
STATUTORY INSTRUMENTS

2014 No. 3263

The Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014

PART 2

CONTROL AND ENFORCEMENT

Competent authority

3.—(1) A competent authority must—

- (a) determine a single application submitted in respect of a holding; and
- (b) remain the competent authority in respect of that application.

(2) Where a holding is situated in more than one territory on the last date on which the single application may be submitted, the competent authority is the competent authority for the territory in which the greater part of the holding is situated.

(3) But a farmer who has a holding situated in more than one territory on the last date on which the single application may be submitted, may submit their application to—

- (a) the competent authority who determined the farmer's most recent single application in accordance with these Regulations, or
- (b) if there was no such determination, the competent authority who determined the farmer's most recent single application in accordance with the 2009 Regulations.

(4) In this regulation—

- (a) "holding" has the meaning given by Article 4(1)(b) of the Direct Payments Regulation;
- (b) "territory" means England, Northern Ireland, Scotland or Wales;
- (c) "the 2009 Regulations" means the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2009(1); and
- (d) in paragraph (3)(b), "single application" has the meaning given by regulation 2(1) of the 2009 Regulations.

Agency arrangements

4.—(1) A competent authority may make an arrangement with another competent authority for any of its relevant functions to be exercised by that other competent authority as its agent.

(2) Such an arrangement must be in writing and signed by or on behalf of the competent authorities concerned and may be subject to conditions.

(3) In this regulation, “relevant functions” means any functions of the competent authority in relation to the support schemes listed in Annex I to the Direct Payments Regulation or support under Title III of the Rural Development Regulation.

Applications

5.—(1) For the purposes of Article 13(1) of the Horizontal Implementing Regulation and Article 12 of the Horizontal Delegated Regulation, the final date on which a single application, aid application or payment claim may be submitted to the Secretary of State is 15th May or, if that date is a Saturday, Sunday, Bank Holiday or other public holiday, the next working day.

(2) In paragraph (1)—

“Bank Holiday” means a day specified in paragraph 1 of Schedule 1 to the Banking and Financial Dealings Act 1971(2);

“payment claim” means a claim for support under the integrated system as provided by Article 67(2) of the Horizontal Regulation;

“working day” means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday.

Minimum size of agricultural area

6. For the purposes of Article 72(1) of the Horizontal Regulation, the minimum size of an agricultural parcel in respect of which a single application may be made is 0.1 hectare.

Recovery of undue payments

7.—(1) Where a beneficiary is liable to repay all or part of a direct payment or rural development payment in accordance with Article 7(1) of the Horizontal Implementing Regulation, the amount of the repayment, together with the interest on that amount calculated in accordance with regulation 8, is recoverable as a debt.

(2) In any legal proceedings brought pursuant to paragraph (1), a certificate of the Secretary of State which—

(a) sets out the Bank of England base rate applicable during a specified period; and

(b) includes a statement that the Bank of England or the coordinating body notified the Secretary of State of that rate for that period,

is evidence of the rate applicable during that period.

(3) In this regulation, “the coordinating body” means the coordinating body referred to in Article 7(4) of the Horizontal Regulation.

Interest

8.—(1) Interest may be charged in respect of each day of the period referred to in Article 7(2) of the Horizontal Implementing Regulation and for this purpose the rate of interest applicable on any day is one percentage point above the Bank of England base rate.

(2) In this regulation, “Bank of England base rate” means—

(a) except where sub-paragraph (b) applies, the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short-term liquidity in the money markets; or

(2) 1971, c.80.

- (b) if an order under section 19 (reserve powers) of the Bank of England Act 1998⁽³⁾ is in force, any equivalent rate determined by the Treasury under that section.

Set-off

9.—(1) The Secretary of State acting as principal or agent for another competent authority may set off any debt and interest due from a farmer in accordance with Article 7(1) of the Horizontal Implementing Regulation to that other competent authority against any direct payment due to that farmer.

(2) The amount of—

- (a) any rural development payment payable by the Secretary of State or an accountable body;
- (b) any rural development payment payable by the Secretary of State or an accountable body under the Rural Development (Enforcement) (England) Regulations 2007⁽⁴⁾; or
- (c) any sum payable by the Secretary of State under the Direct Payments Regulation, Council Regulation 73/2009 or Council Regulation 1782/2003,

may be set off against the amount of any sum recoverable by the Secretary of State or an accountable body under regulation 8(1) or 15(1).

