1991 No. 405

EUROPEAN COMMUNITIES

AGRICULTURE

Temporary Set-Aside Regulations (Northern Ireland) 1991

Made . . . . . *29th August 1991*

Coming into operation . . *29th August 1991*

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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 Economic 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:

(**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

Citation and commencement

1. These Regulations may be cited as the Temporary Set-Aside Regulations (Northern Ireland) 1991 and shall come into operation on 29th August 1991.

Interpretation

2.—(1) In these Regulations—

"aid" means the aid referred to in Articles 2(a) and (b) of the Council Regulation;

"application" means an application under regulation 3 and "applicant" shall be construed accordingly;

"area of special scientific interest" means an area of land specially protected by a declaration made by the Department of the Environment for Northern Ireland under Article 24 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985(**a**);

"authorised officer" means an officer of the Department duly authorised for the purposes of regulation 12;

"beneficiary" means any applicant whose application has been accepted;

"the Commission Regulation" means Commission Regulation (EEC) No. 2069/91(**b**) laying down detailed rules for the application of the temporary set-aside scheme for arable land in the 1991/92 marketing year;

"Community Scheme" means the scheme for the temporary set aside of arable land introduced by the Council Regulation;

"the Council Regulation" means Council Regulation (EEC) No. 1703/91(**c**) introducing a temporary set-aside scheme for arable land for the 1991/92 marketing year and laying down special measures for that marketing year under the set-aside scheme provided for in Council Regulation (EEC) No. 797/85(**d**);

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

"designated map" means the map marked "map of less-favoured farming areas in Northern Ireland" dated 8th May 1991, signed by the Secretary of State and deposited at the offices of the Department at Dundonald House, Upper Newtownards Road, Belfast BT4 3SB;

"eligible arable crops" means those crops which are referred to in Article 1(2) of the Commission Regulation;

"eligible person" means an applicant who on the date of submission of his application occupies a holding as an owner or tenant;

"holding" means land which is occupied as a unit for agricultural purposes;

(**a**) S.I. 1985/170 (N.I. 1)
(**b**) O.J. No. L191, 16.7.91, p. 19
(**c**) O.J. No. L162, 26.6.91, p. 1
(**d**) O.J. No. L93, 30.3.85, p. 1

"landlord" means, in relation to the tenant of a holding or part of a holding, any person who either solely or jointly owns or has a superior tenancy of that holding or part;

"less-favoured area" means land within the area shaded blue or pink on the designated map—

(*a*) which is situated in an area included in the list of less-favoured farming areas adopted by the Council or the Commission of the European Communities under Article 2(2) of Council Directive 75/268/EEC(**a**) on mountain and hill farming and farming in certain less-favoured areas, as amended by Council Directive 80/666/EEC(**b**), which list is contained in Council Directive 84/169/EEC(**c**), as amended by Commission Decision 91/25/EEC(**d**); and

(*b*) which is, in the opinion of the Department, inherently suitable for extensive livestock production but not for the production of crops in quantity materially greater than that necessary to feed such livestock as are capable of being maintained on such land, and whose agricultural production is, in the opinion of the Department, restricted in its range by, or by any combination of, soil, relief, aspect or climate;

"obligations" means the obligations specified in regulation 4;

"premium" means that part of the aid which is referred to in Article 2(a) of the Council Regulation;

"registration" means the process of registering with the Department for the Community Scheme by supplying the information required by Article 3 of the Commission Regulation, and "registration form" shall be construed accordingly;

"to set aside" means, in relation to land, to withdraw it from agricultural production;

"temporary set-aside period" means the period starting with 1st September 1991 and ending with 31st August 1992;

"tenant" means a person who either—

(*a*) occupies a holding or part of a holding under a contract of tenancy for a fixed term of years of which at least one year remains unexpired at the commencement of the temporary set-aside period; or

(*b*) otherwise satisfies the Department that he has the right to occupy a holding or part of a holding as tenant for at least one year from the commencement of the temporary set-aside period;

(**a**) O.J. No. L128, 19.5.75, p. 1
(**b**) O.J. No. L180, 14.7.80, p. 34
(**c**) O.J. No. L82, 26.3.84, p. 67
(**d**) O.J. No. L16, 22.1.91, p. 25

"the 1988 Regulations" means the Set-Aside Regulations (Northern Ireland) 1988(**a**);

"vernacular buildings" in relation to any locality, means buildings traditionally found therein.

