

2011 No. 415

AGRICULTURE

**The Common Agricultural Policy Schemes (Cross-Compliance)
(Scotland) Regulations 2011**

Made - - - - *22nd November 2011*

Laid before the Scottish Parliament *24th November 2011*

Coming into force - - *1st January 2012*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(a) and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Scottish Ministers that it is expedient for references to EU instruments to be construed as references to those instruments as amended from time to time.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2011 and come into force on 1st January 2012.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

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

“the Commission Regulation” means Commission Regulation (EC) No 1122/2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector(b), as amended from time to time;

(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) (“the 2008 Act”), 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. Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act and was amended by the 2008 Act, Schedule, Part 1.

(b) OJ L 316, 2.12.2009, p.65, as last amended by Commission Regulation (EU) No 173/2011 (OJ L 49, 24.2.2011, p.16).

“control report” means a control report pursuant to Article 54 of the Commission Regulation, and “provisional control report” is a draft control report detailing all the information required in a control report;

“the Council Regulation” means Council Regulation (EC) No 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006 and (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003(a), as amended from time to time;

“Council Regulation 1698/2005” means Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)(b), as amended from time to time;

“the EIA Agriculture Regulations” means the Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006(c);

“electronic communication” means an electronic communication as defined in section 15 (general interpretation) of the Electronic Communications Act 2000(d), which has been recorded and is consequently capable of being reproduced;

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

“growing season” means the growing season which ends on or before 15th October in any calendar year;

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

“non-compliance” has the same meaning as in Article 2(36) of the Commission Regulation;

“the Scottish Environment Protection Agency” means the Scottish Environment Protection Agency established under section 20 of the Environment Act 1995(e);

“Scottish Natural Heritage” means Scottish Natural Heritage established under section 1 of the Natural Heritage (Scotland) Act 1991(f); and

“site of special scientific interest” means land notified under section 3(1) or 5(1) (sites of special scientific interest) of the Nature Conservation (Scotland) Act 2004(g).

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

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

(4) Except in relation to a management regime, approval or consent under paragraph 10(2), 11(3), 12(2)(a), 14, 15(1) or 16(1) of the Schedule to these Regulations, where this paragraph applies only if the farmer so consents, or has contacted the Scottish Ministers by way of an electronic communication in relation to such a regime, approval or consent, any reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication.

(a) OJ L 30, 31.1.2009, p.16, as last amended by Commission Implementing Regulation (EU) No 785/2011 (OJ L 203, 6.8.2011, p.10).

(b) OJ L 277, 21.10.2005, p.1, as last amended by Council Regulation (EC) No 473/2009 (OJ L 144, 9.6.2009, p.3).

(c) S.S.I. 2006/582, amended by S.S.I. 2006/614, 2008/202 and 2010/460.

(d) 2000 c.7, relevantly amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

(e) 1995 c.25.

(f) 1991 c.28; section 1 was amended by the Public Services Reform (Scotland) Act 2010 (asp 8), schedule 1, paragraph 2(b).

(g) 2004 asp 6.

Designation

3. The Scottish Ministers shall be the competent national authority for the purposes of providing the list of statutory management requirements and good agricultural and environmental condition to be respected, as required by Article 4(2) of the Council Regulation.

Good agricultural and environmental condition

4.—(1) The standards of good agricultural and environmental condition set out in the Schedule to these Regulations apply as minimum requirements for the purpose of Article 6 of, and Annex III to, the Council Regulation.

(2) The land must be maintained in a condition that would make it reasonably practicable for an authorised person (and any person who may accompany an authorised person) to exercise any of the powers specified in regulation 7 as necessary to ascertain whether any of the statutory management requirements under Article 4 of, and Annex II to, the Council Regulation or any requirement of this regulation or the Schedule to these Regulations has been complied with.

Permanent pasture

5.—(1) If it is established that the ratio mentioned in Article 3(1) of the Commission Regulation is decreasing, the Scottish Ministers must prohibit a farmer from converting land under permanent pasture, in accordance with Article 4(1) of the Commission Regulation.

(2) If it is established that the obligation in Article 3(2) of the Commission Regulation cannot be ensured the Scottish Ministers must require a farmer to re-convert land to permanent pasture in accordance with Article 4(2) of the Commission Regulation.

