

2001 No. 3198

AGRICULTURE

**The Common Agricultural Policy
(Protection of Community Arrangements)
(Amendment) Regulations 2001**

Made - - - - - *21st September 2001*

Laid before Parliament *24th September 2001*

Coming into force - - *15th October 2001*

The Secretary of State, being a Minister designated() for the purposes of section 2(2) of the European Communities Act 1972() in relation to the common agricultural policy of the European Community, in exercise of the powers conferred on her by the said section 2(2) and of all other powers enabling her in that behalf, hereby makes the following Regulations—

Title, commencement and interpretation

1.—(1) These Regulations may be cited as the Common Agricultural Policy (Protection of Community Arrangements) (Amendment) Regulations 2001 and shall come into force on 15th October 2001.

(2) In these Regulations “the principal Regulations” means the Common Agricultural Policy (Protection of Community Arrangements) Regulations 1992().

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

Interpretation of the principal Regulations

2.—(1) Regulation 2(1) (interpretation) shall be amended—

(a) by inserting after the definition of “commercial document” the following definition—

““Communities’ agricultural levy own resources” means levies, premiums, compensatory amounts, additional amounts or factors and other duties established or to be established by the institutions of the Communities in respect of trade with countries outside the Communities within the framework of the common agricultural policy, and also contributions and other duties provided for within the framework of the common organisation of the market in sugar;”;

(b) by substituting for the definition of “regulated transaction” the following definition—

“regulated transaction” means—

(a) a transaction forming part of the system of financing by the Guarantee Section of the Fund to which Regulation 4045/89 applies; or

(a) S.I. 1972/1811; the continued power of the Secretary of State, for the purposes specified in s. 2(2) of the European Communities Act 1972, to make regulations in relation to Scotland is confirmed by s. 57(1) of the Scotland Act 1998 (c. 46), in relation to Wales by article 3(4) of S.I. 1999/2788 and in relation to Northern Ireland by article 3(2) of S.I. 2000/2812.

(b) 1972 c. 68.

(c) S.I. 1992/314.

- (b) a transaction out of which arises a liability to make a payment forming part of the Communities' agricultural levy own resources otherwise than in respect of imports from any country outside the Communities;";
 - (c) by adding at the end of the definition of "Regulation 4045/89" the words "as amended()";
 - (d) by inserting within the definitions of "specified beneficiary" and "specified contributor", in each case after the words "business in", the words, ",or in the production of,";
 - (e) by inserting after the definition of "specified contributor" the following definition—
"specified own resources levy payer" means any person who has paid, or incurred a liability to pay, the whole or any part of any sum forming part of the Communities' agricultural levy own resources otherwise than in respect of imports from any country outside the Communities;"; and
 - (f) by substituting for the definition of "specified person" the following definition—
"specified person" means any person who is a specified beneficiary, a specified contributor or a specified own resources levy payer."
- (2) For regulation 2(2) (which contains the definition of "specified commodity") there shall be substituted the following paragraph—

"(2) For the purposes of these Regulations a "specified commodity" means any of the products that are subject to the provisions of Articles 33 to 38 of the EC Treaty (which are listed in Annex I to that Treaty) and any goods processed from those products in accordance with Council Regulation (EC) No. 3448/93(), as amended(), and listed in Annexes B and C to Commission Regulation (EC) No. 1222/94(), as amended(), and includes oils the release of which into free circulation is subject to destination or end use controls under Commission Regulation (EEC) No. 2828/93(), as amended()."

Powers of authorised officers

3. For regulation 5(1)(b) there shall be substituted the following sub-paragraph—

"(b) an offence under regulation 8(1)(a), (b), (c) or (e), (3), (4), (9) or (10) has been or is being committed."

Scrutiny for the purposes of Regulation 4045/89

4. The following regulation shall be substituted for regulation 7—

"Scrutiny for the purposes of Regulation 4045/89

7.—(1) Without prejudice to the generality of the provisions of regulation 5, authorised officers shall be deemed to be officials responsible for scrutiny for the purposes of Regulation 4045/89 and shall have the powers conferred by the following provisions of that Regulation—

- (a) the power conferred on such officials by Article 5(1) (which relates to the production of commercial documents and the supply of additional information);
- (b) the power conferred on such officials by Article 5(2) (which relates to the supply of extracts or copies of documents referred to in Article 5(1)); and

