
STATUTORY INSTRUMENTS

1992 No. 314

AGRICULTURE

**The Common Agricultural Policy (Protection of
Community Arrangements) Regulations 1992**

<i>Made</i>	- - - -	<i>18th February 1992</i>
<i>Laid before Parliament</i>		<i>28th February 1992</i>
<i>Coming into force</i>	- -	<i>20th March 1992</i>

The Minister of Agriculture, Fisheries and Food and the Secretary of State, being Ministers 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 Economic Community, acting jointly, in exercise of the powers conferred on them by the said section 2(2) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Title, extent and commencement

1. These Regulations may be cited as the Common Agricultural Policy (Protection of Community Arrangements) Regulations 1992, shall apply throughout the United Kingdom and shall come into force on 20th March 1992.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—
“authorised officer” means any person (whether or not an officer of that authority) who is authorised by an enforcement authority in writing, either generally or specially, to act in matters arising under these Regulations;

“the Board” means the Intervention Board for Agricultural Produce established under section 6 of the European Communities Act 1972;

(1) S.I. 1972/1811.
(2) 1972 c. 68; section 2 is subject to Schedule 2 to that Act and is to be read, as regards England and Wales in relation to offences triable only summarily, with sections 37, 40 and 46 of the Criminal Justice Act 1982 (c. 48) and with section 52(4) of the Criminal Justice Act 1988 (c. 33), in relation to offences triable on indictment or summarily, with section 32 of the Magistrates' Courts Act 1980 (c. 43) and with section 51(5) of the Criminal Justice Act 1988, and, in each case, with S.I.1984/447; as regards Scotland in relation to offences triable only summarily, with sections 289F and 289G of the Criminal Procedure (Scotland) Act 1975 (c. 21), as inserted by section 54 of the Criminal Justice Act 1982, in relation to offences triable on indictment or summarily, with section 289B of the Criminal Procedure (Scotland) Act 1975, as inserted by paragraph 5 of Schedule 11 to the Criminal Law Act 1977 (c. 45) and amended by section 55 of the Criminal Justice Act 1982, and, in each case, with S.I. 1984/526; and, as regards Northern Ireland, with S.I. 1984/703 (N.I. 3) and S.R. (N.I.) 1984 No. 253.

“commercial document” has the meaning assigned to it by Article 1(2) of Regulation 4045/89;

“Community debt” means—

- (a) any amount of money paid by the Board to a specified beneficiary in relation to a regulated transaction—
 - (i) in connection with which that person has made a statement or furnished any information which is false or misleading in a material particular; or
 - (ii) which that person has failed to carry out or to carry out in accordance with any Community requirement relating to that regulated transaction;
- (b) any amount of money which a specified beneficiary or specified contributor has become liable to pay to the Board in relation to a regulated transaction;

“Community requirement” means a requirement specified by or in pursuance of Community law in relation to a regulated transaction which a specified person is required to comply with for the correct execution⁽³⁾ of that transaction;

“connected person” means any person to whom, in accordance with Article 2(3) of Regulation 4045/89, the scrutiny provided for in Article 1(1) of that Regulation may be extended;

“the enforcement authority” means—

- (a) in relation to any part of the United Kingdom, the Board;
- (b) in relation to England, the Minister of Agriculture, Fisheries and Food;
- (c) in relation to Scotland or Wales, the Secretary of State; and
- (d) in relation to Northern Ireland, the Department of Agriculture for Northern Ireland;

“the Fund” means the European Agricultural Guidance and Guarantee Fund set up under Article 1 of Council Regulation 25 on the financing of the common agricultural policy⁽⁴⁾

“regulated transaction” means a transaction to which Article 1(1) of Regulation 4045/89 applies;

“Regulation 4045/89” means Council Regulation (EEC) No. 4045/89 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund and repealing Directive 77/435/EEC⁽⁵⁾;

“specified beneficiary” means any person who, in the course of a trade or business in a specified commodity, has applied for or received the whole or any part of any sum financed by the Guarantee Section of the Fund;

“specified contributor” means any person who, in the course of a trade or business in a specified commodity, has paid, or incurred a liability to pay, the whole or any part of any sum for the account of the Guarantee Section of the Fund;

“specified person” means any person who is a specified beneficiary or a specified contributor.