(3) In this regulation, “permanent pasture” has the meaning given to it in Article 2(2) of the Commission Regulation.

Competent control authority

6.—(1) The Scottish Ministers are designated as the competent control authority for the purposes of Article 48 of the Commission Regulation.

(2) The Scottish Ministers may require the relevant authorities to carry out controls for the purposes of Article 8 and Chapters I and III of Title III of Part II of the Commission Regulation.

(3) The relevant authorities must—

- (a) send to the Scottish Ministers a provisional control report; and
- (b) for the purposes of Article 70 of the Commission Regulation where a non-compliance is established as a consequence of any kind of checks, notify the Scottish Ministers of any non-compliance established.

(4) The Scottish Ministers must pursuant to Article 54 of the Commission Regulation, establish the final control report and where the Scottish Ministers are not the Paying Agency, send the control report to the Paying Agency.

(5) In this regulation, “the relevant authorities” means—

- (a) Scottish Natural Heritage; and
- (b) the Scottish Environment Protection Agency.

Powers of authorised persons

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

- (a) providing a control report or a provisional control report;
- (b) establishing whether there has been a non-compliance; or
- (c) ascertaining whether an offence under these Regulations has been or is being committed.

(2) An authorised person may, on producing if so required, a duly authenticated document showing that person's authority, at all reasonable hours enter any land (excluding any premises used only as a dwelling) which is, or which such person has reasonable cause to believe to be, a holding occupied by, or in the possession of, a farmer or employee, agent, contractor or tenant of the farmer.

(3) If a sheriff or justice of the peace, on sworn information in writing, is satisfied that there is reasonable ground for entry into any premises by an authorised person under this regulation and either that—

- (a) entry has been refused or a refusal is reasonably expected, and that person has given notice to the occupier of his or her intention to apply for an entry warrant; or
- (b) a request for entry, or the giving of such a notice, would defeat the object of entry, or entry is urgently required, or the premises are unoccupied, or the occupier is temporarily absent and it would defeat the object of entry to await the occupier's return,

the sheriff or justice may by signed warrant, valid for a period of no more than one month, authorise that person, together with any person who may accompany him or her by virtue of paragraph (5), to enter the premises, if need be by reasonable force.

(4) An authorised person may—

- (a) carry out any inquiries, checks, examinations, measurements and tests;
- (b) take any samples;
- (c) inspect all or any part of the land farmed, laid fallow or withdrawn from agricultural production by a farmer;
- (d) inspect any crops growing on that land or any livestock or any other thing kept on it;
- (e) mark any animal or other thing for identification purposes;
- (f) have access to, inspect and copy any documents or records (in whatever form they are held) kept relating to matters covered by these Regulations, or remove such records to enable them to be copied;
- (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 documents or records; and for this purpose may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford the authorised person such assistance as may reasonably be required and, where a document or record is kept by means of a computer, may require the documents or records to be produced in a form in which they can be taken away;
- (h) remove a carcass found on the land for the purpose of carrying out a post-mortem examination on it;
- (i) take a photograph of anything on the land; and
- (j) remove anything which the authorised person reasonably believes to be evidence of any non-compliance.

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

- (a) such other persons as the authorised person considers necessary; and
- (b) any representative of the European Commission acting for the purposes of the Council Regulation and the Commission Regulation.

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

Assistance to authorised persons

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

(2) Such assistance may include the gathering of livestock and presenting them for inspection in a safe and secure manner.

Offences and penalties

9.—(1) A person commits of an offence if he or she—

- (a) obstructs an authorised person (or a person accompanying an authorised person and acting under the authorised person’s instructions) in the exercise of a power conferred by regulation 7;
- (b) fails without reasonable excuse to comply with a request made under regulation 8; or
- (c) supplies to an authorised person (or person accompanying an authorised person and acting under the authorised person’s instructions) any information knowing it to be false or misleading.

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

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

Offences by bodies corporate, etc.

