SCOTTISH STATUTORY INSTRUMENTS

2004 No. 518

AGRICULTURE

The Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004

Made - - - -	*30th November 2004*
Laid before the Scottish Parliament - - - -	*1st December 2004*
Coming into force - -	*1st January 2005*

The Scottish Ministers in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**1**) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004 and shall come into force on 1st January 2005.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

"authorised person" means any person authorised by the Scottish Ministers to act in matters arising under these Regulations, the Council Regulation or the Commission Regulation;

"the Commission Regulation" means Commission Regulation (EC) No. 796/2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in the Council Regulation(**2**);

"control report" means a control report pursuant to Article 48 of the Commission Regulation, and "provisional control report" shall be a draft control report detailing all the information required in a control report;

"the Council Regulation" means Council Regulation (EC) No. 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and

(**1**) 1972 c. 68. Section 2(2) was amended by the Scotland Act 1998 (c. 46), Schedule 8, paragraph 15(3). The function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(**2**) O.J. No. L 141, 30.04.2004, p.18.

establishing certain support schemes for farmers and amending Regulations (EEC) No. 2019/93, (EC) No. 1452/2001, (EC) No. 1453/2001, (EC) No. 1454/2001, (EC) No. 1868/94, (EC) No. 1251/1999, (EC) No. 1254/1999, (EC) No. 1673/2000, (EEC) No. 2358/71 and (EC) No. 2529/2001(**3**), amended by Council Regulation (EC) No. 21/2004(**4**), Council Regulation (EC) No. 583/2004(**5**) and Council Regulation (EC) No. 864/2004(**6**);

"electronic communication" means an electronic communication as defined in the Electronic Communications Act 2000(**7**) which has been recorded and is consequently capable of being reproduced;

"farmer" has the same meaning as in Article 2(a) of the Council Regulation;

"growing season" means the growing season which ends on or before 15th October;

"holding" has the same meaning as in Article 2(b) of the Council Regulation;

"non compliance" has the same meaning as in Article 2(35) of the Commission Regulation;

"overgrazing" means grazing land with livestock or other animals in such numbers as to adversely affect the growth quality or species composition of vegetation (other than vegetation normally grazed to destruction) on that land to a significant degree;

"spring" means the period beginning on 1st March and ending on 31st May in any calendar year;

"the Scottish Environment Protection Agency" means the Scottish Environment Protection Agency established under section 20 of the Environment Act 1995(**8**);

"Scottish Natural Heritage" means Scottish Natural Heritage established under section 1 of the Natural Heritage (Scotland) Act 1991(**9**);

"site of special scientific interest" means land designated as a site of special scientific interest pursuant to section 28 of the Wildlife and Countryside Act 1981 or section 3(6) of the Nature Conservation (Scotland) Act 2004(**10**);

"the Uncultivated Land and Semi-Natural Areas Regulations" means the Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (Scotland) Regulations 2002(**11**); and

"winter" means the period beginning on the day after harvest and ending on the last day of February in the following calendar year.

(2) Other expressions used in these Regulations have, unless the context otherwise requires, the meaning they bear in the Council Regulation and the Commission Regulation.

(3) Unless the context otherwise requires, any reference in these Regulations to a numbered paragraph or sub-paragraph is a reference to the paragraph so numbered in the regulation or Schedule to these Regulations, or to the sub-paragraph so numbered in the paragraph, in which that reference occurs.

(4) Except in relation to a management regime, approval or consent under paragraphs 10(2), 11(4), 12(2)(a), 14, 15(1) or 16(1) of the Schedule to these Regulations, where this paragraph shall

(**3**) O.J. No. L 270, 21.10.2003, p.1.
(**4**) O.J. No. L 5, 9.1.04, p. 8.
(**5**) O.J. No. L 91, 30.3.04, p. 1.
(**6**) O.J. No. L 206, 9.6.04, p. 20.
(**7**) 2000 c. 7.
(**8**) 1995 c. 25.
(**9**) 1991 c. 28.
(**10**) Section 28 of the Wildlife and Countryside Act 1981 (c. 69) is revoked by paragraph 4 of schedule 7 to the Nature Conservation (Scotland) Act 2004 (asp 6) as a consequence of the coming into force on 29th November 2004 of Part 2 of that Act, subject to transitional arrangements contained in schedule 5 to that Act.
(**11**) S.S.I. 2002/6.

only apply if the farmer so consents, or has contacted the Scottish Ministers by way of an electronic communication in relation to an approval or consent, any reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication.

