

2005 No. 3459

AGRICULTURE, ENGLAND

The Common Agricultural Policy Single Payment and Support Schemes (Cross-compliance) (England) Regulations 2005

<i>Made</i> - - - -	<i>14th December 2005</i>
<i>Laid before Parliament</i>	<i>19th December 2005</i>
<i>Coming into force</i> - -	<i>12th January 2006</i>

The Secretary of State, being a Minister 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 Community, in exercise of the powers conferred upon her by that section makes the following Regulations:

Title, commencement and application

1.—(1) These Regulations may be cited as the Common Agricultural Policy Single Payment and Support Schemes (Cross-compliance) (England) Regulations 2005 and come into force on 12th January 2006.

(2) These Regulations apply in relation to England only.

Interpretation

2.—(1) In these Regulations—

“agri-environment commitment” means a commitment under—

- (a) a scheme established under Council Regulation (EC) No 2078/92 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside(c), as last amended by Commission Regulation (EC) No 2772/95(d);
- (b) a scheme established under Article 14, 22 to 24 or 31 of Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF)(e), as last amended by Council Regulation (EC) No 583/2004(f);
- (c) the Entry Level Agri-Environment Scheme (Pilot) (England) Regulations 2003(g);

(a) S.I. 1972/1811.

(b) 1972 c. 68.

(c) O.J. L 215, 30.07.1992, p. 85. This Council Regulation has been repealed, but agri-environment commitments entered into under it remain extant.

(d) O.J. L 288, 01.12.1995, p. 35.

(e) O.J. L 160, 26.06.1999, p. 80. This Council Regulation has been repealed, with effect from 1st January 2007, by Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (O.J. No. L 277, 21.10.2005, p.1), except for certain provisions which continue in force beyond that date.

(f) O.J. L 91, 30.03.2004, p. 1.

(g) S.I. 2003/838.

- (d) a management agreement entered into with English Nature, pursuant to section 15 of the Countryside Act 1968(a);
- (e) a management agreement entered into with English Nature, pursuant to section 16 of the National Parks and Access to the Countryside Act 1949(b); or
- (f) an approved project in respect of which financial assistance is paid under the Energy Crops Regulations 2000(c);

“authorised person” means any person authorised by the Secretary of State to act in matters relating to 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(d), as last amended by Commission Regulation (EC) No 1954/2005(e);

“the Council Regulation” means Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers(f), as last amended by Commission Regulation (EC) No 118/2005(g);

“farmer” has the meaning given by Article 2(a) of the Council Regulation;

“holding” has the meaning given by Article 2(b) of the Council Regulation; and

“permanent pasture” has the meaning given by Article 2(2) of the Commission Regulation.

(2) Other expressions used in these Regulations, which are also used in either the Council Regulation or the Commission Regulation, shall be construed in accordance with the Council Regulation or the Commission Regulation.

Designation

3. The Secretary of State is designated as the competent national authority for the purposes of Article 3(2) of the Council Regulation.

Standards of good agricultural and environmental condition

4.—(1) The standards of good agricultural and environmental condition set out in the Schedule apply as minimum requirements for the purposes of Article 5(1) of the Council Regulation.

(2) If, in relation to any land subject to an agri-environment commitment, a requirement of the agri-environment commitment conflicts with a standard in the Schedule, any breach of the standard which is a necessary and direct consequence of meeting that requirement shall not be treated as a non-compliance.

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- (a) 1968 c.41. Under this Act, the Natural Environment Research Council was given the powers, for conservation purposes, to enter into an agreement, with owners, lessees or occupiers of land within areas of special scientific interest, which imposes restrictions on the exercise of rights over that land by persons who can be bound by such an agreement. These powers were transferred to the Nature Conservancy Council under the Nature Conservancy Council Act 1973 (c.54). The Environmental Protection Act 1990 (c.43) provided for the winding up of that body and set up the Nature Conservancy Council for England to which the Nature Conservancy Council’s functions were transferred. That body was renamed English Nature by section 73 of the Countryside and Rights of Way Act 2000 (c.37) (“the 2000 Act”).
 - (b) 1949 c.97. Under this Act, the Natural Environment Research Council was given the power to enter into an agreement with owners, lessees and occupiers of land, where their land appeared to it to be land which it was in the national interest to manage as a nature reserve, in order to ensure that land is managed as such. These powers were also transferred to the Nature Conservancy Council, and then to the National Conservancy Council for England, which was renamed English Nature, by virtue of the provisions specified in the previous footnote.
 - (c) S.I. 2000/3042, amended by S.I. 2001/3900.
 - (d) O.J. No. L 141, 30.04.2004, p.18.
 - (e) O.J. No. L 314, 29.11.2005, p.10.
 - (f) O.J. No. L 270, 21.10.2003, p.1, as corrected by corrigenda at O.J. No. L 94, 31.03.2004, p.70 and at O.J. No. L 206, 9.6.2004, p. 20.
 - (g) O.J. No. L 024, 27.01.2005, p.15.

(3) Except in relation to any land set aside pursuant to Article 54 or 55(b) of the Council Regulation, a farmer shall be exempt from a standard in the Schedule if he satisfies the Secretary of State that he should be exempted from it—

- (a) because, by virtue of any power or authorisation conferred by or under any enactment, a pipeline, cable or pylon is being or will be laid through, or constructed on or across, the land, he is unable to ensure the standard is met;
- (b) because, as a result of maintenance of a pipeline, cable or pylon being carried out or to be carried out under statutory authority on the land, he is unable to ensure that the standard is met;
- (c) in the interests of human or animal health or safety; or
- (d) because such an exemption is necessary, either to enable a serious cause of harm to plant health or serious infestation of any pest or specified weed to be treated, or to permit measures to be taken to prevent the development of any such cause of harm or infestation.