10.—(1) Where—

- (a) an offence under these Regulations has been committed by a body corporate or a Scottish partnership or other unincorporated association;
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
 - (i) a relevant individual; or
 - (ii) an individual purporting to act in the capacity of a relevant individual,

the individual as well as the body corporate, Scottish partnership or unincorporated association commits the offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1), “relevant individual” means—

- (a) in relation to a body corporate—
 - (i) a director, manager, secretary or other similar officer of the body;
 - (ii) where the affairs of the body are managed by its members, a member;
- (b) in relation to a Scottish partnership, a partner;
- (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

Amendment of the Rural Payments (Appeals) (Scotland) Regulations 2009

11. In paragraph 9 of the Schedule (relevant decisions) to the Rural Payments (Appeals) (Scotland) Regulations 2009(a), for “the Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004”, substitute “the Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2011”.

(a) S.S.I. 2009/376, to which there are amendments not relevant to these Regulations.

Revocation

12. The following Regulations and Orders are revoked—

- (a) the Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004(a);
- (b) regulation 26 of the Common Agricultural Policy Single Farm Payment and Support Schemes (Scotland) Regulations 2005(b);
- (c) the Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Amendment Regulations 2007(c);
- (d) regulation 2(c) of, and Schedule 3 to, the Common Agricultural Policy (Single Farm Payment and Support Schemes and Cross-Compliance) (Scotland) Amendment Regulations 2008(d);
- (e) regulations 15 to 18 of the Common Agricultural Policy (Single Farm Payment and Support Schemes and Cross-Compliance) (Scotland) Amendment Regulations 2009(e);
and
- (f) article 8 of the Public Services Reform (Scotland) Act 2010 (Consequential Modifications) Order 2010(f).

RICHARD LOCHHEAD

A member of the Scottish Executive

St Andrew's House,
Edinburgh
22nd November 2011

(a) S.S.I. 2004/518.
(b) S.S.I. 2005/143.
(c) S.S.I. 2007/99.
(d) S.S.I. 2008/184.
(e) S.S.I. 2009/391.
(f) S.S.I. 2010/222.

SCHEDULE

Regulation 4

GOOD AGRICULTURAL AND ENVIRONMENTAL CONDITION

PART I

Protection of soil from erosion

Minimum soil cover

Winter soil cover and final seedbeds

1.—(1) Subject to sub-paragraph (2), where land has been cropped with any crop which has been harvested a farmer must ensure that throughout the winter following that harvest such land—

- (a) is covered by the stubble of the harvested crop, by another crop or by grass; or
- (b) has a surface which is ploughed, or roughly cultivated (by the use of discs or tines or otherwise).

(2) Sub-paragraph (1) does not apply to the extent that the prevailing agronomic or weather conditions and the condition of the composition of the soil of that land—

- (a) after harvest are such that compliance with that sub-paragraph would be detrimental to the use of the land for agricultural production; or
- (b) are such that they would allow the planting of the following year's crop before the end of winter.

(3) Final seedbeds must only be created for as short a period as possible before the next crop is planted, to avoid significant evident erosion of the soil, taking account of prevailing weather conditions.

(4) In this paragraph, "winter" means the period beginning on the day after the crop has been harvested and ending on the last day of February in the following calendar year.

Minimum land management reflecting site-specific conditions

Wind erosion

2.—(1) In relation to an area of land prone to wind erosion of the soil, a farmer must reduce the risk of soil loss during the spring by planting and maintaining on or in relation to that field, until a crop is established in that area—

- (a) crop cover by another crop;
- (b) coarse seedbeds;
- (c) shelter belts; or
- (d) nurse crops to protect other crops grown on the land,

or taking other measures with equivalent effect to the establishment of one of those features.

(2) In this paragraph, "spring" means the period beginning on 1st March and ending on 31st May in any calendar year.

Capping

3.—(1) In any field which is prone to capping, or where there is capping, a farmer must form a coarse seedbed or ensure that the farmer breaks any cap which forms so as not to cause erosion.

(2) In this paragraph, “capping” means soil particles which have run together when wet, and then dried so as to form a crust on the surface of the soil; and “cap” is to be construed accordingly.

