2 metres where the crop is a seed crop and 1 metre in the case of any other crop.

Cultivation of the Set-Aside Land and Replacement of the Green cover

2. A farmer shall not carry out any preparation for sowing a crop on the set-aside land prior to the end of the set-aside period, except in accordance with paragraph 3.

3. A farmer may—

(*a*) cultivate the land for the purpose of controlling weeds at any time on or after 1st May prior to the end of the set-aside period;

(*b*) make preparations for sowing and sow any arable crop or temporary grass ley on or after 15th July prior to the end of the set-aside period, provided that the farmer does not intend that any crop so sown should be harvested prior to 16th January following the end of the set-aside period;

(*c*) replace the green cover at any time provided that—

(i) such replacement is necessary—

(*aa*) to control any serious infestation of weeds or pests or the spread of any disease; or

(*bb*) for reasons of health or safety or pollution control approved by the Department;

(ii) seed sufficient to sow a replacement green cover is stored on land which the farmer farms as a single unit with the land set aside before replacement of the existing green cover is commenced;

(iii) it is likely, having regard to the condition of the soil and expected climatic conditions, that sowing the stored seed at this time will result in the successful growth of a green cover; and

(iv) that seed is sown as soon as is practicable after the destruction of the existing green cover.

Destruction of the Green Cover

4. A farmer shall either—

(*a*) destroy the green cover by cultivation of or by application of herbicide to the set-aside land at the latest by 31st August within the set-aside period; or

(*b*) cut the green cover to an average length of not more than 10 centimetres at least once between 15th July and 15th August prior to the end of the set-aside period.

5.—(1) A farmer shall ensure that cuttings produced by cutting the green cover during the set-aside period are not used, or removed from or burnt on the set-aside land, except with the prior consent of the Department.

(2) A farmer shall ensure that no green cover established in accordance with paragraph 1 is burnt, except with the prior consent of the Department.

Use of Fertilisers, Pesticides, Herbicides and Fungicides on the Set-Aside Land

6.—(1) A farmer shall not apply any fertiliser or waste to the set-aside land except in accordance with the following sub-paragraphs.

(2) A farmer may apply fertiliser to the set-aside land if he satisfies the Department that the land is situated in an area known to be used as a feeding area by geese in winter and is to be managed as a feeding area for such geese.

(3) A farmer may apply organic waste to the set-aside land if there is a green cover on that land at the time when such organic waste is applied and that organic waste was produced on land which he farms as a single unit with the set-aside land.

7. A farmer shall not store organic waste on set-aside land unless he stores it in a field which forms all or part of the land set aside and that organic waste is to be applied by him to that field in accordance with paragraph 6(3).

8. A farmer shall not apply fungicides or insecticides to the set-aside land unless he satisfies the Department that the application is necessary in order to control plant health problems which cannot be remedied by any other reasonable means.

9. Subject to paragraph 10 a farmer shall not apply herbicide to the set-aside land unless—

(*a*) it is of a type which is absorbed into a plant primarily through the leaves and stem; and

(*b*) such application if undertaken before 15th April—

(i) is not likely significantly to damage green cover on the land;

(ii) is undertaken using herbicide applied either as a spot treatment or with a wick applicator; or

(iii) is undertaken in order to create or maintain the bare fallow strip permitted under paragraph 1(4).

10. A farmer may apply any herbicide to set-aside land—

(*a*) where the Department is satisfied that such application is necessary to control a serious infestation of weeds or pests or the spread of any disease and any green cover is replaced following the application in accordance with paragraph 3(*c*); or

(*b*) in order to create or maintain a bare fallow strip permitted under paragraph 1(4), provided that the farmer obtains the prior consent of the Department to such application, which consent shall only be given where it is satisfied that the application of herbicides in accordance with paragraph 9(*b*)(iii) has not been effective to maintain that fallow strip.

Retention of Features on the Set-Aside Land

11. A farmer shall not damage, destroy or remove—

(*a*) any existing hedge or row of trees (including hedgerow trees),

(*b*) any existing lake, lough, ditch, watercourse, pond or pool,

(*c*) any existing vernacular building or stone wall, or

(*d*) any archaeological feature,

which is situated on or adjacent to the set-aside land unless he satisfies the Department either that it should be damaged, destroyed or removed for environmental or for safety reasons or that he is obliged to damage, destroy or remove it to comply with a legal requirement.