(4) In relation to land set aside pursuant to Article 54 or 55(b) of the Council Regulation, a farmer shall be exempt from a standard in the Schedule if he satisfies the Secretary of State that he should be exempt from it on any of the grounds specified in sub-paragraphs (a) to (g) of regulation 4(5) of the Common Agricultural Policy Single Payment Scheme (Set-aside) (England) Regulations 2004(a).

Permanent pasture

5.—(1) If it is established that the ratio in Article 3(1) of the Commission Regulation is decreasing, the Secretary of State shall prohibit farmers from converting land under permanent pasture, in accordance with Article 4(1) of that Regulation.

(2) If it is established that the obligation in Article 3(2) of the Commission Regulation cannot otherwise be met, the Secretary of State shall oblige farmers to reconvert land to permanent pasture in accordance with Article 4(2) of that Regulation.

(3) But the Secretary of State must not—

- (a) prohibit a farmer from converting land under permanent pasture where the farmer turned that land into permanent pasture in the circumstance mentioned in Article 4(3) of the Commission Regulation, or
- (b) require a farmer to reconvert land where the farmer turned that land into permanent pasture in the circumstance mentioned in Article 4(3) of the Commission Regulation and later converted it out of permanent pasture.

Competent Control Authorities

6.—(1) For the purposes of Article 42(1) of the Commission Regulation, the Secretary of State is the specialised control body who shall bear the responsibility of carrying out the controls in respect of the statutory management requirements under numbers 10, 11 and 13 to 15 of Annex III of the Council Regulation.

(2) For the purposes of the derogation in Article 42(2) of the Commission Regulation, the Rural Payments Agency(b) shall have the responsibility to carry out the controls in relation to all other cross-compliance requirements and standards.

(3) The Secretary of State and the Rural Payments Agency may, in respect of the standards or requirements for which she or it is responsible, require a relevant authority to carry out controls for the purposes of Article 9 and Chapters I and III of Title III of the Commission Regulation.

(4) A relevant authority which has been required by the Secretary of State or the Rural Payments Agency to carry out the controls referred to in paragraph (3) shall—

(a) S.I. 2004/3385.

(b) The Rural Payments Agency is an Executive Agency of the Department for Environment, Food and Rural Affairs, for the time being accredited as the Paying Agency.

- (a) send a provisional control report, in relation to the controls carried out, to the Secretary of State or the Rural Payments Agency (as the case may be);
- (b) where, in the course of its other activities, it considers that there has been a non-compliance, notify the person or body responsible under paragraph (1) or (2) of this regulation for carrying out controls in relation to that non-compliance.

(5) A function conferred on English Nature under paragraph (3) or (4) shall be treated for the purposes of section 132(2) and 133 of, and paragraphs 19 and 20 of Schedule 6 to, the Environmental Protection Act 1990^(a) as though it were conferred on English Nature under section 132 of that Act.

(6) In this regulation, “a relevant authority” means—

- (a) English Nature as defined in section 73 of the Countryside and Rights of Way Act 2000^(b); and
- (b) the Environment Agency as defined in section 1 of the Environment Act 1995^(c).

Powers of authorised persons

7.—(1) An authorised person may exercise any of the powers specified in this regulation for the purpose of—

- (a) providing a control report pursuant to Article 48 of the Commission Regulation;
- (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—

- (a) shall, on producing, if so required, some duly authenticated document showing his authority, have a right at all reasonable hours to enter any land, other than a building used only as a dwelling, for the purposes of administering and enforcing these Regulations, the Council Regulation and the Commission Regulation; but
- (b) may only do so if the land is a holding occupied by, or in the possession of, a farmer or employee, agent, contractor or tenant of a farmer, or if he has reasonable cause to believe that is so.

(3) An authorised person may—

- (a) carry out any inquiries, checks, examinations and tests;
- (b) take samples;
- (c) inspect all or any part of the land, whether it is farmed or is withdrawn from agricultural production, including land set aside pursuant to Article 54 or 55(b) 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 in relation to activities covered by 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 require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford him such assistance as he may reasonably require and, where a record is kept by means of a computer, require the record to be produced in a form in which it can be taken away.

(a) 1990 c.43.
 (b) 2000 c.37.
 (c) 1995 c.25.

- (4) An authorised person entering any premises by virtue of this regulation may take with him—
- (a) such other persons as he considers necessary; and
 - (b) any representative of the European Commission acting for the purposes of the Council Regulation or the Commission Regulation.

(5) If an authorised person enters any unoccupied premises he shall leave them as effectively secured against unauthorised entry as he found them.

(6) Where an authorised person enters any land, other than a building used only as a dwelling, under a power bestowed on him by other legislation he may exercise any of the powers specified in paragraphs (3) and (4) for the purposes of paragraph (1).

Assistance to authorised persons

8. 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 on him by regulation 7.

Offences and penalties

9.—(1) A person is guilty of an offence if—

- (a) he intentionally obstructs an authorised person (or person accompanying him and acting under his instructions) in the exercise of a power conferred by regulation 7; or
- (b) without reasonable cause, he fails to comply with a request made under regulation 8.

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

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

(4) Where a body corporate is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar person of the body corporate; or
- (b) any person purporting to act in such capacity;

he, as well as the body corporate, shall be guilty of an offence.

(5) For the purposes of paragraph (4), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

Revocation

10. The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (England) Regulations 2004^(a) and the Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (England) (Amendment) Regulations 2005^(b) are revoked.

14th December 2005

Bach
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

^(a) S.I. 2004/3196 as amended by S.I. 2005/918.
^(b) S.I. 2005/918.

Standards of good agricultural and environmental condition

Soil Protection Review

1.—(1) Subject to sub-paragraph (6), a farmer must—

- (a) on or before 1st September 2006, complete a soil protection review for all the land within his holding;
- (b) update the soil protection review at least once in 2007 and at least once in each subsequent year; and
- (c) from 1st January 2007, take all steps reasonably practicable to implement the measures identified in the soil protection review.