Watercourses, watering points and feeding areas

4.—(1) A farmer must prevent the erosion of the banks of watercourses, at watering points or feeding areas, from overgrazing or heavy poaching by livestock except within—

- (a) 10 metres of a gateway; or
- (b) 3 metres of a farm track which requires to be used during wet-periods,

by reducing the livestock numbers on that land so as to cause the land to recover to the extent that the erosion is no longer significant by any time during the growing season in the calendar year after that in which erosion first occurred.

(2) In this paragraph, “heavy poaching” means the cutting up of turf to a significant degree as a result of trampling by livestock.

Field drains

5.—(1) Subject to sub-paragraph (2), a farmer must maintain any functional field drainage systems on the land in a working state (whether by clearing ditches or otherwise).

(2) Sub-paragraph (1) does not apply where an environmental gain would be achieved by not maintaining the field drainage systems provided the farmer has, prior to that system ceasing to function, declared the environmental gain to be achieved—

- (a) in the farmer’s aid application submitted under Article 19 of the Council Regulation; or
- (b) in any other prior application submitted for a direct payment.

Muirburning

6. A farmer must comply with the requirements of the Muirburn Code(a).

PART II

Practices to maintain soil organic matter levels

Standards for crop rotations where applicable

Arable break crops or the application of organic materials

7.—(1) On arable land cultivated for crop production, a farmer must either—

- (a) use suitable break crops to maintain organic matter in the soil in an arable rotation; or
- (b) optimise the application of organic materials to land by applying rates of application of the material calculated by reference to the requirements of the soil and crops grown.

(2) Where a farmer uses the option specified in sub-paragraph (1)(b), the farmer must make and keep for 5 years a written record of the organic materials, and the quantities of those materials, applied to the land.

(a) Published in 2011 by the Scottish Government and available from the Scottish Government Rural Directorate, Victoria Quay, Edinburgh EH6 6QQ.

Arable stubble management

Incorporation of livestock manures

8. Except on an area of land prone to wind erosion of the soil, a farmer must incorporate livestock manures spread on stubble into the soil within a period of 2 weeks after the date of spreading on a particular area of stubble.

PART III

Maintenance of soil structure

Appropriate machinery use

Machinery use for planting or sowing

- 9.—(1) A farmer must not carry out any cultivation using machinery if—
- (a) water is standing on the surface of the land; or
 - (b) the soil is saturated to the point where water is clearly visible when pressure equivalent to a footprint is applied.
- (2) In this paragraph, “cultivation” means cultivation to prepare for planting or sowing.

PART IV

Minimum level of maintenance and prevention of deterioration of habitats

Minimum livestock stocking rates and appropriate regimes

Undergrazing

- 10.—(1) A farmer must not allow undergrazing of land.
- (2) Where undergrazing is identified by an authorised person, and the Scottish Ministers form the opinion that the land is undergrazed, the farmer must in addition comply with the conditions of any written management regime imposed by the Scottish Ministers in relation to that land; and the Scottish Ministers must pass or send a copy of that management regime to the farmer.
- (3) In establishing any undergrazing, land is not undergrazed if the land is capable of recovering to the extent that the use of the land or the growth, structure or species composition of grazed vegetation is no longer detrimental to the environmental or agricultural interest of the land by any time during the growing season in the calendar year following the date when the land first became undergrazed.
- (4) In this paragraph, “undergrazing” means not using land fully or scrub or coarse vegetation becoming evident, where the use of the land or the growth, structure or species composition of grazed vegetation is detrimental to the environmental or agricultural interest of the land.

Overgrazing

- 11.—(1) Subject to sub-paragraph (2), a farmer must not allow overgrazing of land.
- (2) Where a farmer can demonstrate to the satisfaction of the Scottish Ministers that appropriate action has been taken, he or she will not be taken to have allowed overgrazing, where the overgrazing was caused by—
- (a) an incursion of geese which could not be predicted;

- (b) an incursion of wild deer which could not be predicted, and in the case of an incursion of significant numbers of such deer the farmer can show that advice has been taken from Scottish Natural Heritage and that advice has been acted upon; or
- (c) rabbits, where the farmer can show that appropriate control methods have been used.

(3) Where overgrazing is identified by an authorised person, and the Scottish Ministers form the opinion that the land is overgrazed, the farmer must in addition comply with the conditions of any written management regime imposed by the Scottish Ministers in relation to that land; and the Scottish Ministers must pass or send a copy of that management regime to the farmer.