PART II

(REQUIREMENTS IN RELATION TO NON-ROTATIONAL SET-ASIDE LAND)

A. MANAGEMENT OPTIONS FOR NON-ROTATIONAL SET-ASIDE LAND

General

1. Subject to paragraphs 2 and 3, for each field or part field of non-rotational set-aside land, a farmer shall comply with such conditions set out in the following paragraphs as relate to one of the following management options—

(*a*) the Grassland Option referred to in paragraph 4;

(*b*) the Natural Regeneration Option referred to in paragraph 5;

(*c*) the Wild Bird Cover Option referred to in paragraph 6; or

(*d*) where part only of a field is set aside, the Field Margins Option referred to in paragraph 7.

2. If—

(*a*) a farmer applies in writing to the Department for permission to manage non-rotational set-aside land in accordance with a management plan set out in his application; and

(*b*) the written consent of the Department to this plan is obtained,

the farmer shall, following the grant of that consent, manage the land in accordance with that management plan.

3. A farmer need not establish a green cover on—

(*a*) a strip of up to 1 metre wide at the edge of the land set aside, where the land set aside adjoins land planted with a crop other than a seed crop;

(*b*) a strip of land up to 2 metres wide at the edge of land set aside, where the land set aside adjoins land planted with a seed crop;

(*c*) a strip of land up to 5 metres wide at the edge of the land set aside in any place where vehicular access to that land from a road or track adjacent to that land may be possible, provided that the strip is ploughed and left as bare fallow.

The Grassland Option

4. In respect of each field to be managed in accordance with the Grassland Option, a farmer shall—

(*a*) establish a green cover in accordance with paragraph 2(*b*) of Part III by sowing it as soon as is practicable following the harvest of the previous crop and maintain it thereafter; and

(*b*) cut the green cover in accordance with paragraph 8.

The Natural Regeneration Option

5. In each field to be managed in accordance with the Natural Regeneration Option, a farmer—

(*a*) shall establish a green cover in accordance with paragraph 2(*a*) of Part III and maintain it thereafter;

(*b*) shall not carry out any operation likely to inhibit the establishment or maintenance of that green cover except that—

(i) in the first 12 months that the field is set aside; and

(ii) in subsequent years with the consent of the Department, the farmer may disc or shallow cultivate the field; and

(*c*) shall cut the green cover in accordance with paragraph 8.

The Wild Bird Cover Option

6.—(1) In each field to be managed in accordance with the Wild Bird Option, a farmer:

(*a*) shall—

(i) where practicable establish a green cover in accordance with paragraph 2(*a*)(i) of Part III; or

(ii) where that is not practicable establish a green cover in accordance with paragraph 2(*d*) of Part III,

and shall maintain it until it fails to be replaced as specified below;

(*b*) shall replace any green cover established in accordance with paragraph (*a*)(i) by sowing a new green cover in accordance with paragraph 2(*d*) of Part III as early as is practicable during the first calendar year that the field is set aside; and

(*c*) shall replace the existing green cover established in accordance with paragraph (*a*)(ii) or (*b*) by sowing a new green cover in accordance with paragraphs 2(*d*) of Part III as early as is practicable in either the calendar year following that in which the existing green cover was established or in the calendar year following that.

(2) A farmer shall ensure, when replacing the green cover as required by sub-paragraph (1)(*b*) and (*c*) that the requirements of paragraph 10(1)(*a*) to (*d*) are satisfied.

The Field Margins Option

7. In each part field to be managed in accordance with the Field Margins Option, a farmer—

(*a*) shall establish a green cover in accordance with paragraph 4(*a*) or 5(1)(*a*) of Part II and maintain it thereafter;

(*b*) shall cut the green cover at least once during each period of 12 months that the land remains set aside, except that he may leave uncut a strip of green cover up to 2 metres wide adjacent to any hedge or woodland;

(*c*) shall not use the green cover for agrciultural production or permit it to be so used unless—

(i) he has previously notified the Department of his intention to use the cover for permitted agricultural production; and

(ii) he cuts the green cover to an average length of no more than 10 centimetres at least once between 15th July and 15th August prior to the end of the set-aside period.