(2) The Secretary of State must publish—

- (a) guidance about soil management, including guidance as to the preparation of a soil protection review, no later than the day after these Regulations come into force; and
- (b) revised guidance or supplementary guidance whenever she considers that it is expedient in the interests of good agricultural and environmental condition to do so;

in such a way as she considers appropriate to bring it to the notice of those likely to be affected by it.

(3) A farmer must retain copies of current guidance published by the Secretary of State pursuant to sub-paragraph (2), and he must ensure that this guidance and each soil protection review (and each updated review) completed are available for inspection by an authorised person.

(4) The Secretary of State may give a farmer specific guidance concerning the management of his land to ensure soils are well managed in accordance with the guidance referred to in sub-paragraph (2).

(5) Where the Secretary of State gives a farmer guidance of the kind referred to in sub-paragraph (4) the farmer must have regard to this guidance in completing, updating and implementing his soil protection review (as the case may be).

(6) A farmer is not required to—

- (a) include within the soil protection review any part of his holding which is common land; or
- (b) prepare a soil protection review where his holding, excluding that part of his holding which is common land or in relation to which he has rights in common, is 0.3 hectares or less.

(7) In this paragraph—

- (a) “common land” means land subject to rights of common which—
 - (i) has been entered in the register of common land or town and village greens, under the Commons Registration Act 1965(a); or
 - (ii) is land within one of the areas referred to in section 11(1) of that Act;

where the rights are exercised by someone other than the farmer who owns or occupies the land;

- (b) “soil protection review” means a plan about the management of land which—
 - (i) sets out problems identified in relation to the holding as to soil structure, soil organic matter and soil erosion and measures to help avoid those problems;

(a) 1965 c.64.

- (ii) is prepared and updated in accordance with the guidance published by the Secretary of State under sub-paragraph (2); and
- (iii) is set out in the same format as the template included in that guidance.

Post-harvest management of land after combinable crops

2.—(1) If land has carried a crop of oil-seeds, grain legumes or cereals (other than maize) which has been harvested using a combine harvester or a mower, a farmer must ensure that, throughout the period in sub-paragraph (2), at least one of the following conditions is met on that land—

- (a) the stubble of the harvested crop remains in the land;
- (b) the land is left with a rough surface following ploughing, discing, tine cultivation or any other suitable agricultural method;
- (c) the land is prepared as a seedbed for a crop and the crop is sown within a period of 10 days beginning with the day after final seedbed preparation;
- (d) the land is under cultivation sequences used for the purpose of creating a stale seedbed; or
- (e) the land is sown with a temporary cover crop, so long as, if the cover crop becomes grazed out or cultivated out, the condition in paragraph (b) is then met as soon as is practicable without breaching the requirements in paragraph 3, and for the remainder of the period.

(2) The period begins with the first day after harvest and ends with the last day of February in the following year.

(3) In this paragraph, “stale seedbed” means an area of land which is subject to shallow cultivation to stimulate weed germination as part of a strategy of weed control.

Waterlogged soil

3.—(1) A farmer must not carry out a mechanical field operation or use, or allow the use of, a motorised vehicle on waterlogged soil unless—

- (a) the soil is within 20 metres of the access point to an area of soil which is not waterlogged;
- (b) the soil forms part of a track to an area of soil which is not waterlogged; or
- (c) the mechanical field operation or the use of a motorised vehicle is necessary—
 - (i) to improve the drainage of the soil;
 - (ii) to incorporate gypsum into the soil following an intrusion of saltwater;
 - (iii) for reasons of animal welfare or human safety; or
 - (iv) in order to harvest a crop of fruit or vegetables (excluding all varieties of potato, sugar beet, mangel, swede, turnip and fodder beet) —
 - (aa) in order to meet contractual obligations; or
 - (bb) where the quality of the crop would deteriorate if it were not harvested.

(2) The Secretary of State shall vary or suspend any of the requirements in sub-paragraph (1) in relation to an area and for a period of no more than two months, where, in her opinion—

- (a) an area is affected by exceptional weather conditions; and
- (b) those weather conditions justify the variation or suspension of the requirement in this paragraph, taking into consideration the economic impact of the weather conditions and the environmental effects of any variation or suspension of the requirements.

(3) Where the Secretary of State has varied or suspended the requirements she shall publish directions to the farmers in the area concerned stating, with reasons, the details and duration of the variation or suspension, and the farmers must comply with the requirement as varied in the directions, or in the case of a suspension of the requirement, need not comply with the requirement.

(4) In this paragraph, “mechanical field operation” includes any harvesting, cultivation or spreading operation (including the spreading of manure or slurry) by mechanical means.

Burning of crop residues

4. A farmer must not, on agricultural land, burn any crop residue of a kind specified in Schedule 1 to the Crop Residues (Burning) Regulations 1993(a) unless the burning is for the purpose of—

- (a) education or research;
- (b) disease control or the elimination of plant pests where a notice has been served under article 32 of the Plant Health (England) Order 2005(b); or
- (c) the disposal of straw stack remains or broken bales.

5. A farmer must not, on agricultural land, burn—

- (a) any crop residue of a kind specified in Schedule 1 to the Crop Residues (Burning) Regulations 1993 to which an exemption specified in paragraph 4(a) or (b) applies; or
- (b) any linseed residues;

otherwise than in accordance with the restrictions and requirements set out in Schedule 2 to those Regulations.

Overgrazing and unsuitable supplementary feeding

6.—(1) If the Secretary of State gives a farmer written directions concerning the management of land, which is, in her opinion, subject to overgrazing or the use of unsuitable supplementary feeding methods, he must comply with those directions on any area of land specified in them.

(2) A farmer must not—

- (a) allow overgrazing; or
- (b) use unsuitable supplementary feeding methods.