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

Applications

3.—(1) An application for aid under the Community Scheme may be submitted to the Department by an eligible person who has registered the land to which the application relates with the Department on or before 31st July 1991.

(2) An application—

(*a*) shall be made to the Department on or before 31st August 1991;

(*b*) shall contain the information specified in Article 9 of the Commission Regulation (which deals with the content of applications);

(*c*) shall include details of any changes in the information given on the applicant's registration form; and

(*d*) shall contain an undertaking that the applicant will in respect of the holding to which the application relates abide by the obligations specified in regulation 4 for the duration of the temporary set-aside period.

Obligations

4. The obligations referred to in regulation 3(2)(*d*) are as follows:

(*a*) to set aside on the holding an area of land which in preparation for the 1991 harvest was planted with one or more of the eligible arable crops in accordance with the terms of Article 1(3) of the Council Regulation (which deals with the areas of land to be set aside and the areas to remain under cultivation);

(*b*) to observe the requirements of Article 1(3) of the Council Regulation with regard to the area of the holding left under cultivation;

(*c*) to plant the land set aside with one or more of the plant cover types specified in Schedule 1 in accordance with the terms of Article 2(2) of the Commission Regulation (which deals with conditions relating to the land set aside);

(*d*) to observe the conditions set out in Schedule 2 for management of the land set aside.

Additional requirements in relation to land area

5.—(1) The area set aside under the Community Scheme shall include either—

(**a**) S.R. 1988 No. 279 as amended by S.R. 1989 No. 239 and S.R. No. 1990 No. 314
(**b**) 1954 c. 33 (N.I.)

(*a*) one whole field amounting to at least half a hectare; or

(*b*) an area consisting of adjacent whole fields and amounting to at least half a hectare.

(2) Where any land set aside consists of a strip of land, that strip shall be at least 15 metres wide.

(3) Land acquired by a beneficiary during the temporary set-aside period shall not be eligible for inclusion in the Community Scheme.

(4) Land acquired by an eligible person before 31st August 1991 may be the subject of an application provided that land has been registered.

Restrictions on acceptance of applications

6.—(1) The Department shall not accept an application from an eligible person who proposes to set aside land within an area of special scientific interest unless it is satisfied that that person has notified in writing the Department of the Environment for Northern Ireland of his intention to make the application.

(2) The Department shall not accept an application from a tenant unless it is satisfied that the tenant has notified in writing the landlord of the land which is the subject of the application of his intention to make the application in relation to that land.

(3) The Department shall not accept an application where it is satisfied that—

(*a*) the setting aside of any land or the use of any land that would be set aside in accordance with the proposals contained in that application would frustrate the purposes of any assistance previously given or to be given out of money provided by or under any statutory provision or by the European Economic Community; or

(*b*) payment of aid in respect of any land which an applicant proposes to set aside would duplicate any assistance previously given or to be given out of money provided by or under any statutory provision or by the European Economic Community.

Claims

7.—(1) A claim for the payment of aid shall be made on or before 31st August 1992.

(2) A claim under paragraph (1) shall include—

(*a*) details of any changes in the information given in the application; and

(*b*) a declaration that the beneficiary has fulfilled the obligations.