Cutting the Green Cover

8.—(1) In each field to which this paragraph applies, a farmer shall (subject to sub-paragraph (2)), cut the green cover to an average length of no more than 10 centimetres at least once between 15th July and 15th August prior to the end of the set-aside period.

(2) A farmer may—

(*a*) leave a strip of green cover up to 2 metres wide uncut adjacent to any hedge or woodland;

(*b*) leave a further 10% of the area set aside in each field uncut, provided that any area left uncut in accordance with this paragraph is cut in accordance with sub-paragraph (1) in the following year; and

(*c*) on application to the Department be exempted from the duty to comply with any or all of the requirements of sub-paragraph (1).

B. GENERAL MANAGEMENT CONDITIONS APPLYING TO ALL NON-ROTATIONAL SET-ASIDE LAND

9. The provisions in the following paragraphs in this Part apply to all non-rotational set-aside land managed in accordance with any of the provisions of paragraphs 1 to 8.

Replacement of the Green Cover and Changing Management Options

10.—(1) A farmer may replace existing green cover in a field with another provided that—

(*a*) seed sufficient to sow a replacement green cover is stored on land which the farmer farms as a single unit with the land set aside before replacement of the existing green cover is commenced;

(*b*) it is likely, having regard to the condition of the soil and expected climatic conditions, that sowing the stored seed at this time will result in the successful growth of a green cover;

(*c*) this seed is sown as soon as is practicable after the destruction of the existing green cover; and

(*d*) where the land is managed in accordance with a management plan approved by the Department under paragraph 2, the Department's consent is obtained before the farmer commences replacement of the green cover.

(2) The farmer shall comply with the conditions relating to one of the management options set out at paragraph 1 in respect of the replacement green cover, unless the Department approves a management plan in accordance with paragraph 2, in which case the farmer shall comply with the provisions of that plan.

11.—(1) A farmer shall ensure that cuttings produced by cutting green cover are not used for any commercial or agricultural purpose, or removed from or burnt on the set-aside land, except with the prior consent of the Department.

(2) A farmer shall ensure that no green cover established in accordance with this Part is burnt, except with the prior consent of the Department.

Application of Fertilisers, Pesticides, Herbicides and Fungicides to the Set-Aside Land

12. A farmer shall not apply any fertiliser, waste or lime to the set-aside land except in accordance with the following paragraphs.

13. A farmer may apply fertiliser to land set aside if he satisfies the Department that the land is situated in an area known to be used as a feeding area by geese in winter and is to be managed as a feeding area for such geese.

14. A farmer may apply organic waste to the set-aside land if that organic waste was produced on land which he farms as a single unit with the set-aside land and he satisfies the Department, before applying the waste to the land, that he would not otherwise be able to dispose of it satisfactorily.

15. A farmer may apply fertiliser with a total nitrogen content of not more than 30 kilograms per hectare to land managed in accordance with paragraph 6(1), in any year in which a new green cover is established in accordance with paragraph 6(1)(*b*) or (*c*).

16. A farmer shall not store organic waste on the set-aside land unless he stores it in a field which forms all or part of the set-aside land and that organic waste is to be applied by him to that field in accordance with paragraph 12.

17. A farmer shall not apply fungicides or insecticides to the set-aside land unless he satisfies the Department that the application is necessary in order to control plant health problems which cannot be remedied by any other reasonable means.

18. Subject to paragraph 19, a farmer shall not apply herbicide to the set-aside land unless—

(*a*) it is of a type which is absorbed into a plant primarily through the leaves and stem; and

(*b*) such application—

(i) is not likely significantly to damage green cover on the land;

(ii) is made prior to replacing the green cover in accordance with paragraph 10;

(iii) is undertaken using herbicide applied either as a spot treatment or with a wick applicator; or

(iv) is undertaken in order to create or maintain the bare fallow strip permitted under paragraph 3(*c*).