(3) In paragraph (2)—

“accountable body” and “rural development payment” have the meanings given by regulation 2(1) of the Rural Development (Enforcement) (England) Regulations 2007;

“Council Regulation 1782/2003” 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⁽⁵⁾;

“Council Regulation 73/2009” 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⁽⁶⁾;

Powers of entry

10.—(1) Subject to paragraph (2), an authorised person may exercise any of the powers specified in this regulation for the purpose of enforcing the European Regulations except for a purpose mentioned in regulation 21(1).

(2) The Forestry Commissioners may not authorise any person to exercise any of the powers specified in this regulation for the purpose of enforcing the Direct Payments Regulation, the Direct Payments Delegated Regulation or the Direct Payments Implementing Regulation.

(3) An authorised person, on producing, if so required, a duly authenticated document showing that person’s authority, may at any reasonable hour enter any land or premises other than premises used wholly or mainly as a private dwelling.

(4) A justice of the peace may by signed warrant permit an authorised person to enter any land or premises, if necessary by reasonable force, if the justice, on sworn information in writing, is satisfied that—

- (a) there are reasonable grounds for an authorised person to enter the land or premises for any purpose mentioned in paragraph (1); and

(3) 1998, c.11.

(4) S.I. 2007/75, amended by S.I. 2010/2078 and 2012/666.

(5) OJ No L 270, 21.10.2003, p. 1, as last amended by Council Regulation (EC) No 1009/2008 (OJ No L 276, 17.10.2008, p. 1) and repealed on 1st January 2009 by Council Regulation (EC) No 73/2009 (OJ No L 30, 31.1.2009, p. 16).

(6) OJ No L 30, 31.1.2009, p. 16, as last amended by Commission Implementing Regulation (EU) No 320/2104 (OJ No L 93, 28.3.2014, p. 81) and repealed on 1st January 2015 by Article 72(2) of the Direct Payments Regulation.

- (b) one or more of the conditions in paragraph (5) is met.
- (5) The conditions are that—
 - (a) entry to the land or premises has been refused, or is likely to be refused, and—
 - (i) notice of the intention to apply for a warrant has been served on the occupier, or
 - (ii) no such notice has been served on the occupier because serving such a notice would interfere with the purpose or effectiveness of the entry;
 - (b) entry is required urgently;
 - (c) the premises are unoccupied or the occupier is temporarily absent.
- (6) A warrant is valid for three months.
- (7) An authorised person entering any land or premises by virtue of this regulation may be accompanied by—
 - (a) any representative of the European Commission; and
 - (b) such other persons as the authorised person considers necessary for any purpose mentioned in paragraph (1).
- (8) An authorised person who enters any unoccupied premises must leave them as effectively secured as they were before entry.

Powers of inspection etc

- 11.**—(1) An authorised person who has entered any land or premises in exercise of a power conferred by regulation 10 may—
- (a) carry out any inquiries, checks, examinations, measurements and tests;
 - (b) take samples;
 - (c) inspect the land, whether it is farmed or is withdrawn from agricultural production, or premises;
 - (d) inspect any livestock, crops, machinery or equipment;
 - (e) mark any animal or other thing for identification purposes;
 - (f) have access to, inspect, copy and print any documents or records (in whatever form they are held) or remove such documents to enable them to be copied or retained as evidence;
 - (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;
 - (h) take a photograph, or a record in digital form, of anything on the land;
 - (i) remove anything reasonably believed to be evidence of any non-compliance;
 - (j) remove a carcass on the land or premises for the purpose of carrying out a post-mortem examination on it.
- (2) An authorised person who enters any land or premises under a power under other legislation may exercise any of the powers specified in this regulation for the purposes of enforcing these Regulations.
- (3) Paragraph (1) applies in relation to a person referred to in regulation 10(7)(b) when such person is acting under the instructions of an authorised person, as if such person were an authorised person.

