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STATUTORY INSTRUMENTS

2009 No. 3365

AGRICULTURE, ENGLAND

The Agriculture (Cross compliance) (No. 2) Regulations 2009

<i>Made</i>	- - - -	<i>20th December 2009</i>
<i>Laid before Parliament</i>		<i>23rd December 2009</i>
<i>Coming into force</i>	- -	<i>15th January 2010</i>

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SCHEDULE 1 — Standards of Good Agricultural and Environmental Condition
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The Secretary of State is a Minister designated (a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the Common Agricultural Policy of the European Union, and makes these Regulations under that section.

Title, application and commencement

1. These Regulations may be cited as the Agriculture (Cross compliance) (No. 2) Regulations 2009; they apply in England and come into force on 15th January 2010.

(a) S. I. 1072/1811.
(b) 1972 c. 68.

Designation

2. The Secretary of State is the competent national authority for the purposes of 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(a).

Standards of Good Agricultural and Environmental Condition

3.—(1) The standards of good agricultural and environmental condition set out in Schedule 1 apply as minimum requirements for the purposes of Article 6 of, and Annex III to, Council Regulation (EC) No 73/2009.

(2) But the provisions of Schedule 2 set out the circumstances in which breach of a provision of Schedule 1 does not constitute non-compliance.

Permanent pasture

4.—(1) If it is established that the ratio in Article 3(1) of 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)) is decreasing, the Secretary of State must prohibit a claimant from converting land under permanent pasture, in accordance with Article 4(1) of that Regulation.

(2) If it is established that the obligation in Article 3(2) of that Regulation cannot otherwise be met, the Secretary of State must oblige a claimant to reconvert land to permanent pasture in accordance with Article 4(2) of that Regulation.

(3) But the Secretary of State must not—

- (a) prohibit a claimant from converting land under permanent pasture where the claimant turned that land into permanent pasture in the circumstance mentioned in Article 4(3) of that Regulation, or
- (b) require a claimant to reconvert land where the claimant turned that land into permanent pasture in the circumstance mentioned in Article 4(3) of that Regulation and later converted it out of permanent pasture.

Competent control authorities

5.—(1) The Secretary of State is the competent control authority for the purposes of Article 48(1) of Commission Regulation (EC) No 1122/2009 except as otherwise specified in this regulation.

(2) The Environment Agency is the competent control authority for—

- (a) the statutory management requirements numbered 2, 3 and 4 in Annex II to Council Regulation (EC) No 73/2009,
- (b) control of authorisation for abstraction for use in irrigation under Annex III to that Regulation; and
- (c) control of requirements relating to the conditions for land application of fertiliser near watercourses under the footnote to Annex III to that Regulation.

(3) Natural England must carry out controls for the purposes of Article 8 and Chapters I and III of Title III of Part II of Commission Regulation (EC) No 1122/2009, if requested to do so by the Secretary of State.

(a) OJ No L 30, 31.1.2009, p. 16.

(b) OJ No L 316, 2.12.2009, p. 65.

(4) The Secretary of State and the Environment Agency enforce these Regulations, and they or Natural England (if Natural England are acting under paragraph (3)) may authorise in writing persons to enforce them.

Powers of authorised persons

6.—(1) An authorised person may exercise any of the powers specified in this regulation for the purpose of enforcing Council Regulation (EC) No 73/2009, Commission Regulation (EC) No 1122/2009, or these Regulations.

(2) A person so authorised, on producing, if so required, some duly authenticated document showing authority to do so, at all reasonable hours may enter any land, other than a building used only as a dwelling.

(3) An authorised person may—

- (a) inspect the premises and any livestock, crops, machinery or equipment;
- (b) carry out any inquiries, checks, examinations, measurements and tests;
- (c) take samples;
- (d) mark any animal or other thing for identification purposes;
- (e) have access to, inspect and copy any documents or records (in whatever form they are held) or remove such documents or records to enable them to be copied;
- (f) 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 require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford such assistance as is reasonably required and, where a document or record is kept by means of a computer, require the document or record to be produced in a form in which it can be taken away;
- (g) remove a carcass found on the land for the purpose of carrying out a post-mortem examination on it;
- (h) take a photograph of anything on the land; and
- (i) remove anything reasonably believed to be evidence of any non-compliance.

