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STATUTORY INSTRUMENTS

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**2014 No. 3263**

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

**PART 4**

**SCRUTINY OF EUROPEAN AGRICULTURAL  
GUARANTEE FUND TRANSACTIONS**

**Interpretation**

**20.** In this Part—

“authorised person” means any person who is authorised in writing, either generally or specifically—

- (a) by the competent authority to act in matters arising under this Part of these Regulations, or
- (b) for the purposes of any action taken by that authority under this Part of these Regulations in relation to a EU debt, in a case where that debt was paid or is payable by that authority;

“EU debt” means—

- (a) any amount of money paid by the competent authority to a specified beneficiary in relation to a regulated transaction—
  - (i) in connection with which that person has made a statement or furnished any information which is false or misleading in any material particular; or
  - (ii) which that person has failed to carry out or to carry out in accordance with any EU requirement relating to that regulated transaction;
- (b) any amount of money which a specified beneficiary or specified contributor has become liable to pay to the competent authority in relation to a regulated transaction;

“EU requirement” means a requirement specified by or in pursuance of EU law in relation to a regulated transaction;

“regulated transaction” means a transaction forming part of the system of financing by the EAGF to which Chapter III of Title V of the Horizontal Regulation applies;

“specified beneficiary” means any person who, in the course of a trade or business in, or in the production of, a specified commodity, has applied for or received the whole or any part of any sum financed by the EAGF;

“specified commodity” means—

- (a) any of the products that are subject to the provisions of Articles 39 to 44 of the Treaty on the Functioning of the European Union (which are listed in Annex I to that Treaty);
- (b) any goods listed in Annex II to Council Regulation (EC) No 1216/2009 laying down the trade arrangements applicable to certain goods resulting from the processing of

agricultural products<sup>(1)</sup> and in Annexes B and C to Commission Regulation (EC) 1222/94 laying down common detailed rules for the application of the system of granting export refunds on certain agricultural products etc<sup>(2)</sup>,

and includes oils the release of which into free circulation is subject to destination of end use controls under Commission Regulation (EEC) No 2828/93 laying down common rules on verification of the use and/or destination of imported products etc<sup>(3)</sup>;

“specified contributor” means any person who, in the course of a trade or business in, or in the production of, a specified commodity, has paid or incurred a liability to pay, the whole or any part of any sum for the account of the EAGF;

“specified person” means any person who is a specified beneficiary or a specified contributor.

### **Powers of entry**

**21.**—(1) An authorised person, on producing, if so required, a duly authenticated document showing that person’s authority, may exercise the powers specified in this regulation for the purpose of ascertaining whether, in respect of any regulated transaction—

- (a) the regulated transaction has been carried out in accordance with any EU requirement relating to that regulated transaction; or
- (b) an offence under regulation 25(1)(a), (b) or (d), (3), (4) or (9) has been or is being committed.

(2) An authorised person may at any reasonable hour enter any land or premises which that person has reasonable cause to believe to be occupied by, or in the possession of, any specified person or employee or agent of that person, other than premises used wholly or mainly as a private dwelling.

(3) 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 a purpose mentioned in paragraph (1); and
- (b) one or more of the conditions in paragraph (4) is met.

(4) 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; or
- (c) the premises are unoccupied or the occupier is temporarily absent.

(5) A warrant is valid for three months.

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

(1) OJ No. L 328, 15.12.2009, p.10.

(2) OJ No. L 136, 31.5.1994, p.5. Annex B was substituted by Commission Regulation (EC) No. 1341/97 (OJ No. L 184, 12.7.1997, p. 12) and amended by Commission Regulation (EC) No. 1909/97 (OJ No. L258, 1.10.1997, p. 20). Annex C was substituted by Commission Regulation (EC) No. 229/96 (OJ No. L 30, 8.2.1996, p. 24) and amended by Commission Regulation (EC) No. 1341/97 (OJ No. L 184, 12.7.1997, p. 12). Annex B was substituted by Commission Regulation (EC) No. 1341/97 (OJ No. L 184, 12.7.1997, p. 12) and amended by Commission Regulation (EC) No. 1909/97 (OJ No. L258, 1.10.1997, p. 20). Annex C was substituted by Commission Regulation (EC) No. 229/96 (OJ No. L 30, 8.2.1996, p. 24) and amended by Commission Regulation (EC) No. 1341/97 (OJ No. L 184, 12.7.1997, p. 12).