(4) Subject to sub-paragraph (5), in this paragraph “overgrazing” means grazing land with livestock or other animals in such numbers as to adversely affect the growth, quality or species composition of vegetation (other than vegetation normally grazed to destruction) on that land to a significant degree.

(5) There is no overgrazing for the purposes of this paragraph if the land is capable of recovering to the extent that the growth quality or species composition of vegetation would no longer be adversely affected to a significant degree by any time during the growing season in the calendar year after the land first became overgrazed.

Protection of permanent pasture

Pasture land of environmental or archaeological value

12.—(1) A farmer must not plough up pasture land of high environmental or archaeological value (whether species-rich grassland, machair habitat, pastoral woodland, heather moorland or otherwise) without all of the necessary consents or approvals required to permit that ploughing up.

(2) In this paragraph, “necessary consents or approvals” means—

- (a) the prior written consent of—
 - (i) subject to sub-paragraph (3), Scottish Natural Heritage for land within a site of special scientific interest;
 - (ii) the Scottish Ministers, for land under an agri-environment agreement in connection with support paid under Article 39 of Council Regulation 1698/2005(a);
- (b) approval under the EIA Agriculture Regulations; or
- (c) any consent or approval by or under any other enactment which would prohibit that ploughing up.

(3) This paragraph shall not apply where the necessary consent or approval would be the consent of Scottish Natural Heritage at a site of special scientific interest so designated in consequence of its status as a European site within the meaning of regulation 10 of the Conservation (Natural Habitats, &c.) Regulations 1994(b).

Works on rough grazings and other semi-natural areas

13.—(1) A farmer must not undertake new drainage works, plough up, clear, level, re-seed or cultivate rough grazings and other semi-natural areas without approval under the EIA Agriculture Regulations.

(2) In this paragraph and paragraph 14, “rough grazings and other semi-natural areas” means land containing semi-natural vegetation including heathland, heather moorland, bog, unimproved grassland and rough grassland which is used or suitable for grazing.

(a) OJ L 277, 21.10.2005, p.1, as last amended by Council Regulation (EC) No 473/2009, (OJ L 144, 9.6.2009, p.3).

(b) S.I. 1994/2716, relevantly amended by S.S.I. 2007/80.

Pesticides, lime and fertiliser on rough grazings and other semi-natural areas

14. A farmer must not apply pesticides, lime or fertiliser to rough grazings and other semi-natural areas, except—

- (a) as approved under the EIA Agriculture Regulations;
- (b) in the case of lime or fertiliser, where no conservation damage to the diversity of species in those areas will result;
- (c) in the case of pesticides, to control injurious weeds to which the Weeds Act 1959^(a) applies;
- (d) to control bracken with pesticides approved in accordance with the Control of Pesticides Regulations 1986^(b) or the Plant Protection Products Regulations 2011^(c); or
- (e) to control other plants, subject to the prior written consent of the Scottish Ministers.

Retention of landscape features

Boundary features

15.—(1) Subject to sub-paragraph (3), a farmer must not remove, destroy or damage drystone or flagstone dykes, turf and stone-faced banks, walls, hedges and hedgerow trees, boundary trees or watercourses which serve as boundaries to agricultural land, without the prior written consent of—

- (a) the Scottish Ministers; or
- (b) such other authority, by or under any enactment, as may be notified to the farmer by the Scottish Ministers when the farmer applies to Ministers for consent.

(2) A farmer must not trim a hedge during the period beginning on 1st March and ending on 31st July in any calendar year, except—

- (a) for the purposes of hedgelaying up to and including 31st March; or
- (b) to the extent necessary for the purposes of road safety at any time during that period.

(3) Written consent under sub-paragraph (1) is not required to widen field entrances to enable access for livestock or farm machinery.

(4) In this paragraph “remove, destroy or damage” does not include—

- (a) trimming a hedge; or
- (b) lopping branches from hedgerow trees.

(5) In this paragraph, “hedgelaying” means a traditional method of cultivating hedges where tall saplings are partly cut through near the base and then bent over so that they lie horizontally and make a thick barrier.