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

- (a) such other persons as are necessary; and
- (b) any representative of the European Union acting for the purposes of the Community Regulations enforced by these Regulations.

(5) An authorised person who enters any unoccupied premises must leave them as effectively secured as they were before entry.

(6) An authorised person who enters any land under a power under other legislation may exercise any of the powers specified in this regulation for the purposes of enforcing these Regulations.

Obstruction

7. Any person who—

- (a) intentionally obstructs any person acting in the execution of these Regulations;
- (b) without reasonable cause, fails to give to any person acting in the execution of these Regulations any assistance or information that that person may reasonably require under these Regulations;
- (c) furnishes to any person acting in the execution of these Regulations any information knowing it to be false or misleading; or
- (d) fails to produce a record when required to do so to any person acting in the execution of these Regulations,

is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Revocation

8. The Agriculture (Cross compliance) Regulations 2009(a) are revoked.

20th December 2009

Dan Norris
Parliamentary Under Secretary of State
Department for Environment Food and Rural Affairs

SCHEDULE 1

Regulation 3

Standards of Good Agricultural and Environmental Condition

Specified provisions

1. Breach of any of the following provisions constitutes a failure of cross-compliance for the purposes of Council Regulation (EC) No 73/2009—

<i>Provision</i>	<i>Subject</i>
Weeds Act 1959 (b)	
section 2 ⁽ⁱ⁾	Failure to comply with a notice served under section 1
Forestry Act 1967(c)	
section 9(1)	Requirement for a licence to fell trees
section 24	Failure to comply with a notice
Ancient Monuments and Archaeological Areas Act 1979(d)	
section 2(1)	Carrying out works on a scheduled monument
Highways Act 1980(e)	
section 131A	Disturbance of surface of a footpath or other specified highway ⁽ⁱⁱ⁾
section 134(3)	Failing to restore a footpath or bridleway after ploughing, etc. ⁽ⁱⁱ⁾
section 137	Obstructing a footpath or other specified highway ⁽ⁱⁱ⁾

(a) S. I. 2009/3264.

(b) 1959 c. 54. Section 1A was inserted into the Weeds Act 1959 by section 1 of the Ragwort Control Act 2003 (c.40).

(c) 1967 c. 10. The provisions of section 24 were extended to restocking notices by section 1 of the Forestry Act 1986 (c.30), which inserted sections 17A to 17C into the Forestry Act 1967. Section 24 was amended by S.I. 2006/780.

(d) 1979 c. 46.

(e) 1980 c. 66. Section 131A was inserted by the Rights of Way Act 1990 (c.24) section 1. Section 134 was substituted by the Rights of Way Act 1990 (c.24) section 1. Section 146 (5) (aa) was inserted by the Countryside and Rights of Way Act (c.37) section 69.

<i>Provision</i>	<i>Subject</i>
section 146	maintenance of stiles etc.
Wildlife and Countryside Act 1981(a)	
section 28E(1)	Carrying out work in an SSSI
section 28P (6A)	Damaging an SSSI
section 28P(8)	Failure to comply with a management notice
section 31	Failure to comply with a restoration notice
Town and Country Planning Act 1990(b)	
section 210(1)	Failure to comply with a tree preservation order
section 211	Trees in a conservation area
Water Resources Act 1991(c)	
section 24(1)	Abstracting water without, or in breach of, a licence (provided the abstraction is for irrigation purposes)
Crop Residues (Burning) Regulations 1993(d)	
regulation 4	Crop burning
regulation 5	Crop burning
Hedgerows Regulations 1997(e)	
regulation 5	Removing a hedgerow
Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999(f)	
regulation 4(1)	Carrying out a relevant project
regulation 22	Failure to comply with an enforcement notice
Environmental Impact Assessment (Agriculture) (England)(No 2) Regulations 2006(g)	
regulation 4	Carrying out an uncultivated land project, etc.
regulation 9	Carrying out a significant project
regulation 26	Breach of a stop notice
regulation 28	Failure to comply with a remediation notice

