

**EXPLANATORY MEMORANDUM TO
THE AGRICULTURE (CROSS COMPLIANCE) (NO.2) REGULATIONS 2009
(AMENDMENT) REGULATIONS 2010**

2010 No. 2941

1. This explanatory memorandum has been prepared by the Department for Environment Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations amend the Agriculture (Cross compliance) (No.2) Regulations 2009 (S.I. 2009/3365) (the “2009 Regulations”). The amendments serve to increase clarity and remove ambiguity. The amendments:

- Clarify references to existing domestic legislation in Schedule 1 of the 2009 Regulations to remove ambiguity over the extent of the application of these provisions in the context of cross compliance
- Update the Latin name used to refer to Japanese Knotweed
- Clarify the scope of the obligations relating to land not in production
- Clarify the scope of the obligations relating to hedgerows
- Remove an obligation relating to watercourses and ditches
- Update and clarify the scope of permitted exemptions

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 As this instrument mainly makes amendments to clarify policy intent, it is being issued free to recipients of the 2009 Regulations.

4. Legislative Context

- 4.1 These Regulations amend the Agriculture (Cross compliance) (No.2) Regulations 2009 (S.I. 2009/3365) with themselves revoked and replaced the Agriculture (Cross compliance) Regulations 2009 (S.I. 2009/3264) which revoked and replaced the Common Agricultural Policy (CAP) Single Payment and Support Schemes (Cross compliance) (England) Regulations 2005 (S.I. 2005/3459). The 2005 Regulations provided for the administration of Council Regulation (EC) No 1782/2003 and Commission Regulation (EC) No 796/2004 in relation to the establishment of a cross compliance control system for direct support schemes under the CAP. They are available on the [legislation.gov.uk](http://www.legislation.gov.uk) website, together with the accompanying Explanatory Memorandum (at <http://www.legislation.gov.uk/uksi/2005/3459/contents/made>).

4.2 Following the CAP Health Check (where changes were made to the regulations governing the Single Payment Scheme and Cross compliance), Council

Regulation (EC) No 1782/2003 and Commission Regulation (EC) No 796/2004 were replaced by Council Regulation (EC) No 73/2009 and Commission Regulation (EC) No 1122/2009 respectively.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 Cross compliance requires that farmers meet environmental and other standards as a condition for subsidy payment under the Single Payment Scheme (SPS) and also as a baseline for Environmental Stewardship (ES) payments under the Rural Development Programme, England.

7.2 Although the standards faced in practice by farmers are unchanged, amendments are required to clarify a number of minor points arising in the 2009 Regulations and ensure that the Regulations adequately encompass the need to grant exemptions in exceptional circumstances:

- In the table in paragraph 1 of Schedule 1 to the 2009 Regulations a reference to a code of practice for weeds is removed because it is redundant and any such codes of practice can be considered in appeal cases without the need for express reference.
- In the same table the provisions relating to abstraction licensing are clarified to ensure that they only relate to abstraction of irrigation (as per the minimum requirement for this provision under EU law).
- In the same table the provisions relating the Environmental Impact assessment are clarified to ensure that they relate only to uncultivated land projects.
- In Schedule 1 to the 2009 Regulations, paragraph 5 is substituted to clarify when standards for land not in production apply.
- In Schedule 1 to the 2009 Regulations, in paragraph 6, the Latin name for Japanese Knotweed is updated in line with taxonomic developments.
- In paragraphs 7 and 8 of Schedule 1 to the 2009 Regulations the application of requirements for the management of hedgerows (prohibiting cutting during the main nesting season for birds and preventing damage from ploughing very close to the hedgerow) are clarified to show that the requirements apply only

to the field side of any hedgerow that forms (on the other side) part of the curtilage of a dwelling.

- In paragraph 8 of Schedule 1 to the 2009 Regulations the requirement not to apply fertilisers and pesticides directly into watercourses is removed. This is because testing compliance with this requirement as part of the inspection regime is not possible due to technical constraints. Fertiliser and pesticide pollution is very rarely direct to a watercourse (although it is serious if it does occur and such instances, once detected, can be directly enforced by the Environment Agency under other legislation) and protection of watercourses under cross compliance is more readily assessed through compliance with requirements not to apply fertilizers or pesticides in close proximity to watercourse (e.g. the requirement in Schedule 1, paragraph 8(1)) by maintaining a 2 metre margin next to these features.
- In Schedule 2 to the 2009 Regulations the existing exemption for statutorily-authorized works relating to pipelines, cables and pylons is extended to cover all statutory works and connected activities. This will ensure that farmers who are required to comply with statutory works will not be found in breach of cross compliance, provided that following the completion of the works the agricultural land will be in good agricultural and environmental condition for the purposes of Article 6(1) of Council Regulation 73/2009.

- ***Consolidation***

7.3 This instrument amends the Agriculture (Cross compliance) (No.2) Regulations 2009 (S.I. 2009/3365). Further changes to the delivery of cross compliance policy currently under consideration and the work of the Task Force on Farming Regulation may both lead to the need for subsequent revisions in 2011 which would then provide an opportunity to revoke and remake the regulations into a final stable form for the remainder of the current CAP period (we anticipate large scale changes to cross compliance will need to be introduced for 2014 as part of CAP reform).

8. Consultation outcome

8.1 As this instrument only clarifies technical aspects of current policy no consultation was conducted. The policy this instrument implements was subject to consultation in 2009 and the outcome of that consultation is summarised in the Explanatory Memorandum to the 2009 Regulations available from <http://www.legislation.gov.uk/ukxi/2009/3365/memorandum/contents>.

9. Guidance

9.1 Because of the technical nature of the changes introduced by this instrument the basic requirements faced by and guidance provided to farmers will not alter. The Rural Payments Agency provides all farmers subject to cross compliance with guidance that gives details of all cross compliance. As well as these guidance documents, cross compliance is covered by a 'Farm Advisory Service' (FAS) which

manages a website containing further information, writes articles for the farming press and holds events for farmers and farm advisors.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil, other than improved clarity for dealing with cases at appeal.

10.3 An Impact Assessment has not been prepared for this instrument because it does not lead to costs or savings for business.

11. Regulating small business

11.1 The legislation applies to small business (the majority of farms are small businesses so this legislation applies primarily to small businesses).

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to design standards in consultation with the farming industry. These regulations however do not lead to any additional costs or savings for firms.

11.3 The basis for the final decision on what action to take to assist small business is feedback received from farmers. In particular the widened exemptions for statutory-works are based on lessons learnt in recent years as we see increasing numbers of requests for exemptions that did not fit easily into existing classes of exemption (e.g. for non cabling, pipeline or pylon works).

12. Monitoring & review

12.1 The Common Agricultural Policy (of which cross compliance forms part) will be subject to review by at the end of 2012 and the outcomes of that review will be monitored for potential impacts on this instrument. In the meantime feedback will be sought from farmers on guidance materials and advice services during implementation and incorporated into further revisions of guidance and advice materials in 2010 and 2011. Performance against the cross compliance standards themselves is monitored annually under the cross compliance inspection programme.

13. Contact

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