STATUTORY RULES OF NORTHERN IRELAND

1998 No. 209

HORTICULTURAL PRODUCE

The Apple and Pear Orchard Grubbing Up Regulations (Northern Ireland) 1998

Made - - - -	*10th June 1998*
Coming into operation	*10th July 1998*

The Department of Agriculture, being a Department designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to the common agricultural policy of the European Community, in exercise of the powers conferred on it by the said section 2(2) 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 Apple and Pear Orchard Grubbing Up Regulations (Northern Ireland) 1998 and shall come into operation on 10th July 1998.

Interpretation

2.—(1) In these Regulations—

"authorised person" means an officer authorised by the Department for the purposes of these Regulations;

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

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

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

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

(**1**) S.I. 1972/1811
(**2**) 1972 c. 68
(**3**) O.J. No. L.341, 12.12.97, p. 3
(**4**) O.J. No. L.303, 6.11.97, p. 3

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

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

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

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

"recipient" means a recipient of premium and includes his personal representatives;

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

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

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

(3) The Interpretation Act (Northern Ireland) 1954(**5**) shall apply to these Regulations as it applies to a measure of the Northern Ireland Assembly.

Revocation of the Grubbing Up Regulations

3. The Apple Orchard Grubbing Up Regulations (Northern Ireland) 1991(**6**), the Apple Orchard Grubbing Up (Amendment) Regulations (Northern Ireland) 1994(**7**) and the Apple Orchard Grubbing Up (Amendment) Regulations (Northern Ireland) 1995(**8**) (together "the Grubbing Up Regulations") are revoked, subject to regulation 4(2).

Existing undertakings and obligations under the Grubbing Up Regulations

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

(a) which is being fulfilled on the date these Regulations come into operation, shall be treated for the purposes of these Regulations as being fulfilled on that date;

(b) which is not being fulfilled on that date, shall be treated for the purposes of these Regulations as not fulfilled on that date.

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

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

(b) any remedy in relation to a breach of any such obligations.

Grubbing up on a holding

5.—(1) This regulation applies where—

(**5**) 1954 c. 33 (N.I.)
(**6**) S.R. 1991 No. 157
(**7**) S.R. 1994 No. 430
(**8**) S.R. 1995 No. 15

(a) an undertaking has been given for the purposes of Article 3.2 of the Commission Regulation in relation to an application for premium by an owner or occupier of a holding the effect of which is an undertaking to refrain during the restriction period—

(i) from planting or having planted any apple, pear, peach or nectarine trees on the area of his holding affected by the grubbing up operation in respect of which the undertaking was given; and

(ii) from extending any other area of his holding planted with apple, pear, peach or nectarine trees;

(b) the owner or occupier intends, at any time after these Regulations come into operation and before the end of the restriction period—

(i) to grub up apple or pear trees on any part of his holding which is a retained orchard; and

(ii) to plant apple, pear, peach or nectarine trees on that or any other part of his holding which is not a former orchard or a non-eligible orchard; and

(c) the planting mentioned in sub-paragraph (*b*)(ii) takes place before the end of the restriction period but after the grubbing up operation described in sub-paragraph (*b*)(i).

(2) The undertaking referred to in paragraph (1)(*a*) shall not be treated for the purposes of these Regulations as being fulfilled during the period between the completion of the intended grubbing up and planting referred to in paragraph (1)(*b*) and the end of the restriction period unless the conditions specified in paragraph (3) have been satisfied.

(3) The conditions are that the owner or occupier by whom or on whose behalf the intended grubbing up and planting is to be carried out—

(a) notifies the Department, in writing, of his intention to grub up and plant prior to starting the grubbing up and of the areas and locations of land which he intends to grub up and to plant or have planted with apple, pear, peach or nectarine trees;

(b) refrains from planting or having planted any apple, pear, peach or nectarine trees on the holding concerned other than in any non-eligible orchard until after the grubbing up is completed; and

(c) refrains at any time after the last grubbing up has started until the end of the restriction period from extending the area of his holding planted with apple, pear, peach or nectarine trees beyond the area so planted immediately after the grubbing up in respect of which an application for premium has been made.

Sale, transfer etc. of former orchard

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

(a) to refrain during the restriction period from planting any apple, pear, peach or nectarine trees on the area of the holding affected by the grubbing up operation;

(b) to refrain during that period from extending any other area of his holding planted with apple, pear, peach or nectarine trees; and

(c) to secure from his successor an undertaking the effect of which is to impose on the successor the obligations imposed by the undertaking referred to in this paragraph.

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