(2) For the purposes of these Regulations a “specified commodity” means any of the products that are subject to the provisions of Articles 39 to 46 of the EEC Treaty (which are listed in Annex II to that Treaty) and any goods processed from those products as are set out in Annexes B and C to Council Regulation (EEC) No. 3035/80⁽⁶⁾, as substituted by Commission Regulation (EEC) No.4055/87⁽⁷⁾, and the Annex to Council Regulation (EEC) No. 3033/80⁽⁸⁾, as substituted by

⁽³⁾ See Article 1(1) of Council Regulation (EEC) No. 4045/89.

⁽⁴⁾ OJ No. L 30, 24.4.62, p.991/62 (OJ/SE 1959-62 p.126).

⁽⁵⁾ OJ No. L 388, 30.12.89, p.18.

⁽⁶⁾ OJ No. L 323, 29.11.80 p.27.

⁽⁷⁾ OJ No. L 379, 31.12.87, p.1.

⁽⁸⁾ OJ No. L 323, 29.11.80, p.1.

Commission Regulation (EEC) No.3743/87(9) and thereafter amended by Commission Regulation (EEC)No. 1436/90(10).

(3) Other expressions used in these Regulations have, insofar as the context admits, the same meanings as in Regulation 4045/89.

(4) In these Regulations any reference to a numbered regulation shall be construed as a reference to the regulation so numbered in these Regulations.

Keeping and retention of records

3. Without prejudice to the generality of Article 4 of Regulation 4045/89 (which prescribes the period for which commercial documents should be kept), the Board may by notice published in the London, Edinburgh and Belfast Gazettes require any specified person or connected person to keep and retain, in respect of any specified commodity, such records as may be specified in that notice, for the period prescribed in that Article.

Export

4. The export outside the United Kingdom of any of the specified commodities in respect of which a security is required by Article 32 of Commission Regulation (EEC) No. 3540/85 laying down detailed rules for the application of the special measures for peas, field beans and sweet lupins(11), as substituted by Commission Regulation (EEC) No. 1561/90(12), to be lodged before it is exported shall be prohibited unless that security has been lodged with the Board, to the satisfaction of the Board.

Powers of authorised officers

5.—(1) An authorised officer 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 ascertaining whether, in respect of any regulated transaction—

- (a) the regulated transaction has actually been carried out and has been carried out in accordance with any Community requirement relating to that regulated transaction; or
- (b) an offence under regulation 8(1)(a), (b) or (d), (3), (4), (5), (10) or (11) has been or is being committed.

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

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

- (a) inspect those premises;
- (b) inspect any animal or equipment found on those premises which is, or which such officer reasonably suspects to be, an animal or equipment to which a regulated transaction relates;
- (c) inspect and take samples of any specified commodity or other substance found on those premises which such officer reasonably suspects to be a specified commodity or any substance which, in accordance with any Community requirement, may be used with a specified commodity.

(9) OJ No. L 352, 15.12.87, p.29.

(10) OJ No. L 138, 31.05.90, p.9. Keeping and retention of records

(11) OJ No. L 42, 19.12.85, p.1.

(12) OJ No. L 148, 12.06.90, p.9.

(4) An authorised officer entering any premises by virtue of this regulation may take with him such other persons as he considers necessary.

(5) An authorised officer may—

- (a) require any specified person, connected person or any employee, servant or agent of either such person to produce any commercial document and to supply such additional information in that person's possession or under his control relating to a Community debt or to a trade or business in a specified commodity as the authorised officer may reasonably request;
- (b) inspect any such commercial document and, where any such document 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 document;
- (c) require that copies of, or extracts from, any commercial document be produced;
- (d) seize and retain any such commercial document which he has reason to believe may be required as evidence in proceedings under these Regulations and, where any such document is kept by means of a computer, require it to be produced in a form in which it may be taken away.

(6) In—

- (a) paragraphs (2), (3) and (4) above “premises” include any vehicle, and
- (b) paragraph (5) above “commercial document” includes any record which the Board may, by notice published under regulation 3, require any specified person or connected person to keep.

Assistance to authorised officers

6. A specified person, connected person or any employee, servant or agent of either such person shall give to an authorised officer such assistance as the authorised officer may reasonably request so as to enable the authorised officer to exercise any power conferred upon him by regulation 5 and in particular, in relation to any animal, shall arrange for its collection, penning and securing, if so requested.