- (a) 1981 c. 69. Section 28E(1) was substituted by the Countryside and Rights of Way Act 2000 (c.37) section 75(1) Schedule 9 paragraph 1. Section 28P was substituted by the Countryside and Rights of Way Act 2000 (c.37) section 75(1) Schedule 9 paragraph 1. Section 28P (6A) was inserted by the Natural Environment and Rural Communities Act 2006 (c.16) section 55.
- (b) 1990 c. 8. Section 211 was amended by the Planning and Compulsory Purchase Act 2004 (c.5) section 86.
- (c) 1991 c. 57. Section 24(1) was amended by the Environment Act 1995 section 120 Schedule 22 paragraph 128.
- (d) S. I. 1993/1366.
- (e) S. I. 1997/1160. as amended by S.I. 2003/2155.
- (f) S. I. 1999/2228 as amended by S.I. 2006/3106.
- (g) S. I. 2006/2522.

<i>Provision</i>	<i>Subject</i>
Heather and Grass etc Burning (England) Regulations 2007(a)	
regulation 5(2)	Burning specified vegetation
regulation 6(1)(a)	Burning specified vegetation
The Nitrate Pollution Prevention Regulations 2008(b) ⁽ⁱⁱⁱ⁾	
regulation 20	Spreading manufactured fertiliser near surface water
regulation 21	Spreading organic manure near surface water, boreholes, springs or wells

⁽ⁱ⁾ Any appeal relating to the Weeds Act must take into account any relevant code of practice made under section 1A(1) of that Act.

⁽ⁱⁱ⁾ This is restricted to visible footpaths and other highways to which this section applies.

⁽ⁱⁱⁱ⁾ This does not apply until 1st January 2012 but must be complied with from that date by all claimants whether or not the holding is in a nitrate vulnerable zone in accordance with those Regulations.

Soil Protection Review

2.—(1) A claimant must complete, update and keep for at least two years a soil protection review for the holding on the form provided by the Secretary of State in accordance with the directions on that form for the year to which the claim relates (a different format may be used if all the information is entered at the times specified in the form).

(2) A soil protection review is not necessary if the holding is less than one hectare, excluding common land.

(3) A claimant who acquires land so that the holding (excluding common land) becomes greater than one hectare must complete a soil protection review on or before 31st December of that year.

(4) A claimant must take all reasonable steps to implement the measures identified in the soil protection review.

(5) For the purposes of this paragraph “common land” means land—

(a) subject to rights of common that have been entered in the register of common land or of town or village greens under the Commons Registration Act 1965(c) or Part 1 of the Commons Act 2006(d), or

(b) within one of the areas referred to in section 5(2) or (3) of the Commons Act 2006,

where rights of common are exercised by someone other than the farmer who owns or occupies the land.

Overgrazing and unsuitable supplementary feeding

3.—(1) Overgrazing and the use of unsuitable supplementary feeding methods are prohibited.

(2) In this paragraph—

(a) S. I. 2007/2003.

(b) S. I. 2008/2349.

(c) 1965 c. 64.

(d) 2006 c. 26; with effect from 1st October 2008, the Commons Act 2006 (Commencement No. 4 and Savings) (England) Order 2008 (S.I. 2008/1960 (c.94)) commenced the relevant provisions of the Commons Act 2006 (and repealed the corresponding provisions of the Commons Registration Act 1965) in relation to seven pilot areas (being the registration areas in England, as at 1st October 2008, of the commons registration authorities specified in the Schedule to that Order).

