

Arable Area Payments Scheme

AR 28: Explanatory Guide to Exchanges of Eligible and Ineligible Land

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Introduction

1. This booklet explains the statutory background and rules relating to voluntary exchanges of eligible and ineligible land under the Arable Area Payments Scheme (AAPS). It should be read in conjunction with the current Arable Area Payments Scheme Explanatory Guide.
2. This booklet will eventually be replaced by a new booklet which brings together the material:
 - in this booklet about voluntary exchanges;
 - in AR 11 about disturbance caused by the installation of cables and pipelines; and
 - in the AAPS Explanatory Guide about exchanges in the case of compulsory purchase.
3. The new booklet will also give guidance on the implications of the Environmental Impact Assessment Directive. For the present, there is no change in the guidance given below on the environmental considerations which might stand in the way of an exchange of eligibility. However, if Regulations come into force to implement the Directive's provisions for uncultivated land, the Regulations may override some or all of what is said here.

Legal background

4. The rules for exchanging eligible and ineligible land under the AAPS were originally set out in Commission Regulation (EC) No 1959/94 (*Official Journal* No L 198 of 30 July 1994, page 93). They have been amended a number of times since then. Currently they are in Commission Regulation (EC) No 2316/1999 (*OJ* No L 280 of 30 October 1999, page 43).
5. The rules now allow Member States to approve exchanges where:
 - (a) producers are able to give relevant, objective reasons for exchanging ineligible land for eligible land on their holdings, provided that
 - (b) the Member State has checked that there are no valid reasons for refusing such exchanges, in particular from the viewpoint of environmental risks.
6. Under no circumstances may exchanges result in any increase in the total area of eligible arable land on the holding.

What land is currently ineligible

7. Land in England is ineligible for Arable Area Payments if:
 - (a) it was in permanent pasture, permanent crops or trees, or was used for non agricultural purposes on 31 December 1991, and
 - (b) it has not had eligibility transferred to it, with the approval in writing of the Department for Environment, Food and Rural Affairs, or the Ministry of Agriculture, Fisheries and Food.
8. Permanent pasture includes all moorland, rough grazing, pasture, and any areas which had been in grass for five years or more at 31 December 1991. Permanent crops are crops which occupy the soil for a period of five years or more and yield crops over several seasons. However, land growing the following multi-annual crops at 31 December 1991 is eligible: artichokes, asparagus, rhubarb, raspberries, blackberries, mulberries, loganberries, blackcurrants, whitecurrants, redcurrants, gooseberries, cranberries, bilberries and other fruits of the genus *vaccinium*.

Reasons for exchanges

9. Under the rules which applied until July 1998 it was necessary for farmers to show that there was an obligation to make an exchange of land. Now there is no need to show that you are forced to make the exchange but you do still need to show relevant and objective reasons for any exchange and secure the written agreement of your RPA Processing Site. Guidance on relevant objective reasons is given in paragraphs 10-12 below. This is not intended to cover all possible reasons and is given for the purpose of guidance.

AGRICULTURAL PRACTICE

10. Relevant and objective reasons might include agronomic reasons, because conditions affecting soil management, cultivation, or cropping of your current eligible land are such that the change would be good husbandry. Examples of this would be where the land was subject to erosion and continued cropping would lead to serious erosion problems. Further cases would be where an exchange of eligibility is made for organisational reasons, e.g. where eligible land is next to a dairy unit. Exchanges may also be allowed where problems with ineligible land mean that eligible land has to be brought into use, for instance for re-siting a worn-out orchard or where grassland has become infected with TB.

PLANT HEALTH

11. You might wish to exchange land for plant health reasons, because of contamination, or of the need to take preventive action against the spread or development of serious plant diseases, which cannot reasonably be controlled by normal rotations or other conventional means.

ENVIRONMENTAL

12. Environmental reasons might include re-siting an outdoor pig unit because of nuisance caused by odour or where it would facilitate entry into an agri-environmental scheme.

Restrictions on ineligible land which can be made eligible

13. The following sections describe reasons for which an exchange of eligibility may not be allowed. What is said here is substantially unchanged from the October 2000 edition of this booklet. However, if Regulations come into force to implement the Environmental Impact Assessment Directive's provisions for uncultivated land, the Regulations may override some or all of what is said here.