19. A farmer may apply any herbicide to set-aside land—

(*a*) where the Department is satisfied that such application is necessary to control a serious infestation of weeds or pests or the spread of any disease and any green cover is replaced following the application in accordance with paragraph 10(1)(*a*) and (*c*); or

(*b*) in order to create or maintain a bare fallow strip permitted under paragraph 3(*c*), provided that the farmer obtains the prior consent of the Department to such application, which consent shall only be given where it is satisfied that the application of herbicides in accordance with paragraph 18(*b*)(iv) has not been effective to maintain that fallow strip.

Retention of Features on the Set-Aside Land

20. A farmer shall not damage, destroy or remove—

(*a*) any existing hedge or row of trees (including hedgerow trees);

(*b*) any existing lake, lough, ditch, watercourse, pond or pool;

(*c*) any existing vernacular building or stone wall; or

(*d*) any archaeological feature,

which is situated on or adjacent to the set-aside land unless he satisfies the Department either that it should be damaged, destroyed or removed for environmental or for safety reasons or that he is obliged to remove it to comply with a legal requirement.

PART III

(ESTABLISHMENT OF GREEN COVER)

1. Where Part I or II requires a farmer to establish a green cover on his set-aside land, that green cover shall be established—

(*a*) in the case of rotational set-aside land, in accordance with any of the methods specified in paragraph 2; and

(*b*) in the case of non-rotational set-aside land, in accordance with the method specified in paragraph 2 which is defined in Part II to be the appropriate method for establishing a green cover on set-aside land managed in accordance with the management option chosen by the farmer for that land.

Methods of Establishing a Green Cover

2. The methods by which a green cover may be established (subject to paragraphs 4, 5 and 6) are—

(*a*) allowing natural regeneration of—

(i) the previous herbage seed crop or combinable crop (other than a crop including maize or legumes); or

(ii) in the case of a green cover established on non-rotational set-aside land other than land managed in accordance with the Wild Bird Cover Option and with the consent in writing of the Department, any other crop;

(*b*) sowing grass seed and legumes or, in the case of non-rotational set-aside land, sowing a mixture of grass seed and the seed of native broad leaved plants not commonly used for agricultural production;

(*c*) sowing a plant cover other than one consisting either of plants normally grown for harvest, silage production or grazing or of legumes; or

(*d*) sowing a cover comprising a mixture of at least two types of crops which—

(i) produces a mixture of crops which it would not be practicable to harvest separately; and

(ii) is not a mixture only of different types of cereal or of different types of brassica,

which cover may include legumes if the mixture includes at least two other types of crop.

Use of Legumes in the Green Cover

3. A green cover shall not be established on rotational set-aside land by sowing a seed mixture containing more than 5 per cent by weight of legumes unless the farmer—

(*a*) satisfies the Department that he farms the land by organic means or is converting to doing so; and

(*b*) has pursuant to Article 8(1) of Council Regulation 2092/91 notified the authority which is the competent authority for the purposes of that Article that by so farming the land he produces products of a kind specified in Article 1 of that Regulation, and has submitted to the inspection system referred to in Article 9 thereof.

4. A green cover may not be established on non-rotational set-aside land by sowing a seed mixture which contains clover or lucerne.

5.—(1) For the purposes of paragraph 2(*b*), (*c*) and (*d*) breeder's, pre-basic or basic seed may not be sown in order to establish a green cover.

(2) For the purposes of sub-paragraph (1), seed is breeder's, pre-basic or basic seed if it is so classified in any Regulation made under the Seeds Act (Northern Ireland) 1965(**a**) which is in force at the time the seed intended to establish the green cover is sown.

(**a**) 1965 c. 22

SCHEDULE 3 Regulation 8(3)

REQUIREMENTS IN RELATION TO LAND SET-ASIDE FOR THE PROVISION OF SPECIFIED RAW MATERIALS

1. A farmer shall not damage, destroy or remove—

(*a*) any existing hedge or row of trees (including hedgerow trees),

(*b*) any existing lake, lough, ditch, watercourse, pond or pool,

(*c*) any existing vernacular building or stone wall; or

(*d*) any archaeological feature,

which is situated on or adjacent to the set-aside land unless he satisfies the Department either that it should be damaged, destroyed or removed for environmental or for safety reasons or that he is obliged to damage, destroy or remove it to comply with a legal requirement.