(3) The Secretary of State may notify a farmer of measures she considers to be appropriate to prevent overgrazing and unsuitable supplementary feeding.

(4) In this paragraph—

“overgrazing” means grazing with so many livestock as to affect adversely the growth, quality or diversity of any self-seeded or self-propagated vegetation characteristic of the area in which the land is situated; and

“unsuitable supplementary feeding methods” means methods that provide supplementary feed for livestock that affect adversely, through trampling or poaching of land by livestock, or through rutting by vehicles used to transport feed, the quality or diversity of any self-seeded or self-propagated vegetation characteristic of the area in which the land is situated.

Management of land which is not in agricultural production

7.—(1) Except on land which is set aside pursuant to Article 54 of the Council Regulation, a farmer on any eligible hectare(c) which is not used for agricultural production—

- (a) must cut down any scrub and cut down or graze any rank vegetation at least once every 5 years; but—
 - (i) he must cut down no more than 50% of the area of that vegetation in the fourth year and no more than 50% of that area in the fifth year, in each five-year period that the land is not in agricultural production; and

(a) S.I. 1993/1366.

(b) S.I. 2005/2530.

(c) This term has the meaning given to it in Article 44(2) of the Council Regulation.

- (ii) he must not cut down any vegetation in the period within any year beginning on 1st March and ending on 31st July, unless cutting down is necessary in order for the farmer to comply with paragraph 8;
- (b) must, on any land where crops have been harvested, establish a green cover (either through seeding or natural regeneration) as soon as is practicable on or after 1st March in the first year after the land has ceased to be used for agricultural production, unless he can prove that he intends to bring the land back into agricultural production before 15th May in that year;
- (c) must not use the land for non-farm vehicular use;
- (d) must not apply any inorganic fertiliser to the land;
- (e) must not apply manure or slurry to the land; and
- (f) must not store manure or slurry on a field, other than manure where—
 - (i) it is to be used on that field in the next growing season; or
 - (ii) it is to be used on an adjacent field where storage on that adjacent field carries a substantial risk of pollution of watercourses as a result of such storage;
 and the risk of pollution of watercourses through storage on the field on which the manure is stored is low.

(2) However—

- (a) the requirement in sub-paragraph (1)(a)(ii) does not apply where it would conflict with the farmer's obligations under paragraph 8 or 9;
- (b) the requirements in sub-paragraph (1)(a)(ii) and (1)(b) do not apply to land out of production for the first fifteen months from the date of harvest, where—
 - (i) cutting or ploughing is necessary to control infestation by blackgrass (*Alopercurus myosuroides*), couch, (*Agyropyron repens*), creeping thistle (*Cirsium arvense*) or dock (*Rumex* species);
 - (ii) the farmer records this land as not being in agricultural production in the soil protection review referred to in paragraph 1 of this Schedule and takes soil protection measures which are appropriate considering the soil management guidance published under paragraph 1(2) of this Schedule; and
 - (iii) the farmer establishes a green cover (either through seeding or natural regeneration) on that land within fifteen months of the date of harvest;
- (c) no requirement in sub-paragraph (1)(a) or (b) applies where it would conflict with the farmer's obligations under paragraph 25;
- (d) no requirement in sub-paragraph (1)(d) or (e) applies where the land is situated in an area known to be used as a feeding area by geese in winter and is managed as such an area;
- (e) the requirement in sub-paragraph (1)(e) does not apply where manure or slurry is applied as part of seedbed preparation during a period beginning two months before the day the crop is sown;
- (f) no requirement of sub-paragraph (1) applies where it would conflict with the farmer's obligations under paragraphs 18 to 23; and
- (g) no requirement of sub-paragraph (1) applies to the extent that the Secretary of State has, in order to enhance the environment or for reasons relating to crop or livestock production, given the farmer written permission to manage the land in a different way.

(3) For the purposes of sub-paragraph (1)(a), the first year that land is not in agricultural production begins on the first day after the harvest or in the event that crops are not harvested on that land, the day after the land ceases to be in agricultural production.

Control of weeds

8.—(1) If a notice has been served on him under section 1 of the Weeds Act 1959(a), a farmer must not unreasonably fail to comply with the requirements of that notice.

(2) A farmer must take all reasonable steps to prevent the spread of ragwort (*Senecio jacobaea*), spear thistle (*Cirsium vulgare*), creeping or field thistle (*Cirsium arvense*), broad-leaved dock (*Rumex obtusifolius*) and curled dock (*Rumex crispus*) on his land and onto adjacent land.

(3) If, in any appeal against a determination of the Secretary of State that there has been a non-compliance in relation to this paragraph, a code of practice providing guidance on how to prevent the spread of ragwort (*Senecio jacobaea*) made under section 1A(1) of the Weeds Act 1959 appears to be relevant to any question arising in the appeal, it must be taken into account in determining that question.

9. A farmer must take all reasonable steps to prevent the spread of rhododendron (*Rhododendron ponticum*), Japanese knotweed (*Reynoutria japonica*), giant hogweed (*Heracleum mantegazzianum*) and Himalayan balsam (*Impatiens glandulifera*) on his land and onto adjacent land.

Protection of hedgerows and watercourses

10.—(1) A farmer must take all reasonable steps to maintain a green cover on, and he must not cultivate, or apply fertilisers or pesticides to—

- (a) land within 2 metres of the centre of a hedgerow, watercourse or field ditch; and
- (b) land which is within 1 metre of the top of the bank of a watercourse or field ditch.