Landscape features

16.—(1) A farmer must prevent the deterioration of non-productive landscape features on the land, including shelter belts, copses and ponds, except with the prior written consent of—

- (a) the Scottish Ministers; or
- (b) such other authority, by or under any enactment, as may be notified to the farmer by the Scottish Ministers when the farmer applies to Ministers for consent.

(2) In this paragraph, “deterioration” means—

- (a) in relation to shelter belts and copses—
 - (i) not maintaining functional stock proof fences around those features; or

(a) 1959 c.54.

(b) S.I. 1986/1510, as amended by S.I. 1997/188, S.I. 2001/880 and S.I. 2011/2131.

(c) S.I. 2011/2131.

- (ii) severe poaching, where feeding or other livestock husbandry practices have occurred within those features because the farmer has not reduced the livestock numbers so as to cause the turf to recover to the extent that there is no longer a predominantly muddy surface by any time during the growing season in the calendar year following the date when that severe poaching first occurred; or
 - (b) not maintaining ponds on the holding by allowing eutrophication or by drainage.
- (3) In this paragraph “severe poaching” means the cutting up of turf to the destruction of the underlying vegetation leading to a predominantly muddy surface from trampling by livestock.

Protected historic environment

17. A farmer must not alter, or cause (whether directly or indirectly) the damage or destruction of—

- (a) a monument for the time being included in the Schedule of monuments compiled and maintained under section 1 of the Ancient Monuments and Archaeological Areas Act 1979(a), without prior scheduled monument consent(b) within the meaning of that Act;
- (b) a listed building, within the meaning of section 1(4) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997(c), without prior listed building consent under section 7 of that Act; or
- (c) a historic garden or designed landscape, within the meaning of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008(d), in respect of which consultation is required before any grant of planning permission under regulation 25 of, and Schedule 5 to, those Regulations.

Avoiding the encroachment of unwanted vegetation on agricultural land

Encroachment of vegetation

18.—(1) Subject to sub-paragraph (2), a farmer must maintain land in a condition where vegetation does not encroach onto the land to the point that the land is not capable of—

- (a) being used for the production of agricultural products; or
- (b) being put in that condition by any time during the growing season in the calendar year following the date when the encroachment occurred.

(2) In respect of land managed under an agri-environmental scheme funded under the Scotland Rural Development Programme 2007 to 2013, the requirement in sub-paragraph (1) does not apply—

- (a) to the encroachment of native species in the case of—
 - (i) the recolonisation of trees across a native woodland boundary;
 - (ii) the recolonisation of gorse, birch and juniper sub-species, to the extent that it forms an area of mixed habitats; or
 - (iii) the reversion of land to wet grassland or wetland; or
- (b) where there is no degradation of the environmental and agricultural value of the land and the farmer has, prior to that encroachment, declared the environmental gain to be achieved—
 - (i) in the farmer’s aid application submitted under Article 19 of the Council Regulation; or

(a) 1979 c.46.
 (b) Certain works (including agricultural, horticultural and forestry works) have scheduled monument consent by virtue of the Ancient Monuments (Class Consents) (Scotland) Order 1996 (S.I. 1996/1507).
 (c) 1997 c.9.
 (d) S.S.I. 2008/432 as relevantly amended by S.S.I. 2011/377.

- (ii) in any other prior application submitted for a direct payment.

PART V

Protection and management of water

Protect water against pollution and run-off, and manage the use of water

Water abstraction

19.—(1) For the purposes of Article 6 of, and Annex III to, the Council Regulation, a farmer carrying out abstraction of water for irrigation must comply with the authorisation procedures set out in Part II of the Water Environment (Controlled Activities) (Scotland) Regulations 2011^(a).

(2) In this paragraph, “abstraction” has the same meaning as it has in section 20(6) of the Water Environment and Water Services (Scotland) Act 2003^(b).

Establishment of buffer strips along water courses

20.—(1) Organic manure must not be applied to any land which is situated within—

- (a) 10 metres of any surface water; or
- (b) 50 metres of any well, borehole or similar work sunk into underground strata for the purposes of any water supply.