Scrutiny for the purposes of Regulation 4045/89

7. Without prejudice to the generality of the provisions of regulation 5, authorised officers shall be deemed to be officials responsible for scrutiny for the purposes of Regulation 4045/89 and accordingly shall have the powers conferred on such officials by Article 5 (which relates to the production of commercial documents and the supply of additional information) and Article 6 (which deals with the seizure of commercial documents) of that Regulation.

Offences and penalties

8.—(1) If any person—

- (a) fails to comply with a request made under Article 5(1) of Regulation 4045/89 (which relates to the production to authorised officers of commercial documents and of additional information which they may request); or
- (b) fails to comply with a requirement made under Article 5(2) of Regulation 4045/89 (which relates to the supply of extracts or copies of commercial documents); or
- (c) intentionally obstructs an authorised officer (or a person accompanying him and acting under his instructions) acting in the exercise of a power conferred by regulation 5 or by virtue of regulation 7; or

(d) fails to comply with a request made under regulation 6, he shall be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) above shall be liable on summary conviction in Great Britain to a fine not exceeding level 3 on the standard scale or on such conviction in Northern Ireland to a fine not exceeding £400.

(3) If any specified beneficiary—

(a) fails to comply with Article 4 of Regulation 4045/89 (which lays down requirements relating to the retention of commercial documents); or

(b) fails to comply with a requirement imposed on him by notice published under regulation 3, he shall be guilty of an offence.

(4) If any connected person fails to comply with a requirement imposed on him by notice published under regulation 3 he shall be guilty of an offence.

(5) If any person fails to comply with regulation 4 he shall be guilty of an offence.

(6) A person guilty of an offence under paragraphs (3), (4) or (5) above shall be liable on summary conviction in Great Britain to a fine not exceeding level 5 on the standard scale or on such conviction in Northern Ireland to a fine not exceeding £2,000.

(7) Proceedings in England and Wales and in Northern Ireland for an offence under paragraphs (1), (3), (4) or (5) above may be brought within a period of six months from the date on which evidence sufficient in the opinion of the enforcement authority to justify proceedings comes to its knowledge, and in any case within twelve months from the commission of the offence.

(8) Summary proceedings in Scotland for an offence under paragraphs (1),(3), (4) or (5) above may be commenced within a period of six months from the date on which evidence sufficient in the opinion of the prosecutor to justify proceedings comes to his knowledge, and in any case within twelve months from the commission of the offence, and proceedings shall be deemed to be commenced on the date on which a warrant to apprehend or to cite the accused is granted, if such a warrant is executed without undue delay.

(9) A certificate purporting to be signed—

(a) for the purposes of paragraph (7) above, by or on behalf of the enforcement authority, or

(b) for the purposes of paragraph (8) above, by the prosecutor, shall be conclusive evidence of the date on which evidence sufficient to justify proceedings came to the knowledge of that enforcement authority or that prosecutor (as the case may be).

(10) If any specified contributor—

(a) fails to comply with Article 4 of Regulation 4045/89; or

(b) fails to comply with a requirement imposed on him by notice published under regulation 3, he shall be guilty of an offence and liable, on summary conviction in Great Britain, to a fine not exceeding the statutory maximum or, on such conviction in Northern Ireland, to a fine not exceeding £2,000 or, on conviction on indictment in Great Britain or Northern Ireland, to a fine.

(11) If any person—

(a) fails to comply with Article 8(1) of Regulation 4045/89 (which restricts the communication of information collected in the course of scrutiny); or

(b) for the purposes of obtaining for himself or any other person the whole or any part of any sum financed by or for the account of the Guarantee Section of the Fund or for the purposes of evading payment of the whole or any part of such a sum for which he or any other person is liable, or in purported compliance with any such requirement as is imposed by notice published under regulation 3—

(i) furnishes information which he knows to be false or misleading in a material particular; or

(ii) recklessly furnishes information which is false or misleading in a material particular, he shall be guilty of an offence.

(12) A person guilty of an offence under paragraph (11) above shall be liable—

- (a) on summary conviction in Great Britain, to a fine not exceeding the statutory maximum or, on such conviction in Northern Ireland, to a fine not exceeding £2,000; or
- (b) on conviction on indictment in Great Britain or Northern Ireland, to a fine, or to imprisonment for a term not exceeding two years, or both.

(13) 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.