(2) The requirement in sub-paragraph (1) does not apply—

- (a) to land on either side of a hedgerow which was planted on or after 1st January 2005 and which is less than 5 years old;
- (b) to land forming part of a parcel of 2 hectares or less, as measured within permanent boundary features;
- (c) in relation to the use of pesticides, if the only application of pesticides is the spot-application of herbicides to control the spread of any of the weeds mentioned in paragraph 8 or 9;
- (d) to the extent that the Secretary of State has, for reasons relating to livestock production, crop production or the enhancement of the environment, given the farmer written permission to do otherwise;
- (e) to land referred to in sub-paragraph (1) which is set aside pursuant to Article 54 of the Council Regulation, in the calendar year that it is set aside (b); and
- (f) to land referred to in sub-paragraph (1) which is set aside pursuant to Article 55(b) of the Council Regulation, in the calendar year that it is set aside(c).

(3) A farmer may cultivate the land referred to in sub-paragraph (1)—

- (a) in order to establish a green cover where that land does not already have a green cover, and that land is part of a field which—
 - (i) has been created by the merger of two or more fields or the division of a field; or
 - (ii) was previously outside the scope of cross-compliance; or

(a) 1959 c. 54, as amended by the Ragwort Control Act 2003 (2003 c. 40). There are other amending instruments but none is relevant.

(b) In that case the farmer must comply with the provisions as to land set aside from production in regulation 4(1), (3) to (6) of, and Schedule 1 to, the Common Agricultural Policy Single Payment Scheme (Set-aside) (England) Regulations 2004 (S.I. 2004/3385).

(c) In that case the farmer must comply with the provisions as to land set aside from production, in regulation 4(2) to (6) of, and Schedule 2 to, the Common Agricultural Policy Single Payment Scheme (Set-aside) (England) Regulations 2004.

- (iii) is no longer subject to the standards of good agricultural and environmental condition under regulation 4 of the Common Agricultural Policy Single Payment Scheme (Set-aside) (England) Regulations 2004 as a result of the set-aside period coming to an end; and
 - (b) where land is to be set aside from production pursuant to Article 54 of the Council Regulation, in so far as cultivation is necessary to establish a green cover as is required by the standards of good agricultural and environmental condition under regulation 4 of the Common Agricultural Policy Single Payment Scheme (Set-aside) (England) Regulations 2004
- (4) In this paragraph—
- (a) “pesticides” means any substance, preparation or organism prepared or used for destroying any pest; and
 - (b) “pest” means any organism harmful to plants or to wood or other plant products, any undesired plant and any harmful creature.

Hedgerows

11. A farmer must not remove a hedgerow in breach of regulation 5(1) or (9) of the Hedgerows Regulations 1997^(a).

12.—(1) Except where sub-paragraph (2), (3) or (4) applies, a farmer must not cut or trim any hedgerow during the period within any year beginning with 1st March and ending with 31st July.

(2) A farmer may cut or trim a hedgerow at any time if it is necessary to cut or trim it because—

- (a) it overhangs a highway or any other road or footpath, over which there is a public or private right of way, so as to endanger or obstruct the passage of vehicles or pedestrians;
- (b) it obstructs or interferes with the view of drivers of vehicles or the light from a public lamp;
- (c) it overhangs a highway so as to endanger or obstruct the passage of horse-riders; or
- (d) it is dead, diseased, damaged or insecurely rooted, and because of its condition it, or part of it, is likely to cause danger by falling on a highway, road or footpath.

(3) A farmer may carry out hedge-laying and coppicing during the period beginning with 1st March and ending with 30th April.

(4) A farmer may trim a hedgerow by hand during a period of six months beginning with the first day after the hedgerow is laid.

(5) A farmer need not comply with the requirement in paragraph (1) to the extent that the Secretary of State has, in order to enhance the environment, improve public or agricultural access, or for reasons relating to livestock or crop production, given the farmer written permission to do so.

Meaning of “hedgerow” in paragraphs 10, 11 and 12

13. (1) Subject to sub-paragraph (3), paragraphs 10, 11 and 12 apply to any hedgerow growing in, or adjacent to, any land which forms part of the farmer’s holding, if—

- (a) it has a continuous length of at least 20 metres; or
- (b) it has a continuous length of less than 20 metres and, at each end, meets (whether by intersection or junction) another hedgerow.

(2) Subject to sub-paragraph (3), a hedgerow is also one to which these Regulations apply if it is a stretch of hedgerow forming part of a hedgerow such as is described in sub-paragraph (1).

^(a) S.I. 1997/1160, amended by S.I. 2003/2155.

(3) Paragraphs 10, 11 and 12 do not apply to any hedgerow within the curtilage of, or marking a boundary of the curtilage of, a dwelling-house, except that paragraph 10 does apply to land on the side of the hedgerow which is facing away from the dwelling house where that hedgerow marks a boundary of the curtilage of that dwelling house.

(4) A hedgerow which meets (whether by intersection or junction) another hedgerow is to be treated as ending at the point of intersection or junction.

(5) For the purposes of ascertaining the length of any hedgerow—

(a) any gap resulting from a contravention of the Hedgerows Regulations 1997; and

(b) any gap not exceeding 20 metres,

shall be treated as part of the hedgerow.

Stone walls

14.—(1) A farmer must not remove, or remove stone from, a stone wall.

(2) But a farmer may remove, or remove stone from, a stone wall—

(a) to widen an existing gateway in it to no more than 10 metres in order to provide access to the land for machinery or livestock, and in that case the ends of the wall created by the widening operation must be finished with a vertical face;

(b) if he uses the stone to repair another stone wall on his land which is in better condition than the stone wall which is removed or from which the stone is removed;

(c) if he uses the stone to make minor repairs to a footpath on his land; or

(d) if the Secretary of State has, in order to enhance the environment, improve public or agricultural access, or for reasons relating to livestock or crop production, given the farmer written permission to do so.

(3) In this paragraph—

(a) “stone wall” means a stone wall used as a field boundary with—

(i) a continuous length of at least 10 metres;

(ii) a continuous length of less than 10 metres which meets (whether by intersection or junction) another field boundary at each end; or

(iii) a continuous length of less than 10 metres which forms an enclosure;

(b) “footpath” has the meaning given to it in section 329(1) of the Highways Act 1980(a).