Designation

3. The Scottish Ministers shall be the competent national authority for the purposes of providing the list of statutory management requirements and good agricultural and environmental condition required by Article 3(2) of the Council Regulation.

Good agricultural and environmental condition

4.—(1) The standards of good agricultural and environmental condition referred to in Article 5 of the Council Regulation are specified in this regulation and the Schedule to these Regulations.

(2) The land must be maintained in a condition that would make it reasonably practicable for an authorised person (and any person who may accompany an authorised person) to exercise any of the powers specified in regulation 6 as necessary to ascertain whether any of the statutory management requirements under Article 3 of the Council Regulation or any requirement of this regulation or the Schedule to these Regulations has been complied with.

Competent Control Authority

5.—(1) The Scottish Ministers are designated as the Competent Control Authority for the purposes of the derogation in Article 42(2) of the Commission Regulation.

(2) The Scottish Ministers may require the relevant authorities to carry out controls for the purposes of Article 9 and Chapters I and III of Title III of the Commission Regulation.

(3) The relevant authorities shall–

(a) send to the Scottish Ministers a provisional control report; and

(b) for the purposes of Article 65 of the Commission Regulation where a non-compliance is established as a consequence of any kind of checks, notify the Scottish Ministers of any non-compliance established.

(4) The Scottish Ministers shall pursuant to Article 48 of the Commission Regulation establish the final control report and where the Scottish Ministers are not the Paying Agency, send the control report to the Paying Agency.

(5) In this regulation, "the relevant authorities" means–

(a) Scottish Natural Heritage; and

(b) the Scottish Environment Protection Agency.

Powers of authorised persons

6.—(1) In addition to any existing power of entry an authorised person may exercise any of the powers specified in this regulation for the purpose of–

(a) providing a control report or a provisional control report;

(b) establishing whether there has been a non-compliance; or

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

(2) An authorised person shall, on producing, if so required, some duly authenticated document showing that person's authority, have a right at all reasonable hours to enter any land (excluding any building used only as a dwelling) which is or which such person has reasonable cause to believe to

be a holding occupied by, or in the possession of, a farmer or employee, agent, contractor or tenant of the farmer.

(3) An authorised person may–

(a) carry out any inquiries, checks, examinations and tests;

(b) take any samples;

(c) inspect all or any part of the land farmed, laid fallow or withdrawn from agricultural production by a farmer including land set-aside pursuant to Article 54 of the Council Regulation;

(d) inspect any crops growing on that land or kept on it;

(e) mark any animal or other thing for identification purposes;

(f) have access to, inspect and copy any records (in whatever form they are held) kept under these Regulations, or remove such records to enable them to be copied; and

(g) have access to, inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records; and for this purpose may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford the authorised person such assistance as may reasonably be required and, where a record is kept by means of a computer, may require the records to be produced in a form in which they can be taken away.

(4) An authorised person entering any premises by virtue of this regulation may be accompanied by–

(a) such other persons as the authorised person considers necessary; and

(b) any representative of the European Commission acting for the purposes of the Council Regulation and the Commission Regulation.

(5) If an authorised person enters any unoccupied premises the authorised person shall leave them as effectively secured against unauthorised entry as before those premises were entered.

Assistance to authorised persons

7. A farmer or any employee, agent, contractor or tenant of a farmer shall give an authorised person such assistance as the authorised person may reasonably request so as to enable the authorised person to exercise any power conferred by regulation 6.

Offences and penalties

8.—(1) Any person who–

(a) intentionally obstructs an authorised person (or person accompanying an authorised person and acting under the authorised person's instructions) in the exercise of a power conferred by regulation 6; or

(b) without reasonable cause fails to comply with a request made under regulation 7,

shall be guilty of an offence.

(2) Nothing in paragraph (1)(b) shall be construed as requiring any person to answer any question if to do so might incriminate that person.

(3) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Offences of bodies corporate

9.—(1) Where an offence under these Regulations committed by a body corporate or a partnership is proved to have been committed with the consent or connivance of, or to have been 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 (or in the case of a partnership, a partner or a person who was purporting to act as such), that officer or person as well as the body corporate or the partnership, as the case may be, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, the provisions of paragraph (1) shall apply in relation to the acts and defaults of a member in connection with the members' functions of management as if the member were a director of the body corporate.

St Andrew's House, Edinburgh
30th November 2004

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