

2016 No. 104

AGRICULTURE

**The Common Agricultural Policy (Direct Payments etc.)
(Scotland) Amendment Regulations 2016**

<i>Made</i>	- - - -	<i>15th February 2016</i>
<i>Laid before the Scottish Parliament</i>		<i>17th February 2016</i>
<i>Coming into force</i>	- -	<i>24th March 2016</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Common Agricultural Policy (Direct Payments etc.) (Scotland) Amendment Regulations 2016 and come into force on 24th March 2016.

Amendment to the Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015

2. The Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015(b) are amended in accordance with regulations 3 to 5.

3. After regulation 15 (national reserve), insert—

“Obligations to comply with agricultural practices beneficial for the climate and the environment

15A.—(1) For the purposes of Article 43(3) of, and the sixth sub-paragraph (fertiliser regime) of point II(1) of Annex IX to, the Direct Payments Regulation, a farmer must comply with the applicable obligations(c).

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7), section 3(3) and Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(b) S.S.I. 2015/58, as amended by S.S.I. 2015/194 and S.S.I. 2015/215.

(c) In accordance with Article 43(3)(b) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council (OJ L 347, 20.12.2013, p.608), the Scottish Ministers have established an environmental certification scheme in respect of compliance by farmers with the applicable obligations.

- (2) In paragraph (1), “the applicable obligations” means—
- (a) in relation to the cultivation of crops, the crop diversification obligation applicable under and in accordance with—
 - (i) Article 44 of the Direct Payments Regulation and Article 40 of the Direct Payments Delegated Regulation; and
 - (ii) regulation 16;
 - (b) in relation to areas of permanent grassland, the obligation—
 - (i) not to convert or plough areas of permanent grassland designated as environmentally sensitive for the purposes of the first sub-paragraph of Article 45(1) of the Direct Payments Regulation and regulation 17(1); and
 - (ii) to prepare a plan in respect of the application of inorganic nitrogen fertiliser and lime in accordance with regulation 17A; and
 - (c) in relation to arable land, the obligation to have ecological focus areas applicable under and in accordance with—
 - (i) Article 46 of the Direct Payments Regulation and Article 45 of the Direct Payments Delegated Regulation; and
 - (ii) regulation 18 and Schedule 2.”.

4. After regulation 17 (permanent grassland), insert—

“Permanent grassland: obligation to prepare a plan in respect of the application of inorganic nitrogen fertiliser and lime

17A.—(1) A farmer must, in accordance with paragraph (2), no later than the date specified in regulation 6(1) prepare a plan in respect of the application of inorganic nitrogen fertiliser and lime to a relevant parcel of permanent grassland.

(2) The plan under paragraph (1) must specify whether and to what extent it is anticipated that inorganic nitrogen fertiliser or lime is to be applied to a relevant parcel of permanent grassland.

(3) The farmer must provide a copy of the plan under paragraph (1) to the Scottish Ministers on request.

(4) In this regulation, “a relevant parcel of permanent grassland” means a parcel of land comprising areas of permanent grassland provided that the parcel does not also contain areas of either or both of—

- (a) arable land; and
- (b) rough grazing land.”.

5. In Schedule 2 (ecological focus areas: further criteria)—

- (a) for Part 1 (crop species that may be used in a mixture of crop species for the purposes of Article 45(9) of the Direct Payments Delegated Regulation in relation to areas under green cover), substitute—

“PART 1

Crop species that may be used in a mixture of crop species for the purposes of Article 45(9) of the Direct Payments Delegated Regulation in relation to areas under green cover

Rye (*Secale cereale*)

Vetch (*Vicia sativa*)

Phacelia (*Phacelia*)

Barley (*Hordeum vulgare*)

Mustard (*Sinapsis alba*)

Oats (*Avena sativa*)

Alfalfa (*Medicago stiva*)

Clover (*Trifolium*)

Radish (*Raphanus*”); and

(b) in Part 3 (additional conditions for the purposes of Article 45(10) of the Direct Payments Delegated Regulation)—

(i) in paragraph 2, after “field margin” insert “, which is a landscape feature as referred to in point (e) of the first sub-paragraph of Article 45(4) of the Direct Payments Delegated Regulation,”; and

(ii) after paragraph 2 insert—

“**3.**—(1) Areas with nitrogen fixing crops must be established by sowing at least 2 of the crop species listed in Part 2 of this Schedule, provided that one of the crop species sown does not cover more than 75 per cent of the total of such areas.

(2) Any area with nitrogen fixing crops established as mentioned in sub-paragraph (1) must not contain the same crop species as any other such area established.

(3) In this paragraph, “crop species” includes a mixture of any of the crop species listed in Part 2 of this Schedule.

4. In this Part, “areas with nitrogen fixing crops” means areas as mentioned at point (j) of Article 46(2) of the Direct Payments Regulation and which form part of the arable land of the holding declared by a farmer in accordance with Article 46(1) of that Regulation.”.

RICHARD LOCHHEAD

A member of the Scottish Government

St Andrew’s House,
Edinburgh
15th February 2016

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015 (“the principal Regulations”), which make provision in Scotland for the administration of Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy (OJ L 347, 20.12.2013, p.608) (“the Direct Payments Regulation”), and other associated EU Regulations as referred to in regulation 2(1) of the principal Regulations.

From 1st January 2016, farmers’ obligations in return for any payment for agricultural practices beneficial for the climate and the environment (also known as “greening” obligations) under Chapter 3 of Title III to the Direct Payments Regulation, will be delivered through a national environmental certification scheme in accordance with Article 43(3)(b) of the Direct Payments Regulation. That certification scheme comprises the standard greening obligations as set out in Articles 44 to 46 of the Direct Payments Regulation, plus an additional obligation. The amendments made to the principal Regulations by regulations 3 to 5 make provision for these obligations.

For the purposes of the certification scheme, regulation 3 specifies the applicable obligations on the farmer by inserting a new regulation 15A into the principal Regulations. These obligations are in respect of crop diversification, areas of permanent grassland and ecological focus areas. Regulation 4 inserts a new regulation 17A into the principal Regulations requiring farmers to prepare an annual plan in respect of the application of inorganic nitrogen fertiliser and lime to certain areas of permanent grassland.

Regulation 5 substitutes a new Part 1 of Schedule 2 (ecological focus areas: crop species that may be used in a mixture of crop species in relation to areas under green cover) to the principal Regulations. It substitutes a new and longer list of crop species that may be used in a mixture of crop species in relation areas under green cover (regulation 5(a)). It also amends Part 3 of that Schedule (ecological focus areas: additional conditions) to provide for an additional management condition in respect of areas with nitrogen fixing crops (regulation 5(b)).

No business and regulatory impact assessment has been prepared for these Regulations as no impact upon business, charities or voluntary bodies is foreseen.

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£4.25

S201602162 02/2016 19585

<http://www.legislation.gov.uk/id/ssi/2016/104>

ISBN 978-0-11-103170-4



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