ENVIRONMENTAL SAFEGUARDS

14. There are certain restrictions on land which may be declared eligible in order to protect the environment.

15. If your currently ineligible land is within any of the following environmental areas you will not normally be able to exchange it:

- Sites of Special Scientific Interest (SSSI)
- Special Protection Areas (SPA)
- Special Areas of Conservation (SAC)

16. If you have already been informed by English Nature that your land is proposed for designation as an SSSI, SAC or SPA then it is not available to be exchanged.

17. Any land you may have within one hundred metres of an SSSI, SPA or SAC, or within ten metres of any water course, will not normally be granted eligibility. Water courses include all surface waters whether coastal waters, estuaries, lakes, ponds, rivers, streams, canals and field ditches.

LAND IN MANAGEMENT AGREEMENTS

18. If your land is subject to a management agreement under the ESA, NSA, Countryside Stewardship or Habitat Schemes it may not be exchanged.

EXCEPTIONS

19. In all cases which fall into the categories listed in paragraphs 14 to 18 above, eligibility may exceptionally be granted where you can show that no material environmental damage would take place. For example, there may be a physical barrier such as a thickly wooded area or a large stone wall which is sufficient to ensure that no harmful effect on the designated area would occur. Eligibility may also be permitted where you have adjacent land currently ineligible which has been under arable production for a number of years.

NON-ARABLE AND SEMI-NATURAL LAND

20. If the land you wish to exchange has not been managed for arable production within the twenty years prior to 22 April 1995 (such as old pasture) it will not be eligible to be exchanged. (Cutting for hay or silage does not constitute management for arable production.) However, an exchange may be allowed if the purpose of the exchange is to allow previously eligible land to be entered into an agri-environment scheme and there is an overall environmental benefit. The start date for the twenty year period will be reviewed in 2005.

21. Land may also not be made eligible if it has been grassland, scrub or other non-arable habitat continuously for at least 15 years prior to 1 September 1998 and which has not been cultivated or re-seeded or improved with the use of fertilisers, herbicides or lime to such an extent that plant species characteristic of unimproved grasslands or related habitats constitute less than 20% of the sward.

LONG TERM CROPS

22. Land under any orchards that you may have that are over thirty years old may be exchanged only where the land on which they are sited would not suffer from any environmental damage as a result of being used for arable crops.

SITES OF HISTORICAL INTEREST

23. If land has a scheduled ancient monument or a site of archaeological interest on it, it cannot be made eligible, except where it can be shown that arable cultivation or set-aside will have no harmful affect on their preservation.

GUARANTEED OR MULTI-ANNUAL SET ASIDE

24. If you have land that is in guaranteed or multi-annual set-aside, you cannot normally exchange this with ineligible land without incurring penalties.

Other yield regions

25. You cannot make exchanges between yield regions, for example between England and Scotland.

Tenant farmers

26. If you are a tenant farmer you must ask your landlord's permission if you wish to remove eligible status from any land of which you are tenant. You must state on your application that you have secured this agreement in writing and you will need to keep this agreement for four years (from the end of the calendar year in which the exchange occurred) and make it available for inspection on demand.

27. You must state that you have notified your landlord regarding land gaining eligible status, but do not need to state that you have gained prior written agreement.

How to apply

28. You may apply to your RPA Processing Site using form IACS 21 at any time. However, as the staff will be busy in the winter months making AAPS payments, you will need to make your application by 1 January if it is to be considered in time for the next IACS application deadline and by 1 October if it is to be considered before the start of the set-aside period (15 January). You may have to provide supporting information to explain the reasons for your application to exchange eligibility. This will include maps and measurements if you intend to divide fields.

29. You may change the use of your land before you make an application to exchange eligibility or while the application is being considered. *However, you must not include the area to be made eligible in a claim under the AAPS until your RPA Processing Site has told you in writing that the exchange has been allowed.*

Further information

30. Although this booklet provides general advice, it cannot cover every possible situation that might arise. Your [RPA Processing Site](#) can provide further guidance on specific points where necessary.

31. You should remember that penalties apply for breaches of scheme rules and that loss of payments may result if you fail to follow the guidance provided in this booklet.

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Produced by the Department for Environment, Food and Rural Affairs

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