(3) OJ No L 258, 16.10.1993, p. 15, as last amended by Commission Regulation (EC) No. 592/95 (OJ No. L 60, 18.3.1995, p. 1).

- (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).
- (7) An authorised person who enters any unoccupied premises must leave them as effectively secured as they were before entry.
- (8) In this regulation—
- (a) in Scotland, a reference to a justice of the peace means a sheriff, and the reference to sworn information in writing is a reference to evidence on oath; and
  - (b) in Northern Ireland, a reference to a justice of the peace is a reference to a lay magistrate, and the reference to sworn information in writing is a reference to a sworn complaint in writing.

### **Powers of inspection etc**

**22.**—(1) An authorised person who has entered any land or premises in exercise of a power conferred by regulation 21 may—

- (a) inspect the land or premises;
  - (b) inspect any animal or equipment found on the land or premises which is, or which the authorised person reasonably suspects to be, an animal or equipment to which a regulated transaction relates;
  - (c) inspect and take samples of any specified commodity or other substance found on the land or premises which the authorised person reasonably suspects to be a specified commodity or any substance which, in accordance with any EU requirement, may be used with a specified commodity.
- (2) An authorised person may—
- (a) require any specified person or employee or agent of the specified person to produce any commercial document and to supply such additional information in that person’s possession or under that person’s control relating to a EU debt or to a trade or business in a specified commodity as the authorised person may reasonably request;
  - (b) inspect any such commercial document and, where any such document is kept by means of a computer, have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with that document;
  - (c) require that copies of, or extracts from, any commercial document be produced;
  - (d) seize and retain any commercial document which the authorised person has reason to believe may be required as evidence in proceedings under this Part of these Regulations and, where any such document is kept by means of a computer, require it to be produced in a form in which it may be taken away.

(3) In paragraph (2), “commercial document” has the meaning given by Article 79(3)(a) of the Horizontal Regulation.

### **Assistance to authorised persons**

**23.** A specified person or employee or agent of that person must give to an authorised person (“AP”) such assistance as AP may reasonably request so as to enable AP to exercise any power conferred by regulation 21 or 22 and must arrange for the collection, penning and securing of any animal if requested.

### **Scrutiny for the purposes of the Horizontal Regulation**

**24.**—(1) An authorised person is an officer responsible for scrutiny for the purposes of Articles 79 to 90 of the Horizontal Regulation and has the powers conferred on such officials by the following paragraphs of Article 82 of that Regulation—

- (a) paragraph (1) (which relates to the supply of commercial documents and additional information);
- (b) paragraph (2) (which relates to the supply of extracts or copies of documents referred to in paragraph (1); and
- (c) paragraph (4) (which deals with the seizure of commercial documents).

(2) The powers conferred on member States by Article 82(3) of the Horizontal Regulation must be exercised by the competent authority.

### **Offences and penalties**

**25.**—(1) It is an offence for any person—

- (a) to fail to comply with Article 82(1) of the Horizontal Regulation (which relates to the supply of commercial documents and additional information);
- (b) to fail to comply with a requirement under Article 82(2) of the Horizontal Regulation (which relates to the supply of extracts or copies of commercial documents);
- (c) to fail to comply with a requirement under the third sub-paragraph of Article 82(3) of the Horizontal Regulation (which enables the determination of the place and time at which an undertaking must, in certain circumstances, make available for inspection commercial documents required for scrutiny pursuant to Articles 79 to 90 of that Regulation);
- (d) intentionally to obstruct an authorised person (or a person accompanying the authorised person and acting under the authorised person's instructions) acting in the exercise of a power conferred by regulation 21 or 22 or by virtue of regulation 24; or
- (e) to fail to comply with a request made under regulation 23.