Environmental impact assessment

15.—(1) A farmer must not begin or carry out a project without first obtaining either a decision that the project is not a relevant project or a decision granting consent for the project in accordance with the Environmental Impact Assessment (Uncultivated Land and Semi-natural Areas) (England) Regulations 2001(b).

(2) A farmer must not breach a stop notice that has been served on him under regulation 22(1) of those Regulations.

(3) A farmer must not, without reasonable excuse, fail to comply with any requirement of a reinstatement notice served on him under regulation 24(1) of those Regulations.

(4) In this paragraph, “consent”, “project” and “relevant project” have the meaning given by regulation 2(1) of those Regulations.

16.—(1) A farmer must not carry out, on any land, work or operations relating to a relevant project unless—

(a) 1980 c.66.

(b) S.I. 2001/3966, amended by S.I. 2005/1430.

- (a) consent has been granted for that project by the Commissioners or by the appropriate authority; and
- (b) the project is carried out in accordance with the consent (including any conditions to which the consent is subject).

(2) A farmer must not carry out work in relation to a relevant project in contravention of a requirement to discontinue that work in an enforcement notice served in accordance with regulation 20 of the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999^(a).

(3) Subject to sub-paragraph (2) a farmer on whom an enforcement notice has been served in accordance with regulation 20 of those Regulations must not fail, within the period specified in the enforcement notice, to carry out any measure required by the enforcement notice.

(4) In this paragraph, “the appropriate authority” and “the Commissioners” have the meaning given by regulation 2(1) of those Regulations, and “relevant project” has the meaning given by regulation 3(1) of those Regulations.

Heather and grass burning

17.—(1) A farmer must not, in any period of the year, commence burning heather, rough grass, bracken, gorse or vaccinium on any land between sunset and sunrise.

(2) A farmer must not burn heather, rough grass, bracken, gorse or vaccinium unless—

- (a) there are, where the burning is taking place, sufficient persons and equipment to control and regulate the burning during the entire period of the operation;
- (b) he takes, before commencing burning and during the entire period of the operation, all reasonable precautions to prevent injury or damage to any adjacent land, or to any person or thing whatsoever on that land; and
- (c) he has, not less than 24 hours and not more than 7 days before commencing burning, given notice in writing of the date or dates, time and place at which, and the extent of the area on which, it is his intention to burn—
 - (i) to any person who has an interest in the land either as owner or occupier, and
 - (ii) to any person whom he knows, or could with reasonable diligence have discovered, to be in charge of any land adjacent to that on which the burning is to take place.

(3) A farmer must not burn heather, rough grass, bracken, gorse or vaccinium—

- (a) on land which is within a severely disadvantaged area, during the period within any year beginning with 16th April and ending with 30th September, or
- (b) on all other land, during the period within any year beginning with 1st April and ending with 31st October,

except under, and in accordance with any conditions specified in, a licence issued by the Secretary of State^(b) under regulation 7 of the Heather and Grass etc (Burning) Regulations 1986^(c).

(4) In sub-paragraph (3), “severely disadvantaged area” means any area of land shaded pink (except land situated in the Isles of Scilly) on the three volumes of maps numbered 1 to 3, each volume being marked “Volume of maps of less-favoured farming areas in England”, dated 20th May 1991, signed and sealed by the Minister of Agriculture, Fisheries and Food and deposited in the Information Resource Centre, Department for Environment, Food and Rural Affairs, Lower Ground Floor, Ergon House, c/o 17 Smith Square, London SW1P 3JR.

(5) Regulations 8 and 9 of the Heather and Grass etc (Burning) Regulations 1986 apply to the giving of any notices under sub-paragraphs (2) and (3).

(a) S.I. 1999/2228.

(b) See the definition of Minister in section 2(1) of the Heather and Grass etc (Burning) Regulations 1986 (S.I. 1987/1208). By virtue of regulation 2, the functions of the Minister were transferred to the Secretary of State for Environment, Food and Rural Affairs.

(c) S.I. 1986/428, amended by S.I. 1987/1208 and S.I. 2003/1615.

Sites of special scientific interest

18.—(1) A farmer who owns or occupies any land included in a site of special scientific interest other than a European Site, must not, while a notification under section 28(1)(b) of the Wildlife and Countryside Act 1981(a) remains in force, carry out, or cause or permit to be carried out on that land any operation notified under section 28(4)(b) unless he meets the conditions in section 28E(1)(a) and (b) of that Act(b), or unless he has a reasonable excuse.

(2) A reasonable excuse in sub-paragraph (1) includes a reasonable excuse under section 28P(4) of the Wildlife and Countryside Act 1981(c).

19.—(1) In relation to land which is a site of special scientific interest other than a European site, a farmer must not, without reasonable excuse, knowing that the land concerned is within a site of special scientific interest, intentionally or recklessly destroy or damage any of the flora, fauna, or geological or physiographical features by reason of which that land is of special scientific interest, or intentionally or recklessly disturb any of those fauna.

(2) A reasonable excuse in sub-paragraph (1) includes a reasonable excuse under section 28P(7) of the Wildlife and Countryside Act 1981(d).

20. A farmer must not, without reasonable excuse, fail to comply with a requirement of a management notice served on him under section 28K(1) of the Wildlife and Countryside Act 1981(e).

21. A farmer must not, without reasonable excuse, fail to comply with a restoration order made under section 31 of the Wildlife and Countryside Act 1981.

22. A farmer who is a section 28G authority within the meaning of section 28G(3) of the Wildlife and Countryside Act 1981 must comply with the requirements of section 28H of that Act.

23. In paragraphs 18 and 19—

“site of special scientific interest” means an area of land which has been notified under section 28(1)(b) of the Wildlife and Countryside Act 1981; and

“European site” has the meaning given by regulation 10 of the Conservation (Natural Habitats, etc) Regulations 1994(f).