(14) Where the affairs of a body corporate are managed by its members, the provisions of paragraph (13) above 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.

(15) In paragraphs (13) and (14) above the references to a “body corporate” include a partnership in Scotland and, in relation to such partnership, any reference to a director or other officer of a body corporate is a reference to a partner.

Prosecutions

9. Proceedings for an offence under these Regulations shall not, in England and Wales or Northern Ireland, be instituted except by an enforcement authority.

Defence of due diligence

10. In any proceedings for an offence under regulation 8(1)(a) or (b), (3), (4) or (10), it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

Recovery powers

11. The Board may recover from any specified person any Community debt owed by that person.

Revocation

12. The Orders and Regulations specified in the Schedule to these Regulations are hereby revoked.

In witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on

12th February 1992.

John Selwyn Gummer
Minister of Agriculture, Fisheries and Food

18th February 1992

Ian Lang
Secretary of State for Scotland

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

schedule

Regulation 12

revocation of orders and regulations

<i>Orders and Regulations</i>	<i>References</i>
1. The Common Agricultural Policy (Agricultural Produce) (Protection of Community Arrangements) (No. 2) Order 1973	S.I. 1973/288
2. The Common Agricultural Policy (Protection of Community Arrangements) Regulations 1973	S.I. 1973/424
3. The Common Agricultural Policy (Protection of Community Arrangements) (Amendment) Regulations 1974	S.I. 1974/980
4. The Common Agricultural Policy (Protection of Community Arrangements) (Amendment) Regulations 1977	S.I. 1977/1287
5. The Common Agricultural Policy (Protection of Community Arrangements) (Amendment) Regulations 1978	S.I. 1978/1330
6. The Common Agricultural Policy (Agricultural Produce) (Protection of Community Arrangements) (Amendment) Order 1978	S.I. 1978/1660
7. The Common Agricultural Policy (Agricultural Produce) (Protection of Community Arrangements) (Amendment) Order 1979	S.I. 1979/1541
8. The Common Agricultural Policy (Agricultural Produce) (Protection of Community Arrangements) (Amendment) Order 1980	S.I. 1980/1562
9. The Common Agricultural Policy (Protection of Community Arrangements) (Amendment) Regulations 1980	S.I. 1980/1565

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply throughout the United Kingdom, come into force on 20th March 1992. They re-enact with amendments the Common Agricultural Policy (Agricultural Produce)

(Protection of Community Arrangements) (No. 2) Order 1973 (S.I.1973/288), as amended, and the Common Agricultural policy (Protection of Community Arrangements) Regulations 1973 (S.I. 1973/424), as amended.

The Regulations also make provision for the implementation and enforcement of Council Regulation (EEC) No. 4045/89 (OJ No. L 388, 30.12.89. p.18) (“Regulation 4045/89”) on scrutiny by Member States of transactions forming part of the system of financing of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund and repealing Directive 77/435/EEC. They also implement in part the obligations of the United Kingdom contained in Article 8 of Council Regulation (EEC) No. 729/70(OJ No. L 94, 28.4.70, p.13; OJ/SE 1970 (I) p.218) on the financing of the common agricultural policy.

The Regulations—

- (a) enable the Intervention Board for Agricultural Produce (“the Board”) to require by notice published in the London, Edinburgh and Belfast Gazettes any specified person or connected person (these terms are defined in regulation 2) to keep and retain records as specified in the notice (regulation 3);
- (b) prohibit the export outside the United Kingdom of any specified commodity in respect of which a security is required by Article 32 of Commission Regulation (EEC) No. 3540/85 (OJ No. L 342, 19.12.85, p.1), as amended, unless such security is lodged with the Board (regulation 4);
- (c) confer upon authorised officers of an enforcement authority powers to enter land or vehicles, to inspect land, vehicles, animals or equipment, to inspect and take samples of specified commodities or other substances, to require the production of documents and information, to inspect documents (including those kept on a computer), to require the production of copies or extracts of documents and to seize and retain documents (regulation 5);
- (d) require the giving of assistance to authorised officers (regulation 6);
- (e) designate authorised officers as the officials responsible for scrutiny under Regulation 4045/89 (regulation 7);
- (f) prescribe offences and penalties and provide a defence of due diligence (regulations 8, 9 and 10); and
- (g) enable the Board to recover any Community debt (regulation 11).