Assistance to authorised persons

12. The beneficiary in respect of any land or premises entered by an authorised person in exercise of a power conferred by regulation 10 and any employee or agent of that beneficiary, must give an authorised person (“AP”) such assistance as AP may reasonably request so as to enable AP to exercise any power conferred on AP by regulation 10 or 11 and must arrange for the collection, penning and securing of any animal if requested.

Transfers of holdings

13. For the purposes of Article 8(3)(a) of the Horizontal Implementing Regulation, the period within which the transferee must inform the Secretary of State of the transfer and request payment of the aid or support, or both, is 90 days beginning with the first day after the date of the transfer.

Breaches of commitments etc

- 14.—**(1) A delivery body may determine, in relation to commitments made to that body, that—
- (a) the rural development beneficiary has furnished false or misleading information to that body;
 - (b) the rural development beneficiary is in breach of any of the terms of a commitment;
 - (c) the rural development beneficiary is in breach of any requirement to which that beneficiary is subject under—
 - (i) Article 14(2) of Regulation 1257/1999,
 - (ii) Regulation 1698/2005,
 - (iii) Regulation 1974/2006,
 - (iv) Regulation 65/2011,
 - (v) the Common Provisions Regulation;
 - (vi) the Horizontal Delegated Regulation,
 - (vii) the Horizontal Implementing Regulation,
 - (viii) the Horizontal Regulation, excluding Title VI,
 - (ix) the Rural Development Delegated Regulation,
 - (x) the Rural Development Implementing Regulation,
 - (xi) the Rural Development Regulation, or
 - (xii) these Regulations;
 - (d) the whole or any part of the sum paid or payable in relation to a commitment duplicates assistance provided or to be provided out of monies made available by—
 - (i) the European Union,
 - (ii) Parliament, or
 - (iii) a body exercising public functions within the United Kingdom;
 - (e) there has been a material change in the nature, scale, costs or timing of the operation or project in relation to which a commitment has been made; or
 - (f) the operation or project in relation to which a commitment has been made, has been or is being delayed, or is unlikely to be completed.
- (2) Before a delivery body makes a determination under paragraph (1), that body must—
- (a) give the beneficiary a written explanation of the reasons for proposing to make the determination; and

- (b) afford that beneficiary the opportunity of making written representations within such period as that body considers reasonable (“the prescribed period”).
- (3) If on the expiry of the prescribed period, the delivery body has not received any written representations from the beneficiary, that body must make the determination as proposed.
- (4) If the delivery body has received written representations from the beneficiary in the prescribed period, that body must consider any such representations in deciding whether to make any determination.
- (5) In paragraph (1)(c)—
- “Regulation 1257/1999” means Council Regulation (EC) No. 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF)(7);
- “Regulation 1974/2006” means Commission Regulation (EC) No. 1974/2006 laying down detailed rules for the application of Council Regulation (EC) No. 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)(8); and
- “Regulation 65/2011” means Commission Regulation (EU) No. 65/2011 laying down detailed rules for the implementation of Council Regulation (EC) No. 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures(9).

Powers of recovery etc in relation to rural development payments

- 15.**—(1) Where a delivery body makes a determination under regulation 14(1), the Secretary of State or the appropriate accountable body may—
- (a) withhold the whole or part of any rural development payment payable to the beneficiary; and
- (b) recover on demand the whole or part of any rural development payment already paid to the beneficiary.
- (2) Where a delivery body makes a determination under regulation 14(1), that body may terminate the agreement containing the commitment, and any entitlement of the beneficiary to payment in respect of the unexpired period of the agreement shall consequently be terminated.
- (3) Where a delivery body terminates an agreement under paragraph (2), that body may also prohibit the beneficiary from making any new commitment with the body under the same measure, for such period (not exceeding two years) from the date of the termination as the body may specify.
- (4) The powers conferred on the delivery bodies by paragraphs (2) and (3) are exercisable by a notice served on the beneficiary.

Offences and penalties

- 16.**—(1) It is an offence for any person to—
- (a) intentionally obstruct any person acting in the execution of these Regulations;
- (b) without reasonable cause, proof of which lies with that person, fail to give any person acting in the execution of these Regulations any assistance or information that that person may reasonably require under these Regulations; or

(7) OJ No. L 160, 26.6.1999, p. 80, as last amended by Council Regulation (EC) No. 2223/2004 (OJ No. L 379, 24.12.2004, p.1).