Tree preservation orders

24. A farmer must not, in breach of a tree preservation order made under section 198(1) of the Town and Country Planning Act 1990(g), or in contravention of section 211 of that Act (which relates to trees in conservation areas where no tree preservation order is in force), cut down, top, lop, uproot, wilfully damage or wilfully destroy a tree.

Scheduled monuments

25.—(1) Subject to sub-paragraph (3), a farmer must not, without consent under section 2(3) of the Ancient Monuments and Archaeological Areas Act 1979(h), execute any of the following works—

(a) any works resulting in the demolition or destruction of, or any damage to, a scheduled monument;

(a) 1981 c. 69. Section 28(1)(b) was substituted by the 2000 Act, section 75(1) and Schedule 9, paragraph 1.

(b) Section 28E(1)(a) and (b) were inserted by the 2000 Act, section 75(1) and Schedule 9, paragraph 1.

(c) Section 28P(4) was inserted by the 2000 Act, section 75(1) and Schedule 9, paragraph 1.

(d) Section 28P(7) was inserted by the 2000 Act, section 75(1) and Schedule 9, paragraph 1.

(e) Section 28K(1) was inserted by the 2000 Act, section 75(1) and Schedule 9, paragraph 1.

(f) S.I. 1994/2716, amended by the Environment Act 1995 (1995 c.37) and S.I. 2000/192; there are other amending instruments but none are relevant.

(g) 1990 c. 8. Section 211 was amended by the Planning and Compulsory Purchase Act 2004 (c. 5) section 86.

(h) 1979 c. 46.

- (b) any works for the purpose of removing or repairing a scheduled monument or any part of it;
- (c) any works for the purpose of making any alteration or addition to a scheduled monument or any part of it; and
- (d) any flooding or tipping operation on land in, on or under which there is a scheduled monument.

(2) Subject to sub-paragraph (3), if a farmer executes any works to which a scheduled monument consent relates, he must comply with all conditions attached to that consent.

(3) If a farmer can show that—

- (a) in relation to works prohibited by sub-paragraph (1)(a), he took all reasonable precautions and exercised all due diligence to avoid or prevent damage to the monument;
- (b) in relation to works prohibited by sub-paragraph (1)(a) or (c), he did not know and had no reason to believe that the monument was within the area affected by the works or, as the case may be, that it was a scheduled monument; and
- (c) in relation to works prohibited by sub-paragraph (1) or (2), the works were urgently necessary in the interests of safety or health and that notice in writing of the need for the works was given to the Secretary of State for Culture, Media and Sport as soon as reasonably practicable,

the execution of the works in question shall not be treated as a failure to comply with this paragraph.

(4) In this paragraph, “scheduled monument” has the meaning given by section 1(11) of the Ancient Monuments and Archaeological Areas Act 1979 and “scheduled monument consent” shall be construed in accordance with sections 2(3) and 3(5) of that Act.

Felling of trees

26.—(1) Where a felling licence is required under section 9(1) of the Forestry Act 1967(a), a farmer must not fell a tree without the authority of a felling licence.

(2) A farmer must not, without reasonable excuse, fail to take any steps required by a notice given to him under section 24 of the Forestry Act 1967 (a notice to comply with conditions, directions or a restocking notice).

Public rights of way

27. A farmer must not—

- (a) without lawful authority or excuse, disturb the surface of a visible footpath, a visible bridleway, or any other visible highway which consists of or comprises a carriageway other than a made-up carriageway, so as to render it inconvenient for the exercise of a public right of way; or
- (b) without lawful authority or excuse, in any way wilfully obstruct the free passage along a visible highway.

28. A farmer must maintain any stile, gate or similar structure, other than a structure to which section 146(5) of the Highways Act 1980(b) applies, across a visible footpath or bridleway in a safe condition, and to the standard of repair required to prevent unreasonable interference with the rights of persons using the footpath or bridleway.

29.—(1) Where a farmer has disturbed the surface of a visible footpath or bridleway (other than a field-edge path) as permitted under section 134 of the Highways Act 1980, he must, within the relevant period under section 134(7) of that Act, or within an extension of that period granted under section 134(8) of that Act—

(a) 1967 c. 10.

(b) 1980 c. 66, as amended by the 2000 Act.

- (a) so make good the surface of the path or bridleway to not less than its minimum width as to make it reasonably convenient for the exercise of a right of way; and
- (b) so indicate the line of the path or bridleway on the ground to not less than its minimum width that it is apparent to members of the public wishing to use it.

(2) In this paragraph, “minimum width”, in relation to a highway, has the same meaning as in Schedule 12A to the Highways Act 1980.

30. In paragraphs 27, 28 and 29 of this Schedule—

“bridleway”, “carriageway”, “field-edge path”, “footpath” and “made-up carriageway” have the meaning given to them in section 329(1) of the Highways Act 1980;

“highway” has the meaning given to it by section 328 of the Highways Act 1980; and

“visible” means visible as a route to a person with normal eyesight walking or riding along it.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace and revoke the Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (England) Regulations 2004 (S.I. 2004/3196) as amended by S.I. 2005/918. They consolidate those Regulations and also make changes to the provisions relating to the administration and enforcement of cross-compliance (regulation 6) and to the provisions providing for exemptions (regulation 4). They also update and make changes to the standards of good agricultural and environmental condition set out in the Schedule.

These Regulations make provision in England for the administration and enforcement of cross-compliance under Regulation (EC) No 1782/2003 (OJ No L 270, 21.10.2003, p.1) (“the Council Regulation”) and Commission Regulation (EC) No 796/2004 (OJ No L 141, 30.4.2004, p.18) (“the Commission Regulation”) in relation to the system of income support schemes (including the Single Payment Scheme), which came into force on 1 January 2005, under the reformed Common Agricultural Policy.