Rates of premium

8. The premium shall be payable at the rate per hectare of the land set aside shown in the following table:

	Payment per hectare of land set aside	
	Less-favoured area	*Elsewhere*
	£	£
(i) Where the beneficiary has undertaken to set aside more than 100 hectares and more than 75 per cent. of the land which was planted with eligible arable crops for the 1991 harvest, each hectare in excess of the first 100 hectares	79·20	91·20
(ii) Each hectare to which (i) does not apply	109·20	121·20

Change of occupation of whole of holding

9.—(1) Where during the temporary set-aside period there is a change of occupation on a holding of the whole of the area set aside and the whole of the area left under cultivation in accordance with Article 1(3) of the Council Regulation, by reason of the devolution of those areas on the death of a beneficiary or otherwise—

(*a*) the beneficiary (or, if he has died, his personal representatives) shall notify the Department in writing of the change of occupation and shall supply to the Department in writing details of that change of occupation;

(*b*) the new occupier may give an undertaking to the Department to comply with the obligations relating to that holding for the remainder of the temporary set-aside period.

(2) The Department shall not accept an undertaking given under paragraph 1(*b*) unless the Department is satisfied that that new occupier occupies that holding as an owner or tenant or as the personal representative of the original occupier.

(3) Where the Department has accepted an undertaking given under paragraph 1(*b*) that occupier shall be deemed to be a beneficiary and the undertaking to comply with the obligations shall take effect on the date of the acceptance by the Department of that undertaking.

(4) Where in pursuance of paragraph (3), a new occupier is deemed to be a beneficiary the Department may make payments of the aid due under the Community Scheme to that beneficiary and accordingly the original occupier shall cease to be treated as a beneficiary.

(5) Where within a period of three months from the date of change of occupation a new occupier has not given an undertaking to comply with the obligations assumed by the original occupier, the Department may withhold or recover as a civil debt the whole or any part of any payments of aid due or made to the original occupier or his personal representative.

(6) Paragraph (5) shall not apply where the change of occupation of a holding is the result of—

(*a*) the compulsory purchase of that holding; or

(*b*) the death of the original occupier, where

(i) that original occupier occupied that holding as a tenant; and

(ii) following the death of that original occupier the tenancy or lease under which he occupied that holding was terminated by the landlord.

Change of occupation of part of holding

10.—(1) Where during the temporary set-aside period there is a change of occupation on a holding of the whole or part of the area set aside under the Community Scheme, the original occupier shall no longer be treated as a beneficiary and accordingly shall not be entitled to aid.

(2) Where during the temporary set-aside period there is a change of occupation on a holding of the whole or part of an area other than the area set aside the original occupier may continue to be treated as a beneficiary.

Withholding and recovery

11.—(1) Where a person with a view to obtaining the payment of aid to himself or any other person, makes any statement or furnishes any information which is false or misleading in a material respect, the Department may withhold the whole or any part of any aid payable to that person or to such other person, and may recover the whole or any part of any aid already paid to that person or to such other person.

(2) Where a beneficiary—

(*a*) fails to comply with any of the obligations; or

(*b*) fails without reasonable excuse to permit entry and inspection by an authorised officer or to render all reasonable assistance to such an officer as required by regulation 12,

the Department may withhold the whole or any part of any aid payable to that beneficiary, and may recover the whole or any part of any aid already paid to him.

(3) Where the Department recovers from a beneficiary or any other person any aid already paid to him, the Department may in addition require from that beneficiary or other person payment of interest calculated in accordance with Article 21(1) of the Commission Regulation.

(4) Before withholding or recovering any premium under paragraph (2)(*a*), the Department shall—

(*a*) give to the beneficiary a written explanation of the reasons for the proposed withholding or recovery; and

(*b*) afford the beneficiary an opportunity of appearing before and being heard by a person appointed for that purpose by the Department; and

(*c*) consider the report by the person so appointed and supply a copy of the report to the beneficiary.

Requirement to permit entry and inspection

12.—(1) A person who has registered, who has made an application or who is a beneficiary shall permit any officer duly authorised by the Department, accompanied by such persons acting under his instructions as appear to that officer to be necessary for the purpose, at all reasonable times and on production of his authority on demand, to enter upon that person's holding in order to inspect any land, document or record with a view to verifying—

(*a*) the accuracy of any particulars given in a registration form, application or claim; and

(*b*) compliance with the obligations.