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

(3) It is an offence for a specified beneficiary or a specified contributor to fail to comply with—

- (a) Article 43 of the Horizontal Finance Implementing Regulation (which lays down requirements relating to the retention of commercial documents);
- (b) a direction under the first sub-paragraph of Article 82(3) of the Horizontal Regulation (which enables an undertaking to be directed to maintain future records for scrutiny); or
- (c) a determination under the second sub-paragraph of Article 82(3) (which enables the determination of the date from which records referred to in the first sub-paragraph are to be established).

(4) A person guilty of an offence under paragraph (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) Proceedings in England and Wales and in Northern Ireland for an offence under paragraph (1), (3) or (9) may be brought within a period of six months from the date of which evidence sufficient in the opinion of the competent authority to justify proceedings comes to its knowledge, and in any case within twelve months from the commission of the offence.

(6) Summary proceedings in Scotland for an offence under paragraph (1), (3) or (9) 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 the prosecutor's knowledge, and in any case within twelve months from the commission of the offence.

(7) For the purposes of paragraph (6), proceedings are 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 purpose of paragraph (5), by or on behalf of the competent authority, or
- (b) for the purpose of paragraph (6), by the prosecutor,

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

(9) It is an offence for any person—

- (a) to fail to comply with Article 103(2) of the Horizontal Regulation (which restricts the communication of information collected in the course of scrutiny); or
- (b) for a relevant purpose, to knowingly or recklessly—
  - (i) furnish any information,
  - (ii) make or sign any document,
  - (iii) deliver any document,
  - (iv) make in a record, register or document any entry,which is false or misleading in any material particular.

(10) In paragraph (9)(b)—

- (a) “a relevant purpose” means—
  - (i) the purpose of obtaining for that person or any other person the whole or any part of any sum by or for the account of the EAGF; or
  - (ii) the purpose of evading payment of the whole or any part of such a sum for which that person or any other person is liable;
- (b) “document” includes any declaration, notice or certificate;
- (c) 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;
- (d) the reference to knowingly or recklessly delivering a document which is false or misleading in any 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 any material particular, or being reckless as to the possibility that it may be so.

(11) A person guilty of an offence under paragraph (9) 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.

### **Offences by bodies corporate, partnerships and unincorporated associations**

**26.**—(1) Proceedings for an offence under regulation 25 alleged to have been committed by a partnership or 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) the following provisions apply in relation to the partnership or association as they apply in relation to a body corporate—
- (i) section 33 of the Criminal Justice Act 1925(4) (procedure on charge of offence against corporation) and Schedule 3 to the Magistrates' Courts Act 1980(5) (corporations), and
  - (ii) section 18 of the Criminal Justice Act (Northern Ireland) 1945(6) (procedure on charge) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981(7) (corporations).
- (3) A fine imposed on a partnership or association on its conviction of an offence under regulation 25 is to be paid out of the funds of the partnership or association.
- (4) If an offence under regulation 25 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,
- that 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.
- (6) If an offence under regulation 25 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 25 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.

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(4) 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.

(5) 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) 1945 c. 15 (N.I.). Section 18 was amended by the Magistrates Courts Act 1964 (c. 21) and by the Justice (Northern Ireland) Act 2002 (c. 26), Schedule 12.

(7) S.I. 1981/1675 (N.I. 26).

### **Prosecutions**

**27.** Proceedings for an offence under regulation 25 may not be instituted in England, Wales or Northern Ireland except by a competent authority.

### **Defence of due diligence**

**28.** In any proceedings for an offence under regulation 25(1)(a), (b) or (c), (3) (4) or (9), it is a defence for the person charged (“A”) to prove that A took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by A or by a person under A’s control.

### **Recovery powers**

**29.—**(1) The competent authority may recover from any specified person, or person who has paid, or incurred a liability to pay, the whole or any part of any sum forming part of the European Union’s agricultural levy own resources otherwise than in respect of imports from any country outside the European Union, any EU debt owing to the authority by that person.

(2) In paragraph (1), “European Union’s 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 European Union in respect of trade with countries outside the European Union 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.