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- (a) Regulation 4045/89 has been amended by Council Regulation (EC) No. 3094/94 (OJ No. L328, 20.12.94, p. 1) and Council Regulation (EC) No. 3235/94 (OJ No. L338, 28.12.94, p. 16). See also Commission Decision 2311/2000 (OJ No. L265, 19.10.2000, p. 10) establishing the list of measures to which Regulation 4045/89 does not apply.
 - (b) OJ No. L318, 20.12.93, p. 18.
 - (c) By Council Regulation (EC) No. 1097/98 (OJ No. L157, 30.5.98, p. 1), Commission Regulation (EC) No. 2491/98 (OJ No. L309, 19.11.98, p. 28) and Council Regulation (EC) No. 2580/2000 (OJ No. L298, 25.11.2000, p. 5).
 - (d) OJ No. L136, 31.5.94, p. 5.
 - (e) Annex B was replaced by Commission Regulation (EC) No. 1341/97 (OJ No. L184, 12.7.97, p. 12) and amended by Commission Regulation (EC) No. 1909/97 (OJ No. L268, 1.10.97, p. 20). Annex C was replaced by Commission Regulation (EC) No. 229/96 (OJ No. L30, 8.2.96, p. 24) and amended by Commission Regulation (EC) No. 1341/97 (OJ No. L184, 12.7.97, p. 12).
 - (f) OJ No. L258, 16.10.93, p. 15.
 - (g) By Commission Regulation (EC) No. 3495/93 (OJ No. L319, 21.12.93, p. 15), Commission Regulation (EC) No. 347/94 (OJ No. L44, 17.2.94, p. 19), Commission Regulation (EC) No. 2206/94 (OJ No. L236, 10.9.94, p. 16), Commission Regulation (EC) No. 3061/94 (OJ No. L323, 16.12.94, p. 20) and Commission Regulation (EC) No. 592/95 (OJ No. L60, 18.3.95, p. 1).

- (c) the power conferred on such officials by Article 6(1) (which deals with the seizure of commercial documents).
- (2) The powers conferred on member States by—
 - (a) the first sub-paragraph of Article 5(3) (which enables an undertaking to be directed to maintain future records for scrutiny pursuant to Regulation 4045/89);
 - (b) the second sub-paragraph of Article 5(3) (which enables the date to be determined as of which records, referred to in the first sub-paragraph of Article 5(3), are to be established); and
 - (c) the third sub-paragraph of Article 5(3) (which enables the place and time to be determined at which an undertaking shall, in certain circumstances, make available for inspection commercial documents required for scrutiny pursuant to Regulation 4045/89),
 shall be exercised by the enforcement authority.”.

Offences and penalties

5.—The following regulation shall be substituted for regulation 8—

“Offences and penalties

- 8.—(1) If any person—
- (a) fails to comply with a request made under Article 5(1) of Regulation 4045/89 (which relates to the production of commercial documents and of any additional information requested);
 - (b) fails to comply with a requirement issued under Article 5(2) of Regulation 4045/89 (which relates to the supply of extracts or copies of commercial documents);
 - (c) fails to comply with a determination made under the third sub-paragraph of Article 5(3) of Regulation 4045/89 (which enables the place and time to be determined at which an undertaking shall, in certain circumstances, make available for inspection commercial documents required for scrutiny pursuant to Regulation 4045/89), as read with regulation 7(2)(c);
 - (d) intentionally obstructs an authorised officer (or a person accompanying him and acting under his instructions) acting in the exercise of a power conferred by regulation 5 or by virtue of regulation 7; or
 - (e) fails to comply with a request made under regulation 6,
- he shall be guilty of an offence.
- (2) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) If any specified beneficiary—
- (a) fails to comply with Article 4 of Regulation 4045/89 (which lays down requirements relating to the retention of commercial documents);
 - (b) fails to comply with a requirement imposed on him by notice published under regulation 3;
 - (c) fails to comply with a direction given to him under the first sub-paragraph of Article 5(3) of Regulation 4045/89 (which enables an undertaking to be directed to maintain records for scrutiny pursuant to Regulation 4045/89), as read with regulation 7(2)(a); or
 - (d) fails to comply with a determination under the second sub-paragraph of Article 5(3) of Regulation 4045/89 (which enables the date to be determined as of which records, referred to in the first sub-paragraph of Article 5(3), are to be established), as read with regulation 7(2)(b),
- he shall be guilty of an offence.
- (4) If any connected person fails to comply with a requirement imposed on him by notice published under regulation 3 he shall be guilty of an offence.
- (5) A person guilty of an offence under paragraph (3) or (4) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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

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

(8) A certificate purporting to be signed—

(a) for the purposes of paragraph (6), by or on behalf of the enforcement authority, or—

(b) for the purposes of paragraph (7), by the prosecutor,

shall be conclusive evidence of the date on which evidence sufficient to justify proceedings came to the knowledge of that enforcement authority or that prosecutor, as the case may be.

(9) If any specified contributor—

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

(b) fails to comply with a requirement imposed on him by notice published under regulation 3;

(c) fails to comply with a direction given to him under the first sub-paragraph of Article 5(3) of Regulation 4045/89 (which enables an undertaking to be directed to maintain records for scrutiny pursuant to Regulation 4045/89), as read with regulation 7(2)(a); or

(d) fails to comply with a determination under the second sub-paragraph of Article 5(3) of Regulation 4045/89 (which enables the date to be determined as of which records, referred to in the first sub-paragraph of Article 5(3), are to be established), as read with regulation 7(2)(b),

he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(10) If any person—

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

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

(i) furnishes any information,

(ii) makes or signs any document,

(iii) delivers any document, or

(iv) makes in a record, register or document any entry,

which is false or misleading in any material particular, he shall be guilty of an offence.