(2) A person to whom paragraph (1) applies shall render all reasonable assistance to the authorised officer in relation to the matters mentioned in paragraph (1), and in particular shall—

(*a*) produce such document or record as may be required by that officer for inspection; and

(*b*) at the request of that officer, accompany him in making the inspection of any land and identify any area of land which is mentioned in any registration form or concerned in any application or claim.

False statements

13. If any person, for the purposes of obtaining for himself or any other person any aid, knowingly or recklessly makes a false statement, he shall be liable on summary conviction to a fine not exceeding £2,000.

Amendment of the 1988 Regulations

14. Regulation 2(1) of the 1988 Regulations (interpretation) shall be amended—

(*a*) by substituting for the definition of ''designated map'' the following definition:

'' ''designated map'' means the map marked ''map of less-favoured farming areas in Northern Ireland'' dated 8th May 1991, signed by the Secretary of State and deposited at the offices of the Department at Dundonald House, Upper Newtownards Road, Belfast BT4 3SB;''; and

(*b*) by substituting for sub-paragraph (*a*) of the definition of ''less-favoured area'' the following sub-paragraph:

''(*a*) which is situated in an area included in the list of less-favoured farming areas adopted by the Council or the Commission of the European Communities under Article 2(2) of Council Directive 75/268/EEC(**a**) on mountain and hill farming and farming in certain less-favoured areas, as amended by Council Directive 80/666/EEC(**b**), which list is contained in Council Directive

(**a**) O.J. No. L128, 19.5.75, p. 1
(**b**) O.J. No. L180, 14.7.80, p. 34

84/169/EEC(**a**), as amended by Commission Decision 91/25/EEC(**b**)''.

Sealed with the Official Seal of the Department of Agriculture for Northern Ireland on 29th August 1991.

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

(**a**) O.J. No. L82, 26.3.84, p. 67
(**b**) O.J. No. L16, 22.1.91, p. 25

SCHEDULE 1 Regulations 2 and 4

Plant Cover Types

Grasses (*Gramineae*) excluding cereals

Mustards

Legumes (excluding peas, beans and lupins) where sown with any of the other plant cover types as part of a seed mixture, provided the legume content of the mixture does not exceed 5% by weight or 1.5 kg/ha, whichever is the lesser.

SCHEDULE 2 Regulation 4

Management Conditions

Establishment and retention of plant cover

1. The beneficiary shall sow and establish a plant cover of one or more of the types specified in Schedule 1 immediately after the commencement of the temporary set-aside period. If the crop planted in the year prior to the commencement of the temporary set-aside period has not yet been harvested, the plant cover shall be established immediately after the harvest. If the beneficiary is prevented from establishing a plant cover by exceptional weather conditions, he shall do so as soon as practicable.

2. Notwithstanding the requirement in paragraph 1 the beneficiary may retain unburnt cereal stubbles on the ground over winter and sow and establish in the spring a plant cover of one or more of the types specified in Schedule 1.

3. Subject to paragraph 4 the beneficiary shall retain the plant cover established in accordance with these conditions throughout the temporary set-aside period and shall re-establish it if it is wholly or partially destroyed.

4. The beneficiary may destroy the plant cover established in accordance with these conditions by cultivation where this is necessary—

(*a*) in order to control the spread of weeds, provided that where plant cover is destroyed for this purpose it shall be re-established as soon as practicable thereafter; or

(*b*) in order to prepare for the establishment of an alternative plant cover of one or more of the types specified in Schedule 1, provided that that alternative cover is established as soon as practicable after the destruction of the previous cover.

5. The beneficiary shall cut the plant cover established in accordance with these conditions at least twice in the temporary set-aside period. One of the cuts shall be between 1st July and 31st August 1992 and each cut must be at least one month apart from any other. The beneficiary shall not remove or sell cuttings or use them for feeding livestock.