(8) OJ No. L 368, 23.12.2006, p. 15, as last amended by Commission Implementing Regulation (EU) No. 335/2013 (OJ No. L 105, 13.4.2013, p. 1).

(9) OJ No. L 25, 28.1.2011, p.8, as last amended by Commission Implementing Regulation (EU) No. 937/2012 (OJ No. L 280, 13.10.2012, p.1).

- (c) knowingly or recklessly furnish to any person acting in the execution of these Regulations any information that is false or misleading in any material particular.
- (2) A person guilty of an offence under paragraph (1)(a) or (b) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) A person guilty of an offence under paragraph (1)(c) is 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.
- (4) Subject to paragraph (5), for an offence under paragraph (1) proceedings must be brought within the period of six months from the date on which evidence sufficient in the opinion of the prosecutor to justify proceedings came to the prosecutor's knowledge.
- (5) No proceedings for an offence under paragraph (1) may begin more than two years after the date of the commission of the offence.
- (6) For the purposes of this regulation, a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient, in the opinion of the prosecutor, to justify the proceedings came to their knowledge is conclusive of that fact.

Offences by bodies corporate, partnerships or unincorporated associations

- 17.**—(1) Proceedings for an offence under regulation 16 alleged to have been committed by a partnership or an unincorporated association may be brought against the partnership or association in the name of the partnership or association.
- (2) For the purposes of such proceedings—
 - (a) rules of court relating to the service of documents have effect as if the partnership or association were a body corporate, and
 - (b) section 33 of the Criminal Justice Act 1925(10) (procedure on charge of offence against corporation) and Schedule 3 to the Magistrates' Courts Act 1980(11) (corporations) apply in relation to the partnership or association as they apply in relation to a body corporate.
 - (3) A fine imposed on a partnership or association on its conviction of an offence under these Regulations is to be paid out of the funds of the partnership or association.
 - (4) If an offence under regulation 16 committed by a body corporate is proved—
 - (a) to have been committed with the consent or connivance of an officer, or
 - (b) to be attributable to the negligence of an officer,the officer, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.
 - (5) If the affairs of a body corporate are managed by its members, paragraph (4) applies to the acts and omissions of a member in connection with the member's functions of management as it applies to an officer of a body corporate.

(10) 1925 c. 86. Subsections (1), (2) and (5) were repealed by the Magistrates' Courts Act 1952 (c. 55), section 132 and Schedule 6; subsection (3) was amended by the Courts Act 1971 (c. 23), section 56(1) and Schedule 8, Part 2, paragraph 19; subsection (4) was amended by the Courts Act 2003 (c. 39), section 109(1) and (3), Schedule 8, paragraph 71, and Schedule 10.

(11) 1980 c. 43. Paragraph 2(a) of Schedule 3 was amended by the Criminal Procedure and Investigations Act 1996 (c. 25), section 47, Schedule 1, paragraph 13, and was repealed by the Criminal Justice Act 2003 (c. 44), sections 41 and 332, Schedule 3, Part 2, paragraph 51(1) and (13)(a), and Schedule 37, Part 4 (partly commenced by S.I. 2012/1320 and S.I. 2012/2574 and with full effect from a date to be appointed); paragraph 5 was repealed by the Criminal Justice Act 1991 (c. 53) sections 25(2) and 101(2) and Schedule 13; paragraph 6 was repealed by the Criminal Justice Act 2003, section 41, Schedule 3, Part 2, paragraph 51(1) and (13)(b) (partly commenced by S.I. 2012/1320 and S.I. 2012/2574 and with full effect from a date to be appointed).

(6) If an offence under regulation 16 committed by a partnership is proved—

- (a) to have been committed with the consent or connivance of a partner, or
- (b) to be attributable to the negligence of a partner,

that partner, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly.

(7) If an offence under regulation 16 committed by an unincorporated association is proved—

- (a) to have been committed with the consent or connivance of an officer or member of the governing body of the association or other person having management responsibilities in respect of the association, or
- (b) to be attributable to the negligence of that officer, member or other person,

that officer, member or other person, as well as the association, is guilty of the offence and liable to be proceeded against and punished accordingly.