(11) In paragraph (10)(b)—

(a) “document” includes any declaration, notice or certificate;

(b) the references to furnishing information, to making or signing any document, to delivering any document and to making any entry, in each case, include a reference to causing or permitting that act to be done;

- (c) the reference to knowingly or recklessly delivering a document which is false or misleading in a material particular includes a reference to transmitting such a document with the intent to secure that the false or misleading information is recorded by the machine to which it is transmitted so as to be accessible for subsequent reference, in the knowledge that the information as recorded is false or misleading in a material particular, or being reckless as to the possibility that it may be so.
- (12) A person guilty of an offence under paragraph (10) shall be liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum, or to imprisonment for a term not exceeding three months, or both; or
- (b) on conviction on indictment to a fine, or to imprisonment for a term not exceeding two years, or both.
- (13) Where an offence under this regulation which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (14) Where the affairs of a body corporate are managed by its members, the provisions of paragraph (13) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (15) In paragraphs (13) and (14) above the references to a “body corporate” include a partnership in Scotland and, in relation to such partnership, any reference to a director or other officer of a body corporate is a reference to a partner.”.

Defence of due diligence

6. In regulation 10 there shall be substituted for the figures and letters “8(1)(a) or (b), (3), (4) or (10)” the figures and letters “8(1)(a), (b) or (c), (3), (4) or (9)”.

Revocation

7. Regulation 4 (which relates to the application of special measures for peas, field beans and sweet lupins) is revoked.

21st September 2001

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 15th October 2001, amend the Common Agricultural Policy (Protection of Community Arrangements) Regulations 1992 (S.I. 1992/314) (“the principal Regulations”).

Article 8 of Council Regulation (EC) No. 1258/1999 (OJ No. L160, 26.6.1999, p. 103) (on the financing of the common agricultural policy) requires Member States to take the measures necessary to satisfy themselves that transactions financed by the European Agriculture Guidance and Guarantee Fund are actually carried out and are executed correctly, to prevent and deal with irregularities and to recover sums lost as a result of irregularities and negligence. Council Regulation (EEC) No. 4045/89 (OJ No. L388, 30.12.89, p. 18) provided for the scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the Fund (“the Guarantee Section”). It has been amended by Council Regulation (EC) No. 3094/94 (OJ No. L328, 20.12.94, p. 1), in particular so as to extend the scope of scrutiny of commercial documents and also to exclude from its application measures covered by the integrated administration and control system established by Regulation (EEC) No. 3508/92 (OJ No. L355, 5.12.92, p. 1), as amended, and otherwise involving direct payments to producers.

As amended, the principal Regulations provide for implementation of these Community provisions in relation to Guarantee Section transactions subject to scrutiny. They also take account of changes in Community legislation specifying the commodities to which they must apply and, in implementation of Article 8 of Council Decision 94/728 (EC, Euratom) (OJ No. L293, 12.11.94, p. 9) on the system of the European Communities’ own resources, make provision for the collection of own resources derived from agricultural export levies and other duties.

The principal changes introduced by these Regulations—

- (a) provide definitions for “Communities’ agricultural levy own resources” and “specified own resources levy payer” and amend the definitions of “regulated transaction”, “Regulation 4045/89”, “specified beneficiary”, “specified contributor”, “specified person” and “specified commodity” (regulation 2);
- (b) amend regulation 7 conferring on authorised officers and enforcement authorities certain powers in relation to scrutiny under Articles 5 and 6 of Regulation 4045/89 (regulation 4);
- (c) amend regulation 8 to—
 - (i) prescribe offences for failure to comply with determinations made or directions given under Article 5(3) of Regulation 4045/89;
 - (ii) make amendments (consequential on the assimilation by the Criminal Justice (NI) Order 1994 (S.I. 1994/2795) (NI 15) of fines in Northern Ireland to those in Great Britain) to the penalties prescribed in respect of such offences;
 - (iii) amend the provisions prescribing the offence relating to furnishing of false or misleading information so that it also relates to the making, signing, delivery and transmission of documents and the making of entries in a record or register, and the provisions prescribing a penalty for that offence on summary conviction, so that it also includes imprisonment for a period of up to 3 months (regulation 5);
- (d) amend regulation 10 so as to apply the due diligence defence in respect of failures to comply with requirements under Article 5(3) of Regulation 4045/89 (regulation 6);
- (e) revoke regulation 4 pursuant to the termination of the special measures for peas, field beans and sweet lupins, including the repeal of Commission Regulation (EEC) 3540/85 by Commission Regulation (EC) 658/96 (regulation 7).

No regulatory impact assessment has been prepared in respect of these Regulations.

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£2.00

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.
E1710 1/2002 660983 19585

ISBN 0-11-039182-9



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