“overgrazing” means grazing with so many livestock as to affect adversely the growth, quality or diversity of any self-seeded or self-propagated vegetation characteristic of the area in which the land is situated; and

“unsuitable supplementary feeding methods” means methods that provide supplementary feed for livestock that affect adversely, through trampling or poaching of land by livestock, or through rutting by vehicles used to transport feed, the quality or diversity of any self-seeded or self-propagated vegetation characteristic of the area in which the land is situated.

Directions by the Secretary of State

4.—(1) The Secretary of State may give a claimant specific guidance on paragraphs 2 and 3, and the claimant must have regard to that guidance.

(2) Where a claimant’s soils are poorly managed or the land is overgrazed, or unsuitable supplementary feeding methods are used, the Secretary of State may give the claimant written directions on these matters, and the claimant must comply with those directions.

Management of land not in agricultural production

5.—(1) This paragraph applies in relation to agricultural land not in agricultural production; and for these purposes agricultural land is not in agricultural production unless—

- (a) a crop has been planted on the land;
- (b) preparatory work for a following crop such as ploughing or spraying has commenced on the land;
- (c) the land is used for grazing (this does not include grazing for the purpose of grazing rank vegetation in accordance with sub-paragraph (2)); or
- (d) the land is used for growing grass to be cut as feed.

(2) A claimant must cut scrub, and must cut or graze rank vegetation, on all agricultural land not in agricultural production at least every five years.

(3) In any twelve month period a claimant may not cut or graze scrub or rank vegetation on more than 50% of the agricultural land not in agricultural production except—

- (a) to comply with paragraph 6 (control of weeds);
- (b) to manage the land to control an infestation of blackgrass (*Alopecurus myosuroides*), couch (*Agropyron repens*), creeping thistle (*Cirsium arvense*) or dock (*Rumex* species) for the first 15 months from the date of harvest;
- (c) to establish grassy buffers alongside temporary or permanent watercourses to reduce or prevent surface run-off entering watercourses;
- (d) to establish grassy areas to prevent erosion and run-off;
- (e) to establish plots of up to approximately 2 hectares to accommodate ground nesting birds, especially stone curlews;
- (f) to cut pollen and nectar mixtures sown to provide food resources for wildlife, in order to promote flowering.

(4) No person may cut or plough any vegetation on agricultural land not in agricultural production between 1st March and 31st July inclusive other than to carry out one of the operations in paragraph (3).

(5) No person may apply inorganic fertiliser, manure or slurry to agricultural land not in agricultural production, unless the land is known to be used as, and is managed as, a geese feeding area in winter.

(6) Sub-paragraphs (4) and (5) apply if land is or is intended to be out of agricultural production on the deadline for submission of the single application in accordance with Article 11 of Commission Regulation (EC) No 1122/2009, and apply during any period of the year during which the land is out of agricultural production.

Control of weeds

6. A claimant must take all reasonable steps to prevent the spread, on and from the holding, of—

- (a) broad-leafed dock (*Rumex obtusifolius*);
- (b) creeping or field thistle (*Cirsium arvense*);
- (c) curled dock (*Rumex crispus*);
- (d) giant hogweed (*Heracleum mantegazzianum*);
- (e) Himalayan balsam (*Impatiens glandulifera*);
- (f) Japanese knotweed (*Reynoutria japonica*);
- (g) ragwort (*Senecio jacobaea*);
- (h) rhododendron (*Rhododendron ponticum*),
- (i) spear thistle (*Cirsium vulgare*).

“Hedgerows”

7. References in this Schedule to “hedgerows” are to hedgerows to which the Hedgerows Regulations 1997 apply.

Protection of hedgerows and watercourses

8.—(1) A claimant must take all reasonable steps to maintain a green cover on, and must not cultivate, or apply fertilisers or pesticides to—

- (a) land within 2 metres of the centre of a hedgerow, watercourse or field ditch; and
- (b) land between the edge of the watercourse or field ditch and 1 metre on the landward side of the top of the bank of a watercourse or field ditch.