“Cross-compliance” links the payment of direct payments to farmers under the Common Agricultural Policy with compliance with a range of laws and standards (see Article 6 of the Council Regulation). Annex III to the Council Regulation contains a list of applicable “statutory management requirements” in areas of Community law on the environment, public and animal health and animal welfare. Under Article 5(1) of the Council Regulation, Member States must lay down standards of “good agricultural and environmental condition” which will apply to all farmers, within the framework in Annex IV to that Regulation. Under the Council and Commission Regulations, Member States must also take steps to prevent permanent pasture falling below certain levels.

These Regulations provide as follows:

Regulation 3 designates the Secretary of State as the competent national authority responsible for providing farmers with a list of the statutory management requirements and standards of good agricultural and environmental condition on their land.

Regulation 4 and the Schedule set out the standards of good agricultural and environmental condition which will apply in England, as required by Article 5(1) of the Council Regulation. It also provides that farmers with agri-environment commitments, a term which has been broadened in scope through these Regulations, which directly and necessarily conflict with the standards will not be penalised for breaching the standards. Regulation 4 now also provides for farmers to seek an exemption from a standard in particular circumstances. The standards in the Schedule cover the areas listed below and alongside each of these areas is listed the key differences from the Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (England) Regulations 2004, as amended by S.I. 2005/918.

- (a) Retention of guidance on soil management (*paragraph 1*). Additional requirements for 2006 and 2007 have been added which include preparation of a risk-based soil management plan by 1 September 2006, which requires an assessment of soil related problems of the holding and identification of appropriate remedial measures, and implementation of those measures in 2007. Land subject to rights of common is exempted from this requirement as are holdings of 0.3 hectares or less (where common land is not included as falling within the holding).
- (b) Post-harvest management of land after combinable crops (*paragraph 2*).
- (c) Waterlogged soil (*paragraph 3*).
- (d) Burning of crop residues (*paragraphs 4 and 5*).
- (e) Overgrazing and unsuitable supplementary feeding (*paragraph 6*). This now includes a provision allowing the Secretary of State to notify individual farmers of measures which can be taken to prevent overgrazing and unsuitable supplementary feeding.
- (f) Management of land which is not in agricultural production (*paragraph 7*). This now includes a provision prohibiting the storage of manure and slurry on these fields, except in particular cases. It also makes an exception to the rules as to establishing a green cover and not cutting down vegetation to provide for a 15 month bare fallow period where this is required to control weed infestations and where appropriate soil protection measures are taken.
- (g) Control of weeds (*paragraphs 8 and 9*).
- (h) Protection of hedgerows and watercourses (*paragraph 10*). This now requires reasonable steps to be taken to maintain a green cover. It also deals with the position where this land is set aside from production under the Common Agricultural Policy Single Payment Scheme (Set-aside) (England) Regulations 2004.
- (i) Hedgerows (*paragraphs 11 and 12*). Paragraph 12 now allows farmers to seek permission to trim hedges in the prohibited period and clarifies the position as to when hedges can be cut without such permission.
- (j) Stone walls (*paragraph 14*). The provisions as to the widening of stone walls and the use of stone from these walls have been amended.
- (k) Environmental impact assessment (*paragraphs 15 and 16*).
- (l) Heather and grass burning (*paragraph 17*).
- (m) Sites of special scientific interest (*paragraphs 18 to 23*). The requirement that statutory bodies under section 28G of the Wildlife and Countryside Act 1981 comply with section 28H of that Act has been added to the Schedule (*paragraph 22*).
- (n) Tree preservation orders (*paragraph 24*). A reference to trees in conservation areas, protected by section 211 of the Town and Country Planning Act 1990, has been added.
- (o) Scheduled monuments (*paragraph 25*).
- (p) Felling of trees (*paragraph 26*).
- (q) Public rights of way (*paragraphs 27 to 30*).

Regulation 5 requires the Secretary of State to prohibit farmers from converting land under permanent pasture, and to oblige farmers to reconvert land to permanent pasture, where the exercise of these powers is necessary in order for the United Kingdom to meet the requirements of Articles 3 and 4 of the Commission Regulation.

Regulation 6 designates the Secretary of State as the competent control authority in relation to the requirements listed in regulation 6(1). It also exercises a derogation under Article 42 of the Commission Regulation to designate the Rural Payments Agency (“the RPA”) as the competent control authority for the statutory management requirements not listed in regulation 6(1) and for the standards of good agricultural and environmental condition, and permanent pasture. Regulation 6 enables the RPA and the Secretary of State to require certain other authorities to carry out controls.

Regulation 7 provides powers of entry for an authorised person.

Regulations 8 and 9 provide for an authorised person to request assistance and for offences of obstructing an authorised person and failing to provide assistance.

A handbook setting out the standards in the Schedule is available (PB 11305). This handbook, the guidance on soil management (PB 11162), including that specifically on the soil protection review (PB11160), and a handbook explaining those cross-compliance standards which relate specifically to set-aside land (PB11304) will be sent to all farmers. Guidance on the management of habitats and landscape features (PB10222C) remains unchanged from 2005. Further copies are available from Defra Publications, Admail 6000, London SW1A 2XX. Telephone 08459 556 000. Fax 020 8957 5012. Email: defra@iforcegroup.com.

A full regulatory impact assessment on the effect that cross-compliance will have on the costs of business, and a further regulatory impact assessment on the effects of this instrument, are available from Defra Information Resource Centre, Lower Ground Floor, Ergon House, c/o 17 Smith Square, London SW1P 3JR, or at www.defra.gov.uk/farm/capreform/singlepay/index.htm.

STATUTORY INSTRUMENTS

2005 No. 3459

AGRICULTURE, ENGLAND

The Common Agricultural Policy Single Payment and Support Schemes (Cross-compliance) (England) Regulations 2005

£3.50