6. Notwithstanding the requirement in paragraphs 1-5, the Department may authorise a beneficiary to follow different management conditions from those in this Schedule to protect or benefit the environment or for climatic reasons.

7. Subject to paragraph 8 the beneficiary shall not apply any inorganic or organic fertiliser (other than lime) to any land to which these conditions relate during the temporary set-aside period.

8. The Department may authorise a beneficiary to apply an inorganic fertiliser to land to which these conditions relate where it is satisfied that the land is located in an area normally used as a feeding-ground by over-wintering migratory geese. The beneficiary shall manage any land to which an inorganic fertiliser is applied pursuant to such authorisation in such a way as to provide a feeding-ground for such geese.

9. The beneficiary shall not use any land to which these conditions relate as a dumping ground for any type of organic or inorganic material.

Use of pesticides

10. Subject to paragraph 11 the beneficiary shall not apply pesticides to any land to which these conditions relate.

11. The Department may authorise a beneficiary to apply herbicides to land to which these conditions relate provided that any herbicide used is of a type which is absorbed into plants primarily through the leaves and the stem and which has little or no persistence in water and in the soil.

12. The beneficiary shall make a written record of the type, quantity, date and method of application of any herbicide used pursuant to any authorisation under paragraph 11 and of the reason for such use and shall keep the written record until 31st December 1992.

Maintenance of environmental features

13. The beneficiary shall maintain—

(*a*) all existing hedges and rows of trees (including hedgerow trees);

(*b*) all existing lakes, loughs, watercourses, ponds and pools;

(*c*) all existing unimproved grassland, moorland and heath; and

(*d*) all existing vernacular buildings and stone walls

which he is entitled to maintain and which are situated on or adjacent to any land to which these conditions relate.

Land improvement works

14. The beneficiary shall not install any new drainage system, nor substantially modify any existing drainage system on land to which these conditions relate.

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations implement Council Regulation (EEC) No. 1703/91 (O.J. L162, 26.6.91, p. 1) insofar as it concerns the introduction of a temporary set-aside scheme for arable land for the 1991/92 marketing year (''the scheme''), and Commission Regulation (EEC) No. 2069/91 (O.J. L191, 16.7.91, p. 19) laying down the detailed rules for the application of the scheme.

The Regulations provide for applications to enter the scheme. Farmers wishing to join must have registered their land by 31st July and must apply by 31st August 1991 (regulation 3). They must also undertake for the one year duration of the scheme to set aside a minimum percentage of land which has been in production of eligible arable crops during 1990/91, to reduce the area which is given over to the production of those crops for 1991/92, to establish a plant cover on the area set aside and to follow provisions for the management of the land (regulation 4 and Schedules 1 and 2). The Regulations also impose requirements in relation to the land area which is eligible for inclusion in the scheme (regulation 5) and impose restrictions on the acceptance of applications (regulation 6).

Claims for aid under the scheme must be made on or before 31st August 1992 (regulation 7). Aid (defined in Article 2 of Council Regulation (EEC) No. 1703/91) comprises both reimbursement of cereals co-responsibility levy and payment of a premium in relation to the land set aside. The rates of the premium are set out in regulation 8 and are calculated per hectare depending on the extent and location of the land set aside.

The Regulations also—

(*a*) provide for cases where there has been a change of occupation of holdings (regulations 9 and 10);

(*b*) provide for the withholding and recovery of aid in certain circumstances (regulation 11);

(*c*) provide an obligation to permit entry and inspection by authorised officers of the Department of Agriculture (regulation 12);

(*d*) create an offence of knowingly or recklessly making a false statement in order to obtain aid (regulation 13).

Amendments are also made to the Set-Aside Regulations (Northern Ireland) 1988 to revise the definition of ''designated map'' therein and to extend the areas of land which may be treated under those Regulations as less-favoured areas in accordance with Commission Decision 91/25/EEC (regulation 14).