(2) This does not apply—

- (a) to land on either side of a hedgerow that was planted on or after 1st January 2005 and is less than 5 years old;
- (b) to land forming part of a parcel of 2 hectares or less, as measured within permanent boundary features;
- (c) in relation to the use of pesticides, if the only application of pesticides is the spot-application of herbicides to control the spread of any of the weeds in paragraph 6;
- (d) to the extent that the Secretary of State has, for reasons relating to livestock production, crop production or the enhancement of the environment, given the claimant written permission to do so;
- (e) to cultivation for the purposes of casting up a traditional hedgebank between 1st August and the last day of February inclusive (a traditional hedgebank is an earth bank, faced with turf or stone, usually topped with hedge plants).

(3) A claimant may cultivate the land referred to in sub-paragraph (1) in order to establish a green cover if that land does not already have a green cover, and is —

- (a) part of a field that has been created by the merger of two or more fields;
- (b) land created by the division of a field; or
- (c) land previously excluded from the provisions of cross-compliance.

(4) A claimant must ensure, so far as is reasonably practicable, that fertilisers or pesticides do not enter any watercourse or field ditch.

(5) As soon as is reasonably practicable after 31st December 2011 a claimant must produce and keep a map (which may be the map produced for the purposes of regulation 18 of the Nitrate Pollution Prevention Regulations 2008) showing—

- (a) the holding,

- (b) all surface waters on the holding and land within 10 metres of them,
- (c) all boreholes, springs and wells on the holding or within 50 metres of the holding boundary and land within 50 metres of them,

and if circumstances change the claimant must update the map within three months of the change.

Cutting or trimming hedgerows

9.—(1) Cutting or trimming hedgerows is not permitted between 1st March and 31st July inclusive except in accordance with this paragraph.

(2) Cutting and trimming are permitted if the hedgerow—

- (a) overhangs a highway or any other road or footpath so as to endanger or obstruct the passage of vehicles or pedestrians;
- (b) obstructs or interferes with the view of drivers of vehicles or the light from a public lamp;
- (c) overhangs a highway so as to endanger or obstruct the passage of horse-riders; or
- (d) is dead, diseased, damaged or insecurely rooted, and because of its condition it, or part of it, is likely to cause danger by falling on a highway, road or footpath.

(3) Hedge-laying and coppicing are permitted between 1st March and 30th April inclusive.

(4) Trimming by hand is permitted for six months after the hedgerow is laid.

(5) Cutting and trimming are permitted if the Secretary of State has, in order to enhance the environment, improve public or agricultural access, or for reasons relating to livestock or crop production, given the claimant written permission to do so.

Stone walls

10.—(1) Removing a stone wall, or stone from a stone wall, is prohibited.

(2) But this does not apply—

- (a) to widening an existing gateway in a wall to no more than 10 metres in order to provide access to the land for machinery or livestock, and in that case the ends of the wall created by the widening operation must be finished with a vertical face;
- (b) to removing stone to use it—
 - (i) to repair another stone wall on the holding which is in better condition than the stone wall which is removed or from which the stone is removed;
 - (ii) to make minor repairs to a footpath on the holding; or
- (c) if the Secretary of State has given the claimant written permission to do so in order to enhance the environment, improve public or agricultural access, or for reasons relating to livestock or crop production.

(3) In this paragraph—

- (a) “stone wall” means a stone wall that is or was used as a field boundary with—
 - (i) a continuous length of at least 10 metres;
 - (ii) a continuous length of less than 10 metres which meets (whether by intersection or junction) another field boundary at each end; or
 - (iii) a continuous length of less than 10 metres which forms an enclosure;
- (b) “footpath” has the meaning given to it in section 329(1) of the Highways Act 1980.