2. A farmer shall not adjust or annul any contract relating to that land, submitted to the Department in accordance with Article 6(1) of Commission Regulation 334/93, pursuant to Article 7(2) of that Regulation, unless he has notified the Department of the proposed adjustment or annulment, and the collector or processor with whom the contract was made has similarly notified the Intervention Board for Agricultural Produce, at least 10 working days before such adjustment or annulment takes effect.

3. Where as a result of such adjustment or annulment any land set aside for the provision of specified raw materials is no longer to be used for such provision, the farmer shall—

(*a*) dispose of any crop remaining on the land by a method which the Department is satisfied will result in its destruction; and

(*b*) subject to paragraph 4, establish a green cover on the land in accordance with Schedule 2.

4. The Department may grant the farmer an exemption from the requirement to establish a green cover pursuant to paragraph 3(*b*) where it considers that to require the establishment of a green cover would be unreasonable having regard to the date on which the contract was adjusted or annulled in accordance with paragraph 2.

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations come into operation on 13th May 1994. As specified below, they implement and supplement provisions of Council Regulation (EEC) No. 1765/92 (''the Council Regulation''), which establishes a support system for producers of certain arable crops, and of the Commission Regulations made under it, namely Commission Regulations (EEC) Nos. 2293/92, 2294/92, 2295/92, 2780/92, 334/93 and 2593/93. Regulation 2(1) defines these various Regulations, and the definitions include amendments to them.

Under the support system established under the Council Regulation, producers of particular arable crops are entitled to receive a compensatory payment calculated according to the area which they have sown with such crops.

The level of compensatory payment per hectare in a particular locality is determined (in accordance with Articles 4 and 5 of the Council Regulation) by multiplying an amount per tonne by the average yield per hectare for the production region in which the land lies. Member States are required to define production regions for the purposes of this calculation in accordance with the criteria set out in Article 3 of the Council Regulation. Northern Ireland is defined as a separate production region within the United Kingdom in regulation 3, and regulation 4 provides for yield calculation in relation to oilseed rape.

Article 7 of the Council Regulation requires all producers claimimg compensatory payments to set aside part of their arable land, unless they come within the exception for small producers, as defined in Article 8(2) of the Council Regulation. Except in circumstances justified by objective criteria laid down by Member States, the area of land which a producer sets aside in each production region must be in a specified ratio to the cropped land in that region for which he claims payment (Article 4(2) of Commission Regulation (EEC) No. 2293/92), and land qualifying to be set aside must have been previously farmed by him for at least 2 years (Article 3(4) of the same Regulation). The circumstances in which producers are exempted from the first requirement are set out in regulation 7, and those in which producers are exempted from the second requirement are set out in regulation 6 and Schedule 1.

To ensure protection of the environment, Member States are required to take appropriate measures relating to set-aside land (Article 3(3) of Commission Regulation (EEC) No. 2293/92). Regulations 8 and Schedules 2 and 3 specify the requirements to be met in relation to land set aside and set out how a green cover is to be established on land set aside.

Land sown with specified categories of oilseed only qualifies for compensatory payment when seed is sown in accordance with locally

recognised standards (Article 2(1)(d) of Commission Regulation (EEC) No. 2294/92) and conforms to a quality policy established by the Member State in accordance with Article 3(1) of that Regulation. Regulation 9 sets out the qualifying requirements for cleaning, dressing and harvesting farm-saved rapeseed and the qualifying planting distances for particular types of rapeseed.

The Regulations also—

(*a*) prescribe the minimum size of an agricultural parcel for which certain compensatory payments may be claimed (regulation 5);

(*b*) require farmers, collectors and processors to keep, retain and produce records (regulations 10 and 11);

(*c*) specify the reductions in compensatory payments applicable to breaches of requirements relating to land set aside (regulation 12);

(*d*) prescribe the rate of interest payable where a compensatory payment is recovered by the Department in cases where recovery does not result from an error by the Department (regulation 13);

(*e*) confer on authorised persons powers of entry for the purposes of the Regulations and require that such assistance be given to them for the exercise of their powers as they may reasonably request (regulations 14 and 15); and

(*f*) create offences and penalties (regulation 16).