(2) No field heap is to be located within—

- (a) 10 metres of any surface water; or
- (b) 50 metres of any well, borehole or similar work sunk into underground strata for the purposes of any water supply.

(3) Chemical fertiliser must not be applied to any land in any case, location or manner that makes it likely that the fertiliser will directly enter any surface water.

(4) Nitrogen fertiliser must not be applied to any land if there is a significant risk of nitrogen entering surface water, taking into account—

- (a) the slope of the land, particularly if greater than 12 degrees;
- (b) any ground cover;
- (c) proximity to any surface water;
- (d) weather conditions; and
- (e) the type of fertiliser being applied.

(5) In this paragraph—

- (a) “organic manure” means—
 - (i) livestock manure; and
 - (ii) nitrogen fertiliser, not being livestock manure or chemical fertiliser, derived from organic matter,
and includes sewage sludge and other organic wastes;
- (b) “chemical fertiliser” means nitrogen fertiliser which is manufactured by an industrial process;
- (c) “nitrogen fertiliser” means any substance containing a nitrogen compound utilised on land to enhance growth or vegetation; and

(a) S.S.I. 2011/209.

(b) 2003 asp 3, amended by S.S.I. 2005/348.

- (d) “surface water” has the same meaning as it has in section 3(3) of the Water Environment and Water Services (Scotland) Act 2003.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in Scotland for the administration and enforcement of Council Regulation (EC) No 73/2009 (OJ No L 30, 31.1.2009, p.16; “the Council Regulation”) and Commission Regulation (EC) No 1122/2009 (OJ No L 316, 21.2.2009, p.65; “the Commission Regulation”) in relation to cross-compliance under the Common Agricultural Policy.

The Regulations designate the competent national authority for providing farmers under Article 4(2) of the Council Regulation with a list of the statutory management requirements specified in Annex III of the Council Regulation (“the statutory management requirements”), and the standards of good agricultural and environmental condition that they must respect (regulation 3).

Regulation 4 and the Schedule to these Regulations set out the minimum requirements of good agricultural and environmental condition in relation to agricultural land in Scotland under Article 6(1) of the Council Regulation, based on the framework set out in Annex III to that Regulation. A farmer must also keep land in a condition where an authorised person can gain access to the land to ascertain whether there has been a breach of these requirements.

Regulation 5 gives the Scottish Ministers the power to prohibit farmers from converting land under permanent pasture and to oblige farmers to reconvert land to permanent pasture where the exercise of those powers is necessary to meet the requirements of Articles 3 and 4 of the Commission Regulation.

Regulation 6 designates the Scottish Ministers as the competent control authority, which shall bear the responsibility for carrying out the controls on the requirements or standards in question. Regulation 6 also enables the Scottish Ministers to require the relevant authorities to carry out controls. The regulation imposes statutory duties on the relevant authorities to send provisional control reports to the Scottish Ministers and to notify them of any non-compliance with the requirements of these Regulations or the statutory management requirements established as a consequence of any kind of check.

Regulation 7 provides powers of entry for an authorised person. These powers are in addition to any existing power of entry and are for the purpose of providing a control report or establishing whether there has been a non-compliance with the requirements of these Regulations or the statutory management requirements.

Regulation 8 provides for an authorised person to request assistance.

Regulation 9 specifies criminal offences and penalties to enforce cross-compliance for obstructing an authorised person and failing to provide assistance. Regulation 10 provides for offences by bodies corporate, Scottish partnerships and unincorporated associations.

Regulation 11 amends the Rural Payments (Appeals) (Scotland) Regulations 2009 to provide for a right of appeal in relation to relevant decisions concerning cross-compliance.

Regulation 12 revokes the Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004 and amendments to those Regulations.

The consequences of non-compliance with the requirements of good agricultural and environmental condition as provided for in these Regulations (or the statutory management requirements) are that subsidy penalties will be imposed, principally under Chapter 1 of Title II of the Council Regulation and Chapter III of Title IV of the Commission Regulation.

Copies of guidance issued by the Scottish Ministers in relation to the standards of the statutory management requirements and good agricultural and environmental condition may be obtained from Scottish Government Rural Payments and Inspections Directorate agricultural area offices.

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£5.75

S5311 11/2011 315311T 19585