Circumstances where a breach of Schedule 1 is not non-compliance

1. Any action carried out under a commitment under—
 - (a) a scheme established under Council Regulation (EC) No 2078/92 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside(a);
 - (b) a scheme established under Article 14, 22 to 24 or 31 of Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF)(b);
 - (c) a management agreement entered into under—
 - (i) section 16 of the National Parks and Access to the Countryside Act 1949(c);
 - (ii) section 15 of the Countryside Act 1968(d);
 - (iii) section 7 of the Natural Environment and Rural Communities Act 2006(e);
 - (d) an approved project in respect of which financial assistance is paid under the Energy Crops Regulations 2000(f);
 - (e) a measure listed in Article 36 of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development(g).
2. Any action carried out—
 - (a) because, by virtue of any power or authorisation conferred by or under any enactment, a pipe-line, cable or pylon is being or will be laid through, or constructed on or across, the land;
 - (b) as a result of maintenance of a pipeline, cable or pylon being carried out or to be carried out under statutory authority on the land;
 - (c) in the interests of human or animal health or safety;
 - (d) either to enable a serious cause of harm to plant health or serious infestation of any pest or specified weed to be treated, or to permit measures to be taken to prevent the development of any such cause of harm or infestation.

-
- (a) OJ No L 215, 30.7.92, p. 85. This Regulation has been repealed but schemes under it are still in existence.
- (b) OJ No L 160, 26.6.1999, p. 80 as last amended by Council Regulation (EC) No 1698/2005 (OJ No L 277, 21.10.2005, p. 1).
- (c) 1949 c. 97 The Nature Conservancy's powers under section 16 of this Act to enter into agreements with owners, lessees or occupiers of land within nature reserves were transferred to the Natural Environment Research Council by section 3 of the Science and Technology Act 1965 (c.4). They were then transferred to the Nature Conservancy Council by section 1 of the Nature Conservancy Council Act 1973 (c.54), and then to the Nature Conservancy Council for England by section 132 of the Environmental Protection Act 1990 (c.43). That body was renamed English Nature by section 73 of the Countryside and Rights of Way Act 2000 (c.37). Section 26 of the Natural Environment and Rural Communities Act 2006 (c.16) provided for the transfer of English Nature's functions in relation to such agreements to Natural England. Section 16 of the 1949 Act was amended by section 105(1) of, and paragraph 14 of Part 1 of Schedule 11 to, the 2006 Act, with the result that, from 1 October 2006, no new agreements can be entered into under section 16 with regard to England..
- (d) 1968 c. 41 The Natural Environment Research Council's powers under section 15 of this Act to enter into agreements with owners, lessees or occupiers of land within areas of special scientific interest were transferred to the Nature Conservancy Council by section 1 of the Nature Conservancy Council Act 1973 (c.54), and then to the Nature Conservancy Council for England by section 132 of the Environmental Protection Act 1990 (c.43). That body was renamed English Nature by section 73 of the Countryside and Rights of Way Act 2000 (c.37). Section 26 of the Natural Environment and Rural Communities Act 2006 (c.16) provided for the transfer of English Nature's functions in relation to such agreements to Natural England. Section 15 of the 1968 Act was amended by section 105(1) of, and paragraph 14 of Part 1 of Schedule 11 to, the 2006 Act, with the result that, from 1 October 2006, no new agreements can be entered into under section 15 with regard to England.
- (e) 2006 c. 16.
- (f) S. I. 2000/3042.
- (g) OJ No L 277, 21.10.2005, p. 1 as last amended by Council Regulation (EC) No 473/2009 (OJ No L 144, 9.6.2009, p. 3).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Commission Regulation (EC) No 1122/2009, which establishes cross-compliance requirements under Council Regulation (EC) No 73/2009. They set out the requirements for claimants of subsidy under the single payment scheme. The requirements are set out in Schedule 1, and Schedule 2 lists exceptions from those requirements.

They revoke and replace S. I 2009/3264, where the period for casting up hedgebanks was misstated.

A full impact assessment has been prepared and placed in the libraries of both Houses of Parliament. It is available on the Defra website at www.defra.gov.uk.

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2009 No. 3365

AGRICULTURE, ENGLAND

The Agriculture (Cross compliance) (No. 2) Regulations 2009

£5.50